

# Bulletin 2008-01

March 20, 2008

## CONSULTATION

### Review of Rule 022, *Rules on Intervener Costs*

#### Introduction

The Alberta Utilities Commission (Commission) is undertaking a review of Rule 022 *Rules on Intervener Costs* with the objective of implementing changes, on or before June 30, 2008. This review will build upon preliminary comments previously received in connection with the Commission's initial consultation process on intervener costs conducted in December 2007. The Commission has placed all of the comments received in this initial consultation process on the Commission website at [www.auc.ab.ca](http://www.auc.ab.ca) under the "Projects & Initiatives" page. As the Commission mentioned in its reply to comments on January 2, 2008, the current provisions of Rule 022 are substantively the same as the rules on utility proceedings contained in the Alberta Energy and Utilities Board Rules of Practice and Directive 31B, *Utility Costs Claims*, and apply to current hearings and other proceedings before the Commission.

The Commission is also undertaking a separate review of Rule 009, *Rules on Local Intervener Costs* which will be the subject of a different consultation process

#### Process for Review of Rule 022

The Commission is requesting comments on the issues outlined below that supplement comments previously provided. Participants may also provide comments on matters not specifically identified below. Parties may include in their submissions comments in respect of submissions previously filed by other parties. Written comments are due by **April 15, 2008**. Please e-mail your comments to [giuseppa.bentivegna@auc.ab.ca](mailto:giuseppa.bentivegna@auc.ab.ca) or fax them to (403) 592-4406.

Following receipt of the comments, the Commission will invite participants to one or more informal stakeholder meetings to discuss the comments in the latter part of April, 2008. A new draft Rule 022 will be prepared and circulated for comment following the completion of these meetings. Once the comments are received and considered, the Commission will provide its response to these comments. The final step is the adoption and publication of the revised Rule 022 prior to June 30, 2008.

The Commission requests that participants clearly state the principles upon which their comments and responses to the questions posed below are based.

## Issues

The issues outlined below relate to rate hearings or proceedings regarding utilities under the jurisdiction of the Commission.

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

In its December 21, 2007 letter on draft Rule 022, the UCA stated that

- The UCA will be undertaking comprehensive and primary intervention on behalf of residential, farm and small business consumers in all applicable cases before the AUC.
- The UCA will not be requesting intervener cost recovery for its participation in those proceedings.
- The UCA would recommend that, in order to avoid the duplication of positions before the AUC, and in order to avoid placing parties at risk of disallowance due to duplication of positions taken by the UCA, that the UCA provide its information requests, evidence and arguments in advance of other interveners.

On January 10, 2008, the City of Calgary filed a letter in Application 1553052 (ATCO Gas 2008-2009 General Rate Application) opposing the UCA submissions stated above. The Commission also received a letter from the Consumers' Coalition of Alberta on February 6, 2008 opposing the position of the UCA. Both these letters are on the Commission website "Projects & Initiatives" page.

The Commission will consider these comments in this review and will not be replying to these letters at this time. Other parties participating in hearings or other proceedings before the Commission may also submit their comment on these letters in this review.

The Commission is seeking comments on the following:

- Schedule 13.1 of the *Government Organization Act* states that the UCA has the responsibility of representing the groups listed. May other interveners also represent these groups?
- How should conflicting views and positions and conflicts of interest among groups that the UCA has the responsibility of representing be dealt with?
- 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?

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

## **2. Business Interest Rule**

The current business interest rule was implemented in 2004. As costs of interventions are generally passed on to customers, the Commission has a duty to ensure that customers receive fair value for their contribution. Therefore, the intent of the business interest rule is to ensure that ratepayers are not bearing the costs for certain parties who are appearing at Commission hearings to represent their own commercial interests.

In the past, this rule has not generally been applied to well-established associations that represent commercial interests. Also, the business interest rule was not applied to municipalities, municipal associations, rural electrification associations, rural gas cooperative associations, irrigators, public institutional consumers or residential consumers.

The Commission notes that in some other jurisdictions, regulators of public utilities consider applicants, groups that are self-funding or groups that have independent financial means to be ineligible for funding. Other jurisdictions allow for cost awards to otherwise ineligible persons representing their own business interests, if they are financially unable to fund their participation and their participation is considered necessary or desirable.

Comments were received in December 2007. Some were in support of the business interest rule and some against. Some participants wanted the rule to clearly grandfather interveners such as established commercial associations based on the longevity of their participation while others disagreed with such grandfathering provisions and argued that meaningful participation should be the criterion used for cost awards.

The Commission seeks comments on the business interest rule and its application including:

- Who should be ineligible for cost awards?
- 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?
- Should the Commission set out criteria regarding the application of the business interest rule?
- 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?

### **3. Budgets**

Some participants maintain that budgets should not be required from interveners who will not be submitting cost claims. Budgets were originally included within the cost rules to require parties to apply principles of cost discipline early in the proceeding and to identify areas of potential duplication. The Commission asks participants to:

- comment on the current rules on filing of budgets;
- propose any changes to the budget provisions they believe to be necessary.

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

Comments were submitted that the Scale of Costs should be reviewed to reflect market rates. The Commission seeks participants' views on the following:

- Should the Scale of Costs limit the preparation time claimed based on the number of hearing days or any other criteria?
- What rates should be set for lawyers and experts? Please provide rationale in support of the proposed rates.
- Should the Scale of Costs apply to pre-hearing technical workshops or collaborative processes?

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

Currently, costs for negotiated settlements are dealt with in the same manner as for litigated cost claims. The Commission seeks comments on the following:

- whether the costs for negotiated settlements should be treated differently; and
- how concerns about the transparency of the process should be addressed.

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

Recently, the Energy and Utilities Board has conducted certain proceedings where costs recovery has not been allowed. (For example: NGL Inquiry (Application No. 1513726) and the Competition portion of Part B of the Competitive Pipeline Review Proceeding (Application No. 1466609)). The Commission would appreciate views from parties on the circumstances where 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.

### **7. Costs Officer**

In 2005, a costs officer was appointed to oversee and administer the cost process. The cost officer worked with panels and staff to coordinate the assessment of

Statements of Intent to Participate in a proceeding or budgets prior to the proceeding and cost claims following the proceeding. The Commission requests the views of participants as to whether such assessment was useful from their perspective.

As noted above, parties may make submissions on any other issues that they want to bring to the attention of the Commission.

If you have any questions, please contact, Giuseppa Bentivegna, Commission counsel, at (403) 592-4503, [Giuseppa.bentivegna@auc.ab.ca](mailto:Giuseppa.bentivegna@auc.ab.ca).

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