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April 15, 2008

VIA FACSIMILE: giuseppa.bentivegna@auc.ab.ca

Alberta Utilities Commission
Fifth Avenue Place,
4th Floor, 425 - 1 Street SW
Calgary, Alberta, T2P 3L8

**Attention: Ms. Guiseppa Bentivegna,
Commission Counsel**

Dear Ms. Bentivegna:

RE: CONSULTATION: Review of Rule 022, Rules on Intervenor Costs

Gas Alberta is in receipt of the Commission's request for submissions on Intervenor costs. Gas Alberta welcomes the Commission's consultation and will now provide its comments on the seven issues, as set out by the Commission.

1. Role of the Utilities Consumer Advocate (UCA)

Gas Alberta does not believe that the UCA should or can be the only intervener allowed to represent residential, farm, or small business consumers in all applicable cases before the AUC. It is self evident that these groups do not always have the same or even similar interests, particularly in Phase II matters, and even at times in Phase I. Further, over time one or more consumer groups may have developed a particular expertise, or body of knowledge and/or evidence of which the UCA may not be fully cognizant.

Neither Schedule 13.1 of the *Government Organization Act* nor any other legislation provides that the UCA shall have the exclusive right to represent residential, farm and small business consumers. It is noteworthy in fact, that the government amended Bill 46 before it was passed, to remove provisions¹ that would have effectively raised the UCA into a pre-eminent position

¹ Part 5 in Bill 46 as introduced at first reading, dealing specifically with the Office of the Utilities Consumer Advocate was removed, including section 39, the specific provision referred to.

among interveners, including *inter alia*, a provision that would have allowed the UCA to recommend when other interveners ought to be granted funding. These provisions were removed in response to the concerns of Albertans, and the rational conclusion is that the legislative intent was in keeping with promises made at the time to Albertans by its elected officials². That is, that the rights of Albertans to intervene in regulatory matters including their right to cost recovery would continue as before.

Further the right of a municipality to intervene in a regulatory proceeding to represent the interests of the public within that municipality or a considerable portion of it continues to be expressly enshrined in sections 58 of the *Gas Utilities Act* and 78.2 of the *Public Utilities Act*, despite the recent amendments to those statutes. These express rights are entirely inconsistent with the notion that only the UCA should be permitted to intervene to represent farmers, small business owners or residential customers.

Gas Alberta considers that the UCA could be of most assistance to the Commission and interested parties by assuming leadership in pursuing issues that are of general interest to all customers that are included in the UCA's mandate to serve but which require expensive experts to provide evidence. Examples of areas requiring such expertise are rate of return³, cost of debt, brushing, reliability, incentive plans and depreciation, and there are many other issues which typically arise in every general rate application.

The Commission should not expect the UCA to duplicate evidence and examination on issues that are of interest to only one intervenor and/or require expertise specific to that intervenor. For example, Gas Alberta's member/shareholders operate rural gas distribution systems and have special expertise in this area. As Core Customers, direct users and transporters on natural gas pipelines, Gas Alberta often has issues with transmission utilities that would not be of immediate or apparent concern to those indirect customers served through investor-owned and operated distribution systems.

The Commission has specifically requested that parties comment on the following request of the UCA:

“The UCA would recommend that, in order to avoid the duplication of positions before the AUC, and in order to avoid placing parties at risk of disallowance due to duplication of positions taken by the UCA, that the UCA provide its information requests, evidence and arguments in advance of other interveners.”

While Gas Alberta sees no compelling reason for the UCA to file its information requests and/or evidence prior to any other intervenor it does believe that open communication on issues is important to avoid duplication. Gas Alberta notes that the current regulatory timelines do not

² See Appendix I attached for several public assurances that denial of cost recovery would not be used as a means to effectively remove the ability of segments of the Alberta public to have their views and interests be heard and considered.

³ As for example, in ATCO's recent GRA's looking for a departure from generic treatment.

permit the UCA to file an advanced copy of their position with other consumer groups or interested parties. All regulatory participants receive the same notices and must commence their review at the same time in order to meet the timelines established for each proceeding. Furthermore the UCA is not provided any such priority or special rights in legislation or regulation. The Commission should not “read in” any such privilege into its Rules of Practice.

Further to its proposal to provide information requests and/or evidence prior to other intervenors, the UCA states in its letter of April 2, 2008:

“A clear example of a jurisdiction with a similar mixed public/private intervener model is California. Their Office of the Ratepayer Advocates is a publicly funded small-consumer intervener that operates along with other consumer groups funded by cost recovery. The California situation is analogous to Alberta at the current time.”

Gas Alberta notes that the California Public Utilities Commission is only one of scores of public utilities commissions across North America, and its “mixed public/private intervener model” certainly may not be more ‘similar’ to Alberta at the current time than that of other commissions that have not been cited. Gas Alberta submits that the characteristics of just one of the commissions in North America are not relevant to Alberta. Prior to the AUC altering its rules of practice based on the characteristics of other commissions, it would be advisable to undertake a study into the structure and workings of an appropriate sample of North American public utility commissions and for that study to be considered in the context of the Alberta model.

Gas Alberta submits that duplication of positions is best avoided by consultation among parties, including the UCA, prior to and during the hearing. This is the approach that Gas Alberta has applied in any proceeding in which it has participated, with the result that the Board has not found that Gas Alberta duplicated the position of any other party. While continuous consultation among parties requires a disciplined approach to a hearing, it preserves fairness in the Commission’s hearings.

2. Business Interest Rule

Gas Alberta’s fundamental position with respect to the business interest rule is that it should not be used to remove cost recovery for well-established intervener groups who have for years effectively represented the interests of utility customers. These include Gas Alberta, organizations representing municipalities, municipal associations, rural electrification associations, rural gas co-operative associations, irrigators and public institutional consumers. These organizations have not appeared in utility proceedings to advocate in furtherance of their commercial interests, but rather to advocate that the customers they represent receive safe reliable service at fair rates. This has been and continues to be a vital and effective check on the power of natural monopolies to put forward evidence that would otherwise go untested and unchallenged, and could otherwise be self-serving, or simply flawed in treating one group or other in an unfair manner not in keeping with well established principles of rate regulation. The recorded decisions of the EUB abound with examples. The system has protected Albertans for decades and should not be abandoned without a clear and compelling rationale.

3. Budgets

Gas Alberta believes that the current form for submitting budgets requests too much detail and, thus, requires too much time and effort to prepare. For example the form requests among other things, “Why is this area an issue for this participant group?” With respect, this information is usually already available to the Commission through the Statements of Intention to Participate submitted by the interested parties. Therefore the question appears to be redundant. If parties are required to coordinate their efforts in order to avoid duplicating positions, the Commission should not be duplicating its information requests to intervenors.

Another question requests, “To pursue this issue, what resources do you expect to employ?” To answer this question in full detail would require a participant to provide information that would amount to a summary pre-filing of evidence and argument. Gas Alberta submits that the standardized budget form as it now stands represents a retrograde step if the Commission’s objective is to streamline utility hearings.

Gas Alberta notes the concerns of the UCA in its April 2, 2008 letter:

“The UCA’s concern with the requests for budgets for each proceeding was that the requested information would not assist anyone in assessing the reasonableness of case expenditures. The information requested was too detailed, to the extent of estimating the time, personnel and resources used for each issue in a proceeding. The UCA does not have any reasonable way of preparing those budget numbers at this time, other than at a ‘best guess’ level.”

Gas Alberta agrees with the UCA to the extent that the budgeting process at this time is by its nature overly time intensive and too detailed. Gas Alberta submits the budgeting process should be streamlined.

4. Scale of Costs

The Scale of Costs should not arbitrarily limit preparation time. An assessment of the reasonableness of preparation time claimed has always been and should continue to be one of the considerations in processing and approving the level of costs allowed for any proceeding. Some proceedings by their nature will require more preparation than others and a hard and fast or formulaic rule is not appropriate.

Costs should be awarded for participation in pre-hearing technical workshops or collaborative processes. The costs incurred by intervenors to participate in these processes are incurred to ensure that all segments of the Alberta public and in particular of the utility customers, are given the opportunity to become informed of the issues and to provide input in furthering their interests. This is a necessary and effective safeguard to ensure that decisions are indeed made in the public interest.

Gas Alberta notes that the current scale of costs has been in place since August 1, 2001⁴. Further, the maximum hourly rate allowed for legal and consulting fees has increased by only \$25 since 1991⁵. The result is that the current schedule is completely out of step with the market for legal and consulting services in Alberta. In order to maintain access by intervenors to skilled professional assistance, a review and adjustment is well past due. Please see the attached Appendix II for further specific comments on the Scale of Costs.

5. Costs of Negotiated Settlements

Gas Alberta believes that costs for negotiated settlements should continue to be dealt with in the same manner as for litigated cost claims. While negotiated settlements are a different dynamic as compared to regulatory hearings, they accomplish the same end, often more efficiently. Intervention in negotiated settlements also may require significant detailed analysis of positions and their impacts on participants. These costs should be recoverable as a successful negotiation lessens the need of higher costs of extensive regulatory processes.

Transparency comes from full disclosure of all the information passed between parties. As a corollary, the basis for the settlement should be set out clearly for the Commission and the general public to understand.

6. Proceedings without Cost Recovery

As indicated in Bulletin 2008-01, recently the EUB has conducted certain proceedings where cost recovery has not been allowed. Cited as examples are Application No. 1513726 (with which Gas Alberta has no familiarity) and the Competition portion of part B of the Competitive Pipeline Review Proceeding. With respect to the latter proceeding Gas Alberta made specific comment on what it sees as a significant step in the wrong direction.

By letter dated March 17 concerning the lack of a cost recovery process, Gas Alberta stated:

“In the Commission’s letter of February 8, 2008, it stated that the “costs will not be awarded to any party for work subsequent to February 7, 2008. The rationale proffered was that “the Part B process is expected to be dealt with primarily as a Staff run process including workshops with matters coming before the Commission for a decision where parties are unable to move forward.” This ignores the reality that participation in a staff run process costs money that customer representatives simply do not have.

A significant portion of the government’s pronouncements, information releases and contributions to the debate in the legislature related to Bill 46 which became the *Alberta Utilities Commission Act* was directed at assuring Albertans that the regulation of public

⁴ Directive 031A and Guide 31B dated June 2001 came into effect as of August 1, 2001. Appendix D to each is the Scale of Costs which, *inter alia*, caps the hourly fees for senior lawyers and consultants at \$250.

⁵ The Scale of Costs effective August 1, 1991 allowed for an hourly rate of \$225 per hour for senior lawyers and consultants.

utilities in Alberta would remain an inclusive process. In Gas Alberta's view, the Commission's ruling of February 7, 2008 will have the opposite effect. It provides a significant disincentive to any continuing intervenor input into the process, thus effectively silencing the voice of customers and putting the Board in the position of deciding matters in the public interest without input from significant segments of the public. This also runs contrary to the statement made by outgoing Chairman Neil McCrank in the news release dated February 21, 2007 expressing pride in "how the EUB has become more open to the public we serve...Albertans are more engaged and better informed than they have ever been." In Gas Alberta's view, decisions to limit or deny cost recovery for intervenors with legitimate and unique interests will cause the process to be more closed, and Albertans to be less engaged and informed."

Since that expression of its views by Gas Alberta, the AUC has seen fit to issue its notice in Application No. 1566373 (the Utility Asset Disposition Rate Review Proceeding). In that Notice, the AUC asserts that cost recovery will not be available to participants⁶, while at the same time advising that all utilities under the Commission's jurisdiction would be considered parties whether or not they registered or actively participated, and while encouraging interested intervenors to participate. The rationale proffered for this is that "The Commission considers this proceeding to deal with generic issues which concern all stakeholders and that utility ratepayers should not be required to underwrite the costs of the participants through regulated rates." Again, Gas Alberta is strongly opposed to the notion that customers of utilities are not interested in bearing the costs necessarily incurred to ensure the ratepayers' views and interests on this significant issue are heard and considered. Gas Alberta considers that this alarming trend to deny interested parties a mechanism for cost recovery will result in the Commission effectively giving the utilities an unfair advantage⁷ and help to defeat the very purpose of having a legislative scheme which allows for regulatory oversight of public utilities. Gas Alberta sees this trend to denial of cost recovery as running directly contrary to the promises made to Albertans that their rights to intervention and effective representation would be continued⁸.

Any attempt to deny cost recovery for small intervenors such as Gas Alberta effectively limits our participation. Unlike large organizations that have a full time regulatory specialist in their office, small intervenors rely upon external regulatory specialists to review applications and inform them of potential concerns. By denying cost recovery the Commission also denies information processing and involvement by small intervenors.

⁶ Page 3 of the Notice

⁷ Utilities will continue to expend money to put forward their positions.

⁸ See Appendix I attached.

7. Costs Officer

For most cost claims, cost officers have approved costs in a fair and timely manner. Unfortunately, there are still far too many cost claims that exceed the objective of ninety days after the close of the cost proceedings.

Comments on Statements of Intention to Participate or budgets have proved helpful in alerting parties to issues or potential issues so that they may address these issues and any corollary risks.

Yours truly,

BROWNLEE LLP

PER:

Thomas Marriott
Tue Apr 15 15:39:12 2008

A handwritten signature in black ink, appearing to read 'T. Marriott', is written over the typed name and date. A long horizontal line extends from the end of the signature to the right.

THOMAS D. MARRIOTT

TDM/rd