

May 18, 2010

To: Interested Parties

**INQUIRY INTO THE HARMONIZATION OF THE REGULATED RATE OPTION
REGULATION AND DEFAULT GAS SUPPLY REGULATION
(REGULATED RETAIL ENERGY INQUIRY)
APPLICATION NO. 1606030
PROCEEDING ID. 567**

COST ELIGIBILITY AND PRELIMINARY PROCESS INFORMATION

1. In the Notice of Inquiry issued on April 14, 2010, the Alberta Utilities Commission (AUC or Commission) stated that recovery of costs for participation in the Regulated Retail Energy Inquiry (the Inquiry) will be governed by the AUC's [Rule 022](#).¹ In making this determination, the Commission considered the nature of the Inquiry, the parties likely to be interested in participating, the fact that allowed costs of a regulatory proceeding are passed on to customers, the applicability of Rule 022, and whether a departure from the Rule 022 provisions was warranted. The Commission determined that the four parties who have been directed to participate in the Regulated Retail Energy Inquiry² will be considered to be applicants solely for the purposes of qualifying for costs under Rule 022.
2. Included in the statements of intent to participate (SIP) filed by certain parties were comments regarding cost eligibility and cost recovery for their participation in the Regulated Retail Energy Inquiry. ATCO Electric Ltd. and ATCO Gas indicated that, at the current time, the extent of their participation is unknown; however, in the event that either utility actively participates in the proceeding, they will be seeking cost recovery for their participation. The Alberta Federation of Rural Electrification Associations Ltd. (AFREA) submitted that, at this time, it is evaluating its level of participation in the Inquiry. The AFREA added that, as a representative of owners of distribution systems responsible for Regulated Rate Option service to its members, it may seek cost recovery depending on the level of participation needed. The City of Calgary (Calgary) submitted that the Commission should allow cost recovery by Calgary in this proceeding in accordance with the Commission's discretionary powers given that the proceeding's implications "...extend far beyond a simple rate hearing."
3. The writer has been authorized to provide the Commission's determinations with respect to the comments received on cost eligibility and to provide preliminary information respecting anticipated process steps in this proceeding.

¹ AUC Rule 022: *Rules on Intervener Costs in Utility Rate Proceedings* (Rule 022).

² These four parties are AltaGas Utilities Inc., Direct Energy Regulated Services, EPCOR Energy Alberta Inc., and ENMAX Energy Corporation.

Cost Eligibility

4. Section 4 of Rule 022 sets out certain types or classes of interveners that are ineligible to claim costs unless the Commission otherwise orders. Among the types of interveners that are ineligible are (c) a utility intervening in another utility's application, (e) municipalities and (f) rural electrification associations including associations of rural electrification associations. Accordingly, in the absence of the Commission exercising its discretion, each of ATCO Gas, ATCO Electric Ltd., the AFREA and Calgary would be ineligible to claim costs in this proceeding.

5. Given the comments of ATCO Gas, ATCO Electric Ltd., the AFREA and Calgary in their respective SIPs that they may wish to rely on the Commission's discretion to allow them to be eligible to make a claim for costs, the Commission considers that clarification of cost eligibility is in the interest of all participants at an early stage in the proceeding.

6. The Commission is of the view that it has general discretion to award costs pursuant to section 21 of the *Alberta Utilities Commission Act* (section 21):

21(1) The Commission may order by whom and to whom its costs and any other costs of or incidental to any hearing or other proceeding of the Commission are to be paid.

7. The Commission indicated in its Notice of Inquiry that the costs for participation for this proceeding would be governed by Rule 022.

8. The Commission notes that in developing the current Rule 022, which was revised effective September 30, 2008, the Commission received and considered comments from parties. Those views were discussed in Bulletin [2008-19](#) which was issued on September 30, 2008.³

9. In particular, the Commission notes from Bulletin 2008-19 that it retains discretion to award costs for rate and rate-related proceedings, and that in the potential exercise of such discretion, a principal concern would include whether an intervener has the means to raise sufficient resources to enable the intervener to represent its interests adequately in a proceeding. This reasoning was directly incorporated into the language of Rule 022, where subsection 3(1) provides:

3(1) The Commission may award costs to an intervener who has, or represents a group of utility customers that have, a substantial interest in the subject matter of a hearing or other proceeding and who does not have the means to raise sufficient financial resources to enable the intervener to present its interest adequately in the hearing or other proceeding. [emphasis added]

10. The Commission further notes that, in developing Rule 022, it considered the issue of whether costs should be awarded to groups who may represent a broad base of interests, such as residential consumers, farmers, or small business users, amongst others. The Commission recognized that such groups may have genuine interests but may also be constrained with respect

³ Alberta Utilities Commission, Bulletin 2008-19, issued September 30, 2008 – Adoption of Revised Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings* and Changes to Rule 009, *Local Intervener Costs* and Rule 015, *Rules on Costs of Investigations, Hearings or Other Proceedings Relating to Contraventions*, page 1 of 2.

to the resources available to represent those interests. The Commission remained of the view that persons choosing to participate in proceedings before the Commission are expected to take responsibility for their intervention, including the decision of whether the intervention is warranted, the issues to be addressed, the positions to be taken, and whether the costs of an intervention are warranted given their interests.⁴ In this regard, the Commission is particularly mindful that it must exercise caution whenever considering an award of costs arising out of any proceeding where costs will be paid by customers.

11. Calgary remarked that the Inquiry is broader than a rate proceeding. The Commission considers that the Inquiry differs from a rate proceeding but also recognizes that any harmonization of the *Regulated Rate Option Regulation* and the *Default Gas Supply Regulation* could result in rate related impacts to those customers receiving service from regulated gas and electricity providers. For the reasons set out above, the Commission finds its decision to apply Rule 022 to continue to be appropriate in the circumstances of this Inquiry. In applying Rule 022, the Commission is not persuaded that any of ATCO Gas, ATCO Electric Ltd., the AFREA and Calgary lacks the means to raise sufficient financial resources to adequately represent their interests in this proceeding and notes that none of the parties has suggested as much. There is, to the Commission's knowledge, no change in circumstances in respect of these parties from the time of the determinations made in Bulletin 2008-19 and the considerations discussed therein. Therefore, the Commission will not depart from the stipulated cost eligibility provisions of Rule 022.

12. Accordingly, the Commission has decided that ATCO Gas, ATCO Electric Ltd., the AFREA and Calgary will not be considered eligible for cost recovery for participation in the Inquiry.

Process

13. The Notice of Inquiry indicated that the Commission would determine and communicate the next process steps upon completion of the initial filings in this proceeding. To assist all parties with planning and preparation for the proceeding, the Commission provides the following preliminary information regarding process steps.

14. The Commission anticipates that, following the filing of replies to other parties' submissions due June 30, 2010, it may be beneficial to hold a one or two-day roundtable discussion among parties to identify relevant issues for the proceeding. The Commission currently expects that roundtable discussions would be held during the week of **July 12, 2010**, with Commission Staff in attendance. The Commission requests that parties indicate their level of interest to participate in a roundtable discussion and to provide comments on issues for discussion, either as part of their initial submissions due on June 9, 2010 or as part of their replies to other parties submissions due on June 30, 2010. The Commission does not intend to have a transcript of the roundtable discussions.

15. The Commission anticipates that a round of Information Requests and Responses on the initial submissions and replies to other parties' initial submissions may be required, with tentative filing deadlines of **July 22, 2010** and **August 23, 2010** respectively.

⁴ Ibid., page 1 of 2.

16. Given the nature of the proceeding, the Commission anticipates that it may wish to clarify some matters of specific interest following the filing of initial submissions, replies, and information responses. Accordingly, the Commission may require additional submissions from parties on directed matters and issues of specific interest to the Commission. If required, these additional submissions would be filed in mid-September 2010. If the Commission requires clarification, information requests by the Commission only, in respect of the additional submissions, would be tentatively issued in late September 2010.

17. The Commission is expecting to hold an oral hearing. The Commission has set the tentative dates for the oral hearing as **November 1, 2010 to November 19, 2010**, to be held in the Commission's Calgary hearing room. The Commission also expects that the oral hearing will be followed by written argument and written reply. Anticipated filing dates are **December 8, 2010** and **December 22, 2010** respectively.

18. While these dates are currently tentative, they are unlikely to vary by more than a few days given the provisions of Order in Council 93/2010 which require the Commission to render its report no later than March 25, 2011. Parties should make arrangements accordingly.

19. The Commission anticipates that it will finalize and issue a formal schedule following receipt and review of the initial submissions and replies from other parties.

20. If you have any questions regarding this letter please contact the writer at (403) 592-4504 or by email at Colin.King@auc.ab.ca.

Yours truly,

(sent by email)

Colin King
Commission Counsel