



April 15, 2008

Alberta Utilities Commission
Fifth Avenue Place
East 4th Floor 425-1st Street SW
Calgary, AB T2P 3L8
Attention: Giuseppa Bentivegena

Dear Ms. Bentivegena:

Re: Consultation on Review of Rule 022 Rules on Intervener Costs

We have read with interest your Bulletin 2008-01 March 20, 2008 Consultation, as well as the UCA's comments dated December 21, 2007. Mr. Henderson's letter refers to "specific comments" contained in an "attached document" which do not appear on the Commission's website; does the UCA have initial specific comments and if so, please make those comments available to the rest of us and allow all stakeholders an opportunity to review and comment on same.

We have also read the Consumers' Coalition of Alberta comments (February 6, 2008) and the City of Calgary's comments (January 10, 2008). CAREA will be responding only to the issue surrounding the role of the UCA.

While we appreciate being asked to provide our input, this is not the first time stakeholders have been asked to weigh in on the issue of UCA representation. There have been a number of valuable and intelligent insights provided in other stakeholder consultations (such as Bill 46) regarding the folly of leaving regulatory representation of all "eligible consumers" to the Office of the UCA. And while we are unsure of the magnitude of consideration being given to these comments, we remain hopeful that attention will be paid to the very real problems CAREA has had in trying to engage the Office of the UCA.

Given the abysmally offensive experience CAREA has had with the UCA, we have no confidence whatsoever that the UCA could (or would) effectively and earnestly represent CAREA consumers.

May Interveners (other than the UCA) represent residential, farm and small business consumers?

CAREA is concerned that the issue of whom consumers can be represented by in regulatory matters is being framed as a question rather than categorical assurance by the Commission that the public is entitled to access Alberta's regulatory regime through their own choice of representation, subject always to scrutiny by the Commission. Restricting representation before the Commission to the partiality of the UCA's office (by depriving non-UCA representation of cost recovery) is ill-conceived and is an exclusive rather than inclusive measure.

To be clear, Schedule 13.1 of the *Government Organization Act* (Office of the Utilities Consumer Advocate) only makes the UCA *responsible* to represent certain consumers – it in no way limits representation of consumers solely to the UCA. That the UCA should be the default intervener for those consumers not otherwise represented by a larger consumer group is a far more reasonable interpretation of Schedule 13.1(1) than the "primacy" of representation position taken by the UCA.



Below is an *incomplete* list of independent interveners that have appeared before the AUC (EUB) since 1985:

- | | | |
|-------------------------------|----------------------------------|---------------------------|
| 1. AAMDC | 12. CCA | 23. Montana Band |
| 2. AFREA | 13. Care Centre Group | 24. PICA |
| 3. Alexis Nakota Sioux Nation | 14. CFIB | 25. Rate 13 |
| 4. AUMA | 15. ADC | 26. UDI |
| 5. ABCOM | 16. Garneau Inc. | 27. University of Alberta |
| 6. AIPA | 17. FGA | 28. West Edmonton Mall |
| 7. ASBGA | 18. IGCAA | 29. City of Red Deer |
| 8. PGA | 19. IPCAA | 30. City of Lethbridge |
| 9. BOMA | 20. IPPSA | 31. City of Calgary |
| 10. CAPP | 21. Lehigh Inland Cement Limited | 32. City of Edmonton |
| 11. Central Alberta REA Ltd. | 22. MI | |

These 30+ intervenors have, to varying degrees, represented residential, farm and small business consumers before the Commission and CAREA trusts the AUC has engaged the above stakeholders in this consultation.

It is hard to envision a climate in which all diametrically opposed interests can be properly and thoroughly represented. Quite frankly, the Office of the UCA is not competent to represent urban, rural, individual, small business and institutional customers in regulatory matters. No *one* entity is, and while CAREA sympathizes with the impossible position the UCA has been put in, the Commission should not compound the absurdity of the situation by making any substantive change to existing regulatory process, especially its cost recovery Rules.

We need only refer you to your latest notification of April 11, 2008 indicating that for at least 10 applications, the office of the UCA is not in a position “to meet several significant deadlines for currently scheduled major proceedings” because the AUC’s scheduling has “gone well beyond what the UCA could realistically address.” CAREA (as well as most every other past intervenor) has been subject to, and has been able to meet, deadlines of the AUC. And now, at this important juncture, the UCA is unable to meet the most basic of deadlines? This surely must set off warning bells regarding any attempt at “primary” and broad representation by the UCA.

In summary, intervenors other than the UCA *MUST* represent residential, farm and small business consumers for that representation to be meaningful and objective.

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

Quite simply, it is an impossibility.

The separate and distinct consumers groups should continue to be represented by their historical representatives. As far as is known to CAREA, there has been no hue and cry of inadequate representation by customary consumer groups. These consumers trust their traditional and long-

standing representatives and it is those representatives that are well-placed to continue to advocate for a majority of the province’s energy users. The Office of the UCA should perform an advisory and resource function only, and should shoulder any significant expert and consultants costs that are not within the budget of many of these consumer groups.

During and after Bill 46 discussions, the Office of the UCA made, in essence, selective and secretive appointments to its own Governance Board. It must be kept in mind that Part 5 (Office of the Utilities Consumer Advocate) of Bill 46 did not carry through to the final, enacted *Alberta Utilities Commission Act!* It is evident past regulatory (and non-regulatory) consumer advocates’ considerable expertise, experience and knowledge will not be utilized to any material extent.

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?

CAREA is particularly eager to share with you our experience to date with the Office of the UCA. Two particular instances should be enough to illustrate how the UCA collaborates with like-minded consumer groups.

Date of communications with the UCA / Regulatory Intervention	Reason for communication / Reason for CAREA’s separate intervention	Response from the UCA
September 3, 2004 Letter from CAREA to UCA’s David Gray	“CAREA seeks your intervention regarding a Review and Variance filed with the EUB October 2, 2003” (Line Loss Issue/Load Settlement Issue) “We acknowledge that your office was set up to protect the interests of Alberta’s residential, farm and small business consumers and one of your primary goals is to facilitate their representation at regulatory hearings and other proceedings. We need your representation now.”	No acknowledgement No response No engagement
January 14, 2005 Letter from CAREA to UCA’s David Gray	1) Execution of the UCA’s Memorandum of Understanding: “Specific concerns regarding the MOU are as follows: ♦What party is ultimately responsible for allocating responsibilities for the various elements of the work? How is that different than what currently occurs? It is my understanding that intervenors with common interests collaborate on allocation of responsibilities to avoid duplication in regulatory proceedings. ♦What is the mechanism for reaching consensus? ♦What is the mechanism for declaring our position? ♦Would the UCA be obligated to provide comments to the Board on cost claims? ♦What is the protocol for coordinating intervenors in a negotiated settlement?” 2) CAREA’s representation by the UCA in FAI 2005 Distribution Tariff Negotiated Settlement No. 1371998: “CAREA has a very limited and distinct interest in regulatory proceedings.	No acknowledgement No response No engagement



Central Alberta Rural Electrification Association Ltd.

	<p>Coupled with our scarce resources, we are concerned with our ability to effectively collaborate and contribute as a “participating party.” You are aware that our primary interest in regulatory proceedings is confined to issues of line loss allocation and load settlement costs allocation.”</p> <p>“We have now registered as an Intervenor in the FAI Application and to that end, have drafted IRs and have requested to participate in the Negotiated Settlement process.”</p> <p>CAREA’s Request to Participate: “...CAREA intends to work within the structure proposed by the UCA’s Memorandum of Understanding Guideline for Collaborative Intervention in Utility Proceedings. CAREA is entering into discussions with the UCA regarding revision and ultimate execution of the Memorandum of Understanding.”</p>	<p>No acknowledgement No response No engagement</p>
<p>FAI 2006/2007 DT NSA for Phase I Application 1434992 2006</p>	<p>CAREA sought its own separate counsel and consultant as the Office of the UCA had not responded in any significant or material way to any of our requests since 2004.</p>	
<p>FAI 2006/2007 DT Phase II and Other Matters Application 1514140 2006</p>	<p>CAREA sought its own separate counsel and consultant as the Office of the UCA had not responded in any significant or material way to any of our requests since 2004.</p>	
<p>Letter from CAREA to UCA (and other interveners) regarding collaboration with Regulatory Consultants and Counsel for FAI’s 2008 GTA March 1, 2007</p>	<p>“...the EUB’s Cost Award regarding FortisAlberta’s 06-07 General Tariff Application reflected the Board’s view that there was insufficient coordination and collaboration between Intervenors.</p> <p>...the Board gave a number of Directives from that Application, 4 of which are pertinent [to CAREA]...</p> <p>Appropriate determination of line loss is of immense interest to CAREA and we would be interested in taking on this portion of FortisAlberta’s 08 GTA.</p> <p>Given the Board’s Directives, coupled with its Cost Award comments and what is known to date, CAREA would like to take this early opportunity to advise as to which issues it is interested in examining and is now canvassing all like-minded intervenors concerning collaboration. CAREA would like to be in a position such that when FortisAlberta’s 08 GTA hits, we will be able to concentrate on only those areas of interest and of which CAREA can bring some expertise to.”</p>	<p>No acknowledgement No response No engagement</p>
<p>Follow-up letter to UCA seeking collaboration with the UCA in regulatory matters June 4, 2007</p>	<p>“[CAREA] now understand[s] there may be some UCA initiative to coordinate interventions solely through your office. CAREA is perplexed that 1, we have not had any reply to our detailed letter of March 1, 2007, and 2, that any meetings or consultations regarding collaboration have taken place without any notice to us. CAREA would like to make clear that we are an interested party and should be included in any discussions on regulatory arrangements as it pertains to intervenors by your office, the Department of Energy or the EUB.”</p>	<p>June 13, 2007 Blackberry Response (David Gray):</p> <p>“We are in receipt of your letters and have been consulting with our regulatory partners, including the AFREA.</p>

		<p>You must already be aware of our concern with case you presented in the last FORTIS hearing. We will provide a full response to your letters soon.”</p> <p>No “full response by letter” No engagement</p>
<p>Email from CAREA to UCA’s Henderson, Gray and Hill requesting engagement July 19, 2007</p>	<p>“...CAREA...requires a formal written response to ...communications (March 1, 2007, June 4, 2007, June 14, 2007, July 11, 2007). CAREA is concerned...that if CAREA and all other REAs are required to be represented in regulatory matters by the UCA, there is such a lack of collaborative process in place that once again, our issues will be nether understood or presented accurately...You must understand that CAREA requires some assurance that the lines of communication are now open and that we will be able to fully and completely participate in the process. We are looking for preliminary meeting dates, process coordination and the like.”</p>	<p>No acknowledgement No response No engagement</p>
<p>FAI 2008/2009 Phase I DTA Application 1514140 July 5, 2007</p>	<p>CAREA sought its own separate counsel and consultant as the Office of the UCA had not responded in any significant or material way to any of our requests since 2004.</p>	

The above table illustrates how the UCA has worked and collaborated with this consumer group (CAREA). It did not seek our views, did not respond to any of our requests, did not meet with us pre-, during and post-Hearing proceedings. CAREA’s separate interventions (particularly FAI 2006/2007 DT Phase II and Other Matters Application 1514140) came about as a result of being shut out of the UCA’s inner circle. With full and repeated knowledge that CAREA had an interest in line loss, the UCA hid from us the fact that they had engaged an expert to examine this issue. We explained this as well as we could to you when seeking cost recovery. The utter lack of communication afforded CAREA by the Office of the UCA borders on spiteful and malicious.

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?

The solution to this seemingly vexing question is obvious – all interveners with *similar* issues and *homogeneous* views on those issues will be required to work together and avoid duplication in exactly the same way as they have always done; to conduct themselves otherwise is to put their cost recovery at risk.

CAREA understands there has always been intervener alliances and coalitions. These groups attend pre-application meetings, certain issues are assigned to specific consultants and counsel, others are assigned negotiations, others to intervener requests, yet others to oral representation and written argument. Reports are that it worked reasonably well and efficiently, and that this approach has been indirectly

endorsed by the AUC given its previous cost award rulings.

Those consumer groups that had dissimilar issues or differing positions on an issue simply intervened separately where required. The current cost recovery system, with its checks and balances, allows legitimate interveners access to the regulatory process. CAREA believes the commission would be hard pressed to find many of the 30+ interveners listed previously recommending any substantial change to the regulatory cost recovery regime.

Summary

The AUC is in serious danger of perpetuating an already divisive and discordant relationship between the UCA and some consumer groups; it pits the Office of the UCA against all others who may have a different perspective, a unique insight, a discreet issue needing a regulatory audience. Why would the AUC want these views homogenized by the UCA?

The February 6, 2008 letter of the CCA's contains the following excerpt from the Speech from the Throne:

Over the coming year, the energy regulatory system will be enhanced. Albertans can have confidence in this system. The new regulatory Bodies that have been established will bring renewed focus to ensuring that Albertans affected by energy development are engaged and respected as part of the decision-making process.

Our 8,000+ members, consisting of residential, farm and small business consumers have little faith in the UCA's abilities to represent them in regulatory matters. Our 8,000+ members do not feel confident or engaged when it comes to UCA representation. Our 8,000+ members do not believe CAREA is respected as part of the UCA's regulatory decision-making process. Neither does CAREA have any confidence in the UCA-appointed REA representative to its Governance Board (the AFREA); CAREA does not belong to the AFREA. CAREA surely must be allowed to pursue another avenue of representation, subject always to the Commission's determination of reasonableness and effectiveness when considering intervenor cost recovery.

We note the Commission will be inviting participants to informal stakeholder meetings to discuss all comments. CAREA believes that in-depth, thorough face to face consultations are required before adjustments to the process of regulatory intervention and cost recovery are made.

It cannot be reasonably demonstrated that restricting consumer representation in regulatory matters to UCA intervention is a clear improvement rather than plain improvidence. CAREA looks forward to the opportunity to establish that proposition.

Yours truly,



Jim Towle, Chair, CAREA