

ANNE JARMAN, Q.C.
City Solicitor

Mark Young

Darrell Lopushinsky

Barry R. Alloway

Kismet Fung

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Ingrid Johnson

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Debi Piecowye

David S. Woo

Christine D. Maloney

Brian Loewen

Michael D. Teeling

Carl Argo

Jamie Johnson

Nazrina Umarji

Michelle Bohn

Kristen Morley

Student-at-Law

Your File:

Our File:

April 15, 2008

Ms. Giuseppa Bentivegna
Commission Counsel
Alberta Utilities Commission
Fifth Avenue Place
4th Floor, 425 – 1 Street SW
Calgary, Alberta, T2P 3L8

**SUBJECT: City of Edmonton Comments regarding -
AUC Bulletin 2008 -01
CONSULTATION
Review of Rule 022, *Rules on Intervener Costs***

Dear Ms. Bentivegna:

The City of Edmonton wishes to extend its appreciation for this opportunity to provide input to the Commission's review of this important matter. Clearly, the Commission's determinations regarding the Intervener Cost process could be reflected in the public's perception of the credibility and fairness of the Commission's Regulatory process and Decisions, and we find it reassuring that this review is taking place.

1. Role of the Utilities Consumer Advocate (UCA)

UCA's Position:

- UCA will provide primary and comprehensive interventions on behalf of residential, farm, and small business consumers in all applicable cases before the AUC.
 - EDM comment: These groups have inherent differences between them and conflicts will occur.
- UCA will not be requesting intervener cost recovery for its participation in proceedings.
 - EDM comment: UCA funding has been presented under various actual and possible models, including from the Balancing Pool, from Provincial budgets, and as an end-user Distribution charge. The main difference between these sources and the AUC cost recovery process seems to be in terms of openness and accountability, the ultimate payers of UCA's costs seem to be generally the same parties or persons. By removing the UCA

intervention costs from public view, the transparency of the UCA budget process is reduced.

- UCA wishes to be allowed to provide its IR's, evidence, and arguments in advance of other interveners, so as "to avoid duplication".
 - EDM comment: This is evidently an unrealistic concept given the recent requests by UCA that schedules be delayed to accommodate its limited resources when forced to deal with a large number of concurrent Applications. In order to allow enough time for intervenors to review the UCA filings in light of the application and their particular interests prior to their deadline for filing, proceedings may be further delayed. It would not be appropriate to require other intervenors to consider the UCA filings or risk cost disallowances unless sufficient time is provided to those intervenors to do so. If the UCA is seriously concerned about duplications, it might consider making its positions on issues within each proceeding widely known to other interveners as soon as they have been approved by its Governance Board. Those interveners not sharing UCA's positions would then be able to direct their efforts accordingly, possibly bringing forward better overall information for the AUC's consideration, and with a minimum of duplication.

AUC's Questions:

- May other interveners also represent the groups represented by the UCA?
 - Yes. The UCA has acknowledged that there will be situations in which the positions adopted by its Governance Board will not be acceptable to all consumer groups, for any of a number of reasons. UCA's processes for accommodating such situations nominally include the possibility of it bringing forward essentially opposed teams of counsel and experts, subject to the direction of its Governance Board, but this concept is as yet untried, and would be problematic in terms of schedules, resources, and other practical aspects.
- How should conflicting views and positions and conflicts of interest among groups that the UCA has the responsibility of representing be dealt with?
 - Ideally, at least some of these issues will be resolved by the UCA's Governance Board, provided it is sufficiently open and accessible that the reasonableness of its positions can be readily assessed and perhaps accepted by all concerned, and within the tight schedules that apply. Alternatively, there may be issues that can only be adjudicated by the AUC through a hearing process, and this option must be kept available.
- 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?
 - A statement of intention to participate (SIP) or equivalent submission identifying the party represented and the representatives, with a declaration of areas of interest is a reasonable requirement, and may serve to reduce duplicated effort.
- 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 wide-ranging mandate of the UCA, demonstrated by its production of high volumes of detailed Information Requests in major proceedings make this a challenging area. To the extent that other interveners have relatively narrow areas of interest, the possible duplication in submissions should be reduced. It is possible, however, that different parties could reach different conclusions from the same information. Duplications within the hearings (e.g.: in cross examination) should be more obvious and therefore more easily controlled.

2. Business Interest Rule

AUC's Questions

- Who should be ineligible for cost awards?
 - Parties that are clearly competing with Applicants should be excluded from cost awards.
- Should the business interest rule include commercial associations as ineligible?
 - No, provided the associations exist and are active in a context that is not limited to sponsoring regulatory interventions.
- Should the Commission set out criteria regarding application of the business interest rule?
 - Yes, as above.
- Is it appropriate to grandfather existing groups?
 - No, cost awards should not be automatic for any interveners.

3. Budgets

AUC's Questions:

- Comment on the current rules on filing of budgets
 - Budgets tend to be inaccurate, mainly due to the limitations of the information available at the time they are prepared.
 - It is difficult to see how detailed budgets contribute usefully to the overall efficiency or effectiveness of the process.
 - It is to be expected that responsible parties will observe internal budgets so as to be aware (for example) of their potential exposure to disallowances.
 - Early public disclosure of detailed budgets may lock parties in to positions prematurely, eliminating possible cost-reducing compromises.
- Proposed changes?
 - Instead of the detailed budgets, consider use of indicative or order of magnitude budgets.
 - Focus more emphasis on the detailed cost claims submitted and on a critical assessment of useful contributions provided by intervenors.

4. Scale of Costs

AUC's Questions:

- Limits on preparation time based on Hearing Days?
 - Providing limits may tend to suggest a minimum instead of a limit. It may be better to evaluate this in the context of the overall cost claim and contribution to the process.
- Rates for Lawyers and Experts
 - Rates should reflect a Canada-wide average for similar regulatory professionals, updated at two-year intervals.
- Should Scale of Costs apply to technical workshops or collaborative processes?
 - Technical workshops and collaborative processes should be considered with downward adjustments to reflect the context of these, the difficulty of assessing individual contributions, and the possibly lower overhead associated with these processes. These proceedings require more direct participation and observation by AUC staff to ensure that value is correctly determined.

5. Costs of Negotiated Settlements

AUC's Questions:

- Should costs of negotiated settlements be treated differently
 - Although the costs do not need to be treated differently, the selection of participants in the process should be determined by the AUC before the process begins. Self-selection for participation is not appropriate.
- Transparency
 - Some form of regular update communication by the negotiating group to the wider group of interested parties would improve the transparency of the process.

6. Proceedings without Cost Recovery

- No comment

7. Cost Officer

- The Cost Officer's role should be to ensure that the cost claims are assessed in the context of the budgets submitted (minor impact), the level of detail of the claim (medium impact), and the Panel's (and Board Staff's) detailed feedback on the contribution of the intervener to the proceeding. Disallowances should be severe where clearly justified.

Thank you for considering our comments in your consultation. If you have any questions about the above, please contact the writer.

Sincerely,



Claudia Pooli
Barrister and Solicitor
496-8069
e-mail: Claudia.pooli@edmonton.ca