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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-72-07

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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
L.F. Kelsey, Commissioner
L.A. Zaozirny, Commissioner
A.W.K. Anderson, Commissioner
R.J. Milbourne, Commissioner
N.F. Nicholls, Commissioner
L.A. O'Hara, Commissioner
A.J. Pullman, Commissioner
P.E. Vivian, Commissioner

July 5, 2007

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, G-23-01 and G-15-04; and
- D. By letter dated May 9, 2007, 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 5th day of July 2007.

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

The Commission Panel in a proceeding may award costs for participation, pursuant to these Guidelines, under Section 118 of the Act. 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.

The Commission Panel will determine whether a Participant is eligible or ineligible for an award. In determining an award of all or any portion of a Participant’s costs, the Commission Panel will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. If this criterion is not met, the Participant will typically not receive a cost award except, possibly, for out-of-pocket disbursements.

Except in limited circumstances, it is expected that only ratepayer groups will establish a “substantial interest in a substantial issue” so as to be eligible for an award in a revenue requirements proceeding. For the purposes of this section, the principal interest of “ratepayer groups” will be the rate impacts of the revenue requirement to be paid by the ratepayer Participants. The Commission Panel will also consider other characteristics of the Participant, including the scope and significance of the principal concerns of the Participant.

Participants other than “ratepayer groups” may be eligible for funding in energy supply contract, rate design, resource plan, and CPCN proceedings provided that the Participant meets the “substantial interest in a substantial issue” criterion.

The Commission Panel will then consider the following:

- (i) 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) Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration of the proceeding? (This criterion will not, by itself, disqualify a Participant for pursuing a relevant position in good faith and with reasonable diligence)
- (vi) 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 the day reply argument is filed or the day of the oral phase of argument. Participants that 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 that have formed a coalition of groups should provide a letter from each particular member of the group, identifying its interest in the Commission's proceedings and authorizing representatives to act on its behalf. This letter should be provided at the beginning of the year or with the first intervention in a proceeding in a calendar year. If the authorization changes during the year, or for a particular proceeding, the Participant should inform the Commission in a timely manner.

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 some potential issues that may affect funding.

The Commission Panel may, in limited circumstances, provide preliminary comments either directly to Participants or through the Commission staff letter, regarding three matters:

- (i) the funding cap, if one has been established;
- (ii) the "substantial interest in a substantial issue" requirement; and
- (iii) the fees budgeted for expert witnesses/specialists, as discussed in section 4(d) of these Guidelines.

Such comments in the Commission staff letter will be with attribution to the Commission Panel. Preliminary comments from the Commission Panel regarding "a substantial issue" will be circulated to all Participants in the proceeding.

The Commission staff will identify for the utility (or whoever will be asked to pay) the budget estimates for 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. The "last day of the proceeding" will normally be the last day of the argument phase of the proceeding, which may be either the day reply argument is filed or the day of the oral phase of argument.

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 must be supported by a statement of costs with the appropriate receipts and invoices and should include 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, hearing days, and oral argument days, and will not include town hall meeting days. The Commission Panel may award costs for preparation days, typically 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). The number of proceeding days and the ratio used for the purposes of calculating awards may vary among Participants and among members of the Participant’s team.

a. Foregone Earnings

The Commission Panel may 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	\$1200
5- 10	\$1400
10+	\$1800

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. Case managers may be awarded costs at a maximum daily fee of \$500, prorated for part days.

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+	\$1250
Expert Witness / Specialist		\$1450

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. At the time of filing a budget, the Participant may seek from Commission staff their opinion as to whether or not a consultant is likely to qualify as a Specialist. In some circumstances, the Commission Panel will make a determination, after receipt of the budget, as to whether or not a consultant qualifies as a Specialist.

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.

In some circumstances, an individual Participant that does not qualify for an award, pursuant to Participant eligibility criteria as set forth in section 1, may be reimbursed for disbursements to travel to a proceeding that is more than 100 km. from the Participant’s residence.

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, 2017

MEAL EXPENSES¹

(Out of Town Participants)

TRAVEL RATE²

(Out of Town Participants)

Breakfast only	\$ 22.00	Vehicle Mileage: \$.53/km²
Lunch only	22.00	
Dinner only	28.50	Airfare: Full Fare Economy²
Breakfast & Lunch	30.00	Economy airfare only will be reimbursed. Receipts/copies of receipts and proof of payment are required.
Breakfast & Dinner	36.50	
Lunch & Dinner	36.50	Private Accommodation \$30.00/night
Breakfast/Lunch/Dinner	49.00	may be claimed when private lodging is arranged (e.g., staying with friends). Receipts are not required.

ACCOMMODATION RATES³

(single room rate only)

For a list of hotels and rates please see:

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

The Provincial government has initiated a new travel policy and is now negotiating government rates with each hotel that elects to participate. As such, the rates throughout the Province are no longer standard, and the old two season block formula (May 1 through Sept 30/Oct 1 through April 30) is no longer in use.

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 Ms. Sheena Zyp (604-660-3662) or Mr. Kevin Wong (604-660-4743) at the BC Utilities Commission and request an approval letter.

NOTES:

1. **Meal Expenses/Out of Town Participants:** The rates applicable to those Participants who have applied to attend a hearing not in their immediate area.
2. **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.
3. **Accommodation rates** 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/>
 - 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.

[♦] Rates updated May 18, 2017.