

April 2, 2008

Ms. Giuseppa Bentivegna
Commission Counsel,
Alberta Utilities Commission
Fifth Avenue Place,
4th Floor, 425 - 1 Street SW
Calgary, Alberta T2P 3L8

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

Dear Ms. Bentivegna:

Please find attached the views of the Office of the Utilities Consumer Advocate with respect to the Commission's request for comments on the intervener cost award process.

Issue 1: Role of the Utilities Consumer Advocate (UCA)

As noted in Bulletin 2008-01, the Office of the Utilities Consumer Advocate has been included in Schedule of 13.1 of the *Government Organization Act*, as a consequential amendment to Bill 46, with the following responsibility related to regulatory interventions:

- (a) 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;

In keeping with this specified responsibility, the UCA will be appearing before the AUC in every case that affects residential, farm and small business utility customers and will be providing comprehensive representation on behalf of those customers. The UCA will also continue to act on behalf of residential, farm and small business utility customers with funding separate from the AUC grants of intervener funding from utility hearing reserves.

The UCA is governed by a widely representative Governance Advisory Board, with members from each of the specified sectors, from urban and rural Alberta, and from previously active small consumer intervener groups: AUMA, AAMDC, AFREA and Federation of Alberta Gas Co-ops.

May other interveners represent (residential, farm and small business customers)?

It is clear that the Commission is left with the ability to provide funding to whichever interveners it considers to provide value to the regulatory process. However, the Government has also solidified the role of the UCA as a "public defender" within the utility regulatory process and has taken steps to ensure effective and independent governance of that role. The UCA has a direct responsibility to represent its customers and is governed directly, explicitly and transparently by delegated representatives of those customers.

Within a regulatory proceeding there will be a considerable risk of duplication of intervention effort if parties insist on the UCA being “just another intervener amongst others”. Unless one can construe the case that the Government was attempting to make the utility regulatory process more inefficient, one has to consider the effect of the role and independent funding of the UCA within the context of other interveners receiving hearing reserve payments.

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.

The procedure adopted in California is that the Ratepayer Advocate presents its evidence and arguments before other interveners. This is done to give the other interveners fair warning as to the evidence and positions of the public intervener, minimizing the likelihood of duplication of effort and allowing the other interveners to take clearly different positions from the public intervener.

The UCA supports the ability of other interveners, even those representing a sub-set of UCA customers, to be able to make representations to the AUC and to be compensated if those representations are of assistance to the Commission. The UCA also expects the Commission will strive to ensure that the regulatory process is efficient and avoids unnecessary and costly duplication of efforts. The UCA believes that its proposal allows for continued regulatory intervention by parties, while still striving to increase the efficiency of the regulatory process.

How should conflicting views and positions and conflicts of interests among groups that the UCA has the responsibility of representing be dealt with?

In establishing a Governance Advisory Board for the UCA, the Government has created a means of achieving a consensus position for the customers represented by the UCA. The Governance Advisory Board is tasked with addressing the interests of all residential, farm and small business customers in Alberta, and includes representation appropriate to that end.

As well, the Governance Advisory Board maintains an ability to direct the UCA to take multiple positions into a hearing, if it is not possible for the Governance Advisory Board to reach a reasonable consensus on an issue. Although this is not seen as likely, it is possible that some issues may involve an unresolved principle or aspect that would benefit from a thorough vetting before the Commission.

To the extent that other interveners wish to take a different view than the UCA Governance Advisory Board, they should be free to do so, but subject to a responsibility to provide input that is helpful to the Commission.

Should any group representing persons wanting to intervene in a hearing or other proceeding be required to demonstrate who they represent and how their participation may differ from other similar groups?

The process for declaring who a practitioner is representing, the means of receiving instruction, and the membership in any represented organization should be improved. The utility regulatory system should not support open-ended and undirected interventions. The UCA has significant concerns with individual regulatory practitioners operating in a self-directed fashion.

If the UCA and other interveners may represent the same groups, how will the UCA and other interveners work together to avoid duplication of submissions and reduce hearing time and costs?

With all respect to the position of the Consumer's Coalition of Alberta, in its letter of February 6, 2008, there is no "obligation for the UCA to work with all other interveners in matters before the AUC" the UCA operates under the direction of a diverse and representative Governance Advisory Board. The Governance Advisory Board has representatives from previously active small customer organizations, from urban and rural Alberta, and from residential, farm and small business customers.

The UCA has a specific mandate to represent these customers and will be making every effort to do so efficiently and effectively. The UCA has made a proposal to do so in keeping with its mandate, recognizing other interveners' ability to make representations, and attempting to improve regulatory efficiency.

Issue 2: Business Interest Rule

A basic principle for consideration in the discussion around the business interest rule is that direct payment of costs by an organization likely leads to the most cost discipline in the regulatory process. The governance of the regulatory intervention process should be clearly focused on the costs of the regulatory process, as well as its outcomes. In either the case of direct payment of costs or cost recovery, customers will ultimately pay for the costs of intervention.

With that principle in mind, the ability to achieve that level of governance is a function of how cohesive each group is and whether or not it can organize to direct and fund its intervention efforts. For groups with diverse membership, either with large numbers or geographically diverse, it may be more fair and efficient to have one agency to undertake representation and to spread its costs to all benefiting customers by the cost recovery process. For groups that have a limited membership and an ability to fund intervention costs directly, those costs should be payable directly.

Issue 3: Budgets

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.

However, the UCA would be willing to provide the Commission with detailed information following a proceeding regarding the resources used and monies expended. After some time collecting this information, it is expected that the UCA and the Commission will be better able to judge the reasonableness of budgets and expenditures for each proceeding.

The UCA believes that concerns regarding duplication are best addressed by its proposal for regulatory scheduling.

Issue 4: Scale of Costs

It is clear that the scale of costs allowed under the cost recovery process is not current. A maximum rate of \$250/hour is far below market rates for senior counsel and should be reviewed. With regards to consulting experts, there are clearly areas where the \$250/hour limit is inadequate to cover the reasonable rates for experts. Financial experts and engineering experts are two examples where the AUC scale is out of date.

The consequence of the scale of costs being out of date is felt mostly on the customer side of the hearing room. Utilities have sufficient shareholder resources to “invest” in more expensive legal counsel. Having said this, some utilities have already tried to include these costs in customer rates, and are trying again currently. In order to create a level playing field for the benefit of consumers, it is recommended that the AUC review the scale of costs for legal counsel and experts and increase the allowances to current levels for both companies and customers.

Issue 5: Costs of Negotiated Settlements

Categorically, negotiated settlements and ongoing review processes are the processes most prone to abuse of cost recovery rules. There is little scrutiny of the efforts of parties within negotiated settlement discussions and there have been few, if any, cost disallowances arising from negotiations. Negotiated settlement discussions can be readily unduly extended by parties wishing to do so, and may be continued without any hope of settlement. Ongoing review processes also seem to allow opportunity for significant ongoing billings with little in the way of review of value added.

The AUC should empower its negotiated settlement observers to ensure that negotiations move towards conclusion by allowing them to penalize cost recovery for parties that are not negotiating with the intent to settle or are otherwise harmful to the progress of negotiations. The AUC should also empower its cost officers to review the activities of consultants in ongoing processes.

Issue 6: Proceedings without Cost Recovery

The effect of limiting cost recovery is again felt most immediately on the customer side of the hearing room. If the Commission wishes to have extensive customer representation on an issue, it should allow cost recovery in every proceeding. Regardless of cost recovery, the UCA will represent the interests of its customers in each proceeding.

Issue 7: Cost Officers

The UCA would suggest that the focus for AUC cost officers should be altered somewhat. In cases where costs are disallowed, the UCA believes that there should be a process by which the affected party can address the findings of the cost officer. At the moment, there is no particular process for appeals, and no particular rationale for decisions on costs.

Further, rather than concentrating on pre-hearing budgets, the UCA would suggest that the cost officers may play more of an audit role. It would be useful for the cost officers to ensure that there are no breaches of acceptable practices for cost recovery within the large number of proceedings, negotiated settlements, and ongoing processes.

Should you have any questions with regard to this matter please contact the undersigned at (780) 644-5476.

Yours truly,

<sent via e-mail>

Ron Henderson
Manager, Regulatory Affairs
Office of the Utilities Consumer Advocate

cc. Mr. Larry Sirman, Chair – UCA Governance Board
Mr. David Gray, Executive Director - UCA