



SURFACE RIGHTS BOARD

of the

NORTHWEST TERRITORIES

RULES OF PROCEDURE

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1.0 Applying for an Order, Review of an Order or Termination of an Order

- 1.1 A person wishing to make an Application for an Access Order, an Application for a Compensation Order, an Application for a Review of an Order or an Application for Termination of an Order of the Northwest Territories Surface Rights Board (NWT SRB) may initiate these processes by obtaining, completing and submitting to the NWT SRB an Initial Application Form.
- 1.2 Initial Application Forms may be obtained by visiting the NWT SRB website at www.NWTSRB.ca, by contacting the NWT SRB via electronic mail at NWTSRB@NWTSRB.ca, by telephone at (867) 766-2822, by fax at (867) 766-2823 or by postal mail at P.O. Box 2580 Yellowknife, Northwest Territories X1A 2P9.

2.0 Availability of NWT SRB Rules of Procedure and Practice Directions

- 2.1 The NWT SRB *Rules of Procedure* and *Practice Directions* are available to all persons wishing to obtain a copy. Anyone wishing to obtain an electronic copy of the NWT *Rules of Procedure* and/or the NWT SRB *Practice Directions* may do so by visiting the NWT SRB website at www.NWTSRB.ca, by making a request by electronic mail at NWTSRB@NWTSRB.ca, or may obtain a paper copy by contacting the SRB by telephone at (867) 766-2822, by fax at (867) 766-2823 or contacting the SRB by postal mail at P.O. Box 2580, Yellowknife, NWT X1A 2P9.

3.0 Service of Documents

- 3.1 Notification of Parties and filing and service of documents with respect to matters involving NWT SRB processes shall at all times be undertaken in a manner reasonable in the circumstances. The NWT SRB may be contacted to determine the appropriate manner of notification and/or filing and service in each circumstance, including:
- 3.1.1 Filing and serving documents electronically. Documents (originals or scanned copies) may be sent to and filed with the SRB electronically. Filed copies of these documents may also be sent to and served upon other persons electronically. In order to ensure receipt of service, any person filing and/or serving documents via e-mail must receive confirmation of filing and/or service satisfactory to the NWT SRB. In the event that an Applicant attempting to effect service cannot obtain such a confirmation of

service, that person may make an Interlocutory Application to the NWT SRB for an Order directing substitutional service.

3.1.2 Filing and serving paper documents. If filing and serving paper documents via postal mail or courier, extra time should be given to complete the process. In any case, proof of service of paper documents satisfactory to the NWT SRB is required by the Board.

3.2 In the event that a document submitted for filing is a NWT SRB Initial Application Form (initiating an Application for an Access Order, an Application for a Compensation Order, an Application for a Review of an Order or an Application for Termination of an Order of the NWT SRB) or an Interlocutory Application Form (initiating an Interlocutory Application of the NWT SRB) the Applicant must serve a copy of the filed document on all other Parties to the proceeding, accompanied by a request for confirmation of receipt of service and must receive confirmation of service satisfactory to the NWT SRB. All such filed documents shall be posted by the NWT SRB on its website for public viewing.

3.3 All filed documents (excluding Initial Application Forms and Interlocutory Application Forms) shall be considered to have been properly served upon all Parties upon being posted by the NWT SRB on its website for public viewing.

4.0 Confidentiality

4.1 The NWT SRB recognizes that Parties to its proceedings may from time to time wish to protect the confidentiality of information provided to the NWT SRB. Any Party to a proceeding (Hearing or Interlocutory Hearing) before the NWT SRB may, at any time, request to the NWT SRB that information of a personal, business or Aboriginal Traditional Knowledge nature be treated as confidential. Upon receiving such a request, the NWT SRB will consider the request and will advise the Parties by way of *Practice Directions* (see Rule 5.0) on a case-by-case basis as to what if any steps will be taken to protect the confidentiality of the information.

5.0 Practice Directions

5.1 For the purpose of carrying out its responsibilities pursuant to the NWT *Surface Rights Board Act* and facilitating its processes and procedures the NWT SRB may, from time to time, issue '*Practice Directions*' for the purpose of addressing procedural issues either with respect to NWT SRB proceedings generally (on a short-term basis until the *Rules of Procedure*

may be formally amended) or pertaining to individual proceedings which occur within a case specific context, which *Practice Directions* are to be read in conjunction with these NWT SRB *Rules of Procedure*.

- 5.2 In the event of a conflict or inconsistency between *Practice Directions* and these *Rules of Procedure*, *Practice Directions* shall prevail to the extent of the conflict or inconsistency as an exception to the *Rules of Procedure*.
- 5.3 *Practice Directions* which apply to NWT SRB proceedings generally or with respect to a specific proceeding are “directions” and shall not constitute “rules” as contemplated in section 90 of the NWT *Surface Rights Board Act*, and as such do not require formal advertising or publication in the NWT *Gazette* and shall not be appended to these NWT SRB *Rules of Procedure*. *Practice Directions* shall be available by contacting the NWT SRB as set out herein or by visiting the NWT SRB website.

6.0 Defects or Irregularities in Form

- 6.1 No NWT SRB proceeding to which these NWT SRB *Rules of Procedure* apply shall be invalid solely by reason of a procedural defect or other irregularity in form.

7.0 Non-Compliance

- 7.1 In the event that a Party to a NWT SRB proceeding fails to comply with an Order of the Board, or fails to comply with these *Rules of Procedure* or with a *Practice Direction* pursuant to Rule 5 herein, the NWT SRB may take such action as it deems appropriate in the circumstances, keeping in mind that the Board has all of the power, rights and privileges of a superior court with respect to the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary or proper in relation to Applications for, Reviews of, or Termination of Orders.

8.0 Negotiation to Resolve Disputes Involving Non-Tlicheo Lands

- 8.1 The NWT SRB is not authorized to consider an Application for an Order involving non-Tlicheo lands unless, in accordance with these *Rules of Procedure*, an Applicant has attempted in good faith to resolve a matter in dispute by negotiation and is unable to bring about a resolution of the dispute within a reasonable period.

- 8.2 All communications for the purpose of attempting to resolve a matter in dispute by negotiation shall be on a 'without prejudice' basis.
- 8.3 All communications (including documents) within the scope of negotiations for the purpose of attempting to resolve a matter in dispute shall be considered to be 'confidential' and cannot be provided to third parties without the written agreement of the parties.
- 8.4 When determining whether an Applicant has attempted in good faith to resolve a matter in dispute by negotiation within a reasonable period, the NWT SRB may take account of activities of the Applicant which include (but are not limited to):
- a) In-person meeting(s) between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
 - b) Telephone discussion(s) between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
 - c) Correspondence between an Applicant and other parties to a matter in dispute for the purpose of resolving the dispute.
 - d) Formal offer(s) of settlement between an Applicant and other parties to a matter in dispute.

9.0 Mediation to Resolve Disputes Involving Tlicheo Lands

- 9.1 The NWT SRB is not authorized to consider an Application for an Order involving Tlicheo lands unless the Applicant has attempted in good faith to resolve the matter in dispute by mediation in accordance with Part 6 of the Tlicheo Agreement and is unable to bring about a resolution of the dispute.

10.0 Pre-Hearing Meetings

- 10.1 The NWT SRB may, in its discretion, require that Parties to a Proceeding before the NWT SRB attend one or more Pre-Hearing Meetings prior to the holding of a Hearing by the NWT SRB. Information relating to the details of a Pre-Hearing Meeting will be provided by the NWT SRB to the Parties in advance of the Pre-Hearing Meeting.

11.0 Interlocutory Applications

- 11.1 In the event that one or more Parties to any NWT SRB proceedings wish to raise an issue relating primarily to matters of process or procedure, any Party may bring an Interlocutory Application to address the issue. Matters relating primarily to the substance of an Application for Access, Application for Compensation, Application to Review an NWT SRB Order or Application to Terminate an NWT SRB Order shall not be dealt with by the NWT SRB by way of Interlocutory Application.
- 11.2 Interlocutory Applications are to be commenced by the Applicant(s):
 - a) filing with the NWT SRB a completed Interlocutory Application Form available on request from the SRB, and
 - b) serving upon all Parties a copy of the Interlocutory Application Form filed with the NWT SRB in accordance with the Service provisions set out in these *Rules of Procedure*.
- 11.3 Upon receiving an Interlocutory Application the NWT SRB may, in its discretion, choose to hear the matter by way of Interlocutory Hearing, or may deal with the matter by any other means deemed appropriate by the NWT SRB.
- 11.4 In the event that the NWT SRB decides to hold an Interlocutory Hearing it shall provide notice of the Interlocutory Hearing to all Parties to the Application.
- 11.5 In the event that the NWT SRB decides in its discretion, to hold an Interlocutory Hearing, it may, in its discretion, hold Interlocutory Hearings either in person (“In-Person Interlocutory Hearing”), or via electronic means (“Electronic Interlocutory Hearing”), or in writing (“Written Interlocutory Hearing”), or by any combination of the three (“Combination Interlocutory Hearing”), at such time and location as directed by the NWT SRB, and may set out the process to be followed for that Interlocutory Hearing, which may include adopting any or all of the rules which apply to a Hearing of an Application for Access, Application for Compensation, Application to Review an NWT SRB Order or Application to Terminate an NWT SRB Order as set out in these *Rules of Procedure*.
- 11.6 Upon hearing an Interlocutory Application the Member(s) of the NWT SRB hearing the Application shall render a decision with respect to the Interlocutory Application, which decision shall be in writing and shall include reasons for the decision.
- 11.7 A copy of a decision in writing referred to in Rule 11.6 herein shall be provided by the NWT SRB to every Party participating in the Interlocutory Application and published on the NWT SRB website.

12.0 NWT SRB Request for Information

12.1 At any time in its proceedings the NWT SRB may request additional information from any Party to those proceedings.

13.0 Panel Membership

13.1 Membership of NWT SRB Panels at SRB proceedings including Hearings shall be within the discretion of the SRB.

14.0 Forms of Hearings

14.1 The NWT SRB may, in its discretion, hold a variety of forms of Hearings, including:

- a) In-person Hearings
- b) Written Hearings
- c) Electronic Hearings
- d) Combination Hearings

15.0 Rules of Hearing Procedure

15.1 The NWT SRB will provide to all Parties in advance of its processes, including Hearings, guidance on the application of its Rules (including procedures) which the SRB wishes to employ in those processes.

16.0 Taking a View

16.1 The NWT SRB may, in its discretion, determine that it will “take a view” by way of a site visit of the geographic area which is the subject of a SRB process.

17.0 Orders/Decisions

17.1 The NWT SRB will make all reasonable efforts to render its Decisions with written Reasons relating to Applications for Orders, Review of Orders and Termination of

Orders in an expeditious fashion and provide copies of its Decisions with written Reasons and Orders as soon as feasible to the Parties and to any applicable regulatory authority.

17.2 The NWT SRB will provide copies of its Orders and/or Decisions via electronic and/or paper format to the Parties to an Application and to all relevant regulatory authorities, and shall publish all NWT SRB Orders and Decisions on the NWT SRB website.

18.0 Factors Taken into Consideration in Decisions Relating to Applications for Orders, Review of Orders or Termination of Orders

18.1 In making its Decisions with respect to Applications for Orders, Review of Orders or Termination of Orders the NWT SRB shall consider all relevant evidence.

19.0 Types of Orders

19.1 The NWT SRB may make Decisions with respect to Applications and issue Orders, Amendments to Orders and Termination of Orders on the basis of those Decisions.

20.0 Reasons for Decision

20.1 The NWT SRB shall provide written reasons with respect to Decisions regarding Orders, Amendments to Orders and Termination of Orders.

21.0 Enforcement of Orders

21.1 The NWT SRB shall file all Orders with the Clerk of the Supreme Court of the Northwest Territories, making its orders enforceable in the same manner as an order of that Court.

22.0 Review of Orders

22.1 Upon Application for Review of an NWT SRB Order, the NWT SRB may review via Hearing such an Order if there has been a material change in the facts or circumstances relating to the Order.

23.0 Costs

- 23.1 The awarding of Costs relating to a matter within the jurisdiction of the NWT SRB shall be wholly within the discretion of the NWT SRB.