



**ORDER NUMBER
G-143-16**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473
and
Participant Assistance/Cost Award Guidelines

BEFORE:

D. M. Morton, Commissioner
D. A. Cote, Commissioner
D. J. Enns, Commissioner
H. G. Harowitz, Commissioner
K. A. Keilty, Commissioner
M. Kresivo, Commissioner
N. E. MacMurchy, Commissioner
B. A. Magnan, Commissioner
R. D. Revel, Commissioner

on August 31, 2016

ORDER

WHEREAS:

- A. In 1993 the *Utilities Commission Act* (Act) was amended to allow the British Columbia Utilities Commission (Commission) to make orders related to participants with costs associated with proceedings before the Commission;
- B. Between 1993 and 2007 the Commission issued and amended its participant funding guidelines pursuant to section 118 of the Act by Orders G-117-93, G-103-96, G-97-98, G-23-01, G-15-04 and G-72-07;
- C. In response to letters dated January 18, 2016, April 8, 2016, and June 17, 2016, the Commission received comments from stakeholders on revising the Participant Assistance/Cost Award Guidelines; and
- D. The Commission reviewed the stakeholder comments and determines that revisions to the Participant Assistance/Cost Award Guidelines are warranted.

NOW THEREFORE pursuant to section 118 of the *Utilities Commission Act*, the British Columbia Utilities Commission approves amended Participant Assistance/Cost Award Guidelines, attached as Appendix A to this order, effective for all proceedings initiated on or after August 31, 2016.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of September 2016.

BY ORDER

D. M. Morton
Commissioner

Attachment

Orders/G-143-16_BCUC-PACA-Guidelines



Participant Assistance and Cost Award Guidelines

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PURPOSE AND SCOPE OF THESE GUIDELINES

The British Columbia Utilities Commission (Commission) provides Participant Assistance/Cost Award (PACA) funding to participants in proceedings pursuant to section 118 of the *Utilities Commission Act*.

The purpose of these guidelines is to set out the Commission procedure for considering applications for PACA funding and to provide guidance to participants on how to apply for PACA funding in Commission proceedings.

GUIDELINES

1.0 DEFINITIONS

- (a) “affected group” means a group or organization who may be potentially affected by a proceeding;
- (b) “individual participant” means a participant, who may be potentially affected by a proceeding, representing their own interests and not the interests of a group or organization;
- (c) “participant” means an individual or an affected group that actively participates in a proceeding of the Commission for which a cost award is sought. Participant includes, but is not limited to, interveners in a proceeding;
- (d) “ratepayer group” means a group or organization representing the direct interests of rate-paying customers of the applicant regulated entity.

2.0 COST AWARD AVAILABILITY

- 2.1 The Commission may award costs for participation in a proceeding under section 118 of the *Utilities Commission Act*.
- 2.2 The Commission may establish a funding cap for a proceeding. A funding cap is a maximum aggregate amount or a maximum number of days eligible for funding for a proceeding.
- 2.3 The Commission may award costs for work completed after a proceeding is initiated and until the Commission issues a final order.
- 2.4 Interim funding may be available pursuant to Section 5.0.

3.0 PARTICIPANT ELIGIBILITY FOR A COST AWARD

- 3.1 In determining whether a participant is eligible for a cost award in a proceeding, the Commission will consider whether the participant:
 - (a) is directly or sufficiently affected by the Commission’s decision; or

- (b) has experience, information, or expertise relevant to a matter before the Commission that would contribute to the Commission's decision-making.

3.2 Generally a participant in a proceeding meets the eligibility criterion under Section 3.1 where the participant has the characteristics of the following examples:

- (a) represents the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the Commission;
- (b) represents an interest or policy perspective relevant to the Commission's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) has an interest in property that is or may potentially be affected by the proceeding.

4.0 CRITERIA FOR A COST AWARD

4.1 For all proceedings for which a cost award is available, the Commission may determine the number of funding days, subject to a funding cap if established for the proceeding. The number of funding days represents typical funding for participation that meets the expectations of the Commission as determined by the criteria in Section 4.3.

4.2 In determining the funding days of a proceeding, the Commission will consider the following:

- (a) for an oral/in-person proceeding or an oral/in-person portion of a proceeding, funding days will typically be determined by the number of proceeding days and may include preparation days on a ratio of 2 funding days per proceeding day. Proceeding days include workshop days, negotiation days, procedural conference days, oral hearing days, streamlined review process days, oral argument days, and other in-person processes in a proceeding. The Commission may make adjustments for partial funding days in cost awards.
- (b) for a written proceeding or a written portion of a proceeding, funding days will typically be an estimate of the number of days required for participation in and preparation of written submissions such as information requests, final arguments and letters of comment.

4.3 In determining the amount of a participant's cost award, the Commission will consider the following:

- (a) Has the participant contributed to a better understanding by the Commission of the issues in the proceeding?
- (b) To what degree will the participant be affected by the outcome of the proceeding?
- (c) Are the costs incurred by the participant fair and reasonable?

- (d) Has the participant joined with other groups with similar interests to reduce costs?
- (e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?
- (f) The funding day calculation for funding in accordance with Sections 4.1 and 4.2, if one is provided.
- (g) Any other matters which the Commission determines appropriate in the circumstances.

5.0 INTERIM FUNDING

- 5.1 Participants must make an application for interim funding to the Commission. The Commission will consider eligibility and amount for interim funding applications by applying Sections 3.0 and 4.0. In addition, the Commission must be satisfied that:
 - (a) the participant has demonstrated a need for financial assistance; and
 - (b) the proceeding is lengthy.
- 5.2 A participant seeking interim funding must complete the applicable portions of the Budget Estimate form.
- 5.3 Upon completion of the process set out in Sections 14.2.3 and 14.2.6, interim funding may be ordered by the Commission for:
 - (a) costs, or a portion thereof, that have been incurred after the proceeding has begun; or
 - (b) estimated costs not yet incurred.
- 5.4 Interim funding ordered by the Commission typically does not exceed 50 percent of the participant's budget estimate.
- 5.5 If interim funding is granted, the Commission will make a determination as to whether the amount
 - (a) constitutes a final award for costs already incurred; or
 - (b) constitutes an advance against the Commission's final cost award determination after the conclusion of the proceeding.
- 5.6 For interim funding awards granted under Section 5.5 (b), a participant must file a final cost award under Section 14.0 at the conclusion of the proceeding.

6.0 PROCESS FOR UPDATING THE RATE SCHEDULE

- 6.1 The Commission may update the rate schedules in Attachments A and B, as needed and appropriate.

7.0 PROFESSIONAL FEES

- 7.1 The Commission expects participants to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, expert witnesses and case managers. The Commission may adjust cost awards where any duplication appears to have occurred.
- 7.2 Maximum daily fees in Attachment A are based on an 8 hour day. Awards may be prorated for partial funding days. Where the actual billing rate for an 8 hour day is less than the maximum daily fee, the lesser amount will be used for the award.
- 7.3 Maximum daily fees in Attachment A do not include provisions for goods and services tax (GST) and provincial sales tax (PST), which will also be allowed, pursuant to Section 12.1.
- 7.4 Legal counsel are expected to perform legal services and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task. Participants are expected to use legal services in a cost-effective manner, giving regard to the years of experience required to perform tasks.
- 7.5 Consultants are expected to provide services related to their technical expertise and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for specific tasks.
- 7.6 Specialists are expected to provide services related to their specialized technical expertise and may be paid in accordance with the maximum daily fee in Attachment A.
- 7.7 Expert witnesses are expected to provide services related to their specialized technical expertise and provide fair, objective and non-partisan opinion evidence. Expert witnesses may be paid in accordance with the maximum daily fee in Attachment A.
- 7.8 The Commission may award fees for a specialist or expert witness that exceed the maximum daily fee if the Commission determines that the specialist or expert witness services are not available at the maximum daily fee because of the specialized technical expertise required to competently address the issues in a proceeding.

- 7.9 A participant may seek prior approval for rates that exceed the maximum daily fee or for costs for a specialist or expert witness. Upon such request for prior approval, the Commission may determine whether or not the specialist or expert witness qualifies for fees exceeding the maximum daily fee or whether the participant is approved for the costs for the specialist or expert witness.
- 7.10 Case manager services include, but are not limited to, coordinating the effective use of services from legal counsel, consultants, specialists and/or expert witnesses and performing tasks that enable a coalition of participants with similar positions in a proceeding. The Commission supports the use of case managers where this reduces the use of other professional services and may award costs in accordance with the maximum daily fee in Attachment A.
- 7.11 Generally the Commission will limit awards for individual participants to foregone earnings, childcare and disbursements. However, the Commission may award individual participants professional fees if it deems those fees are warranted for the individual to participate effectively.

8.0 FOREGONE EARNINGS

- 8.1 Participants may apply for a cost award for foregone earnings in accordance with the rate schedule in Attachment A. Participants claiming foregone earnings must provide proof of actual foregone earnings, except where to do so would be unreasonably difficult, in which case, some indication of the usual daily earnings must be provided.

9.0 CHILD CARE

- 9.1 Child care expenses, when such expenses are incurred for the purpose of participating, may be allowed in accordance with the rate schedule in Attachment A.

10.0 DISBURSEMENTS

- 10.1 Disbursements directly related to the participant's participation in the proceeding may be allowed.
- 10.2 Payment may be up to the British Columbia Government Employees Union (BCGEU) rates applicable to the Commission for travel, accommodation and meals, etc. The BCGEU rates are shown in the rate schedule in Attachment B with the effective date shown. Accommodation disbursements may exceed the applicable BCGEU rates and be awarded at the rate, negotiated by the Commission with the hotel where the proceeding takes place.
- 10.3 An individual participant may be reimbursed for disbursements to travel to an oral/in-person proceeding.

11.0 FUNDING FOR ABORIGINAL PEOPLES

- 11.1 Funding is available for Aboriginal peoples to participate in Commission proceedings for relevant matters regarding section 35 of the *Constitution Act, 1982*. This funding may be available for community consultations and for roles specific to Aboriginal peoples such as Traditional Knowledge Experts and Elders.
- 11.2 In determining a cost award, the Commission may take into consideration any capacity funding received by the Aboriginal peoples.

12.0 TAX COSTS

- 12.1 GST and PST costs, which cannot be recovered through an Input Tax Credit will be allowed. Participants seeking an award must confirm in their application for an award that the applied-for taxes cannot be recovered by the participant through an Input Tax Credit.

13.0 OTHER COSTS

- 13.1 The Commission may award any other costs that the Commission deems as reasonable and justified.

14.0 MAKING AN APPLICATION FOR PARTICIPANT ASSISTANCE/COST AWARDS

- 14.1 Submitting a budget estimate
 - 14.1.1 Participants that intend to apply for a cost award exceeding \$10,000 must file a completed Participant Assistance/Cost Award Budget Estimate form by email to commission.secretary@bcuc.com, or via mail, courier, or personal delivery to the Commission Secretary, Box 250, 900 Howe Street, 6th Floor, Vancouver, BC, V6Z 2N3.
 - 14.1.2 Commission staff will disclose to the regulated entity, or the party who will be asked to pay, the budget estimate amount submitted.
 - 14.1.3 Commission staff will reply to all submitted participant budget estimates with a review letter. The staff review letter will typically include an estimate of funding days. The participant will be informed of staff's concerns, if any, and be advised whether, in staff's opinion, all or a portion of the participant's budget estimate may be at risk of not being funded.
 - 14.1.4 Commission staff advice is not binding on the participant or the Commission and is provided only to forewarn participants of some potential issues that may affect funding. The issuance of a staff letter will neither guarantee nor disqualify a participant from receiving funding.

14.2 Making the final application for a cost award

- 14.2.1 To make a final application for a cost award, a participant must file a completed Participant Assistance/Cost Award Application form by email to commission.secretary@bcuc.com, or via mail, courier, or personal delivery to the Commission Secretary, Box 250, 900 Howe Street, 6th Floor, Vancouver, BC, V6Z 2N3. The Commission may request supporting receipts and invoices.
- 14.2.2 A final application for a cost award must be made within 30 calendar days following the last date in the proceeding's final regulatory timetable or at such other time as the Commission directs. For clarity, the last date is commonly the close of final argument or final submissions.
- 14.2.3 The Commission will review the final application for a cost award. Prior to the Commission making its determination on a cost award, the Commission may require further supporting documents from the participant seeking costs, such as additional information about the participant or sworn affidavits supporting particulars of costs.
- 14.2.4 The Commission will provide the party being asked to pay, and any other party identified by the Commission, with copies of the final application for a cost award as soon as possible after the final order, decision or report is issued. Parties being asked to pay will be provided the opportunity to comment on cost award applications within 10 business days. Parties being asked to pay must submit their comments to the Commission and copy the participant making a cost award application.
- 14.2.5 The participant making a final application for a cost award will be given the opportunity to reply to comments provided pursuant to Section 14.2.4 within 5 business days. Participants must submit their comments to the Commission and copy the party being asked to pay.
- 14.2.6 The Commission will determine the participant's eligibility and the amount of the final cost award taking into account the criteria established in Sections 3.0, 4.0 and 7.0 through 12.0.
- 14.2.7 The Commission aims to issue final cost awards by order no later than 60 calendar days after the proceeding's final order, decision or report has been issued.
- 14.2.8 An affected participant or regulated entity may seek a reconsideration of its award but must file its application within 30 business days of the Commission's decision on the award.

ATTACHMENT A: Rate Schedule I
effective August 31, 2016

1. Professional fees

a. Legal counsel

Years Since Call	Maximum Daily Fee
Articling student	\$850
0–4	\$1900
5–7	\$2250
8–12	\$2550
12+	\$2800

b. Consultants and specialist/expert witnesses

Years of Related Experience	Maximum Daily Fee
Consultant 0–4	\$950
Consultant 5–7	\$1300
Consultant 7+	\$1850
Specialist /Expert Witness	\$2150

c. Case managers: maximum \$600 per day.

2. Foregone earnings: maximum \$250 per proceeding day per person.

3. Child care: maximum \$75 per proceeding day per person.

ATTACHMENT B: Rate Schedule II
effective April 1, 2017¹

<u>MEAL EXPENSES</u> ¹		<u>TRAVEL RATES</u> ²	
Breakfast only	\$22.00	Vehicle Mileage:	\$.53/km ²
Lunch only	\$22.00	Airfare:	Full Fare Economy ²
Dinner only	\$28.50		
Breakfast & Lunch	\$30.00		
Breakfast & Dinner	\$36.50		
Breakfast, Lunch & Dinner	\$49.00		

ACCOMMODATION RATES³

(Single Room Rate Only)

For a full list of hotels and rates please see:

<http://www.pss.gov.bc.ca/csa/categories/accommodation/search/>

Private accommodation: \$30.00/night

To determine what the current Government rate is in the area in which the hearing is being conducted, please visit the above noted site, and review the Accommodation rate for the Hotel the Commission has booked for the hearing.

In order for the participants to receive the Provincial Government Rate, please contact the Financial Administrator at the BC Utilities Commission and request an approval letter.

NOTES:

1. **Meal expenses/travel rates for in town participants:** In-town participants who attend a hearing may apply for meal expenses and travel rates. Meal expenses, such as lunch, and travel rates are intended for individual participants who do not apply for professional fees.
2. **Meal expenses for out of town participants:** Participants who have applied to attend a hearing not in their immediate area may apply for meal expenses.
3. **Travel rates for out of town participants:** Participants who have applied for funding to attend a hearing not in their immediate area may apply for travel rates.
4. **Accommodation rates** for out of town participants apply to the area in which the hearing is being conducted.

For government rates please see: <http://www.pss.gov.bc.ca/csa/categories/accommodation/search/>

- For hotels with blacked-out periods, the seasonal rate charged in the month prior to the month in which costs are incurred, shall apply.
- Rates charged by Hotels not on the Government Accommodation Listing will be subject to review and adjustment by the Commission.

¹ Rates updated May 18, 2017.