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January 10, 2008

VIA E-MAIL - DDS

Alberta Utilities Commission
4th floor, 425 - 1 Street SW
Calgary, AB
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Attention: Douglas A. Larder, Q.C., General Counsel

Dear Sir:

**Re: APPLICATION NO. 1553052; ATCO GAS
2008-2009 GENERAL RATE APPLICATION
PROCEEDING ID 011**

Further to your Notice of Application and Hearing dated January 3, 2008, we write on behalf of The City of Calgary ("Calgary") to provide its comments on certain matters therewith.

Process and Schedule Comments

Calgary has reviewed the process/schedule and state of the record comments filed by counsel to the Office of the Utilities Consumer Advocate ("UCA") under a letter dated January 7, 2008, and generally agrees with and supports the recommendations and requests set out therein.

Calgary further understands that ATCO Gas has suggested revisions to address the scheduling concerns by way of a letter dated January 9, 2008.

However, the Commission (by letter dated January 8th) has confirmed further process concerning the Competitive Pipeline Review Proceeding (Application 1466609). The schedule for that proceeding also calls for substantial activities to take place in the period of

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March and April 2008. In addition, significant activities in connection with the ATCO Pipe GRA (Application 1527926) can also be expected to take place during this period.

Accordingly, in Calgary's submission it is still advisable for the Commission, in any event, to further extend or stage the steps in this ATCO Gas GRA process to commence the oral hearing portion past the original April 7th date but earlier than the early to mid-May period suggested by the UCA. While it is true that Interveners will have four weeks to prepare their evidence under the ATCO proposal, if the opening hearing date remains the same, the remaining prehearing timelines – critical to proper hearing preparation --- are necessarily truncated to the detriment of Interveners.

As to the issue of rate shock raised in the ATCO letter, while Calgary would agree that rate shock should be avoided if possible, the filing of the ATCO Gas application in late 2007, combined with the decision of the AEUB to “restart” the proceeding as a Commission process in 2008, have together necessarily resulted in a position where there may be a significant recovery of revenue requirement over a short period of time.

Put another way, whether the oral portion of the hearing starts on April 7, 2007 or April 28th (say following the CAMPUT conference) or even in May, it will take approximately 7 months for the hearing to take place, arguments to be made, the Commission to issue a decision, and ATCO to complete the compliance filing process. Therefore, and in any event, the earliest that final 2008 rates would be in place is November, 2008, leaving only 2 months to implement recovery.

Ex parte Communications

Calgary notes that in previous AEUB communications on the ATCO application (letter of October 31, 2007), it was disclosed that AEUB staff and several ATCO Gas executives and senior staff met to discuss the application. Obviously, Interveners were not provided notice that this meeting took place, nor were they invited to attend.

Calgary would respectfully submit that, *prima facie*, such meetings are unfair and prejudicial to Interveners, insofar as the utilities can explain their application and advocate its merits to the regulator, while customers are not given the opportunity to rebut utility claims or even to access what additional information and submissions were made by the applicant.

Going forward with this (and any other Commission proceedings), Calgary would respectfully submit that such practices and communications either cease outright, or that they not proceed until all interested parties have been provided notice of all proposed meetings or discussions, with full particulars, and provided the opportunity to participate in the same.

To be clear, Calgary recognizes that operating public utilities will need to liaise with their regulator from time to time on matters outside of the regulatory realm. Such communications, in the ordinary course, are not the basis for Calgary's concern. However, with matters related to the economic regulation of public utilities, experienced and sophisticated utilities should be assumed to be capable of meeting application and filing requirements and guidelines, such that *ex parte* communications on applications should not normally be required, and if so required, should be handled in the manner suggested above.

Rule 016 – Review and Variance of Commission Decisions (“R&V Rules”)

Calgary notes that the Commission has released Rule 016 as of January 2, 2008. As published, the R&V Rules differ materially from the draft Rules distributed by the AEUB to stakeholders on October 23, 2007. Importantly, the new Rules have eliminated (from Section 2 of the previous draft Rules) the right of affected parties to apply for review and variance of tariff decisions on the basis of an alleged error of fact, law or jurisdiction, notwithstanding that the Courts have long accepted these grounds under common law as a basis for judicial review of a tribunal’s decision.

Scope of R&V Grounds

As such, relief on these grounds for tariff decisions will only be available to parties by way of recourse to the appellate courts. As the Commission is aware, Calgary previously raised concerns in commenting on the R&V Rules as to the efficiency and efficacy of requiring parties to address administrative relief by way of protracted and costly court processes. Moreover, Calgary understands that utility tribunals in Ontario, British Columbia and Manitoba do not constrain affected parties from seeking relief at the tribunal level on the common law grounds.

Further, Calgary has reviewed the comments of stakeholders on the October 23rd draft R&V Rules as posted on the Commission’s website, and understands that no party (most notably even the ATCO Utilities) suggested that Section 2 of the draft Rules be revised as it ultimately was. As well, parties were given no notice by the AEUB (or the Commission prior to their release) that the R&V Rules would be altered in this fashion.

Calgary and other parties had also raised concerns with many aspects of the previously initiated (AEUB) process for the ATCO GRA (Application 1544779). In particular, Calgary requested in a letter dated November 26, 2007 that an AEUB proceeding be established for the ATCO GRA by way of a Notice of Hearing, as a fundamental procedural requirement. Again, the AEUB decided to “restart” the ATCO proceeding as a Commission process.

Implications for ATCO Gas Proceeding

The issue raised by these events is that under Rule 016, both Interveners and ATCO Gas are now limited to the very narrow grounds under Section 7 when seeking review and variance of a Commission decision on the ATCO GRA, and will be precluded from seeking relief from the Commission on the grounds of an alleged error of fact, law or jurisdiction.

In the course of making its previous process submissions to the AEUB on the ATCO application, and in declining to exercise its rights under now repealed legislation, Calgary had relied on the assumption that the R&V Rules, when released by the Commission, would be substantially similar to the initial draft, and that if any changes would be made which materially affected the rights of parties, prior notice and consultation would be provided by the AEUB or the Commission.

With great respect, it appears this reliance was misplaced and therefore Calgary reserves its rights to seek further relief and recourse on the matter should the need arise.

However, if Calgary's understanding of the intent and operation of the R&V Rules is different from that described above, it would appreciate clarification from the Commission.

Particulars of AEUB Proceeding

Calgary would respectfully request the Commission provide written confirmation of the identity of individual members of the AEUB who were referenced in Mr. Burt's letter dated December 12, 2007 as a "division of the Board" to review and make a determination of the matters referenced therein.

Additionally, Calgary would also appreciate written confirmation of the particulars associated with the delegation by the AEUB to EUB Staff of process and schedule matters, as indicated or implied in the AEUB's letter dated November 13, 2007. In particular, Calgary requires confirmation of who made the delegation decision and when.

Cost Recovery and UCA Participation

Calgary notes the December 21st letter filed by the UCA to Ms. Bentivegna providing comments on the draft Intervener Cost Recovery Rules.

In its letter, the UCA says it is undertaking "primary" intervention in Commission cases on behalf of residential, farm and small commercial customers. As the Commission is aware from Calgary's comments in previous AEUB proceedings and with respect to proposed Rules, Calgary rejects any representation by the UCA that it, and its Governance Board, possess the authority, experience or ability to represent the exclusive interests of Calgary's citizens. This position has also been stated by Calgary's elected officials in correspondence with the Alberta Department of Energy, the Minister of Energy and the Premier.

Of additional concern is that the UCA letter suggests that the Commission incorporate this concept of primacy into its hearing processes and rules, to the extent as to permit the UCA to provide information requests, evidence and arguments in advance of other Interveners.

The Commission should reject this request outright. UCA management is using the Commission to indirectly sanction and carry out for the benefit of such management what is now impossible due to Bill 46 amendments which stripped the UCA of a "primary" role in representing customers.

Moreover, Section 9 of Rule 022 sets out full and fair criterion for the Board's determination of whether or not to award costs, and in what amount. Nowhere in those criterion is there any implied or express reference to the concept or notion of primacy as the UCA suggests, despite its repeated self-aggrandizing claims.

Please contact the undersigned if you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "Douglas I. Evanchuk". The signature is stylized with overlapping loops and a long horizontal stroke extending to the right.

DOUGLAS I. EVANCHUK

DIE/dld

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