

List of roundtable discussion items

January 7, 2022

Assertive case management

The AUC retained a panel of independent experts to review the AUC's rate application adjudicative processes and procedures and make recommendations for potential improvements. This Committee prepared a [report](#) with 30 recommendations with the overall intention of implementing an assertive case management approach to AUC rate proceedings. The AUC accepted 29 of the recommendations for implementation.

The Commission is seeking feedback on the following elements of the AUC's assertive case management process:

1. An important element of the assertive case management approach is rigorous scoping of relevant issues at the outset of the proceeding and adherence to the identified scope over the course of the proceeding. Please comment on the effectiveness of this approach in terms of hearing efficiency and identify any modifications to the approach that you feel could enhance the process.
2. As part of its rigorous scoping of relevant issues, the AUC implemented a number of changes in relation to information requests. These include limiting interrogatories to matters within the list of issues, providing deadlines for all related proceeding steps (including motions to compel further and better responses) in process schedules and holding technical meetings. Please comment on your experience with these changes and identify any modifications that you feel could improve the information request process.
3. One of the recommendations adopted by the AUC was to consider rate applications using a combination of a written evidentiary process and oral argument. Please comment on how implementation of this recommendation has affected your participation in AUC proceedings. Further, please provide your views on the circumstances under which the AUC should not adhere to this approach.
4. Stakeholders also raised concerns about the timeliness and adequacy of reasons in AUC decisions. The Commission has recently adopted a new approach to the writing of reasons with a view to simplifying its analysis and associated reasons. Do interested parties have a reaction to this new approach?

Mediated/negotiated settlements

The AUC also commissioned an expert [report](#) on mediated settlements and has since encouraged stakeholders to use this process as a surrogate to a fully litigated proceeding. Mediations were identified as a process improvement that can significantly reduce proceeding timelines and the costs of regulatory processes. To date, the AUC has approved one mediated settlement, with that settlement taking less than half the amount of time it had taken to resolve the last fully litigated application. Another mediated settlement agreement is currently before the Commission for approval, with the applicant and interveners reaching a settlement of the majority of the application in less than 100 days after it was filed. The Commission is interested in stakeholders' views on the mediated settlement process and their willingness to engage in it.

1. Are there structural or other reasons in the current process that work against settlement? For example, the costs of both the settlement and hearing processes are passed through to ratepayers. The risks of proceeding with a hearing are less pronounced or, in some cases, non-existent. In addition, the reasonableness of positions in settlement discussions is kept from the panel. Contrast this with civil litigation where parties have strong incentives to avoid further litigation (for example, a lengthy and costly trial) and face consequences for turning down settlement offers that are more favourable than the ultimate adjudicated decision. While the Commission recently canvassed this issue specifically as it relates to cost awards in the context of Rule 022, are there other mechanisms or changes required to support greater use of mediated settlements?
2. Are there any identified problems or concerns associated with putting the current mediation procedures into practice?
3. Is further guidance from the Commission as to the value of negotiated settlements required? For example, is there remaining uncertainty that the consensus of affected parties as to what is reasonable, will be subjected to further scrutiny based on the requirement that the Commission finds the consensus is in the public interest?
4. Will successful adoption of settlements require personal initiative of senior leaders of the utility sector? If not, how will the current conservatism be overcome?
5. Are there concerns associated with settlements that do not exist when cases are litigated? For example, until recently the tolls for CER-regulated gas transmission pipelines had been successfully negotiated since 1995. A key to that outcome was a united producing sector through the Canadian Association of Petroleum Producers (and its predecessors) as a counterparty to the utility. Does a lack of a united counterparty in negotiations inhibit settlements?
6. Should more technical resources be made available to participate in settlement discussions to provide technical insights and perspective on parties' positions?

Revised performance metrics

The current performance metrics for rates proceedings are found in [Bulletin 2015-09](#). New performance metrics for rates proceedings will be introduced in 2022. These metrics will be aggressive and focus on full-cycle processing times. Success in meeting these performance metrics is partially dependent upon the initial quality of the application and the conduct of participants over the course of the proceeding. The Commission would like stakeholder feedback on its performance metrics and the considerations that it should have regard for when setting or adjusting them.

1. The AUC's currently applies its performance metrics starting on the day an application is received. The AUC is proposing to change this practice by applying its performance metrics once it is satisfied that the application has no material deficiencies. If the application is determined to be complete, the performance metric timeline will commence, and the AUC will issue notice of the application. Applications with material deficiencies would be closed. Please provide your feedback on this proposal.
2. Most rates applications are now being addressed through a written evidentiary process followed by oral argument and reply, making these proceedings most comparable to the full written process type in Bulletin 2015-09. The maximum full-cycle time set out for a full written process is 262 days to complete all standard steps and issue a decision. This is not meant to incorporate non-standard steps, for example the time required for technical meetings, negotiated settlements, multiple rounds of information requests, motions, etc.) As part of its commitment to improving efficiency and full-cycle timelines, the Commission is considering options for reducing this maximum. The Commission is considering a full-cycle maximum for written hearings in the range of 180 days to 225 days, which will require abiding by shorter timeframes for most or all associated process steps. It will also require a greater amount of applications or parts of applications to be settled. The types of applications this maximum is expected to apply to include general rate and tariff applications, direct assign capital deferral accounts reconciliation applications, non-energy regulated rate tariff applications, regulated rate option energy price setting plan applications and various performance-based regulation applications. Please provide your feedback on the proposed shorter, full-cycle metrics. Are there applications that will require more than the maximum and, if so, how should the Commission treat exceptions?
3. As noted above, the performance metrics in Bulletin 2015-09 exclude any time for non-standard process steps. In the past, when measuring its performance, the AUC discounted the days associated with these non-standard process steps and other delays not caused by the AUC (e.g. extension requests from participants). The Commission is proposing to discontinue this as part of its commitment to assertive case management in an effort to focus on full-cycle turnaround times. While this means that, in most cases, delays to the process must be avoided, there may be exceptional proceedings that are delayed or suspended for reasons outside the control of the AUC. Does the Commission need to maintain a degree of flexibility to permit delays and, if so, how can it account for these in how it measures its performance?

Suggestions for further improvement

Please provide any further suggestions you might have to assist the AUC with the reduction of regulatory burden.