



THE CITY OF
CALGARY
OFFICE OF THE ALDERMEN

ALDERMAN DALE HODGES

2008 April 15

Mr. Robert D. Heggie, Chief Executive Officer
Alberta Utility Commission
Fifth Avenue Place
4th Floor, 425 - 1 Street SW
Calgary, Alberta T2P 3L8

SENT BY FAX: (403) 592-4406

Dear Mr. Heggie:

Subject: AUC Bulletin 2008-01

Attached are The City of Calgary's comments with respect to the AUC Bulletin 2008- 01 issued on 2008 March 20 with respect to the Rule 22 Intervener Cost.

The City of Calgary has many concerns with the AUC's proposal and believes that in long term it will not be in Alberta's or Calgary's best interest as outlined in the letter. If you have any questions, please contact Richard Mount at 268-5510, Mark Rowe at 268-1362 or myself at 268-2430.

Thank you.

Yours truly,

ALDERMAN DALE HODGES, CHAIR
CITY OF CALGARY
GAS, POWER AND TELECOMMUNICATIONS COMMITTEE
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City of Calgary Response to the Alberta Utilities Commission Bulletin 2008-01
Consultation – Review of Rule 022, Rules on Intervener Costs

The Alberta Utilities Commission (AUC) is undertaking a review of Rule 022, Rules on Intervener Costs, as published in Bulletin 2008-01, to consult with interested parties. The Bulletin is seeking written comments by 2008 April 15. The Bulletin sets out a number of specific issues and questions on which the AUC would like feedback. The following numbered sections and bullet points follow the structure of the Bulletin for ease of analysis.

1. The Role of the Utilities Consumer Advocate (UCA) in hearings or proceedings regarding utilities under the jurisdiction of the Alberta Utilities Commission (AUC).

General comments.

Preserving the Intent of Amended Bill 46

Bulletin 2008-01 appears to be focused on implementing the version of Bill 46 before it was amended by the legislature, even though the significant concerns raised by stakeholders such as Calgary were addressed in the amendments. The Bulletin highlights the UCA's recommendation that, in order to avoid duplication of positions before the AUC, the UCA provide its information requests, evidence and arguments in advance of other interveners. By requesting comments on such a proposition, the AUC appears to be sanctioning it, or at least shifting the onus to parties to rebut the proposition.

Calgary submits this approach is contrary to the intent of the Legislature reflected in the final amendments to Bill 46. Those amendments, amongst other things, restored the rights customers to cost recovery. At no time has Bill 46, whether as originally tabled or as amended, given the UCA the primary position it seeks. While Bill 46 provided the AUC with jurisdiction to make rules, the delegated rule making powers are secondary to the primary legislation which confers cost recovery rights.

The Chairman of the Commission has appropriately and succinctly addressed the issue of rights and interests, when stating in the Calgary Herald on April 4, 2008 as follows:

"The single most important thing is you make sure people's rights are respected and their interests are recognized."

Calgary and its citizens have a long standing and well established record before the PUB and the EUB on utility proceedings. The rights of its citizens to be represented on an exclusive basis in these proceedings are also well established.

Policy of Consumer Choice

If the UCA is granted its requested primary position then it will become defacto the sole provider of intervener services for non-industrial customers. The City of Calgary is surprised that the UCA is proposing a position that is out of step with the Province's policy of encouraging competition and providing customers with choice. The Province's policy of encouraging multiple suppliers for services recognizes that sole suppliers cannot meet everyone's needs all the time. The City of Calgary rejects the notion of primacy for the UCA. Calgary's position is based on the principle of equality; when interveners have different perspectives on an issue then the perspective of one intervener should not be considered *ex ante* more important than that of the others.

The AUC should not attempt to let the UCA to accomplish this "primary role" position by regulation when it was removed by the legislature amendments to Bill 46.

From a process and procedural perspective, the UCA's proposal is also problematic. If the UCA is given the primary position that it seeks, this will add to the hearing time because the UCA will file its positions and other parties (including the utilities and other interveners not represented by the UCA) will have to then respond based upon what the UCA files. Confusion and delay will surely result.

Calgary is also concerned that UCA appears to be preparing an application to tariff the utility bills of Calgary's citizens and businesses to pay for the UCA's interventions. Calgary is also very concerned about a lack of checks and balances in the UCA intervention process. It is unclear how the UCA tariff and cost recovery process will be managed and until this is clarified responding to Rule 22 is premature. Before any steps are taken, Calgary would expect a full period of consultation on the UCA regulations.

When one considers the billions of dollars that Albertans pay for utility services, Calgary finds it interesting that the AUC appears to be focusing on reducing intervention costs, which are small part of the total utility costs.

UCA Capacity

Calgary also has concerns with the ability of the UCA to garner the resources to carry out its mandate. The Commission is aware that regulatory interventions require specific expertise and experience, whether for technical legal or financial matters. This pool of expertise is utilized by utilities, regulatory tribunals or by customer interveners, and is further subject to professional constraints such as conflict of interest rules and contractual exclusivity arrangements.

The UCA has had a year to prepare for its purported role of primacy, and to date it appears that it has been unable to garner the proper resources in order to carry out its mandate. Indeed, the UCA has recently requested that the Commission defer or delay current proceedings to accommodate the UCA's ability to participate in them.

Such delays, if consistently required, will soon adversely affect all parties in the system: applicant utilities, Commission staff as well as other customer groups, all of which are looking to see the regulatory agenda proceed in a fair and consistent manner.

Moreover, given the small pool of regulatory expertise available to customers, Calgary questions whether the UCA will be able to have these resources in the foreseeable future. The AUC's 24 month forecast for regulatory proceedings (dated March 27, 2008) indicates that the regulatory agenda for the AUC will be full during that time. Simply put, Calgary does not see any reasonable way in which the UCA will be able to bring its capabilities up to the required level in the foreseeable future. As such, Calgary would submit the AUC should be very cautious about restricting the ability of long standing intervener parties to continue to represent their constituents through restrictions on cost recovery.

There has been discussion about using the "California" as a model, the Office of Ratepayer Advocates, to represent consumers in Alberta. This group appears to have about 133 people on staff. However, a brief search indicates that Californians have issues with how consumers are represented. Before Alberta uses California as a model, a public review is needed to ensure that this is a model that Alberta should follow.

Comments on specific questions asked by the AUC.

- 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?

This is no different than the provincial government representing the citizens of Alberta while at the same time the City of Calgary represents its citizens within its city boundaries. The nature of government in Canada provides for representation at many levels, and within the AUC hearings process there must be the opportunity for subsections of the population to specifically be represented, for example, the citizens of Calgary by The City of Calgary. Calgarians have no voice at the UCA; however, Calgarians have elected Aldermen who are responsible to them.

The UCA mandate is directed to represent residents, farms and small business on a broad basis and this is reflected in their governance Board which does not provide for specific representation of the major metropolitan areas to the exclusion of other areas or constituencies. It is absolutely crucial that the AUC permit interveners in hearings and proceedings that represent organizations or special and exclusive interests of residents, farms and small business in a capacity that is different than the general perspective that is representative of the group as a whole.

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

This is not something that should be dealt with in the Rules as it would limit the decision making ability of the Commission.

The UCA will need to provide separate representation of each of the conflicting views. The advantage of the AUC, and not the UCA, to provide funding for other groups is that UCA would be acting as a quasi judicial body that determines who does or does not get funded representation at the AUC.

Conflicts of interest are inevitable in a one size fits all intervention that the UCA must undertake to meet its mandate. As such, the ability to allow parties natural justice to provide their views to the AUC requires intervener funding. This is consistent with the Chairman's quote set out above. The utilities are able to use customer revenues to present their position to the AUC, customers need to have the same right.

A recent and clear example of where conflicting interests affected stakeholders is the Fortis Distribution Tariff Application proceeding completed in late 2007. There, the interests of municipalities (AUMA members) were directly and adversely affected in a material way by the negotiated settlement which the UCA

consented to and indeed by the UCA's own evidence in the proceeding, even though the AUMA and its UCA representative appear to be significantly involved in the UCA's governance. Calgary is concerned that there appears to be a lack of checks and balances within the UCA's structure to allow for obvious conflicts to be accommodated in a reasonable and fair way.

Moreover, as Calgary indicated in previous submissions, the current Rules provide the Commission with the tools it needs to ensure that costs of intervention are monitored and held in check. Indeed, since the EUB adopted more rigorous review of cost claims since 2006, Calgary would be surprised if the total intervention costs have not decreased materially versus previous years.

In this regard, Calgary would suggest all parties and the new Commission members would benefit from a review of total intervention costs. Calgary would request the Commission, in providing its response to submissions on Rule 22, to provide the following information for each year in the period 2003-2007 inclusive:

1. Number of hearings and proceedings in which cost claims were submitted;
2. Total amount of costs and disbursements claimed (including by utilities);
and
3. Total amount of costs and disbursements awarded (including to utilities).

Calgary suggests that until the Commission makes full and proper disclosure of this information, a fair and transparent discussion of Rule 22 cannot take place. In the current process that allows parties to comment on cost recoveries, there is a transparency that would be deleted under the proposed Rule 22.

- 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?

Yes, but this is not a new requirement. In the past, cities and other organizations have been required to show that they were authorized to participate. A resolution of a city council should be defacto demonstration that the City is representing its citizens in the AUC proceedings.

The City of Calgary adds value to AUC proceedings by the inclusion of public policy in its submissions. Authorization for the City's participation is reviewed and approved by a policy committee and City Council. The City of Calgary has contributed to utility hearings by having policy witnesses on the stand.

- 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?

In Calgary's experience there has been very little duplication. Over the years different groups have developed expertise in certain aspects of regulation and they have generally focused on those areas. While two parties may deal with the same subject they may do so from different perspectives thus providing a broader perspective to the Commission. Calgary does not consider this duplication. Intervenors should not be held to any greater standard on duplication than the applicants that seem to have no limitation on the duplication of evidence they present on a subject. The demonstration that a proposed intervention does not contain duplication is likely only possible *ex post*, not *ex ante*.

The problems have generally arisen where a small group(s) has intervened with specific issues and the cost of their intervention has in some cases been a very high percentage of the total intervener cost recovery paid.

The majority of excessive costs and extended hearing time are the result of inconsistent approaches to matters taken by the EUB in the past where rules were not evenly enforced. In particular, Rule 1 section 20(2) is not required of every applicant leading in some cases to significant costs and delays. Similarly, Rule 1 paragraph 15(3) is not enforced with respect to indicating clearly what portions of a document are revised.

As well, and as stated previously, the current Rules give the Commission the ability to refuse unreasonable costs claimed by interveners.

Lastly, given the UCA's resource shortage Calgary would suggest it is the UCA that will need to work with other groups to ensure the issues are properly covered, and not vice versa.

2. The Commission seeks comments on the business interest rule and its application including:
 - Who should be ineligible for cost awards?

Generally, those affected by the outcome of the hearing should have an opportunity to provide input into the hearing process. The opinions of individual residents, farms and small businesses need to have their interest represented collectively and this is to be accomplished by the UCA. There are many organizations and associations that have an interest in the outcome of AUC proceedings. The business rule should only restrict interveners with commercial interests from receiving cost recovery.

There has been much discussion in the past about what exactly is a business interest. Interveners such as municipalities represent collective governmental interests that are clearly not commercial in nature and should not have the business interest rule applied to them.

Utilities intervening in other utilities proceedings should be presumed to have budgeted such costs in their revenue requirements and not be eligible. Cost recovery of interventions by associations of commercial interests is not always a matter that can be decided *ex ante*. Associations which take a broad approach to issues as opposed to lobbying for their members should be evaluated *ex post*.

- 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?

As general rule Calgary would suggest that municipalities should be presumed to represent their citizens and not be subject to the business interest. Interventions by The City of Calgary do not represent commercial interests.

The City of Calgary often charges user fees for the costs of services rendered. If an AUC hearing requires participation by The City of Calgary because the decision will have an impact on the municipality then the intervention by the City is a service made necessary by the application of the utility for an AUC hearing. Therefore the utility requesting the hearing needs to have regulatory costs built into its rate base to cover the costs of The City of Calgary's intervention.

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

Some criteria would be useful but there is likely a need for some flexibility.

- 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?

The City of Calgary has a long history of regulatory interventions. Calgary has focused on issues that impact Calgarians but have benefited customers across the province and across rate groups.

Any standing party demonstrating such experience and expertise should be grandfathered for exemption from the Business Interest rule.

As well, there are a number of proceedings that are currently under way. To stop intervention funding during the hearing or the follow up proceedings is not fair.

The evaluation of the interventions by other organizations not meeting the criterion such as associations can only be done effectively after the proceedings have taken place. The emphasis of groups change over time and so providing a blanket determination is not appropriate.

3. Budgets

- Comment on the current rules of filing of budgets.

They are reasonable.

- Propose any changes to the budget provisions considered necessary.

4. Scale of Costs

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

The intervention costs are driven in large part by the application and the applicant's responses to interrogatories. It is also determined by the time to prepare evidence and witnesses. Is it in the AUC's interest to have poorly prepared parties at hearings?

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

In 1991, the top level scale of costs was set at \$225 per hour. They currently stand at \$250 per hour. On an inflation adjusted basis, the 1991 rates should be at the \$325 per hour level. However, legal rates in Alberta, based upon The City of Calgary's experience in hiring outside counsel and experts, is that these rates have increased faster than the inflation rates.

The utilities have been able to access revenues from customer rates and effectively have not been constrained by the Scale of Costs. There is no reason why consultants representing customers should not be compensated on the same basis. Otherwise, the principal of equality will be violated.

If the Scale of Rates is increased, the Commission will still have the ability to ensure costs are reasonable by reviewing the hours claimed.

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

Yes

5. Costs of Negotiated Settlements

- Whether the costs for negotiated settlements should be treated differently.

No

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

An officer of the Company should be prepared to sign a statement stating what the utility has paid for its legal and outside consultant costs.

6. Proceedings without Cost Recovery

The City of Calgary is concerned over the AUC position on cost recovery for ongoing proceedings such as the "Review of rate related implications of utility asset dispositions following the Supreme Court's Calgary Stores Decision". This proceeding follows an issue that has been deliberated since 2002 with intervener cost recovery allowed. The decision to disallow intervener cost claims on matters that the AUC itself describes as "may have significant, long-lasting implications for utility shareholders, investors and rate payers" will be detrimental to the quality and quantity of substantive submissions and could very well result in inferior decision making.