

April 15, 2008

Emailed to AUC (giuseppa.bentivegna@auc.ab.ca)

Alberta Utilities Commission
Fifth Avenue Place, Fourth Floor
425 – 1 Street SW
Calgary AB T2P 3L8

Attention: Giuseppa Bentivegna, Alberta Utilities Commission (AUC) Counsel

Dear Ms. Bentivegna:

Re: AUC Bulletin 2008-01, Consultation Review of Rule 022, *Rules on Intervener Costs*

On March 20, 2008 the Alberta Utilities Commission issued Bulletin 2008-01, requesting comments on specific issues regarding the *Rules on Intervener Costs*. The AUC requested that parties make their submissions by April 15, 2008. Provided below are the comments from AltaGas Utilities Inc. (AUI) presented in the order of the issues as they appear in Bulletin 2008-01. AUI has added one additional issue at the end of this submission.

1. Role of the Utilities Consumer Advocate (UCA)

In Bulletin 2008-01, the Commission sought specific comments on the following four issues:

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?

Comments: Yes. The definition of “residential, farm and small business consumers” is very broad. AUI submits it is reasonable that customers fitting this definition might not necessarily share the same views as the UCA, but are entitled to representation in a regulatory proceeding. Customers should have the opportunity to decide for themselves who should represent them.

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

Comments: In fairness, interested parties who prefer to be represented by somebody other than the UCA should be permitted representation in regulatory proceedings. Further, all parties including the UCA should participate under the same rules.

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?

Comments: Yes. AUI submits this information should be useful to the Commission in its assessment of costs based on each party’s contribution to the process.

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?

Comments: AUI's observation has been that, in general, this issue is of greatest concern in a utility's phase 2 proceeding (cost allocation and rate design) where there tends to be a wider range of views and positions taken by interested parties. It has been AUI's past experience in phase 1 proceedings (rate base and revenue requirement), that interested parties have managed to delegate issues among themselves and AUI's expectation is that this should include the UCA if it is a participant.

Additional Comments: Prior to the inception of the UCA in 2003, the rules for costs applied equally to all participants. Through this process, the regulator was given the opportunity to compare relative contributions. All parties also shared the same risk of disallowed costs. The possibility of cost disallowance helped ensure imprudent costs were avoided. At all times, it was expected the value of each participant's contribution to the regulatory process would be assessed by the regulator.

Although the UCA states it "...will not be requesting intervenor cost recovery...". It would be in error to think that the UCA's involvement does not come without a cost to utilities and their customers. Costs incurred by the UCA must be recovered in some manner. UCA funding, either directly or indirectly, no matter how it is recovered is still a cost to consumers.

Although the UCA has stated it "... could provide its actual expenditures to the AUC following each hearing.", it would appear that the UCA can intervene without being subject to the same controls or tests that other interveners and the applicant must observe. Placing the determination of UCA costs outside of the AUC's cost approval process has the potential to add costs, possibly unnecessary costs, to the regulatory process. For example, a party in conflict with the UCA might incur more costs than necessary to rebut the UCA who *appears to* have significant access to funds. At the very least, the cost awarding process with respect to the UCA does not appear equitable and transparent. Procedural fairness should be considered where a participant is not required to follow the same rules other participants are expected to follow.

2. Business Interest Rule

The Commission has asked participants to provide their comments on the following four issues:

Who should be ineligible for cost awards?

Comments: In Bulletin 2008-01, the Commission provides a general explanation of how the business interest rule has not been applied in the past. AUI does not oppose the Commission's practice. Most importantly, AUI submits that there needs to be cost transparency and equal treatment with respect to all intervenor costs.

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?

Comments: AUI is not opposed to the Commission's past practice of allowing parties such as those listed above to recover costs. However, it is a concern to AUI if all parties are not subject to the same test used in approving costs. All intervenor costs should be transparent and assessed on the same basis.

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

Comments: If the Commission intends to continue with a business interest rule, criteria would be helpful to more clearly understand the rule.

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

Comments: AUI submits that it would not oppose grandfathering intervenors who have demonstrated a positive contribution to the regulatory process in the past.

3. Budgets

The Commission asked participants to:

- **comment on the current rules on filing of budgets;**
- **propose any changes to the budget provisions they believe to be necessary.**

Comments: AUI supports filing budgets as required under the existing rules, particularly if the Commission finds them to be useful. Intervenors not planning to actively participate in a proceeding could be exempt from the budget process. However, interested parties like the UCA should not be exempt from submitting a budget simply because they do not intend to claim costs. To ensure transparency, AUI submits that any intervenor planning to actively participate in a proceeding should be required to submit a budget for costs. Regardless of whether or not there will be a claim for costs, a budget from all participants should assist interested parties and the Commission in gauging the amount of time and resources the proceeding will require.

4. Scale of Costs

The Commission asked participants for their views on the following questions:

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

Comments: The Scale of Costs should not limit the preparation time claimed based on the number of hearing days. It is not at all clear to AUI that there is a direct and meaningful linkage between preparation time and hearing days. AUI submits that the costs of hearing preparation should be recovered by a participant on the basis of the value their participation

provided to the process. AUI is concerned that a formulaic approach to determining a limit on preparation time might not take into consideration all the relevant factors. With each process having its unique circumstances and issues, it would appear such a formula would require significant complexity. Other controls, such as a maximum number of information requests or a maximum time for cross examination, might be considered as possibilities for reducing costs.

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

Comments: AUI submits that the cost recovery rates for the fees charged by lawyers and experts are inadequate by today's standards. The approved Scale of Costs was last revised in 2001. Based on time alone, the change in the Consumer Price Index for Alberta between 2001 and 2007 is roughly 22%. At a minimum, the rates should be amended to take this into consideration. Further analysis should also be undertaken to determine industry or profession-specific adjustments that would make the cost recovery rates more appropriate and aligned with the marketplace.

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

Comments: AUI submits that the Scale of Costs should apply to pre-hearing technical workshops and collaborative processes. These activities are intended to make the overall regulatory process more efficient and effective, and therefore, associated costs should qualify for recovery. The Company also sees merit in Commission staff attending such activities to help assess the value of the contributions made by participants.

5. Costs of Negotiated Settlements

The Commission asked participants for comments on the following:

- *whether the costs for negotiated settlements should be treated differently; and*
- *how concerns about the transparency of the process should be addressed.*

Comments: AUI submits that the current method of administering negotiated settlement costs in the same manner as litigated proceedings does not require a change. With respect to the issue of transparency, Commission staff served as observers to AUI's previous negotiated settlement processes.

6. Proceedings without Cost Recovery

The Commission has asked for participants to provide their views:

- *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.*

Comments: AUI submits that in general, if participation in a proceeding has a potential impact on rates, the costs of participation should be recoverable through rates. Based on past experience, unique circumstances would have to exist where AUI would choose to participate in a proceeding that has no potential impact on rates. However, if the Commission requires a party to participate, that party should be given the opportunity to apply for cost recovery.

7. Costs Officer

The Commission has asked for participants to provide their views:

- *as to whether such assessment [of SIPs, budgets, and cost claims] was useful from their perspective.*

Comments: AUI submits there is merit in using the assessment process as a basis for determining hearing cost awards. It is the opinion of AUI that the same assessment process should apply to all participants in a proceeding. Currently, UCA costs are not subject to the same assessment process as costs incurred by other interveners, and as a result, appears to create unfairness among participants. Utility customers are only expected to incur a level of intervener costs commensurate to the value provided by the intervention. The same rule should apply to all intervention. The Company does not have specific comment at this time with respect to the tools (SIPs, budgets, and cost claims) used by the Costs Officer.

8. Timing of Cost Claims

Comments: Rule 022 specifies that a cost claim must be filed within 30 days after the hearing or other proceeding is closed. Occasionally, the date of the close of the proceeding can be unclear, particularly if the process does not involve argument and reply. In such cases, AUI suggests it would be particularly helpful for those making cost claims if the Commission would issue a notification to interested parties that the proceeding is closed and that the date of the notification would serve as the milestone from which the 30 day limit is based.

AUI is available should the Commission have any questions or concerns with respect to this submission.

Sincerely,

Robert J. Koizumi, CMA



Manager, Regulatory Affairs