



**Industrial Gas Consumers Association of Alberta**

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*“Adding Value in Alberta Using Natural Gas”*

April 15, 2008

Ms. Giuseppa Bentivegna  
Commission Counsel  
Alberta Utilities Commission  
Fifth Avenue Place, 425 First Street SW  
Calgary, AB T2P 3L8

via email: [giuseppa.bentivegna@auc.ab.ca](mailto:giuseppa.bentivegna@auc.ab.ca)

Dear Ms. Bentivegna:

**Re: AUC CONSULTATION  
Review of Rule 022, Rules on Intervener Costs**

The Industrial Gas Consumers of Alberta (IGCAA) provides this submission in response to the Alberta Utilities Commission (AUC) March 20, 2008 Bulletin 2008-01. IGCAA appreciates the opportunity to respond to the Commission’s questions. IGCAA did not participate in the consultation process conducted in December 2007 and has not reviewed the Draft Rules (dated December 10, 2007) that are referred to in the UCA letter to the AUC on December 21, 2007. IGCAA is not certain whether this was an oversight on our part or whether participation in this earlier consultation was intentionally limited. IGCAA has organized its response according to the Issues identified by the Commission.

**1. Role of the Utilities Consumer Advocate (UCA)**

- IGCAA would expect that from time to time on specific issues that some sectors of the residential, farm and small business utility customers group will have a unique or adverse interest to those represented or advocated by the UCA. While it is clear that the UCA has been given a broad mandate to represent these interests it would seem that natural justice should not preclude any interested and affected party from representing itself before the AUC.
- IGCAA does not offer any suggestions for the UCA and its constituents to resolve conflicts. Furthermore, IGCAA is not familiar with the internal processes employed by the UCA and its constituents.
- There would seem to be an onus on constituents claiming not to be represented by the UCA to demonstrate that they have attempted to work together or reach a consensus.
- To the extent that a separate intervention is not duplicative and is determined to have contributed value to the regulatory process it does not seem unreasonable that there should be eligibility for cost recovery. Eligibility for cost recovery for interveners is not a guarantee for cost recovery. The risk of

non-recovery provides a measure of discipline to ensure that interventions are not duplicative and add value.

## **2. Business Interest Rule**

- IGCAA believes that the Business Interest Rule has been reasonably applied by the EUB since it was implemented in 2004 and does not advocate changes.
- Broadening the Business Interest Rule to include associations may have little impact on cost claims but runs a high risk of increasing the number of direct interveners and the total costs incurred by parties to participate in hearings. While IGCAA has eligibility for cost recovery, it makes every effort to use the services of its Executive Director where practicable to represent its interests and participate in regulatory proceedings. IGCAA does not seek recovery of the costs paid to its Executive Director in this regard. For larger and more complex proceedings IGCAA augments the involvement of its Executive Director with legal counsel, regulatory generalists and experts as required. IGCAA is keenly aware that cost recovery eligibility is not a guarantee for cost recovery and therefore works hard to ensure that its intervention is not duplicative and that it has added value.
- Loss of cost recovery eligibility for industry associations may lead to an increase of individual companies representing their own interests directly. It is IGCAA's view that this would lead to an inefficient and more costly regulatory process as compared to the current framework for intervener cost recovery.
- IGCAA believes that the coordination efforts undertaken between groups such as IGCAA, CAPP and the UCA demonstrate the efficiencies stemming from the broad sectoral representation and communication efforts between these groups. These groups represent fundamental customer groupings of utilities which ultimately bear the cost of utility regulation.

## **3. Budgets**

- IGCAA believes that the filing of budgets should only be a requirement in proceedings that are likely to generate significant intervener costs. Examples of this would include General Rate Applications and Generic Utility proceedings. Furthermore, budgets should only be required from interveners that are planning on subsequently requesting recovery of their eligible costs.
- It is difficult for interveners to provide much precision in the budgeting process at an early point in a proceeding. Consequently, IGCAA does not believe the budget exercise is one that should be relied upon to proactively identify potential overlaps; rather, it should be the last indicator.
- The safeguard of the budgeting process for interveners is that it provides the Commission with an opportunity to flag budgets that may appear to have a large element of risk for recovery.

- IGCAA has not undertaken any assessment of how intervener budgets compare to final cost claims and wonders if the exercise of budget preparation provides value to the Commission.

#### **4. Scale of Costs**

- IGCAA believes that the current scale of costs is dated and does not reflect the reasonable costs incurred by interveners for qualified legal counsel and particular expert witnesses. Many interveners utilize both senior and junior counsel to perform different functions in order to minimize costs. Notwithstanding this practice, it is IGCAA's view that experienced senior regulatory counsel add significant value to regulatory proceedings and efficiencies that are enjoyed by all participants. With the current scale of costs being too low it may inadvertently result in more costs due to limiting the input of such qualified and helpful resources.
- IGCAA is reluctant to suggest that there is a particular metric (such as hearing days) that can be reasonably used to apply to all other related costs. IGCAA believes that level of costs for each intervener needs to be addressed on their own merits.
- Generally, IGCAA is of the view that cost recovery is not required for participation in collaborative processes. This participation is carried out by business representatives of particular organizations and does not involve representation by counsel or retention of experts. For special circumstances where an outside expert view may be required or beneficial, the funding can be a matter of discussion and agreement by those involved in the collaborative process.

#### **5. Costs of Negotiated Settlements**

- IGCAA is of the view that cost recovery is not required for normal representation and participation in negotiated settlements. This representation, similar to collaborative processes, is normally and properly carried out by business representatives.
- For complex and technical components of negotiated settlements there is merit for considering cost recovery. For example, in a Revenue Requirement negotiation interveners may want to collectively retain a cost of capital expert. Additionally, for a broad negotiation of Rate Design intervener groups may need to retain and involve rate experts at an earlier stage and it seems reasonable that the same cost recovery that would be available through a fully litigated process could also be available through a negotiated settlement process.
- The downside of taking a hard line on cost recovery for negotiated settlements is that they are voluntary processes. IGCAA does not think it would be wise for the lack of cost recovery for legitimate costs to become an incentive for parties to opt out of a negotiated settlement in favor of a traditional litigated regulatory process.

- IGCAA agrees that transparency for assessing the reasonableness of cost claims is a challenge for the Commission. It is possible that the AUC staff observer participating in a negotiated settlement could play a role in commenting on the reasonableness of cost claims.

**6. Proceedings without Cost Recovery**

- IGCAA is of the view that there are certain broad inquiries that may lend themselves to the Commission not providing for cost recovery. Particularly, if the scope of issues is well beyond a single or group of utilities and the issues extend to non-utility issues. The NGL Inquiry is an example of such a scope. Given the nature of the issues being addressed in the Competitive Pipeline Review proceeding it is not unreasonable to not have cost recovery; however, in this proceeding the subject matter is clearly focused on utility matters for a small number of regulated utilities.
- The decision by the Commission to designate a proceeding to not be eligible for cost recovery may well impact the quality of participation by industry members and should be considered carefully.

**7. Costs Officer**

- IGCAA is unable to comment on whether the Cost Officer has played a helpful role to the Commission in assessing SIPS or Budgets prior to a proceeding or cost claims following a proceeding. The Cost Officer role is somewhat transparent and IGCAA defers to the judgment of the AUC as to how best to organize itself to perform its role in overseeing intervener costs.

Yours truly,

*<Original by email>*

Greig Sproule  
Executive Director