

# Rule 022

## Rules on Costs in Utility Rates Proceedings

This rule as amended was approved by the Alberta Utilities Commission on **Month DD, 20XX**, and is effective on **Month DD, 20XX**.

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## 1 Application

- (1) These rules apply to rates proceedings as defined in Rule 001: *Rules of Practice*, as well as any other proceeding or inquiry to which the Commission determines these rules apply.
- (2) These rules may also apply to any pre-application or pre-inquiry process, such as settlement negotiations, that may occur before the formal filing of an application, if the Commission determines that such process may result in the fair, expeditious and efficient resolution of any issue.
- (3) The Commission may dispense with, vary or supplement all or any part of these rules if it is satisfied that the circumstances of any proceeding, or the fair, expeditious and efficient resolution of any issue, require it.

## 2 Definitions

In these rules:

- (a) “act” means the *Alberta Utilities Commission Act*;
- (b) “applicant” means a person who files an application with the Commission;
- (c) “Commission” means the Alberta Utilities Commission;
- (d) “costs order” means an order of the Commission awarding costs to a participant under Section 21 of the act and these rules;
- (e) “eligible participant” means a participant who the Commission has found to be eligible for cost recovery under sections 3 or 4 of this rule;
- (f) “hearing cost reserve” means an account of the owner of a utility or regulated service provider in which costs awarded by the Commission under Section 21 of the act and these rules are recorded and ultimately recovered through the owner or provider’s rates, tolls, tariffs, charges or prices;
- (g) “intervener” means a participant in a rates proceeding who is not the applicant nor the Commission;
- (h) “participant” means an applicant or intervener in a rates proceeding;
- (i) “regulated service provider” means a regulated rate provider under the *Electric Utilities Act* or a default supply provider under the *Gas Utilities Act*;
- (j) “scale of costs” means the scale of costs set out in Appendix A;

- (k) “utility” means a gas utility within the meaning of the *Gas Utilities Act*, an electric utility within the meaning of the *Electric Utilities Act*, and a public utility within the meaning of the *Public Utilities Act*.

### 3 Cost eligibility

An intervener in a rates proceeding may be eligible to claim costs under these rules if:

- (a) the intervener has, or represents a group that has, a substantial interest in the subject matter of the proceeding;
- (b) the intervener brings special expertise or insight to bear on the issues facing the Commission in the proceeding, or will otherwise assist the Commission in determining the issues before it in the proceeding; and
- (c) the intervener is not ineligible to claim costs by virtue of Section 4.

### 4 Ineligible participants

- (1) The following types or classes of participants are ineligible to claim costs under these rules, unless otherwise provided in these rules or directed by the Commission:
  - (a) An applicant.
  - (b) The owner of an out-of-province utility.
  - (c) Electric generators, including associations representing electric generators.
  - (d) An owner of a utility or regulated service provider.
  - (e) Business, commercial, institutional or industrial entities, including associations of these entities.
  - (f) Municipalities, including associations of municipalities.
  - (g) Rural electrification associations, including associations of rural electrification associations.
  - (h) Rural gas co-ops including associations of rural gas co-ops.
- (2) Notwithstanding sections 3 and 4.1, the Commission will consider, on a case-by-case basis, allowing a participant who is ineligible under Section 4.1 to recover a portion of the participant’s proceeding-related costs if:

- (a) the participant will bring expert or other evidence or argument that would not, in the absence of some amount of cost recovery, otherwise be presented to the Commission; and
  - (b) the expert or other evidence or argument that the participant will bring is required in order for the Commission to properly decide the matter(s) before it in the subject proceeding.
- (3) A participant who seeks recovery of costs under Section 4.2 must bear a portion of the costs of participating in the proceeding and must demonstrate why additional funding under Rule 022 is required to enable intervention in the proceeding.
- (4) In a request made under Section 4.2, the participant must include:
- (a) all of the information required under Section 5.3 except Section 5.3(c); and
  - (b) an explanation of the participant's own resources being allocated to the intervention and why it requires additional funding under these rules in order to participate in the proceeding.

## **5 Cost eligibility request**

- (1) A participant who wishes to claim costs for its participation in a proceeding must file a request for eligibility in accordance with this section and a budget in accordance with Section 6.
- (2) A participant may submit a request for eligibility:
- (a) in relation to an upcoming application, at any time before the application is filed with the Commission;
  - (b) in relation to an ongoing proceeding, no later than the deadline for statements of intent to participate in the proceeding; or
  - (c) as otherwise directed by the Commission.
- (3) A request for cost eligibility must include the following:
- (a) A description of the participant and the participant's interest(s) in the proceeding.
  - (b) If the participant represents a class or group of consumers, a description of the participant's membership and how the participant is accountable to its membership, letter(s) of support from its membership, and a description of the group's governance structure.

- (c) In the case of an intervener applying under Section 3, an explanation of how the intervener meets the criteria in that section.
  - (d) A summary of the issues the participant intends to address and why those issues are material and not duplicative of the issues to be pursued by any other participant in the proceeding.
  - (e) A budget in accordance with Section 6.
- (4) When a request for cost eligibility is submitted concurrently with an intervener's statement of intent to participate in a proceeding, the Commission will issue its ruling as part of its notice of hearing and directions on procedure issued pursuant to Rule 001.

## **6 Budget to be filed**

- (1) Any participant who intends to submit a cost claim for its participation in a rates proceeding must file a budget in accordance with Appendix B as part of its cost eligibility request.
- (2) A budget must include:
- (a) A detailed budget outlining the reasonable fees and disbursements the participant anticipates it will incur in association with its involvement in the proceeding.
  - (b) A detailed proposal outlining the professional assistance such as experts, consultants, lawyers, the participant intends to engage, including:
    - (i) the qualification of each professional;
    - (ii) the issues that each professional will address;
    - (iii) the nature and scope of the work that each professional will carry out to address the identified issues; and
    - (iv) the hourly rate of each professional and an estimate of the expected hours to be worked.
  - (c) Any request for the Commission to consider awarding costs for an expert in excess of the scale of costs, including an explanation of how the expert's qualifications establish them as an expert in a technical area at issue in the rates proceeding.

## **7 Advance funding**

- (1) As part of a cost eligibility request under Section 5, a participant may make a request to the Commission for advance funding.

- (2) An eligible participant may make a request to the Commission for advance funding at any time during a rates proceeding, unless the Commission otherwise directs.
- (3) A request for advance funding must include a budget in accordance with Section 6 and include information substantiating the need for advance funding.
- (4) If the Commission awards advance funding to an eligible participant under this section, the Commission may issue an order directing the applicant to advance funds to the eligible participant and set out the terms for repayment of the advance to the applicant by the eligible participant if the Commission varies or denies costs on the claim for costs filed by the eligible participant at the close of the rates proceeding.

## **8 Costs claim**

- (1) An eligible participant may apply to the Commission for an award of costs incurred in a rates proceeding by filing a costs claim in accordance with Appendix C.
- (2) An eligible participant may only claim costs in accordance with the scale of costs, except as authorized by the Commission.
- (3) An eligible participant shall file any claim for costs as follows:
  - (a) Within 30 days after the hearing or other proceeding is closed.
  - (b) For a rates proceeding involving a negotiated or mediated settlement, within 30 days of:
    - (i) the date on which the settlement is approved by the Commission, if the settlement is dispositive of all the issues in the proceeding; or
    - (ii) the date on which the hearing or other proceeding is closed, in all other cases.
  - (c) For a review application, within 30 days of the Commission's final decision on the review and variance application.
- (4) After receipt of a claim for costs, the Commission may direct the eligible participant who filed the costs claim to file additional information or documents with respect to the costs claimed.
- (5) The Commission shall issue notice of a claim for costs filed on the record of the original proceeding to which the claim relates.
- (6) All costs claims will be filed on the Commission's eFiling System for viewing by participants and interested parties.

## 9 Costs award

- (1) In determining whether to award costs to an eligible participant, the Commission may consider whether:
  - (a) The costs are reasonable.
  - (b) The eligible participant brought special expertise or insight to bear on the issues facing the Commission in the proceeding, thereby contributing to a better understanding of the issues.
  - (c) The eligible participant needed legal or technical assistance to take part in the rates proceeding.
  - (d) The eligible participant acted responsibly in the proceeding, including whether the eligible participant:
    - (i) pursued irrelevant issues through information requests and/or cross-examination, taking into account their materiality and the scope of any established issues list;
    - (ii) failed to adhere to Rule 001 and any other Commission rulings and directions such as page and time limits;
    - (iii) asked duplicative information requests, questions on cross-examination, or otherwise failed to avoid duplication of work by coordinating with other participants;
    - (iv) presented new evidence in argument or during an oral hearing that was available at the time the participant filed documentary evidence; and
    - (v) engaged in any other conduct that unnecessarily lengthened the rates proceeding or resulted in unnecessary costs to the Commission, the applicant or other participants.

## 10 Liability for costs

- (1) In a hearing or other proceeding that relates to an application of an owner of a utility, the Independent System Operator or regulated service provider, the applicant shall pay the costs awarded to an eligible participant.
- (2) In a generic hearing or other proceeding that relates to policies or concerns respecting more than one utility or regulated service provider, the Commission may require that payment of the costs award be shared by one or more owners of a utility, regulated service providers or other participants.
- (3) In a review and variance application under Rule 016: *Review of Commission Decisions* where the application is dismissed, the applicant must bear its own costs.

- (4) The Commission may direct any participant or other person, including the shareholder(s) of the owner of a utility or regulated service provider, to pay another participant's costs, or portion thereof, if:
  - (a) the participant or its consultants, experts or legal representatives failed to comply with any rule or a direction of the Commission;
  - (b) the participant or its consultants, experts or legal representatives engaged in conduct that impeded the fair, expeditious and efficient resolution of any issue; or
  - (c) the Commission otherwise considers the circumstances warrant it.

## 11 Costs decision

- (1) Where the Commission has awarded costs in a hearing or other proceeding, the Commission shall issue a cost decision setting out the amount awarded and to whom and by whom the payment must be made.
- (2) An applicant or other person who is directed to pay an amount awarded shall pay that amount to the person(s) directed within 30 days of the decision.
- (3) An owner of a utility or regulated service provider must record the costs it is directed to pay pursuant to Section 11.2 in its hearing costs reserve account.

## 12 Coming into force

This rule comes into force on **XX, 2022**, and applies to all costs claim applications filed after this date.

## Appendix A

### Scale of costs

#### 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. Where a professional's ordinary billed hourly rate is less than what is provided in the scale, the claim must be limited to that professional's billed hourly rate as opposed to claiming for the maximum allowed under the scale. **The Commission allows professionals only half of the allowed 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.

Where a statement of account does not include this level of detail, a timesheet(s) that include the above-described information must be filed in addition to the statement of account.

##### a) Legal fees

Articling students \$180 per hour

One to four years at the bar \$300 per hour

Five to seven years at the bar \$360 per hour

Eight to 12 years at the bar \$410 per hour

More than 12 years at the bar \$450 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 administrative or support staff work. The fees for this work must be claimed as administrative or staff support fees.

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

One to four years of experience \$150 per hour

Five to seven years of experience \$200 per hour

Eight to 12 years of experience \$300 per hour

More than 12 years of experience \$350 per hour

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

**c) Fees for administrative or support staff**

Administrative or support staff \$60 per hour

**2. 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 reasonable office disbursements incurred throughout the eligible participant's involvement in the proceeding, including:

- long-distance telephone calls
- photocopies and printing (10 cents per page)
- postage
- transcripts and/or connection fees for live transcript services (must be accompanied by a receipt)
- charges for legal research services (e.g., Westlaw, LexisNexis)

The Commission does not require eligible participants to submit receipts for the above disbursements (other than transcripts) with their initial costs claims. Eligible participants 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 (e.g., incidental costs incurred as a result of participating in a virtual hearing process).

**b) Personal disbursements**

The Commission will consider claims for the following personal disbursements that are incurred during an in-person (i.e., not virtual) oral hearing only:

- **Meals**

The allowable claim for meals is \$41.55 per day (\$9.20 for breakfast, \$11.60 for lunch and \$20.75 for dinner). Claims for meals are restricted to the duration of an in-person oral hearing. No receipts are required to accompany claims for the per diem meal allowance.

- **Accommodation**

Maximum allowable claim for accommodation is \$200 per day. 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 50.5 cents per kilometre for use of a personal vehicle to attend an in-person oral hearing. 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 in-person 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 identify the date and the amount. Tips are not claimable.

- **Parking**

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

## Appendix B

### Budget<sup>1</sup>

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?

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<sup>1</sup> Note that a cost eligibility request pursuant to Section 5 of Rule 022 is required to accompany a budget.

What specific activities will junior counsel be performing?

What specific activities will articling students be performing?

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

**Expert**

Name of expert being retained:

Hourly rate of expert being retained:

Estimate of expected hours to be worked by expert:

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

Describe the specific activities the expert 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: \$\_\_\_\_\_

If applicable, specifics of request to award costs for expert in excess of the scale of costs:

**Consultant**

Name of consultant being retained:

Hourly rate of consultant being retained:

Estimate of expected hours to be worked by consultant:

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

Describe the specific activities the 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

1. All eligible participants 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 eFiling System.
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 (see 3(b), (c) and (d) below) for each application and a description of the method or rationale used to allocate common costs between the applications; otherwise, costs claims are returned.
3. An eligible participant must submit the following:
  - (a) Submission of justification (e.g., in the form of a cover letter). Eligible participants are required to explain:
    - (i) What tasks they have undertaken.
    - (ii) What efforts were expended to avoid duplication as between participants or as between counsel, experts and consultants.
    - (iii) Why the costs submitted are reasonable.
  - (b) Form U1 – Summary of total costs claimed.
  - (c) Form U2 – Summary of professional fees and disbursements claimed (provide one Form U2 for each law firm and consultant).
  - (d) Form U4 – Affidavit of fees and disbursements claimed – to be signed by the participant.
  - (e) Statement(s) of account reflecting the professional fees being claimed. Where statements of account do not include detailed, disaggregated descriptions and times for activities, as required under Appendix A, detailed timesheets must also be filed.
  - (f) Legible receipts for certain expenses where required.
4. The onus is on the eligible participant to provide sufficient information for the Commission to effectively assess its claim and must address the specifics of the proceeding. The Commission may disallow some or all of a costs claim if it finds the eligible participant has not discharged this onus.
5. All costs claim forms are available on the Commission website.
6. A costs claim must be filed electronically as a single PDF document using the AUC eFiling System accessible from the AUC website. Questions or issues regarding use of the eFiling System should be directed to the AUC's Assistance and Information Services group at 310-4AUC (310-4282 in Alberta) or 1-833-511-4AUC (1-833-511-4282 outside Alberta) or by email to [info@auc.ab.ca](mailto:info@auc.ab.ca).