

NEGOTIATED SETTLEMENT PROCEEDINGS

The policy of the Public Utilities Board (the “Board”) is to use the negotiated settlement process judiciously to foster better regulatory decisions and where possible to save time and reduce the cost of utility regulation. The Board is committed to public participation in its processes. It is in the spirit of these values that this policy will be implemented.

1. Initiation of a Negotiated Settlement Process

Any party making an application to the Board for which a public hearing is necessary (AApplicant≅), and wishing to conduct a negotiated settlement process shall request the Board for leave to do so.

The decision as to whether to consent to a negotiated settlement process will be made by the Board, after consideration of the application (AApplication≅), usually a general rate application, for which a public hearing is necessary or deemed by the Board to be necessary, the proposed issues for discussion, and the interests of the affected parties, including the public interest.

Nothing in these Rules precludes the Applicant and intervenors from discussing issues or otherwise exchanging information as has been customary in respect of previous applications before the Board.

2. The Right to Participate

Proper notice is important to ensuring that all parties have the opportunity to participate in settlement discussions. Notice requirements will be the same as for a public hearing, as outlined in the Board=s *Rules of Practice and Procedure*.

Participation in a negotiated settlement process is voluntary but restricted to intervenors to the Application. In this policy, intervenors who express interest in taking part in negotiated settlement proceedings are called AParticipants≅.

The unanimous participation of all affected parties is preferred but not necessary. A decision by an intervenor not to participate does not preclude the intervenor from commenting on the Settlement Agreement or participating in the public hearing.

The Board considers negotiated settlement processes as incidental to proceedings for the purpose of cost awards under section 26 of the *Public Utilities Act*. Costs may be granted in the discretion of the Board.

3. Steps Leading to Negotiated Settlement Meetings

The appropriate time for a negotiated settlement to occur is after sufficient information is available to intervenors so that issues can be assessed and the intervenors can meaningfully consider participating. The Board will determine, based upon the specific facts and circumstances of each application, when sufficient information is available such that a negotiated settlement process may be undertaken. For example, the Board will require that an application be filed, and may also require that information requests be responded to or other information or evidence be made available.

Prior to the commencement of the settlement discussions, the Applicant shall provide the Board with a list of Participants and a list of the issues proposed for discussion. The issues list should be of sufficient detail to identify all key elements on which discussion will focus.

Pre-negotiation meetings may be held to determine procedural matters and to refine the list of issues to be discussed. Changes to the list of issues, prior to commencement of negotiations, shall be made by majority agreement of the Participants, with leave of the Board.

No issue(s) shall be addressed during settlement negotiations unless approved by the Board for discussion.

4. Discussions Confidential and Without Prejudice

All discussions or negotiations on each issue shall be on a confidential and without prejudice basis. The Board will recognize any such communications as privileged, and generally inadmissible. Information that would have become available independently of the negotiated settlement process remains public information.

5. The Right to Dissent

The right of Participants to dissent from a proposed agreement is explicitly recognized by the Board.

A dissenting Participant retains the right to present evidence and to participate at a public hearing or to rebut the evidence of others if there is a written hearing, subject to any confidentiality undertaking, express or implied.

6. Board Staff and Representatives

Board staff will not be present at the negotiation settlement discussions. The Board reserves the right to have staff and consultants attend any pre-negotiation meetings, workshops or technical sessions.

If circumstances warrant it, the Board may appoint an independent third party facilitator. The

precise role and duties of the facilitator shall be determined by the Board on a case specific basis and shall be communicated to all Participants.

It will be the Applicant=s responsibility to keep a record of the settlement negotiations. The nature and scope of such a record will be determined by the Participants in the negotiated settlement process.

Neither the facilitator, nor any Participant, shall provide any information to the Board about any position advanced at the negotiations without the consent of all Participants.

7. Settlement Agreement

If a Settlement Agreement is reached, it will be circulated among the Participants and, upon the written concurrence of the Participants, will then be distributed to any other intervenors and to the Board.

When submitting a Settlement Agreement to the Board, the Applicant shall ensure that the Board has been provided with a full and reasonable explanation of the Settlement Agreement, including updated schedules or other evidence which may have changed as a result of the Settlement Agreement.

In all cases, the onus shall be on the Applicant to ensure sufficient and appropriate information is on the record to permit the Board to understand the Settlement Agreement, and meet its obligations to the public interest.

8. Public Hearing

Under section 20 of the *Public Utilities Act*, the Board is compelled to hold a hearing where required by the Act (for example, for a change in rates pursuant to section 45), and may hold a hearing on its own motion. To the extent that any portion of this policy conflicts with the *Public Utilities Act*, that portion is of no force and effect.

Parties not present at the settlement discussions retain the right to present evidence and to cross-examine at the hearing, as do dissenting Participants, subject to any undertakings of confidentiality, express or implied.

Regarding matters outside the scope of the Settlement Agreement, Participants who have agreed to any Settlement Agreement may also participate fully at the hearing, subject to any undertakings of confidentiality, express or implied.

9. Board Evaluation of Settlement

The Board has a statutory duty to regulate in the broad public interest. The negotiated settlement process must not fetter the Board's ability and discretion to take into account any public interest considerations which may extend beyond the immediate concerns of the parties to the negotiations.

If the Board is not satisfied that a Settlement Agreement is in the public interest, it must reject the agreement.

Where the Participants so seek, the Board will evaluate agreements as packages, in recognition of the fact that settlements often involve compromise. At the same time, the Board will not accept any single issue or item it considers illegal, discriminatory, offensive, or otherwise contrary to the public interest.