

Alberta Utilities Commission

Written Consultation: Draft Amendments to Rule 009: *Rules on Local Intervener Costs*  
Submitted via email to: [engage@auc.ab.ca](mailto:engage@auc.ab.ca)

Date: November 12, 2024

**Table of Contents**

**1. Background Information..... 2**  
**2. Agents in AUC Proceedings..... 4**  
**3. Proceeding #29226 Fox Meadows Wind - A Test Case..... 5**  
**4. Municipal Intervener Honoraria..... 5**  
**5. Local Intervener Honoraria..... 5**  
**6. Rule 009 Changes: Comments and Recommendations..... 6**  
**7. Recommendations..... 10**  
**Appendix for Supporting Documents..... 11**

Submitted by: Jasona Rondeau, BEd.

## 1. Background Information

My introduction to the AUC came in the summer of 2022 when Elemental Energy attempted to have their inappropriately-sited Foothills Solar Project approved within the Frank Lake IBA/KBA near my home in Blackie, Alberta. This Important Bird Area and Key Biodiversity Area is where my daughter and I have called home for 6 years and so I began learning about solar power plants and the plight of project-adjacent landowners from direct experiences with them as a result of this proceeding and consequent application denial.

My participation in that proceeding was very limited as a registered group member of the Frank Lake Concerned Citizens (FLCC) which hosted a precedent-setting 160 members on Proceeding #27486.

On April 20, 2023, Commission Chair Carolyn Dahl-Rees lawfully denied the Foothills Solar Project application on the grounds of being inappropriately sited within the Frank Lake IBA/KBA. After 90 days of praying, the precedent of a solar project being DENIED was finally set and history was made.

Later that same evening, the Frank Lake North Concerned Citizens Group (FLNCCG) formed at the Blackie School Gym in order to prepare their opposition to Capital Power's 2-phase Aldersyde Solar Project, slated to consume almost 18 quarters of prime Class 2 agricultural lands between Blackie and Mazeppa. During this meeting of approximately 30 people, I volunteered to be the group's Communication Coordinator for several reasons:

- Effective communication had been lacking on the previous project and as a professional educator and communicator, I wanted the responsibility of raising awareness and gathering information that would be adequately and appropriately shared as my way to contribute to my local community
- As a person who does not own land and would likely not face a renewables developer on my doorstep, I wanted to be able to help those who DO own land in any way possible... as if it was my OWN land that was being threatened

This new group was expecting Capital Power to apply during the summer of 2023 and so preparations began immediately. A group email was set up and members who joined began receiving weekly updates on what was happening, the latest news from the solar industry, and advice on how to educate and prepare themselves for the upcoming AUC application. I conducted hours and hours of research on the AUC eFiling website, online, and through watching the hearings from numerous different AUC proceedings.

A major task I undertook was learning how many renewables projects were sited around the province and so I explored the AUC Interactive Wind & Solar Map. This led me to create a spreadsheet on the total number of solar power plants, the total acreage they occupied, and how many panels were committed to being used without any recycling facilities being available. I was absolutely astounded by what I learned:

- There were a total of 99 solar projects scattered around the province
- These projects (except for 3) were all located on cultivated, agricultural land totalling approximately 65,000 acres
- These projects would install approximately 27,000,000 solar panels once built

This spreadsheet was submitted as part of Proceeding #28501 (Module A AUC Inquiry) after being presented to 2 federal MPs on August 2, 2023. On August 3, 2023, the moratorium on processing renewables applications started and the FLNCCG was granted a bit of a break in their defense preparations. Once the Module A Inquiry was announced, this group was briefed and prepared to contribute their submissions during a very pivotal time.

Much has transpired between my initial introduction to the AUC and where I am today. I have invested thousands of hours in educating myself over the last 2 years in order to put myself forward as a qualified and experienced group representative. My growth has been as organic as the growing need for interveners to have more support in navigating AUC proceedings. I have experienced the system in many different ways, I have learned vast amounts of valuable information, and now, I endeavor to share this knowledge with those who need it most. Ethically, I cannot waste what I have learned and I cannot un-know all that I now know... I am responding to a very observable need that has emerged in a post-moratorium environment of increased public awareness and renewable energy project application literacy.

My objectives as a social advocate and stakeholder engagement consultant include:

- Raising public literacy regarding of all types of renewable energy projects
- Assisting project-adjacent landowners while navigating the eFiling system, AUC pre-hearing and hearing processes, and bridging interactions with legal counsel
- Bringing renewables project applications under the appropriate amount of scrutiny they deserve potentially resulting in conditions of approval or other project adjustments directed by the AUC, as in Proceeding #28723, the Dolcy Solar + Energy Storage Project where 20 conditions were added to the approval of this facility
- Increasing the likelihood of meaningful participation and fostering a more inclusive process for local interveners who are currently deemed to be in agreement with projects, if they do not learn how to voice their objections appropriately in an ever-increasingly digital world

During Proceeding #28501, I presented the following analogy in our group's 26-minute oral submission.

I developed a little analogy to be able to help interveners understand how opposing an application with the AUC works... I call it "Welcome to the NHL". I think it is critical that interveners have a good understanding of what they

are going up against; this analogy puts it into terms that anyone who knows of the game of hockey, can quickly and easily understand.

- Imagine the scene as an NHL hockey game... you have professional teams including players, trainers, and coaches... you have referees, you have a set list of game rules, you have spectators in the stands and even some watching from at home
- The professional NHL teams are the developers, their trainers are their paid industry professionals and experts, and their coaches are their legal teams. These people play all day, every day. They play to win, and have been winning 99% of their games so far
- Then, we have the farm teams... the rural and Indigenous interveners who have participated before and the ones yet to participate. They do not know any trainers or coaches yet but fortunately, the AUC will provide them with a coach, and possibly trainers, along with free tickets to enter the arena.
- Some players are granted standing in the form of ice skates and a hockey stick, while others, granted only permission to participate (and not full standing), are allowed only to sit on the team bench. Anyone not in these two groups, become spectators as observers or unregistered members of the public.

While this analogy may seem a bit harsh of a description, local interveners agree that they feel like they are being flung into the Stanley Cup Finals and they don't even know how to tie up their skates...

## 2. Agents in AUC Proceedings

While the current regulatory environment is willing to take a “buyer beware” approach to project-hosting landowners who are considering signing land leases with developers, this “buyer beware” approach does not seem to be fit for project-adjacent landowners when choosing their representation for Commission proceedings. To add more fuel to the fire, the Commission seems content to continue allowing interveners to represent themselves, which often results in being to their own detriment and overall failure navigating a proceeding. It seems quite odd to under-protect some landowners and over-protect others.

Restricting choices for representation seems to be a very recent idea and I cannot help but feel that my actions have contributed to it in some way as I have become more active in more proceedings. The services provided by various agents support the demand that is currently growing in this post-moratorium environment. With the influx of facility applications (approximately 25 current applications), a greater number and wider variety of interveners and their individual needs are surfacing. The AUC and renewables industry on the whole, need to realize that they are now operating within a system that has changed from how it operated prior

to August 2023. A great number of things have shifted and transitions are inevitable. It will be very unfortunate if the AUC realizes this transition by eliminating the capacity for agents and group representatives to recover costs. If they are unable to recover costs, they are unlikely to be able to work for free so this would virtually eliminate them from the system limiting representative choices to lawyers who only represent interveners or lawyers who play for both sides - neither of which seem fair or inclusive in today's day and age.

### 3. Proceeding #29226 Fox Meadows Wind - A Test Case

As a registered group representative for the Edgerton Land Advocates (ELA) Group in this proceeding, I have actively been providing justification for allowing a stakeholder engagement consultant, working under the supervision and direction of legal counsel, to recover costs associated with assisting interveners during the pre-hearing and hearing stages of the application. As an Appendix to this submission, I include copies of the relevant documents for consideration in this consultation. This appendix contains:

- Exhibit 29226-X0074 (submitted by J. Rondeau)
- Exhibit 29226-X0073 (submitted by J. Rondeau)
- Exhibit 29226-X0073 (submitted by H. Beyko of Ackroyd LLP)
- Exhibit 29226-X0080 (AUC Request for Response)
- Exhibit 29226-X0091 (submitted by FMWI)
- Exhibit 29226-X0093 (submitted by J. Rondeau)

### 4. Municipal Intervener Honoraria

I have reviewed the submission from the Rural Municipalities of Alberta (RMA) and am in agreement with the points they have raised and their justifications for them. If any institution could speak on the behalf of municipal interveners, the RMA would be the most relevant and appropriate source to listen to.

### 5. Local Intervener Honoraria

When considering proceedings in their entirety, it is plain to see that the only individuals not receiving a full-time salary for participating in proceedings are the local interveners. Instead, the only compensation they receive is \$50 within 120 days of the hearing being held, for an afternoon's participation in a virtual hearing. The majority of interveners are not motivated by the idea of being able to make money off a proceeding; they want and deserve to be adequately recognized for their contributions and investments of time in exchange for providing the Commission with the valuable information it requires for its determinations.

When I meet with potential interveners, they are more concerned with how much the proceeding and the outcome of the proceeding are going to cost them, not what costs they might be able to get back from a developer. The AUC and project applicants seem overly preoccupied with

interveners committing acts of fraud through double-recovery. There is a complete disregard for the amount of time and energy an intervener must contribute in order to meaningfully participate in a proceeding and zero recognition of the sacrifices to work, family, recreation, and general wellness being made by interveners across the province.

The most recent costs decision in favor of Mr. Nathan Brown on the Westlock Solar Project, was the most positive movement I have seen in the direction of adequately remunerating an intervener. Were all interveners with standing allowed to record their activities and claim costs for completing necessary and role-appropriate tasks, it would go a long way to balancing the rights and needs of interveners against those who are making the decisions or paying the bills.

## 6. Rule 009 Changes: Comments and Recommendations

There is one change made to Rule 009 prior to this written consultation that concerns me as a stakeholder engagement consultant: the Commission's decision to remove photocopies and printing from the list of recoverable expenses.

While saving paper and ink may seem like the right thing to do, a brief conversation with Chat GPT indicates that there may be serious problems regarding digital discrimination or accessibility discrimination resulting from this action (taken without consultation or draft notice).

*Question #1:*

*What kind of discrimination would it be to force people to use an online portal in order to participate in a quasi-judicial regulatory hearing as a stakeholder?*

*ChatGPT said:*

*Forcing people to use an online portal to participate in a quasi-judicial regulatory hearing could potentially lead to digital discrimination or accessibility discrimination. This type of discrimination occurs when individuals or groups are disadvantaged due to a lack of access to the required technology, internet connectivity, or digital literacy.*

*Here are some forms of discrimination that could arise:*

- 1. Digital Divide: People from lower-income backgrounds or rural areas may not have reliable internet access or devices necessary to participate.*
- 2. Age Discrimination: Older individuals may lack familiarity with digital tools, making it harder for them to participate.*
- 3. Disability Discrimination: If the online platform is not designed to be accessible to people with disabilities (e.g., those who use screen readers, have mobility issues, or are hearing impaired), it could violate their right to participate.*
- 4. Language Discrimination: If the portal is only available in certain languages, individuals who speak other languages could be excluded.*

*To avoid these forms of discrimination, alternative methods of participation, such as in-person, by phone, or through mail, should be offered.*

## Question #2:

What are the consequences of only offering an online communication platform to conduct these quasi-judicial hearings?

ChatGPT said:

Only offering an online communication platform for quasi-judicial regulatory hearings can have several significant consequences:

### 1. Exclusion of Certain Groups

- *Digital Divide: People without reliable internet access, adequate devices, or necessary digital literacy would be effectively excluded from participating, leading to inequitable access.*
- *Elderly Population: Older individuals, who may not be comfortable with or have access to digital technology, could be disenfranchised.*
- *Rural Communities: Participants in rural areas may face issues with poor internet connectivity, creating barriers to their engagement.*

### 2. Accessibility Concerns

- *Disability Discrimination: If the platform is not designed to be fully accessible (e.g., not compatible with screen readers, lacking sign language interpretation, or not accommodating for individuals with cognitive disabilities), it can result in legal challenges and violate disability rights legislation, such as the Americans with Disabilities Act (ADA) in the U.S.*

### 3. Legal Challenges and Procedural Unfairness

- *Excluding individuals due to their inability to participate online can lead to claims of procedural unfairness or denial of due process, resulting in legal challenges against the regulatory body.*
- *Courts could invalidate the outcome of the hearing if it's proven that certain groups were disenfranchised, leading to delays in the regulatory process and the need for re-hearings.*

### 4. Potential Violations of Rights

- *Right to be Heard: Many quasi-judicial bodies are required to ensure that all stakeholders have a meaningful opportunity to participate. Limiting participation to online platforms could undermine this right.*
- *Discrimination Laws: The exclusion of individuals based on their ability to access or use the online platform may violate anti-discrimination laws, particularly regarding age, socioeconomic status, disability, or even race and ethnicity if language barriers exist.*

### 5. Credibility and Public Trust

- *If stakeholders feel that the process is exclusionary or unfair, it could damage the credibility of the institution, erode public trust, and undermine the legitimacy of the regulatory decisions.*

## 6. Technology-Related Issues

- *Platform Failures: Technical issues, such as platform outages, bugs, or poor user interface design, could disrupt proceedings and lead to a lack of transparency and fair participation.*
- *Cybersecurity Risks: Online platforms may also be vulnerable to hacking or breaches of confidentiality, which could compromise sensitive information or undermine the integrity of the hearing process.*

## 7. Social and Economic Consequences

- *Stakeholders who are excluded from participation may be negatively affected by decisions made in their absence, potentially impacting their livelihoods, business interests, or community well-being. This could lead to broader socioeconomic inequalities.*

*To mitigate these consequences, providing alternative methods of participation—such as in-person hearings, telephone access, or mail submissions—ensures that all stakeholders have an equal opportunity to be heard.*

### Question #3:

*Should quasi-judicial regulatory bodies assume that someone who does not participate in a proceeding as a stakeholder, because they are limited to participating only online, is in agreement with an application under their consideration? Why or why not?*

*ChatGPT said:*

*No, quasi-judicial regulatory bodies should not assume that someone who does not participate in a proceeding, particularly if participation is limited to an online platform, is in agreement with the application under consideration. Here's why:*

### 1. Exclusion Does Not Equal Consent

- *Non-participation does not imply agreement. Many factors beyond agreement could prevent a stakeholder from participating. Lack of digital access, technical skills, time, or understanding of the process may all limit a person's ability to engage online. Assumptions of agreement could lead to unjust outcomes for those who were simply unable to participate.*

### 2. Violation of Due Process

- *Assuming non-participation equals agreement may violate the principle of due process, which requires that all stakeholders have a meaningful opportunity to be heard. If participation is hindered by the online format, this principle is not upheld, and the process becomes unfair.*



### 3. Procedural Unfairness and Legal Challenges

- *If regulatory bodies assume consent from non-participation, this could lead to claims of procedural unfairness, opening the door for legal challenges. Courts might find that the process was biased or incomplete, especially if the barriers to participation were significant (e.g., lack of internet access, digital illiteracy, or disabilities).*

### 4. Risk of Unjust Decisions

- *Decisions made based on incomplete or limited stakeholder input can lead to unjust outcomes. Important viewpoints, objections, or concerns might be overlooked, potentially resulting in decisions that adversely affect certain communities, businesses, or individuals.*

### 5. Perception of Bias and Erosion of Public Trust

- *If stakeholders feel their inability to participate online is interpreted as agreement, they may perceive the process as biased. This could erode public trust in the regulatory body and undermine the legitimacy of the decision-making process.*

### 6. Overlooking Vulnerable Populations

- *Vulnerable groups, such as the elderly, low-income individuals, or people with disabilities, may be disproportionately impacted by the assumption that non-participation equals agreement. These groups often face greater barriers to online engagement, and their silence should not be taken as consent.*

### 7. Requirement for Active Participation

- *Regulatory bodies should require active participation—whether in support or opposition—rather than relying on assumptions about non-participation. Encouraging or facilitating broader participation through alternative methods (e.g., in-person hearings, mail submissions, or phone options) is essential to ensuring that all voices are heard.*

### Conclusion

*A fair and transparent regulatory process requires that the absence of stakeholder participation not be interpreted as agreement. Instead, quasi-judicial bodies should make every effort to ensure that all stakeholders can participate, considering that silence may stem from barriers to access rather than consent.*

## 7. Recommendations

- Allow agents and group representatives to recover costs applicable to the project-specific role played and duties performed
- Increase intervener honoraria by implementing a system for fair and transparent cost recovery rather than a flat \$50/\$100 fee for all
- Allow recovery of costs for photocopies of project documentation to avoid potential accessibility discrimination issues for those who are not technologically savvy, who live remotely, or who prefer to have paper copies to aid in their comprehension, understanding, and subsequent evidence submissions.
- Follow the RMA's advice on Municipal Intervener honoraria