

Rule 022

Draft

Rules on Intervener Costs

Definitions

1 In these rules:

- (a) “Act” means the *Alberta Utilities Commission Act*;
- (b) “Commission” means the Alberta Utilities Commission;
- (c) “costs order” means an order of the Commission awarding costs on a claim for costs to a participant under section 21 of the Act;
- (d) “participant” means an applicant or intervener in a hearing or proceeding for a rate application or related to a rate application;
- (e) “scale of costs” means the scale of costs set out in Appendix A.

Application

2 These rules apply to hearings or proceedings for rate applications of utilities under the jurisdiction of the Commission or related to rate applications.

Cost Eligibility

3(1) The Commission may award costs to an intervener who has, or represents a group of utility customers that has, a substantial interest in the subject matter of a hearing or other proceeding and who does not have the means to raise sufficient financial resources to enable the intervener to present its interest adequately in the hearing or other proceeding.

- (2) An intervener may request an advance ruling on its eligibility for costs.
- (3) An applicant is eligible to claim costs.

Ineligible Interveners

4 Unless the Commission orders otherwise, the following types or classes of interveners are ineligible to claim costs

- (a) an out-of-province utility;

- (b) electric generators, including associations representing electric generators;
- (c) a utility intervening in another utility's application;
- (d) business, commercial, institutional, or industrial entities including associations of these entities;
- (e) municipalities including associations of municipalities;
- (f) rural electrification associations including associations of rural electrification associations; and
- (g) Rural gas co-ops including associations of rural gas co-ops.

Review and Variance Costs

5 (1) When an applicant for review and variance under Rule 016, *Review and Variance of Commission Decisions*, is a utility and the application is dismissed on the preliminary question, the utility must bear its own costs and the costs incurred by the cost eligible participants, and these costs shall be borne by the shareholders of the applicant utility and may not be included in or form the basis of any forecast used to apply for rate increases.

(2) When an applicant for review and variance under Rule 016, *Review and Variance of Commission Decisions*, is an intervener and the application is dismissed on the preliminary question, the applicant must bear its own costs and the utility's costs may be assigned to its hearing costs reserve account.

(3) When the Commission has decided that a review and variance applicant has satisfied the preliminary question and has decided to hold a hearing or other proceeding to determine the review issue(s), parties who are eligible to claim costs under this Rule may do so for the review proceeding and may also include the costs incurred for the preliminary question stage.

Budget to be Filed

6(1) Unless otherwise directed by the Commission, only those participants who are eligible to claim costs must file a budget in accordance with 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.

Advance of Funds Request

7(1) An eligible intervener in a hearing or other proceeding may, at any time before or during the hearing or other proceeding, make a request to the Commission for an advance of funds.

(2) An application for advance funding must include a budget in accordance with section (4) and include information substantiating the need for the advance of funds.

(3) If the Commission awards an advance of funds to an eligible intervener under this section, the Commission may issue an order directing the applicant to advance funds to the eligible intervener and set out the terms for repayment of the advance to the applicant by the eligible intervener if the Commission varies or denies costs on the claim for costs filed by the eligible intervener at the close of the hearing or other proceeding.

Interim Awards

8(1) An eligible intervener may apply to the Commission for an award of interim costs incurred in a hearing or other proceeding by filing an interim costs claim.

(2) An application for interim funding must include a budget in accordance with Appendix B.

(3) An eligible intervener may only claim interim costs in accordance with the scale of costs.

(4) The Commission may award interim costs to an eligible intervener if the Commission is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding,
- (b) the hearing or other proceeding in which interim costs are claimed is lengthy, and
- (c) the eligible intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.

(5) If the Commission awards interim costs to an eligible intervener under this section, the Commission may issue an order directing the applicant to pay the interim costs to the eligible intervener and set the terms for repayment of the interim costs to the applicant by the eligible intervener, if the Commission varies or denies costs on the claim for costs filed by the eligible intervener at the close of the hearing or other proceeding.

Costs Claim

- 9(1)** An eligible participant may apply to the Commission for an award of costs incurred in a hearing or other proceeding by filing a costs claim in accordance with Appendix C.
- (2)** An eligible participant may only claim costs in accordance with the scale of costs.
- (3)** Unless otherwise directed by the Commission, an eligible participant shall
 - (a)** file a claim for costs within 30 days after the hearing or other proceeding is closed, and
 - (b)** serve a copy of the claim on the other participants.
- (4)** For a negotiated settlement, an eligible participant shall submit a cost claim within 30 days of
 - (a)** the date upon which the settlement is approved by the Commission, or
 - (b)** the date upon which the settlement is abandoned and these costs are not to be combined with any hearing or other proceeding arising out of a settlement being abandoned.
- (5)** For a review and variance application, an eligible participant shall submit a cost claim within 30 days
 - (a)** of the date the Commission dismissed the application on the preliminary question under Rule 016, *Review and Variance of Commission Decisions*; or
 - (b)** following final argument in the review hearing or other proceeding conducted in the case where the Commission granted the application on the preliminary question under Rule 016, *Review and Variance of Commission Decisions*;
- (6)** An applicant may submit, as part of the applicant's claim for costs, a request to the Commission to record in the applicant's hearing costs reserve account except for an application for review and variance made by a utility which was dismissed on the preliminary question, costs that are reasonable and directly and necessarily related to the hearing or other proceeding.
- (7)** After receipt of a claim for costs, the Commission may direct the eligible participant who filed the costs claim to file additional information or documents with respect to the costs claimed.
- (8)** All cost claims will be placed in the AUC's IAR System for viewing by participants and the public.

Comments on Costs Claims

- 10(1)** Unless otherwise specified by the Commission, in a hearing or other proceeding
 - (a)** within 14 days of the receipt of a summary of costs prepared by the Commission from the costs claims submitted by one or more of the eligible participants, each

participant shall file and serve on the other participants a submission detailing any questions and comments on the summary of costs, and

- (b) within 14 days of the receipt of the comments from one or more participants under clause (a), each eligible participant shall file and serve on the other participants a reply respecting those comments.

Costs Award

11(1) The Commission may award costs, in accordance with the scale of costs, to an eligible participant if the Commission is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and
- (b) the eligible participant acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

(2) In determining the amount of costs to be awarded pursuant to subsection (1) the Commission may consider whether the eligible participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness;
- (b) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Commission, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that was not relevant;
- (g) needed legal or technical assistance to take part in the hearing or other proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to the applicant or other participants;
- (j) failed to comply with these rules or Rule 001, *Rules of Practice*.

Liability for Costs

12 Unless the Commission otherwise directs

- (a) in a hearing or other proceeding that relates to an application of a utility, the utility shall pay the costs awarded to an eligible intervener, and
- (b) in a hearing or other proceeding that relates to policies or concerns respecting utilities, the Commission may pay the costs awarded to an eligible participant or require that payment of the costs award be shared by one or more utilities.

Costs Order

13(1) Where the Commission has awarded costs in a hearing or other proceeding, the Commission shall issue a cost order setting out the amount awarded and to whom and by whom the payment must be made.

(2) The Commission shall serve a copy of the cost order on the eligible intervener making the claim and on the applicant.

(3) An applicant named in a cost order shall pay the amount awarded to the eligible intervener within 30 days of being served with a copy of the cost order.

(4) A cost order may state whether an applicant named in the order is authorized to record the costs in its hearing costs reserve account.

Coming into force

14. This rule comes into force on October 1, 2008 and applies to all rate applications filed after this date.

Appendix A Scale of Costs

This scale of costs represents a fair and reasonable tariff to provide any eligible interested party with adequate, competent, and professional assistance in making an effective submission before the Commission. In a case where an eligible participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in this scale to address such unique circumstances.

1. Professional Fees

This scale of costs provides a sliding scale for professional fees; as the professional's experience increases, so will his or her value and wage. The Commission emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Commission will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. **The Commission allows professionals only half of their hourly rate for travel time.**

Claims for professional fees must be accompanied by a statement of account.

Statements of account must include the following:

- the date of activity undertaken;
- a description of the activity undertaken with sufficient detail to allow the Commission to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant; and
- the time incurred with respect to each described service.

Legal Fees

Articling students \$140.00/hour
1-4 years at the bar \$240.00/hour
5-7 years at the bar \$280.00/hour
8-12 years at the bar \$320.00/hour
More than 12 years at the bar \$350.00/hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Commission will not award legal fees for secretarial/support staff work. The fees for this work must be claimed as secretarial/staff support fees.

Fees of Consultants, Analysts, and Experts

1-4 years' experience \$120.00/hour
5-7 years' experience \$160.00/hour
8-12 years' experience \$230.00/hour
More than 12 years' experience \$270.00/hour

The Commission recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Commission will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

Fees for Secretarial/Support Staff

Secretarial/support staff \$45.00/hour

2. Disbursements

The Commission will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. **The Commission will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.**

Office Disbursements

The Commission will consider claims for the following office disbursements incurred throughout the eligible participant's involvement in the hearing or proceeding.

- courier charges
- long-distance telephone calls
- photocopies (\$0.10/page)
- fax (\$1.00/page)
- computer charges
- postage
- transcripts (must be accompanied by a receipt)

The Commission does not require eligible claimants to submit receipts for the above disbursements (other than transcripts) with their initial cost claims. Eligible claimants should, however, retain receipts for such disbursements, as the Commission will require their submission if the claim is selected for audit. Office disbursements other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed attached.

Personal Disbursements

The Commission will consider claims for the following personal disbursements that are incurred during an oral hearing.

Meals

Maximum allowable claim for meals is \$40.00 per day (\$10.00 for breakfast, \$15.00 for lunch and dinner each). Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable.

Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

Accommodation

Maximum allowable claim for accommodation is \$140.00 per day maximum. Claims for accommodation are restricted to the duration of an oral hearing.

Receipts must accompany all claims for accommodation.

Travel

The Commission's mileage rate for automobile travel is \$0.46/km (including GST). This portion of a claim is restricted to intercity travel distances of 50 km or greater.

The Commission will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing.

Receipts are required and must clearly identify the date of departure and arrival.

Taxi

Taxi claims are restricted to an oral hearing. Taxi receipts need not accompany the claim. Tips are not claimable. However, an eligible claimant should retain such receipts in the event that the Commission directs an audit of the claim.

Parking

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, an eligible claimant should retain such receipts in the event that the Commission directs an audit of the claim.

Appendix B
Budget Submission

Date of Budget Submission:

Name of hearing:

Application number(s):

Name of participant group:

Identify the issues you will be exploring and/or challenging:

Issue 1 –

Issue 2 –

Issue 3 –

Issue 4 –

Issue 5 –

For each issue identified, complete the following Budget Submission:

General

Name of issue/area to be explored and/or challenged:

Why is this area an issue for this participant group?

To pursue this issue, what resources do you expect to employ?

External Legal Counsel

Name of law firm being retained

What specific activities will senior counsel be performing?

What specific activities will junior counsel be performing?

What specific activities will articling students be performing?

Anticipated legal fees:\$_____

Expert Consultant

Name of expert consultant being retained

What specific areas of this issue is the expert consultant responsible for?

Describe the specific activities the expert consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated expert fees: \$ _____

General Consultant

Name of general consultant being retained

What specific areas of this issue is the general consultant responsible for?

Describe the specific activities the general consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated consulting fees: \$ _____

Appendix C Cost Claims

1 All eligible claimants must acknowledge that all documents filed in respect of the cost claim must be placed on the public record, including that all documents will be accessible on the AUC's IAR system which is available via the Internet.

2 If a hearing or other proceeding is convened to consider multiple applications by different applicants, eligible participants must file a separate package of utility cost forms for each application, otherwise, cost claims are returned.

3(1) An eligible claimant must submit the following.

(a) Submission of Justification. Eligible participants are required to explain:

- (i) what interests they represent
- (ii) what tasks they have undertaken
- (iii) why they appeared before the Commission
- (iv) what efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants?
- (v) why the costs submitted are reasonable.

(b) Form U1 – Summary of Total Costs Claimed

(c) Form U2 – Summary of Professional Fees Claimed

(d) Form U3 – Summary of Disbursements Claimed

(e) Form U4 – Affidavit of Fees and Disbursements Claim which may be signed by the participant or counsel for the participant

(f) Statement(s) of account reflecting the professional fees being claimed

(g) Legible receipts for certain expenses where required

(2) The onus is on the eligible claimant to provide sufficient information for the Commission to effectively assess its claim and must address the specifics of the proceeding.

(3) All cost claim forms are available on the Commission website.

(4) A cost claim must be filed electronically as a single PDF document by e-mail to utilitycosts@auc.ab.ca. A paper copy is not required.