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C O R P O R A T I O N

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Alberta Utilities Commission  
Facilities Branch  
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**By E-mail**  
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Dear Sirs/Mesdames:

**Re: Bulletin 2008-01**  
**Alberta Utilities Commission Consultation**  
**Review of Rule 022, Rules on Intervener Costs**  
**WEG / Tenaska Submissions**

We are writing on behalf of our clients, the Western Export Group (“WEG”), comprising Avista Corporation, Cascade Natural Gas Corporation, Northwest Natural Gas Company, Pacific Gas and Electric Company, Puget Sound Energy, Inc. and Terasen Gas Inc., as well as Tenaska Marketing Ventures and Tenaska Marketing Canada (“Tenaska”), to provide submissions as requested by the Alberta Utilities Commission (“AUC”) in Bulletin 2008-01 “Review of Rule 022, Rules on Intervener Costs”.

Our submissions follow the order of the issues identified by the AUC in Bulletin 2008-01.

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

The WEG / Tenaska takes no position with respect to this issue.

## **2. Business Interest Rule**

### **“Business Interest**

**3(1)** Unless the Commission orders otherwise, the following types or classes of participants are considered to have a business interest and are ineligible to claim costs:

- (a) an out-of-province utility;
- (b) corporations;
- (c) generators, including associations representing generators;
- (d) a utility intervening in another utility’s application; and
- (e) ad hoc associations of commercial interests organized for participating in a specific hearing or proceeding.”

*Who should be ineligible for cost awards?*

The WEG / Tenaska submit that eligibility for cost award should reflect:

- financial impacts of a party’s effective participation; and
- value and effectiveness of a party’s contribution to the process and the AUC’s understanding of the issues to be determined.

*Should the business interest rule have a broader application to include commercial associations whose individual members are ineligible, municipalities, municipal associations, rural electrification associations, rural gas cooperative associations, irrigators or public institutional consumers?*

The WEG / Tenaska submit that eligibility for cost awards should not be determined by predetermined Intervener classifications, but rather by the even-handed application of established eligibility criteria. Unless the AUC is confident that it has an exhaustive list of potential Intervener classifications it will run the risk of unintentionally excluding new or previously unknown Interveners. Classifications are also subject to debate as to the precise definition of a given classification.

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*Should the Commission set out criteria regarding the application of the business interest rule?*

Yes, as noted above, clear criteria provide a much more principled way to determine eligibility for cost awards than rigid, pre-determined Intervener classifications.

*Is it appropriate to grandfather any existing groups, and if so, are there criteria that should apply in making a determination to grandfather an intervener group?*

The WEG / Tenaska submit that grandfathering existing groups would be inappropriate and inconsistent with the AUC's stated intent of the Business Interest Rule. A principled determination of eligibility for cost recovery should turn on whether the criteria are satisfied, rather than on who has been attending regulatory proceedings the longest.

*Does the WEG / Tenaska have any additional submissions regarding the Business Interest Rule?*

Yes. The WEG / Tenaska submit that the Business Interest Rule is unfair, unduly discriminatory in several respects.

Rule 022, Section 3(1)(a) specifically excludes "an out-of-province utility" from eligibility for cost awards. That is inconsistent with the Business Interest Rule's stated intent to "... ensure that ratepayers are not bearing the costs for certain parties who are appearing at Commission hearings to represent *their own commercial interests*." The utility members of the WEG hold pipeline capacity in Alberta primarily for the benefit of their core markets, which are almost exclusively residential and commercial consumers, and costs are passed through to them. In that respect, the WEG utility members are effectively no different than local gas utilities within Alberta. Although the WEG utility members are investor-owned, it is not accurate to describe their participation in AUC proceedings as representing "their own commercial interests."

Further, denying eligibility for cost recovery simply on the basis of a party's geographic location has logical connection to the stated intent of the Business Interest Rule. Whether a party is "representing its own commercial interests" is a question entirely independent of where that party is located.

One might reasonably conclude that the Business Interest Rule is meant to discourage or prevent out-of-province parties from effectively participating in AUC proceedings in Alberta. If that is the intent, which the WEG / Tenaska does not believe is the case, then Rule 022 should expressly state that. The AUC and parties benefit from the WEG / Tenaska's participation in Alberta regulatory proceedings because we provide an important customer perspective that would otherwise be absent. It is fundamentally

unfair to recover the cost awards to other Interveners, who may be adverse in interest to the WEG / Tenaska, through rates paid by the WEG / Tenaska while deeming them ineligible for their own cost recovery.

Rule 022, Section 3(1)(e) specifically excludes "... ad hoc associations of commercial interests organized for participating in a specific hearing or proceeding." The WEG began participating in EUB proceedings in 1999 and is currently active in several AUC proceedings so there is no question that the WEG is not "ad hoc". As explained above, the utility members of WEG also don't represent "commercial interests." Deeming so-called "ad hoc" associations ineligible for cost recovery has the undesirable consequence of discouraging Interveners with similar concerns from acting together, notwithstanding the very significant procedural efficiencies that generally result from such cooperation. A blanket prohibition on "ad hoc" associations is an unprincipled approach, favoring certain associations at the expense of others.

### **3. Budgets**

AUC Rule 022 states:

#### **"Budget to be Filed**

**4(1) Unless otherwise directed by the Commission, every person that intends to participate in a hearing or other proceeding must file a budget on Appendix B.**

**(2) A budget must provide the following:**

- (a) a detailed budget outlining the reasonable fees and disbursements the participant anticipates it will incur in association with its involvement in the proceeding;
- (b) a summary of the issues the party intends to address and why those issues are material to that party or its organization;
- (c) a detailed proposal outlining the professional assistance such as experts, consultants, lawyers, the participant intends to engage, including:
  - (i) the qualification of each professional;
  - (ii) the issues that each professional will address; and
  - (iii) the nature and scope of the work that each professional will carry out to address the identified issues." (emphasis added)

The WEG / Tenaska submit that this section, presumably due to an inadvertent drafting error, is overreaching. It should be amended by adding, in section 4(1) after the word "proceeding", the qualifying phrase "and to apply for cost recovery". There is no reasonable basis to compel parties who have no intention to apply for cost recovery to file a budget. There are several cogent reasons why that approach should be avoided.

First, it forces parties to waive solicitor-client privilege by disclosing the nature and certain specifics of the legal advice they seek from their counsel. Second, preparing a detailed budget that satisfies the requirements of section 4 can be time-consuming and forces parties to incur incremental costs that could otherwise be avoided. Third, review of budgets for parties who won't apply for cost recovery serves no practical purpose and unnecessarily consumes AUC staff time that would be much better spent on matters of consequence.

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

The WEG / Tenaska submit that the Scale of Costs should limit the preparation time claimed based on the number of hearing days, but the ratio of preparation days to hearing days may need to be adjusted for particularly difficult proceedings. The Scale of Costs should apply to pre-hearing technical workshops or collaborative processes because they add value for the AUC and parties by potentially avoiding or reducing hearing days.

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

The WEG / Tenaska submit that Negotiated Settlements are no less valuable to the AUC or to parties than a litigated outcome in a proceeding. They are two alternative means to determine the result. Effective participation in a Negotiated Settlement process often requires parties to incur significant costs, but a well-managed process may and often does result in overall savings of time and expense relative to a litigated proceeding. The two processes (negotiation vs. litigation) provide similar benefits so, other things being equal, there is no compelling reason to allow cost recovery for one but not the other.

Concerns about transparency of Negotiated Settlements can be adequately managed. It should not be necessary for parties to reveal confidential negotiating positions, but they should nevertheless be able and be required to demonstrate how the costs related to an activity benefited the negotiation process overall.

#### **6. Proceedings without Cost Recovery**

The Energy and Utilities Board has conducted certain proceedings (i.e. NGL Inquiry and the Competition portion of Part B of the Competitive Pipeline Review Proceeding) in which cost recovery has not been allowed. The WEG / Tenaska submit that, under certain circumstances, it would be appropriate to specify at the commencement of a proceeding that no party will be eligible for cost recovery should they elect to participate.

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Such proceedings would typically involve only corporate parties or associations with interests that may be affected by the outcome, rather than core customers or parties with concerns regarding rights-of-way or land rights.

## **7. Costs Officer**

The WEG / Tenaska submit that coordination of the assessment of Statements of Intent to Participate in a proceeding or budgets prior to the proceeding and cost claims following the proceeding is important, but take no position regarding whether that role is best performed by a Costs Officer.

The WEG / Tenaska request notice of, and expect to participate in, informal stakeholder meetings led by AUC staff in the latter part of April.

All of which is respectfully submitted.

Yours truly,

(original signed by)  
Fred J. Weisberg  
Barrister & Solicitor  
Weisberg Law Corporation

Counsel for the Western Export Group and Tenaska