

# Rule 009

## Rules on Local Intervener Costs

This rule as amended was approved by the Alberta Utilities Commission on March 1, 2016, and is effective May 2, 2016.

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## 1 Costs

In this rule:

- (a) “act” means the *Alberta Utilities Commission Act*;
- (b) “costs decision” means a decision of the Commission awarding costs on a claim for costs to a local intervener;
- (c) “local intervener” means a local intervener as defined in Section 22 of the act.

## 2 Advance of funds request

- 2.1 A local intervener who intends to take part in a hearing or other proceeding may, at any time during the hearing or other proceeding, make a request to the Commission for an advance of funds in accordance with the scale of costs set out in Appendix A and submit a budget in accordance with Appendix B.
- 2.2 The Commission may award an advance of funds to a local intervener if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.
- 2.3 If the Commission awards an advance of funds to a local intervener under Section 2.2, the Commission may
  - 2.3.1 advance the funds to the local intervener and
    - (i) set out the terms for repayment of the advance to the Commission by the local intervener, or
    - (ii) direct the applicant to reimburse the Commission for the funds advanced to the local intervener,
  - or
  - 2.3.2 direct the applicant to advance funds to the local intervener and set out the terms for repayment of the advance to the applicant by the intervener.

## 3 Budget to be filed

The Commission may, at any time during a hearing or other proceeding, require a local intervener to file a budget of the intervener’s anticipated costs in the proceeding in accordance with Appendix B.

## 4 Interim awards

- 4.1 A local intervener may apply to the Commission for an award of interim costs incurred in a hearing or other proceeding by filing an interim costs claim.

- 4.2** A local intervener may only claim interim costs in accordance with the scale of costs set out in Appendix A.
- 4.3** The Commission may award interim costs to a local intervener if the Commission is of the opinion that
- 4.3.1** the costs are reasonable and directly and necessarily related to the hearing or other proceeding,
  - 4.3.2** the hearing or other proceeding in which interim costs are claimed is lengthy, and
  - 4.3.3** the local intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.
- 4.4** If the Commission awards interim costs to a local intervener under Section 4.3, the Commission may
- 4.4.1** pay the interim costs to the local intervener and
    - (i) set out terms for repayment of the interim costs to the Commission by the local intervener if the Commission varies or denies costs on a claim for costs filed by the local intervener at the close of the proceeding, or
    - (ii) direct the applicant to reimburse the Commission for the interim costs paid to the local intervener,
- or
- 4.4.2** direct the applicant to pay the interim costs to the local intervener and set out terms for repayment of the interim costs to the applicant by the local intervener if the Commission varies or denies costs on the claim for costs filed by the local intervener at the close of the hearing or other proceeding.

## **5 Costs claim**

- 5.1** A local intervener may apply to the Commission for an award of costs incurred in a hearing or other proceeding by filing a costs claim in accordance with Appendix C.
- 5.2** A local intervener may only claim costs in accordance with the scale of costs set out in Appendix A.
- 5.2.1** Unless otherwise directed by the Commission, a local intervener shall file a claim for costs within 30 days after the hearing or other proceeding is closed, and

**5.2.2** serve a copy of the claim on the other parties.

**5.3** After receipt of a claim for costs, the Commission may direct the local intervener who filed the costs claim to file additional information or documents with respect to the costs claimed.

**5.4** Costs claims filed with the AUC will be available for viewing by interested parties.

## **5.A Review costs**

**5.A.1** In this section:

**5.A.1.1** “electric utility” has the meaning given to it in the *Electric Utilities Act*;

**5.A.1.2** “Independent System Operator” or “ISO” has the meaning given to it in the *Electric Utilities Act*;

**5.A.1.3** “owner” has the meaning given to in the *Electric Utilities Act*; and

**5.A.1.4** “owner of a gas utility” has the meaning given to it in the *Gas Utilities Act*.

**5.A.2** When the Commission denies an application for a review under Rule 016: *Review of Commission Decisions*, the review applicant shall bear its own costs.

**5.A.3** When the unsuccessful review applicant is the owner of an electric utility, the owner of a gas utility, or the ISO, it shall also bear the costs incurred by local interveners responding to their review application, and these costs shall be borne by the shareholders of the applicant utility or the ISO and may not be included in or form the basis of any forecast used to apply for rate increases.

**5.A.4** When the unsuccessful review applicant is an intervener, the costs incurred by the ISO, an owner of an electric utility or an owner of a gas utility to respond to the review application may be assigned to its hearing cost reserve account unless it is otherwise prohibited from doing so by the Commission.

**5.A.5** A cost claim for a review application may either be filed within 30 days after the Commission’s determination of the review application or, where the Commission has granted a review application and held a hearing or other proceeding to decide whether to confirm, rescind or vary the decision, within 30 days after the conclusion of that hearing or other proceeding.

## **6 Comments on costs claims**

**6.1** Unless otherwise specified by the Commission, in a hearing or other proceeding,

**6.1.1** an applicant in the proceeding for which one or more cost claims has been filed may file a submission with the Commission detailing any questions

and comments on the costs claimed within seven days of the deadline for the filing of a costs claim referred to in Section 5 or Section 5.A

- 6.1.2** if an applicant files a submission under Section 6.1.1, a local intervener may file a reply submission with the Commission within 14 days of the deadline for the filing of a costs claim referred to in Section 5 or Section 5.A.

## **7 Costs award**

- 7.1** The Commission may award costs, in accordance with the scale of costs set out in Appendix A, to a local intervener if the Commission is of the opinion that
  - 7.1.1** the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and
  - 7.1.2** the local intervener acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.
- 7.2** In determining the amount of costs to be awarded to a local intervener, the Commission may consider whether the local intervener did one or more of the following:
  - 7.2.1** asked questions on cross-examination that were unduly repetitive of questions previously asked by another party and answered by that other party's witness;
  - 7.2.2** made reasonable efforts to ensure that the local intervener's evidence was not unduly repetitive of evidence presented by another party;
  - 7.2.3** made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine the local intervener's submission with that of similarly interested local interveners;
  - 7.2.4** presented in oral evidence significant new evidence that was available to the local intervener at the time the local intervener filed documentary evidence but which was not filed at that time;
  - 7.2.5** failed to comply with a direction of the Commission, including a direction on the filing of evidence;
  - 7.2.6** submitted evidence and argument on issues that were not relevant to the proceeding;
  - 7.2.7** needed legal or technical assistance to take part in the proceeding;
  - 7.2.8** engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;

**7.2.9** failed to comply with these rules and AUC Rule 001: *Rules of Practice*.

## **8 Liability for costs**

Unless the Commission otherwise directs,

**8.1.1** in a hearing or other proceeding that relates to a specific licensee, operator or approval holder, the licensee, operator or approval holder shall pay the costs awarded to a local intervener, and

**8.1.2** in a hearing or other proceeding that relates to policies or concerns respecting utilities or facilities under the jurisdiction of the Commission, the Commission may pay the costs awarded to a local intervener.

## **9 Costs decision**

**9.1** Where the Commission has awarded costs in a hearing or other proceeding, the Commission shall issue a costs decision setting out the amount awarded and to whom and by whom the payment must be made.

**9.2** The Commission shall serve a copy of the costs decision on the local intervener making the costs claim and on the applicant.

**9.3** An applicant named in a costs decision shall pay the amount awarded to the local intervener within 30 days of being served with a copy of the costs decision under Section 9.2.

## **10 Coming into force**

This rule comes into force on May 2, 2016, and applies to all cost claim applications filed after this date.

## Appendix A

### Scale of costs

This scale of costs represents a fair and reasonable tariff to provide any eligible interested party with adequate, competent and professional assistance in making an effective submission before the Commission. In a case where an eligible participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in this scale to address such unique circumstances.

#### 1. Professional fees

This scale of costs provides a sliding scale for professional fees; as the professional's experience increases, so will his or her value and wage. The Commission emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Commission will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. **The Commission allows professionals only half of their hourly rate for travel time.**

**Claims for professional fees must be accompanied by a statement of account.**

Statements of account must include the following:

- The date of activity undertaken.
- A description of the activity undertaken with sufficient detail to allow the Commission to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant.
- The time incurred with respect to each described service.

#### a) Legal fees

Articling students \$140 per hour  
One to four years at the bar \$240 per hour  
Five to seven years at the bar \$280 per hour  
Eight to 12 years at the bar \$320 per hour  
More than 12 years at the bar \$350 per hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Commission will not award legal fees for secretarial/support staff work. The fees for this work must be claimed as secretarial/staff support fees.

**b) Fees of consultants, analysts, and experts**

One to four years of experience \$120 per hour  
Five to seven years of experience \$160 per hour  
Eight to 12 years of experience \$230 per hour  
More than 12 years of experience \$270 per hour

The Commission recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Commission will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

**c) Fees for secretarial/support staff**

Secretarial/support staff \$45 per hour

**2. Honoraria for local interveners**

**a) Honorarium for forming a group**

Local interveners with similar issues should consider intervening as a group rather than as individuals. The formation of a group often reduces duplication of the information presented at the hearing and of costs. As organizing a group of local interveners may require time, effort, or expense, organizers may claim an honorarium of up to \$500. In exceptional cases when the necessary preparation time is substantial, honoraria in excess of \$500 may be claimed.

Reasonable expenses incurred by a local intervener related to the organization of a group may be claimed, in accordance with the disbursements set out in Section 2.

Goods and Services Tax (GST) cannot be claimed on honoraria.

**b) Preparation honorarium**

A local intervener who personally prepares a submission without expert help, may claim an honorarium in the range of \$300 to \$2500, depending upon the complexity of the submission. An honorarium may not be awarded for preparation honorarium if a lawyer is primarily responsible for the preparation of an intervention.

When a submission is prepared on behalf of a group of interveners without expert help, up to four people may be entitled to preparation honoraria at the same rates described above.

Reasonable expenses incurred by a local intervener and related to the preparation of a submission may be claimed, in accordance with the disbursements set out in Section 2.

GST cannot be claimed on honoraria.



**c) Attendance honorarium**

Interveners who participate in a hearing may claim an honorarium of \$50 for each half day of attendance at a hearing.

For large local intervener groups, attendance honoraria may be claimed by up to six individuals. In exceptional circumstances, additional honoraria may be claimed.

Reasonable expenses incurred by a local intervener for attendance at a hearing may be claimed in accordance with the disbursements set out in Section 2.

GST cannot be claimed on honoraria.

**3. Disbursements**

The Commission will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. **The Commission will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.**

**a) Office disbursements**

The Commission will consider claims for the following office disbursements incurred throughout the eligible participant's involvement in the hearing or proceeding.

- courier charges
- long-distance telephone calls
- photocopies (10 cents per page)
- fax (\$1 per page)
- computer charges
- postage
- transcripts (must be accompanied by a receipt)

The Commission does not require eligible claimants to submit receipts for the above disbursements (other than transcripts) with their initial costs claims. Eligible claimants should, however, retain receipts for such disbursements, as the Commission will require their submission if the claim is selected for audit. Office disbursements other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed attached.

**b) Personal disbursements**

The Commission will consider claims for the following personal disbursements that are incurred during an oral hearing.

- *Meals*

Maximum allowable claim for meals is \$40 per day (\$10 for breakfast, \$15 for lunch and dinner each). Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable.

Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

- ***Accommodation***

Maximum allowable claim for accommodation is \$140 per day maximum. Claims for accommodation are restricted to the duration of an oral hearing.

Receipts must accompany all claims for accommodation.

- ***Travel***

The Commission's mileage rate for automobile travel is 46 cents per kilometre (including GST). This portion of a claim is restricted to intercity travel distances of 50 kilometres or greater.

The Commission will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing.

Receipts are required and must clearly identify the date of departure and arrival.

- ***Taxi***

Taxi claims are restricted to an oral hearing. Taxi receipts are required and must clearly reflect the date and the amount. Tips are not claimable.

- ***Parking***

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, an eligible claimant should retain such receipts in the event that the Commission directs an audit of the claim.

## Appendix B

### Budget submission

Date of budget submission:

Name of hearing:

Application number(s):

Name of participant group:

Identify the issues you will be exploring and/or challenging:

Issue 1 –

Issue 2 –

Issue 3 –

Issue 4 –

Issue 5 –

For each issue identified, complete the following budget submission:

#### **General**

Name of issue/area to be explored and/or challenged:

Why is this area an issue for this participant group?

To pursue this issue, what resources do you expect to employ?

#### **External legal counsel**

Name of law firm being retained

What specific activities will senior counsel be performing?

What specific activities will junior counsel be performing?

What specific activities will articling students be performing?

Anticipated legal fees:\$\_\_\_\_\_

**Expert consultant**

Name of expert consultant being retained:

What specific areas of this issue is the expert consultant responsible for?

Describe the specific activities the expert consultant will be performing by way of the following categories:

- Pre-hearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated expert fees: \$ \_\_\_\_\_

**General consultant**

Name of general consultant being retained:

What specific areas of this issue is the general consultant responsible for?

Describe the specific activities the general consultant will be performing by way of the following categories:

- Pre-hearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated consulting fees: \$ \_\_\_\_\_

## Appendix C

### Costs claims

1. All eligible claimants must acknowledge that all documents filed in respect of the costs claim must be placed on the public record, including that all documents will be accessible on the AUC's regulatory eFiling System which is available via the Internet.
2. If a hearing or other proceeding is convened to consider multiple applications by different applicants, eligible participants must file a separate package of utility cost forms for each application, otherwise, costs claims are returned.
3. An eligible claimant must submit the following:
  - (a) Submission of justification. Eligible participants are required to explain:
    - (i) What interests they represent.
    - (ii) What tasks they have undertaken.
    - (iii) Why they appeared before the Commission.
    - (iv) What efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants.
    - (v) Why the costs submitted are reasonable.
  - (b) Form U1 – Summary of total costs claimed
  - (c) Form U2 – Summary of professional fees and disbursements claimed
  - (d) Form U3 – Summary of intervener honoraria claimed
  - (f) Affidavit of fees, honoraria and disbursements claim - which may be signed by the participant or counsel for the participant.
  - (g) Statement(s) of account reflecting the professional fees being claimed.
  - (h) Legible receipts for certain expenses where required.
4. The onus is on the eligible claimant to provide sufficient information for the Commission to effectively assess its claim and must address the specifics of the proceeding.
5. All costs claim forms are available on the Commission website.
6. A costs claim must be filed electronically via the eFiling System accessible from the AUC website. Questions and issues regarding the use of the eFiling System need to be addressed to the eFiling System support staff by email at [info@auc.ab.ca](mailto:info@auc.ab.ca) or by phone at 403-592-4500.