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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** F-10-07

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

and

**Application for Participant Assistance/Cost Awards ("PACA")
in a filing by British Columbia Hydro and Power Authority ("BC Hydro")
for the Review of the 2006 Integrated Electricity Plan ("2006 IEP")
and the Approval of the 2006 Long-Term Acquisition Plan ("LTAP")**

BEFORE:

R.H. Hobbs, Chair
N. Nicholls, Commissioner
A.J. Pullman, Commissioner

May 31, 2007

O R D E R

WHEREAS:

- A. On March 29, 2006, BC Hydro filed, pursuant to Section 45(6.1) of the Utilities Commission Act ("the Act"), the 2006 IEP and the LTAP with the Commission for regulatory review and approval; and
- B. In a letter dated March 15, 2006, BC Hydro informed the Commission that the balance of the F07/F08 Revenue Requirements Application ("F07/F08 RRA") would be filed in or about late April 2006; and
- C. In the months leading up to the opening oral submissions on November 14, 2006, the Commission convened three joint procedural conferences to hear submissions on the 2006 IEP/LTAP and the F07/F08 RRA; and
- D. By Order No. G-29-07 dated March 15, 2007 and Reasons for Decision dated May 11, 2007, the Commission accepted the specific determinations sought by BC Hydro in the 2006 IEP/LTAP Application; and
- E. In the Reasons for Decision appended to Order No. F-3-07, the Commission awarded funds to participants in the F07/F08 RRA and determined that participants reimbursed for participating in the three joint procedural conferences will not be reimbursed for the joint procedural conferences days in the 2006 IEP/LTAP proceeding; and
- F. On March 27, 2007, the British Columbia Old Age Pensioners Organization *et al.* ("BCOAPO *et al.*") applied for a PACA in the proceeding and, on April 19, 2007, provided supplementary information to its application; and

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- G. On March 29, 2007 Vanport Sterilizers Inc. (“Vanport”) applied for a PACA for its participation in the proceeding. By letter dated April 13, 2007, Vanport requested that the Commission amend Order No. G-96-06 dated August 3, 2006 to accommodate Vanport’s application that was filed without first filing its budget by the deadline as set out in that Order; and
- H. On April 11, 2007, the Commercial Energy Consumers Association of British Columbia (“CEC”) applied for a PACA for its participation in the proceeding and, on April 25 and April 26, 2007, provided supplementary information to its application; and
- I. On April 11, 2007, the Sierra Club of Canada, B.C. Chapter, BC Sustainable Energy Association, and the Peace Valley Environment Association (“SCCBC *et al.*”) applied for a PACA for its participation in the proceeding and on April 27, 2007, provided further documentation to support its application; and
- J. On April 12, 2007, the Independent Power Producers Association of British Columbia (“IPPBC”) applied for a PACA for its participation in the proceeding; and
- K. On April 15, 2007, the Joint Industry Electricity Steering Committee (“JIESC”) applied for a PACA for its participation; and
- L. On April 16, 2007, the Energy Solutions for Vancouver Island (“ESVI”) applied for a PACA for its participation in the proceeding; and
- M. In a letter dated April 27, 2007 to the Commission, BC Hydro commented on each of the seven cost award applications from the participants; and
- N. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the Guidelines in Commission Order No. G-15-04 and has concluded that, after making a number of changes to the amounts of funding requested for in the Reasons for Decision that are set out in Appendix A to this Order, certain cost awards should be approved for participants in the proceeding.

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NOW THEREFORE pursuant to Section 118(1) of the Act, the Commission awards funds to the following for their participation in the proceeding:

	<u>Application</u>	<u>Award</u>
BCOAPO <i>et al</i>	\$175,112.70	\$149,402.40
CEC	202,153.20	114,244.92
SCCBC <i>et al.</i>	223,640.09	187,119.62
IPPBC	188,372.45	119,405.00
JIESC	140,416.00	133,541.60
ESVI	29,953.50	1,333.50
Vanport	<u>5,000.00</u>	<u>0.00</u>
	\$964,647.94	\$705,047.04

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of June 2007.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

British Columbia Hydro and Power Authority
2006 Integrated Electricity Plan (“IEP”) and
the 2006 Long-Term Acquisition Plan (“LTAP”)

Participant Assistance/Cost Award (“PACA”) Applications

REASONS FOR DECISION

1.0 INTRODUCTION

On March 29, 2006, British Columbia Hydro and Power Authority (“BC Hydro”) filed the 2006 IEP and the LTAP pursuant to Section 45 (6.1) of the Utilities Commission Act (“the Act”).

The Commission convened three procedural conferences to hear submissions on: (1) May 19, 2006 to consider the regulatory process for the review of the 2006 IEP/LTAP and the F2007/F2008 Revenue Requirements Application (“F07/F08 RRA”) that was expected to be filed concurrently with the 2006 IEP/LTAP; (2) August 1, 2006 to consider a regulatory timetable to complete the review of the 2006 IEP/LTAP and the F07/F08 RRA before the Commission; creating a separate proceeding for an Electricity Purchase Agreement application, the Amended and Re-stated Long-Term Electricity Purchase Agreement (“LTEPA+”), from the 2006 IEP/LTAP proceeding; and (3) November 8, 2006 to consider the F07/F08 RRA negotiated settlement agreement.

The oral public hearing for the 2006 IEP/LTAP commenced on November 22, 2006. It was adjourned from December 6, 2006 until the afternoon of December 11, 2006 to accommodate the oral hearing phase of the LTEPA+ proceeding. The oral public hearing was adjourned again from December 14, 2006 until January 5, 2007 to accommodate the holiday season. The oral hearing phase closed on January 12, 2007.

The Commission issued Order No. G-29-07 on March 15, 2007, accepting the specific determinations sought by BC Hydro in the 2006 IEP/LTAP proceeding. The Reasons for Decision to the Order was issued on May 11, 2007.

The Commission issued Order No. F-03-07 dated January 24, 2007 to determine awards to eight applicants who applied for funding in the F07/F08 RRA proceeding. Six of the eight applicants for PACA in the F07/F08 RRA proceeding are also applicants in this proceeding. In the Reasons for Decision accompanying Order No. F-3-07, the Commission found that applicants reimbursed for participating in Procedural Conferences No. 1, 2, and 3 held jointly for 2006 IEP/LTAP and the F07/F08 RRA, would not be reimbursed for those proceeding days in the 2006 IEP/LTAP.

Section 118 of the Act provides that the Commission Panel may make cost awards for participation in a proceeding. In this proceeding the Commission received seven applications pursuant to the PACA Guidelines under Section 118. The cost awards requests totaled \$964,647.94.

The Commission’s PACA Guidelines are set out in Appendix A to Order No. G-15-04. It states:

“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."

Pursuant to the PACA Guidelines, BC Hydro was provided with copies of the cost award applications and the opportunity to comment on them. In a letter dated April 27, 2007 to the Commission, BC Hydro made comments on each of the seven applications and provided general commentary on topics such as its preference for applications with two lawyers to break their time out; its preference for additional details on consultants' time, and encouraging the use of junior counsel for less important issues in handling major complex filings.

2.0 PROCEEDING AND PREPARATION DAYS

Section 4 of the PACA Guidelines states that proceeding days may include workshop days, negotiation days, pre-hearing conference days, and hearing days; and that the Commission panel may award costs for preparation days, typically on a ratio of up to two preparation days per proceeding day. Maximum daily costs for legal counsel and consultants are based on an eight-hour day and are to be prorated for partial days.

The Commission Panel has determined the number of proceeding days for the 2006 IEP/LTAP as follows:

<u>Full proceeding days</u>	
13	Nov 22,23,24,27,28,29,30, Dec 1,4, Jan 8,9,10,11
<u>Partial proceeding days (0.75 days)</u>	
3	Nov 14, Dec 5,12
<u>Partial proceeding days (0.5 days)</u>	
2	Dec 13, Jan 12
<u>Partial proceeding days (0.25 days)</u>	
1	Dec 11

$$\text{Total Proceeding Days} = 16.5 \text{ days } \{ 13 + [3 \times .75] + [2 \times .5] + [1 \times .25] \}$$

Based on a ratio of two preparation days for each proceeding day, **the total maximum number of days for funding for this proceeding is 50 days (16.5 + 33.0).**

The Commission Panel notes that all applicants have been reimbursed for the procedural conference pre-hearing days and preparation days in the F07/F08 RRA cost awards except the SCCBC *et al.*, who was only reimbursed for days related to Procedural Conferences No. 1 and 2.

3.0 PACA APPLICATIONS

The Commission received PACA applications from the British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO *et al.*"), the Commercial Energy Consumers' Association of British Columbia ("CEC"), the Sierra Club of Canada, BC Chapter, *et al.* ("SCCBC *et al.*"), the Independent Power Producers Association of British

Columbia (“IPPBC”), the Joint Industry Electricity Steering Committee (“JIESC”), the Energy Solutions for Vancouver Island (ESVI), and Vanport Sterilizers Inc. (“Vanport”).

The PACA application amounts are summarized as follows:

	<u>Amount</u>
BCOAPO <i>et al</i>	\$175,112.70
CEC	202,153.20
SCCBC <i>et al.</i>	223,640.09
IPPBC	188,372.45
JIESC	140,416.00
ESVI	29,953.50
Vanport	<u>5,000.00</u>
	<u>\$964,647.94</u>

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATION AMOUNTS

The Commission Panel has reviewed the applications and determines that the following reductions will be made to the amounts of cost awards requested in the applications.

BCOAPO *et al.*

BCOAPO *et al.* claims a Bill of Cost for the amount of \$175,112.70 based on total counsel fees of \$111,474.90, total consultants’ fees of \$63,472.80 and disbursements of \$165.00.

The Commission Panel notes that BCOAPO *et al.* calculated the counsel fees based on 61.5 days as opposed to the 63 days claimed in the Bill of Costs. The Panel also notes that the consultant’s fee for Econalysis Consulting is based on 16.7 days as opposed to the 22 days claimed in the Bill of Costs. Furthermore, the Panel notes that BCOAPO *et al.* has added 6% GST to the Bill of Cost where it was already included in the Econalysis Consulting invoice.

The Commission Panel finds that the counsel time for the two lawyers should be prorated between Quail (75%) and Worth (25%) to reflect the contribution that both lawyers made to the proceeding. This results in a downward adjustment to the counsel fees of \$25,614.90 inclusive of GST.

$$\begin{aligned} \$25,614.90 &= \$111,474.90 - \$85,860 \\ \$85,860 &= \{[(50 \text{ days} * 75\% * \$1,710) * 1.06] + [(50 \text{ days} * 25\% * \$1,350) * 1.06]\} \end{aligned}$$

The Commission Panel also adjusts downward the chargeable time of Colin Fussell from 33.2 days to 33.125 days, by \$95.40.

The BCOAPO *et al.* adjusted cost award amount is \$149,402.40.

CEC

CEC applied for a cost award of \$202,153.20 based on legal fees of \$107,856.00 plus GST and PST, disbursements of \$132 plus GST, and consultancy fees of \$75,600.00 plus GST.

The Commission Panel finds that the counsel fees were calculated on the basis of 63 days at a daily rate of \$1,712 and that this daily rate exceeds the rate per the PACA Guidelines of \$1,710 for 10+ years of related experience. The consultant's fees were calculated on the basis of 63 days at a daily rate of \$1,200.

The Commission Panel is of the view that the CEC represents a substantial interest in this proceeding and it actively participated, therefore, counsel fees are awarded for the maximum 50 days. However, the Commission Panel is of the opinion that the depth of CEC's submissions and its contribution to the Commission's understanding of the issues warrant a reduced award for the consultant fees to 33 days at \$500/day.

The CEC adjusted cost award is \$114,244.92 based on a downward adjustment of counsel's fees to \$96,615.00 (50 days * \$1,710 * 1.13), consultant's fees to \$17,490.00 (33 days * \$500 * 1.06), and total disbursements of \$139.92.

Vanport

Vanport submitted an application for \$5,000.00. Mr. Tennant of Vanport submitted that it did not file a budget for its participation as it was admitted as a late Intervenor.

The Commission Panel has determined that Vanport does not represent a substantial interest in this proceeding and therefore denies Vanport's application for a cost award.

SCCBC *et al.*

SCCBC *et al.* applied for a cost award for an amount of \$223,640.09. This amount is composed of \$120,384.00 legal fees and applicable taxes, \$64,811.67 expert witness fees, and \$22,604.21 case manager fees and out-of-pocket expenses.

The expert fees and expenses of \$64,811.67 comprise \$39,218.11 for Green Energy Economics Group and \$25,593.56 for Synapse Energy Economics Inc. The Commission Panel notes that an invoice for the amount of \$13,365.63 from Green Energy Economics Group was for expert witness's time incurred on demand side management issues in the F07/F08 RRA proceeding, which was previously denied for reimbursement. The Commission Panel accepts the expert evidence on demand side management from the F07/F08 RRA to be moved to this proceeding and therefore allows the total amount submitted for reimbursement.

The legal fees are based on 70.4 days at \$1,710/day plus applicable taxes and disbursements. The case manager fees are based on \$480 per day for 39.5 days. The respective daily rates for counsel at \$1,710/day and case manager at \$480/day, and the out-of-pocket expenses are generally consistent with the Guidelines.

The Commission Panel notes that SCCBC *et al.* was only paid for funding days for Procedural Conferences No. 1 and 2 but had not received funding for Procedural Conference No. 3 in the Order awarding costs for the F07/F08 RRA. The Panel therefore allows 51.5 days (50 + 1.5 days) for SCCBC *et al.* as the basis to calculate reimbursable legal fees in this proceeding.

The SCCBC *et al.* adjusted cost award amount is \$187,119.62, which is a downward adjustment of \$36,520.47 in legal fees to reflect the reduction of allowable time from 70.4 days to 51.5.

$$\$36,520.47 \text{ or } \{(70.4 - 5.15) * \$1,710\} * 1.13\}$$

ESVI

ESVI claims an award for \$29,953.50 based on consultancy fees of \$28,620 inclusive of taxes and \$1,333.50 disbursements on travel expenses.

The Commission Panel is of the view that on matters such as ESVI pursuing its goal of promoting energy conservation on Vancouver Island it could have joined with another Intervenor, such as the SCCBC *et al.* The Commission Panel has determined that ESVI does not represent a substantive interest in the proceeding and therefore it does not meet the threshold criterion for funding.

The Panel allows ESVI a cost award for out of pocket expenses for the amount of \$1,333.50.

IPPBC

The IPPBC applied for a cost award for \$188,372.45 based on total counsel fees of \$118,836.45, consulting fees of \$64,236.00 and case manager fees of \$5,300.00, all inclusive of applicable taxes.

The IPPBC represents a substantial interest in this proceeding and actively participated. Therefore, counsel fees are awarded for the maximum 50 days. However, the Commission Panel considers that the consultant Mr. Weimer's contribution to the proceeding was more consistent with that of a case manager than a consultant and warrants a reduced award of 33 days at \$500/day.

The IPPBC adjusted cost award is \$119,405. The award is based on:

$$\begin{aligned} &\$96,615.00 \text{ (50 days * \$1,710 * 1.13) plus } \$5,300 \text{ (10 days * \$500 * 1.06) plus} \\ &\$17,490 \text{ (33 days * \$500 * 1.06)} \end{aligned}$$

JIESC

JIESC applied for participant funding of \$140,416 based on 55.2 maximum funding days for counsel pro-rated between Wallace and Chang, 31.1 days for the consultant, and 10 days for the case manager. The daily rates used by JIESC are: \$1710 and \$1170 respectively for counsel Wallace and Chang, \$500 for the case manager, and \$1,200 for the consultant. These rates are consistent with the PACA Guidelines.

The Commission Panel notes that the total counsel time of 55.2 days exceeds the maximum number of days for funding for this proceeding by 5.2 days. Therefore, the Panel adjusts downward the counsel days for Chang from 18.2 to 13 days. **The adjusted cost award for JIESC is \$133,541.60**, reflecting a downward adjustment of \$6,874.40.