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Alberta Utilities Commission
Utilities Division, Calgary Office
#400, 425 1 Street SW
Calgary, Alberta T2P 3L8

Attention: Mr. JP Mousseau, Commission Counsel

Dear Mr. Mousseau,

Re: Bulletin 2016-19 Stakeholder consultation on proposed amendments to AUC Rule 001: Rules of Practice and Bulletin 2016-20 Stakeholder Feedback requested regarding enforcement policy and practices.

TransCanada Energy Ltd. (TCE) is a generation developer that owns or has an interest in several generating facilities within the province of Alberta. As such, TransCanada has an interest in the proposed changes to Rule 00,1 Rules of Practice (the Rule). TransCanada has reviewed the Alberta Utilities Commission's (Commission or AUC) Bulletin 2016-19 and Bulletin 2016-20 and at the outset wishes to express its general support for the amendments to the Rule and appreciates the opportunity to offer the following specific comments:

Section 1.1 Definitions

The term "business hours" is used throughout the Rule and therefore TCE suggests it be defined as 8:00 AM to 5:00 PM, Monday through Friday in the Rule.

The term "person" is also used throughout the Rule and TCE suggests that it be defined consistent with section 1(1)(kk) of the *Electric Utilities Act*, where a person "includes an individual, unincorporated entity, partnership, association, corporation, trustee, executor, administrator or legal representative."

In TCE's view, the definition of "party", in Section 1.1(j) of the Rule contains an incomplete list of the types of applicants that may file an application with the Commission. Specifically, part (iii) of the definition should be amended to include the Market Surveillance Administrator. As well, TCE is unsure whether "an applicant", as set out in 1.1(j)(i) is sufficiently broad to capture persons who have brought a complaint, rather than an

application. TCE therefore suggests that a new subsection be inserted between (iii) and (iv), which would read “any person that files a complaint pursuant to sections 25 or 26 of the *Electric Utilities Act*.”

Section 5 Commencement of proceedings

TCE suggests that section 5.1 of the Rule should be amended with an additional subsection that would read “(c) an objection.”

Section 8 Notice of enforcement proceeding

TCE agrees with the inclusion of Section 8 in the Rule. However, TCE understands that the service requirement set out in section 8.1 can be satisfied by any of the means set out in section 7.1, above. Given the importance of an enforcement proceeding to a market participant, TCE suggests that the service required by section 8.1 be limited to service that occurs either by “personal delivery” or by “mail, courier service, fax or electronic means to the address given by the person or party.”

Section 18 Evidence and Section 42 Presenting Evidence

TCE submits that in written proceedings, the evidence should be tested prior to the commencement of the argument phase of the proceeding and in oral hearings, prior to the commencement of the hearing. TCE notes that in some proceedings the Commission has allowed the applicant to file rebuttal evidence without providing an opportunity for interveners to test the rebuttal evidence by asking information requests. Setting out a default process, as discussed more fully below, that accounts for the need to include process steps to test all evidence filed on the record avoids a situation where parties either rely on evidence that has not been tested in their written argument or requires an inordinate amount of time during an oral hearing to deal with through cross-examination.

Further, in cases where a party introduces new evidence in Argument or Reply the Rule should require that the evidence be struck.

Section 32 Process meetings and negotiated settlements

Section 2.2 states:

“these rules must be liberally construed in the public interest to ensure the most fair, expeditious, and efficient determination on its merits of every proceeding”

While Section 2.4 states:

“the Commission may dispense with, vary or supplement all or any part of these rules if it satisfied that the circumstances of any proceeding require it”.

While TCE appreciates the Commission’s need for flexibility, particularly given the many

different types of issues it faces, TCE's experience is that in most cases when there is a delay or loss of efficiency, it is often due to a party filing a submission out of process. Although the Commission cannot control the actions of parties before it, it can and should control its process. Accordingly, TCE recommends that the Commission consider the following mechanisms to discourage out of process submissions in order to encourage fair, expeditious and efficient determinations.

Often when a party makes a submission out of process, it does so because it considers that the procedure set out by the Commission does not accommodate its specific needs. In some cases the Commission has held process meetings prior to the commencement of a proceeding. A process meeting provides all interested parties the opportunity to make submissions regarding the process. Therefore, TCE suggests, in cases where there are more than five (5) parties to the proceeding, a process meeting (even if it is simply a conference call) should be mandatory. In addition, parties to any proceeding should have the right to make a written for a process meeting prior to the commencement of a proceeding.

Alternatively, and for smaller proceedings, TCE suggests that the Commission consider drafting default processes for standard categories of application, i.e.: rule objection, rule complaint, conduct complaint, compliance filings etc. Default processes would ensure consistency between similar types of proceedings. However, if a party identifies a need to make additional submissions, it would have the opportunity to bring a motion to vary the process, either at the outset of the proceeding or on an interlocutory basis. TCE believes this would help avoid significant delays associated with out of process submissions.

To this end, TCE suggests that Section 32 of the Rule be amended to require a process meeting when certain criteria are met as well as provide the option for a party to request a process hearing for any proceeding. Section 32 should also outline the default processes that the Commission in consultation with industry deems appropriate.

Finally, once issued by the Commission, TCE suggests that the Process Schedule should have the force of a Commission Order thereby requiring any requests for an amendment to come in the form of a Motion. In cases where a party, despite being given the opportunity to request a change to the process, fails to abide by the Process Schedule and violates the Commission's Order, the Commission should recognize that it is fully within its discretion to disregard a filing made out of process.

Section 17 Filing of Documents

As suggested above, in many cases when there is a delay in a proceeding (or loss of efficiency) it is usually due to a party making a submission out of process. For this reason TCE recommends the e-filing system restrict the ability of parties to file submissions as "external correspondence" and require that any submissions that are not in response to a specific deadline as set out by the Process Schedule be filed as a Motion.

Conclusion

In summary, TCE appreciates the opportunity to provide comments on the proposed amendments to its Rules of Practice. TCE hopes that its submissions will assist the Commission in its desire to improve the Rules of Practice. However, TCE submits that the core of the issue is not necessarily with the content of Rule 001 but rather, the lack of adherence to same by some parties.

Sincerely,
TransCanada Energy Ltd.

Original Signed by

Janene Taylor
Manager, Market Services