

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

RULES OF PRACTICE AND PROCEDURE RESPECTING REGULATORY PROCEEDINGS

APPLICATION OF RULES

- 1 These Rules are made to facilitate proceedings before the Board. Until the enactment of enabling legislation, the Board does not have the legislative authority to approve or dismiss applications and shall only provide recommendations to the Atlantic First Nations Water Authority Inc. and Indigenous Services Canada.

SHORT TITLE

- 2 These Rules may be cited as the *Board Regulatory Rules*.

OBJECT

- 3 The object of these Rules is to secure the just, speedy and economic determination of every application on its merits.

DEFINITIONS

- 4 In these Rules, unless the context otherwise requires:
- (a) "applicant" shall include the Atlantic First Nations Water Authority Inc. and any other person or corporation applying to the Board to hear and determine any matter or thing;
 - (b) "application" shall include any proceeding, matter or thing which the Board can determine;
 - (c) "Board" means the First Nations Financial Management Board, established under the *First Nations Fiscal Management Act*, SC 2005, c 9;
 - (d) "Clerk" means the Clerk of the Board;
 - (e) "intervenor" means a person who establishes an interest in an application pursuant to Rule 12;
 - (f) "party" means, in respect of an application, an applicant, a respondent or an intervenor;
 - (g) "respondent" shall include any person or corporation adverse in interest to an applicant or entitled to be heard in opposition to any application;

GENERAL

- 5
- (1) Where procedures are not provided for in these Rules or in an enactment, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
 - (2) The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of these Rules at any time by making a procedural order, if it is satisfied that the special circumstances of the application so require, or it is in the public interest to do so.
 - (3) The Board may make directions on procedure and procedural orders which shall govern the conduct of a specific application.
 - (4) The Board may extend or abridge the time fixed by these Rules or otherwise fixed by the Board, and may do so on its own initiative or in response to a motion by any party whether or not the motion to extend or abridge the time is made after the time so fixed has expired.

(5) Unless otherwise specified, where these Rules or a Board order make reference to the number of days between two (2) events, not expressed to be clear days, the number of days shall be calculated by excluding the day on which the first event happens and including the day on which the second event happens. If the last day falls on a day the Board offices are closed, the time shall automatically be extended to the next business day.

(6) No application before the Board shall be defeated or affected by any technical objection or by any objection based upon defects in form or procedure.

PRACTICE DIRECTIVES

6 In addition to these Rules, the Board may issue practice directives which the Board considers necessary for the administration and carrying out of these provisions and to enable it to effectively and completely adjudicate on the matter before it.

APPLICATIONS

7 Every application shall:

- (a) contain a proposed title of the application;
- (b) contain a clear and concise statement of the facts;
- (c) set forth the reasons for the application;
- (d) contain the statutory provision(s), if any, under which it is made;
- (e) set forth the nature of the order or decision applied for;
- (f) be divided into consecutively numbered paragraphs, each of which is confined as nearly as possible to a distinct portion of the subject of the application;
- (g) be signed by the applicant or the applicant's representative;
- (h) provide the full name, address and the telephone, fax and electronic access numbers of the applicant and the applicant's representative; and
- (i) provide any other information that may be useful in explaining or supporting the application in order for the Board to have sufficient information to adjudicate the application.

FILING

8

- (1) Any document to be filed with the Board shall be filed with the Clerk.
- (2) A document may be filed with the Clerk by any of the following methods:
 - (a) delivering a copy to the Clerk at the Board's office;
 - (b) mailing a copy to the Clerk;
 - (c) transmitting a copy to the Clerk via fax or e-mail; or
 - (d) such other manner as the Board may determine.
- (3) All documents filed pursuant to Rule 8(2) shall be date stamped either manually or electronically upon receipt by the Board and any document filed with the Board after 2:00 p.m. PST or on a Saturday, Sunday or holiday shall be considered filed on the next working day.
- (4) When a document is filed with or served on the Board by e-mail transmission or fax, the sender shall obtain an acknowledgment from the Clerk of its receipt.

- (5) In all cases where documentary evidence is offered, the Board, in lieu of requiring the originals thereof to be filed, may accept true copies of such evidence or such parts of the same as may be relevant.
- (6) The Board may reject requests for intervenor status, submissions of evidence and information requests and any other documents which are not filed in accordance with the schedule set by the Board in an application.

SERVICE

9

- (1) Where any document is required to be served on a party, service shall be effected by any of the following methods:
 - (a) personal service;
 - (b) delivering a copy to the party's proper address;
 - (c) sending a copy by ordinary mail addressed to the party at his or her proper address;
 - (d) transmitting a copy to the party via fax or e-mail, where the party has provided a fax number or e-mail address; or
 - (e) such other manner as the Board may determine.
- (2) Where the party is represented, service of a document shall be effected on the party when served on the party's representative and any of the methods of service set out in Rule 9(1) may be used for this purpose.
- (3) Service of a document may be proven by affidavit evidence.
- (4) When a document is served on a party by e-mail transmission, a hard copy or fax of the document shall be provided within a reasonable period thereafter if requested by the recipient.

ORAL OR WRITTEN HEARINGS

10

- (1) An application will be disposed of by way of written hearing in the normal course.
- (2) Notwithstanding Rule 10(1), where the Board deems it necessary at any time during an application, the Board may order that the application be disposed of by an oral hearing in substitution for a written hearing.

HEARING ORDERS

11

- (1) Within thirty (30) days of an application being filed, the Board shall issue a hearing order containing the procedural details applicable to the hearing, accompanied by a notice of hearing.
- (2) Where the Board issues a notice of hearing in accordance with Rule 11(1), the applicant shall, within such time limit as the Board may direct,
 - (a) publish the notice in such publications as the Board may direct; and
 - (b) serve a copy of the notice on such persons as the Board may direct.
- (3) An applicant referred to in Rule 11(2) shall file with the Board an affidavit that sets out the title and date of each publication in which the notice of hearing was published pursuant to Rule 11(2)(a) and the means taken to effect service pursuant to Rule 11(2)(b).
- (4) Where the Board issues a hearing order, it may direct that:

- (a) the applicant shall keep available at the applicant's business address, for public inspection during regular business hours, a copy of the application;
 - (b) the Board shall keep available for public inspection at the offices of the Board a copy of the application and all non-confidential documents related thereto.
- (5) Where the Board does not issue a hearing order, it shall notify interested persons of the hearing and the procedure to be followed in respect thereof.

INTERVENORS

12

- (1) Where a hearing order has been issued pursuant to Rule 11(1), any interested person may apply to intervene by filing with the Board and serving on the applicant, if any, on or before the date set out in the order, a written request to intervene that:
 - (a) sets out the name of the person and any authorized representative of the person and the mailing address, address for personal service, telephone number and any other telecommunications numbers of the person or the person's authorized representative;
 - (b) sets out the facts and reasons why the person has an interest in the application; and
 - (c) states the issues that the person intends to address at the hearing.
- (2) The Board may accept or disallow an intervention and in either case, the Board shall notify the applicant, if any, and the person who filed the request to intervene of its decision in respect of the intervention.
- (3) An intervenor, on being advised by the Board of the name and mailing address of any other intervenor, shall serve a copy of the written intervention on every other intervenor.
- (4) A party may, within fifteen (15) days after the date of service of a written intervention, serve an objection to the intervention on the person who has filed the intervention and shall file with the Board and serve on all other parties a copy of the objection.
- (5) Unless the Board otherwise directs, an applicant who is notified that an intervention has been accepted by the Board in accordance with Rule 12(2) shall, within such time limit as the Board may fix, serve on the intervenor:
 - (a) a copy of the application;
 - (b) subject to Rule 13, any information, particulars or documents relevant to the application that have been filed with the Board; and
 - (c) any hearing order issued by the Board.
- (6) Where a hearing order has been issued pursuant to Rule 11(1), any interested person who does not wish to intervene in the application but who wishes to make comments to the Board regarding the application shall file with the Board and serve on the applicant, if any, on or before the date set out in the order, a letter of comment that:
 - (a) comments on the application;
 - (b) describes the nature of the person's interest in the application; and
 - (c) provides any relevant information that the person considers will explain or support the person's comments.
- (7) The Board shall provide all parties with a copy of any letter filed pursuant to Rule 12(6).
- (8) A party may, within fifteen (15) days after receipt of a letter filed pursuant to Rule 12(6), serve a reply on the person who has filed the letter and shall file with the Board and serve on all other parties a copy of the reply.

- (9) A person who files a letter pursuant to Rule 12(6):
 - (a) does not thereby acquire status as an intervenor;
 - (b) loses intervenor status if that person is an intervenor; and
 - (c) subject to Rule 12(8), is not entitled to any further notice in the application.

CONFIDENTIAL DOCUMENTS

13

- (1) Subject to Rule 13(2), all documents filed in respect of an application shall be placed on the public record.
- (2) A party may request that all or any part of the document be held in confidence by the Board, which request shall be placed on the public record.
- (3) The burden of satisfying the Board that a document should be held in confidence is on the party claiming confidentiality.
- (4) Any request for confidentiality shall:
 - (a) include a summary of the nature of the information in the document;
 - (b) state:
 - (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, and
 - (ii) any objection to placing an abridged version of the document on the public record, and the reasons for such an objection; and
 - (c) be filed with the Board and served on the parties.
- (5) Where a party has made a request under Rule 13(2), the document shall be held in confidence unless the Board orders otherwise.
- (6) A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.
- (7) An objection shall state the reasons:
 - (a) why the party requires disclosure of the document; and
 - (b) why disclosure would be in the public interest
- (8) The party claiming confidentiality will have an opportunity to reply to any objection.
- (9) The Board may decide the issue with or without a hearing. Where the Board holds a hearing, the Board may direct that the hearing be held in the absence of the public.
- (10) In ruling on a request for confidentiality the Board shall consider:
 - (a) whether the document may disclose matters involving public security;
 - (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
 - (c) such other matters as the Board deems appropriate.

- (11) The Board may:
- (a) order that the document be held in confidence by the Board;
 - (b) order that the document be placed on the public record;
 - (c) order that an abridged version of the document be placed on the public record;
 - (d) order that the document be made available to a party to the proceeding, who has a good faith interest in accessing the confidential information and who would not otherwise be in a conflict of interest, on such terms as the Board considers appropriate, including the signing of a confidentiality undertaking in a form approved by the Board;
 - (e) order that the document be withdrawn; and
 - (f) make any other order the Board may deem to be in the public interest.
- (12) Where the Board rejects a claim for confidentiality, the party claiming confidentiality may, within seven (7) days of receiving the Board's decision, or such other time as the Board may allow, notify the Board in writing that:
- (a) if the party is an applicant, the application is withdrawn; or
 - (b) if the party is an intervenor, the intervention is withdrawn.
- (13) Where a party provides written notice to the Board pursuant to Rule 13(12), if the document is on file with the Board, the Board shall immediately return the documents for which confidentiality was claimed.

AMENDMENT

14 A filed document may be amended at any time with leave of the Board.

ADMISSION OF FACTS

15

- (1) The parties to any application before the Board may, by admission in writing filed with the Board, agree upon the facts or any of the facts involved therein, which admission, if filed, shall be regarded and used as evidence at such hearing, investigation or other proceeding.
- (2) The Board may require such additional evidence as it may deem necessary.

INFORMATION REQUESTS

16

- (1) The Board may provide for Information Requests necessary to:
- (a) clarify evidence filed by a party;
 - (b) simplify the issues;
 - (c) permit a full and satisfactory understanding of the matters to be considered; or
 - (d) expedite the application.
- (2) An Information Request shall be in accordance with Form A and shall:
- (a) be directed to the party from whom the response is sought;
 - (b) number the questions consecutively, or as otherwise directed by the Board, in respect of each item of information requested;

- (c) list the name, address and telephone and fax numbers of persons who may be contacted in case clarification of questions is required;
 - (d) be forwarded to the party from whom a response is sought, with copies being sent simultaneously to the Board and all other parties.
- (3) An Information Request shall not be directed to any party upon whose behalf no evidence has been filed, without leave of the Board or consent of the party from whom a response is sought.
- (4) A party seeking leave under Rule 16(3) shall, within any time limit fixed by the Board, file with the Board and serve on the party to whom the Information Request is directed, the proposed Information Request and the reasons therefor.
- (5) The Board shall not grant leave pursuant to Rule 16(3) unless the party to whom the Information Request is directed has been given an opportunity to comment on the proposed Information Request.

17

- (1) Subject to Rule 17(3), where an Information Request has been directed to a party, that party shall file a Response to Information Request within the time fixed by the Board.
- (2) A Response to Information Request shall be in accordance with Form B and shall:
- (a) provide a full and adequate response to each question;
 - (b) state the question at the beginning of each response;
 - (c) begin each response on a new page;
 - (d) number each response to correspond with each item of the Information Request;
 - (e) specify which person prepared the response;
 - (f) file and serve the Response to Information Request as directed by the Board; and
 - (g) set out the date on which the Response to Information Request is filed and served.
- (3) A party who is unable or unwilling to provide a full and adequate response to a question in an Information Request shall file and serve a response:
- (a) where the party contends that the information requested is not relevant, setting out specific reasons in support of that contention;
 - (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons why the information is unavailable and providing any alternative available information that the party considers would be of assistance to the party directing the Information Request;
 - (c) where the party contends that the information sought is of a privileged nature, setting out the reasons why it is considered privileged;
 - (d) where the party contends that the information sought is of a confidential nature, requesting that it be held in confidence, or not filed, pursuant to Rule 13; and
 - (e) otherwise explaining why such a response cannot be given.
- (4) Where a party is not satisfied with the response provided or objects to a claim of privilege, the party may apply to the Board for directions.

ISSUES

18

- (1) The Board may formulate issues to be considered in an application and shall notify parties in respect thereof if, in the opinion of the Board:
 - (a) the formulation of issues would assist the Board in the conduct of the application; and
 - (b) the formulation of issues would assist the parties in participating more effectively in the application.
- (2) To assist the Board in formulating issues in accordance with Rule 18(1), the Board may invite parties to propose issues or to suggest amendments to any formulated issues.
- (3) Any party who proposes an issue pursuant to Rule 18(2) shall explain the issue's relevance to the application.
- (4) Notwithstanding the above, the Board may direct that certain issues or items will be excluded from consideration during the application.
- (5) In an attempt to avoid multiplicity of proceedings on the same issue, the Board may, in any decision, identify issues that will not be revisited until a specified time period has elapsed, absent a significant change in circumstances, or other reason which, in the opinion of the Board, justifies an earlier consideration.

WRITTEN SUBMISSIONS

19

- (1) The Board may direct parties to make written submissions for the purpose of considering matters that relate to:
 - (a) the clarification or simplification of issues;
 - (b) the necessity or desirability of amending an application;
 - (c) the admission of certain facts or the verification of those facts by affidavit, or the use by any party of documents of a public nature;
 - (d) the settling of matters that relate to information requests;
 - (e) the procedure to be adopted in the application;
 - (f) the exchange of documents among the parties; and
 - (g) any other matter that could aid in the conduct and disposition of the application.

HEARINGS

20

- (1) Written or oral hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure required in a court of law.
- (2) The Board may, at its discretion, conduct a hearing or a preliminary hearing in person, in writing or by teleconference, video conference or by any other electronic means.
- (3) At the hearing of an application, the applicant shall present its evidence first, and after the evidence of all other parties is given, shall have the right to reply.
- (4) At any oral hearing, a party may call and examine witnesses, cross-examine opposing witnesses and present arguments and submissions.

- (5) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.
- (6) A party may be represented before the Board by counsel or an agent.
- (7) A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or at the request of any party.
- 21 The Board, whenever it deems it desirable, may require briefs to be filed by the parties within such time as the Board may prescribe.
- 22 The Board may issue a decision in several parts if it is determined by the Board to be in the public interest to do so.

AUDIO AND VIDEO RECORDING OF HEARINGS

- 23
- (1) Audio and video recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate.
- (2) The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the hearing in any way.
- (3) Where recording is allowed, the following shall apply unless otherwise directed by the Board:
- (a) only equipment which does not produce distracting sound or light shall be used;
- (b) where possible, existing audio systems present in the hearing room shall be used;
- (c) media personnel shall not move about while the hearing is in progress; and
- (d) equipment shall be positioned unobtrusively before the hearing begins and shall not be relocated while the hearing is in progress.

DISPOSAL OF EXHIBITS

- 24
- (1) A person who has submitted exhibits to the Board may request that the Board return the exhibits.
- (2) The Board, at the end of six (6) months from the date of the final order in the application, provided no appeal or judicial review has been commenced within that time, may return requested exhibits and may destroy any remaining exhibits.

PRODUCTION OF DOCUMENTS AND DISCOVERY

- 25 The Board may make orders for production of documents, for inspection and for examination.
- 26 A party may give another party notice in writing to produce any documents which relate to any matter in question between the parties, which are in the custody, power or possession of said other party, and if such notice be not complied with secondary evidence of such documents may be given.
- 27 A party may be called upon by any other party, by notice in writing, to admit any document which requires to be proven, saving all just exceptions; and in default of notice to admit, the costs of proving the document shall not be allowed except where, in the opinion of the Board, the omission to give notice was a saving of expense.

Form A – Information Request
First Nations Financial Management Board

IN THE MATTER OF AN APPLICATION [name of applicant]

INFORMATION REQUEST

To: [name of party from whom information is sought]

From: [name of party requesting information]

Responses due by: [as directed by pre-hearing order or the Board Clerk]

Questions:

1. [questions to be numbered consecutively]

2. etc.

Copies: [as directed by pre-hearing order or the Board Clerk]

Contact person: [name, address and telephone/fax numbers of persons who may be contacted in case clarification of questions is required]

Issued at Vancouver, British Columbia, this _ day of (month), 202_.

Clerk of the Board

Form B – Response to Information Request
First Nations Financial Management Board

IN THE MATTER OF AN APPLICATION [name of applicant]

RESPONSE TO INFORMATION REQUEST

To: [name of party (or Board) requesting information]

From: [name of party information requested from]

Question 1. [repeat the question asked]

Response 1. [response – attach any schedules and attachments relating to this response]

** [each response must start on a separate page and must include the heading as above]

[date that response is filed with the Board]