

# Bulletin 2020-33

October 22, 2020

## Process improvements to AUC rate proceedings

In a [letter issued](#) today Alberta Utilities Commission Chair Carolyn Dahl Rees notified stakeholders of improvements that the Commission intends to make to its processes and procedures for rate cases. That letter, as well as [the independent expert report](#) that sets out the reform recommendations that are being implemented, are [available here](#).

The purpose of this bulletin is to provide additional information with respect to the implementation of the recommendations.

The *Report of the AUC Procedures and Processes Review Committee* was authored by Kemm Yates, QC (committee chair), David J. Mullan and Rowland J. Harrison, QC. The committee and its terms of reference were first introduced on May 8, 2020 in AUC [Bulletin 2020-17](#). The bulletin invited interested parties to make submissions on adjudicative efficiencies in rate proceedings and both written and oral submissions were received by the committee over the course of their work. This independent committee then made 30 recommendations to improve AUC adjudicative efficiency, the most fundamental one being that the Commission implement a comprehensive assertive case management approach to its procedures and processes.

The Commission has accepted 29 of the 30 report recommendations. It did not accept one recommendation, that a legislated tightening of the AUC's decision-making timeframes is unnecessary. The Commission believes legislation could be an effective option to focus the Commission and stakeholders on our commitment to efficiency.

While some or all of the recommendations may ultimately require inclusion in the Commission's [Rule 001: Rules of Practice](#) to effectively implement the efficiencies described in the committee's report, the Commission will adopt the following recommendations immediately:

### **Recommendations 1 and 2 (Assertive case management)**

These recommendations have many aspects which are further reflected in other specific recommendations. But the overall philosophy of the Commission owning its processes and procedures and making decisions based on the information it deems necessary to make a decision in the public interest will be adopted. (Please see the report for the full text.)

### **Recommendation 8 ( Confidentiality)**

The Commission should build on its proactive resolution of the confidentiality issue and aggressively apply case management to enhance the efficiency of its processes in this respect.

**Recommendation 9 (Hearings)**

There should be a strong presumption that all Commission rate-setting hearings be conducted in writing, subject to the applicant or a party demonstrating to the satisfaction of the Commission, or the Commission determining in view of its own needs, that a hearing or part of the hearing be oral.

**Recommendation 12 (Cross-examination)**

The committee recommended that the Commission maintain and increase its focus on reduction of regulatory burden in determining whether to allow cross-examination.

**Recommendation 13 (Cross-examination).**

The committee recommended cross-examination should be limited to areas and issues that the Commission considers to be necessary to inform its judgment on the application before it. (Please see the report for the full text.)

**Recommendation 14 (Aids to cross-examination)**

Aids to cross-examination should be strictly controlled in accordance with the Commission's Rule 001: *Rules of Practice* and stated policies.

**Recommendation 15 (Non-expert opinion evidence)**

Non-expert opinion evidence should be discouraged through reduction of costs allowed to utilities and eligible interveners.

**Recommendation 18 (Rebuttable resumption - previous rulings)**

The Commission should implement a rebuttable presumption of following precedents set by previous decisions in respect of previous rulings on similar motions.

**Recommendation 19 (Argument)**

The committee recommended that the Commission adopt a presumption for efficient and expeditious oral argument to be delivered within three business days of the close of the hearing record, using the top-down/bottom-up format. This presumption should be varied only in exceptional circumstances with appropriate justification.

**Recommendation 20 (Argument)**

The committee recommended that the Commission adopt an assertive approach to management of oral argument including utilization of time limits, stipulation of topics on which it will hear argument, or other measures as it deems necessary or advisable in pursuit of the goal of improving efficiency and expedition.

**Recommendation 22 (Assertiveness in hearing room)**

The committee recommended, consistent with the focus of the report on assertive case management, that the Commission endorse assertiveness not only in the hearing room but generally throughout the process as a virtue that should inform all rate-setting and rate-related proceedings.

**Recommendation 23 (Decisions)**

The Commission should adopt a template for decision-writing that is issue-driven.

**Recommendation 24 (Training for decision writing)**

The Commission should provide appropriate training to its members and staff on issue-driven decision-writing.

**Recommendation 25 (Member training)**

The committee recommended that Commission members be provided with training on the nature of the Commission's role as a quasi-judicial tribunal and on the principles of procedural fairness and the elements of conducting a quasi-judicial process, particularly with respect to balancing procedural requirements with the need to conduct an effective and efficient process intended to enable the Commission to fulfil its mandated responsibilities. (Please see the report for the full text.)

**Recommendation 26 (Plenary meetings)**

The Commission should formally recognize the benefits of plenary meetings to discuss generic issues that arise in proceedings before individual panels, within the terms of the guidance on such meetings provided by the Supreme Court of Canada in the *Consolidated-Bathurst* and *Vavilov* decisions.

**Recommendation 27 (Interventions)**

The Committee recommends that the Commission should, through its case management powers, more assertively hold all parties to the scoped issues and guard against repetitious evidence and submissions.

**Recommendation 28 (Costs)**

The Committee recommends that the Commission should, in appropriate cases, continue to recognize and apply the extensive discretionary authority that it possesses under Section 11 of [Rule 022: Rules on Costs in Utility Rate Proceedings](#), to deny or reduce the cost claims of both utilities and eligible interveners

**Recommendation 29 (Costs)**

The Committee recommends that the Commission rigorously apply to costs claims in rate-setting and rate-related proceedings the considerations governing eligibility and quantum of recovery set out in Section 11 of Rule 022: *Rules on Costs in Utility Rate Proceedings*.

**Recommendation 30 (Rules review)**

The Committee recommends that the Commission review Rule 001: *Rules of Practice* with a view to supporting implementation of the committee's recommendations, as the Commission may deem appropriate.

These recommendations will be implemented immediately on all existing and future proceedings.

As indicated in Ms. Dahl Rees' letter today, a working group composed of five or six participants from the Commission's roundtables in the fall of 2019 will be formed. The Commission will select members of this group who along with the AUC will examine all the recommendations accepted by the Commission with a view to incorporating them into the Commission's Rule 001: *Rules of Practice* if necessary to effectively reduce regulatory lag and burden.

The working group will conclude its work and submit any proposed rule amendments to the Commission by the end of the 2020.

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