



WACHOWICH & COMPANY
— *Barristers & Solicitors* —

December 5, 2016

Alberta Utilities Commission
400, 425 First St. S.W.
Calgary, Alberta
T2P 3L8
Via Email

Attn: Mr. JP Mousseau
Commission Counsel

Dear Mr. Mousseau,

**Re: Stakeholder consultation on proposed amendments to
AUC Rule 001: Rules of Practice
Consumers' Coalition of Alberta ("CCA") Comments**

1. In Bulletin 2016-19, dated November 1, 2016, the AUC invited written comments from interested parties regarding proposed revisions to AUC Rule 001: *Rules of Practice* indicated in the draft of the rule distributed with the bulletin.
2. CCA has reviewed the proposed revisions and provides comments in Appendix A to this correspondence.
3. Please contact the writer if you have any questions with respect to this matter.

Yours truly,

WACHOWICH & CO.

PER:
JAMES A. WACHOWICH, Q.C.
Counsel to the CCA

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Appendix A

CCA Comments to Proposed Revisions to AUC Rule 001: *Rules of Practice*

Section 1 Definitions

Section 1.1

Section 1.1(j) states: ““party” means (ii) a person, other than an applicant, ...who participates in a proceeding to decide that application”[emphasis added]. The sentence appears to indicate that the “party” decides the outcome of the application, whereas it is the Commission who decides the outcome of an application.

CCA recommends that the following clarification to the wording may be of assistance: “a person, other than an applicant, ...who participates in a proceeding to contribute to the Commission’s understanding of that application”.

Section 1.1(l) states: ““representative” means the agent of or solicitor of a person or party.”[Emphasis added] The term “party” is a defined term, but the term “person” is not. Further, the definition of “party” includes a “person” under section 1.1(j). It is not clear to the CCA what distinction the Commission had in mind when it indicates person or party in the revised rule.

For these reasons, CCA recommends including a definition of “person” to assist in understanding the distinction.

Section 8 Notice of enforcement proceeding

For section 8.2(e), CCA recommends adding the word “include” to the beginning of the phrase (e) as follows: “include any other information that the Commission may direct.”

Section 18 Evidence

Section 18.1 states: “All documentary evidence in a proceeding must be filed in accordance with the Commission’s directions.”

CCA recommends that the Commission consider defining the term “documentary evidence” to clearly delineate it from the term “independent expert evidence” in Section 19.

Section 18.2 requires all documentary evidence to set out the qualifications of the person who prepared the documentary evidence. It is unclear to the CCA if corporate and policy witnesses fall into the category of “documentary evidence” and thus the requirements of Section 18.2.

Where evidentiary submissions are filed by a group of witnesses simultaneously, the requirements of Section 18.2 to clearly set out the qualifications for each section of the evidence can be time consuming. For instance, the general evidence of the applicant can include input and collaboration from both the internal staff of the utility and external experts, but may not involve filing independent

expert evidence. This also occurs in certain intervenor submissions, where multiple individuals collaborate on a piece of evidence, and thus there may not be one individual who maintained “direction or control” of the preparation of the evidence but rather the evidence was developed as team with some individuals taking primary responsibility for certain areas of the evidence, either individually or jointly. The CCA considers this information may be beneficial for the Commission or parties to understand, but it may not be necessary in every application before the Commission. Consequently, it might be more efficient to only identify the primary authors and leave requests for further disclosure of contributors to evidence to each specific application.

Further, the CCA notes that with two general forms of evidence, being “documentary” and “independent expert”, other submissions of parties such as landowners or members of the general public seeking to make a submission, may not clearly fall under either category and thus will lack guidance. The CCA recommends including a category of evidence, considered “corporate, policy or non-expert” if the Commission considers such evidence to be different from documentary evidence.

The CCA suggests that this evidence should not be subject to the same requirements of “documentary” evidence, specifically that each section of the evidence be clearly attributed to a specific witness. The CCA considers it would be appropriate at the introduction of the evidence to list those individuals who had direct input into the evidence and who will be available to testify to the evidence in the event of an oral hearing.

Section 25 Response to information request

Section 25.1(b) requires identification of the individual or individuals responsible for preparing the response.

While the CCA considers it to be important to identify the author of an information request response, in some cases, for instance for a utility applicant, there may be multiple authors to a single information request, including the ultimate witness that will testify to the response, if necessary, and their staff, or other witnesses. Similarly, some intervenors use administrative staff to assist in the timely and cost effective preparation of some information responses. CCA is unclear on the relevance of this information and also notes this information will add to the administrative burden of preparing an information response. This requirement could be particularly burdensome for large multi-disciplinary proceedings where information responses are often prepared in a very limited timeframe. Finally, all information that is submitted by the CCA is reviewed by counsel and the client. Thus, requiring disclosure of the author(s) of a specific IR could engage legal privilege and require additional process to address whether or not authorship is protected by privilege.

To address this issue, the CCA suggests that the identification be limited to an identification of the key individual or individuals that would testify to the response as part of an oral hearing, if required, rather than the listing of all individuals who may have had responsibility to contribute to the response. The individuals responsible to testify to pre-filed evidence and information responses could be identified in advance of a hearing when CVs of witnesses are being filed.

Section 28 Confidential filings

Section 28.6 states: “At the time a request for confidential treatment of information is filed, the requesting party must provide the AUC with one confidential, un-redacted copy of the document that includes the information for which confidentiality is requested.”

The CCA wishes to specifically note its support for this revision to the rule. CCA believes this revision will improve regulatory efficiency, lead to better informed rulings and potentially reduce the volume of information being granted confidential treatment, thereby enhancing the open and transparent process for applications.

Section 28.11 indicates the Commission will delete the confidential un-redacted document filed in accordance with subsection 28.6 or return documents on storage devices to the requesting party.

The CCA has understood that historically, for confidentiality motions, the Commission retained one permanent copy of any unredacted documents received. The CCA seeks to confirm that this policy of the Commission will remain unchanged after the Commission rules that the subject information to the confidential motion is relevant and thus should be provided on the record of the proceeding either in a redacted or unredacted form. In other words, the CCA seeks to confirm that the Commission will continue to permanently retain one copy of all unredacted information granted confidentiality in an application, even after all other copies provided to participants have been deleted, destroyed or returned to the requesting party.

Section 31.1 Late filing

Section 31.1 states: “A person or party who wishes to file a document, including a statement of intent to participate, after the time limit set out for filing has elapsed, may bring a motion seeking the Commission’s permission to file the document or statement of intention to participate.”

The CCA submits that a requirement to file a motion for late filings that are not a statement of intent to participate in all circumstances may become overly burdensome on parties to a proceeding and create further delay in a proceeding.

The CCA agrees with the motion requirement in regards to when a party submits a statement of intent to participate after the Commission established deadline. However, the CCA submits it would be administratively burdensome to require a party to file a motion for a late filing such as information requests, information responses, procedural responses, evidence or argument if those filings are made the same day they are due, but after the technical deadline, such as 2:00 pm or 4:00 pm, by even by a few minutes.

The CCA considers that, all things being equal, timely submissions are in the best interests of all parties, however the practical realities of intervention on behalf of consumers requires the use of limited resources across multiple proceedings, frequently with multiple deadlines on the same day or week. The addition of a motion for late filing, filed the same day, would create an additional and

unnecessary burden on all parties or, conversely, require the CCA to increase its costs requests on proceedings in order to meet this administrative expectation.

The CCA notes that from time to time, due to normal delays in preparing documents in a proceeding, all parties in a proceeding, including the applicant and interveners have been late on a submission, ranging from a few minutes to several hours and occasionally into a subsequent day. Technical issues and normal procedural delays can occur late into a process, and delay a filing that is otherwise complete.

Frequently, deadlines are often set by the Commission without consultation with parties and while parties usually respond in a timely manner, they occasionally need to request relief on a deadline and such relief has not always been granted. Additionally, some parties are simultaneously working on more than one application and a deadline that may seem reasonable in one application may not be reasonable when considered in conjunction with one or more other applications that are being conducted simultaneously.

Interveners such as CCA are particularly disadvantaged as CCA has limited access to consultants willing to work on a cost recovery basis due to uncertainty on recovery of costs and often long delays of many months on approval of those costs from the date the costs begin to be incurred. Also, while CCA endeavors to cooperate with other interveners, obtaining input from other interveners with multiple competing priorities can increase the challenges of meeting Commission deadlines.

Landowners may face constraints caused by heavy workloads during planting or harvest periods, may be unfamiliar with the Commission's application process and face the challenge of the time required to obtain consensus among landowners working together, with or without legal counsel.

Consequently, adding an additional process that requires further motions simply adds complication to a process, may cause unnecessary delay and will likely contribute to regulatory inefficiency. Further, the Commission already had an established process to accommodate extension requests where the party does not consider it will be able to meet the currently established deadline with reasonable effort.

Accordingly, the CCA recommends that Section 31.1 and 31.2 be segmented into two areas as follows, and include a further section 31.3 and 31.4:

- 31.1 A person or party who wishes to file a statement of intent to participate, after the time limit set out for filing has elapsed, may bring a motion seeking the Commission's permission to file the statement of intent to participate.
- 31.2 Upon receipt of the late filed statement of intent to participate, the Commission may
 - a) grant permission for the late filing of the statement of intent to participate on any terms it considers reasonable; or
 - b) disregard the statement of intent to participate.

- 31.3 The Commission may request that a person or party who files a document (other than a statement of intent to participate) after the established filing deadline, bring a motion to the Commission requesting that the late filing be permitted on the record of the proceeding.
- 31.4 Upon receipt of the motion in support of the late filed document subject to Section 31.3, the Commission may
- a) grant permission for the late filing of the document on any terms it considers reasonable; or
 - b) disregard the document.

Section 38 Motions made in an oral hearing

Section 38, in the title of the section, has a superfluous “a” included as follows: “Motions made in a an oral hearing”. The word “a” needs to be deleted.

Section 39 Aids to question witnesses

Section 39.1 requires that an aid to question be provided no less than 24 hours before the witness is to be questioned.

The CCA recommends that the Commission should include an exception to the requirement to file an aid to question no less than 24 hours before the witness is questioned in circumstances where the aid to question addresses the honesty of the witness being questioned. CCA considers that such instances would be rare as aids to question are normally seeking clarification or further evidence from a witness on their pre-filed evidence or on evidence related to their expertise and to their evidence. The AUC must also remain flexible in enforcing this as there are times relaxation may be required.