

ALBERTA UTILITIES COMMISSION

IN THE MATTER OF *the Alberta Utilities Commission Act, S.A. 2007, c. A-37.2;*

AND IN THE MATTER OF *Rule 001: Rules of Practice of the Alberta Utilities Commission;*

AND IN THE MATTER OF *Bulletin 2016-19: Stakeholder consultation on proposed amendments to AUC Rule 001: Rules of Practice*

**COMMENTS OF
THE CITY OF CALGARY
DECEMBER 5, 2016**

A. INTRODUCTION

1. The City of Calgary (“**Calgary**”) is providing these stakeholder comments and submissions on proposed amendments to Rule 001, as contemplated in Bulletin 2016-019.
2. Calgary has some general comments on the proposed amendments, as well as specific comments on a few of the proposed revisions.

B. GENERAL COMMENTS

3. Calgary attended a stakeholder consultation session in October 2015, held by the Commission to review the effectiveness of public utility regulation in Alberta. At that session, Calgary noted that participating in the Commission’s proceedings was becoming increasingly costly for Interveners. It also provided specific recommendations to the Commission for ways and means in which both the cost of interventions and the cost of regulation could be lowered. Lowering the cost of regulation lowers the rates paid by Customers. None of Calgary’s recommendations were accepted or adopted by the Commission.
4. Instead, Calgary respectfully submits that the Commission has embarked upon revisions to its rules and processes which, as implemented, will not only increase participation costs, but may also compromise the ability of Interveners to make effective contributions on the expectations of ratepayers, as required by the Commission to fulfil its mandate in the manner confirmed by the Courts.¹
5. This development is of great concern on its own, but is heightened in light of the Commission’s long standing decision to disallow cost recovery eligibility under Rule 022 for many parties, including municipalities like Calgary.

¹ Per Paperny, J.A. in *Fortis Alberta Inc v Alberta (Utilities Commission)*, 2015 ABCA 295, para 171: The Commission’s “... mandate includes the creation of a balanced and predictable application of principles to the relationship between revenues, expenses and assets (both depreciable and non-depreciable) of utilities on the one hand, and the reasonable expectations of the ratepayers who receive and pay for services on the other.”

C. SPECIFIC COMMENTS

6. Appendix A to these submissions contains Calgary's specific submissions on the Commission's draft Rule 001 provided for stakeholder comments in accordance with Bulletin 2016-019.

APPENDIX A

CITY OF CALGARY COMMENTS ON PROPOSED RULE 001 REVISIONS

Section No.	Subject Matter	Comments
Section 13.1	Decision without notice	<p>Section 13 is a new section. The option for the Commission to issue decisions “on a proceeding” under Section 13.1 without any notice is problematic, because the revised definition of “proceeding” (Section 1.1 (k)) includes virtually all methods and means by which a matter may be brought before the Commission (i.e. by application, MSA notice, complaint, by Commission on its own initiative, etc.). The discretion left to the Commission to opine that no person may be directly and adversely affected by the decision cannot be fairly exercised without notice in cases of complaints and MSA enforcement proceedings, for example.</p>
Section 19	Independent Expert Evidence	<p>Section 19 is a new section. Calgary is in favour of the requirements set out in Section 19.2 of the proposed Rule concerning the content requirements for expert evidence.</p> <p>With respect to Section 19.3, and the option for the Commission to require “hot tubbing” of expert witnesses to “confer with each other in advance of a hearing”, Calgary would expect that such directions from the Commission would not be issued in cases where section 19.2 (f) applied, that is where in filings of rebuttal evidence (whether the filings are simultaneous multi-party filings or otherwise) the experts would typically and likely provide “a summary of the points of agreement and disagreement with the other’s expert evidence”. As such, Calgary would expect that circumstances where the Commission may use Section 19.3 would be limited.</p> <p>Further, a concern is raised as to how section 19.3 directions would operate in practice, for example, whether the experts would be required to participate in hot tubbing without counsel present, or whether counsel and the sponsored parties would be present. Also, a concern is raised as to whether parties be given prior notice, and given the chance to opt out of hot tubbing.</p> <p>Another concern arises in cases where, if substantial expenditures have already been incurred by the sponsoring party with respect to the preparation of expert evidence, that hot tubbing would serve to limit the ability of the party advancing the evidence to have the record properly reflect the evidence and the case the sponsoring party wishes to make using that evidence. Simply put, the value of these expenditures to the</p>

		<p>sponsoring party could be compromised against that party's wishes.</p> <p>Moreover, it is now the case that differences between experts are usually highlighted either through information requests, cross-examination, or rebuttal evidence (including that contemplated by Section 19.2 (f)). The implementation of a hot tubbing process in a proceeding may therefore limit a party's procedural and substantive rights to use or rely upon these methods to fashion the record in the manner it wishes.</p> <p>Accordingly, Calgary would strongly recommend that Section 19.3 be deleted.</p> <p>If the Commission intends to implement Section 19.3 in any event, Calgary strongly recommends that it consult with stakeholders as soon as possible in 2017 to work out the rules, procedures and understandings to be adopted when hot-tubbing is required by the Commission in a specific proceeding.</p>
Section 31	Late Document Filing	<p>Calgary notes that Section 31.1 is intended to cover all documents to be filed after the time limits set out for filing has lapsed, including at the start of a proceeding with the statement of intent to participate. The section requires the party seeking to file the late document to file a motion. Calgary believes that in the first instance, the party seeking permission should seek permission in its chosen form, and the Commission use its discretion and call for a motion if the circumstances require.</p> <p>This is especially the case where the late filing may be only by a short time (for example the next day), or indeed a deadline day filing made after the hourly (4 p.m.) deadline. Also, requiring motions could potentially be a highly costly exercise to deal with matters that are of a routine nature and/or of no demonstrable prejudice to parties.</p> <p>Accordingly, Calgary recommends that Section 31 be revised simply to refer back to the previous Rule 001 wording to obtain Commission leave to allow the late filing in the form chosen by the applicant.</p>