AUC Rule 001: Rules of Practice

Stakeholder comment matrix

Section	Stakeholder	Stakeholder comment	AUC response
1	**AESO**	The AESO sought clarification that the proposed changes to the definition of “proceeding” were made for administrative reasons. The AESO suggested that the filing of an ISO Rule is not a matter before the Commission until a notice of objection is filed under Section 20.4 of the *Electric Utilities Ac*t."	**No change proposed.** The filing of an ISO Rule triggers a proceeding through the Commission's efiling system. This definition was amended for administrative reasons.
1	**UCA**	The UCA proposed that a definition for complaint should be added to mean an allegation of wrongdoing or misconduct on the part of an entity that is subject to the jurisdiction of the AUC. The UCA stated that a "complaint" should include third-party complaints and all customer concerns regarding utility services which are brought forth to the Commission's consumer relations group.	**No change proposed.** The opportunity for a person to bring a complaint to the Commission is set out in various statutes. The Commission believes that adopting the definition of complaint proposed by the UCA could exclude some conduct that currently is included in those complaint provisions.
1	**TransCanada Energy**	Define the term "business hours" as 8:00 AM to 5:00 PM, Monday through Friday.	**No change proposed.** "Business hours" is only used once in the rule and no definition is required.
		Define the term "person" to include an individual, unincorporated entity, partnership, association, corporation, trustee, executor, administrator or legal representative.”	**Change made.** A definition of person identical to the definition of person in the *Electric Utilities Act* has been added. Section 1.1(k) now states: "(k) “person” includes an individual, unincorporated entity, partnership, association, corporation, trustee, executor, administrator or legal representative."
		The definition of “party" should include the MSA; it should also include “any person that files a complaint pursuant to sections 25 or 26 of the *Electric Utilities Act*.”	**Change made.** Definition changed to (ii) "a person, other than an applicant, with rights that may be directly and adversely affected by the Commission’s decision on an application, who participates in a proceeding."
1	**CCA**	The definition of "party" should be amended to a	**Change made.** Definition changed to (ii) "a person,

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		person, other than an applicant, …who participates in a proceeding to contribute to the Commission's understanding of that application.	other than an applicant, with rights that may be directly and adversely affected by the Commission's decision on an application, who participates in a proceeding."
		The term "person" is not defined. It is unclear what distinction the Commission was drawing between a person and a party in the rule.	**Clarification provided:** the term "person" is now defined. A person may file documents in a proceeding without becoming a party. For example, a person who files a SIP but is denied standing by the Commission is not a party.
2	**AESO**	The AESO suggests deleting "before the Commission" in section 2.2 pursuant to the AESO's comment regarding the definition of "proceeding."	**Change made.** The change proposed improves the readability of the rule.
2	**ENMAX**	Revise Section 2.2 by removing the word "most" so that the subsection states: "These rules must be liberally construed in the public interest to ensure the fair, expeditious and efficient determination on its merits of every proceeding before the Commission."	**Change made.** The change proposed improves the readability of the rule.
4	**ENMAX**	This provision permits a person to make a request to keep personal information in a document confidential. The request may be made by e-mail or phone, but must include the document. The requirement to include a document appears to effectively make a phone request impossible.	**Change made.** The section has been re-drafted to address the inconsistency identified.
5	**AESO**	The AESO requested clarification on whether the filing of an ISO Rule in accordance with Section 20.6 of the *Electric Utilities Act* would be considered a "proceeding."	**Clarification provided.** The filing of an ISO Rule under Section 20.6 will initiate a proceeding on the Commission's efiling system. This change was introduced for administrative reasons.
5	**ATCO**	The ATCO Utilities interpreted Section 5.1 to include complaints made by an eligible party with respect to ISO rules, under S. 25(I) of the *Electric Utilities Act*. If the interpretation is incorrect, then clarity should be added as to any other process that would apply to such complaints.	**Clarification provided.** ATCO's interpretation of the provision is correct; the filing of a complaint about an ISO Rule under Section 25(1) of the *Electric Utilities Act* will trigger a proceeding.
5	**TransCanada Energy**	Section 5.1 of the Rule should be amended with an	**No change proposed.** Because the filing of a rule commences a proceeding in the efiling system it is

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		additional subsection that would read “(c) an objection.”	unnecessary to include "an objection" as a method by which a proceeding is commenced. However, the Commission recognizes that an objection to an ISO Rule is what initiates a contested proceeding.
6	**AESO**	The AESO asked the Commission to clarify whether section 6.3 permits the Commission to make an information request to the AESO upon the filing of an ISO Rule in accordance with Section 20.2 of the *Electric Utilities Act*.	**Clarification provided.** The Section does not permit the Commission to make an information request of the AESO upon the filing of an ISO Rule under Section 20.2 of the *Electric Utilities Act*.
7	**ENMAX**	Consider adding a clause to the end of Section 7.1 to the following effect, “…but in all cases in a manner that is likely to come to the attention of the parties considering all the circumstances of the case.”	**No change proposed.** The proposed addition is unnecessary because it is inherent in the service options provided.
8	**AESO/CCA**	Amend Section 8.2(e) to read “provide any other information that the Commission may direct.”	**Change made.** Subsection 8.2(e) amended to read “include any other information that the Commission may direct".
8	**TransCanada Energy**	TransCanada 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.”	**No change proposed.** Some enforcement proceedings may be commenced against persons or parties that cannot be served personally or may be avoiding personal service.
10	**AESO**	The AESO seeks to clarify that the time for filing a statement of intent to participate will be set out in the notice of hearing.	**Clarification provided**. The time for filing a statement of intent to participate will be specified in a notice of application or a notice of hearing.
		The AESO requests clarification on whether the content of Form RP2 is substantially similar to that described in current section 24 of AUC Rule 001.	**Clarification provided.** The content of form RPS is the same as a current Statement of Intent to Participate that is generated by the Commission's eFiling system.
11	**ENMAX**	As drafted, Section 11.1 only allows an applicant to make submissions on standing if the Commission so directs. ENMAX submits that an applicant should always have the right to make submissions on standing.	**No change proposed.** An applicant that wishes to comment on a party's standing can seek the Commission's permission to do so. However, in most cases, the Commission does not require input from the applicant when making a standing decision.
12	**ENMAX**	Section 12.4 allows a person or party to withdraw a SIP by filing a written request to withdraw. However, as	**Change made.**"12.4 A person or party may withdraw a statement of intent to participate, by filing a notice of

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		drafted, this section gives such a person the right to withdraw. It is therefore not a request to withdraw, but a notice of withdrawal.	his or her intent to withdraw the statement of intent to participate and the withdrawal of the statement to participate will be effective upon filing of the notice."
13	**Calgary**	The option for the Commission to issue decisions under Section 13.1 without notice is problematic because the revised definition of "proceeding" includes virtually all methods and means by which a matter may be brought before the Commission (i.e. by application, MSA notice, complaint, by the 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.	**No change proposed.** The Commission's discretion to make a decision without notice is expressly provided in Section 9 of the *Alberta Utilities Commission Act.* This new provision codifies and makes express the Commission's current and past practice of deciding certain applications (i.e., substation alteration in rural area) for minor changes or amendments, and applications where is of the opinion that no person may be directly and adversely affected by its decision on the proceeding (i.e., rural substation with no other landowners within 2 km). This section must be read in concert with the duty of care imposed on Commission members by Section 6 of the *Alberta Utilities Commission Act*. That section requires every Commission member to: a) act honestly, in good faith and in the public interest, b) avoid conflicts of interest and c) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances. Regarding enforcement proceedings initiated by the MSA under Section 51of the *Alberta Utilities Commission Act*; the MSA must prepare a notice and serve that notice upon any person named in the notice. Under section 53, the Commission must hold a hearing upon receipt of such a notice.
14	**ATCO**	In the proposed Section 14, the existing requirement for 10 days' notice is removed from the proposed wording. The ATCO Utilities recognize that in some limited circumstances there may be a desire to dispense with the time limitation. For most proceedings, however, the ATCO Utilities view a notice period of less than 10 days to be insufficient.	**Change made.** Section 14.2(c)will state: 14.2 Unless otherwise directed, a notice of hearing must (c) for an oral hearing, indicate the date, time and place of the hearing which shall not be less than 10 days after the date of the notice;
15	**ENMAX**	Section 15.1 requires an applicant to provide paper copies to parties who cannot access the eFiling	**Change made.** Provision has been amended to read " Unless otherwise directed, a party shall, upon request

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		system. This is not practical for very large spreadsheets, and may be very expensive for large and numerous maps or large applications more generally.	of a person or party who cannot access the eFiling system, provide the person or party with paper copies of any documents and material filed on the eFiling System." This proposed change addresses the concerns identified by stakeholders and gives the Commission sufficient flexibility to assess the reasonableness of requests for paper copies.
15	**Fortis**	Fortis recommends that Section 15.1 be revised to refer to “parties” as opposed to “applicant” to ensure that participants who are unable to access the eFiling System have access to all documents comprising the record, regardless of their source. The obligation to provide hard copies of electronically filed evidence should be subject to an overall requirement of reasonableness of requests.	
17	**AESO**	The AESO suggested the following amendments to Section 17.3: “17.3 If a person or party cannot file a document or form using the eFiling System because (a) the person or party has no reasonable means to access the Commission’s efiling System; or (b) the person or party has no reasonable means of converting the document into a supported format, the person may file the document by personal delivery, courier service, ordinary mail, email, fax, or by any other means directed by the Commission.”	**Change made.** The change proposed improves the readability of the rule.
18	**CCA**	The Commission should consider defining the phrase "documentary evidence" to delineate it from independent expert evidence.	**No change proposed.** The meaning of "documentary evidence" is self-evident and there is no contradiction between the requirements in sections 18 and 19.
		It is unclear to the CCA if the requirement in Section 18.2 to set out the qualifications of the person who prepares documentary evidence applies to policy witnesses.	**Clarification provided.** Section 18 applies to any person who prepares or directs and supervises the preparation of documentary evidence.
		Section 18.2 May be difficult to set out qualifications of person preparing evidence when evidence prepared collaboratively. There CCA proposes that only primary	**No change proposed:** There is sufficient flexibility in Section 18 to allow the parties filing evidence to identify the only the primary authors.

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		authors be identified.	
		With respect to Section 18.2, the CCA observed that policy evidence or evidence from landowners is neither documentary evidence nor expert evidence. The CCA proposed that a new category of evidence "corporate, policy, or non-expert evidence" be developed if the Commission sees a meaningful difference in the types of evidence filed.	**No change proposed.** Section 18 relates to documents filed as evidence in a proceeding. It is unnecessary to create a new class of evidence for the purpose of this section. Policy evidence or landowner evidence that is reduced to writing will be documents filed as evidence or "documentary evidence".
18	**ENMAX**	This section refers only to “documentary evidence” and may have the unintended consequence of allowing parties to adduce oral evidence, thereby avoiding the obligation to provide their evidence in writing. Consider changing this section to read “All evidence…”	**No change proposed.** This section must be read in accordance with Section 42 which sets limits on a party's testimony.
18	**TransCanada Energy**	TransCanada noted 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 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.	**No change proposed.** The process schedule for each proceeding must take into account the specifics of the issues raised in that proceeding. Given the variety of proceedings conducted by the Commission it is of the view that a default schedule would require frequent modifications to account for the particulars of each hearing.
		TransCanada submitted that, In cases where a party introduces new evidence in argument or reply, Rule 001 should require that the evidence be struck.	**No change proposed.** The Commission has the discretion to provide such a remedy if warranted.
19	**Calgary**	Calgary expressed concern regarding the use of concurrent evidence and the circumstances under which the Commission may direct parties to file concurrent evidence. Calgary sough greater certainty on: the role of counsel when concurrent evidence is given; whether parties could have advance notice, whether parties could opt out of providing concurrent evidence, etc. Calgary expressed concern that a concurrent evidence process could prejudice a party’s	**No change proposed.** The Commission believes that, in certain instances, concurrent evidence can contribute to a better understanding of the issues raised in a proceeding. The Commission will address the issue of when and in what manner concurrent evidence will be given on a case by case basis. The Commission will give parties prior notice of its intention to have witnesses provide

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		right to present its case and could limit the ability of a party to use expert evidence it had sponsored.	concurrent evidence. The Commission will continue to review the reasonableness of each cost claim on its own merits. In circumstances where the Commission directs independent witness to prepare a joint written statement it will assess the associated costs on the same basis.
19	**ATCO**	ATCO was not convinced that hot tubbing actually results in increased hearing efficiencies and is concerned that the practice reduces their ability to present their case as they consider best. In addition, hot tubbing may result in a less rigorous testing of the evidence presented by the experts of each of the parties.	
19	**Fortis**	Fortis suggested that Section 19.3 should be refined to further clarify the contents (and possibly format) of any positional summary that may be ordered by the Commission. For example, it is unclear whether the "joint written statements" referred to in the provision are intended to be limited to summaries of points of agreement and divergence of opinion, or have a broader scope. FortisAlberta also requests that the Commission consider supplementing the current wording of Section 19.3 to provide additional certainty regarding the regulatory treatment of costs incurred in connection with the joint meetings and submissions contemplated by the rule.	
20	**ENMAX**	Section 20 requires affidavits to be based on facts or information and belief. The line between fact and opinion is not always clear. For example, that a utility has made a forecast is a fact, but the forecast itself is not a fact. Rather, it is a form of opinion evidence. Taken literally, section 20.1 would prohibit affidavits from including information about forecasts. Further, it is not clear when an affidavit would be used, other than in instances where a party is not required to appear personally to adopt pre-filed written evidence in a hearing, in which case the affidavit would provide the statements required by S. 42.2, or S. 17.6.	**No change proposed.** Affidavits can be filed in a variety of circumstances in a proceeding.
23	**AESO**	The AESO requests clarification on when service becomes effective and to confirm that a document may no longer be served by personal delivery, mail, or	**Clarification provided.** Section 23 sets the eFiling system as the default tool for the service of documents in a proceeding. However, the Section expressly

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		electronic means.	allows the Commission to depart from that process where circumstances require.
		The AESO suggests that this section be amended to "Unless otherwise directed, service is effective on the date a document becomes publicly available on the Commission's eFiling System."	**Change made.** The wording proposed by the AESO improves the readability of the section.
24	**ENMAX**	Section 24(3) is redundant, since section 24.1 only permits a party to make an IR in accordance with a direction of the Commission.	**No change proposed.** Section 24(3) makes it clear that in enforcement proceedings an information request process represents an exception.
25	**ENMAX**	Section 25.1(b) requires that a party filing a response to an information request identify the author of the information request. ENMAX submitted that this is not practical when it comes to corporate evidence, where the specific identity of the drafter is not important in the way it is for "personal" evidence (e.g., expert evidence, evidence from individual interveners).	**No change proposed.** Information regarding who prepared a response to an information request will be available when the response is prepared.
25	**CCA**	Regarding the preparation of responses to an information request under Section 25.1(b), the CCA was not clear why the identity of the author of an information response is relevant. The CCA submitted that because counsel may review a response this could engage legal privilege. The CCA proposes that only the key individual or individual involved in preparing an IR response be identified.	**No change proposed.** There is sufficient flexibility in the section to allow a party to designate a person as the person responsible for preparing an information response in instances where an information response was prepared collaboratively.
27	**ENMAX**	Subsections 27.2(b)(iii), 27.4(b) and 27.6(b) refer to "oral" evidence being adduced in support of a motion. Parties should have all evidence in support of a motion reduced to writing and provided in advance.	**Change made.** Subsections clarified to make it clear that a summary of oral evidence is only required if the motion is to be heard in an oral hearing - "(b) briefly describe the nature of any oral or documentary evidence sought to be presented in support of the response if the motion is to be heard in an oral hearing;".
		Section 27.3 states that unless otherwise directed, a party to whom a motion is directed may file a response to the motion. This is unduly narrow. A party who may	**No change proposed.** The Commission has the discretion to allow some or all parties to a proceeding to respond to a motion.

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		be affected by the relief sought in a motion should have the right to respond to the motion.	
28	**ENMAX**	Section 28.7(c) states that a confidential document provided to the Commission for the purposes of determining a request for confidential treatment cannot be protected. Parties should be permitted to password protect confidential information.	**No change proposed.** The Commission has had problems in the past where documents were subject to time-sensitive password protection which resulted in difficulties accessing the document when time was of the essence.
28	**ENMAX**	Section 28.12(a) requires a party who wishes to receive confidential materials to file a confidentiality undertaking (and "its protocol for the treatment of confidential documents it receives." It is not clear whether there will be a standard form protocol, or whether each party must prepare its own (in which case, the contents should be prescribed in the rules).	**No change proposed.** There is no standard form protocol because each market participant may take different steps to meet the obligations that are set out in the confidentiality order. As each order may differ so may the protocol a market participant adopts.
		In cases where the Commission denies a request for confidential treatment, it may require the requesting party to place the confidential or commercially sensitive information or document on the public record (28.13), and the requesting party must comply if the document was request in an IR or other direction of the Commission (28.14). ENMAX submits that a requesting party should have the right to withdraw any confidential information or document under section 28.14.	**No change proposed.** The Commission is of the view that has the discretion and authority to direct a party to file, on the record, a material or relevant document that the Commission has found not to meet its test for confidential treatment.
28	**CCA**	The CCA seeks to confirm that the Commission will continue to permanently retain one copy of all un-redacted information granted confidentiality in an application, even after all other copies provided to participants have been deleted, destroyed or returned to the requesting party.	**Clarification provided.** The Commission will retain one copy of all unreacted information granted confidentiality in an application in accordance with its records management plan, even after all other copies provided to participants have been deleted, destroyed or returned to the requesting party.
31	**ENMAX**	Regarding Section 31.1, in some instances, parties experience technical problems that result in a filing that is a few minutes or hours late. The requirement to file a motion in such cases is onerous.	**Change made.** The provision has been reworded as follows: "31.1 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, must first request, in writing, the Commission's permission to do so."
31	**Calgary**	Calgary believes that the Commission should use its discretion and call for a motion for a late filing if the	

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		circumstances require. Calgary recommends that Section 31 be revised to the previous Rule 001 wording.	
31	**CCA**	Requiring a motion for late filing, would create an additional and unnecessary burden on all parties.	
31	**ATCO**	ATCO requested clarification of the proposed amendment.	
32	**TransCanada Energy**	TransCanada suggests that, in cases where there are more than five (5) parties to the proceeding, a process meeting should be mandatory. Parties to any proceeding should have the right to make a written request for a process meeting prior to the commencement of a proceeding.	**No change proposed.** The Commission believes that the current wording provides sufficient flexibility to convene a process meeting when one is required. The Commission considers that the rules as drafted provide sufficient flexibility to address the circumstances that may arise in each application. The Commission is of the view that a default process would not materially improve the efficiency of its process. The Commission is also of the view that it has sufficient discretion to address deviations in process schedules without formalizing such schedules as Commission orders.
		TransCanada 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.	
		TransCanada 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.	
39	**Fortis**	Regarding Section 39.1, Fortis submits that aids to cross examination should be submitted 48 hours before a witness is to be questioned rather than the 24 hours proposed in the rule.	**No change proposed.** 24 hour advance notice of an aid to questioning is consistent with the Commission's current practice. Because the Commission will now require aids to questioning longer than five pages to be highlighted, it is of the view that 24 hours will provide a witness with sufficient time to review such aids.
39	**CCA**	The CCA proposed that an exception be made to the requirement to provide witnesses with aids to questioning 24 hours before questioning in circumstances where the honesty of the witness is	**No change proposed.** The flexibility sought by the CCA is built into the section by the inclusion of the phrase, "unless otherwise directed" at the beginning of Section 39.1.

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		being questioned.	
41	**AESO**	The AESO requests clarification on the purpose of limiting conferring among panel members where the panel does not include an independent expert witness. The AESO suggests that it is appropriate to limit conferring between an independent expert witness and other panel members. The AESO suggests section 41.3 be amended to "Unless a question is addressed to an independent expert on a witness panel or the Commission otherwise directs, members of the witness panel may confer among themselves."	**Change made:** The Commission has revised the section in response to comments received. Consistent with the Commission's past practice, members of a witness panel will be allowed to confer with each other unless the Commission directs otherwise. As always, the Commission retains the discretion to direct a witness to respond to a question posed without conferring in certain circumstances. The section has been amended to allow participants to direct questions to an independent (expert) witness and to require the independent witness to answer that question without conferring with other members of the witness panel. The Commission considers that this approach is consistent with the duty of an expert to provide independent advice.
41	**EPCOR**	EPCOR submitted that the proposed amendment to Section 41.4 constitutes a significant, unnecessary and inappropriate change to the Commission's approach to dealing with panels of witnesses. Rather than the witness panel having the ability to choose the witness or witnesses most appropriate to answer a question, the new rule provides the cross examiner with that choice, and then places an onus on the witness panel to demonstrate that the witness chosen is not the appropriate witness to respond to the question, or that the witness chosen by the cross examiner is not the only witness that should be responding to the question. In EPCOR's view, such an approach will accomplish little more than to add time, procedural wrangling and a needless additional source of interruption and argument to proceedings that otherwise run smoothly, with the witnesses who are by far the most familiar with the filed material and their specific involvement in and knowledge of its different components determining who is/are the appropriate person(s) to respond to each question.	
41	**ENMAX**	Section 41 provides that where a question is directed to a specific member of a panel and that person is not able to answer the question, the witnesses may only confer with the permission of the Commission. ENMAX is concerned that this is overly prescriptive. ENMAX believes that a process where a question is directed at	

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		a specific witness, the witnesses may confer unless the person asking the question objects, in which case the Commission will rule on the objection.	
42	**ENMAX**	The requirement that a witness confirm that the evidence was prepared by the witness or under the witness' direction or control can cause problems with corporate evidence.	**No change proposed.** The provision as worded provides sufficient flexibility to account for collaborative preparation of evidence and changes in personnel giving policy or company evidence.
43	**EPCOR**	EPCOR does not support the idea of seating expert witnesses from different parties as a single witness panel during an oral hearing. EPCOR understands that the goal of such an approach is to achieve greater efficiency in proceedings, but EPCOR does not believe the practice of "hot-tubbing" will achieve the desired results. EPCOR is concerned that the practice will ultimately result in less rigorous testing of the evidence presented by experts of each party and would limit each party's ability to address the fundamental issues in whatever way they think is appropriate. The current method of testing expert opinions can and should continue to be dealt with through written information requests, cross examination and argument rather than through the concurrent presentation of expert evidence.	**No change proposed.** The Commission believes that, in certain circumstances, concurrent evidence can be an efficient mechanism for exploring topics for which expert evidence has been filed. The Commission will consider whether concurrent evidence will contribute to a better understanding of the issues before it on a case by case basis. The Commission has discretion to coordinate concurrent evidence in a variety of ways that may address the concerns expressed by EPCOR and ATCO. For example, in Proceeding 20512, the Commission directed that risk assessment experts retained by ATCO and an intervener provide concurrent evidence. In that case each witness initially provided their direct evidence as part of their client's witness panel and was cross-examined by the party opposite in interest but not Commission staff. After both parties had provided their evidence, the two experts were re-paneled together and then questioned first by Commission staff and then each party had an opportunity to ask further questions arising from those questions. This allowed each party to have access to their own expert during the initial cross-examination of the other party's expert. The Commission considered the concurrent evidence to be extremely helpful when assessing the evidence of both experts.
43	**ATCO**	ATCO does not support "hot-tubbing" of witnesses.	