

# **Rules of Procedure for Appeals of Director's Notices and Decisions on Licences, Issued Under Part VIII of the Electricity Act, 1998**

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# Rules of Procedure for Appeals of Director's Notices and Decisions on Licences Issued Under Part VIII of the Electricity Act, 1998

## 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 person appointed as a Director under section 9 (1) of the *Safety and Consumer Statutes Administration Act, R.S.O. 1996, c.19*, as amended;

**“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;

**“Director of Licensing”** means a person appointed as a Registrar under Part VIII of the *Electricity Act, 1998*, as amended

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

**“Hearing before the Director”** as constituted under s. 15.1(c) of the *SCSAA*, means the process under s.113.4 or 113.5 of the *Electricity Act, 1998*, where a person requests a hearing that commences with the filing of a notice of appeal before the Director with the Authority's Director of Appeals. The standard format for these hearings shall be in writing, unless otherwise stated;

**“Hearing before the Review Panel”** as constituted under s. 15.1(c) of the *SCSAA*, means the process under Part III, s.14 of Ontario Regulation 187/09 where a person requests a hearing that commences with the filing of a notice of appeal before the Review Panel with the Authority's Director of Appeals. The standard format for these hearings shall be orally, unless otherwise stated;

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

**“Licence”** means an authorization, certificate or registration issued under s.113.2 of the *Electricity Act*;

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

**“Notice”** is a document served to a licence holder, without a hearing, where the Authority's Director of Licensing has provisionally suspended or provisionally refused to renew a licence due to safety issues;

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

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

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

**“Notice of Proposal”** is a document served to a person by the Authority's Director of Licensing, where the Director of Licensing is proposing to; refuse to grant or refuse to renew an authorization, suspend or revoke an authorization; or, to grant or renew an authorization subject to restrictions, limitations, or conditions;

**“Parties”** means the Director of Licensing 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 Electricity Act and corresponding Regulations;

**“Presiding Officer”** is a member of the Review Panel Roster who presides at a pre-hearing conference;

**“Proceedings”** means motions, appeals or hearings for matters related to Licensing & Certification;

**“Regulation”** means the Regulation 187/09 made under the SCSAA or Regulation 570/05 made under Part VIII of the *Electricity Act* ;

**“Review Panel”** means a panel of not more than three persons selected from a roster of persons appointed 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 July 1, 2006.

## **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 by 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 of Appeals, the Director of Licensing 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.

## **1.6 Time**

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.
2. The Director of Licensing or Review Panel may extend or reduce any time period required under these Rules, with notice to the parties.

## **Rule 2. General – Applies to all Proceedings**

**2.1** These Rules apply to all proceedings before the Director of Licensing 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 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 an appeal unless,
- (a) the documents are complete; and
  - (b) the fee as prescribed for commencing a proceeding if required, 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 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.

**Rule 3. General – Applies to Proceedings before the Director of Licensing**

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

**Rule 4. General – Applies to 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 proceeding.

- 4.6** The Review Panel may proceed with a hearing in a party's absence in the circumstance where a party has indicated to the Review Panel their unwillingness to participate in the hearing. The defaulting party will not be entitled to any further notice of the proceeding 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 Appeal before the Director – Applies to Hearings before the Director of Licensing**

- 5.1** Where a party applies for a hearing under s.113.4 or 113.5 of the Electricity Act by filing a notice of appeal before the Director of Licensing with the Authority's Director of Appeals, the Director of Appeals shall within 5 days of receiving the appeal forward the notice of appeal to the Director of Licensing for a written response to the appeal.

**5.2 The Director of Licensing shall,**

- (a) provide a written response to the appeal within 10 days of receiving the notice of appeal 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 appeal, and may send a request for consent as to the manner of holding the hearing.

- 5.3** Where the Director of Appeals receives the request for a hearing from the Director of Licensing, the Director of Appeals shall, subject to an attempt to obtain consent as to the manner of holding the hearing shall,

- (a) give notice of the hearing to all parties within 10 days of receiving the request for a hearing, and
- (b) convene the hearing within 25 days of receiving the request for a hearing; or
- (c) within a reasonable time thereafter.

**Rule 6. Notice of Appeal before the Review Panel – Applies to Hearings before the Review Panel**

- 6.1** Where a party has filed a notice of appeal before the Review Panel under Part III, subsection 14(1) of Ontario Regulation 187/09 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,

- (a) give notice of the hearing to all parties within 10 days of receiving the notice of appeal, and
- (b) convene the hearing within 25 days of receiving the notice of appeal.

**Rule 7. Request for Consent & Notice of Hearing – Applies to all Proceedings**

- 7.1** Where consent of a party(s) as to the manner of holding the hearing is requested by the Director of Licensing or Review Panel, the Director of Appeals within 10 days of receiving the request shall send the request for consent to the party(s).

- 7.2** 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 for consent, and the Director of Appeals shall,

- (a) send a notice of hearing to all parties within 10 days of receiving the parties' consent; and
- (b) convene a hearing within 25 days after receiving consent from all parties.

- 7.3** 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 10 days following the expiry of time; and
- (b) convene a hearing in the standard format within 25 days following the expiry of time.

- 7.4** 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 before the Review Panel 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 Director of Licensing or 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. Hearings – Applies to all Proceedings**

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

**Rule 9. Oral Hearings**

- 9.1** Rules 9.2 to 9.6 applies to all Proceedings and Rules 9.7 to 9.9 applies to proceedings before the Review Panel
- 9.2** The Director of Licensing or Review Panel may hold a part or all of a hearing orally.
- 9.3** Hearings conducted by the Director of Licensing or Review Panel shall be held orally at the Authority's Provincial office, unless otherwise agreed to by the party(s).
- 9.4** The purpose of an oral hearing is to hear the evidence of all parties including the evidence of any witnesses.
- 9.5** Oral evidence given before the Director of Licensing or Review Panel at a hearing, may be recorded if the requesting party has satisfied the Director of Licensing or 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.
- 9.6** If all or part of a hearing before the Review Panel is conducted by oral means, all of the parties are entitled to receive every document that the Director of Licensing or 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.
- 9.7** 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.
- 9.8** Every person participating in the proceeding shall ensure they attend the proceeding in person.
- 9.9** Every person participating in the oral hearing before the Review Panel 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 of Licensing or the Review Panel may review a filed document before the hearing starts.

**Rule 10. Electronic Hearings**

- 10.1** Rules 10.2 to 10.3 applies to all Proceedings and Rules 10.4 to 10.8 applies to Proceedings before the Review Panel.
- 10.2** The Director of Licensing 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.
- 10.3** Despite Rule 10.2, 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 Director of Licensing or Review Panel orders otherwise.
- 10.4** If all or part of a hearing is conducted by electronic means before the Review Panel, all of the parties are entitled to receive every document that the Director of Licensing or 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.
- 10.5** 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.
- 10.6** 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.
- 10.7** 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.
- 10.8** 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 of Licensing or Review Panel may review a filed document as soon as it is received.

**Rule 11. Written Hearings**

- 11.1** Rule 11.2 applies to all Proceedings and Rules 11.3 to 11.4 apply to Proceedings before the Review Panel.
- 11.2** The Director of Licensing may hold all or part of a hearing in writing. The Review Panel may hold all or part of a hearing in writing on written consent from all parties.
- 11.3** If all or part of a hearing is conducted in writing before the Review Panel, all the parties are entitled to receive every document that the Director of Licensing or 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.
- 11.4** Every person participating in the written hearing before the Review Panel, 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 of Licensing and the Review Panel may review a filed document as soon as it is received.

**Rule 12. Pre-Hearing Conferences – Applies to Proceedings before the Review Panel**

- 12.1** On the consent of all parties, the Review Panel may direct that a pre-hearing conference be held.
- 12.2** A pre-hearing conference shall be presided over by a single member selected, by the Director of Appeals, from the Panel Roster.
- 12.3** 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.

**12.4** 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.

**12.5** 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 13. Review Panel Composition for Hearings and Term**

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

**13.2** The composition of the Review Panel that conducts a hearing pursuant to Part III, s. 14 of the regulation shall be selected by the Director of Appeals.

**13.3** 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.

**13.4** 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 14. Quorum/Majority Vote – Applies to Proceedings before the Review Panel**

**14.1** A quorum/majority vote for the purposes of the Review panel rendering a decision shall be,

(a) 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; or

(b) 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; or

(c) 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 15. Disclosure – Applies to all Proceedings**

**15.1** 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.
- 15.2** 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.
- 15.3** 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.
- 15.4** The Director of Licensing or Review Panel may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under Rule 15.3 above, and may make directions it considers necessary to ensure that the other party is not prejudiced.
- 15.5** The findings of fact made by the Director of Licensing 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 16. Production of Documents from Third Parties**

- 16.1** 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.
- 15.2** A motion relating to the production of documents from third parties by request shall not be heard until the commencement of the hearing.
- 15.3** 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 17. Costs – Applies to Proceedings before the Review Panel**

- 17.1** Pursuant to Part III, subsection 14(10) 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 vexatious, 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** Where the Review Panel unanimously finds that a party has acted unreasonably, frivolously or vexatious, the Review Panel may order that party pay the costs of another party or parties to the proceedings as determined under Rule 17.4.
- 17.4** Where the Review Panel determines that an order for costs may be made under Rule 17.3,
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; and
    - (b) the amount of costs incurred by the party requesting costs; and
    - (c) the conduct of the party(s) other than the party requesting costs.
  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.
- 17.5** Pursuant to Part III, subsection 14(12) 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.

**Rule 18. Decisions and Service – Applies to all Proceedings**

- 18.1** Every party to a proceeding, and the Director of Appeals, within 10 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 of Licensing, shall be prepared and served by the Director of Licensing; and
  - (b) Proceedings before the Review Panel, shall be prepared and served by the Review Panel.
- 18.2** The Authority shall publish the decisions of the Review Panel including the reason, if any have been given for it.
- 18.3** 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.
- 18.4** 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.
- 18.5** 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.