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April 21, 2008

Giuseppa Bentivegena
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Fifth Avenue Place
East 4th fl 425 - 1 Street SW
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Via e-mail

Re: AUC Bulletin 2008-001

I am writing on behalf of the Consumers' Coalition of Alberta to provide the attached comments.

We thank the Commission for the extension for filing the same and the opportunity to participate in this process.

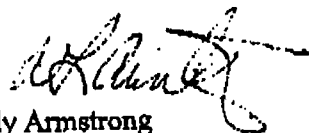
We trust you find the foregoing to be in order and should you have any comments, questions or concerns please do not hesitate to contact the writer.

Yours very truly,

Consumer's Coalition of Alberta

Per:

Wendy Armstrong



Process for Review of Rule 022

Introduction

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The Alberta Utilities Commission (Commission) is undertaking a review of Rule 022 *Rules on Intervener Costs* with the objective of implementing changes, on or before June 30, 2008.

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The Consumers' Coalition of Alberta (CCA) provides the following comments:

The Commission requests that participants clearly state the principles upon which their comments and responses to the questions posed below are based.

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CCA statement of relevant Principles

Utility services are a basic need and a public good. The accessibility, reliability, quality, cost and price of these services have a profound effect on the quality of life of families and the sustainability of communities in which they live.

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The CCA believes the role of a government-appointed utility regulator is to ensure due process, transparency and accountability to citizens in actions and decisions within its mandate. These decisions affect the reliability of supply, service quality and fair distribution of the costs and benefits among suppliers and various customer classes as well as other affected parties (e.g. citizen landowners) and identified public interests (e.g. environment). In particular, we believe it is important for the AUC in its role as an adjudicator of these interests to make a special effort to take into account the interests of small volume inelastic customers which are often at a disadvantage to larger more elastic customers.

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This disadvantage is notably present in the resources available to fund comprehensive independent interventions in absence of a cost recovery mechanism like that available under the AUC.

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One of the reasons for the existence of an arms length quasi-judicial board to consider and adjudicate competing interests in the overall public good is to avoid either real or perceived ad hoc power or political interference. Another is to

provide an opportunity for on-the-record input and evaluation from diverse perspectives in order to ensure the commission is as fully informed as possible in arriving at its decisions.

5 The CCA understands the regulator has a mandate to impartially review the affairs of monopoly public utilities in order to set the rates paid by the customers of the same utilities. The CCA participates in utility regulation to preserve or advance the interests of residential customers. In discharging its mandate the utility regulator must employ due process that balances the interests of the utility and its customers. To do this we submit the regulator must hear from a diverse range of independent parties and interests, or their representatives. A balance is struck by the impartial regulator hearing all interested parties and fairly balancing the interests of the monopoly utility shareholders with those of all utility customers.

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15 The CCA furthers the interests of its constituents as a coalition of two unrelated parties; the Consumers' Association of Canada Alberta - CAC Alta and the Alberta Council on Aging - ACA. Both these parties, ACA and CAC are established entities with membership and boards of directors holding regular meetings. These parties are independent of utilities or government and as such can represent customer issues without question of their overlap with either of the other parts of the regulatory balance.

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25 As a coalition the CCA is representative of household or residential customers who are end use utility customers or consumers. As such the principles that guide the CCA are to see the AUC discharge its mandate in accordance with a broad public interest, including the interests of residential or household customers. To assist the AUC in doing this the CCA assimilates the views (and concerns) of its members and other residential customers which it is in contact with as well as those of other known independent residential consumer advocacy organizations so it can articulate an independent voice for residential utility customers. Further

there is ongoing feedback between the legal counsel, consultants and client organizations. We recognize that while the utility side of the equation is rife with various individual monopolies the intervenor side is challenged by its many competing interests. No intervenor has a monopoly on the expression of its constituent interests and each intervenor must respect other parties including other and similar intervenors.

A regulatory review and rate setting performed in accordance with the above and the rules of natural justice should give a requisite assurance to the public that the monopoly utility rates are just, reasonable and fair to both shareholders and customers.

Additionally the CCA wishes to point to the level of regulatory activity in Alberta in the years 1995 – 2007. Much of this activity was driven by industry and corporate restructuring and as a consequence the regulatory load of the AEUB was heavy. During that time the AEUB conducted itself in accordance with the above stated principles as these were and continue to be required regardless of the regulator's work load.

The CCA views the purpose of the current cost recovery methodology as providing compensation to participants. The AUC must insure that compensation is fair in both quantum and process. The CCA submits the intervenor cost recovery mechanism, as it is before the AUC and was before its predecessors, the PUB and AEUB, is of value to the regulator as it allows the many disparate voices to retain experts and articulate their concerns to the adjudicator. Further we submit intervenor cost recovery is of value to the public interest at large.

Lastly the CCA needs to address the concern of duplication. Some duplication is unavoidable. Duplication will exist even with a wide diversity of interested groups. It must be recognized there is a healthy aspect to duplication. Duplication and diversity will build a better end product.

Issues

The issues outlined below relate to rate hearings or proceedings regarding utilities under the jurisdiction of the Commission.

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The CCA comments must be read in light of the above principles.

1. Role of the Utilities Consumer Advocate (UCA)

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The Consumers' Coalition of Alberta stands by its letter of February 6, 2008 raising concerns with the December 2007 proposal of the UCA.

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Many of our concerns about the original proposed role of the UCA as an exclusive intervenor on behalf of small volume utility customers, as contained in in Bill 46, are equally applicable to the UCA's proposal for "intervenor of first resort" status. (See November 7th Media Release and Backgrounder on Bill 46 at www.albertaconsomers.org) It has also become clear to us over the past year that it is difficult, if not impossible, for the UCA to effectively act as an "advocate" given its position within government and proposed regulations. This is also supported by our experiences on the Memorandum of Understanding Committee and the response of the UCA to repeated formal complaints by the Consumers' Association related to the misleading marketing practices of energy retailers. We are also concerned that the lack of independent expertise and reliance on information provided by the UCA itself will compromise the ability of governing board members to effectively represent the interests of their own constituencies and interests.

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UCA is appointed by government yet as a government body tasked to intervene in an adversarial process it cannot remain impartial. The original and considered recommendation of the Bolger committee to the Alberta government was that it should create an entity with a **consumer ombudsman role**. This recommendation was not followed and an advocate entity was created even though there were pre-existing utility customer intervenors acting as advocates in the adversarial regulatory processes.

The challenge is that just as the UCA was created by government, it can be controlled or even be terminated by government. Notwithstanding this it is paid for by customers many of which in turn are not being allowed any formal input to the UCA positions or policies. As such these groups must find other ways to voice their concerns and interventions in utility proceedings is one such avenue.

Further the question is not just what the UCA wants to be but rather what the AUC will allow it to become. The regulator must treat those that appear before it fairly and with impartiality. This is important as how the regulator treats the UCA will in large measure define the UCA as an intervenor and define it relative to other intervenors. If the UCA is treated by the AUC with a special status, as the UCA has requested in its letter of December 2007, the UCA as an intervenor will be different from any independent intervenor before the AUC. Stated from the converse, if this special status were to be granted all the independent intervenors will be left to question if they are prejudiced relative to the UCA or worse they may question if that prejudice extends to their position amongst other independent intervenors.

By way of analogy – no utility holds special status, relative to other utilities, before the AUC. To insure both real and perceived procedural fairness the AUC should not adopt the proposal made by the UCA to elevate itself above other intervenors.

CCA has concerns with the potential for significant duplication at the front end of a process. For example, if the independent intervenors such as the CCA were to follow UCA, the CCA consultant(s) would have to review the GTA filing to assess, undertake the necessary analyses and identify key issues of concern; hence, there is absolutely no savings in hearing costs in the “preparation and review” phase of the GTA. The independent consultants would then have to plough through all of the IR’s from the UCA, figure out which of the UCA IR’s are deficient or which issues have not been canvassed or not canvassed

satisfactorily, or which IR's may seek to promote other rate classes or disadvantage the Residential customers' best interests. Additionally the phase II consequences of positions taken in phase I can result in real conflicts of interest within the UCA stable of interests. This is because the UCA's intervention "on behalf of residential, farm and small business consumers" results in making a call/judgment, when there is a question of whether costs should be shifted as between customer classes, which of these 3 customer groups it will support.

The Commission sought comments on the following:

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?

Yes – the position of the CCA is that it is important to note there is no legislated exclusion of other intervenors that represent similar interests nor would it be desirable for the AUC to devise any method of exclusion of similar interests. The CCA submit any exclusion of a willing and qualified participant would damage the impartiality of the regulator to all participants in the regulatory process.

The AUC has the mandate to oversee the cost recovery of all participants whereas the UCA does not have any specific mandate to be involved in the cost recovery by independent intervenors. The CCA submit the UCA should be dissuaded from this type of "scope creep" into the jurisdiction of the AUC.

Interestingly the UCA can discharge its specific utility hearing intervention mandate by monitoring hearings to insure other groups adequately cover the issues of concern to the broad range of UCA constituent interests. Further the UCA should and can support other groups to enhance those independently guided interventions and it could actually take on a secondary role in monitoring the processes. This should be examined as it may reduce overall costs and resolve many of the UCA resource constraints. This was in fact the negotiated partnership that was created by the first Memorandum of Understanding or MOU

5 between existing intervenors and the UCA. It was a regulatory participation partnership. Unfortunately the UCA has now selected a smaller group and a different tactic (we are uncertain how the tactic differs as the second MOU has not been publicized but we see the December 2007 letter as inconsistent with the first MOU).

10 The UCA is not independent as it is a Government agency with a Government appointed Governance Board. The UCA is likely to be beholden to carry out the government's policy. Such policy may result in the UCA choosing the interest of one customer class/group over another. With due respect, reconciling issues between rate classes of a utility is the AUC's role; the UCA should not usurp that role.

15 The CCA is concerned that while the UCA may not be filing for cost recovery, its intervention is not at zero cost to customers. Further as long as it does not have an independent body such as the AUC exercising an oversight function on the hearing costs actually incurred, there is little incentive for the UCA to conduct itself in an effective, efficient and responsible manner.

20 The UCA is funded by gas and electric customers through either the Revenue Requirement (through the hearing cost reserve account) or through the Balancing Pool. As such the actual costs of the UCA's intervention must become transparent.

25 The CCA submit regulation must acknowledge the UCA's intervention costs in the same manner as the AUC does the hearing costs of independent intervenors.

30 Since ALL customers are paying for the UCA to represent Residential, Farm and Small Commercial, this further substantiates the need for customers to have full disclosure of the UCA budgeted and actual costs for interventions, as well as an assessment of the effectiveness of such interventions.

Since funding of the UCA's regulatory activities is derived in one form or another from the customers of all regulated utilities, it is imperative that all intervenor costs be subject to the same level of scrutiny. To this end, the AUC must treat UCA as it does the other independent intervenors. That is, the AUC must obtain from the UCA its budgets, and scrutinize these budgets in the same manner as it does to budgets submitted by independent intervenors.

The UCA should be required to demonstrate how it's proposed intervention (and hence its budget) reflects its willingness to work with independent intervenors. The UCA should be required to submit its actual costs for the intervention, provide full justification for the variance between its budget and actual costs, and the AUC Cost Order should provide an assessment as to whether the UCA's intervention was effective and in the customer's (as opposed to the government's) best interest.

While AUC may not be able to direct the UCA Board of Governance to enact any cost reductions it considers are necessary, AUC feedback will provide the UCA Board of Governance and the Minister it reports to a significantly more objective assessment of the work done by the UCA in the regulatory arena than any self assessment from within the UCA.

To this end, we submit the only measurement of a successful intervention is not just the reduction in the total Revenue Requirement requested by the regulated entity; equally important is how effective and efficient that intervention was. The experience in practice has been that the UCA has invested significant resources in recent GTAs, certainly more than any other independent intervenor and it does not appear costs are an issue to the UCA.

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

5 CCA submits parties should attempt to resolve disputes initially amongst themselves but with recourse to the commission or a formal and independent arbitration process to assist in resolving disputes

10 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?

15 The CCA submit participation must be open and parties need to demonstrate how they assist the commission in its deliberations. If two identical groups appear which is viewed as correct? If similar interests frequently become truly identical then the AUC will have to assist the parties in resolving the inefficiency created by true duplication. If interests remain similar the question is, what is the benefit of such diversity relative to the cost of the same? The AUC can weigh it and judge it. Essentially this is a bridge will be crossed if we come to it.

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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?

25 Parties to a process are aware of subtle to major differences in their positions, short and long term strategies that are not readily apparent to all other participants. When no intervenor took the presumption of being the “prima intervena” this problem resolved itself among equals.

30 CCA sees it as desirable for there to be coordination as between intervenors (both the independent as well as the government-sponsored) to reduce overall rate hearing costs. To this end, the CCA has in recent GTA’s requested to work with the UCA in a collaborative manner in order to avoid duplication and reduce hearing costs; however, such overtures have not been met with positive response
35 from the UCA.

5 Notwithstanding the challenges of working cooperatively the CCA envisioned a collaborative approach whereby all intervening parties would meet following an initial review of the filed GTA and discuss and allocate responsibility for issues of concern in that GTA. This vision was not sustained. Based on the diversity among views and earlier experience it may not be achievable but the CCA does not rule out future collaboration. It must be recognized the practice does not always meet the theory. Whatever form future collaboration takes it must recognize the diverse interests and each participant's responsibility to their
10 respective constituency and client.

It should also be noted that the Consumers' Coalition is equally concerned about the limited opportunities for public and customer scrutiny, oversight and control of the budget and activities of the Utilities Consumer Advocate Office.

2. Business Interest Rule

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

Who should be ineligible for cost awards?

10 CCA submits parties which advance positions which completely or significantly protect their business or commercial interests – example a retailer appearing in a matter when it is there for protection or advancement of its own interests – such as increased market share or simple cost avoidance or transfer – should not be allowed cost recovery. Similarly a generator of electricity or producer of gas may
15 be questioned if they are participating in a relevant regulated transmission process but are doing so primarily to advance or protect their own interests. (Example: influencing the proximity of relevant Transmission or system growth to their business assets.) This is not to say a narrow interest is necessarily a business interest or a broad interest is not; the regulator must look to the dominant purpose
20 of the intervention. If the dominant purpose appears to be the furtherance of a specific business or commercial interest of the intervenor the rule ought to be invoked.

25 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?

30 Generally no, except perhaps in rare circumstances or if the association was viewed as a conduit for the convenience of one or a few members to exert influence in their specific business interest akin to the examples above.

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

Yes – Guidelines are desirable but it is necessary to retain some flexibility in the rule - see above.

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?

5 The CCA submits there is no demonstrated need to grandfather parties who are clear exceptions to the business interest rule.

10 **3. Budgets**

Some participants maintain that budgets should not be required from interveners who will not be submitting cost claims. Budgets were originally included within the cost rules to require parties to apply principles of cost discipline early in the proceeding and to identify areas of potential duplication. The Commission asks participants to:

15 Comment on the current rules on filing of budgets;

20 CCA sees the filing of detailed budgets by independent intervenors as an exercise of limited value. Budgets are forecasts filed by a party reacting to the filing by the applicant and subject to a process that is set by the AUC but influenced by the applicant utility and all participants. We submit at present too much detail is required and it could be replaced by experienced intervenors providing estimates of their resource deployment and a statement of the areas of concern to their constituency.

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

30 Remembering that the CCA view is budgets are of limited value we believe budgets, if required, are better later in the process and should only be used in a few of the more conventional processes such as regular GRA or GTA filings. Processes which are more predictable will be easier to accurately budget. More unique or one of a kind processes are more unpredictable and the accuracy of budgeting varies and from the perspective of the intervenor any value from the budgeting exercise is diminished by the uncertainty inherent in the unique process.

5 Additionally it will be useful to all parties if a participant raises an alert to instances of exceptionally costly interventions, the existence of an out lying amount is likely known only to that party but early dissemination may benefit others.

10 When budgets are required the UCA as a public office in Government and paid for by utility customers should be required to demonstrate how it's proposed intervention (and hence its budget) reflects its willingness to work with independent intervenors. The UCA should be required to submit its actual budget and costs for the intervention and provide full justification for the variance between its budget and actual costs. Further the AUC Cost Order should provide an assessment as to whether the UCA's intervention was effective and in the customer's (as opposed to the government's) best interest. In any event the UCA should disclose the costs of its interventions on a case by case basis and the AUC comments on each matter could be contained in the AUC cost order.

20 **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:

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

30 No –firstly slavish adherence to such a formula driven approach will likely serve to illustrate more frequent anomalies. While the number of hearing days may have much to do with the complexity of the case this is not always so. It is an unfortunate reality that the costs of each process before the Commission and value of each participant in that process, must be assessed on its own merits, just as each application must be assessed separately on its merits. In doing this we submit some value must be placed on independence and diversity as well as contribution to the specific process.

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

5 The CCA suggests the AUC employ some form of canvas of market rates in establishing a new and current scale. Currently no one gets any discount as everything appears to be priced at market with the exception of the current AUC scale of costs. The result is the overall regulatory process receives a discount on the expertise of the intervenor counsel and technical consultants and witnesses.

10 The intervenors, which tend to represent customers, are paid by the customers through the hearing cost reserve. Since independent customer groups actually choose their representatives why should those same groups be effectively limited in their choice by an outdated scale of costs? This is not mirrored on the utility side as recent hearings have disclosed utility counsel and consultants being paid

15 by the utility at more than the scale but outside of the HCR. There is an inherent unfairness in this which will be exacerbated as the market rates continue to rise above the scale.

20 Additionally we submit any reasoned cost benefit analysis will likely disclose the current AEUB/AUC cost recovery regime to be of a general benefit to utility customers including household consumers. The experience in Alberta is that the costs of regulation are more than made up by savings in the rates paid by utility customers.

25 In the end all costs are paid by customers including funding the now duplicitous role of the UCA.

30 Many of the participants are professionals with a unique expertise in utility regulation. Limiting the scale of costs to below market rates seems inconsistent with the fair treatment of professionals constructively engaged in their chosen field of work and who assist the regulator in the discharge of its public interest mandate.

5 As an additional comment CCA notes per diems, hotel costs and mileage rates need to be reassessed and adjusted to reflect market rates. Further some form of index may be appropriate or alternatively a regularly scheduled reassessment may be advantageous.

10 Lastly the matter of transcript costs should be addressed by the AUC. In the past these costs were the responsibility of each participating entity which chose to receive a transcript. The CCA has long held the view that the Commission should purchase the rights to the transcript and post the same for electronic retrieval. We submit this could reduce overall disbursement costs for all participants.

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

20 Yes - cost recovery generally should be available to intervenors in all steps of all AUC processes. This of course is subject to proper justification of the actions of the parties claiming the costs.

5. Costs of Negotiated Settlements

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

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

30 The CCA submit the status quo works well and is consistent with the overall mandate of the AUC. The cost recovery process in an NSP should receive scrutiny but must recognize a negotiation likely has some very different parameters than an adversarial hearing process. As such it needs to be recognized the cost recovery process for a NSP may be very different than the adversarial
35 process.

5 The recent prevalence of NSP's speaks to the accumulated expertise on the
intervenor side of the industry as well as the familiarity by all participants with
the regulator. Further and importantly there is a degree of trust as between the
people employed by the utilities and the independent intervenors which has lead
to and continues from a long track record of settlements. The AUC must be
mindful this climate of common trust took significant time and resources to
establish and nurture.

10 how concerns about the transparency of the process should be addressed.

15 The CCA has concern with strategic elements or adverse impact to strategic
positions of too much transparency. Generally in any negotiation there is a large
component of trust and this may include some limits to the transparency that is
otherwise desirable.

20 **6. Proceedings without Cost Recovery**

25 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.

30 The CCA submits closing cost recovery should occur in only very limited
instances – CCA can't imagine when this would be as it is inconsistent with the
mandate and it may close a public process to a segment of the public.

35 The CCA is very concerned with the utility asset disposition issue (1566373 ID.
20 - Utility Asset Disposition Rate Review Proceeding) being considered without
broad based input from independent intervenor groups which represent a range of
utility customers. We submit the AUC should reconsider its position in respect to
cost recovery in this matter.

7. Costs Officer

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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.

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Yes CCA sees a real need for a contact point in the AUC for these concerns. The CCA sees benefit in real dialogue with the regulator when it comes to the assessment of costs. The feedback for each party would improve the overall methodology of cost recovery.

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As noted above, parties may make submissions on any other issues that they want to bring to the attention of the Commission.

The CCA submits there may be some value in acknowledging long standing intervenors by unique treatment. In decisions 2000- - 73 and 74 the AEUB noted:

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The Board accepts the views of Parties representing a wide cross section of potential RRO customers that this Arrangement should be approved. These Parties are well known to the Board. The Board considers these Parties to be experienced and knowledgeable with a long record of representing the citizens of Alberta. - Emphasis added.

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The CCA leaves it to the deliberations of the AUC but notes that a party trades on its record of involvement and while this may benefit some parties with long standing it must be handled cautiously to prevent prejudice to newer parties.

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The CCA submits the AUC should make more frequent use of advance or interim funding of cost claims. The lag time between commencement of a hearing and issuance of a cost order can be great. It would reflect a more balanced approach if

all intervenors were not saddled with waiting for the close of proceedings to make their claims for compensation.

5 The CCA notes there have been significant criticisms of intervenors and the cost recovery process. We note that few commentators appear to be aware of the significant resource constraints impacting the independent intervenors. Many who comment have little or no experience in the area of independent interventions or first hand experience with the cost recovery process.

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