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VIA e-mail

Alberta Utilities Commission
Ms. Giuseppa Bentivegna
Law Branch
Fifth Avenue Place, 4th Floor
425 – 1st Street SW
Calgary, Alberta T2P 3L8

Dear Ms. Bentivegna:

BULLETIN 2008-01
CONSULTATION
Review of Rule 022, *Rules on Intervener Costs*

Pursuant to the Commission (AUC) letter of March 20, 2008 the Alberta Sugar Beet Growers (ASBG) and the Potato Growers of Alberta (PGA) hereby provide comments on the referenced Review of Rule 022, Rules on Intervener Costs.

1. Role of the Utilities Consumer Advocate (UCA)

The Commission is seeking comments on the following:

Commission Question:

Schedule 13.1 of the *Government Organization Act* states that the UCA has the responsibility of representing the groups listed. May other interveners also represent these groups?

ASBG/PGA Response:

ASBG/PGA notes that the amendments to Bill 46 clearly stated the Department of Energy intent to allow all interveners the opportunity to represent their client's interest before the Commission. This intent was clearly stated in the News Release accompanying the Bill 46 Amendments:

The Department of Energy News Release of November 27, 2007 included:

Edmonton.... Two key amendments to Bill 46, the Alberta Utilities Commission Act, will answer Albertans' concerns about landowner

participation in utility hearings and allow third parties to apply for funding when they intervene.

In addition, all references to the Utilities Consumer Advocate (UCA) have been removed from the Act. The UCA will remain with Service Alberta - separate from the Alberta Utilities Commission.

“The province’s UCA, as well as independent consumer groups, will continue to effectively represent Alberta’s small utility consumers at rate hearings.” Knight added.

With the amendments, who will be eligible to apply for intervener funding?

Section 21 of the Act is being amended to allow the AUC the discretion to provide funding to a local intervener or other interveners in any hearing or other proceeding-just as the EUB does today. This allows the AUC to provide any intervener with funding in respect to hearings or other proceedings to ensure the public interest is considered in AUC decisions.

[underlinings added]

Therefore it is the ASBG/PGA position that the government intended that other interveners could represent groups that the UCA is also attempting to represent.

Commission Question:

How should conflicting views and positions and conflicts of interest among groups that the UCA has the responsibility of representing be dealt with?

ASBG/PGA Response:

ASBG/PGA submit that in the final analysis the Commission has the responsibility of making fair and reasonable decisions in the public interest. For the broad spectrum of interests that the UCA represents it is inevitable that there would be conflicting views and conflicts of interest. These conflicts would occur particularly in Phase II proceedings where the rates for separate rate classes are considered but also in Phase I proceedings where rate class forecasts and revenues are considered. These potential conflicts in Phase I and II proceedings were evident and recognized by interveners in AEUB proceedings since the mid 1990s. At that time voluntary intervener collaboration was exercised in Phase I proceedings but for Phase II proceedings interveners were essentially on their own. Moreover collaborating interveners were also free to provide dissenting and separate arguments as required in their client’s interest.

Furthermore there is precedence in prior AEUB proceedings where one rate class is represented by more than one intervening group. For instance in AESO proceedings the

industrial group of customers have been represented by more than one intervening group in the same proceeding and this approach had been accepted by the AEUB.

Commission Question:

Should any group representing persons wanting to intervene in a hearing or other proceeding be required to demonstrate who they represent and how their participation may differ from other similar groups?

ASBG/PGA Response:

ASBG/PGA submit that it is reasonable for an intervener to provide its “credentials” to the Commission to demonstrate who they represent and how the party is affected for a particular proceeding. However an intervener should not be required to demonstrate how their intervention may differ from other groups as the Intervener may not have detailed knowledge of the other groups’ concerns nor is it reasonable for an intervener to be required to assess all the concerns of other groups.

Commission Question:

If the UCA and other interveners may represent the same groups, how will the UCA and the other interveners work together to avoid duplication of submissions and reduce hearing time and costs?

ASBG/PGA Response:

First of all the Commission needs to ensure that there is a level playing field amongst the interveners and the UCA with respect to the allocation of issues for a proceeding and in the spirit of the Bill 46 amendments. The Commission could sponsor initial meetings between the UCA and interveners to discuss the approach to the proceeding and attempt to reach a consensus on the issues to be addressed by the respective parties.

2. Business Interest Rule

The Commission seeks comments on the business interest rule and its application including:

Commission Question:

Who should be ineligible for cost awards?

ASBG/PGA Response:

A business interest rule which is defined as large business interests that represent their own commercial interests is a fair criterion to be applied to parties that should be ineligible for cost awards. A large business interest could be defined in financial terms

with annual revenues or assets in excess of a certain amount. The rationale for ineligibility would be that these large customers could fund their own participation without cost recovery.

Commission Question:

Should the business interest rule have a broader application to include commercial associations whose individual members are ineligible, municipalities, municipal associations, rural electrification associations, rural gas cooperative associations, irrigators or public institutional consumers?

ASBG/PGA Response:

There should be a continuation of the status quo with exemption from a business interest rule for municipalities, municipal associations, rural electrification associations, rural gas cooperative associations, irrigators and public institutional consumers. Specifically with regard to irrigators the non-profit associations representing this class of unique seasonal customers would not be able to participate in an intervention without a cost recovery provision. Therefore it is submitted that a broader application of the business rule would conflict with the intent of Bill 46 Amendments.

Commission Question:

Should the Commission set out criteria regarding the application of the business interest rule?

ASBG/PGA Response:

Establishing criteria for the application of the business rule would be helpful. As discussed above financial size could be utilized to establish a business interest for an individual party. Utility applicants should be eligible for cost recovery and excluded from a business rule as the utilities are required to participate in their own applications.

Commission Question:

Is it appropriate to grandfather any existing groups, and if so, are there criteria that should apply in making a determination to grandfather an intervener group?

ASBG/PGA Response:

Grandfathering of existing groups is appropriate. The criteria should include the length of time that these groups have been represented in Commission proceedings and the impact on continuing participation if cost recovery is not available.

3. Budgets

Commission Question:

Comment on the current rules on filing of budgets;

ASBG/PGA Response:

Currently budgets are required from the applicant and all interveners that intend to submit cost claims. Budgets are not required from the UCA but the Commission application of the cost rules suggest interveners should be aware of potential duplication with the UCA and risks of cost disallowance. A level playing field for the UCA and interveners needs to be addressed in the budgets process.

Commission Question:

Propose any changes to the budget provisions they believe to be necessary.

ASBG/PGA Response:

The UCA should be required to provide a budget for its participation and a submission of final costs.

4. Scale of Costs

Comments were submitted that the Scale of Costs should be reviewed to reflect market rates. The Commission seeks participants' views on the following:

Commission Question:

Should the Scale of Costs limit the preparation time claimed based on the number of hearing days or any other criteria?

ASBG/PGA Response:

ASBG/PGA submit that preparation time is not necessarily a direct function of subsequent hearing time. For instance pre-hearing technical workshops or collaborative processes may involve significant preparation time that ultimately reduces the amount of hearing time. Furthermore the quality of the utility application and subsequent responses to Information Request(s) can be more determinative of the number of hearing days that are required. Therefore preparation time needs to be examined on a case by case basis rather than attempting to apply any formula.

Commission Question:

What rates should be set for lawyers and experts? Please provide rationale in support of the proposed rates.

ASBG/PGA Response:

ASBG/PGA submit that the current approach of tiered scale of rates for lawyers and consultants based on the level of experience with a cap should be maintained. However the scale should be indexed to a base year of say 2004, the year the current cost rules were implemented, with yearly increases indexed to an average administrative salary inflationary increase that the Commission has approved on a forecast basis for utilities under its jurisdiction.

Commission Question:

Should the Scale of Costs apply to pre-hearing technical workshops or collaborative processes?

ASBG/PGA Response:

ASBG/PGA submit that the increasing technical content of utility applications and the associated significant level of spreadsheet data and analysis support the utilization of pre-hearing technical workshops or collaborative process as cost effective approaches to minimize hearing time. However if these workshops or collaborative processes are not subject to the Scale of Costs and cost recovery provisions then there is a potential barrier to interveners' participation. Therefore it is important to ensure that these processes are treated in a similar manner as a full hearing process with cost recovery. It is also important for the Commission to ensure that there are no other artificial restrictions to full intervenor participation such as limited committee participation.

5. Costs of Negotiated Settlements

Currently, costs for negotiated settlements are dealt with in the same manner as for litigated cost claims. The Commission seeks comments on the following:

Commission Question:

Whether the costs for negotiated settlements should be treated differently; and

ASBG/PGA Response:

Since a Commission approved negotiated settlement process is in lieu of a litigated process the cost claim process should be essentially the same.

Commission Question:

How concerns about the transparency of the process should be addressed.

ASBG/PGA Response:

Transparency of the process should be enhanced with Commission observers and a requirement for essentially line by line resulting financial schedules that are filed with the Commission for review and approval. Additionally negotiated settlements could be limited to test year proceedings that follow a litigated test year proceeding. This limitation would ensure that consecutive test year proceedings would not be subject to negotiated settlements.

6. Proceedings without Cost Recovery

Commission Question:

Recently, the Energy and Utilities Board has conducted certain proceedings where costs recovery has not been allowed. (For example: NGL Inquiry (Application No. 1513726) and the Competition portion of Part B of the Competitive Pipeline Review Proceeding (Application No. 1466609)). The Commission would appreciate views from parties on the circumstances where it would be appropriate to specify at the commencement of a proceeding that no party will be eligible for cost recovery should they elect to participate.

ASBG/PGA Response:

The circumstances for proceedings with non-cost recovery provisions should be limited to generic type of proceedings. However even in these circumstances the Commission should allow time in its proceeding schedule for Intervener submissions on whether cost recovery is appropriate and necessary for the proceeding.

7. Costs Officer

Commission Question:

In 2005, a costs officer was appointed to oversee and administer the cost process. The cost officer worked with panels and staff to coordinate the assessment of Statements of Intent to Participate in a proceeding or budgets prior to the proceeding and cost claims following the proceeding. The Commission requests the views of participants as to whether such assessment was useful from their perspective.

ASBG/PGA Response:

The cost process is flawed with respect to the assessment of duplication of efforts since a potential major participant, the UCA, does not provide a costs budget, and there is no Commission oversight of collaboration amongst the UCA and Interveners. Furthermore if the Commission is considering a major cost claim disallowance for an Intervener then the Commission should consider requesting additional explanations or support information from such Intervener prior to a final cost order.

8. Other

ASBG/PGA submit that another issue that should be addressed is the issue of transcripts for AUC proceedings. The cost of these transcripts is a significant burden to interveners since the Court Reporter expects payment within 30 days of the completion of the hearing. Since the AUC contracts with the Court Reporters for these services it is submitted that only the AUC should pay for these services and have the daily transcripts posted on the AUC DDS or IAR systems for access by all interveners.

Please contact Henry Unryn at (403) 294 1351 or unrynhen@telus.net with any questions on the comments provided.

Yours truly,

UNRYN & ASSOCIATES LTD.

(e-mailed)

J. Henry Unryn

Representing
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