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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-15-04

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

Participant Assistance/Cost Award Guidelines

BEFORE: R.H. Hobbs, Chair)
M. Birch, Commissioner)
L.A. Boychuk, Commissioner)
P.G. Bradley, Commissioner)
R.D. Deane, Commissioner) February 3, 2004
K.L. Hall, Commissioner)
L.F. Kelsey, Commissioner)
R. Milbourne, Commissioner)
N.F. Nicholls, Commissioner)
P. Vivian, Commissioner)

O R D E R

WHEREAS:

- A. In 1993 the Utilities Commission Act was amended to allow the Commission to assist participants with costs associated with proceedings before the Commission; and
- B. On December 8, 1993 the Commission, by Order No. G-117-93, issued its participant funding guidelines pursuant to Section 118 of the Act, effective April 1, 1993; and
- C. Following the release of the Participant Assistance/Cost Award Guidelines under Order No. G-117-93, subsequent amendments to the Guidelines were approved by Orders No. G-103-96, G-97-98 and G-23-01; and
- D. By letter dated January 8, 2004, the Commission requested comments on draft, revised Participant Assistance/Cost Award Guidelines; and

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E. The Commission has reviewed the Stakeholder submissions and has determined that revisions to its Participant Assistance/Cost Award Guidelines are required.

NOW THEREFORE pursuant to Section 118 of the Act, the Commission approves amended Participant Assistance/Cost Award Guidelines, attached as Appendix A to this Order, effective immediately.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of February 2004.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

**British Columbia Utilities Commission
Participant Assistance/Cost Award Guidelines
Section 118 of the Utilities Commission Act**

1. Participant Eligibility

If the Commission panel determines that cost awards may be made for participation in a proceeding, then the Commission panel may award costs, pursuant to these Guidelines, under s118 of the Act. In most proceedings to review a utility application, awards will be made under Section 118(1). The Commission panel may establish a maximum aggregate award amount (“funding cap”) for a proceeding.

A Participant is an individual or an organization, which actively participates in a proceeding of the Commission.

In determining an award of all or any portion of a Participant’s costs, the Commission panel will consider the following:

- (i) Does the Participant represent a substantial interest in the proceeding and will the Participant be affected by the outcome?
- (ii) Has the Participant contributed to a better understanding of the issues by the Commission?
- (iii) Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- (iv) Has the Participant joined with other groups with similar interests to reduce costs?
- (v) Any other matters appropriate in the circumstances.

If the Commission panel considers it to be an appropriate consideration in a proceeding, the Commission panel may consider the Participant’s ability to participate in the proceeding without an award.

2. Application for a Cost Award

Submitting a Budget Estimate

For the purposes of these Guidelines, a proceeding begins when the Commission panel issues an order establishing a hearing, an inquiry or a Negotiated Settlement Process and normally ends when the Commission panel begins its deliberations. Participants who intend to apply for a cost award must submit a budget by the date set out in the Order establishing the proceeding. The Budget Estimate should address the Participant's eligibility considering Section 1 of these Guidelines, identify the key issues that the Participant will examine, indicate whether the Participant expects to lead evidence, and include an estimate of proceeding and preparation days. In addition, Participants who represent a coalition of groups should provide an annual letter from each particular coalition or group, identifying their general interest in Commission proceedings and authorizing representatives to act on their behalf. This letter may be provided at the beginning of the year or with the first intervention in a proceeding in a calendar year.

Commission staff will reply with a review letter that includes an estimate of proceeding days and an estimate of the preparation days that may be funded. Some issues identified in the Budget Estimate may, in the opinion of Commission staff, fall outside the Commission's jurisdiction or be of limited relevance to the proceeding. If so, the Participant will be informed of these concerns and advised that this part of the Budget Estimate may not be funded. The Commission staff advice is not binding on the Participant or the Commission panel and is provided only to forewarn Participants of potential issues that may not be funded by the Commission.

The Commission staff letter will also state the funding cap, if any.

The Commission staff will identify for the utility (or whoever will be asked to pay) those Participants who intend to apply for participant assistance.

Making the Final Application for a Cost Award

- (i) An application for a cost award must be made by filing a written application with the Commission panel within thirty days following the last day of a proceeding (or such time as the Commission panel directs) setting out the reasons for such an award.

A Participant applying for costs should again address its eligibility considering Section 1 of the Guidelines, preferably citing examples from the proceeding to support the awarding of costs. In addition, the application should address any reasons why the actual application differs from the Budget Estimate. For example, if the actual hearing is shorter or longer or the issues more or less complex than anticipated, Participants claiming an award should address how this affected their preparation when their application for a cost award is made. The application should be supported by a statement of costs with the appropriate receipts and invoices together with a sworn affidavit.

- (ii) The Commission panel will review the application and statement of costs. It may require further supporting documents from the Participant seeking costs.
- (iii) The Commission will provide the party being asked to pay, and any other party identified by the Commission panel, with copies of the cost award applications and the opportunity to comment on them. The party will have ten working days to respond.
- (iv) The Commission panel will determine the entitlement to a full or partial award taking into account the criteria established in Section 1 of the Guidelines, the information provided by the Participant with respect to any variances from the participant's Budget Estimate and any variances from the initial staff estimate of proceeding and preparation days.
- (v) The costs are to be awarded by Order no later than 2 months after the hearing Decision has been issued.
- (vi) Once in receipt of the Commission panel's Decision on the award, an affected Participant may seek a reconsideration of its award but must file its application within 10 working days.

3. Interim Award

In exceptional circumstances, the Commission panel may approve the costs of retaining a consultant, Expert Witness/Specialist, or lawyer by a Participant under an accelerated approval process. If an accelerated approval process is approved, one of the following reimbursement alternatives may be ordered.

- (a) reimbursement of a consultant's, Expert Witness/Specialist's, or lawyer's approved invoice, or a portion thereof, that has been received after the regulatory proceeding has begun, but may be before the proceeding has concluded; or
- (b) advance payment(s) not to exceed fifty percent of the higher of the amount actually paid by the Participant and the Budget Estimate net of those items that may not be funded as per the advice from Commission staff pursuant to Section 2.

In the case of 3(b) above, the Participant would also be required to file an application under Section 2 at the conclusion of the hearing, and the approved award, net of the advance payments, would be payable as per Section 2.

4. Participant Assistance: Eligible Costs and Rates

The following reasonable expenses are eligible for participant assistance. The term "proceeding day" may include workshop days, negotiation days, pre-hearing conference days and hearing days. The Commission panel may award costs for preparation days on a ratio of up to 2 days per proceeding day, such ratio may be adjusted, after the proceeding, by the Commission panel with adequate justification from participant(s), in which case the adjusted ratio will be considered as being applicable to all participant awards for that proceeding.

a. Foregone Earnings

The Commission panel will award costs for foregone earnings up to a maximum of \$175 per proceeding day. Participants claiming foregone earnings are required to provide proof of actual foregone earnings, except where to do so would be unreasonably difficult. In this case, an indication of the usual daily earnings must be provided. Where not otherwise provided for in these Guidelines, this provision may also be used to fund the appearance of witnesses who meet the Eligibility Criteria.

b. Legal Fees

The Commission panel will consider factors such as experience before regulatory tribunals, complexity of the issue and overall conduct of the counsel in determining an appropriate contribution or partial award towards legal costs.

The Commission panel may award legal counsel costs up to a maximum as set out in the scale below per full proceeding day or preparation day (assumed to be an eight hour day). Awards will be prorated for part days. Where the actual billing rate is less, the lesser amount will be used for the award.

Years Since Call	Maximum Daily Fee
0 – 5	\$1170
5- 10	\$1350
10+	\$1710

These maximums do not include provision for GST and PST, which may also be allowed, pursuant to subsection 4(g).

c. Case Managers

The Commission supports the use of case managers where this either reduces the use of legal counsel or enables a coalition of interest groups with similar positions to participate. However, the Commission panel will want to be assured that the use of a case manager is not associated with unnecessary duplication of personnel for any particular task.

d. Consultants

The Commission panel will consider factors such as level of professional achievement, experience before regulatory tribunals, complexity of the issue and overall contribution of the consultant in determining an appropriate cost award. In each case the consultant's resume must be provided.

Participants must demonstrate in their submitted budgets their efforts to find qualified consultants knowledgeable of issues in a British Columbia context.

The Commission panel may award costs up to a maximum set out in the scale below, per full proceeding day or preparation day (assumed to be an eight hour day). Awards will be prorated for part days. Where the actual billing rate is less, the lesser amount will be used for the award.

Years of Related Experience		Maximum Daily Fee
Consultant	0 – 5	\$640
Consultant	5- 10	\$800
Consultant	10+	\$1200
Expert Witness / Specialist		\$1400

These maximums do not include provision for GST and PST, which may also be allowed, pursuant to subsection 4(g).

The Commission panel may award fees for an Expert Witness/Specialist that exceed the “Maximum Daily Fee” if the Applicant clearly establishes that Expert Witness/Specialist services are not available at the “Maximum Daily Fee” because of the specialized expertise required to competently address the issues in a proceeding. The Applicant must seek approval for fees that exceed the Maximum Daily Fee at the time of filing its budget.

e. Disbursements

Disbursements directly related to the Participant's participation in the proceeding will be allowed. Payment may be up to the British Columbia Government Employees Union (“BCGEU”) rates applicable to the Regulatory Affairs staff of the Commission for travel, accommodation and meals, etc. 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. These rates are shown in the attached Schedule with the effective date shown. Because these rates may change, participants should contact the Commission if unsure whether the attached Schedule remains in effect.

f. Child Care

Child care expenses (when such expenses are incurred for the purpose of participating) may be allowed to a maximum of \$50.00 per day.

g. Taxes

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

h. Other Costs

Other costs which the Commission panel may deem as reasonable and justified.

BRITISH COLUMBIA UTILITIES COMMISSION

PARTICIPANT ASSISTANCE/COST AWARDS RATE SHEET*
effective April 1, 2003

MEAL EXPENSES¹

Maximum \$44.50/Day (Out of Town Participants)

Breakfast only	\$ 22.00
Lunch only	22.00
Dinner only	28.50
Breakfast & Lunch	30.00
Breakfast & Dinner	36.50
Lunch & Dinner	36.50

TRAVEL RATE²

(Out of Town Participants)

Vehicle Mileage:	\$.44/km ² \$.45/km (effective April 1, 2004)
Airfare:	Full Fare Economy ²

ACCOMMODATION RATES³

(single room rate)	<u>May 1 through Sept 30</u>	<u>Oct 1 through April 30</u>
Greater Vancouver	\$115.00 + taxes	\$80.00 + taxes
Victoria	\$95.00 + taxes	\$70.00 + taxes
Whistler	\$65.00 + taxes	\$80.00 + taxes
All other areas in Province	\$70.00 + taxes	\$65.00 + taxes
Private Accommodation	\$30.00/night	\$30.00/night

NOTES:

- Meal Expenses/Out of Town Participants:** The rates applicable to those Participants who have applied to attend a hearing not in their immediate area.
- Travel Rate/Out of Town Participants:** The rates applicable to those Participants who have applied for funding to attend a hearing not in their immediate area. The participant assistance approved for consideration will be the lesser amount of the two options.
- Accommodation rates apply to the area in which the hearing is being conducted. Please make note of the different seasonal rates applicable for high and low seasons.

* Rates updated April 1, 2003.