

The Northwest Territories Public Utilities Board

RULES ON COSTS

1. Application

These rules apply to parties who participate in proceedings for utility rate applications before the Public Utilities Board pursuant to the *Public Utilities Act*.

2. Definitions

The terms used in the rules shall have the same meaning ascribed to them in the Act.

For the purposes of clarity and for these rules:

“Act” means the *Public Utilities Act*;

“Board” means the Public Utilities Board established by section 3 of the Act;

“parties” includes applicants and interveners; “party” means any of each an applicant or intervener;

“rules” means these rules on costs;

“Scale of Costs” means Appendix A to the rules.

3. Authority to Award Costs

The Board’s authority to award costs is as described in Section 26 of the Act.

4. Purpose of the Rules and Scale of Costs

The Board seeks to strike a balance between application by utilities, the need to encourage interventions at Board proceedings, and the financial burden on rate payers that would result from awarding costs to parties. Effective proceedings are necessary to the Board in testing the applicant’s case. The Board relies on parties to bring certain issues and points of view to its attention. In respect of interveners, to the extent they represent interest groups, they are the means by which the general public is made aware that an application has been tested.

The ratepayers must bear the cost of the proceedings. The Board has a duty to the public to ensure costs are reasonably and prudently incurred. While costs are awarded to encourage participation and intervention, the Board is equally concerned that ratepayers should not bear the costs of proceedings which serve no useful purpose in an applicant’s case. A balance must be maintained between the need for effective proceedings and the costs of the regulatory process.

5. Proceeding Costs and Budgets

The Board considers a budget for the participation in proceedings to be helpful to ensure efficiencies. The Board will require intervener and applicant budgets having regard to the nature of the proceeding, the process steps involved and the parties requesting funding.

Upon the Board's determination to require a budget from each of the parties, the proposed budgets must include the costs and rates for all parties, including the applicable taxes and disbursements for each stage of the proceeding, as applicable.

If an approved intervener seeking an award of costs or an applicant determines that a Board approved budget will be exceeded by 10% or more, that party shall immediately notify, in writing, the Board, provide an explanation for the reason of the revised budget and propose the amount of additional funding being sought.

The Board shall respond to any request for variance of the budget within 10 days.

6. Cost Claim

Sections 32 and 33 of the Board's *Rules of Practice and Procedure* shall apply to all parties in respect of submitting cost claims to the Board. Parties' cost claims, including those applicable to external costs of counsel and consultants retained by the applicant, are to be submitted to the Board within 30 days of the close of record of the subject proceedings.

Unless the Board directs otherwise, costs orders respecting parties' cost awards will be recoverable from ratepayers by assignment to the applicant utility's hearing cost reserve account.

7. Coming into force

These rules repeal all previous guidelines for claims and Scale of Costs. These rules come into force on March 16, 2020 and apply to all cost claim applications filed after this date.

APPENDIX A

Scale of Costs

This Scale of Costs represents a fair and reasonable tariff to provide any party with adequate, competent, and professional assistance in making an effective submission before the Board. In a case where a party can advance persuasive argument that the scale is inadequate given the complexity of the case, the Board may award an amount greater than stated in this scale to address such unique circumstances.

The onus is on the eligible claimant to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding. Costs will be awarded to parties on a case-by-case basis according to the Act, the *Rules of Practice and Procedure*, the rules and the Scale of Costs.

1. General - Allowable Fees and Expenses

For greater certainty than provided by the Act or the *Rules of Practice and Procedure*, and as may be amended by the Board, parties may only claim the following costs at the rates equal to or lesser than those rates set out below.

Activities undertaken by interveners in advance of the filing of an application with the Board are generally not eligible to be covered by a cost claim, except where an intervener participates in pre-application meetings or consultations with the utility and/or other interveners under a Board sanctioned process.

2. Professional fees

The maximum hourly professional fees allowed by the Board are as described below. It is the Board's view that these rates should allow parties to obtain adequate representation before the Board. Should parties choose to hire representation at rates greater than that allowed by the Board, then the excess will not be allowed in the cost claim.

The Board allows professionals only half of their hourly rate for travel time.

Claims for professional fees must be accompanied by a statement of account that must include the following:

- The date of activity undertaken;
- A description of the activity undertaken with sufficient detail to allow the Board to understand the nature of the activity and how it relates to the issues being advanced by the eligible party; and
- The time incurred with respect to each described service.

a. Legal fees

The maximum allowed for legal fees is \$350 per hour.

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Board will not award legal fees for secretarial or support staff work.

b. Fees of consultants, analysts, experts and support staff

The maximum allowed for consultants, analysts and experts is \$270 per hour.

Cost claims for secretarial or support staff are limited to \$45 per hour.

The Board will not recognize claims for overhead based upon percentages of the fees or expenses claimed.

3. Disbursements

The Board will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. Unless otherwise stated, the Board will not request clarification for receipts that do not satisfy these requirements, and the related claim might not be approved.

a. Office expenses

The Board will consider claims for the following office disbursements incurred throughout the eligible party's involvement in the proceeding such as:

- courier charges
- long-distance telephone calls
- photocopies or printing charges (10 cents per page)
- postage

The Board does not require eligible claimants to submit receipts for the above disbursements with their initial costs claims. Eligible claimants should, however, retain receipts for such expenses, in the event the Board requests the receipts.

Office expenses other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed and receipts attached.

b. Personal expenses

The Board will consider claims for the following personal expenses.

Meals and Incidentals

The maximum allowable daily claim for meals and incidentals is in accordance with current Government of the Northwest Territories rates. Tips are not

claimable. Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

Accommodation

Receipts must accompany all claims for accommodation with the exception of private accommodations which can be reimbursed for up to \$50 per night.

Travel

The Board's mileage rate for automobile travel is in accordance with current Government of the Northwest Territories rates. This portion of a claim is restricted to travel distances of 50 km or greater from the meeting or hearing venue.

The Board will recognize claims for airfare at economy rates or less. Receipts are required and must clearly identify the date of departure and arrival.

Taxi

Taxi receipts need not accompany the claim. Tips are not claimable. However, a party should retain such receipts in the event that the Board requests the receipts.

Parking

Parking receipts need not accompany the claim. However, a party should retain such receipts in the event that the Board requests the receipts.

4. GST

Parties that are eligible for GST rebates are not allowed to include GST in the cost claim. Parties that are not eligible for GST rebates are allowed to include GST paid in the cost claims.

5. Fees and Honorarium of Unrepresented Interveners

An intervener who has not hired legal counsel or a consultant may claim for the number of hours spent in preparing their evidence and submissions in a proceeding. The hourly rate of an unrepresented intervener shall not exceed \$100 per hour and will be determined by the Board when assessing the cost claim.

An unrepresented intervener may claim an honorarium of \$100 for each half day of attendance at an oral hearing.

6. Transcripts

Transcripts are available from the Board in electronic format for all parties and the cost claim can include the 10 cents per page cost of printing the transcripts. If a party chooses to obtain the transcripts directly from the transcription company then the cost

claim is limited to the lesser of 1) what it cost to purchase the transcripts or 2) what it would have cost to obtain the transcripts electronically from the Board and have them printed at 10 cents per page.

7. Comments on Costs Claims

Parties may comment on other parties' costs claims within a time frame set out by the Board. The party submitting the cost claim may respond to such comments within a time frame set out by the Board.

8. Costs Award

In exercising its discretion to award costs, the Board will consider the factors listed in Section 32(2) of the *Rules of Practice and Procedure* for party cost claims.

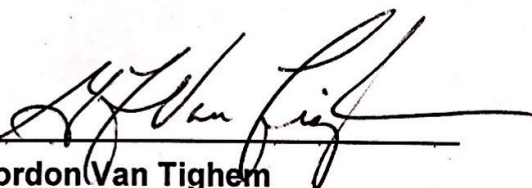
9. Costs Order

9.1 Where the Board has awarded costs in a proceeding, the Board shall issue a cost order setting out the amount awarded and to whom and by whom the payment must be made.

9.2 The utility named in a cost order shall pay the amount awarded to an intervener within 30 days of the issuance of the cost order.

9.3 A cost order will state whether the utility named in the order is authorized to record the costs in its hearing costs reserve account.

**ON BEHALF OF THE
NORTHWEST TERRITORIES
PUBLIC UTILITIES BOARD**



**Gordon Van Tighem
Chairperson**

Dated March 16, 2020