

December 6, 2021

**To: All parties participating in the upcoming virtual stakeholder sessions for Rule 022:
*Rules on Costs in Utility Rate proceedings consultation***

Process for virtual stakeholder sessions

1. The Alberta Utilities Commission is conducting a stakeholder engagement to review its rules governing cost recovery in rates proceedings to improve participation and encourage efficient, issue-focused proceedings, as set out in the AUC 2021-2024 Strategic Plan. This review is limited to addressing cost recovery matters in rate-related proceedings only; the Commission will consider costs in facilities proceedings under Rule 009: *Rules on Local Intervener Costs* at a later date.
2. As part of this process, the Commission will conduct a virtual stakeholder engagement session on December 8 and 9, 2021. The session will begin at 9 a.m. and finish at 2 p.m. each day. The Commission asks participants to sign into the virtual platform at 8:15 a.m. on the first day to test their connection and equipment in an effort to ensure we can start at 9 a.m. and avoid disruptions throughout the day. A tentative schedule for the session is attached to this letter.
3. After reviewing written submissions from participants received in November on the AUC's Engage platform, the Commission requested that the Office of the Utilities Consumer Advocate (UCA) participate in the virtual stakeholder session. The Commission subsequently received a response and written comments from the UCA on December 3, 2021, a copy of which was uploaded to the Engage platform. The Commission has also been contacted by The City of Calgary who has asked to participate in the virtual stakeholder session notwithstanding that it did not file written comments. The Commission will include both the UCA and Calgary in the virtual stakeholder session, and requests that Calgary provide a written summary of its submissions on the issues identified earlier in this consultation by December 7 at 12 p.m. The summary will also be posted on the Engage platform for all participants' reference.
4. The Commission will provide participants with the opportunity to summarize their views, respond to the submissions of others and answer questions from the Commission. To focus the discussion, the Commission will organize the discussion by the issues set out in Bulletin 2021-18.¹ Each participant is asked to limit their oral summary to five minutes (or less) for each issue. The Commission will hear from participants alphabetically on each issue.
5. The Commission provides additional guidance in this letter on the scope of the consultation and items of interest to the Commission so that parties may focus their submissions accordingly.

¹ Bulletin 2021-18: Consultation on Rule 022: Rules on Costs in Utility Rate Proceedings, September 24, 2021.

Utility cost recovery process

6. The Commission notes that the scope of this consultation is limited to the costs of participation in rates proceedings. The Commission is not revisiting its process for assessing non-proceeding related costs (i.e., legal and consulting fees for matters not directly attributable to a specific rates proceeding) in the current consultation.

7. In Bulletin 2008-19,² the Commission expressed the view that utility applicants must submit cost claims in accordance with Rule 022 and reflect the cost awards in their hearing cost reserve accounts. This was subsequently revised for distribution utilities under performance-based regulation (PBR) in Decision 2012-237,³ where the Commission decided that the utility portion of hearing costs should be subject to I-X and only intervenor costs should be recorded in the hearing cost reserve account and flowed through by way of a Y factor. Rather than addressing the approach to cost recovery for utilities under PBR as part of this review, the Commission will revisit this issue in the upcoming proceeding to establish the parameters of the next PBR plans.⁴

8. Several parties suggested establishing a threshold to avoid or minimize the regulatory burden associated with small or immaterial cost claim amounts.

- If the Commission established a threshold for filing cost claims under Rule 022 and permitted utilities to record costs under the threshold in their hearing cost reserve accounts without filing a cost claim, what should this threshold be? How can the Commission ensure that the costs recorded without a supporting cost claim are reasonable?
- Alternatively, if the Commission were to provide each utility, regulated rate and default supply provider with an annual maximum budget to account for its own proceeding-related costs, could the Commission dispense with the need for these entities to file cost claims?

Eligibility for costs

9. Several participants pointed to overlap or duplication between the UCA and other intervenors in rates proceedings. Some suggested that any intervenor requesting eligibility to recover costs under Rule 022 should be required to substantiate why the interests that intervenor represents are not and cannot be represented by the UCA. Other suggestions included that the UCA should be designated as the primary intervenor representing all non-industrial customers in

² Bulletin 2008-19: Adoption of Revised Rule 022: *Rules on Intervenor Costs in Utility Rate Proceedings* and Changes to Rule 009: *Local Intervenor Costs* and Rule 015: *Rules on costs of Investigations, Hearings or Other Proceedings Relating to Contraventions*, September 30, 2008.

³ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Proceeding 566, Application 1606029-1, September 12, 2012.

⁴ In Decision 26356-D01-2021, the Commission stated it will initiate a proceeding to establish the parameters of the next PBR in mid 2022.

rates proceedings and that the UCA should be required to provide greater transparency as to how it is coordinating interventions with other customer representatives.

10. Certain participants submitted that eligibility for costs should be expanded and that provisions in Section 4 of Rule 022 declaring certain parties ineligible for costs should be removed. Some suggested the current Rule 022 creates an uneven playing field or is unfair to certain customers or market participants who are not represented by the UCA and who are not eligible to claim costs. However, it appears that these customers or customer groups may have other means (business revenue, members' dues, etc.) to fund their participation in rates proceedings.

- When the UCA intervenes in a proceeding, should cost eligibility for that proceeding only be available to intervenor groups who can demonstrate that they do not represent the same consumers as the UCA?
- Why should interested parties that have other means to fund participation in rates proceedings be eligible to claim costs of participation? Alternatively, should all cost eligible participants be expected to pay for some portion of their proceeding-related costs from sources other than funding under Rule 022 to ensure cost-eligible participants have "skin in the game"?

Scale of costs and professional fees claimed

11. The majority of participants supported increasing the maximum hourly rates provided in the scale of costs (Appendix A to Rule 022), although feedback varied regarding the method to develop the increased rates (market review, benchmark, escalate current maximums by a measure of inflation, etc.) However, the Commission's existing maximum hourly rates appear comparable to other regulators across Canada (for example, the Ontario Energy Board and the British Columbia Utilities Commission).

- Why should the Commission increase the prescribed maximums if it would result in higher hourly rates than are permitted in other jurisdictions?
- What is the objective of the scale of costs (full indemnity, recovery of a percentage of costs, etc.)? Do the current prescribed maximums or some other amount achieve this objective?

12. Some participants indicated that the Commission should reconsider the approach it introduced in Bulletin 2016-07,⁵ under which formal qualification of experts is not required.

- If the Commission were to create separate scales of costs for consultants and experts, how would it address who is eligible to claim what amounts in light of its practice of not-qualifying experts in proceedings?

⁵ Bulletin 2016-07, Practice advisory and procedural change – expert witness qualification no longer required, March 24, 2016.

Process for cost awards

- Should the Commission change its approach to awarding costs, for example, by establishing a “cap” for interventions or approving budgets on a per-proceeding basis, or annual budgets for intervention more generally?
- How can the Commission assess and better quantify the value provided or the results achieved by an intervention? And should the amount of costs awarded be tied in some way to the relative success or value?

Other issues or considerations

- Whether alternative arrangements could be made for the recovery of pre-proceeding costs. For example, can or should cost recovery for Alberta Electric System Operator (AESO) consultations be provided by and/or managed by the AESO?
 - How should intervener cost awards should be allocated? For example, should the costs of an intervention on behalf of residential customers be recovered only from the residential customer class(es)?
13. Some participants recommended greater transparency into costs awarded, including recommendations regarding publishing costs of interventions.
- Are there any concerns with the Commission publishing a report of the costs claimed and awarded to cost eligible participants?
 - What would any such report be used for and would the value of any such report outweigh the work required to assemble and publish the information?
14. Information on how to participate, including the registration link for the session, has been sent out by email. If you have any questions, please contact Kristjana Kellgren at kristjana.kellgren@auc.ab.ca or Kim Macnab at kim.macnab@auc.ab.ca.

Yours truly,

Kristjana Kellgren
Executive Director
Rates Division

Attachment – Schedule for virtual stakeholder sessions for Rule 022: *Rules on Costs in Utility Rate proceedings* consultation

Day 1 – Wednesday, December 8, 2021	
8:15 a.m.	Participants to sign in to the virtual platform
9 a.m. – 9:10 a.m.	Opening remarks and any preliminary matters
9:10 a.m. – 10 a.m.	Utility cost recovery process
10 a.m. – 11:30 a.m.	Eligibility for costs
11:30 a.m. – 12:30 p.m.	Lunch break
12:30 p.m. – 1 p.m.	Eligibility for costs (continued)
1 p.m. – 2 p.m.	Scale of costs and claims for professional fees

Day 2 – Thursday, December 9, 2021	
8:15 a.m. – 8:55 a.m.	Participants to sign in to the virtual platform
9 a.m. – 10 a.m.	Scale of costs and claims for profession fees (continued)
10 a.m. – 11:30 a.m.	Process for cost awards
11:30 a.m. – 12:30 p.m.	Lunch break
12:30 p.m. – 1 p.m.	Process for cost awards (continued)
1 – 2 p.m.	Other issues or considerations