

Alberta Utilities Commission amends Rules of Practice to promote efficiency

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On May 3, 2021, the Alberta Utilities Commission (the AUC or Commission) [approved](#) [PDF] amendments to AUC [Rule 001: Rules of Practice](#) [PDF] (*Rules of Practice*), which will apply to proceedings registered on or after May 17, 2021. The amendments to the *Rules of Practice* are intended to give effect to a number of the recommendations contained in an August 2020 [committee report](#) [PDF] as part of the Commission's ongoing efficiency initiatives, discussed in our [previous update](#), and are in addition to recent efficiency-seeking changes to [facility application requirements](#).

What is Rule 001?

The *Rules of Practice* set out in Rule 001 govern all steps of Commission proceedings and address matters, including how a proceeding is commenced, the submission of documents and evidence, procedural rules regarding information requests, confidentiality motions and late filings, pre-hearing meetings, settlements, hearing procedures, and Commission decisions.

Overview of changes to Rule 001

Generally, the recent amendments to the *Rules of Practice* provide efficiencies that should minimize uncertainty, unnecessary expense and delay in Commission proceedings. Several amendments specifically target efficiency in rates proceedings.

Changes in the amended *Rules of Practice* directed at rates proceedings include the following:

- defining “rates proceeding” — distinct from any other Commission “proceeding” — as follows:

a proceeding convened to consider the rates, tolls, tariffs, charges, prices or terms and conditions of service of an owner involved in the provision of electric or gas distribution services, electric or gas transmission services, regulated electric or gas retail services, and investor-owned water services, or any other proceeding determined by the Commission to be a rates proceeding, but does not include an enforcement proceeding.
- requiring the Commission to provide procedural directions when it decides to hold a hearing in a rates proceeding, which directions may include:
 - a process for establishing a preliminary list of issues for the hearing,
 - restrictions on the hearing's scope, and

- limits on the number of information requests each party may ask.
- where there is a finalized list of issues, limiting information requests to questions directly related to those listed issues
- applying a presumption that rates proceeding hearings will be conducted in writing, with the onus on a party seeking an oral hearing to demonstrate that an oral hearing is required
- where there is an oral hearing, barring parties from questioning witnesses except with advance approval from the Commission
- requiring requests to question witnesses be supported by a description of the witness(es) to be questioned, the time required for questioning, the issues that the questioning will address, an explanation of how the questioning will be of assistance to the Commission and any other information the Commission directs
- restricting any questioning of witnesses to specific witnesses, issues and time limits approved by the Commission in advance

Notable changes in the amended *Rules of Practice* that will apply to all proceedings include the following:

- where an application is not complete when filed, providing discretion for the Commission to direct the applicant to provide additional information, instead of filing an information request, or where the Commission identifies a material deficiency, dismiss the application
- providing discretion for the Commission to issue any directions regarding the procedure of a hearing it considers necessary, including restricting the scope of a hearing and imposing limits on the number of information requests
- placing the onus on those requesting an extension of a time limit or an adjournment to demonstrate that the request is necessary and will not interfere with the fair, expeditious and efficient resolution of the proceeding
- providing discretion for the Commission to, at any time during a proceeding, suspend the proceeding or, where the Commission determines it cannot continue to process the application, dismiss the application
- requiring that documentary evidence be directly relevant to the proceeding and providing discretion for the Commission to remove documents it finds not relevant or necessary to determining the issues in the proceeding
- requiring that all documentary evidence accompanied with a statement of the qualifications of the person who prepared the documentary evidence also includes an explanation of how such qualifications are directly relevant to the issues addressed in the evidence
- providing discretion to the Commission to order the removal of all or part of a document that is not relevant or may prejudice or delay a proceeding
- requiring information requests be directed to a party adverse in interest from the requesting party
- requiring a requesting party who is not satisfied with a response to an information request to make reasonable efforts to resolve the matter with the responding party prior to bringing a motion requesting the matter be settled by the Commission

- if a party brings a motion requesting that the Commission settle a matter related to the sufficiency of an information request response, requiring the motion be filed within five business days of the information request response being filed and describe the reasonable efforts made to resolve the matter prior to bringing the motion
- setting tight time and page limits on pre-hearing motions and providing discretion for the Commission to rule on pre-hearing motions without response or reply processes
- placing the onus on a party bringing a pre-hearing motion that is inconsistent with a prior ruling of the Commission to demonstrate that the departure from the Commission's prior ruling is justified in the circumstances
- unless the Commission has granted permission for a late filing, removing a document filed on the record of a proceeding after an applicable time limit for filing has elapsed from the proceeding record without further process — such documents will not be considered by the Commission in rendering any subsequent decision in that proceeding
- providing discretion for the Commission to set limits on the scope of oral hearings, the time allowed for questioning witnesses, and the scope, format and content of argument
- requiring opening statements by witnesses be filed 24 hours in advance of the witness being seated
- applying a presumption that the argument is to be delivered orally, subject to any person or party satisfying the Commission that the written argument will permit the proceeding to be resolved in a more fair, expeditious and efficient manner
- requiring that the Commission deliver its decisions in accordance with its performance standards for dispositions or notify the parties in advance where it is unable to meet those standards

Next steps

In the coming months, the Commission intends to support the implementation of the amendments by releasing practice notes and enhancing functionality in the *Rules of Practice* and its supporting forms.

Comments

The amended *Rules of Practice* codify certain existing AUC practices while also offering a more efficient and streamlined proceeding process that is likely to avoid unnecessary costs and deliver timely decisions. The amendments introduce certain mandatory provisions regarding the content, onus of proof and time limits associated with procedural requests and other filings; presumptive hearing formats; and the consequences of late filings. The most notable change is the expanded discretion provided to the Commission to enhance the efficiency of proceedings through scoping and the imposition of strict time limits.

Benefits brought by these amendments, which act to codify the regulatory efficiency commitments made by the Commission in October 2020, are likely to include more certain regulatory timelines and reduced costs for proceedings. At the same time, tighter deadlines may prove challenging for proceeding participants to meet, and the Commission's increased procedural discretion — including its discretion to reduce the scope of proceedings to only those matters the Commission deems directly relevant — could raise fairness concerns depending on how the Commission exercises its discretion.