

# Rule 022

(Formerly EUB Directive 31B and Rules of Practice)

## Rules on Intervener Costs

The Alberta Utilities Commission (AUC/Commission) has approved an amendment to this rule on June 25, 2008.

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### Definitions

**1** In these rules:

- (a) “Act” means the *Alberta Utilities Commission Act*;
- (b) “Commission” means the Alberta Utilities Commission;
- (c) “costs order” means an order of the Commission awarding costs on a claim for costs to a participant under section 21 of the Act;
- (d) “participant” means an applicant or intervener in a hearing or proceeding for a rate application or related to a rate application;
- (e) “scale of costs” means the scale of costs set out in Appendix A.

### Application

**2** These rules apply to hearings or proceedings for rate applications of utilities under the jurisdiction of the Commission or related to rate applications.

### Business Interest

**3(1)** Unless the Commission orders otherwise, the following types or classes of participants are considered to have a business interest and are ineligible to claim costs:

- (a) an out-of-province utility;
- (b) corporations;
- (c) generators, including associations representing generators;
- (d) a utility intervening in another utility’s application; and

- (e) ad hoc associations of commercial interests organized for participating in a specific hearing or proceeding.

(2) A participant who is uncertain about whether the participant will be considered as having a business interest for purposes of costs may request an advance ruling on its eligibility for costs.

### **Budget to be Filed**

**4(1)** Unless otherwise directed by the Commission, every person that intends to participate in a hearing or other proceeding must file a budget on Appendix B.

(2) A budget must provide the following:

- (a) a detailed budget outlining the reasonable fees and disbursements the participant anticipates it will incur in association with its involvement in the proceeding;
- (b) a summary of the issues the party intends to address and why those issues are material to that party or its organization;
- (c) a detailed proposal outlining the professional assistance such as experts, consultants, lawyers, the participant intends to engage, including:
  - (i) the qualification of each professional;
  - (ii) the issues that each professional will address; and
  - (iii) the nature and scope of the work that each professional will carry out to address the identified issues.

### **Advance of Funds Request**

**5(1)** A participant in a hearing or other proceeding may, at any time during the hearing or other proceeding, make a request to the Commission for an advance of funds.

(2) An application for advance funding must include a budget in accordance with section (4) and include information substantiating the need for financial assistance to address relevant issues in the hearing or other proceeding.

(3) The Commission may award an advance of funds to a participant if the participant demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.

(4) If the Commission awards an advance of funds to a participant under this section, the Commission may:

- (a) advance the funds to a participant and

- (i) set out the terms for repayment of the advance to the Commission by the participant if the Commission varies or denies costs on the claim for costs filed by the participant at the close of the hearing or other proceeding, or
- (ii) direct the applicant to reimburse the Commission for the funds advanced to the participant,

or

- (b) direct the applicant to advance funds to the participant and set out the terms for repayment of the advance to the applicant by the participant if the Commission varies or denies costs on the claim for costs filed by the participant at the close of the hearing or other proceeding.

### **Interim Awards**

**6(1)** A participant may apply to the Commission for an award of interim costs incurred in a hearing or other proceeding by filing an interim costs claim.

**(2)** An application for interim funding must include a budget in accordance with Appendix B.

**(3)** A participant may only claim interim costs in accordance with the scale of costs.

**(4)** The Commission may award interim costs to a participant if the Commission is of the opinion that:

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding,
- (b) the hearing or other proceeding in which interim costs are claimed is lengthy, and
- (c) the participant has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.

**(5)** If the Commission awards interim costs to a participant under this section, the Commission may:

- (a) pay the interim costs to the participant and
  - (i) set out terms for repayment of the interim costs to the Commission by the participant if the Commission varies or denies costs on a claim for costs filed by the participant at the close of the proceeding, or
  - (ii) direct the applicant to reimburse the Commission for the interim costs paid to the participant,

or

- (b) direct the applicant to pay the interim costs to the participant and set out terms for repayment of the interim costs to the applicant by the participant if the Commission varies or denies costs on the claim for costs filed by the participant at the close of the hearing or other proceeding.

### **Costs Claim**

- 7(1)** A participant may apply to the Commission for an award of costs incurred in a hearing or other proceeding by filing a costs claim in accordance with Appendix C.
- (2) A participant may only claim costs in accordance with the scale of costs.
- (3) Unless otherwise directed by the Commission, a participant shall:
  - (a) file a claim for costs within 30 days after the hearing or other proceeding is closed, and
  - (b) serve a copy of the claim on the other participants.
- (4) For a negotiated settlement, a participant shall submit a cost claim within 30 days of:
  - (a) the date upon which the settlement is approved by the Board, or
  - (b) the date upon which the settlement is abandoned and these costs are not to be combined with any litigated process arising out of a settlement being abandoned.
- (5) An applicant may submit as part of the applicant's claim for costs, a request to the Commission to record in the applicant's hearing costs reserve account, costs that are reasonable and directly and necessarily related to the hearing or proceeding.
- (6) After receipt of a claim for costs, the Commission may direct the participant who filed the costs claim to file additional information or documents with respect to the costs claimed.
- (7) All cost claims will be placed in the AUC's IAR System for viewing by participants and the public.

### **Comments on Costs Claims**

- 8(1)** Unless otherwise specified by the Commission, in a hearing or other proceeding:
  - (a) within 14 days of the receipt of a summary of costs prepared by the Commission from the costs claims submitted by one or more of the participants, each participant shall file and serve on the other participants a submission detailing any questions and comments on the summary of costs, and
  - (b) within 14 days of the receipt of the comments from one or more participants under clause (a), each participant shall file and serve on the other participants a reply respecting those comments.

## Costs Award

**9(1)** The Commission may award costs, in accordance with the scale of costs, to a participant if the Commission is of the opinion that:

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and
- (b) the participant acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

**(2)** In determining the amount of costs to be awarded to a participant, the Commission may consider whether the participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by that participant's witness;
- (b) made reasonable efforts to ensure that the participant's evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine the participant's submission with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to the participant at the time the participant filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Commission, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that were not relevant to the proceeding;
- (g) needed legal or technical assistance to take part in the hearing or other proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs;
- (i) the participant took part in the hearing or other proceeding for the sole purpose of protecting the participant's business interests;
- (j) failed to comply with these rules.

## **Liability for Costs**

**10** Unless the Commission otherwise directs:

- (a) in a hearing or other proceeding that relates to a utility, the utility shall pay the costs awarded to a participant, and
- (b) in a hearing or other proceeding that relates to policies or concerns respecting the utilities, the Commission may pay the costs awarded to a participant.

## **Costs Order**

**11(1)** Where the Commission has awarded costs in a hearing or other proceeding, the Commission shall issue a cost order setting out the amount awarded and to whom and by whom the payment must be made.

**(2)** The Commission shall serve a copy of the cost order on the participant making the claim and on the applicant.

**(3)** An applicant named in a cost order shall pay the amount awarded to the participant within 30 days of being served with a copy of the cost order.

**(4)** A cost order may state whether an applicant named in the order is authorized to record the costs in its hearing costs reserve account.

## **Expiry**

**11** These rules expire on September 30, 2008.

## **Appendix A Scale of Costs**

The *Scale of Costs* represents a fair and reasonable tariff to provide any interested party with adequate, competent, and professional assistance in making an effective submission before the Commission. In a case where a participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in the *Scale of Costs* to address such unique circumstances.

### **1. Professional Fees**

The *Scale of Costs* provides a sliding scale for professional fees; as the professional's experience increases, so will his or her value and wage. The Commission emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Commission will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. The Board allows professionals only half of their hourly rate for travel time.

**Claims for professional fees must be accompanied by a statement of account.**

Statements of account must include the following:

- the date of activity undertaken;
- a description of the activity undertaken; and
- the time incurred with respect to each described service.

### **Legal Fees**

Paralegal \$65.00/hour  
Articling students \$90.00/hour  
1-4 years at the bar \$140.00/hour  
5-7 years at the bar \$180.00/hour  
8-12 years at the bar \$220.00/hour  
More than 12 years at the bar \$250.00/hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Commission will not consider fees for secretarial work. In certain situations, it may also be appropriate for a paralegal to work on the application or intervention. The Commission will consider such claims only if it can be demonstrated that the work performed required the expertise of a paralegal and could not have been performed by a legal assistant.

## **Fees of Consultants, Analysts, and Experts**

Secretarial/support staff \$45.00/hour  
1-4 years' experience \$100.00/hour  
5-7 years' experience \$140.00/hour  
8-12 years' experience \$210.00/hour  
More than 12 years' experience \$250.00/hour

The Commission recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Commission will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

## **2. Disbursements**

The Commission will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. **The AUC will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.**

### **Office Disbursements**

The Commission will consider claims for the following office disbursements incurred throughout the participant's involvement in the hearing or proceeding.

- courier charges
- long-distance telephone calls
- photocopies (\$0.10/page)
- fax (\$1.00/page)
- computer charges
- postage
- transcripts (must be accompanied by a receipt)

The Commission does not require claimants to submit receipts for the above disbursements (other than transcripts) with their initial cost claims. Claimants should, however, retain receipts for such disbursements, as the Commission will require their submission if the claim is selected for audit. Office disbursements other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed attached.

### **Personal Disbursements**

The Commission will consider claims for the following personal disbursements that are incurred during an oral hearing.

#### ***Meals***

Maximum allowable claim for meals is \$40.00 per day (\$10.00 for breakfast, \$15.00 for lunch and dinner each). Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable.

Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

***Accommodation***

Maximum allowable claim for accommodation is \$140.00 per day maximum. Claims for accommodation are restricted to the duration of an oral hearing.

Receipts must accompany all claims for accommodation.

***Travel***

The Commission's mileage rate for automobile travel is \$0.30/km (including GST). This portion of a claim is restricted to intercity travel distances of 50 km or greater.

The Commission will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing.

Receipts are required and must clearly identify the date of departure and arrival.

***Taxi***

Taxi claims are restricted to an oral hearing. Taxi receipts need not accompany the claim. Tips are not claimable. However, a claimant should retain such receipts in the event that the Commission directs an audit of the claim.

***Parking***

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, a claimant should retain such receipts in the event that the Commission directs an audit of the claim.

**Appendix B**  
**Budget Submission**

Date of Budget Submission:

Name of hearing:

Application number(s):

Name of participant group:

Explain whether or not the business interest rule applies.

Identify the issues you will be exploring and/or challenging:

Issue 1 –

Issue 2 –

Issue 3 –

Issue 4 –

Issue 5 –

For each issue identified, complete the following Budget Submission:

**General**

Name of issue/area to be explored and/or challenged:

Why is this area an issue for this participant group?

To pursue this issue, what resources do you expect to employ?

**External Legal Counsel**

Name of law firm being retained

What specific activities will senior counsel be performing?

What specific activities will junior counsel be performing?

What specific activities will articling students/researchers/paralegals be performing?

Anticipated legal fees:\$ \_\_\_\_\_

**Expert Consultant**

Name of expert consultant being retained

What specific areas of this issue is the expert consultant responsible for?

Describe the specific activities the expert consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated expert fees: \$ \_\_\_\_\_

**General Consultant**

Name of general consultant being retained

What specific areas of this issue is the general consultant responsible for?

Describe the specific activities the general consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated consulting fees: \$ \_\_\_\_\_

## **Appendix C Cost Claims**

**1** All claimants must acknowledge that all documents filed in respect of the cost claim must be placed on the public record, including that all documents will be accessible on the AUC's IAR system which is available via the Internet.

**2** If a hearing or other proceeding is convened to consider multiple applications by different applicants, participants must file a separate package of utility cost forms for each application, otherwise, cost claims are returned.

**3(1)** A claimant must submit the following.

(a) Submission of Justification. Participants are required to explain:

- (i) what interests they represent
- (ii) what tasks they have undertaken
- (iii) why they appeared before the Board
- (iv) what efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants
- (v) why the costs submitted are reasonable.

(b) Form U1 – Summary of Total Costs Claimed

(c) Form U2 – Summary of Professional Fees Claimed

(d) Form U3 – Summary of Disbursements Claimed

(e) Form U4 – Affidavit of Fees and Disbursements Claim which may be signed by the participant or counsel for the participant

(f) Statement(s) of account reflecting the professional fees being claimed

(g) Legible receipts for certain expenses where required

**(2)** The onus is on the claimant to provide sufficient information for the Commission to effectively assess its claim and must address the specifics of the proceeding.

**(3)** All cost claim forms are available on the Commission website.

**(4)** A cost claim must be filed electronically as a single PDF document by e-mail to [UtilityCosts@auc.ab.ca](mailto:UtilityCosts@auc.ab.ca). A paper copy is not required.