

Energy Resource Appeal Tribunal

RULES

Approved: February 2011
Amended: December 2012
Amended: July 1, 2016
Amended: April 2019
Amended: August 2023

Energy Resource Appeal Tribunal
RULES

Table of Contents

INTRODUCTION4

GENERAL4

 Rule 1 Definitions 4

 Rule 2 Applying the rules 5

 Rule 3 Effect of non-compliance 5

 Rule 4 Calculating time 5

APPEALS AND PARTIES6

 Rule 5 Starting an appeal 6

Deemed date of receipt of notice of appeal sent by registered/certified mail..... 6

 Rule 6 Extension of time to file an appeal 6

 Rule 7 Acknowledgement of appeal 6

 Rule 8 Delivery of the respondent’s “record of decision” 7

 Rule 9 Representation before the Tribunal 7

 Rule 10 Change in contact information 8

 Rule 11 Adding or removing interveners to an appeal 8

DOCUMENT DELIVERY8

 Rule 12 Filing documents with the Tribunal 8

Filing documents by email or fax 9

Filing multiple copies of a document..... 9

When documents are deemed to be delivered to the Tribunal..... 9

 Rule 13 Delivering documents to parties and interveners 9

When delivery of a document is deemed to be complete 9

Alternative method of delivery.....10

APPEAL MANAGEMENT10

 Rule 14 Joining or consolidating appeals10

 Rule 15 Pre-hearing conferences10

 Rule 16 Facilitated settlement (mediation)10

 Rule 17 Consent orders11

APPLICATIONS11

 Rule 18 General procedure11

Applications for documents12

Energy Resource Appeal Tribunal

RULES

HEARINGS	12
Rule 19	Scheduling a hearing12
Rule 20	Failure to participate in a hearing12
Rule 21	Oral hearings13
	<i>Pre-hearing submissions (Statement of Points) and document disclosure</i>13
	<i>Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses</i>14
	<i>Photographing and recording during a hearing [as amended 04/19]</i>14
Rule 22	Written hearings14
Rule 23	Interpreters, assistance for visually and hearing impaired, and other accommodations14
Rule 24	Closing of the record15
WITNESSES	15
Rule 25	Oath or affirmation15
Rule 26	Application for a summons (order to attend as a witness)15
	<i>Serving the summons (order) and witness fees and expenses</i>16
	<i>Application to amend or cancel a summons</i>16
Rule 27	Expert evidence16
	<i>Expert report</i>16
	<i>Notice of expert testimony (without report)</i>17
	<i>Expert reply</i>17
	<i>Expert to be available for cross-examination</i>17
	<i>Proving an expert’s qualifications</i>18
	<i>Changing the dates for delivery of an expert report</i>18

FORMS

[Form 1](#): Notice of Appeal – Land Owner (includes application to extend time to appeal)

[Form 2](#): Notice of Appeal – Non-Land Owners/“Eligible Persons” (includes application to extend time to appeal)

Energy Resource Appeal Tribunal RULES

INTRODUCTION

The Energy Resource Appeal Tribunal has made these Rules pursuant to [section 11\(1\) of the Administrative Tribunals Act](#). These Rules replace previous versions of the Rules made by the Tribunal.

If a matter arises during the appeal process that is not envisioned by these Rules, the Tribunal will take steps to ensure that the appeal process is fair and expeditious and in accordance with the applicable legislation and the principles of natural justice.

In the case of a conflict with any applicable statute or regulation, the statute or regulation will override these Rules.

In addition to these Rules, the Tribunal has prepared a comprehensive [Practice and Procedure Manual](#) which describes the general practices, procedures and policies that have been adopted by the Tribunal to fill in the gaps left by the legislation and the Rules. The Tribunal has also created [Information Sheets](#) on discrete subjects.

GENERAL

Rule 1 – Definitions

1. In these Rules:

“**Act**” means the *Oil and Gas Activities Act*;

“**address for delivery**” means the specific location where documents are to be sent during the appeal as identified by a party or intervener, or as may be inferred from the party or intervener’s usual method of delivering documents to the Tribunal and/or to the other parties and interveners, and may be the person’s current postal address, fax number, or email address;

“**appellant**” means the person bringing an appeal;

“**business day**” means 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays;

“**calendar day**” is each day shown on a calendar and includes weekends and holidays;

“**day**” means “calendar day” unless it is expressly stated to be a “business day”;

“**document**” includes a letter, email, application, submission, reply, notice, photograph, chart, report, plan, sound recording, videotape, or other thing upon which information is communicated or recorded, but does not include a notice of appeal;

“**file**” or “**filing**” means effective delivery of a document to the Tribunal;

“**intervener**” means a person, other than a party, that the Tribunal allows to participate in an appeal under section 33 of the *Administrative Tribunals Act*;

“**member**” means a person appointed by Order in Council as a member of the Tribunal;

“**oral hearing**” means an in-person hearing;

Energy Resource Appeal Tribunal RULES

“**panel**” means those members (1 or 3 members) designated by the Tribunal Chair to hear an appeal;

“**party**” means an appellant, respondent, or third party in an appeal;

“**representative**” includes a lawyer or agent authorized to represent a person in an appeal;

“**respondent**” means the Oil and Gas Commission;

“**submission**” means written information or argument filed by a party or intervener for consideration by the Tribunal in support of, or in response to, an application or appeal;

“**third party**” means a person invited by the Tribunal to be a third party in an appeal; and

“**Tribunal**” means the Energy Resource Appeal Tribunal established under section 19 of the Act, and includes a member of the Tribunal.

Rule 2 – Applying the rules

1. All parties and interveners must comply with these Rules unless the Tribunal orders or directs otherwise under [section 11\(3\) of the Administrative Tribunals Act](#).
2. Unless otherwise stated, a Tribunal member may exercise any power under these Rules on the member’s own initiative or on the application of a party or intervener.
3. Unless otherwise directed by the Tribunal, these Rules apply to all appeals before the Tribunal, whether commenced before or after the date of these Rules.

Rule 3 – Effect of non-compliance

1. In addition to the Tribunal’s powers under [section 18 of the Administrative Tribunals Act](#), if a party or intervener fails to comply with these Rules or a procedural order or direction of the Tribunal, the Tribunal may:
 - a. make an order for costs; and/or
 - b. make any other decision or order the Tribunal considers appropriate in the circumstances.
2. Despite Rule 3(1), any technical defect or irregularity in form will not invalidate the Tribunal’s proceedings and does not constitute non-compliance with these Rules.

Rule 4 – Calculating time

1. To calculate deadlines under these Rules, or in any order or direction of the Tribunal, the days are counted as calendar days.
2. When a due date is to be counted forward in time (e.g., 10 calendar days to do something), the calendar days are counted by excluding the first day and including the last day. If the due date falls on a Saturday, Sunday or public holiday, the due date will be the next calendar day that is not a Saturday, Sunday or public holiday.
3. When counting backward from a hearing date to determine a due date (e.g., notice of expert reports and statement of points), the calendar days are counted by excluding the first day of

Energy Resource Appeal Tribunal

RULES

the hearing and including the last day (i.e., the last day is the due date). If the due date falls on a Saturday, Sunday or public holiday, the due date will be the calendar day that falls before the Saturday, Sunday or public holiday (e.g., the Friday before the weekend).

4. The Tribunal may modify a time limit in the Rules or in any order or direction of the Tribunal, whether or not the time limit has already expired, if the Tribunal determines that it is fair and appropriate in the circumstances.

APPEALS AND PARTIES

Rule 5 – Starting an appeal

1. A person must file a notice of appeal with the Tribunal, which may be in [Form 1](#), containing the information required by [section 22 of the Administrative Tribunals Act](#).
2. The notice of appeal may be filed with the Tribunal by regular mail, registered or certified mail, courier, hand delivery, fax or email.

Deemed date of receipt of notice of appeal sent by registered or certified mail

3. If a notice of an appeal is sent to the Tribunal by registered or certified mail, the appeal is deemed to be received by the Tribunal on the official date stamp showing Canada Post's receipt of the document. For all other methods of delivery of a notice of appeal, the date of receipt is set out in Rule 12(9)-(10) [When documents are deemed to be delivered to the Tribunal].

Rule 6 – Extension of time to file an appeal

1. An application for an extension of time to file an appeal pursuant to [section 24\(2\) of the Administrative Tribunals Act](#) may be made by filing with the Tribunal an "Application to Extend the Time to File an Appeal" attached to [Form 1](#) and [Form 2](#) [Notices of Appeal], or by filing an application with the Tribunal containing the following information:
 - a. the reasons for the delay in filing the appeal; and
 - b. any special circumstances that the Tribunal should consider when making its decision on the extension request.
2. The application must accompany a completed notice of appeal in accordance with Rule 5(1);
3. The Tribunal will not take any further action on an appeal unless an extension of time is granted.

Rule 7 – Acknowledgement of appeal

1. Following receipt of a notice of appeal, the Tribunal will:
 - a. notify the appellant that the appeal has been received;

Energy Resource Appeal Tribunal RULES

- b. provide a copy of the notice of appeal and any documents included with it to the respondent, who will immediately be added as a party to the appeal;
- c. in accordance with in [section 72\(5\) of the Oil and Gas Activities Act](#), provide a copy of the notice of appeal and any documents included with it to the person that is the subject of the decision (e.g., the permit holder), if different from the appellant, and add that person as a third party to the appeal; and
- d. if the appeal is against a refusal to issue or amend a permit, provide a copy of the notice of appeal and any documents included with it to the land owner identified in [section 72\(5\) of the Oil and Gas Activities Act](#), and add the land owner as a party to the appeal upon the land owner's request.

Rule 8 – Delivery of the respondent's "record of decision"

- 1. The respondent's "record of decision" consists of the full content of the decision under appeal, the respondent's reasons for decision (if in a separate document), and, if the appeal is by a land owner, it includes any:
 - a. submissions made by the land owner to the respondent under sections 22(5) or 31(2) of the Act, and
 - b. reports submitted under section 24(1)(c) or 31(6) of the Act.
- 2. If the decision under appeal is a review decision, the original decision (determination) that was the subject of the review is also part of the respondent's decision record.
- 3. Unless the Tribunal directs otherwise, the respondent must deliver 2 copies of the decision record to the Tribunal, and 1 copy to each party, within 14 calendar days after notification of the appeal by the Tribunal under Rule 7 [Acknowledgement of appeal].
- 4. If the record of decision contains more than 1 document, the record of decision must include a table of contents and the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.
- 5. The documents provided in accordance with this Rule are not required to be resubmitted by the parties for the hearing.

Rule 9 - Representation before the Tribunal

- 1. If a party or intervener appoints a representative, the following information for the representative must be provided to the Tribunal:
 - a. full name of the representative;
 - b. the name of the party or intervener that the person is representing;
 - c. the representative's address;
 - d. the representative's daytime telephone number;
 - e. the representative's fax number and email address (if any); and

Energy Resource Appeal Tribunal

RULES

- f. the representative's address for delivery [defined in Rule 1].
2. If a party or intervener has a representative, the address for delivery of the representative will be the address for delivery of the party or intervener.
3. A representative who withdraws or ceases to represent a party or intervener must immediately notify the Tribunal, in writing.

Rule 10 – Change in contact information

1. A party or intervener must immediately notify the Tribunal, in writing, of a change to the contact information for the party or intervener.

Rule 11 – Adding or removing interveners to an appeal

1. In addition to the requirements of Rule 18 [General application procedure], an application to be added as an intervener must include the following information:
 - a. the applicant's full name, address for delivery, telephone number, fax number and email address (if any);
 - b. the amount of participation sought in the appeal (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments);
 - c. a description of the following:
 - i. the issues the applicant seeks to address;
 - ii. the applicant's expertise or interest in a particular subject; and
 - iii. the particular perspective that the applicant will provide to the Tribunal and whether it is different from the perspectives of the parties.
2. If the application is allowed, the Tribunal will advise of any terms, conditions or limitations placed on the intervention in the appeal.
3. An application to remove an intervener must explain why the intervener ought to be prevented from participating in the appeal.

DOCUMENT DELIVERY

Rule 12 – Filing documents with the Tribunal

1. Unless otherwise ordered or directed, any document filed with the Tribunal must also be provided to all other parties and interveners to the appeal.
2. Each document filed with the Tribunal shall have all pages numbered consecutively or the documents must be organized using tabs.

Energy Resource Appeal Tribunal

RULES

3. Documents may be filed with the Tribunal by mail, courier, hand delivery, email or fax, subject to any restrictions or conditions set out in these Rules.

Filing documents by email or fax

4. Documents, including any attachments, with a combined total of 10 pages or less may be filed with the Tribunal by email or by fax.
5. Documents, including any attachments, with a combined total of more than 10 pages may be sent to the Tribunal by email or fax, provided that a printed copy is filed with the Tribunal by mail, courier or hand delivery.
6. An email to the Tribunal must include the name of the sender.
7. A document sent to the Tribunal by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission, and a telephone number to call if there are transmission problems.

Filing multiple copies of a document

8. If multiple copies of a document are required to be filed with the Tribunal by these Rules, or by direction of the Tribunal, the required number of paper copies must be filed by mail, courier or hand delivery. The Tribunal will not make additional copies.

When documents are deemed to be delivered to the Tribunal

9. A document that is received by the Tribunal after the business day is deemed to be delivered on the next day business day.
10. If a document is sent to the Tribunal by fax or email, the document is not deemed to be delivered to the Tribunal until the transmission is received by the Tribunal, regardless of the date or time that it is shown to have been sent.

Rule 13 – Delivering documents to parties and interveners

1. Documents must be sent to the address for delivery of a party or intervener, unless the party or intervener consents to an alternative address for delivery or the Tribunal orders otherwise.
2. When an address for delivery is an email address, the sender of a document is not required to mail or otherwise provide a paper copy unless directed to do so by the Tribunal.
3. If a party or intervener does not consent to the delivery of documents by fax or email, the Tribunal may make an order directing that documents be delivered by fax or email, subject to any terms, conditions or limitations that are appropriate in the circumstances.

When delivery of a document is deemed to be complete

4. A document that is received by email or fax after the business day, is deemed to be delivered on the next business day.
5. If the Tribunal is required to serve notice or a document on a party or other person, and that party or other person wants to establish that, pursuant to [section 19\(5\) of the Administrative](#)

Energy Resource Appeal Tribunal RULES

[Tribunals Act](#), the notice or document was not received by the deemed date of delivery due to absence, accident, illness, or other cause beyond his or her control, the person must notify the Tribunal, in writing, as soon as practicable.

Alternative method of delivery

6. The Tribunal may approve an alternate method of delivering documents to a party or intervener if it is impractical to deliver a document to the specified address for delivery, or an alternate method is otherwise warranted in the circumstances.

APPEAL MANAGEMENT

Rule 14 – Joining or consolidating appeals

1. In addition to the powers under [section 37 of the Administrative Tribunals Act](#), if two or more appeals before the Tribunal involve the same parties, the Tribunal may direct, upon such terms as it considers appropriate, that the appeals be consolidated (combined), heard together with any other appeal before the Tribunal, or the Tribunal may direct that one appeal be heard immediately after the other.
2. The Tribunal will notify all parties and interveners if it decides to combine the appeals or use any other procedure listed above.
3. An objection to the Tribunal's decision to consolidate an appeal must be made to the Tribunal, in writing, as soon as practicable.

Rule 15 – Pre-hearing conferences

1. On its own initiative, or at the request of a party or intervener, the Tribunal may schedule a pre-hearing conference.
2. A request for a pre-hearing conference must be in writing, provide the reasons for the conference, potential dates, and include a list of the items to be discussed.
3. If the Tribunal decides that a pre-hearing conference is warranted in the circumstances, it will notify the parties and interveners of the time, date and place for the conference, or the dial-up instructions (if conducted by teleconference), and will advise of any terms or conditions that apply.
4. Where notice of a pre-hearing conference has been properly given and a party or intervener fails to participate without advance written notice, the Tribunal may proceed in their absence.
5. If a Tribunal member conducts a pre-hearing conference and confidential settlement matters are discussed, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

Rule 16 – Facilitated settlement (mediation)

1. On its own initiative, or at the request of a party, the Tribunal may conduct a settlement meeting (mediation) to resolve one or more issues in dispute.

Energy Resource Appeal Tribunal RULES

2. The Tribunal will not convene a settlement meeting (mediation) unless all parties to the appeal agree to participate in settlement discussions.
3. The Tribunal may appoint a Tribunal member or other person to conduct the facilitated settlement.
4. If a Tribunal member conducts the settlement meeting and the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

Rule 17 – Consent orders

1. If the parties request an order from the Tribunal under [section 16\(1\)](#) or [section 17\(2\) of the *Administrative Tribunals Act*](#), the parties must provide the Tribunal with a copy of the order, executed by all parties, for consideration and signing by the Tribunal. The date must be left blank and will be filled in if the Tribunal signs the order.
2. An unexecuted copy of the consent order must also be provided to the Tribunal in Word format for posting on the Tribunal’s website.

APPLICATIONS

Rule 18 – General procedure

1. All pre-hearing and post-hearing applications must be made to the Tribunal in writing. Pre-hearing applications include, but are not limited to, the following matters:
 - a. extensions, postponements, and adjournments ([section 39 *Administrative Tribunals Act*](#));
 - b. type of hearing (oral/written), expedited hearing, and change in the venue or location of a hearing;
 - c. stay of the decision under appeal or removal of an automatic stay ([sections 72\(3\) and\(4\) of the *Act*](#));
 - d. summary dismissal of an appeal ([section 31 of the *Administrative Tribunals Act*](#));
 - e. disclosure of particulars;
 - f. production of documents or objects ([section 34\(3\) of the *Administrative Tribunals Act*](#));
 - g. summons for a witness (order to attend a hearing) ([section 34\(3\) of the *Administrative Tribunals Act*](#));
 - h. intervener status;
 - i. costs or security for costs ([section 47 and 47.1 & 47.2 of the *Administrative Tribunals Act*](#));
 - j. site visits; and
 - k. evidentiary issues.

Energy Resource Appeal Tribunal RULES

2. All applications must include:
 - a. the grounds (the reasons) for the application;
 - b. the relief requested (the nature of the order or direction);
 - c. whether the other parties agree to it (if known); and
 - d. any evidence to be relied upon.
3. If more than 1 document is provided to the Tribunal as part of the evidence identified in Rule 18(2)(d), the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

Applications for documents

4. Before applying for an order to produce documents under [section 34\(3\)\(b\) of the *Administrative Tribunals Act*](#), the applicant must ask the person in possession or control of the documents, in writing, to voluntarily produce the documents.
5. In addition to the requirements in Rule 18(2), an application for an order for documents must describe the attempts made to have the person voluntarily produce the documents.

HEARINGS

Rule 19 - Scheduling a hearing

1. The Tribunal will decide whether a hearing will be conducted:
 - a. orally,
 - b. by way of written submissions,
 - c. by telephone or videoconferencing, or
 - d. a combination of the above.
2. If the Tribunal schedules an oral hearing, or a hearing by telephone or videoconference, it will notify all parties and interveners of the date, time and location (or dial-in directions) of the hearing in a "notice of hearing".
3. If the Tribunal schedules a written hearing, it will notify the parties and interveners of the submission schedule.

Rule 20 - Failure to participate in a hearing

1. If an appellant has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions in support of the appeal, the Tribunal may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances.
2. If a respondent, third party, or intervener has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions, the Tribunal may proceed with the hearing and disposition of the appeal without further notice to that party or intervener.

Energy Resource Appeal Tribunal

RULES

Rule 21 – Oral hearings

Pre-hearing submissions (Statement of Points) and document disclosure

1. All parties are required to provide:
 - a. a Statement of Points containing:
 - i. a summary of his or her case to be presented at the hearing,
 - ii. a list of the witnesses to be called by that party (if any),
 - iii. the legal authorities (e.g., case law, legislation, legal articles or excerpts from text books) that will be relied upon at the hearing (if any); and
 - b. a copy of the documents that he or she will be referring to, or relying upon, at the hearing,

in the following quantities and according to the following schedule unless the Tribunal directs otherwise:

 - i. the appellant must deliver 2 copies of its Statement of Points and documents to the Tribunal, and 1 copy to each party and intervener, at least 30 calendar days before the hearing commences;
 - ii. the respondent and any other party must deliver 2 copies of their respective Statements of Points and documents to the Tribunal, and 1 copy to each other party and intervener, at least 15 calendar days before the hearing commences.
2. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
3. If a party intends to produce affidavit evidence at the hearing, the party must provide the affidavit evidence with the Statement of Points.
4. If a party wishes to cross-examine the affiant on the contents of the affidavit, that party must apply to the Tribunal within a reasonable amount of time after receiving the affidavit.
5. The Tribunal may require interveners to provide a Statement of Points, witness list, authorities and documents.
6. All parties and interveners must bring to the hearing 1 additional copy of all documents (excluding legal authorities and Statements of Points) intended to be tendered as evidence. This copy will be provided to the official recorder and marked as an exhibit, if and when required.
7. The Tribunal may allow an appeal to proceed to a hearing even if an appellant has not fully complied with this Rule if it is satisfied that the other parties and interveners have sufficient information to prepare for the hearing.

Energy Resource Appeal Tribunal

RULES

Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses

8. Despite Rule 21(1), at a hearing, a party or intervener may refer to, or rely upon, documents or legal authorities not previously disclosed, or hear from witnesses that were not previously identified, with the approval of the hearing panel.
9. The party relying on new documents or legal authorities must bring sufficient copies to the hearing such that there is a copy for each panel member, the Tribunal's appeal file, and each party and intervener. A copy of a new document must also be provided to the official recorder. The official recorder does not require a copy of new legal authorities.

Photographing and recording during a hearing [as amended 04/19]

10. Photographing, audio recording, video recording or other electronic recording of Board proceedings is prohibited without the prior approval of the Board or the panel.

Rule 22 - Written hearings

1. All parties and interveners are required to provide their written submissions in accordance with the submission schedule established by the Tribunal, and in the following quantities, unless the Tribunal directs otherwise:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
2. All evidence (including affidavits and documents) and legal authorities must be included with the written submission.
3. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
4. If a party:
 - a. seeks to cross-examine an affiant on the contents of an affidavit, or
 - b. seeks to have a portion of the written hearing conducted orally,the party must apply to the Tribunal.

Rule 23 – Interpreters, assistance for visually and hearing impaired and other accommodations

1. At least 30 calendar days before the hearing commences, a party or intervener must notify the Tribunal if he or she requires some type of accommodation or assistance to enable their meaningful participation at the hearing.

Energy Resource Appeal Tribunal

RULES

2. The Tribunal will make every effort to accommodate that person's needs, as is reasonable in the circumstances.

Rule 24 - Closing of the record

1. At the conclusion of the hearing, the record will be closed unless the panel directs otherwise.
2. Once the record is closed, no additional evidence will be accepted unless the panel decides the evidence is material, and that there is a good reason for the failure to produce it in a timely fashion.
3. If an application to reopen the hearing to allow additional evidence is granted by the panel, the other parties will have an opportunity to reply to the new evidence.
4. The hearing will not be reopened once the Tribunal's final decision is issued.

WITNESSES

Rule 25 - Oath or affirmation

1. A person who gives evidence at an oral hearing is required to give that evidence under oath or affirmation.

Rule 26 - Application for a summons (order to attend as a witness)

1. If a proposed witness refuses to voluntarily attend a hearing to give evidence, a party may apply for an order requiring the person to attend the hearing to give evidence (a summons).
2. An application for this order must be made to the Tribunal at least 60 calendar days before the hearing is scheduled to commence.
3. Before applying to the Tribunal for this order, the applicant must ask the person to voluntarily attend as a witness.
4. In addition to the requirements in Rule 18 [General application procedure], an application for an order requiring a person to attend a hearing to give evidence must include the following information:
 - a. the name and address of the person wanted as a witness;
 - b. a brief summary of the evidence to be given by the witness, and an explanation of why the evidence is relevant and necessary;
 - c. the attempts made to have the witness voluntarily attend the hearing; and
 - d. if required, a list of the particular documents or other things the person must bring to the hearing.

Energy Resource Appeal Tribunal

RULES

5. Unless there is evidence that a proposed witness will not attend the hearing voluntarily, the Tribunal will not issue an order under this Rule.

Serving the summons (order) and witness fees and expenses

6. The party who requested the order will be responsible for serving it on the person by leaving it with that person, or by leaving it at the person's usual residence, within a reasonable time before the date the person is required to appear.
7. The party who requested the order must pay any witness fees and expenses in accordance with [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#), unless the witness is:
 - a. a party or intervener in the appeal;
 - b. a present officer, director or partner of a party or intervener in the appeal;
 - c. an employee of the provincial government; or
 - d. the Tribunal directs otherwise.

Application to amend or cancel a summons

8. A person who is subject to a summons ordered by the Tribunal may apply to the Tribunal for an order cancelling or varying the summons. The application must set out the reason(s) the order should be cancelled or its terms should be varied.
9. An application to vary the terms of, or to cancel, an order must also be delivered to the person that requested the order.

Rule 27 – Expert evidence

Expert report

1. Unless the Tribunal directs otherwise, a party must deliver a written statement or report by an expert at least 84 calendar days before the scheduled oral hearing date or, if the hearing is in writing, 84 calendar days before the appellant's first written submission is due, in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
2. The expert's qualifications must be included with the report.
3. If there is an oral hearing, 1 additional copy of the statement or report and the expert's qualifications must be brought to the hearing for the official recorder.

Energy Resource Appeal Tribunal

RULES

Notice of expert testimony (without report)

4. Unless the Tribunal directs otherwise, a party that wishes to call an expert witness to testify at a hearing without a report must provide a notice of expert testimony at least 84 calendar days before the oral hearing is scheduled to commence in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
5. The notice must include:
 - a. the qualifications and areas of expertise of the witness;
 - b. a written summary of the opinion to be given at the hearing; and
 - c. the facts on which the opinion is based.
6. If there is an oral hearing, 1 additional copy of this notice must be brought to the hearing for the official recorder.

Expert reply

7. Unless the Tribunal directs otherwise, a party must deliver an expert's reply report or notice of an expert witness in reply, without a report, at least 42 calendar days before the oral hearing is scheduled to commence or, if the hearing is in writing, then 42 calendar days before the appellant's first written submissions are due, in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
8. Notice of an expert reply must contain the same information required in Rule 27(2) or (5), whichever applies.
9. If there is an oral hearing, 1 additional copy of the reply report or notice must be brought to the hearing for the official recorder.

Expert to be available for cross-examination

10. If a party wants to cross-examine an expert on his or her report, the party must provide reasonable advance notice to the party tendering the expert report, the Tribunal, and the other parties and interveners, advising that the expert is required to attend the hearing for cross-examination.

Energy Resource Appeal Tribunal

RULES

Proving an expert's qualifications

11. A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and the Tribunal finds otherwise.

Changing the dates for delivery of an expert report

12. The parties may, by agreement, change the dates for delivery of a report or summary under this Rule, provided that they will be prepared to proceed on the date scheduled for the hearing and advise the Tribunal of the agreement.

FORMS

[Form 1](#): Notice of Appeal – Land Owner (includes application to extend time to appeal)

[Form 2](#): Notice of Appeal – Non-Land Owners/"Eligible Persons" (includes application to extend time to appeal)