

April 15, 2007

BP Canada Energy Company (BP) believes that changes being considered to improve the efficiency of the regulatory process must be balanced against the potential to undermine either the fairness or the effectiveness of the process. It would be counter-productive to introduce changes that preclude a necessary level of participation by stakeholders as there is a direct correlation between the durability of a regulatory decision and the quality of information it is based upon. The EUB acknowledged the importance of independent stakeholder participation in Decision 2005-087: "In all processes before it, the Board assumes that parties will endeavour to provide the Board with relevant and helpful evidence and submissions. Indeed, the viability and legitimacy of the Board's process depends on the active participation of parties with various and often conflicting interests." BP encourages the AUC to keep sight of this precept as it considers the appropriateness of current intervenor funding practices. BP will also comment on the UCA's role because the right to self-representation must be an over-arching principle, and because the UCA's individual constituents often advance positions which lead to better informed regulatory decisions.

Utilities Consumer Advocate

BP notes that a number of the UCA's constituents are not members of its Governance Advisory Board and have not relinquished the right to represent their own interests in regulatory proceedings. Nor can the diminution of this right be inferred from the statutes giving rise to the UCA's formation. Entities who sit on the UCA's Governance Advisory Board are not inherently more legitimate than entities choosing to participate independently. In fact, individual members of the Governance Advisory Board can choose to participate in a hearing if the UCA's position is inconsistent with their own. Notwithstanding the UCA assertion that it is able "to take multiple positions into a

hearing", members of the Governance Advisory Board may have views which simply cannot be reconciled. Neither the UCA nor an industry association have the right to speak for a constituent who has a different view and who elects to advance that view themselves. The AUC needs nothing more to discourage duplicative and ineffectual interventions than the ability to deny cost recovery.

Business Interest Rule

Presumably, one of the objectives of the Business Interest Designation was to encourage commercial entities to consider the cost when contemplating an intervention. Since members of associations comprised of ratepayers ultimately bear the cost of their interventions (whether directly through membership dues or indirectly through rates), the elimination of funding for these associations would seem to serve little purpose. In fact, it could be argued that associations enhance both the efficiency and the effectiveness of the process by: 1) reducing the total number of intervenors, 2) encouraging the development of common positions, and 3) serving as a repository for expertise and historical context. Other stakeholders occasionally rely on such associations to represent a common interest. The AFREA confirmed in one hearing, for instance, that it would rely on IPCAA "to make sure the load customer view is expressed." The same argument cannot be made, however, for commercial entities who are not ratepayers. It would be unfair to force ratepayers to fund the interventions of entities who are not. Regarding the grandfathering of "long-standing" associations, BP suggests that the quality of an association's participation is more important than its longevity.

Budgets and Cost Officer

Aside from identifying areas of duplicative effort, pre-hearing budget filings are unlikely to foster cost discipline because Commission panel members cannot assess the value of an intervenor's submissions before the hearing commences. Decision 2005-087 indicates when the cost of

an intervenor's participation should be compared to the benefits of that

participation: "the Board in assessing claims for costs following a hearing will deny cost claims stemming from the submission of irrelevant, repetitive, or unhelpful evidence" (emphasis added).

Another concern is that intervenors may be tempted to spend up to their budget while others may be dissuaded from providing the AUC with valuable assistance if it means exceeding their budget. A well-understood and consistently-applied criteria for the awarding of costs would be a preferable method of promoting cost discipline. While a Cost Officer might be of considerable assistance to intervenors and Commission panel members in this respect, the panel members should ultimately determine whether an intervenor's participation was helpful.

Other Cost Recovery Matters

BP suggests that the costs of intervenors whose participation is limited to the internalization of issues be ineligible for recovery. Fairness demands differential treatment for the costs of an active participant whose intervention assists the AUC and the costs of a passive participant whose intervention does not. Stakeholders who pay dues to industry associations or use internal resources to monitor regulatory developments should not be forced to bear the costs of those who rely on intervenor funding for a similar purpose. As long as the criteria for awarding costs is the value of a participant's contribution to a well-informed decision or policy, BP also believes that the AUC should have the option of awarding a stipend to stakeholders who might otherwise be unable to participate in proceedings without cost recovery.

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