

Rules of Procedure for Reviews and Appeals of Orders Issued by The Electrical Safety Authority

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Rules of Procedure for Reviews and Appeals of Orders Issued by the Electrical Safety Authority

(made under s. 12.1(b) of the Safety and Consumer Statutes Administration Act)

Rule 1. Interpretation and Application of Rules

1.1 Definitions

In these Rules, unless the context requires otherwise:

“**Authority**” means the Electrical Safety Authority;

“**Deliver**” means to serve on the other party and to file with the Director of Appeals, with proof of service.

“**Director**” means a director appointed by the Authority, under subsection 9 (1) of the SCSAA, for the purpose of conducting reviews, hearings and rendering decision(s), related to orders issued by the authority or the non-issuance of an order by the Authority, under the Electrical Safety Code and Ontario Electrical Distribution Safety Regulation O. Reg. 22/04;

“**Director of Appeals**” means a director appointed by the Authority, under subsection 9 (1) of the SCSAA, for the purpose of administering reviews and appeals;

“**Electricity Act**” means the Electricity Act 1998, Part VIII, as amended;

“**Hearing**” means the process constituted under Part II, s. 9 of the Regulation where the Director requests a hearing that commences with the filing of a notice of review with the Authority’s Director of Appeals or under Part II, s. 10 of the Regulation that commences with the filing of a notice of appeal with the Authority’s Director of Appeals.

(a) All hearings shall be held orally, unless otherwise stated.

“**Holiday(s)**” means a statutory holiday, Saturdays and Sundays.

“**Motion**” is a request made to either the Authority’s Director or Review Panel to make a decision in a particular proceeding;

“**Notice of Appeal**” is a document filed with the Authority’s Director of Appeals by a person named in a decision made by a Director of the Authority, seeking to appeal the decision of the Authority’s Director;

“**Notice of Review**” is a document filed with the Authority’s Director of Appeals, to request a review of an order issued by the Authority, or where the Authority has not issued an order;

“**Notice of Hearing**” means a document issued by the Director of Appeals that contains the details of the scheduled hearing;

“**Parties**” means the Authority and the person named in a Notice of Review on a proceeding before the Director or the Director on a proceeding before the Review Panel and the person named in a Notice of Appeal;

“**Person**” means an individual, an association, a partnership or a corporation; “**Prescribed**” means prescribed by the Regulation;

“**Proceedings**” means motions, reviews, appeals or hearings;

“Regulation” means the Regulation 187/09 made under the SCSAA or Regulation 22/04 made under the Electricity Act;

“Review Panel” means a panel of not more than three persons appointed from a roster of persons selected by the Authority; and

“SCSAA” means the Safety and Consumer Statutes Administration Act, R.S.O. 1996, c.19, as amended;

1.2 Application of Rules

The Rules apply to all proceedings of the Authority for the purpose of reviewing, hearing and determination, and take effect on January 17, 2005.

1.3 Interpretation of Rules

These Rules shall be interpreted to ensure a determination that is fair and just.

1.4 Amendments of Rules

Amendments to these Rules may be made the Authority, subject to approval of the Authority’s Board of Directors.

1.5 Non-Compliance with Time Periods

The failure of the Authority, the Director or the Review Panel to comply with a time period does not affect the validity of the action taken or any finding, decision or order made.

Rule 2. General – Applies to all Proceedings

2.1 These Rules apply to all proceedings before the Director and the Review Panel.

2.2 Where any of these rules is in conflict with any statute or regulation, the statute or regulation applies.

2.3 In any matter not provided for in these Rules, the practice for conducting reviews and hearings will be determined by referring to the Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22, as amended.

2.4 No proceeding is invalid by reason only of a defect or other irregularity in form.

2.5 The Director of Appeals may decide not to process the request for a review or an appeal unless,

- (a) the documents are complete;
- and
- (b) the fee required for commencing the proceeding is paid;
- and
- (c) the documents are received before the expiry of the time period, in accordance with the Regulation, including any extension of time.

2.6 The Director of Appeals, within 5 days of receiving a request, shall notify the party who files the request for either a review or an appeal, if any of the requirements set out in Rule 2.5 are not met.

2.7 The requirements for the processing of the documents shall include:

- (a) where the documents are incomplete, the completion of those documents;
- (b) where the required fee is not paid, payment of such fee;
- (c) where the documents are received after the time required for processing an appeal has elapsed, proof that an extension of that time has been granted; and

- (d) where defects as set out in (a) or (b) are corrected and such corrections are made after the time required for processing an appeal has elapsed, proof that an extension of that time was granted; and
- (e) any other matter or defect that requires correction.

2.8 The Director or Review Panel may extend or reduce any time period required under these rules, with notice to the parties.

Rule 3 General – Applies to Proceedings before the Director

3.1 The Director or Director's designate may exercise any of his/her powers under these Rules on his/her own initiative or at the request of a party.

- (a) The Director for matters related to the Ontario Electrical Safety Code shall be the Chief Engineer, Provincial Code Engineer or their designate.
- (b) The Director for matters related to the Electrical Distribution Safety Regulation shall be the General Manager for Utility Regulations or their designate.

Rule 4 General – Proceedings before the Review Panel

4.1 The Review Panel may exercise any of its powers under these Rules on its own initiative or at the request of a party.

4.2 The Review Panel may dismiss a proceeding without a hearing if it finds,

- (a) it is frivolous or vexatious;
- (b) it relates to matters that are outside the jurisdiction of the Review Panel;
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met; or
- (d) the party filing the appeal has abandoned the proceeding.

4.3 Before dismissing a proceeding under Rule 4.2, the Review Panel shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in Rule 4.2 (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason

4.4 The notice of intention to dismiss a proceeding under Rule 4.3 shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the Review Panel with respect to the dismissal within the time specified in the notice.

4.5 A party who receives a notice under Rule 4.3 may make written submissions to the Review Panel with respect to the notice of intention to dismiss the proceedings.

4.6 The Review Panel may proceed in a party's absence where a party defaults by failing to attend before the Review Panel, or leaves prior to the conclusion of the hearing. The defaulting party will not be entitled to any further notice of the proceedings and the Review Panel may treat the party's hearing as abandoned, and in accordance with Rule 4.2 (d) dismiss the matter and impose costs as provided by Rule 17.

Rule 5. Notice of Review – Applies to Reviews before the Director

5.1 Where a party has filed a notice of review with the Authority's Director of Appeals, the Director of Appeals, shall within 5 days of receiving the request forward the notice of review to the appropriate Director for a written response to the appeal.

Rule 6. Reviews and Hearings Before the Director

6.1 The Director shall,

- (a) conduct the review of an order issued by the Authority, or the non-issuance of an order, by the Authority, within 10 days of receiving the notice of review from the Director of Appeals; or
- (b) send a request for a hearing to the Director of Appeals within 5 days of receiving the notice of review.

6.2 Where the Director has requested a hearing, the Director of Appeals shall,

- (a) within 5 days of receiving the request send a notice of hearing to the parties, and
- (b) convene the hearing within 10 days of receiving the requests.

Rule 7. Request for Consent & Notice of Hearing – Applies to Hearings Before the Review Panel

7.1 Where a party has filed a notice of appeal with the Authority's Director of Appeals, the Director of Appeals shall, subject to any pre-hearing conference and subject to an attempt to obtain consent as to the manner of holding the hearing, give notice of the hearing to all parties within 10 days of receiving the notice of appeal and shall convene the hearing within 15 days of receiving the request.

7.2 Where consent of a party(s) as to the manner of holding the hearing, is requested by the Director or Review Panel, the Director of Appeals within 5 days of receiving the request shall send the request for consent to the party(s).

7.3 Before the Director of Appeals proceeds to convene a hearing, the party(s) shall file consent with the Director of Appeals within 5 days of receiving the request, and the Director of Appeals shall,

- (a) send a notice of hearing to all parties within 5 days of receiving the parties consent;
and
- (b) convene a hearing within 15 days after receiving consent from all parties.

7.4 Where the parties fail to file consent or the time for filing consent has expired, the Director of Appeals shall,

- (a) send a notice of hearing to all parties within the first 5 days following the expiry of time;
and
- (b) convene an oral hearing within 15 days following the expiry of time.

7.5 The notice of hearing shall include:

- (a) a statement of the time, date, location and the purpose of the hearing, and details about the manner in which the hearing shall be held;
- (b) all hearings shall be held at the Authority's Provincial Office, unless otherwise stated;
- (c) where a hearing is to be held in a manner other than orally, a reference to the party's consent shall be included;
- (d) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (e) a statement notifying the parties of their disclosure obligations under these Rules;
- (f) a statement notifying the parties of their filing obligations under these Rules and that the Review Panel shall receive and review filed documents in advance;
- (g) any other information the Director of Appeals considers necessary for the proper conduct of the

hearing; and

(h) in addition to the requirements prescribed above, the Director of Appeals shall include in a notice of oral hearing, a statement that where a person is properly served with a notice of a hearing and does not attend at the time and place appointed, or attends and then leaves prior to the conclusion of the hearing, such that the party has abandoned the hearing, then the hearing may proceed in that person's absence and without further notice to that person or may be treated as abandoned under Rule 4.6.

Rule 8. Time

8.1 In the computation of time under these rules or in an order, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens, and including the day on which the second event happens;
- (b) where a reference to a number of days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

8.2 The Director or Review Panel may extend or reduce any time period required under these rules.

Rule 9 – Review Panel Composition for Hearings and Term

9.1 The Director of Appeals shall schedule hearings, arrange the sittings of the Review Panel and assign members for each Panel.

9.2 The composition of the Review Panel that conducts a hearing pursuant to Part II, s. 10 of the regulation, shall be selected by the Director of Appeals.

9.3 If the term of office of a member of the Review Panel sitting for a hearing expires during the hearing, the member remains a member of the Review Panel for the purpose of completing the hearing.

9.4 If a member of the Review Panel is unable to continue to conduct a hearing because of illness or other reason, where there are less than three panel members sitting during a hearing, the hearing shall be terminated and a new hearing shall be commenced unless the remaining Review Panel member(s),

- (a) believe that it would best serve the interests of justice to proceed without replacing the member(s); or
- (b) believe the hearing was close to the end; or
- (c) all parties consent to the continuation of the hearing with the remaining member(s), and the review Panel member(s) accept that consent.

Rule 10. Disclosure – Applies to Proceeding before the Review Panel

10.1 All parties to a proceeding shall make disclosure to the other party, at least 5 days before the scheduled proceeding, including:

- (a) all relevant information in their possession, unless it is privileged as a matter of law;
- (b) in the case of written or documentary evidence, copies of the written or documentary evidence, or an opportunity to examine the evidence;

(c) in the case of evidence of an expert, at least 5 days before the hearing, the identity of the expert and a copy of the expert's written report, or, if there is no written report, a written summary of the evidence; and

(d) names of any witnesses, agents, legal counsel, or other person(s) who shall be present during any part of a proceeding..

10.2 The obligation on all parties to disclose is a continuing one. Consequently, after initial disclosure has been made, it is incumbent upon the parties to provide timely disclosure of information subsequently obtained and information previously considered irrelevant, but whose relevance has subsequently become apparent.

10.3 Evidence of an expert is not admissible unless the party with this evidence has provided the other party a copy of the evidence, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence, at least 5 days before the hearing.

10.4 The Review Panel may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under Rules 10.3 above, and may make directions it considers necessary to ensure that the other party is not prejudiced.

10.5 The findings of fact made by the Director or the Review Panel during the hearing shall be based on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the Statutory Powers Procedure Act.

Rule 11. Production of Documents from Third Parties

11.1 A request for the production of documents that are not in a party's possession prior to a hearing shall not require the production of these documents before the commencement of the hearing.

11.2 A motion relating to the production of documents from third parties by request shall not be heard until the commencement of the hearing.

11.3 The party bringing a motion for the production of documents shall give written notice of the motion to the person who has possession of the document and any other person who has a substantial interest, such as a privacy interest, in them.

Rule 12. Reviews and Hearings – Applies to all Proceedings

12.1 The Director or Review Panel may hold hearings and perform the other duties pursuant to s. 15.1(a) of the SCSAA and to these Rules of Procedure.

12.2 Pursuant to s. 15.1 (a) of the SCSAA, and subject to these Rules, the Director or Review Panel may hold a proceeding orally, electronically or in writing or a combination of all three, as is determined appropriate.

Rule 13. Pre-Hearing Conferences – Applies to Proceedings before the Review Panel

13.1 On the consent of all parties, the Review Panel may direct that a pre-hearing conference be held.

13.2 A pre-hearing conference shall be presided over by a single member of the Panel Roster selected by the Director of Appeals.

13.3 During the course of a pre-hearing conference, the parties and the Review Panel member of the pre-hearing may consider, on a without prejudice basis:

- (a) the settlement of any or all of the issues to be brought before the Review Panel;
- (b) the simplification of the issues;
- (c) the facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing;
- (f) procedural issues that might have to be resolved by the Review Panel;
and
- (g) any other matter that may assist in the just and most expeditious disposition of the hearing.

13.4 The member of the Review Panel Roster who presides at a pre-hearing conference shall not be a member of the Review Panel assigned to the hearing, unless the parties consent.

13.5 The member of the Review Panel Roster who presides at a pre-hearing conference shall not disclose information learned at the pre-hearing conference to the Review Panel other than an agreement reached or a procedural direction given at a pre-hearing conference.

Rule 14. Oral Hearings – Applies to all Proceeding

14.1 The Director or Review Panel may hold a part or all of a hearing orally.

14.2 Hearings conducted by the Director or Review Panel shall be held orally at the Authority's Provincial office, unless otherwise agreed to by the parties.

14.3 Subject to this Rule, the purpose of an oral hearing is to hear the evidence of all parties including the evidence of any witness.

14.4 Oral evidence given before the Review Panel at a hearing, may be recorded if the requesting party has satisfied the Review Panel that,

- (a) the necessary arrangements for the recording have been made;
- (b) the requesting party agrees to pay all the associated costs;
and
- (c) the requesting party agrees to pay the Authority for any additional costs that the Authority may incur.

14.5 If all or part of a hearing is conducted by oral means, all of the parties are entitled to receive every document that the Review Panel receives, which may include a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.

14.6 Where it is not reasonably practical to produce a copy of a document, the parties shall have a right of reasonable access to the document.

14.7 Every person participating in the proceeding shall ensure they attend the proceeding in person.

14.8 Every person participating in the oral hearing shall deliver every document, in sequentially numbered pages that he or she intends to rely upon, at least 5 days before the hearing and the Director or the Review Panel may review a filed document before the hearing starts.

Rule 15. Electronic Hearings – Applies to all Proceeding

15.1 The Director or Review Panel may hold all or part of a hearing by telephone conference call, videoconference, or any other form of electronic communication, on written consent of the parties.

15.2 Despite Rule 15.1, where the purpose of the hearing is to deal with procedural matters or a pre-hearing conference, the electronic hearing shall proceed by way of telephone conference call, unless the Review Panel orders otherwise.

15.3 If all or part of a hearing is conducted by electronic means, all of the parties are entitled to receive every document that the Review Panel receives, which may include a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.

15.4 Where it is not reasonably practical to produce a copy of a document, the parties shall have a right of reasonable access to the document.

15.5 At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Director of Appeals of the telephone number and location where he or she can be reached for the proceeding.

15.6 Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided at least 5 minutes before the proceeding is scheduled to commence.

15.7 Every person participating in the electronic hearing shall deliver every document, in sequentially numbered pages that he or she intends to rely upon, at least 5 days before the hearing and the Director or Review Panel may review a filed document as soon as it is received.

Rule 16. Written Hearings – Applies to Proceedings before the Review Panel

16.1 On consent of the parties, the Review Panel may hold all or part of a hearing in writing.

16.2 If all or part of a hearing is conducted in writing, all the parties are entitled to receive every document that the Review Panel receives, which may include a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.

16.3 Every person participating in the written hearing shall deliver every document and submission, in sequentially numbered pages, that he or she intends to rely upon at least 5 days before the hearing, and the Director and the Review Panel may review a filed document as soon as it is received.

Rule 17. Costs – Applies to Proceedings before the Review Panel

17.1 Pursuant to Part II, subsection 10 (9) of the Regulation, with notice to the other parties, the Review Panel may make an order of costs as it considers appropriate in the circumstances, if it is satisfied that the appeal is frivolous or vexatious.

17.2 The Review Panel in determining whether a party has acted unreasonably, frivolously or vexatiously, shall consider all of the circumstances, including, without limiting the generality of the foregoing, circumstances such as a party,

- (a) failing to attend a hearing before the Review Panel or to send a representative when properly given notice;
- (b) failing to comply in a timely manner with a procedural order or direction of the Review Panel or presiding officer at a pre-hearing conference resulting in undue prejudice or delay to another party or parties in the proceedings before the Review Panel;

(c) failure to comply in a timely manner with the disclosure requirements as set out in these Rules including, without limiting the generality of the foregoing, the disclosure requirements respecting documents, particulars, or constitutional issues;

(d) knowingly presenting false or misleading evidence; or . (e) attempting to

unreasonably delay or prolong the duration of a hearing.

17.3 Pursuant to Part II, subsection 10 (11), of the Regulation, the Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.

17.4 Where the Review Panel unanimously finds that a party has acted unreasonably, frivolously or vexatiously, the Review Panel may order that party pay the costs of another party or parties to the proceedings under Rule 17.5, respecting the amount of costs that may be ordered by the Review Panel.

17.5 Where the Review Panel determines that an order for costs may be made under Rule 17.4,

1. the Review Panel when determining the appropriate award of costs shall consider all the circumstances, including, without limiting the generality of the foregoing,

- (a) the seriousness of any misconduct;
- (b) the amount of costs incurred by the party requesting costs; or
- (c) the conduct of the party(s) other than the party requesting costs, and

2. the amount of costs shall not exceed,

- (a) where the Review Panel has not commenced a hearing, the sum of \$400.00; or
- (b) where the Review Panel has commenced a hearing, the sum of \$800.00 multiplied by the number of days that the Review Panel conducts a hearing of the matter, with any part day being considered a full day for the purpose of this calculation of costs.

Rule 18. Quorum/Majority Vote – Applies to Proceedings before the Review Panel

18.1 Where an appeal is to be heard by a Review panel of three members, the decision of a majority of the members is the decision of the Review Panel,

- (a) where the appeal is to be heard by a Review Panel of one member, the decision of the member is the decision of the Review Panel;
- (b) where the appeal is to be heard by a Review Panel of two members, their unanimous decision, is the decision of the Review Panel and if they cannot agree, a new hearing before another panel shall be held.

Rule 19. Decisions and Service – Applies to all Proceedings

19.1 Every party to a proceeding, and the Director of Appeals, within 5 days following the conclusion of the proceeding, shall be sent a written copy of the decision including the reasons, if any, that have been given for it,

- (a) proceedings before the Director, shall be prepared and served by the Director;
and
- (b) proceedings before the Review Panel, shall be prepared and served by the Review Panel.

19.2 The Authority shall publish the decisions of the Review Panel including the reason, if any have been given for it.

19.3 Notice of the decision may be served to the party(s) to the proceeding, personally or by registered mail addressed at their last known address, by fax or by any other form of electronic transmission if there is a record that the notice has been sent.

19.4 If registered mail is used, the notice shall be deemed to have been served on the third day after the day of mailing, unless the person on whom notice is being served satisfies the Authority that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

19.5 If a fax or any other form of electronic transmission is used, the notice shall be deemed to have been served on the day after the fax was sent or the other transmission was made, unless the person on whom notice is being served satisfies the Authority that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.