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Office of Utilities Regulation

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**Guidelines on the Resolution of  
Regulatory Disputes Between  
Licensees in Regulated Sectors**

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**Notice of Proposed Rulemaking**

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2017/GEN/006/NPR.001

Publication Date: 2017 May 2



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**OFFICE OF UTILITIES REGULATION**

## **Abstract**

The Office of Utilities Regulation (OUR/Office) recognises the possibility of disputes arising between Licensees and the potential risks where such regulatory disputes are not resolved expediently and effectively. Such risks may include, but are not limited to: a Licensee being unable to carry out various functions critical to its operation; providing its customers with economical and reliable service; sufficiently protecting its own commercial interests as a result of an ongoing dispute.

Being cognisant of the potential impacts, the OUR has taken the initiative to develop guidelines that will guide the Office's intervention in such matters in an effort to facilitate the effective resolution of related disputes.

This Notice of Proposed Rule Making (NPRM) sets out the Office's general approach to disputes between Licensees. The guidelines herein outline the form and manner in which disputes between Licensees should be referred to the Office, and the process that the Office will adopt in the handling of the disputes placed before it.

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## Consultation Process

Persons who wish to express opinions on this Notice of Proposed Rulemaking (NPRM) are invited to submit their comments in writing to the Office of Utilities Regulation (OUR) by post, facsimile or email addressed to:

**Office of Utilities Regulation  
P.O Box 593  
36 Trafalgar Road  
Kingston 10**

**Attention: NPRM – Dispute Resolution for Licensees Consultation**

**Fax: (876) 929-3635**

**Email: [disputeresolution@our.org.jm](mailto:disputeresolution@our.org.jm)**

**Responses are requested by 2017 June 2**

Responses which are not confidential, pursuant to any relevant legislation, will be posted to the OUR's website ([www.our.org.jm](http://www.our.org.jm)). Respondents are therefore requested to supply their responses in electronic form to facilitate such postings.

### **COMMENTS ON RESPONSES**

There will be a specific period for respondents to view other responses (non-confidential) and to make comments on them. The comments may take the form of either correcting a factual error or putting forward counter arguments. As in the case of the responses, comments which are not confidential will be posted to the OUR's website.

**Comments on responses are requested by 2017 July 3**

### **Arrangement for viewing responses**

This NPRM and the responses and comments received by the OUR will also be made available to the public through the OUR's Information Centre ("OURIC"). Persons who wish to view the NPRM, responses and comments should make an appointment by contacting:

**Ms. Kishana Munroe  
Co-ordinator OURIC/Information Officer  
Telephone: (876) 968-6053  
Fax: (876) 929-3635  
Email: [kmunroe@our.org.jm](mailto:kmunroe@our.org.jm)**

Individuals with appointments should visit the OUR's offices at:

3rd Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10

Photocopies of selected responses and comments may be provided on request at a price which reflects the cost to the OUR.

### **CONSULTATION TIMETABLE**

The timetable for the consultation on this NPRM is summarized below:

<b>Event</b>	<b>Date</b>
Publish NPRM Document	2017 May 2
Responses to NPRM	2017 June 2
Comments on Responses	2017 July 3
Issue of OUR Responses to Comments	2017 September 22
Issuance of Guidelines	2017 September 22

## **1 Purpose of NPRM**

- 1.1 The legislation under which the Office of Utilities Regulation (OUR/Office) carries out its statutory mandate (except for interconnection disputes pursuant to the Telecommunications Act) does not specifically provide for dispute resolution procedures for the resolution of disputes between licensees or specified organization (together hereinafter referred to as Licensees) in regulated sectors. The Office recognizes the need to publish its general standardized approach to dispute resolution to regulatory disputes between licensees.
- 1.2 This Notice of Proposed Rulemaking (NPRM) Consultation document sets out the Office's general approach to the resolution of disputes between Licensees in the regulated sectors. The proposed Guidelines on the Resolution of Regulatory Disputes between Licensees in Regulated Sectors (Guidelines) also set out the form and manner in which dispute referrals should be made, and the process that the Office will adopt in the handling of the disputes placed before it.
- 1.3 If the parties do not refer disputes in the manner set out herein, the Office is not obliged to accept the dispute.

## **2 Legal and Regulatory Framework**

- 2.1 Pursuant to section 4(1) of the Office of Utilities Regulation Act ("OUR Act"), the Office as part of its overall functions, regulates prescribed utility services and has the power to conduct investigations in relation to the provision of such services. Sections 4(2) and 4(3) of the OUR Act further mandates the OUR to ensure that the needs of consumers are met and that their interests of consumers are protected relative to the supply of prescribed utility services. The applicable provisions in respect of each provision are as follows:
- 2.2 Section 4 (1) of the OUR Act provides as follows:

*"4(1) Subject to the provisions of this Act, the functions of the Office shall be to-*

  - (a) regulate the provision of prescribed utility services by licensees or specified organizations ...*
  - (b) .....*
  - (c) .....*
  - (d) .....*
  - (e) subject to section 8A, carry out, on its own initiative or at the requested of any person, such investigations in relation to the provision of prescribed*

*utility services as will enable it to determine whether the interests of consumers are adequately protected.”*

2.3 Section 4(2) of the OUR Act provides as follows:

*“4 (2) The Office where it considers necessary, give directions to any licensee or specified organization with a view to ensuring that –*

*(a) The needs of the consumers of the services provided by the licensee or specified organization are met; and*

*(b) the prescribed utility service operates efficiently and in a manner designed to –*

*(i) protect the health and well being of users of the service and such elements of the public as would normally be expected to be affected by its operation; ...”*

2.4 Section 4 (3) of the OUR Act provides as follows:

*“4(3) In the performance of its functions under this Act the Office shall undertake such measures as it considers necessary or desirable to –*

*(a)...*

*(b) protect the interests of consumers in relation to the supply of a prescribed utility service ..”*

2.5 A “prescribed utility service” is defined in section 2 of the OUR Act as “...a utility specified in the First Schedule” which is the provision of telecommunications services; the provision of sewerage services; the generation, transmission, distribution and supply of electricity; and the supply and distribution of water.

2.6 With regard to investigation of disputes, section 8A of the OUR Act gives the OUR the discretion whether to undertake or continue an investigation. Section 8A of the OUR Act provides as follows:

*“8A. (1) The Office may, determine whether to undertake or continue an investigation under this Act and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if it is of the opinion that—*

*(a) the subject-matter of the complaint is trivial;*

*(b) the complaint is frivolous or vexatious or not made in good faith;*

*(c) the complainant has deferred for too long the making of his complaint to the Office;*

- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint; or*
  - (e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.*
- (2) Where the Office decides not to undertake or continue the investigation of a complaint, it shall inform the complainant of its decision and give reasons.”*

### **3 The Guidelines**

- 3.1 The OUR, in an effort to ensure certainty and consistency in its approach towards dispute resolution generally, developed these Guidelines utilizing the dispute resolution procedures outlined by the OUR relative to the “Resolution of Interconnection Disputes in the Telecommunications Sector” (the Consultation document, Stakeholders responses and the OUR’s Response to Stakeholders’ responses may be viewed on the OUR’s website [www.our.org.jm](http://www.our.org.jm)).
- 3.2 The proposed Guidelines which sets out the dispute resolution procedures are attached hereto as Annex A.



## **ANNEX A**

### **GUIDELINES ON THE RESOLUTION OF REGULATORY DISPUTES BETWEEN LICENSEES IN REGULATED SECTORS, 2017**

In exercise of the powers conferred upon the Office of Utilities Regulation by sections 4 and 8A of the Office of Utilities Regulation Act, the following Guidelines are hereby made:-

#### **Citation & Scope of the Guidelines**

1. These Guidelines:
  - (1) may be cited as the Guidelines on the Resolution of Regulatory Disputes between Licensees in Regulated Sectors, 2017;
  - (2) outline the Office's general approach to the resolution of disputes between Licensees in the regulated sectors. These Guidelines also set out the form and manner in which dispute referrals should be made, and the process that the Office will adopt in the handling of the disputes placed before it;
  - (3) will be kept under review and amended as appropriate in the light of further experience, developing law and practice and any change to Office's powers and responsibilities;
  - (4) shall be applicable to licensees and specified organizations in the water and sewerage, electricity and telecommunications sectors (excluding interconnection disputes between licensees pursuant to Telecommunications Act).

#### **Interpretation**

2. In these Guidelines –

“Affidavit” means an affidavit in support of Notice of Request for Regulatory Intervention which is duly sworn before a Justice of the Peace;

“dispute” means a dispute between persons issued a licence pursuant to the Office of Utilities Regulation Act, the Telecommunications Act or the Electricity Act, 2015 to provide prescribed utility service(s);

“Notice of Request” means a Notice of Request for Regulatory Intervention under section 5;

“Panel” means the Dispute Resolution Panel established and constituted under sections 16 and 17;

“party” refers to either the Requesting party or the Respondent; and parties refer to both Requesting party and the Respondent.

“Requesting party” means any person asking for a resolution of a dispute under these Guidelines;

“Respondent” means any person served with a Notice of Request under these Guidelines;

“Response” means the document containing case presented for the Respondent which shall be in the form of an affidavit duly sworn before a Justice of the Peace.

### **Discretion to Hear Disputes**

3.
  - (1) Parties to a dispute shall use best efforts and make reasonable endeavours to amicably resolve the dispute before referring it to the Office.
  - (2) The Office reserves the right whether to hear a dispute that it considers to fall within its statutory remit and may in its sole discretion seek the advice of any person who, in the opinion of the Office, is able to assist the Office regarding the issues raised in a dispute.

### **Complaints**

4.
  - (1) Any party to a dispute may, in writing, lodge a complaint with the Office before making a formal reference of the dispute to the Office.
  - (2) Upon receipt of a complaint, the Office may address the complaint in the most efficient and effective way, as it thinks fit, and shall endeavour to resolve the issues raised in the complaint within fourteen (14) working days.
  - (3) The Office, in certain instances, may resolve an issue raised in a complaint through contact in writing where a clarification of a regulatory rule or decision is being sought.
  - (4) Where the Office exercises its powers under this section to resolve a complaint, this shall not constitute a decision on the merits of the complaint.

- (5) If, after the response from the Office, there is no amicable resolution of the dispute, a complainant may formally refer the dispute in accordance with the procedures laid out in section 5.

### **Intervention by the Office in a Dispute**

5.
  - (1) The Office shall have the right to intervene in a dispute on its own initiative, or after receipt of two (2) duly executed copies of the Notice of Request accompanied by the Affidavit, and an electronic copy addressed to: the Secretary to the Office, 3<sup>rd</sup> Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10 or such other address as may be notified from time to time, in the form set out in section 8.
  - (2) Where the Office, on its own initiative, intervenes in a dispute, the Office shall give such directions as it thinks fit.

### **Acknowledgement of Notice of Request**

6. Upon receipt of the Notice of Request, the Office shall cause a receipt of acknowledgement thereof to be issued to the Requesting party.

### **Assessment of Dispute**

7.
  - (1) Before deciding to intervene in a dispute, the Office shall carry out an assessment to determine whether:
    - (a) there is in fact a dispute;
    - (b) a Respondent has a case to answer;
    - (c) regulatory intervention is necessary; and
    - (d) a formal hearing should be conducted.
  - (2) Upon receipt of a complaint or a Notice of Request and the Affidavit, the Office shall within [five (5)] working days send the complaint or the Notice of Request to the Respondent and invite comments thereon.
  - (3) Where the Office on its own initiative decides to intervene in a dispute, the Office shall, in writing, require the parties to the dispute to give an indication of the nature and status of the dispute.
  - (4) During the assessment phase, the Office may, at its sole discretion and as soon as is practicable, meet with the parties (individually or collectively) to

gather information from both parties to help the Office to decide whether or not a formal hearing should be held.

- (5) If the Office, after hearing the parties, determines that it should constitute a Panel to hear the dispute, the parties shall raise any challenges to the inclusion of any issue identified in the dispute, and the Office shall within ten (10) working days inform the parties of its decision and confirm the list of issues to be determined.
- (6) The Office shall decide whether or not to proceed to conduct a formal hearing, on a case-by-case basis.

### **Matters to be included in the Notice of Request and Affidavit**

8.
  - (1) The Notice of Request and the Affidavit shall be in writing, in the English language.
  - (2) For the purposes of these Guidelines, the documents and the requisite copies shall be considered filed when received by the Office during the business hours of 8:30 am to 4:30 pm. All filings received after the Office's business hours shall be deemed filed as of the next business day.
  - (3) The Notice of Request shall set out the names, addresses, telephone number, facsimile number, and, if available, email addresses of all the parties as well as a summary of the issues in the dispute to be set before the Office, with the relevant dates and why, in the Requesting party's view, the dispute falls within the Office's purview to hear, consider and determine.
  - (4) The Affidavit, which shall outline the facts along with the supporting documentary evidence, shall include, but not be limited to:
    - (a) The name, address, telephone number, facsimile number, and, if available, email address of the party and the party's designated representative;
    - (b) Why, in the Requesting party's view, the matter constitutes a dispute that falls within the Office's purview to hear, consider and determine.
    - (c) A list of the issues that have been resolved by the parties;
    - (d) A list of the unresolved issues and the position of each party with respect to those issues as well as all relevant documentation and correspondence;

- (e) A description of the parties' efforts to resolve their differences by negotiation as well as relevant documentary evidence;
- (f) A clear and comprehensive explanation of the commercial context of the dispute including an explanation why an agreement could not be reached; and
- (g) Proposed remedies, options or solutions for resolving the dispute including reasons for suggesting same.

### **Service of Notice of Request and Affidavit**

- 9.
  - (1) Subject to the provisions regarding a non-disclosure request, within three (3) working days of the filing of the Notice of Request and the Affidavit, the Requesting party shall serve on the Respondent copies of the Notice of Request and the Affidavit.
  - (2) The Requesting party shall, within three (3) working days of the service of the Notice of Request and the Affidavit, file with the Office a notice of service that the documents have been served on the Respondent. Service shall be deemed to have been effected on the Respondent upon receipt of the notice of service by the Office.
  - (3) In the event that service of the Notice of Request and the Request Affidavit on the Respondent is unsuccessful, the Requesting party shall in writing notify the Office setting out all the reasonable attempts made to effect such service. In such event, the Office shall issue special instructions for the service of the Notice of Request and the Affidavit.

### **Filing of the Response**

- 10. The Respondent shall file its Response with the Office and serve the Requesting party within ten (10) working days of the date of receipt of the Notice of Request and Affidavit.

### **Matters to be included in the Response**

- 11.
  - (1) The Response shall include any disagreement with matters contained in the Notice of Request and the Affidavit, and accompanied by such additional

information and evidence as is necessary to support the position of the Respondent.

- (2) The Response shall specifically indicate the admission, denial or explanation of the matters stated in the Notice of Request by the Requesting party.

### **Service of the Response**

12.
  - (1) Within three (3) working days of service of the Response on the Requesting party, the Respondent shall file with the Office, documentary evidence that the Response has been served on the Requesting party.
  - (2) In the event that service of the Response on the Requesting party is unsuccessful, the Respondent shall, in writing, notify the Office setting out all the reasonable attempts made to effect such service. In such event, the Office shall issue special instructions for the service of the Response on the Requesting party.

### **Special Instructions by the Office**

13. Where there is more than one Requesting party or Respondent, the Office may, upon receipt of the Notice of Request and the Affidavit, issue special instructions as it deems necessary.

### **Preliminary Timetable**

14.
  - (1) Within three (3) working days of the completion of the filing of the relevant documents by the parties to the dispute, the Office shall meet with the parties to determine a preliminary timetable for the conduct of the proceedings.
  - (2) The Office will, in the event that the preliminary timetable will not be met, notify the parties within five (5) working days of the change, providing reasons for the delay, along with a new timetable.

### **Acknowledgement of Submissions**

15. The Office will acknowledge receipt of all submissions made to it within three (3) working days.

## **Establishment of the Panel**

16. Where the Office is reasonably satisfied that the reference of the dispute is made in accordance with sections 5 and 8, and sufficient information has been provided for consideration of the dispute, the Office shall constitute the Panel and advise the parties accordingly.

## **Constitution of the Panel**

17. The Panel shall consist of one or more members of the Office. The Office reserves all rights and sole discretion with regard to the constitution of the Panel in relation to the number of members as well as the selection of Chairman.

## **Notice of Pre-Meeting**

18.
  - (1) The Panel -
    - (a) may as soon as practically possible, fix a date, time and place for a pre-meeting; and
    - (b) shall cause to be served a notice of pre-meeting, informing the parties and any attorney-at-law representing a party of the date, time and place so fixed.
  - (2) A notice of pre-meeting shall be served not less than five (5) working days before the date fixed for the pre-meeting.

## **Pre-Meeting**

19. At the pre-meeting –
  - (a) the Panel may give such directions as to the conduct of the matter;
  - (b) the parties shall raise any further challenges. If such challenges are not raised, they shall be deemed to be waived by the parties.

## **Decisions of the Panel following the Pre-meeting**

20. The Panel shall within five (5) working days after the pre-meeting, in writing:
- (a) determine the outcome of the challenges;
  - (b) confirm the issues to be determined in the dispute;
  - (c) confirm the agreed timetable; and,
  - (d) advise the parties accordingly.

### **Proceedings on Evidence by Affidavit**

21. The Panel may, in its discretion, either as to the whole case or as to any particular fact proceed and act upon evidence given by affidavit.

### **Conduct of the Panel**

22. The Panel shall enquire into the issues pertaining to the dispute and may:
- (a) determine the dispute solely on the basis of affidavit evidence;
  - (b) hear oral evidence from the parties and any witness; and
  - (c) seek as it thinks fit, the advice of any person who, in the opinion of the Panel, is able to assist the Panel in its deliberations.

### **Clarification and Additional Information**

- 23.
- (1) The Panel may require the parties to supply such clarifications and/or additional information or documents relating to the dispute, as it thinks fit.
  - (2) Where the Panel requests further information the following procedure shall will apply:
    - (a) A party shall respond, in writing, in the form of an affidavit, to any specific questions posed by the Panel in relation to the dispute, within the time specified by the Panel.
    - (b) Subject to the discretion of the Panel, upon receipt of an information request, the Panel shall cause the information obtained from the request to be served on the other party. The other party, if it thinks fit, shall respond in writing, in the form of an affidavit, within five (5) working days of the service of the document.



- (c) Subject to the response of the other party, if the Panel determines that no additional information is required, and the Panel is satisfied that no meeting is necessary, the Panel, shall communicate same to the parties and thereafter the Panel, may proceed to determine the matter.
- (3) Where the Panel considers it necessary to meet with the parties to obtain further and better particulars, the Panel may summon the parties to a meeting and where appropriate, may request a party to provide, in writing, such further and better particulars or written submissions.

## **Meetings**

24. The Panel shall meet at such times and places as it shall determine.

## **Notice of Meeting**

25.

- (1) If a meeting is deemed necessary, the Panel shall –
  - (a) fix a date, time and place for the meeting; and
  - (b) notify the parties of the date, time and place so fixed.
- (2) The notice of the meeting shall be given not less than ten (10) working days before the date fixed.

## **Appearance before the Panel**

26. Each party shall be entitled to attend a meeting before the Panel in person and may be accompanied and represented by an attorney-at-law.

## **Further Evidence at a Meeting**

27. A party, who wishes to adduce further evidence at a meeting, shall disclose such evidence in the form of an affidavit, to the Panel as well as to the other party, not less than ten (10) working days in advance of the meeting. The other party shall deliver its response to the further evidence not less than five (5) working days before the date fixed for the meeting.

## **Proceedings in the Absence of Parties**

28. The Panel may on the meeting date, upon proof of service of the notice of meeting, proceed with a meeting notwithstanding that any or all of the parties failure to appear.

### **Procedure at Meetings**

29.
  - (1) The Panel may regulate its own proceedings.
  - (2) The parties to the dispute shall be entitled to be heard and to present such further particulars/evidence as deem necessary by the Panel.
  - (3) Oral submissions and responses at the meeting shall be recorded by a stenographer or by such other means as the Panel considers appropriate.

### **Notes of Proceedings**

30. The Panel shall circulate the notes of the meeting to the parties within fourteen (14) working days after the meeting, and the parties shall signify receipt within three (3) working days of receipt of the notes of meeting.

### **Adjournment of Meeting**

31. The Panel may, before the conclusion of a meeting –
  - (a) adjourn the meeting; and
  - (b) set another date for continuation.

### **The Panel's Decision**

32.
  - (1) The Panel's decision shall be in writing and shall be sent to the parties –
    - (a) not later than [twenty (20)] working days from the date the Panel notifies the parties of the decision not to convene a meeting; or
    - (b) not later than [twenty (20) working days] after the conclusion of a meeting.
  - (2) The Panel shall provide reasons for its decision and shall in accordance with the circumstances, endeavour to represent a fair balance between the legitimate interests of both parties.

- (3) In coming to its decision, the Panel may offer an alternative solution other than that proposed by the parties for the resolution of the dispute.
- (4) The decision and report of the Panel shall include:
  - (a) a ruling on each of the issues presented for resolution by the parties.
  - (b) a statement of any conditions imposed on the parties in order for the parties to comply with the provisions of any relevant legislation.
  - (c) reasons and rationale for each of the rulings or conditions included in the decision.
- (5) The decision and report of the Panel, subject to any considerations of confidentiality, is a matter of public record.

### **Compliance with the Panel's Decision**

33.
  - (1) The parties shall fully comply with the decision of the Panel subject to such rights set forth in any relevant legislation.
  - (2) The decision of the Panel is subject to reconsideration by the Office.
  - (3) The Office, upon an application by an aggrieved party, may suspend the decision until a determination has been made.

### **Confidentiality**

34.
  - (1) Documents and or any part thereof may be treated as confidential upon the request of a party seeking such confidential treatment.
  - (2) A party to a dispute may:
    - (a) inform the Office that, in its opinion, a specified part of a document contains confidential information;
    - (b) provide reasons for indicating same; and
    - (c) request that the Office not disclose it to the other party.
  - (3) On receipt of a request for non-disclosure, the Office shall:

- (a) inform the other party that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
  - (b) ask the other party whether there is any objection to the Office complying with the request.
- (4) The Office or the Panel after assessing the request for non-disclosure and any objections thereto, may decide to provide or instruct the party to provide to the other party the document or such portions of the relevant document that contains confidential information as the Office or the Panel thinks fit. The Office or Panel on the application for non-disclosure will be subject to the provisions of all relevant legislation.

### **Service of Notice or Documents**

- 35.
- (1) Service of any notice or document required by these Guidelines may be effected by personal delivery on the party concerned at its last known place of business within its regular business hours.
  - (2) Any notice or document required to be given or signed by the Office or the Panel may be given or signed by an authorized officer or by any person duly authorized by the Office or the Panel.

### **Power to Extend Time**

- 36.
- Notwithstanding anything to the contrary in these Guidelines, the Panel or the Office may extend the time for doing anything under these Guidelines.

### **Application for Extension of Time**

37. Where a party is unable to meet the stipulated timelines, the party shall make an application for extension of time, setting out the reasons therefor to the Office or the Panel as the case may be.

### **Dismissal of Notice of Request by the Office**

- 38.

- (1) Without prejudice to these Guidelines, the Office may dismiss a Notice of Request where the Notice of Request does not comply with the requirements set out in sections 5 and 8.
- (2) The Office may dismiss a Notice of Request or refer the matter back to the Requesting Party, if in the opinion of the Office:
  - (a) The request for regulatory intervention was vexatious;
  - (b) The subject matter of the dispute is trivial, misconceived and lacking in substance; and
  - (c) A party to the dispute has not engaged in negotiations in good faith.

### **Dismissal of Notice of Request by the Panel**

39. Where at any stage of the proceedings, the Panel finds that the request for regulatory intervention is unfounded and frivolous or vexatious, the Panel may dismiss the Notice of Request forthwith.

### **Withdrawal of Notice of Request**

40. The Requesting Party may, at any time after the filing of the Notice of Request, withdraw the Notice of Request by forwarding to the Office of the Panel as the case may be, a notice of withdrawal in writing signed by the Requesting Party and the Office or the Panel shall forthwith inform every other party of the withdrawal.