

Appendix I

Public Statements that the Rights to Intervention and Effective Representation in Utility Rate Proceedings will continue

Gas Alberta perceives an alarming trend developing with respect to the handling of cost recovery by the AUC. The two examples cited by the Commission with respect to issue 6 “Proceedings Without Cost Recovery” in Bulletin 2008-01 as well as the Commission’s Notice dated April 2, 2008 in application 1566373 are examples of proceedings in which it has been determined that no cost recovery will be available. In Gas Alberta’s view, denying cost recovery for interveners, effectively denies them of their voice and puts consumers at risk that the Commission will hear only from the utilities themselves, the Commission’s staff and the UCA. It is self evident that the expert staff, consultants and legal counsel of all of those parties will be compensated. Similarly core market interveners do not have the resources or the expertise to participate without hired assistance. Gas Alberta does not consider that this exclusionary model will provide sufficient protection for consumers and that the Commission’s ability to truly make decisions in the public interest will be compromised.

Gas Alberta also considers this trend to be completely contrary to the many assurances that were made to Albertans both by the heads of the EUB and AUC as well as government MLA’s and Ministers to the effect that consumers’ rights to intervention and effective representation would continue as before. Gas Alberta would urge the Commission to make future cost recovery decisions in keeping with the promises that had been made to Albertans.

Promises and assurances made by the EUB and the AUC

Neil McCrank

In a news release dated February 21, 2007, outgoing chairman Neil McCrank was quoted as saying: “I am most proud of how the EUB has become more open to the public we serve... Albertans are more engaged and better informed than they have ever been.”¹

In Gas Alberta’s view, restricting cost recovery will lead to Albertans being less engaged and less informed. The regulatory process will become more restrictive and closed.

¹ A copy of the February 21, 2007 news release is attached.

Willie Grieve

In a news release dated April 9, 2008², new AUC chairman Willie Grieve is quoted as follows:

“The single most important thing is you make sure people’s rights are respected and their interests are recognized”. Mr. Grieve is also quoted in the same article as stating, “You have to make sure you are fair and transparent, and as fair and transparent as you can be, to hear all the arguments....”

Gas Alberta agrees with the Chairman’s statements, and asserts that its rights and interests cannot be effectively understood and its voice cannot continue to be heard, without access to cost recovery for responsible interventions.

Statements In Hansard

The debate in the legislature regarding Bill 46 (which in its amended form became the *Alberta Utilities Commission Act*) included concerns regarding the potential for restricting representation and cost recovery for consumers before the regulator. The government responded with some amendments aimed at least in part at quieting those concerns. The introduction of these amendments was accompanied by several statements by members of the government apparently intended to provide reassurance and comfort to Albertans that these fears were without basis.

Mr. Vanderburg

Excerpt From Alberta Hansard December 3, 2007³

...Mr. Chairman, I’d like to talk about intervenor funding. Before the amendments were introduced, the AUC act stated that the intervenor funding for participation in the AUC hearings or in other proceedings would be reserved for local intervenors; in other words, directly or adversely affected landowners. Other intervenors would have the ability to participate but would have responsibility for their own costs. Other intervenors would have been able to participate but would have been responsible for their own costs. I wanted to repeat that because there are some cloudy issues around that clause.

² A copy of the April 9, 2008 Edmonton Journal Article is attached.

³ See excerpt from Hansard for Dec. 3, 2008 attached.

Again, this is a case where Albertans have expressed their concern and we have responded. Section 21 is being amended to allow the Alberta utilities commission the discretion to provide funding to a local intervenor or other intervenors in any hearing or other proceeding, just as the EUB does today. This allows the AUC the ability to provide any intervenor with funding to ensure that the public interest is considered in the AUC decisions. The right and opportunity for parties to intervene in proceedings has not been restricted in any way. In fact, this amendment to section 21 gives the AUC the discretion to provide funding to any third-party intervenors for participation in any hearings or proceedings...

...Independent consumer groups will continue to participate at rate hearings and can apply for funding to help cover their costs, just as they do today...

Mr. Graydon

Excerpt from Alberta Hansard, December 4, 2007⁴

...Mr. Chairman, in developing Bill 46, government has carefully considered the concerns of all stakeholders, including those raised by landowners, consumer groups, various associations, and municipalities. The Minister of Energy has listened and responded with amendments to Bill 46. These amendments...will ensure that Albertans have the opportunity to be heard ...and allows all intervenors to be eligible for funding in regulatory hearings. (emphasis added)

Summary of Gas Alberta's Position

Gas Alberta would urge the Commission to make its decisions on cost recovery in a manner consistent with the representations made to Albertans. Cost recovery for intervenors is important to ensure that Albertans have a real opportunity to be heard, and to influence decisions that affect them. A restrictive approach to cost recovery stifles the voice of Albertans and closes the doors of the Commission's offices in their face.

⁴ See excerpt from Hansard for Dec. 4, 2008 attached.

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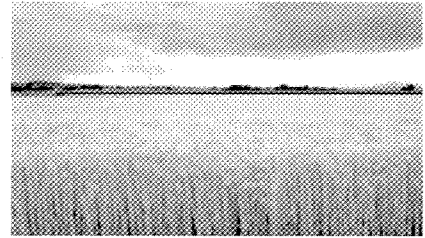
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News Release

FOR IMMEDIATE RELEASE

EUB CHAIRMAN NEIL McCRANK ANNOUNCES RETIREMENT

Calgary, Alberta (February 21, 2007) Neil McCrank, Chairman of the Alberta Energy and Utilities Board (EUB), will be retiring on March 31, 2007, after nearly nine years with the EUB, and a total of thirty-four years of public service in Alberta and Ontario.

"I am most proud of how the EUB has become more open to the public we serve," McCrank said. "The EUB has played a significant role in increasing the public's awareness of energy and utility issues. Albertans are more engaged and better informed than they have ever been."

"I have great respect and admiration for the staff and Board members I have served with at the EUB," McCrank added. "We are widely regarded as a world-class regulator, and our people are the reason why."

"I would like to thank Neil for his service to Albertans as Chairman of the Board during this period of unprecedented growth in our energy sector," said Energy Minister Mel Knight. "His leadership of the EUB will certainly be missed, and on behalf of my colleagues in government, I wish him all the best in his retirement."

EUB Board Member Brad McManus will take on the role of Acting Chairman until McCrank's replacement has been appointed. The government will undertake a comprehensive executive search to select a new chairman for the EUB. Information about recruitment to this position will be posted March 2, 2007 at www.pao.gov.ab.ca/jobs.

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McCrank was appointed Chairman of the EUB in 1998. After coming to Alberta in 1979 to work with the Alberta Attorney General, he served as a Special Prosecutor, Assistant Deputy Minister for the Criminal Justice Division, Deputy Attorney General, and Deputy Minister for the Alberta Department of Justice until his appointment to the EUB. Prior to his public service career in Alberta, Mr. McCrank worked with the Province of Ontario and spent several years with a private law firm in Toronto.

The EUB ensures that the discovery, development, and delivery of Alberta's energy resources and utility services take place in a manner that is fair, responsible, and in the public interest.

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This news release and attached backgrounder are available on the AUC Web site at www.auc.ab.ca.

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NR 2007-06

New utilities boss eager to prove his mettle; Willie Grieve says respecting people's rights, recognizing their interests are his priorities as the new chair of Alberta Utilities Commission

The Edmonton Journal Wed 09 Apr 2008 Page: A15 Section: Ideas Clippings April 9, 2008 7

Byline: Geoffrey Scotton Source: Calgary Herald

Alberta Utilities Commission chairman Willie Grieve says the new organization has a lot to learn amidst mushrooming growth in Alberta's utilities sector -- and will prove its objectivity and independence through its actions.

"With those cases that are coming before us, it's going to be a fair amount of work and it's going to be a fair amount of learning for people," said Grieve, who took over the new job Feb. 1.

The interview was part of Grieve's debut in Calgary, as the regulator threw open the doors on its new downtown Calgary headquarters for a reception for 200 of the city's most powerful politicians and business people.

Grieve, 54, with shoulder-length silver hair, a gravelly voice, quick sense of humour and apparently an eye for ties, doesn't come across as your average utility regulator.

But he certainly knows the role.

"The single most important thing is you make sure people's rights are respected and their interests are recognized," said Grieve, still unpacking boxes in his new office.

"You have to make sure you are fair and transparent, and as fair and transparent as you can be, to hear all of the arguments that you need to hear and you need to make your decisions very clear and why you made them."

Grieve, a former vice-president of regulatory affairs at Telus Corp., comes into a tough job as the first chair of the AUC, which is itself a successor to the Alberta Energy and Utilities Board (EUB), and which will regulate electricity and other utility matters, including transmission and power market competitive behaviour.

"I understand economic regulation, which is, of course, what this organization is mostly about," Grieve says.

The EUB's final days were spent being dismantled to create the AUC and the Energy Resources Conservation Board, and were tainted by its own admission it had spied on landowners opposed to a massive transmission project it was adjudicating.

A provincial court subsequently found the supposedly objective EUB had created a reasonable apprehension of bias and the transmission project itself -- considered by many to be critical -- went into limbo.

In addition, the concept of the AUC and the splitting of the EUB -- which predated the EUB scandal -- also became politically charged in the heated debate around its enabling legislation, Bill 46, the Alberta Utilities Commission Act.

Grieve pledges that the AUC will build its own reputation, and that will be unassailable.

"I don't know that there's any way that you can assure people upfront," Grieve observes. You can tell them that you're going to be open, transparent and fair and you can tell them that's your reputation ... but you really have to demonstrate it.

"You really have to go out and show people that you mean what you say and that you're going to do the things you say you're going to do. I guess it's a 'just watch me.' " Although much of Grieve's background is in telecom, he brings good experience to the job, says Jim Wachowich, an Edmonton lawyer who has represented the Consumers' Coalition of Alberta in utility hearings.

"I have crossed paths with him. This is a guy with a tremendous depth of experience in telecom regulatory issues," said Wachowich.

"This guy has been through a pretty big regulatory event that few in Canada have."

Grieve said the AUC's work will revolve around three key areas: traditional utility rate regulation, the location of generation and transmission facilities, and the adjudication of cases of allegations of rule-breaking in Alberta's wholesale electricity.

He is open to new ways of doing things, which will come as a relief to an generating industry that is clamouring for more transmission but has been stymied by expensive, laborious and glacially-slow regulatory processes.

"One of the things you'll see from us is some new processes to speed things up, some expedited processes that the commission didn't have before, new approaches to getting to the answers more quickly," said Grieve.

Rate-making, in particular, may get a makeover. "We've had basically the same regulatory approach to rate-making for many, many years ... we're quite interested in considering applications to do things in new ways."

Right now, the AUC is considering some generic proceedings around what principles it will apply and how they will be applied.

"Principle is going to be established early," said Grieve. "They're going to affect how things are going to be done and we want to make sure that people understand that they've been heard, that we've given a decision and that we're going to consistently apply it."

amendments identified as A through X be treated as a package for the committee and one vote, sir. The majority of the amendments are housekeeping in nature; they address the need for consistency in language and intent between this bill and existing energy regulation legislation.

The Deputy Chair: Hon. member, you know, we are in a committee stage, where we technically go line by line. Unless there's an agreement between both sides of the House, the Chair is obliged to have a vote individually on separate sections.

Hon. Member for Whitecourt-Ste-Anne, you may proceed.

Mr. VanderBurg: The majority of these amendments are housekeeping in nature. They address the need for consistency in language and intent between this bill and the existing energy regulation legislation, such as the Gas Utilities Act and the Electric Utilities Act. This is an intricate bill. Because it works together with other legislation, it's important to consider it in its entirety, not by individual clauses and certainly not out of context, as some have chosen to do. I ask that the amendments be considered in the same manner, in their entirety. Since they were tabled in the House a week ago, I trust that others have had the opportunity to review them in detail so that they may be considered as a package.

I spoke to this bill in second reading. I want to confirm my full support for the legislation. During my time today I'd like to highlight some of the key amendments government has proposed. As we all know, Mr. Chair, the Minister of Energy tabled the government's amendments to Bill 46 last week during question period. Listening to Albertans and hearing what they have to say is an integral part of the legislative process. We listened to landowners. We heard from Albertans, and we responded with changes.

Key amendments will answer Albertans' concerns about landowner participation in utility hearings and allow third parties to apply for funding when they intervene. To be clear, Bill 46 hearings must be held on all infrastructure applications where the rights of an individual may be directly or adversely affected. All interested parties will have the right to be notified of the facts, to participate in the hearing if they wish, to be represented by counsel if they choose, and to appeal questions of law or jurisdictions to the court.

Mr. Chair, I'd like to go through some of the key amendments during my time this evening. The way it was originally proposed, the AUC would make a decision without holding a hearing if it appears that no person will be directly or adversely affected in a material way by that decision. We have responded to the landowners' concerns. Section 9(3)(b), which uses the phrase "in a material way," has been removed. The intent of this section was to improve the regulatory process for infrastructure applications that have had minimal or no impact on people. Clearly, I'm not referring to major transmission infrastructure projects, that would impact Albertans. However, by removing this section, stakeholders can be confident that they'll be able to make their case to the regulator if they believe that they are directly or adversely affected.

This amendment ensures that those who are directly and adversely affected will be able to express their concerns to the regulator as part of the hearing process. In addition, section 9 goes on to state that the AUC shall provide the opportunity for parties to receive notice and the opportunity to learn all the facts about the application – that refers to section 9(2)(a) and (b), Mr. Chair – and that a public hearing be held if any person's rights may be directly or adversely affected by an AUC decision. That's section 9(2)(c).

9:40

I also want to comment about 9(4). The section reads:

Where a person is entitled to make representations to the Commission, the Commission is not required by subsection (2) to afford an opportunity to a person to make oral representations, or to be represented by counsel, if the Commission affords the person an adequate opportunity to make representations in writing.

Now, some parties have expressed concern over this point. They are concerned that landowners would not be able to present their views unless it was given by oral presentation. Section 9(4) of Bill 46 does give the AUC the ability to require testimony in written rather than oral format. This may be appropriate in certain circumstances, as in highly technical matters such as the determination of gas cost ratios. The current regulator has used the written format for hearings previously, and it has been successful. Some say this will be used to limit landowners' participation. Mr. Chairman, this is not the case. Keep in mind that this provision exists today – this is not a change from routine powers granted under the existing legislation – and that is section 40 of the PUB act.

In Bill 46 the commission has the authority under sections 91(1)(e) to make rules of practice governing hearings. The AUC will make rules surrounding hearings and proceedings, and rules regarding oral hearings will be developed in a transparent process with public input. As with any legislation it must be looked at in its entirety. Each section builds on the next, creating a clear set of rules. A clear set of rules.

Mr. Chairman, I'd like to talk about intervenor funding. Before the amendments were introduced, the AUC act stated that the intervenor funding for participation in the AUC hearings or in other proceedings would be reserved for local intervenors; in other words, directly or adversely affected landowners. Other intervenors would have the ability to participate but would have responsibility for their own costs. Other intervenors would have been able to participate but would have been responsible for their own costs. I wanted to repeat that because there are some cloudy issues around that clause.

Again, this is a case where Albertans have expressed their concern and we have responded. Section 21 is being amended to allow the Alberta utilities commission the discretion to provide funding to a local intervenor or other intervenors in any hearing or other proceeding, just as the EUB does today. This allows the AUC the ability to provide any intervenor with funding to ensure that the public interest is considered in the AUC decisions. The right and opportunity for parties to intervene in proceedings has not been restricted in any way. In fact, this amendment to section 21 gives the AUC the discretion to provide funding to any third-party intervenors for participation in any hearings or proceedings.

Mr. Chairman, the Utilities Consumer Advocate, part 5. There were many concerns raised about Bill 46 establishing the UCA as part of the Alberta utilities commission and setting out its responsibilities. In response, the amendments we have introduced will remove the section of the act relating to the Utilities Consumer Advocate. The UCA will remain within Service Alberta, separate from the Alberta utilities commission and will continue to effectively represent Albertans at rate hearings. Independent consumer groups will continue to participate at rate hearings and can apply for funding to help cover their costs, just as they do today.

I would like to say that a majority of consumer groups, five of seven, have been part of a stakeholder consultation over the past few months and should be commended for providing their members and Albertans with excellent representation. Albertans can be confident that the Utilities Consumer Advocate will continue to represent the interests of electricity and natural gas small consumers. That's residential and small businesses and agriculture in Alberta. The UCA team works diligently to ensure that small consumers have the information and representation they need to assist them to make

Legislative Assembly of Alberta

Title: **Tuesday, December 4, 2007**

8:00 p.m.

Date: 2007/12/04

head: **Government Bills and Orders
Committee of the Whole**

[Mr. Marz in the chair]

The Chair: I'd like to call the Committee of the Whole to order.

Bill 46 Alberta Utilities Commission Act

The Chair: When we adjourned, the hon. Member for Grande Prairie-Wapiti had started speaking. Did you have other comments to continue on?

Mr. Graydon: Yes, Mr. Chairman. Thank you.

The Chair: The hon. Member for Grande Prairie-Wapiti.

Mr. Graydon: Well, thank you. Over the break I had many hon. members approach me and say they were anxious to get back in to hear the balance of my comments, so I will continue now. The new Energy Resources Conservation Board will focus on the responsible development of Alberta's resource wealth, ensuring that the production of our province's oil and gas, oil sands, coal-bed methane, and other resources occur safely and in the public interest. The new Alberta utilities commission will oversee the distribution and sale of electricity and retail natural gas to Alberta consumers and will make decisions on new transmission facilities.

Mr. Chairman, it has been said before but it bears repeating: under Bill 46 hearings must – must – be held on all infrastructure applications where the rights of an individual may be directly and adversely affected. All interested parties have the right to be notified of the facts, to participate in a hearing, to be represented by counsel if they wish, and to appeal questions of law or jurisdiction to the courts.

I would like to use the balance of my allotted time to focus my comments on the mandate of the Alberta utilities commission, specifically section 17. A summary of section 17 states that where the commission conducts a hearing, it shall give consideration to whether construction or operation of the proposed development is in the public interest having regard to the social and economic effects of the development. This means that Bill 46 explicitly requires the Alberta utilities commission to consider whether a proposed development is in the public interest and to take into account its social, economic, and environmental effects. It will not only maintain the current rights afforded to landowners and intervenors but adds an additional layer of consideration. Section 17 expands on the checks and balances currently in place.

Mr. Chairman, in developing Bill 46, government has carefully considered the concerns of all stakeholders, including those raised by landowners, consumer groups, various associations, and municipalities. The Minister of Energy has listened and responded with amendments to Bill 46. These amendments and the addition of section 17 will ensure that Albertans have the opportunity to be heard when the regulator considers the need for major infrastructure projects, such as transmission lines, and allows all intervenors to be eligible for funding in regulatory hearings.

Mr. Chairman, Bill 46 strikes a balance between the need to ensure there is enough power for Albertans and ensuring that development is carried out in a responsible manner. We will ensure fairness and efficiency when it comes to regulating Alberta's

electricity marketplace. I am confident that Bill 46 will preserve the rights of affected individuals and intervenors while ensuring that the interests of all Albertans are met. For those reasons I'm pleased to offer my support for Bill 46.

Thank you, Mr. Chairman.

The Chair: The hon. Member for Edmonton-Gold Bar.

Mr. MacDonald: Thank you very much, Mr. Chairman. It's interesting to listen to all the discussion here at committee. When we look at these amendments in the time that we have left, certainly I for one am not convinced that this is adequate or necessary. It's not an adequate or necessary debate on this bill nor are the reasons put forward by the government members as to why we should go ahead with this bill at this time. There is just too much wrong with this legislation for us to proceed.

Now, the hon. member previous talked about public interest in section 17, but certainly that section should be amended, Mr. Chairman. In fact, I'm really disappointed that that wasn't one of the long list of amendments that was provided by the government. A portion of this that should be removed and replaced would be the last portion of section 17, which reads, "is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment." I think we should consider tightening that up, that entire section.

Section 18 – and we're obviously not going to have time – should be amended, and we should give due consideration to section 18(2), which talks about the giving of contradictory evidence. We still don't have an explanation for that. I see the Minister of Energy in the House, Mr. Chairman, with his coat off. He must be very excited after carrying in all the regulations that go along with this bill. He had to remove his coat because of that hard, diligent work. I'm certain at the end of this debate he must be going to table all the regulations.

Now, an amendment that certainly should be made is section 24. I'm very disappointed that section 24 isn't going to be amended. In fact, it should not be amended; it should be just deleted in its entirety. This bill as we allow it to continue in the Assembly in this form controls landowners and consumers, but it doesn't control generators of electricity nor the transmission organizations, and that is wrong. That's wrong. There are two sides of this to have a good regulatory system that's in balance, and this is not the proper balance. Certainly, we talked about this before. There should be an amendment to the period of 10 days from which one has time to make an appeal. It should be increased to 90 days. The appeals from the commission, section 29(2), should be amended as well from 30 days to 90 days.

When we use closure, we don't have time to even try to improve this flawed legislation. The exclusion of the judicial review: people have talked about this, previous speakers. Part 5 is going to be amended, and I for one think it should be. We can go through this. Part 6 is the Market Surveillance Administrator. This whole section hasn't even been touched in the limited discussions that we have had on the role of the Market Surveillance Administrator. I for one think that the Market Surveillance Administrator should come under the Auditor General Act, but it doesn't, and I'm puzzled as to why. I know the government is sensitive about the Auditor General since the report came out on the royalties and how they are or are not handled by the department, but I for one would certainly like to have seen that section amended to put the Market Surveillance Administrator and his department under the watchful eye of our Auditor General.