

# AER Bulletin 2014-07

March 6, 2014

## **Considerations for Awarding Energy Costs Claims and Changes to the AER's Process for Reviewing Energy Costs Claims**

The purpose of this bulletin is to remind hearing participants of the factors the Alberta Energy Regulator (AER) must consider when deciding energy costs claims made under the *Alberta Energy Regulator Rules of Practice (Rules of Practice)* and *Directive 031: REDA Energy Cost Claims (Directive 031)*. This bulletin also announces changes the AER intends to make to its process of reviewing costs applications under *Directive 031*, effective immediately.

### **Factors for Considering Costs Claims**

On November 30, 2013, the AER amended Division 2 of Part 5 of the *Rules of Practice* to provide an expanded list of the factors the AER must consider when making a decision on an application by a hearing participant for an award of costs. The factors considered by the AER apply to requests for an advance of funds, an interim award of costs, or a final award of costs. The factors are listed in subsections 58.1(a) to (r) of the *Rules of Practice*. In addition to the factors, the *Rules of Practice* state that a participant may only claim interim costs or final costs in accordance with the scale of costs in *Directive 031*.

The AER expects that both costs applicants and those responding to costs claims (normally the applicant or approval holder in the proceeding to which the costs claim relates) will address the factors from the *Rules of Practice* that appear relevant to a particular costs claim in their submissions on costs applications. Parties should also be aware that hearing commissioners may ask hearing participants, at the conclusion of the hearing, to make oral submissions regarding their respective intentions to file a costs claim and what the participant foresees will be or may be the issues to be decided by the AER in relation to its costs claim. These oral submissions will be in addition to any written submissions subsequently filed by costs claimants and those responding to a costs claim.

### **AER Review of Costs Claims**

In processing energy costs applications, the AER has historically conducted a detailed review of all aspects of costs claims for compliance with the costs rules or *Directive 031* requirements. This has included a detailed review of information submitted to support costs claims and disbursements (including receipts, invoices, etc.). The AER's recent experience with costs applications indicates that this approach consumes far more AER resources than can be justified by the results and often causes significant delays in the issuance of costs awards. Further, the AER believes that this

function is the responsibility of and is more properly performed by the parties to costs applications.

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Therefore, effective immediately, the AER intends to conduct a more limited review of costs claims and will instead rely on costs submissions to identify matters arising from costs claims that require an AER decision. Specifically, the AER will review only those aspects of a costs claim that a claimant or a responder to a claim identifies in its costs submission as being in dispute. As a result, if a party responding to a costs claim does not dispute a particular amount claimed by a costs applicant, the AER will presume that part of the claim is eligible for an award in the amount sought and that the costs payee does not object to the AER awarding the amount claimed.

Accordingly, going forward, only costs that a costs applicant or a responder to a costs application specifically dispute, with supporting information and reasons, will be scrutinized by the AER, and the rest of the claim may be granted without further review or intervention by the AER.

The AER expects parties to submit and respond to costs claims in good faith and, where possible, to agree on amounts to be paid under a costs award and to advise the AER accordingly. If a costs applicant or a responder to a costs application requires more time than is provided under the *Rules of Practice* to attempt to resolve matters arising from a costs claim, they should make a written request to the AER for additional time, specifying the amount of time required and the reasons for requesting more time.

Despite the above, the AER may, at its sole discretion, audit a costs claim for compliance with the costs rules and *Directive 031* at any time after it is filed, including after the AER has issued a costs award. Any noncompliance with the costs rules or *Directive 031* requirements identified during such an audit, including the failure to provide supporting receipts or invoices, may result in a decision by the AER to disallow all or any portion of a costs claim, summary denial of a costs claim, or a decision by the AER to suspend or rescind all or part of a costs application or previous costs award. Recurring or persistent noncompliance with the costs rules or *Directive 031* requirements by a party may result in that party's costs applications being audited more frequently by the AER.

The AER's Law Branch coordinates energy costs applications, and any questions relating to this bulletin should be directed to it at [EnergyCost@aer.ca](mailto:EnergyCost@aer.ca). The *Rules of Practice* and *Directive 031* are available on the AER's website at [www.aer.ca](http://www.aer.ca). Printed copies can be purchased from AER Information Product Services, Suite 1000, 250 – 5 Street SW; telephone: 403-297-8311 or 1-855-297-8311 (toll free); fax: 403-297-7040; e-mail: [infoservices@aer.ca](mailto:infoservices@aer.ca).

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