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Alberta Utilities Commission

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Rule 009 Draft Amendments: Written Submission

With respect, I ask that the Alberta Utilities Commission (AUC) consider the following points with regard to the Rule 009 Draft Amendments.

My name is Carmen Felzien, and I and my husband have participated in five AUC Proceedings, in various capacities since 2017:

- 22563 – Capital Power Halkirk 2 Wind Power Project Original Proceeding: My husband and I joined the group of local residents/intervenors represented by Ackroyd LLP.
- 25047 – Capital Power Extension Request for Halkirk 2 Wind Power Project: Again, my husband and I joined the group of local residents/intervenors represented, again, by Ackroyd LLP.
- 25469 – Central Alberta Transfer Out (CETO) Transmission Application ATCO and AltaLink TFOs: In this proceeding, my husband joined the group of local residents/intervenors represented by a Land Agent.
- 27691 – Capital Power Redesigned Halkirk 2 Wind Power Project: In this proceeding, my husband joined the group of local residents/intervenors represented by a Land Agent and I chose to act as Agent for a resident landowner, and on my own behalf.
- 28689 – Capital Power Halkirk 2 Aeronautical Safety Proceeding: My husband had a vested interest in this proceeding, but was prohibited by the AUC from participating. He registered as an observer.

While I could go into extensive detail about the challenges and frustrations inherent in each scenario, the important points I wish to make are:

1. Under the umbrella of a group, represented by a law firm that regularly participates in AUC proceedings, intervenor concerns were diluted. In essence, the proceeding process served no purpose at all except to provide an Approval for a power plant. Issues raised around significant

and documented environmental issues and aviation safety concerns were glossed over and brushed aside.

It wasn't until Intervenors chose to pursue different representation that these concerns were addressed by the Commission.

2. It took five proceedings for me and my husband to figure out how to work within the AUC system to finally bring relevant issues to the forefront. Only by engaging stand-alone experts and legal representation was the issue of Aviation Safety given the scrutiny it needed.
3. Only when I agreed to act on my own behalf and as Agent for another Intervenor was I able to affect significant change to project design to protect historical waterways and minimize visual impacts and health concerns for my 80 year old mother.

This somewhat extensive experience with the AUC and its preference for lawyers gives rise to the following observations:

- Herding Intervenors into groups dilutes and muddies key concerns.
- Intervenors have limited access to 'experts' due to cost recovery restriction. The AUC Panelists take an interesting position on what constitutes an 'expert'. Again, I will spare you the details. But look up the conversation around Aerial Spraying Safety in proceeding 27691, and decide for yourself how much expertise a Real Estate Agent can have in this matter.
- There appears to be a nice little circle of lawyers and their experts that show up in proceedings over and over again. Where is the procedural fairness when Intervenors are expecting new and vibrant arguments and the Commission Panel hears the same old 'blah, blah, blah'?
- Not only do the same lawyers seem to show up, they also feel very comfortable representing both sides of the game. It has been our experience, on more than one occasion, that a lawyer who savagely dismisses the arguments and evidence of an intervenor in one proceeding feels no compunction against taking those same arguments and evidence to build a case supporting an intervenor in another proceeding.
- There does not appear to be a magic formula that ensures 'administrative efficiency and procedural fairness'. I understand the spirit in which the Commission is proposing these changes. But limiting Intervenor's options and restricting access to proceedings does not look like the way to achieve the AUC's objectives.

In closing, I have some recommendations to the Commission in this regard.

1. Continue to allow Agents and Individual participants to represent Intervenor concerns. Intervenors (by definition: "a person or group or association of persons who, in the opinion of the Commission, (a) has an interest in, and (b) is in actual occupation of or is entitled to occupy land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application...") must have the right to choose their representation.
2. Require full disclosure of costs by ALL parties to a proceeding, including proponents. Procedural Fairness demands it.

3. Revisit the AUC definition of 'expert' and the requirements for considering and assessing the value of expert testimony.
4. Put more emphasis on an Intervenor's right to ask for approval for an escalated cost recovery *before* a proceeding goes to hearing. Make sure Intervenors know they have options beyond the same old blah, blah, blah.

And I put to the Commission the following questions for their consideration. If someone cares to formulate some answers, we would all benefit.

How will the proposed changes to Rule 009 ensure procedural fairness?

How will moving to limit accessibility and restrict participation enhance and support AUC's Mission and Values?

How can the Commission ensure that the best interests of Intervenors, rather than the best interests of legal firms, are being put forward?

Based on the current system of cost reimbursement and the caps put on Lawyer and Expert compensation, how does the Commission ensure that Intervenors will be able to put forward 'specialized experts' and 'make technical legal arguments' if they choose to reach beyond the cohort of 'participating' counsel?

Thank you for this opportunity.

Sincerely,

Carmen Felzien