

Hearing Cost Review Meeting  
Calgary, Alberta  
May 21, 2008

---

---

**Attendance**

**Alberta Utilities Commission**

Carolyn Dahl Rees (Chair)  
Tom McGee  
Tudor Beattie  
Doug Larder  
Heather Gnez  
Jim Law  
Jodi Chaulk

**Facilitator**

Dr. Bill Taylor

**Participants**

Don Crippen (ENMAX)  
Kate Leonard (ENMAX)  
Debbie Nering (ENMAX)  
Nigel Chymko (Chymko Consulting for Red Deer and Lethbridge)  
Cynthia Johnston (FortisAlberta)  
Miles Stroh (FortisAlberta)  
Norman Mills (BP Canada)  
Vince Kostaskey (TransCanada)  
Greig Sproule (IGCAA)  
Dale Hildebrand (D410 Group)  
Lewis Manning (D410 & R13 Groups)  
Joyce Zwick (UCA)  
Rick Cowburn (UCA)  
Paul Dawson (UCA)  
Mark Rowe (Calgary)  
Doug Evanchuk (Calgary)  
Greg Matwichuk (Calgary)  
Ron Holberton (Calgary)  
Dave Hellerton (Western Export Group)  
Chris Best (TransCanada)  
Mike Gillis (ATCO Utilities)  
Cheryl Terry (IPCAA)  
Grant Pellegrin (ADC)  
Carolyn Shaw (TransCanada Pipelines)  
Lynn Meyer (EPCOR)  
Joe Anglin (LaVesta)  
Luke Kurata

Mrs. Kurata  
Charles Meggison  
Henry Unryn (ABSG/PGA)  
Corinne Grudecki (Direct Energy)  
Clarence Wolfleg (Siksika Nation)

### **Opening Remarks (Dahl Rees)**

- On January 2, 2008 the Commission adopted Rule 022 on Intervener Costs to replace Directive 31B.
- On March 20, 2008 the Commission released Bulletin 2008 -01 stating that there would be undertaking of Rule 022, with changes to be implemented on or before June 30, 2008.
- Issues that the Commission would be seeking comments on are as follows:
  - Role of Utilities Consumer Advocate (UCA)
  - Business Interest Rule
  - Budgets
  - Scale of Costs
  - Costs of Negotiated Settlements
  - Proceedings without cost recovery
  - Cost Officer
  - Other Comments Interveners wish to bring to the Commission attention.
- On May 11, 2008 the Commission released Bulletin 2008-05 indicating to interested parties that meetings would be held in both Edmonton and Calgary as the next step in the review process.
- The Commission had reviewed the comments submitted, created a matrix of these comments, and had asked that interested parties come prepared to discuss the following issues:
  - Purpose of intervener cost awards
  - Role of UCA
  - Business Interest Rule
  - Costs Officer.

### **Facilitator**

- Will be facilitating the meeting as he is an outsider to the Commission, as well as the Interveners, and has no conflict of interest with the two.
- Set out structure of the meeting with the direction from the Commission Members that the meeting should be an opened with no restrictions – just to stay on topic.
- Will look at this process in two broad chunks during the meeting:
  1. Each of intervener (one representative from each organization) should identify the key issues that they want to bring to the attention of the Commission – a request was made to keep the opening comments short – to no more than 3 minutes
  2. Discussion of issues outlined in Bulletin 2008-05.

3. because of time restraints- some groups including the R 13/D410 Groups did NOT get a chance to discuss the issues – at all or fully

### **Minutes**

- Question as to whether minutes would be taken, and if so who would be seeing them.
- Input being seen by the Commission and its Members will allow parties to see that they are being heard.
- It is important to capture the content and main points that are being made throughout the meeting.
- Notes will be taken just to capture some of the issues that were not obvious in the written submissions.
- The notes will go to the parties who are in attendance as well as the Commission Members.
- Consensus of Commission staff to post the notes on the external website

### **Next Step after Meetings**

- Commission Members will come together and discuss how they might approach the next steps and mission, vision and values, as well as some of the issues that they are facing. Costs will be a part of that discussion.
- Draft rules will then be prepared and sent out to interested parties for comments.
- Commission will then respond to these comments and effective June 30, 2008 the final rule will be made.

### **Comments to be filed after meetings**

- Parties wanted the right to file comments to the Commission after the meetings in a written form within the next week.
- No problem to file comments, may take some time if everyone wants to submit comments.
- Comments should be brief and submitted in a timely fashion to be on the record.
- Comments are welcomed and there would be no set lines as to what the Commission will do here, but the submissions will be read if received by the 28th of May.

### **Identification of Key Issues from Interveners**

#### ***IGCAA***

- Primary issue of interest is the Business Interest Rule.
- Question- What exactly are these "proposed" changes that the Commission speaks about in Bulletin 2008-05 in regards to the Business Interest Rule?
- IGCAA has concerns about perceptions of associations representing commercial business interests. Through aggregating interests and compromising of individual interest IGCAA ultimately advocates a public interest.

- Wonders that if cost recovery process is removed for associations like IGCAA, would it then lead to a proliferation of single business interests at the table which would be more costly and inefficient for all parties.

### *Commission Staff*

- To answer IGCAA's question regarding the "proposed" changes with the Business Interest Rule, the Commission has not decided yet whether it will or will not make any changes to the rule
- That's what this process is intended to assist

### *D410 & R13 Groups*

- Here today to focus on issues in Bulletin 2008-05.
- The purpose of intervener cost awards is for the Commission to fulfill its mandate to set just and reasonable rates.
- In order to do this we strongly believe that all intervenors should be treated fairly and be eligible for funding
- We will raise our comments on the Business Interest rule later as requested by the facilitator

### *UCA*

- Two issues to discuss here: Diversity and Feedback.
- UCA has a duty to coordinate where possible with other parties to bring forth a case to the Commission and maintain diversity.
- All parties would benefit from more precise feedback.

### *Calgary*

- Purpose of intervener costs – submits that purpose is to allow for legitimate interest to be heard and to reimburse those parties, which have contributed, with costs.
- Contribution principle solves a lot of problems with the Business Interest Rule.
- UCA – has a role to play, the message we would like to leave is that role is reasonable.
- Gathering that the Commission is considering a means test for cost recovery, however, think the contribution principle should be the test
- What is the purpose and real objective of this process? Is the Commission looking at eliminating interveners and just having the UCA represent all?

### *WEG*

- Views that cost recovery should be fair and based on the interveners' contribution, specifically the intervener's contribution to the Commission in helping reach its discussion.
- The current Business Interest Rule is unfair, and is discriminatory because it excludes out of province utilities and instead is based on some categorization of intervener groups – this is not fair.

- Playing field should be level so that we are not discriminating against parties that may be adverse to our views

### ***ATCO Utilities***

- Attended meeting in Edmonton, so will not repeat all that was said.
- Important for the Commission to clearly spell out in the revised rule the intent of cost recovery and whether parties are to recover 100% recovery of prudent costs or whether parties will only receive a portion of those costs.

### ***IPCAA***

- Purpose of funding is to ensure that the decisions which are made by the Commission are in the public interest.
- UCA – IPCAA believes that the struggle the Commission will have is with what the UCA would want and as to whether the UCA would be able to represent all customers.
- Difficult to have appropriate representation if only being represented by the UCA.
- IPCAA has demonstrated that it has thoroughly attempted to act in the public interest.
- Role of an association vs. role of Members. Members are struggling with what they would do to fund their own interests before the Commission.
- It does seem that one of the measurements in which the Commission looks at, is duplication. What is exactly meant by this duplication? Needs to be clearly defined.
- Important that customers are represented as a group in front of the Commission.
- Cross subsidization – members paying a substantial portion of costs for all interveners.
- How can the differences of opinion be represented by the UCA?

### ***ADC***

- Attended meeting in Edmonton.
- Echo IPCAA's views.

### ***TransCanada***

- Concerned that eligibility should not be pre-determine and should be examined on a case by case basis and the award should be based on the merits of participation.
- Utilities under the AUC's jurisdiction, whether applicants or those directed by the AUC to participate in a proceeding, generic or otherwise, should be eligible for cost recovery.

### ***EPCOR***

- Should be clarity on who is eligible for costs and in what the Commission will consider and what it will not consider.
- There is room for duplication – allows for a diversity of opinions among interveners.
- Cost process should be as efficient as possible.

### *LaVesta*

- Attended Edmonton's meeting.
- The system should not be viewed as being broke; it just needs to be managed properly.
- Duplication is not a problem. The Commission needs to review duplication on a case by case basis.
- The cost process is a manageable situation for the Commission and it isn't clear as to where there is any lack of effort not to duplicate.
- The Commission needs to ensure that it is receiving accurate information.
- UCA does not represent us if we say it does not represent us.
- There's a risk of duplication with the UCA and the UCA should bear that duplication, not the other interveners.
- Interveners are at a disadvantage because they are not ensured 100% cost recovery, but the UCA is guaranteed their costs.
- Cost awards should be based on the effort that goes into providing the Commission effective information.
- Legal costs of interveners should be based on a Scale of Costs but there should be no prejudice to the public in this matter.
- Individuals need the opportunity to present their issues.
- If the Commission limits the participation, it is going to lose public confidence.
- Need to have the respect of the public.
- By setting one intervener above anyone else is wrong; there has to be an even playing field.
- Dually elected bodies should have a right to go to any hearing they wish because it part of the democratic process – the Commission should weigh this.

### *Kurata*

- It's the underlying philosophy of the UCA that is really the key.
- Doesn't matter if the UCA is presuming to represent an individual with respect to a rate increase or an individual in a substitutional manner and deny that individual independent intervener status.
- Contribution principle is a folly – intervener has a right to make a point and if his costs are reasonable he should be entitled to his full reasonable costs.
- Cannot remove the right of the individual to choose its own intervener.
- The UCA is not responsible to the consumer who is a residential owner or farmer, it is ultimately the responsibility of the Minister
- No legislation that sets out where the UCA is over the line or not over the line.

### *ASBG/PGA*

- Represents small customers that are seasonal and irrigation farmers.
- Purpose of Intervener Costs – being small customers have a problem participating in regulatory proceedings if there is no eligible for cost recovery.
- Without a cost award system participation would be difficult.

- More importantly, with the cost awards it provides more of level playing field for the participation of the smaller intervenes with the large utilities.
- Role of UCA – Bulletin speaks of all customers being eligible for cost awards but if there is duplication then there is the threat of downward adjustment of costs.
- ASBG/PGA states that the definition of duplication is not easy and another viewpoint of the same issue may not be duplication and may be of value to the Commission and in this case should be recognized.
- If the playing field is level for all interveners, we would see that the UCA should also be subject to the same rules and in that respect it would go down to the submission for costs recovery and the evaluation by the Commission.
- Bottom line is that ASBG/PGA wants a level playing field.

### ***Direct Energy***

- Supports intervener funding on negotiated settlements.
- Considers that the same rules regarding the determination of intervener standing, application of the Business Interest Rule and the scale of costs should be applicable to negotiated settlements.
- Groups with independent financial means should be ineligible for costs awards.

### ***ENMAX***

- With respect to the role of the UCA - in situations where the UCA and other interveners represent the same groups, the UCA and other groups should be encouraged to work together per customer class.
- With regards to the level of funding, the Commission should set budgets on a customer class.
- It would be helpful if the UCA would submit budgets at the same time as everyone else.
- Would encourage cooperation and avoid unnecessary duplicative costs.
- With respect to the Business Interest Rule, ENMAX believes that parties with a commercial interest should be ineligible for costs awards.
- Does not support the grandfathering of interveners.
- Rule 022 should be equally applied to all interveners.

### ***Red Deer/Lethbridge***

- Clarified that the matrix composed by the Commission should include Lethbridge as well as Red Deer.
- Role of intervener funding is to ensure that an opportunity for all viewpoints to be heard, therefore giving more diversity.
- Groups can get so big and diverse that we are not sure how they can be represented..
- With Commission taking more active role more detailed reasons as to whether the intervener was helpful or not should be expressed .
- Need more leadership from the Commission before interveners can put in more solid criteria.

- How much diversity does the Commission want put in front of them? And how is the Commission going to satisfy the public interest?
- Question everyone seems to be struggling with is how we deal with the UCA and other interveners.
- The answer to this question is in transition and one of the important things that the UCA has to do is to build trust with those they are representing.
- Have not seen any communication with the UCA representative.
- Have to balance what the policies are and where we might be going in the longer term vs. cutting costs and not worrying about tomorrow.
- Long way to go if trying to fully implement the role of the UCA and perhaps an interim step needs to be taken into account when the Commission looks at its rules.
- With respect to the Business Interest Rule– sometimes this rule is mandatory and appears to be getting into more generic type hearings. Why should we be dipping into shareholders pockets for these costs?
- Bottom line with regards to cost recovery is that the Commission needs to lead intervener benefits and costs. Have the interveners been helpful during and after the process?
- Address some of the problems to be sure that cost inefficiencies will be eliminated for the next time.
- Commission needs to lead a bit more in what it is doing.

### ***FortisAlberta***

- Purpose of intervener funding is to assist the Commission in reaching a balanced decision which results in just and reasonable rates. The Commission must ask if additional and diverse perspectives are helpful in reaching a balanced decision and award costs on that basis.
- Commission has a more active role to play in prioritizing issues in rate cases upfront.
- Commission must insist on the disclosure of the UCA's budgets upfront to eliminate duplication.
- Given the UCA governance structure, where other wire owners are represented (REAs and municipalities), FortisAlberta is concerned about how Phase II issues will be effectively dealt with given the conflict of interest between wire owner interests and customer interests.

### ***BP Canada***

- Industrial consumers bear disproportionate share of hearing costs but see value in interventions by non-industrial stakeholders, particularly on Phase I issues.
- Support cost recovery for associations but believes that quality of contribution is a more important criteria for eligibility.
- Rather than distinguish between commercial and non-commercial entities, better to differentiate between stakeholders who are ratepayers and those who are not.
- Commercial entities already fund everyone else's interventions through their rates so the non-discretionary elimination of funding for these parties would seem to serve little purpose other than to compound an existing inequity.

- It can be argued that these associations add efficiency and effectiveness to the process by: reducing total number of interveners; encouraging development of common positions; and serving as repository for expertise and historical context.

### ***TransCanada***

- Non regulatory energy side
- A lot of confusion that requires clarification on the role of the UCA and how that will apply to rates.
- Funding should be considered on a case by case basis.
- If commission is to predetermine cost recovery before a hearing then the budgets for parties who are not eligible to receive costs is of no value and is a disadvantage to the party who is not getting funding

---

Interveners were asked to address the following two issues by Commission:

1. Diversity: What are the barriers now to the UCA representing a diverse group?
2. Means Test in Bulletin 2008-05
  - a. If party has the ability to raise funds and it's important to participate why shouldn't they pay for that participation?
  - b. If that individual or group is going to fund that participation is that a better system than the current system in terms of accountability?

### **UCA Invited to Speak**

#### ***UCA***

- No formula that is going to solve all matters with the UCA and other parties.
- UCA is an organization that is in start up right now.
- Model is different than the past in almost every respect and the organization is still working out how it can effectively balance diversity and efficiencies in the process.
- Can only provide speculations as of yet because processes will need to be tried to see if they work effectively.
- Alternatives are to meet with parties when they know that applications will be brought up (Pre-Work).
- Formal process – but have a time constriction.
- One of the real constrictions in effective coordination is the reality that it takes time and to the extent that the Commission can allow sufficient time for the coordination to occur it can happen.
- Ongoing process on how to preserve diversity.
- Facilities Applications - the UCA does not believe it could effectively represent landowner issues.
- Preserving diversity – no formula but will always fall to the Commission to implement.

## **Responses from others regarding the UCA**

### **BP Canada**

- UCA (and associations) serve a role and purpose that provides value.
- Could see more extremes if individual interveners participate.
- UCA (and associations) cannot represent diverse views simultaneously because the regulatory process is an adversarial one.

### **Calgary**

- Commission has to understand what duplication is and what an overlap is.
- Duplication is what is easy to say and hard to determine.
- Can be overlap where parties may take a different view because of different values and principles, and expertise and experience in the matter.
- Bottom line is that the contribution rule still applies.
- Diversity and UCA's representation of diverse views: helpful for everyone if the regulations that were indicated by the government model were available.
- Calgary feels that this exercise might be premature until we see what the government intends.
- Concern, particularly with Phase I, is that the UCA could show up and represent all parties, but that is not their intent.

### **D410 & R13 Groups**

- In direct response to Commission question on Diversity : What are the barriers now to the UCA representing a diverse group
- UCA does not by statute or otherwise represent the D 410/R 13 Group customers which include industrial, commercial, and institutional members including Calgary Hospitals and the University of Calgary
- UCA has directly attacked position put forward by the D 410 Group at hearing
- The AEUB severely criticized the UCA for the nature of the position it took against the D 410 Group position – which was in keeping with generally accepted regulatory principles
- The AEUB penalized the UCA in costs – remarking that its understanding of the application was questionable and proffered aids to cross examination were of no value (D 2007\_022 at 14-15, and 17)
- UCA has treated the D 410 customers unfairly.
- Virtually impossible to see the UCA representing clients whom they treat unfairly.

### **IPCAA**

- Legislature did not intended for UCA to represent all parties.
- Does not represent the industrial customers.
- Enough issues in Phase I and Phase II that you have to allow for customers who feel not represented to bring forth their claims.

### *LaVesta*

- Until we see the actual wording change UCA will not be trusted.
- Representing us in a government appointed commission is a major conflict.
- Concerned about diversity and what we know to be true depending on the issues at hand any organization could represent our issues.
- Fear the delegation would be solely to the UCA and concerned that these are business organizations who have invested interests.
- More organizations the better the public interest is being served.
- Worried the Commission will limit the information coming in and that it will limit the representations in this proceedings.

### **Business Interest Rule/ Means Test**

#### *Calgary*

- Means Test – we wanted to raise some issues and concerns with regards to having the means test be the basis on costs eligibility.
- Would the means test apply to parties who overlap with the UCA?
- Means test would be problematic with respect to Phase II proceedings.
- If go with strict means test does this mean that individual rate payers will be able to be eligible for funds?
- Would the onus be on the party before the fact?
- Would Commission want to have this burden administratively for all proceedings?
- For municipalities this test raises interesting questions. If you use money in one spot you have to take in from another. Do you put the burden on other parties as to what services they want to give up?
- Will a means test discourage contribution from the long standing parties?
- Economical rationale for parties, but there is very few large load customers that would have a significant interest.
- With respect to cost discipline – at the end of the day this is where it's interesting. Some parties rely on Commission's cost process to get paid. There is cost discipline for those who are getting paid along the way.

#### *IPCAA*

- Dealing with the means test – If you can raise the funds why should other parties pay for it?
- Industrial customers throw 70% into the pot and wonder why they do not receive any back. This doesn't make sense, why shouldn't I get a piece of this back as I still have to pay for that?
- Means test – echo Calgary
- AUC is looking for a different model.
- IPCAA has agreed that maybe a rate class allocation model is better.

### *LaVesta*

- If you put his mean test in effect to prevent information to come to the Commission and then apply where some parties meet and some do not meet, you have a double standard.
- Want to see a fair playing field where the Commission is looking to get as much information as possible.
- Have confidence in the Commission that it can manage this and that it does function very well in the prehearing stages.
- It is up to the Commission to make those determinations.
- Important that the Commission get all the diversity and information to make its decision.
- If an organization decides not to take the means test the Commission might deny itself that one piece of information that may be valuable and there would not be in the public interest.
- Issues dealing with municipalities - It is important for our people that they never be denied in bringing their concerns or issues before the Commission.
- Fact is from a democracy point of view, there is benefit in making sure that these municipalities are never denied and are not subject to a means test.

### *ASBG/PGA*

- Commission would have to really look at that situation because in a lot of circumstances, the cost of specific intervenor participation is really aligned with the positions that other intervenors have taken in a proceeding.
- This would cause the level of intervenor participation to be influenced substantially.

### *IGCAA*

- Regarding funds – who doesn't have the ability to raise funds? Only group would be single landowners.
- Would be hardship for some association members to come up with money and not others and this will vary between industries and within different parts of the business cycle.
- Was not the establishment of the UCA in part to address means?; maybe the province needs to create an ombudsman for individual intervenors who lack means.
- If the Commission puts a means test in the process then there should be an impact test to go with it. It makes little sense to award costs to parties who are impacted to a small degree and to deny costs to parties who are impacted by a large degree.
- Current cost recovery provisions provide cost discipline – maybe more than they are given credit for – there is always a risk of not recovering your costs and the tools are there for the commission to use. IGCAA works hard to consult with other intervenors and to ensure its interventions make a contribution.

### ***BP Canada***

- Once it is determined that a person cannot fund their intervention then their costs cannot be disallowed for lack of contribution either.
- If rate classes have certain funds available to them they will use it fully because there is no longer any incentive to co-operate with other rate classes.

### ***D410 & R13 Groups***

- In addressing the Commission question “If party has ability to pay why shouldn’t they pay?”
- At the core of the issue is what’s fair and what results in the Commission having what it needs in order to get a just and reasonable result and decision .
- A number of focused and effective interveners from commercial industrial clients, who all have funded, hire the expertise in which the AEUB (Commission) has relied upon in coming to its decisions in the past
- For example – where the AEUB has relied upon and accepted evidence from parties in coming to its decision on what constitute just and reasonable rates the fact that such parties “might have the ability” to fund an intervention does not take away from the fact that these parties participated responsibly and offered evidence that was accepted and relied upon by the Board
- In our respectful submission the imposition of a means test would effectively treat these customers differently, and may result in the Commission being deprived of valuable evidence which it has typically relied upon in the past – in our submission this would result in a great disservice to the Commission and to the public interest in having the Commission make its decision on the basis of the best record possible
- Often these interventions are for the purpose of taking on issues that raise questions of regulatory principles that apply across all rate classes – they are not focused on issues that have bearing on narrow commercial interests
- Examples from these clients interventions in the past include:
- The first “buy/sell” and transportation rate dating from 1985-86 on ATCO Gas that paved the way for the transportation rates now standard in industry
- The AEUB first refusing ATCO Gas’s application to sell the Viking gas fields and later approval the sale after an increased sale price (approx \$100 million more) was received
- Disallowance of ATCO GAS Meter and Main Replacement project when initially put forward resulting in deferral of approx \$240 million of capital expenditures and lower rates;
- Successful Opposition to ENMAX Power (EPC) attempt to collect no cost equity from ratepayers in 2004
- Successfully put forward rate design and cost allocation principles accepted by the AEUB regarding EPC rates at EPC’s initial rate case
- Successful opposition to EPC attempting to collect equity funding from customers through municipal rate riders after the EUB disallowed the direct collection of equity funding through EUB approved rates
- What happens internally amongst the rate payers? Free rider problem

- Certain pocket of customers who take their responsibility seriously and fund the interventions in accordance with the existing cost recovery regime - and others of the same customer class who don't bother to participate but get the benefit its' fundamentally unfair to fund some parties and not others – especially when the costs are passed along to ratepayers

### **WEG**

- From a rate perspective our view is that playing field should be level.
- Does help the board and other parties who have a perspective to have an expertise point of view.

### ***Siksika Nation***

- Where do we fall within this process?
- As first nations people, where do we fit into or how do we go about fitting into this process?

### ***Calgary***

- Closing comments
- Contribution principle – give a better understanding of the issues.
- Material test – has to be some impact or some materiality on the parties making the issue..
- Look at other tribunals to adjust guidelines and learn from their mistakes or mimic what they are doing.
- Complexity of issues is not going to go away.
- Resources will be limited and that's not going to go away either (Commends UCA for getting organization off the ground in a short manner).
- Vitality and renewability- if legitimate parties are put off from participating then that might make long term problems.

**Meeting Closed.**