

ORDER NO. A.I. 3 (2007)

IN THE MATTER OF the *Insurance Companies Act* R.S.N. 1990, Chapter I-10, and the *Automobile Insurance Act*, R.S.N. 1990, c. A22;

AND IN THE MATTER OF an application by Facility Association for an Order of the Board approving revisions to rates charged for private passenger and miscellaneous vehicle automobile insurance policies issued through the Facility Association mechanism, pursuant to section 102 of *Insurance Companies Act*.

PROCEDURAL ORDER

WHEREAS Facility Association is an unincorporated non-profit association of insurers licensed to transact automobile insurance in the province in accordance with the provisions of the *Insurance Companies Act*, RSNL 1990, c. I-10; and

WHEREAS Facility Association filed an application with the Board of Commissioners of Public Utilities (the “Board”) on March 20, 2007 seeking the approval of the Board for changes in rates to be charged for private passenger and miscellaneous vehicle automobile insurance policies insured through Facility Association in all areas of the province, to be effective on September 1, 2007 (the “Application”); and

WHEREAS the rate changes proposed in the Application result in part from Facility Association’s proposal to include in rates a provision for the cost of capital which had not previously been included in Facility Association rates; and

WHEREAS notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on April 2, 2007; and

WHEREAS on April 18, 2007 a Pre-hearing Conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s; and

WHEREAS the issues addressed at the Pre-hearing Conference included the identification of participants, the process to be followed in the matter and the Rules of Procedure; and

WHEREAS having heard from the participants and giving regard to the fact that there were no objections to:

- i) Thomas Johnson as Consumer Advocate being designated an Intervenor;
- ii) an advance determination of the cost of capital issue;
- iii) the proposed schedule of dates; and
- iv) the proposed Rules of Procedure

the Board makes the following order pursuant to the provisions of the relevant legislation and regulations thereunder.

THE BOARD ORDERS THAT:

1. Thomas Johnson as Consumer Advocate is designated as an Intervenor.
2. The issue of whether Facility Association is permitted to include in rates a provision for the recovery of the cost of capital will be considered in advance of the other issues, without consideration of the amount of the provision, in accordance with the schedule of dates and the procedures set out in Appendix “A” to this Order, unless and until changed by the Board.
3. The remaining issues arising from the Application will be considered in a process to be determined by the Board after the issuance of the Order of the Board in respect of the entitlement to a cost of capital issue.
4. The Rules of Procedure as set out in Appendix “B” to this Order are hereby approved for this proceeding.

Dated at St. John's, Newfoundland and Labrador, this 27th day of April 2007.

Robert Noseworthy
Chair & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

Cheryl Blundon
Board Secretary

**Schedule of Dates
Facility Association**

Thursday, May 3, 2007

9 am Counsel Meeting

Wednesday, May 16, 2007

Pre-filed Evidence and Experts Reports of Facility Association

Wednesday, May 23, 2007

Requests for Information on pre-filed evidence, experts' reports and all other matters

Wednesday, May 30, 2007

Answers to all Requests for Information

Friday, June 1, 2007

9 a.m. Counsel meeting

Wednesday, June 6, 2007

Deadline for the filing of remaining Evidence, including expert reports

Tuesday, June 12 and Wednesday, June 13, 2007

Oral testimony, if determined by the Board to be necessary

Tuesday, June 19, 2007

Written submissions with all supporting material and authorities

Thursday, June 21, 2007

Oral submissions, if determined by the Board to be necessary

2007 FACILITY ASSOCIATION APPLICATION Rules of Procedure

Public Record

1. Unless otherwise ordered by the Board, all documents filed with respect to this proceeding shall be placed on the public record.

Form of Documents

2. (1) Unless otherwise ordered by the Board, the official record of this proceeding will be the original paper copy filed with the Board's Secretary
- (2) Every written document filed by a party shall be prepared as follows:
 - (a) Typed, written or printed on 8½" X 11" letter size paper, 3-hole punched for standard binders.
 - (b) Single or double sided.
 - (c) Each page shall be numbered.
 - (d) Where reasonable, each line shall be numbered.

Filing of Documents

3. (1) All documents shall be filed with the Board Secretary.
- (2) Documents may be filed by:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means directed by the Board.
- (3) Filing is accomplished when the Board receives the submission.
- (4) All documents will be date and time stamped when received at the Board's Office.
- (5) All documents filed according to the scheduled dates shall be filed no later than 3:00 p.m. on the date stipulated. Documents filed after this time or on a Board holiday shall be considered as filed on the next Board business day.

Revisions to Documents

4. (1) A party may revise any document to correct errors or to provide new information before the completion of the hearing.

- (2) Where all or any part of a document is revised, each revision shall indicate the page(s) revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of the revision.
- (3) Where a revision is made to a document the Board may, upon its own motion or upon the request of another party, after receiving submissions of the parties, make any order in respect of the revisions.

Service of Documents

5. (1) All documents shall be served upon the other parties in this proceeding.
- (2) Parties will appoint one (1) person to receive documents for this proceeding.
- (3) Service may be made as follows:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means ordered by the Board.
- (4) Service will be effective:
 - (a) On the day of delivery, where the document is sent by hand, courier or facsimile.
 - (b) On the date of receipt, where the document is delivered by registered mail.
 - (c) On a date determined by the Board, where service is made by any other means.

Number of Copies of Filings and other Documents

6. (1) Unless otherwise ordered by the Board, parties filing documents with the Board shall adhere to the following guidelines:
 - (a) File with the Board Secretary one (1) original signed copy of each document.
 - (b) Provide eight (8) copies of the original documents with the Board.
 - (c) Serve one (1) copy of each document to the parties.

Charge for Copies

7. (1) The Board will provide a copy of any document authored by the Board or its consultants at no charge.
- (2) Copies of documents originating or authored by a party should be requested directly from the party.

- (3) One (1) copy of the transcript for each day of the hearing will be provided to each party at no cost.
- (4) Copies of the Legislation, Acts, and Regulations can be obtained from the Queen's Printer, viewed at the Board's Main Office, or viewed on the Board's Website at (www.pub.nl.ca).
- (5) The Board may charge copy fees for the cost associated with the reproduction of any other document requested by an individual or party in accordance with the applicable legislation.

Electronic Filing

8. (1) To the extent practical every party shall file with the Board an electronic version of all documentation filed with the Board in this proceeding in the following manner:
 - (a) Each individual document shall be converted while in electronic form to "read only" *.pdf format (Adobe Acrobat), still allowing for key word searches and cut and paste functionality.
 - (b) Two days after the day of filing of the hard copy, one (1) copy of the electronic *.pdf file will be emailed to ito@pub.nl.ca.
 - (c) All Documents that are generated in-house by the parties are to be filed electronically in the manner prescribed in this Order, with the exception of:
 - i. Covering letters or correspondence;
 - ii. Background reports, Board orders or historical documentation that are unavailable or impractical to provide electronically, and
 - iii. Case law filed in support of Motions.
- (2) Copies of all documentation filed with the Board in this proceeding will be placed on the Board's website (www.pub.nl.ca), where it will be available for review or download.
- (3) The electronic file is not an official record for the purposes of this proceeding.

Public Viewing

9. Interested persons may view any or all documents filed in this proceeding on the Board's website (www.pub.nl.ca), or at the Board's main office by contacting the Board Secretary.

Time

10. All references to time shall be clear days, that is the first and the last day shall be excluded.

Motions

11. (1) Motions must be filed in writing with the Board and served upon the parties two (2) days before the Motion Day.
- (2) The responding parties must file with the Board and serve upon the parties' response briefs to a Motion one day before the Motion Day.

Information Requests

12. (1) The Parties shall observe the dates set for the issuance and filing of requests for information ("RFIs") and dates for responses to RFIs.
- (2) RFIs shall be:
 - (a) labelled with the initials of the party issuing the RFI;
 - (b) designated so as to provide notice of to whom the RFI is directed (i.e. PUB-FA-1; PUB-CA-1); and
 - (c) numbered consecutively with whole numbers.
- (3) RFIs, and responses to RFIs, shall constitute part of the record in the proceeding and will be considered to be evidence in the proceeding.
- (d) Where directed by the Board, a party providing a response to an RFI shall make a witness or witnesses available for cross-examination to speak to the information provided in the response.

Procedures for Presentation of Evidence and Cross-examination of Witnesses

13. (1) Pre-filed testimony of all non-expert witnesses and reports of expert witnesses should be adopted as evidence by the witnesses in sworn testimony.
- (2) Direct examination should be limited to matters set out in the witness pre-filed testimony. The Board may allow a witness to provide supplementary evidence or may restrict direct testimony where it is irrelevant, redundant or not helpful to the Board in making its decision.
- (3) Direct evidence may be presented by way of a panel of witnesses. Prior notice must be given to the Board Secretary and the parties. When examining a panel of witnesses Counsel shall put each question to a particular witness on the panel. Co-counsel may examine the same witness, or panel of witnesses, provided notice is given to the Board Secretary and the parties prior to the start of the cross-examination of the witness.

- (4) Where co-counsel intend to examine the same witness, prior notice must be given to the Board Secretary and the parties. Co-counsel should not examine the same witness on the same subject matter.
- (5) The party calling the witness shall be afforded an opportunity for re-direct examination and all parties shall have an opportunity to pose questions in relation to new matters arising from questions of the Board.
- (6) When presenting a document to a witness one (1) copy will be provided to the witness, eight (8) copies to the Board Secretary and one (1) copy to each party.
- (7) A party wishing to examine or cross-examine a witness on a document that is not:
 - (a) already part of the record of the proceeding;
 - (b) a portion of a transcript of the witness' own prior testimony; or
 - (c) an Order of the Board;shall:
 - i. file a copy of the document with the Board and all parties by 3:00 p.m. on the last business day before the examination or cross-examination is to take place;
 - ii. provide eight (8) copies to the Board Secretary on the day of the examination or cross-examination; and
 - iii. give the witness a reasonable time to review the document before the witness is asked to answer any questions concerning the document.
- (8) Where the witness adopts the document it will be marked as an exhibit to his testimony.
- (9) Where a document was not adopted as part of the witness' testimony the document may be:
 - a. if the parties consent, entered as a consent exhibit; or
 - b. entered as an information item.

Other

14. Unless otherwise ordered by the Board, the rules of procedure set out in *Regulation 39/96* apply in this proceeding to the extent that they are consistent with this Order.