

Bulletin 2008-05

May 11, 2008

MEETINGS

Rule 022, *Rules on Intervener Costs*

Introduction

As stated in Bulletin 2008-01, *Consultation, Review of Rule 022 Rules on Intervener Costs*, the Alberta Utilities Commission (Commission) is undertaking a review of this Rule. The Commission thanks the interested persons that have submitted comments for their efforts and time. These comments are posted on the Commission website at www.auc.ab.ca under the “Projects & Initiatives” page. Commission Staff has prepared a matrix which is also posted.

Meetings

The Commission has scheduled two meetings as the next step in the review process. The Commission will hold a meeting in Edmonton on Tuesday, May 20, 2008, on the 12th Floor of the AUC’s Edmonton Office at 10055 - 106 Street from 1:30 pm to 4:30 pm and another meeting in Calgary on Wednesday, May 21, 2008, at a location to be determined, from 1:30 pm to 4:30 pm.

The Commission has reviewed the comments received to date and asks that interested parties come prepared to discuss the following:

1. What is the purpose of intervener cost awards?

Costs awarded by regulatory agencies to interveners are not like cost awards courts might grant. A cost award does not depend on a winner or loser being declared and the loser does not pay the costs of the winners. Instead, the broad base of customers pay, or in some cases, individual classes of customers are assessed the costs of the interveners representing them.

The principal purpose of granting the power to award costs to regulatory agencies has been to address the issue of representation for customers who individually do not have a sufficient interest in the outcome of a proceeding to warrant covering the expense of an intervention. Providing regulatory agencies with the power to award costs is meant to provide a mechanism through which representatives of those customers can participate in proceedings to represent the collective interests of those customers. Typically, the customer groups that fall into this category have been residential customers and farm customers. Sometimes small business customers have been included in that group as well.

One of the problems faced by a regulatory agency reviewing a cost claim by representatives of these customers is the need to assess the quality of the intervention, the relevance of it and whether the representatives have contributed to a better understanding of the issues. For those customer representatives, their client is not in the room and cannot judge whether the intervention was meaningful and whether it was worth the cost. It falls to the Commission to step into the shoes of the large and diverse set of customers to make those judgments. Because there is a broad range of interests to be considered and the Commission must balance those interests as part of its public interest mandate, providing for some mechanism to help ensure those interests are heard is worthwhile and the Commission is prepared to play its role as surrogate for the absent clients in ensuring that costs are awarded only where warranted.

In some circumstances, the government that established the regulatory agency will establish and fund a consumer advocate or contract directly with a group to represent consumers. The government either establishes a governance structure through which the costs and quality of the work of that agency are assessed or they call on the regulator to assess whether the costs of the interventions are justified by requiring the government-sponsored agency to apply for costs as any other intervener might.

Other interveners are not the same. Where an intervener is a large customer that has a sufficient interest in the outcome of a proceeding, that intervener will retain its own representation, will be able to assess whether the representatives properly represented its interests and determine whether the cost of the intervention is justified and funding comes directly from the client. In some cases, groups of customers will join together to pool their resources and ensure that their collective interests are represented before the regulator. Through the governance structure they choose, they can determine whether the cost of the intervention is justified and provide the funding they consider is justified. Sometimes, municipal governments will choose to intervene in provincial or federal regulatory proceedings directly or collectively through associations to represent their own interests and/or the interests of the utility customers in their municipalities. They too can determine whether the cost of the intervention is justified and can do so by reference to their own interests and provide the funding they consider is justified.

The AUC asks that parties come prepared to discuss the purpose of intervener cost awards by addressing these concepts and any others they consider relevant.

2. Role of the Utilities Consumer Advocate (UCA)

As stated in Schedule 13.1 of the *Government Organization Act*, the UCA represents the interests of Alberta residential, farm and small business consumers of electricity and natural gas before proceedings of the Alberta Utilities Commission. The Commission accepts that there is value in the UCA being proactive in contacting and cooperating with others representing these groups and discussing the issues and position the UCA will present on their behalf. Such a process would also identify areas where there may be conflicting interests and how they may be handled by the UCA. However, the Commission does not consider it necessary to implement rules or special processes of the AUC for that purpose. The UCA is expected to establish its own relationships with its constituencies and the parties that represent those constituencies.

However, the fact that the UCA represents these groups does not preclude the participation in a proceeding of other groups or persons representing residential, farm and small business

consumers. Nor would it preclude those groups from eligibility for costs if they have no other source of funding to participate in a meaningful way and contribute to a better understanding of the issues or raise a unique and relevant issue or position. To the extent these groups duplicate the efforts of other groups, including the UCA, who represent the same interests, the expectation is that the costs would be adjusted downward in recognition of the duplication.

3. Business Interest Rule

The Commission is of the view that the proposed changes to the business interest rule will apply in future proceedings to all interveners. Representatives of a small customer class may be eligible for costs as it does not have the means to raise revenue to fund its participation. Also, persons who would not otherwise be able to participate and who are not advancing their own interest may be eligible for costs. Any other group or person that has the means to raise revenue to fund its participation, whether it is a commercial entity or a not for profit one, is not likely to be eligible for costs. Persons who are advancing their own interests by participating in a proceeding would not be eligible for costs.

4. Costs Officer

The Commission is proposing that the position will be discontinued.

The Commission also invites additional discussion on the other issues listed in Bulletin 2008-01 but asks that any person who has submitted written comments not simply repeat the comments at a meeting. The Commission is hoping for a meaningful exchange of ideas.

If you have any questions about the meetings, please contact Giuseppa Bentivegna at giuseppa.bentivegna@auc.ab.ca or (403) 592-4503.

Original signed by

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