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Alberta Utilities Commission
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Attention: Giuseppa Bentivegna, Commission Counsel

CONSULTATION TO REVIEW RULE 022, RULES ON INTERVENER COSTS

We write further to the request for comments issued by the Alberta Utilities Commission (Commission) in Bulletin 2008-01 (Bulletin) regarding a review of Rule 022 *Rules on Intervener Costs*. FortisAlberta is one of the participants directly affected by Rule 022 and therefore submits the following comments regarding the Commission's specific questions as detailed in the Bulletin.

FortisAlberta's comments are based upon the regulatory principles of (i) transparency of the regulatory process and its costs, and (ii) the opportunity to recover reasonable and prudent costs. Per its obligation to serve, a utility such as FortisAlberta has a legal obligation to file a tariff and other applications, and has a legal right to have the opportunity to recover all prudent costs it incurs as an applicant in meeting its obligations.

1. Role of the Utilities Consumer Advocate (UCA)

FortisAlberta does not read Schedule 13.1 of the *Government Organization Act* as stating or implying that only the UCA may represent the listed groups. That said, the overall cost of representing such groups must be transparent, reasonable and not duplicative.

It is appropriate that each participant demonstrates who they represent and how their participation may differ from other similar groups. If the UCA and other interveners represent the same groups, it is essentially up to those parties to define, to the satisfaction of the Commission, how they will work together and resolve conflicts.

Conflicting views and positions may not always represent actual conflicts of interest, but can arise from other factors such as professional preference or previously advocated positions. Specific conflicts of interest are best dealt with in the normal course by

separate and independent representation, with separate and independent instructions to such representatives.

2. Business Interest Rule

Application of the Business Interest Rule

Blanket ineligibility for cost awards does not appear appropriate for certain proceedings such as Phase II proceedings which focus on cost allocations among customer groups. However, a more restrictive cost awards regime could be instituted where customer interests better align, such as in Phase I matters. These distinctions may not be completely clear in every application and Commission judgement regarding potential duplication will still be required.

Setting criteria should help both the Commission and interveners in determining the appropriate application of the business interest rule. The criteria should include:

- meaningful participation by the intervener;
- cost ineligibility for ‘monitoring’ proceedings;
- no duplication among interveners (i.e. coordination should be encouraged);
- different rules for participation in Phase I and Phase II applications; and
- distribution utilities that represent the interests of customers should be eligible for cost awards if their participation reduces costs or improves clarity for customers. (For example, owners of electric distribution systems have duties under the *Electric Utilities Act* to arrange and pay for system access service from the ISO on behalf of end-use customers in their service area.)

Applying the business interest rule to government-funded bodies, or associations thereof, would serve to treat such bodies similar to the UCA. Persons in positions of responsibility for the prudent expenditure of public monies will make decisions as to what and where monies should be spent. Similarly, discipline within commercial enterprises will, in the normal course, prioritize allocation of resources.

Grandfathering Intervenors

The electricity market structure and issues arising therein have continuously evolved. Thus, grandfathering intervenors *per se* may not be appropriate. However, it would be expected that existing groups, with their background and experience, would remain as the groups most useful to the Commission in determining matters, at least in the near term.

If the Commission adjudges that some form of grandfathering is appropriate, it should be based upon an assessment of the assistance it has received from intervenors in determining issues in past and current proceedings.

3. Budgets

If budgets are to be required of some participants, they should be required of all such participants eligible for and intending to file a cost claim. In addition, the UCA should submit at least what has been approved by the UCA Governance Board, so that other

participants and the Commission may know the areas to be covered and experts to be retained by the UCA, in order to assess and minimize duplication.

The discipline and detail of early budgeting can help the Commission assess and influence meaningful coordination among participants. This will, in turn, produce an efficient process.

4. Scale of Costs

Limiting preparation time claimed based on the number of hearing days has an element of hindsight. Proceedings often see certain issues only raised in cross-examination while others are largely argued through pre-hearing evidentiary filings. Other pre-set criteria that could be incorporated into the Scale of Costs may have similar shortcomings.

The Scale of Costs should be expanded to apply to pre-hearing technical workshops and collaborative processes. In FortisAlberta's experience, workshops and collaboration have assisted with streamlining regulatory processes by narrowing issues and reaching resolutions in a cost-effective manner. Therefore, participation in these processes should be encouraged. Costs for such participation should be tracked by participants and applied to the relevant application. Cost recovery, as always, would be subject to the Commission's assessment of prudence and assistance in engendering an efficient process.

The Scale of Costs rates for professionals have not remained competitive with market rates and are now well out of date. Based on the principles articulated above, there is no justification for a utility being arbitrarily denied full recovery of the costs it must incur to prepare and present its case. Therefore, the Scale of Costs rates should be revised to reflect market rates and an ongoing review or adjustment mechanism should be considered.

5. Costs of Negotiated Settlements

Negotiated settlements should be eligible for such cost awards as provided by the general cost award regime adopted by the Commission. The negotiated settlement process, if it results in a settlement, is a more cost effective approach than litigation. Furthermore, even when a full settlement is not reached, issues are often narrowed and better understood for the subsequent hearing process.

In terms of transparency, the current regime of Commission observer participation and settlement briefs is largely sufficient. However, if the Commission wishes to improve upon the transparency of the negotiated settlement process, a Commission observer could attend *all* settlement discussions.

6. Proceedings without Cost Recovery

FortisAlberta is not sufficiently apprised of the issues and reasons for Application Nos. 1513726 and 1466609 to be able to comment on the appropriateness of the process surrounding these applications.

Regarding the current Generic Cost of Capital Preliminary Questions proceeding, utilities were requested by the Commission to participate, consistent with the obligation of utilities to file tariffs that include the cost of capital. Such a proceeding should be subject to whatever cost claim regime the Commission adopts.

7. Costs Officer

A cost officer would be useful in determining preliminary cost eligibility and would provide a signal to parties to collaborate where it appears intervention would be duplicative.

Sincerely,

“original signed”

Cynthia Johnston
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