



April 15, 2008

Alberta Utilities Commission
Fifth Avenue Place
#400, 425-1 Street SW
Calgary, Alberta
T2P 3L8

Attention: Giuseppa Bentivegna
 Commission Counsel

Dear Ms. Bentivegna,

Re: Bulletin 2008-01
 Review of Rule 022, Rules on Intervener Costs

EPCOR Utilities Inc. (“EPCOR”) is pleased to provide the following comments in respect of the referenced document (“the Bulletin”) that was issued by the Alberta Utilities Commission (“AUC” or “Commission”) on March 20, 2008. EPCOR has previously participated in the Commission’s initial consultation process on intervener costs in December 2007 and is supportive of the AUC’s ongoing efforts to improve and enhance the efficiency of the regulatory process.

EPCOR’s comments and perspectives on the issues outlined in the Bulletin are discussed below.

1. Role of the Utilities Consumer Advocate (“UCA”)

As suggested in the initial consultation process, EPCOR requests that the proposed rules on intervenor costs include further specification that costs are not to be awarded to participants representing the same interest. Schedule 13.1 of the Government Organization Act states that, “the Office of the Utilities Consumer Advocate has responsibilities to represent the interests of Alberta residential, farm and small business consumers of electricity and natural gas before proceedings of the Alberta Utilities Commission and other bodies whose decisions may affect the interests of those consumers.” Within this mandate, the UCA is required to represent these groups but the Regulation is ambiguous whether the UCA is obligated to present one convergent point of view. The UCA cannot effectively represent conflicting views; therefore it should be required to take a clear single view. If the groups that the UCA represent have a divergent view point than that advanced by the UCA, it should be the responsibility of the UCA to

meet with these groups in advance of any proceeding to reach a common position. In the previous EUB Directive 31B, section 5.2 referred to Cooperation amongst Parties and it may be in the best interest of all parties if this section be revisited and reinstated within the framework of Rule 022.

Should the groups not come to a common position with the UCA and continue to participate in a proceeding, it is expected that they would address in any cost submission their participation and why the UCA could not adequately represent their interests. The final rule should place the onus of demonstrating the value produced through the divergent representation on the group.

Any group funded through cost awards should be required to provide evidence demonstrating why they are intervening, including a test of duplicative representation. As stated in Section 9.2 b and c of the rules, groups should make “reasonable efforts to ensure participant’s evidence was not unduly repetitive of evidence presented by another participant” and there should be an effort to “reduce the duplication of evidence and questions or to combine the participant’s submission with that of similarly interested participants”. To date, duplication in intervenor representation and questions have not always been prevented thereby affecting any associated cost claims. The lack of a budget provided by the UCA has not assisted the AUC in avoiding duplication and managing costs of a proceeding.

2. Business Interest Rule

EPCOR is in agreement that ratepayers should not bear the costs for parties participating in Commission hearings to solely represent their own business interest. The business interest rule has not been applied to associations that represent commercial interests. This practice should continue. If the rule is changed to have a broader application and include these groups, overall costs to consumers will increase. In fact, the rule should also be extended to associations that represent the business interests of large commercial consumers. Large commercial groups support their own business interest and ratepayers should not have to bear the costs for these parties.

EPCOR feels the Commission should continue to be diligent in reviewing all cost claims for inclusion of non-regulatory costs.

3. Budgets

Budgets should continue to be required from all parties that intend to submit cost claims when participating in a hearing or proceeding as outlined in section 4.1.

4. Scale of Costs

Currently, the Scale of Costs provides a sliding scale for professionals reflecting their fees relative to the years of experience and expertise. The universal scale of costs has not been revisited for utilities since 2001 and a review of the fee structure for

professionals such as lawyers and consultants would be timely and appropriate. The review should ensure that the professional fees assessed would only be for work provided in a regulatory process. An adjustment can be made to align the Scale of Costs as a result of a review with more current rates and in addition, include a mechanism that can increase the fees relative to an inflation factor on a yearly basis.

A review of the maximum allowable claims for Disbursements, such as accommodations and meals, would also be timely and appropriate.

5. Costs of Negotiated Settlements

Costs associated with a negotiated settlement should continue to be dealt with in the same manner as the other litigated cost claims.

In respect to the transparency of the process, the rationale is that all parties that enter into a negotiated settlement process negotiate in good faith with intentions to settle. As noted in the previous Directive 018, Section 4.1, an AUC representative could provide relevant input and comment on the value provided by the parties. EPCOR suggests that this point be reinstated under Rule 018, section 5, allowing these individuals to provide more guidance as to the effectiveness of the process in greater detail. Currently with a lack of incentives to settle, the concern is that the costs claimed would increase as a result of a combination of a failed settlement and a subsequent hearing.

6. Proceedings without Cost Recovery

The examples given of proceedings in which cost recovery has not been allowed by the EUB has been related to Pipeline and Gas reviews or inquiries. Proceedings without cost recovery would be appropriate in circumstances where the AUC would be interested in receiving the viewpoints on broad industry policy issues. Groups that choose to participate would do so under the understanding that no group would be eligible for cost recovery. The AUC would clearly outline this point in the notification.

7. Costs Officer

EPCOR has no concerns with the role of the Costs Officer.

In summary, EPCOR feels that the course of action that is determined in this process could be favourable in augmenting and reinforcing the Commission's existing discretion and authority to scrutinize intervenor costs. As noted in EUB Utility Cost Order 2007-009,

“Before exercising its discretion to award costs, the Board must consider the effectiveness of a participant's contribution to the process, its relevance to the issues, and whether the costs claimed are fair and reasonable in light of the scope and nature of the issues in question.”

When determining a cost award, the Board will consider if the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board. To the extent reasonably possible, the Board will be mindful of participants' willingness to co-operate with the Board and other participants to promote an efficient and cost-effective proceeding.

As the costs of a utility proceeding are generally passed on to customers, it is the Board's duty to ensure that customers receive fair value for a party's contribution."

If the AUC follows these basic guiding principles when assessing a cost claim and is satisfied that the costs associated with the claim are legitimate, the ratepayer will not unduly be burdened with any extra costs.

EPCOR appreciates the opportunity to provide additional comments during the consultation process on Rule 022 and values the efforts made by the AUC to ensure that the processes in place are fair and costs are not awarded in an arbitrary manner.

If you would like to discuss these comments further, please feel free to contact me at 780-412-3361 or via email at pwong@epcor.ca.

Regards,

<Original Signed By>

Pat Wong
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EPCOR Utilities Inc.