

Rules on Local Intervener Costs

This rule as amended was approved by the Alberta Utilities Commission on February 7^{MMM DD}, 2024, and is effective on March 1^{MMM DD}, 2024.

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1 Costs Definitions

In this rule:

- (1) "act" means the *Alberta Utilities Commission Act*;
- (2) "applicant" means a person who files an application commencing a facilities proceeding;
~~"costs decision" means a decision of the Commission awarding costs on a claim for costs to a local intervener;~~
- (3) "Commission" means the Alberta Utilities Commission;
- (4) "eligible intervener" means an intervener that:
 - (a) is a local intervener;
 - (b) is a municipality; or
 - (c) is otherwise determined to be an eligible intervener by the Commission;
- ~~(3)~~(5) "facilities proceeding" means an application under the *Hydro and Electric Energy Act* or the *Pipeline Act*;
- (6) "facilities review proceeding" means a proceeding convened to consider an application to review a Commission decision made in a facilities proceeding;
- (7) "intervener" means a participant in a facilities proceeding who is not the applicant or the Commission;
- ~~(a)~~(8) "local- intervener" means a local intervener as defined in Section 22 of the *Alberta Utilities Commission Act*.
- (9) "municipality" means a city, town, village, summer village, municipal district or specialized municipality, a town under the *Parks Towns Act*, or a municipality formed by special Act;
- (10) "scale of costs" means the scale of costs set out in Appendix A;

2 Application of Rule 009 Advance of funds request

- (1) These rules apply to facilities proceedings, facilities review proceedings and any other proceeding to which the Commission determines these rules apply.
- (2) Unless the Commission otherwise directs, these rules do not apply to any pre-application process connected with a proceeding referred to in 2(1);
- (3) Unless the Commission otherwise directs, 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 an eligible intervener.

- ~~(4) 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.~~
- ~~(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) 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.~~
- ~~(3) If the Commission awards an advance of funds to a local intervener under Section 2(2), the Commission may~~
- ~~(a) 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~~
- ~~(b) 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 Costs eligibility request ~~Budget to be filed~~

- ~~(1) 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. Within the course of a proceeding, the Commission may direct an intervener to file a request for costs eligibility in accordance with the Rule 009 Costs Eligibility Form~~
- ~~(2) If the intervener is seeking advanced funding in a proceeding in which the Commission has not made a direction under 3(1), an intervener may file a request for costs eligibility in accordance with the Rule 009 Costs Eligibility Form~~

4 Costs application ~~Interim awards~~

- ~~(1) A local Eligible interveners may apply to the Commission for an cost award of interim costs incurred in a hearing or other proceeding by filing an interim costs application ~~claim~~ in accordance with the Rule 009 Costs Application Form.~~

- ~~(2) An eligible intervener who files a costs application has the onus of demonstrating that the costs claimed are reasonable and that their participation contributed to a better understanding of the issues raised in the proceeding.~~
- ~~(2)(3) A local intervener may only claim interim costs. All costs applications must be in accordance with the scale of costs unless the Commission authorized the eligible intervener to claim costs in excess of the scale of costs in a proceeding set out in Appendix A.~~
- ~~(3) The Commission may award interim costs to a local intervener if the Commission is of the opinion that~~
- ~~(a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding;~~
- ~~(b) the hearing or other proceeding in which interim costs are claimed is lengthy, and~~
- ~~(c) the local intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.~~
- ~~(4) Unless otherwise directed, all costs applications must be filed within 30 days after the facilities proceeding, facilities review proceeding or other proceeding, is closed. If the Commission awards interim costs to a local intervener under Section 4(3), the Commission may~~
- ~~(d) 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~~
- ~~(e) 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) All costs applications must be filed using the Commission's eFiling System.~~
- ~~(6) After receipt of a costs application, the Commission may direct the eligible intervener who filed the costs claim to file additional information or documents with respect to the costs claimed.~~
- ~~(7) The Commission shall issue notice of a costs application on the record of the proceeding to which the claim relates.~~

5 Facilities review proceedingsCosts claim

- ~~(1) A cost claim for a facilities 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.~~
- ~~(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.~~

 - ~~(a) If the unsuccessful review applicant was the applicant, the applicant must also bear the costs of eligible interveners.~~
 - ~~(b) If the unsuccessful review applicant was the applicant, and the applicant has tariff regulated by the Commission, review application costs cannot be recovered from ratepayers or otherwise reflected in the tariff.~~
 - ~~(c) If the unsuccessful review applicant was an intervener, and the applicant has a tariff regulated by the Commission, the applicant's costs may be assigned to its hearing cost reserve account unless otherwise directed.~~
- ~~(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 application in accordance with the Rule 009 Costs Application Form.~~
- ~~(1) A local intervener may only claim costs in accordance with the scale of costs set out in Appendix A.~~

 - ~~(a) 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~~
 - ~~(b) serve a copy of the claim on the other parties.~~
- ~~(2) 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.~~
- ~~(3) Costs claims filed with the AUC will be available for viewing by interested parties.~~

6 Review costs

In this section:

- ~~(1) "electric utility" has the meaning given to it in the *Electric Utilities Act*;~~
- ~~(2) "Independent System Operator" or "ISO" has the meaning given to it in the *Electric Utilities Act*;~~
- ~~(3) "owner" has the meaning given to in the *Electric Utilities Act*; and~~

- ~~(4) — “owner of a gas utility” has the meaning given to it in the *Gas Utilities Act*.~~
- ~~(5) — When the Commission denies an application for a review under Rule 016: *Review of Commission Decisions*, the review applicant shall bear its own costs.~~
- ~~(6) — 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.~~
- ~~(7) — 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.~~
- ~~(8) — 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.~~

76 Comments on costs ~~application~~claims

- (1) Unless otherwise specified by the Commission, ~~in a hearing or other proceeding,~~
- (a) 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 6.~~
- (b) if an applicant files a submission under ~~this Section 7(1)(a), an local-eligible~~ 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 6.~~

87 Costs ~~decision~~award

- (1) ~~When considering a costs application, T~~the Commission may have regard for whether: 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
- (a) The eligible intervener needed legal or technical assistance to take part in the proceeding.
- (b) The eligible intervener brought expertise or insight to bear on the issues facing the Commission in the proceeding and contributed to a better understanding of the issues.

~~(a)(c) The costs are reasonable, and directly and necessarily related to the hearing or other proceeding, and~~

~~(b)(d) The eligible intervener local intervener acted responsibly in the hearing or other proceeding, including whether the eligible intervener: and contributed to a better understanding of the issues before the Commission.~~

~~(i) pursued irrelevant issues through information requests and/or questioning, taking into account their materiality and the scope of any established issues list, if applicable;~~

~~(ii) failed to adhere to Rule 001: *Rules of Practice* and any Commission rulings and directions such as page and time limits;~~

~~(iii) asked duplicative information requests or questions, or otherwise failed to avoid duplication of work by coordinating with other eligible interveners;~~

~~(iv) presented new evidence in argument or during an oral hearing that was available at the time the eligible intervener filed documentary evidence; and~~

~~(v) engaged in any other conduct that unnecessarily lengthened the proceeding or resulted in unnecessary costs to the Commission, or the other eligible interveners.~~

~~(e) Any other matter that the Commission determines to be material and relevant to the costs application.~~

(2) Having regard to the above factors, and any other factor that, in the opinion of the Commission, is material and relevant to a costs application, the Commission may:

~~(a) Approve or deny the costs application, in whole or in part;~~

~~(b) Grant partial, further or other relief in addition to, or in substitution for, that applied for;~~

~~(c) Direct that any participant or other person, pay another participant's costs, or portion thereof; and~~

~~(d) Include any terms and conditions that it prescribes.~~

~~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:~~

~~(a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another party and answered by that other party's witness;~~

~~(b) made reasonable efforts to ensure that the local intervener's evidence was not unduly repetitive of evidence presented by another party;~~

~~(c) 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;~~

- ~~(d) 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;~~
- ~~(e) failed to comply with a direction of the Commission, including a direction on the filing of evidence;~~
- ~~(f) submitted evidence and argument on issues that were not relevant to the proceeding;~~
- ~~(g) needed legal or technical assistance to take part in the proceeding;~~
- ~~(h) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;~~
- ~~(i) failed to comply with these rules and AUC Rule 001: *Rules of Practice*.~~

9 ~~Liability for costs~~

~~Unless the Commission otherwise directs,~~

- ~~(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~~
- ~~(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.~~

10 ~~Costs decision~~

- ~~(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.~~
- ~~(2) The Commission shall serve a copy of the costs decision on the local intervener making the costs claim and on the applicant.~~
- ~~(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 10(2).~~

118 Coming into force

This rule comes into force on ~~March 1~~ **MMM DD**, 2024, and applies to all facilities proceedings or facilities review proceedings registered after this date.

Appendix A – Scale of costs

In accordance with Section 45(32) of Rule 009, all claims for professional fees and disbursements must be in accordance with this scale of costs, unless the Commission authorized the ~~participant~~ eligible intervener to claim costs in excess of this scale of costs in a proceeding.

1. Professional fees

Professional fees (maximum hourly rates)		
Years of experience	Legal fees	Consultant, analyst, and expert fees
Articling student	\$190 per hour	Not applicable
0-4 years	\$315 per hour	\$160 per hour
5-7 years	\$380 per hour	\$210 per hour
8-12 years	\$430 per hour	\$315 per hour
More than 12 years	\$475 per hour	\$370 per hour

2. Fees for administrative, clerical or other support services

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm, including work performed by administrative, clerical or support staff.

Consultants, analysts and experts may include reasonable fees for work performed by administrative, clerical or other support staff at a rate of \$60 per hour. The Commission will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

Statements of account/invoices/timesheets for professional and administrative fees are to be filed by Claimants.

3. Disbursements

Office disbursements

The following office disbursements are eligible for recovery without a receipt. However, Claimants should retain receipts for such disbursements because the Commission will require their submission if the claim is selected for a more detailed review. To support the environment, and given the existence of the eFiling System, the Commission no longer permits cost recovery for photocopies.

- courier charges
- postage
- transcripts
- miscellaneous charges

The Commission will not consider disbursement claims based upon percentages of fees claimed.

Travel disbursements

Claims for travel disbursements are **limited to travel to and from a site visit or a hearing or proceeding**. While it is not necessary to submit receipts for all travel disbursements, Claimants should retain receipts for all travel disbursements because the Commission will require their submission if the claim is selected for a more detailed review.

Expense type	Limit	Receipt required
Meal allowances		
breakfast	\$13 (including GST)	no
lunch	\$17 (including GST)	
dinner	\$27 (including GST)	
Accommodation	The actual expense of accommodation at a reasonably priced hotel may be claimed	yes
Airfare	Economy class air travel	yes
Private vehicle mileage	\$0.55 per kilometre (including GST), restricted to intercity travel distances of 50 kilometres or greater	no
Taxi		no
Parking		no

4. Honoraria and disbursements **for local interveners**

Local intervener honoraria	
Formation/organization of a group of local interveners	\$500
Preparation of submission by a local intervener that is not <u>claiming professional fees represented by a lawyer, agent or consultant</u>	\$300-\$2500
Attendance at a hearing for up to six local interveners	\$100 per day
Reasonable expenses associated with group organization (e.g., hall rental)	

<u>Municipality honoraria</u>	
<u>Preparation of submission by a municipality that is not claiming professional fees</u>	<u>\$300-\$2500</u>
<u>Attendance at a hearing for municipal employee</u>	<u>\$300 per day</u>

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: \$ _____