

S.I. 2009 No. 82

Utilities Regulation Act
Cap. 282

UTILITIES REGULATION (PROCEDURAL)
(AMENDMENT) RULES, 2009

The Commission in exercise of the powers conferred on that body by section 39 of the *Utilities Regulation Act*, and after consultation with the service providers and the Minister, makes the following Rules:

1. These Rules may be cited as the *Utilities Regulation (Procedural) (Amendment) Rules, 2009*.

2. The *Utilities Regulation (Procedural) Rules, 2003*, in these Rules referred to as the principal Rules are amended in regulation 2 by deleting the definition of “intervenor” and substituting the following:

Cap. 282. ““intervenor” means an interested party or a consumer referred to in section 15(5) of the *Utilities Regulation Act*,”.

3. Rule 13 of the principal Rules is amended by deleting paragraphs (4) and (5) and substituting the following:

“(4) Where a party has made a request under this Rule, the document if filed with the Commission, shall be held in confidence unless the Commission decides to

(a) hold a hearing; and

(b) place the document on the public record.

(5) Where the Commission holds a hearing under paragraph (4), the Commission may direct that the hearing be held in the absence of the public in accordance with rule 39.”.

4. Rule 16 of the principal Rules is amended

(a) in paragraph (3), by deleting the words “(1) and (2)” and substituting the words “(1), (2) and (8),”;

(b) by deleting paragraph (4) and substituting the following:

“(4) Subject to rule 16A, any party who wishes to present evidence at an oral hearing shall prior to the appearance of its witness, file and serve its written evidence including a witness statement as directed by the Commission.”;

(c) in paragraph 7, by deleting sub-paragraph (c) and substituting the following:

“(c) a witness statement filed and served under paragraph (4),”;

(d) in paragraph 8, by deleting sub-paragraph (c) and substituting the following;

“(c) a witness statement filed and served under paragraph (4),”

5. The principal Rules are amended by inserting immediately after rule 16 the following as rule 16A:

“Witness statement. 16A. (1) a witness statement shall

(a) give the name, address and occupation of the witness;

(b) so far as is reasonably practical, be in the witness’ own words;

(c) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document;

- (d) be dated and signed or otherwise authenticated by the intended witness.

(2) The Commission may order that any inadmissible, scandalous, irrelevant, defamatory, offensive or otherwise oppressive word or phrase be struck out of any witness statement and in instances where inclusions of this nature have been made throughout the witness statement the Commission shall have the discretion to strike out the entire statement.

(3) Where the witness in question is tendered as an expert witness verification of his expertise shall be annexed to his witness statement.

(4) A witness giving oral evidence may, with the permission of the Commission:

- (a) amplify the evidence as set out in a witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or
- (c) comment on evidence given by other witnesses.

(5) A witness may seek leave of the Commission at any time before the end of the hearing to amend or amplify the witness statement, to address any issue arising as a result of additional information or new matters which have arisen during the course of the hearing and after the witness statement was served on the parties.

(6) The witness statement of a witness called to give evidence at a hearing may be referred to in cross

examination whether or not the statement or any part of it was referred to during the witness' evidence in chief

(7) Where a witness statement is not served in respect of an intended witness within the time specified by the Commission, then the witness may not be called unless the Commission considers it just in all the circumstances to give permission.

(8) A witness statement may stand as the witness' evidence in chief unless the Commission otherwise orders.

(9) Where a witness statement is directed to stand as examination in chief the witness shall be asked to verify his signature or other authentication of the statement.

(10) Subject to paragraph (1), and to any matters of clarification that may arise, the witness shall be tendered for cross-examination."

6. Rule 42 of the principal Rules is amended by

(a) deleting paragraph (2) and substituting the following:

"(2) Examination of witnesses shall proceed as follows:

- (a) examination-in-chief by the applicant;
- (b) cross-examination of the applicant by Public Counsel, intervenors, the Commission, commission counsel or staff;
- (c) re-examination by the applicant;
- (d) examination-in-chief by Public Counsel and the intervenors;
- (e) cross-examination of Public Counsel and intervenors, by the applicant, Commissioners, commission counsel or staff;

- (f) re-examination by Public Counsel and intervenors;”.
- (b) deleting paragraph (6);
- (c) re-numbering existing paragraphs (7) and (8) as paragraphs (6) and (7) respectively.

7. The principal Rules are amended by deleting rule 64 and substituting the following:

“Applica-
tion for
intervenor
status.

64. (1) Subject to paragraph (8) of rule 64, any person who wishes to participate as an intervenor at a rate review and service standards hearing shall submit a letter of intervention to the Commission.

(2) A person who wishes to actively participate in a proceeding shall comply with the applicable rules.

(3) A person who intends to actively participate in the proceeding by

- (a) leading evidence;
- (b) making arguments;
- (c) submitting interrogatories; or
- (d) cross-examining a witness or witnesses

must comply with paragraphs (5) and (6) of rule 64.

(4) A person may apply to actively participate in the proceeding by submitting a letter of intervention to the Commission.

(5) A person shall not submit a letter of intervention unless the person intends to actively

participate in the proceeding in the manner set out in paragraph (3) of rule 64.

- (6) Every letter of intervention shall
 - (a) be divided into paragraphs and numbered consecutively;
 - (b) describe the intervenor, the interest of the intervenor in the proceeding and contain detailed grounds for the intervention;
 - (c) contain, subject to paragraph (7) of rule 64, a concise statement of the nature and scope of the intervenor's intended participation;
 - (d) request the written evidence if it is desired; and
 - (e) set out the full name, address, telephone number and facsimile number of no more than 2 representatives including counsel of the intervenor for the purpose of service and delivery of documents in the proceeding.

(7) Where by reason of an inability or insufficient time to study an application or other document initiating the proceeding, a person is unable to include the information required in the letter of the intervention, that person shall

- (a) state this fact in the letter of intervention as submitted under paragraph (5) of rule 64; and
- (b) within

- (i) 15 business days of receipt of a copy of the written evidence;
- (ii) 15 business days of the submission of the letter of intervention; or
- (iii) 3 business days after the issues have been formulated by the Commission,

whichever is later, submit the letter of intervention with the information required by paragraph (6) rule 64.

(8) Where several intervenors raise the same or substantially the same grounds of intervention, the Commission may in an effort to save time and costs limit the number of persons actually participating in the hearing on those said grounds of intervention.

(9) Upon the submission of a letter of intervention, the Secretary shall notify the person applying for intervenor status in writing that the letter of intervention has been accepted for filing and whether the status has been granted; and the Secretary shall supply copies of the letter of intervention to the other parties and to the service provider.”.

8. Rule 65 of the principal Rules is amended by

- (a) deleting the word “file” appearing before the words “a letter of intervention and substituting the word “submit”; and
- (b) deleting the word “directed” appearing before the words “by the Commission” and substituting the word “fixed”.

9. Rule 67 of the principal Rules is amended by

(a) deleting paragraph (1) and substituting the following:

“(1) Unless the Commission otherwise directs, an intervenor shall submit a written brief to the Commission before a hearing, summarizing the issues he or she wishes to raise in the hearing; and the brief shall be accompanied by any documents which may be useful in explaining or supporting the intervention.”;

(b) deleting paragraph (7) and substituting the following:

“(7) Intervenors who are consumers are entitled to be represented by the Public Counsel and the Commission will encourage intervenors to exercise this right if they appear to be having difficulty in complying with the Rules of the Hearing.”; and

(c) deleting paragraph (8) and substituting the following:

“(8) Where several intervenors who are consumers raise the same or substantially the same grounds of intervention, the Commission may invite those intervenors to make their intervention through the Public Counsel for the purpose of saving time, expense and the overall expeditious disposition of the hearing.”.

Made by the Commission this 3rd day of July, 2009.

NEVILLE V. NICHOLLS
Chairman of the Commission.