

Practice note: written rebuttal evidence

Alberta Utilities Commission (AUC) hearing processes generally include an opportunity for applicants to file limited, written rebuttal evidence after intervenor evidence is filed. This practice direction sets out the AUC's expectations for written rebuttal evidence and the potential consequences if those expectations are not met.

Purpose of written rebuttal evidence

Rebuttal evidence is prepared and filed to refute or contradict evidence presented by the opposing party. In AUC proceedings, rebuttal evidence is intended to ensure that the applicant is not deprived of the fair opportunity to respond to unanticipated new evidence from the intervenors.

The applicant may be allowed to file written rebuttal evidence after the intervenor's evidence. Rebuttal evidence should only be filed where the intervenors introduced new evidence that the applicant has had no opportunity to deal with and could not reasonably have anticipated.

Admissible written rebuttal evidence

Written rebuttal evidence should be limited to evidence that responds only to new issues raised in intervenor evidence that the applicant could not have reasonably anticipated when it filed its application.

Written rebuttal evidence cannot be used to repeat, confirm, reinforce or re-present evidence already given. It also cannot be used for case-splitting (i.e. to introduce evidence the applicant could have adduced initially) or to introduce unrelated evidence.

The purpose of limiting written rebuttal evidence in this manner is to ensure procedural fairness. It is improper for an applicant to withhold relevant, available evidence until the rebuttal evidence stage to deprive intervenors of the opportunity to effectively respond.

An applicant's written rebuttal evidence must be in response to a new and reasonably unanticipated concern in intervenor evidence or it will likely be struck from the record.

Examples

Example 1

An applicant is proposing a wind project in rural Alberta. During its participant involvement program, several adjacent landowners express significant concerns about the project's impact on property values. The applicant includes an expert report on property values for the area based on recent sales in its application. The intervenors file their own expert report that includes new sales data from transactions that occurred after the applicant's study was filed. The applicant could file

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rebuttal evidence addressing the new sales data but could be precluded from filing rebuttal evidence that simply confirms or re-emphasizes its findings in the original report.

Example 2

An applicant files for Commission approval of its actual costs connected with a certain capital project. The applicant understands that the costs associated with the project are in issue in the Commission's hearing process, because its actual costs are substantially greater than what the applicant had forecast. In its application, the applicant's evidence supporting the capital project is about 100 pages in length. Interveners file 50 pages of evidence opposing the applicant's costs for the capital project. In rebuttal evidence, the applicant files 200 new pages of evidence related to the capital project, all of which was available when it filed its application. The applicant's rebuttal evidence could be struck, because the applicant split its case and should have provided this information with its application.