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PART I – GENERAL

DEFINITIONS

In the construction of these rules, unless the context otherwise requires, words importing the singular number shall include the plural and words importing the plural number shall include the singular, and:

"applicant" means the Government or person on whose behalf an application is presented to the Commission in accordance with Rule 12;

"application" means a request for approval of the 'use, obstruction or diversion' of waters under the Boundary Waters Treaty;

"Canadian section" consists of the commissioners appointed by Her Majesty on the recommendation of the Governor-in-Council of Canada;

"electronically" refers to the storage or transfer of data on any medium by a computer system or other similar device that can be read by a computer or other similar device;

"Government" means the Government of Canada or the Government of the United States of America;

"meeting" means an official gathering of commissioners which may be held by teleconference and/or videoconference at the discretion of the Commission;

"person" includes Province, State, department or agency of a Province or State, municipality, individual, partnership, corporation and association, but does not include the Government of Canada or the Government of the United States of America;

"oath" includes affirmation;

"reference" means the document by which a question or matter of difference is referred to the Commission pursuant to Article IX of the Treaty;

"the Treaty" means the Treaty between the United States of America and His Majesty the King of Great Britain, dated the 11th day of January, 1909;

"United States section" consists of the commissioners appointed by the President of the United States.

CHAIRS

The commissioners of the United States section of the Commission shall appoint one of their number as chair, to be known as the Chair of the United States Section of the International Joint Commission, and the Chair of the United States Section shall act as chair at all meetings of the Commission held in the United States and in respect to all matters required to be done in the United States by the chair of the Commission.

The commissioners of the Canadian section of the Commission shall appoint one of their number as chair, to be known as the Chair of the Canadian Section of the International Joint Commission, and the Chair of the Canadian Section shall act as chair at all meetings of the Commission held in Canada and in respect to all matters required to be done in Canada by the chair of the Commission.

In case it shall be impracticable for the chair of either section to act in any matter, the commissioner of such section who is senior in order of appointment shall act in the chair's stead.

PERMANENT OFFICES

The permanent offices of the Commission shall be in Washington, in The District of Columbia, and at Ottawa, in the Province of Ontario, and at the directions of the majority of Commissioners within their respective sections, the secretaries of the United States and Canadian Sections shall have administrative responsibilities concerning said offices, respectively.

DUTIES OF SECRETARIES

The secretaries shall act as joint secretaries at all meetings and hearings of the Commission. The secretary of the section of the Commission of the country in which a meeting or hearing is held shall prepare a record thereof and each secretary shall preserve an authentic copy of the same in the permanent offices of the Commission.

Each secretary shall receive and file all applications, references and other papers properly presented to the Commission in any proceeding instituted before it and shall number in numerical order all such applications and references; the number given to an application or reference shall be the primary file number for all papers relating to such application or reference.

Each secretary shall forward to the other for filing in the office of the other copies of all official letters, documents, records or other papers received by that secretary or filed in that secretary's office, pertaining to any proceeding before the Commission, to the end that there shall be on file in each office either the original or a copy of all official letters and other papers, relating to the said proceeding.

Each secretary shall also forward to the other for filing in the office of the other copies of any letters, documents or other papers received by that secretary or filed in that secretary's office which are deemed by that secretary to be of interest to the Commission.

The secretary of each section of the Commission is directed to provide all information (including, without limitation financial information, employment information, litigation/disputes, contractual information, briefing notes and reports "the Information") to all three Commissioners of each respective section and conduct their duties with the utmost good faith, equally, to all three Commissioners. The secretary of each section shall also facilitate the provision of information by staff of their respective section office to all Commissioners equally and each staff member, advisor, and consultant are directed to provide to all three Commissioners of each respective

section all Information and conduct their duties with the utmost good faith, equally, to all three Commissioners.

MEETINGS

Subject at all times to special call or direction by the two Governments, meetings of the Commission shall be held at such times and places in the United States and Canada as the Commission or the chairs may determine and in any event shall normally be held each year in the United States in April and in Canada in October.

If the Commission determines that a meeting shall be open to the public, it shall give such advance notices to this effect as it considers appropriate in the circumstances.

SERVICE OF DOCUMENTS

Where the secretary is required by these rules to give notice to any person, this shall be done by delivering or mailing such notice to the person at the address for service that the said person has furnished to the Commission, or if no such address has been furnished, at the dwelling house or usual place of abode or usual place of business of such person.

Where the secretary is required by these rules to give notice to a Government, this shall be done by delivering or mailing such notice to the Minister of Foreign Affairs of Canada or to the Secretary of State of the United States of America, as the case may be.

Service of any document pursuant to Rule 22 shall be by delivering a copy thereof to the person named therein, or by leaving the same at the dwelling house or usual place of abode or usual place of business of such person. The person serving the notice or request shall furnish an affidavit to the secretary stating the time and place of such service.

CONDUCT OF HEARINGS

Hearings may be conducted, testimony received and arguments thereon heard by the whole Commission or by one or more Commissioners from each section of the Commission, designated for that purpose by the respective sections or the chairs thereof.

DECISION BY THE WHOLE COMMISSION

The whole Commission shall consider and determine any matter or question which the Treaty or any other treaty or international agreement, either in terms or by implication, requires or makes it the duty of the Commission to determine. For the purposes of this rule and Rule 7, "the whole Commission" means all of the commissioners appointed pursuant to Article VII of the Treaty whose terms of office have not expired and who are not prevented by serious illness or other circumstances beyond their control from carrying out their functions as commissioners. In no event shall a decision be made without the concurrence of at least four commissioners.

SUSPENSION OR AMENDMENT OF RULES

The Commission may suspend, repeal, or amend all or any of the Rules of Procedure at any

time, with the concurrence of at least four commissioners. Both Governments shall be informed forthwith of any such action.

GENERAL RULE

The Commission may, at any time, adopt any procedure which it deems expedient and necessary to carry out the true intent and meaning of the Treaty.

AVAILABILITY OF RECORDS

The following items in the official records of the Commission shall be available for public information at the permanent offices of the Commission:

Applications

References

Public Notices

Press Releases

Statements in Response

Statements in Reply

Records of hearings, including exhibits filed

Briefs and formal Statements submitted at hearings or at other times

Minutes of Commission meetings

Decisions rendered and orders issued by the Commission and formal opinions of any of the Commissioners with relation thereto, shall be available similarly for public information after duplicate originals of the decisions or orders have been transmitted to and filed with the Governments pursuant to Article XI of the Treaty.

Copies of reports submitted to one or both of the Governments pursuant to the Treaty shall be available similarly for public information only with the consent of the Government or Governments to whom the reports are addressed.

Reports, letters, memoranda and other communications addressed to the Commission, by boards or committees created by or at the request of the Commission, are privileged and shall become available for public information only in accordance with a decision of the Commission to that effect.

Except as provided in the preceding paragraphs of this rule, records of deliberations, and documents, letters, memoranda and communications of every nature and kind in the official record of the Commission, whether addressed to or by the Commission, commissioners, secretaries, advisers or any of them, are privileged and shall become available for public information in accordance with a decision of the Commission to that effect, or available for public information after twenty-five years have elapsed from the date of the record or document in question, unless otherwise decided by the Commission in specific cases. The foregoing decision is not to preclude the earlier release of any such material for public information in accordance with a decision of the Commission to that effect.

A copy of any document, report, record or other paper which under this rule is available for public information may be furnished to any person upon payment of any cost involved in its reproduction.

PART II – APPLICATIONS

PRESENTATION TO COMMISSION

Where one or the other of the Governments on its own initiative seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, it shall present to the Commission an application setting forth as fully as may be necessary for the information of the Commission the facts upon which the application is based and the nature of the order of approval desired.

Where a person seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, that person shall prepare an application to the Commission and forward it to the Government within whose jurisdiction such use, obstruction or diversion is to be made, with the request that the said application be transmitted to the Commission. If such Government transmits the application to the Commission with a request that it take appropriate action thereon, the same shall be filed by the Commission in the same manner as an application presented in accordance with paragraph (1) of this rule. Transmittal of the application to the Commission shall not be construed as authorization by the government of the use, obstruction or diversion proposed by the applicant. All applications by persons shall conform, as to their contents, to the requirements of paragraph (1) of this rule.

Where the Commission has issued an Order approving a particular use, obstruction or diversion, the Commission retains continuing jurisdiction over the subject matter of an application and reserves the right to make further orders relating thereto. Any Government or person entitled to request the issuance of such further order may present to the Commission a request, setting forth the facts upon which it is based and the nature of the further order desired. On receipt of the request, the Commission shall proceed in accordance with the terms of the Order. In each case the secretaries shall notify both Governments and invite their comments before the request is complied with.

COPIES REQUIRED

Subject to paragraph (3) of this rule, two duplicate originals of the application and an electronic copy of the application and of any supplemental application, statement in response, supplemental statement in response, statement in reply and supplemental statement in reply shall be delivered to either secretary. On receipt of such documents, the secretary shall forthwith send one duplicate original and an electronic copy to the other secretary.

Subject to paragraph (3) of this rule, two copies and an electronic copy where practical of such drawings, profiles, plans of survey, maps and specifications as may be necessary to illustrate clearly the matter of the application shall be delivered to either secretary and the secretary shall send one copy and an electronic copy forthwith to the other secretary.

Notwithstanding paragraphs (1) and (2) of this rule, such additional copies of the documents mentioned therein as may be requested by the Commission shall be provided forthwith.

AUTHORIZATION BY GOVERNMENT

Where the use, obstruction or diversion of waters for which the Commission's approval is sought has been authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority, two copies of such authorization and of any plans approved incidental thereto shall accompany the application when it is presented to the Commission in accordance with Rule 12.

Where such a use, obstruction or diversion of waters is authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority after an application has been presented to the commission in accordance with Rule 12, the applicant shall deliver forthwith to the commission two copies of such authorization and of any plans approved incidental thereto.

NOTICE OF PUBLICATION

As soon as practicable after an application is presented or transmitted in accordance with Rule 12, the secretary of the section of the Commission appointed by the other Government shall send a copy of the application to such Government.

Except as otherwise provided pursuant to Rule 19, the secretaries, as soon as practicable after the application is received, shall cause a notice to be published in the Canada Gazette and the Federal Register, on the Commission website, and in two newspapers published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion. Subject to paragraph (3) of this rule, the notice shall state that the application has been received, the nature and locality of the proposed use, obstruction or diversion, the time within which any person interested may present a statement in response to the Commission and that the Commission will hold a hearing or hearings at which all persons interested are entitled to be heard with respect thereto.

If the Commission so directs, the notice referred to in paragraph (2) of this rule, appropriately modified, may be combined with the notice of hearing referred to in Rule 23 and published accordingly.

STATEMENT IN RESPONSE

Except as otherwise provided pursuant to Rule 19, a Government and any interested person, other than the applicant, may present a statement in response to the Commission within thirty days after the filing of an application, A statement in response shall set forth facts and

arguments bearing on the subject matter of the application and tending to oppose or support the application, in whole or in part. If it is desired that conditional approval be granted, the statement in response should set forth the particular condition or conditions desired. An address for service of documents should be included in the statement in response.

When a statement in response has been filed, the secretaries shall send a copy forthwith to the applicant and to each Government except the Government which presented the said statement in response. If so directed by the Commission, the secretaries shall inform those who have presented statements in response, of the nature of the total response.

STATEMENT IN REPLY

Except as otherwise provided pursuant to Rule 19, the applicant and, if the applicant is a person, the Government which transmitted the application on the applicant's behalf, one or both may present a statement or statements in reply to the Commission within thirty days after the time provided for presenting statements in response. A statement in reply shall set forth facts and arguments bearing upon the allegations and arguments contained in the statements in response.

When a statement in reply has been filed, the secretary shall send a copy forthwith to each Government except the Government which presented the said statement in reply, and to all persons who presented statements in response.

SUPPLEMENTAL OR AMENDED APPLICATIONS AND STATEMENTS

If it appears to the Commission that either an application, a statement in response or a statement in reply is not sufficiently definite and complete, the Commission may require a more definite and complete application, statement in response or statement in reply, as the case may be, to be presented.

Where substantial justice requires it, the Commission with the concurrence of at least four Commissioners may allow the amendment of any application, statement in response, statement in reply and any document or exhibit which has been presented to the Commission.

REDUCING OR EXTENDING TIME AND DISPENSING WITH STATEMENTS

In any case where the Commission considers that such action would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the Treaty, the Commission may reduce or extend the time for the presentation of any paper or the doing of any act required by these rules or may dispense with the presentation of statements in response and statements in reply.

INTERESTED PERSONS AND COUNSEL

Governments and persons interested in the subject matter of an application, whether in favour of or opposed to it, are entitled to be heard in person or by counsel at any hearing thereof held by the Commission.

CONSULTATION

The Commission may meet or consult with the applicant, the Governments and other persons or their counsel at any time regarding the plan of hearing, the mode of conducting the inquiry, the admitting or proof of certain facts or for any other purpose.

ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS

Requests for the attendance and examination of witnesses and for the production and inspection of books, papers and documents may be issued over the signature of the secretary of the section of the Commission of the country in which the witnesses reside or the books, papers or documents may be, when so authorized by the chair of that section.

All applications for subpoena or other process to compel the attendance of witnesses or the production of books, papers and documents before the Commission shall be made to the proper courts of either country, as the case may be, upon the order of the Commission.

HEARINGS

The time and place of the hearing or hearings of an application shall be fixed by the chairs of the two sections.

The secretaries shall forthwith give written notice of the time and place of the hearing or hearings to the applicant, the Governments and all persons who have presented statements in response to the Commission. Except as otherwise provided by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette and the Federal Register, on the Commission website and in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion of water.

All hearings shall be open to the public.

The applicant, the Governments and persons interested are entitled to present oral and documentary evidence and argument that is relevant and material to any issue that is before the Commission in connection with the application.

The presiding chair may require that evidence be under oath.

Witnesses may be examined and cross-examined by the Commissioners and by counsel for the applicant, the Governments and the Commission. With the consent of the presiding chair, counsel for a person other than the applicant may also examine or cross-examine witnesses.

The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

The commissioners shall be free to determine the probative value of the evidence submitted to it.

A verbatim transcript of the proceedings at the hearing shall be prepared.

The hearing of the application, when once begun shall proceed at the times and places determined by the chair of the two sections to ensure the greatest practicable continuity and dispatch of proceedings.

EXPENSES OF PROCEEDINGS

The expenses of those participating in any proceeding under Part II of these rules shall be borne by the participants.

The Commission, after due notice to the participant or participants concerned, may require that any unusual cost or expense to the Commission shall be paid by the person on whose behalf or at whose request such unusual cost or expense has been or will be incurred.

GOVERNMENT BRIEF RE NAVIGABLE WATERS

When in the opinion of the Commission it is desirable that a decision should be rendered which affects navigable waters in a manner or to an extent different from that contemplated by the application and plans presented to the Commission, the Commission will, before making a final decision, submit to the Government presenting or transmitting the application a draft of the decision, and such Government may transmit to the Commission a brief or memorandum thereon which will receive due consideration by the Commission before its decision is made final.

PART III – REFERENCES

PRESENTATION TO COMMISSION

Where a question or matter of difference arising between the two Governments involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States of America and Canada is to be referred to the Commission under Article IX of the Treaty, the method of bringing such question or matter to the attention of the Commission and invoking its action ordinarily will be as set forth in this rule.

Where both Governments have agreed to refer such a question or matter to the Commission, each Government will present to the Commission, at the permanent office in its country, a reference in similar or identical terms setting forth as fully as may be necessary for the information of the Commission the question or matter which it is to examine into and report upon and any restrictions or exceptions which may be imposed upon the Commission with respect thereto.

Where one of the Governments, on its own initiative, has decided to refer such a question or matter to the Commission, it will present a reference to the Commission at the permanent office in its country. All such references should conform, as to their contents, to the requirements of paragraph (2) of this rule.

Such drawings, plans of survey and maps as may be necessary to illustrate clearly the question or matter referred should accompany the reference when it is presented to the Commission.

NOTICE AND PUBLICATION

The secretary to whom a reference is presented shall receive and file the same and shall send a copy forthwith to the other secretary for filing in the office of the latter. If the reference is presented by one Government only, the other secretary shall send a copy forthwith to that secretary's Government.

Subject to any restrictions or exceptions which may be imposed upon the Commission by the terms of the reference, and unless otherwise provided by the Commission, the secretaries, as soon as practicable after the reference is received, shall cause a notice to be published in the Canada Gazette, the Federal Register, the Commission website and in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference. The notice shall describe the subject matter of the reference in general terms, invite interested persons to inform the Commission of the nature of their interest and state that the Commission will provide convenient opportunity for interested persons to be heard with respect thereto.

ADVISORY BOARDS

The Commission may appoint a board or boards, composed of qualified persons to conduct on its behalf investigations and studies that may be necessary or desirable and to report to the Commission regarding any questions or matters involved in the subject matter of the reference.

Such board ordinarily will have an equal number of members from each country.

The Commission ordinarily will make copies of the main or final report of such board or a digest thereof available for examination by the Governments and interested persons prior to holding the final hearing or hearings referred to in Rule 29.

HEARINGS

A hearing or hearings may be held whenever in the opinion of the Commission such action would be helpful to the Commission in complying with the terms of a reference. Subject to any restrictions or exceptions which may be imposed by the terms of the reference, a final hearing or hearings shall be held before the Commission reports to Governments in accordance with the terms of reference.

The time, place and purpose of the hearing or hearings on a reference shall be fixed by the chairs of the two sections.

The secretaries shall forthwith give written notice of the time, place and purpose of the hearing or hearings to each Government and to persons who have advised the Commission of their interest. Unless otherwise directed by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette, the Federal Register, on the Commission website and in two newspapers, published one in each country and circulated in or near the localities

which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference.

All hearings shall be open to the public, unless otherwise determined by the Commission.

At a hearing, the Governments and persons interested are entitled to present, in person or by counsel, oral and documentary evidence and argument that is relevant and material to any matter that is within the published purpose of the hearing.

The presiding chair may require that evidence be under oath.

Witnesses may be examined and cross-examined by the Commissioners and by counsel for the Governments and the Commission. With the consent of the presiding chair, counsel for any interested person may also examine or cross-examine witnesses.

The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

A verbatim transcript of the proceedings at the hearing shall be prepared.

PROCEEDINGS UNDER ARTICLE X

When a question or matter of difference arising between the two Governments involving the rights, obligations or interests of either in relation to the other or to their respective inhabitants has been or is to be referred to the Commission for decision under Article X or the Treaty, the Commission, after consultation with the said Governments, will adopt such rules of procedures as may be appropriate to the question or matter referred or to be referred.

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