

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-24-07**

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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 Approval of the 2007 Rate Design Application (“2007 RDA”) – Phase I

BEFORE: A.J. Pullman, Panel Chair
R.J. Milbourne, Commissioner November 28, 2007
L.A. O’Hara, Commissioner

ORDER

WHEREAS:

- A. On March 15, 2007 BC Hydro filed, in compliance with Commission Order No. G-148-06, its 2007 RDA which addressed rate rebalancing, rate restructuring, changes to the E-Plus rates, amendments to terms and conditions and the distribution extension policy. On May 8, 2007, the Commission established an oral public hearing process for the review of the Application by Order No. G-50-07; and
- B. The public hearing commenced on July 9, 2007 in Vancouver; and
- C. On July 17, 2007, the Commission Panel made the determination that the Application would be heard in three phases. Phase I would cover the issues related to Items No. 1 to 5 on the Issues List; Phase II would cover issues in Items No. 6 and 7 of the Issues List; and Phase III would cover the BC Hydro Special Contract rates; and
- D. By Order No. G-111-07 dated September 19, 2007, the Commission set out certain directions to BC Hydro on the Cost of Service Study; and by Order No. G-130-07 with Reasons for Decision dated October 26, 2007, the Commission rendered its decision on the relief sought by BC Hydro in Phase I of the 2007 RDA; and
- E. On August 22, 2007, the E-Plus Homeowners Group (“E-Plus Group”) applied for a PACA for its participation in Phase I of the proceeding; and
- F. On October 5, 2007, the Commercial Energy Consumers Association of British Columbia (“CEC”) applied for a PACA for its participation in Phase I of the proceeding; and
- G. On October 18, 2007, the Joint Industry Electricity Steering Committee (“JIESC”) applied for a PACA for its participation in Phase I and Phase II of the proceeding; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** F-24-07

2

- H. On October 5, 2007 the British Columbia Old Age Pensioners Organization *et al.* (“BCOAPO”) applied for a PACA for its participation in Phase I of the proceeding, and on November 2, 2007 provided a revised claim to its application; and
- I. On October 12, 2007, the Heiltsuk Tribal Council and Shearwater Marine Ltd. (“Heiltsuk/Shearwater”) applied for a PACA for their participation in Phase I of the proceeding; and
- J. In a letter dated November 15, 2007 to the Commission, BC Hydro commented on the five cost award applications from the participants; and
- K. 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, as amended by Commission Order No. G-72-07 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.

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>
E-Plus Group	\$76,331.40	\$48,759.40
CEC	114,459.79	55,655.09
JIESC	153,193.21	95,906.11
BCOAPO	87,759.22	82,734.70
Heiltsuk/Shearwater	91,850.94	43,502.40
	<hr/>	<hr/>
	\$523,594.56	\$326,557.70

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of November 2007.

BY ORDER

Original signed by

A.J. Pullman
Panel Chair

Attachment

British Columbia Hydro and Power Authority
2007 Rate Design Application (“2007 RDA”) –PHASE I
Participant Assistance/Cost Award (“PACA”) Applications

REASONS FOR DECISION

1.0 INTRODUCTION

On March 15, 2007, British Columbia Hydro and Power Authority (“BC Hydro”) filed the 2007 RDA in compliance with Commission Order No. G-148-06.

The Commission issued Order No. G-36-07 dated March 23, 2007 establishing a preliminary Regulatory Timetable for the review of the application. The Commission convened a Pre-hearing Conference to hear submissions on May 4, 2007 to consider procedural matters. As a result of the Participants’ submissions and the Commission’s determinations, a regulatory timetable for an oral public hearing was established and set out in Appendix A to Commission Order No. G-50-07.

Before the oral public hearing commenced on July 9, 2007, a Registered Intervenor, the Heiltsuk Tribal Council/Shearwater Marine Ltd. (“Heiltsuk/Shearwater”) filed a motion (“Heiltsuk Motion”) to the Commission submitting that the Energy Purchase Agreement between BC Hydro and a power producer Central Coast Power Corporation (“CCPC”) be produced. By Commission Letter No. L-57-07 issued on July 3, 2007, the Commission Panel determined that the Panel would hear the Heiltsuk Motion immediately following the Opening Statement of the Panel Chair. The Commission Panel also advised CCPC to attend the oral public hearing should CCPC wish to have its position presented.

On the first day of the oral hearing following submissions on the Heiltsuk Motion and issues related to the Non-Integrated Area (“NIA”), parties who had no interest in the Heiltsuk Motion were excused by the Commission Panel for the afternoon. In the afternoon of the first day of the hearing, Parties made submissions on the Heiltsuk Motion and whether issues related to the NIA and ‘Bella Bella NIA’ rates ought to be within scope for the 2007 RDA proceeding.

On July 17, 2007, the Commission Panel made the determination that the Application would be heard in three phases. Phase I would cover the issues related to Items No. 1 to 5 on the Issues list; Phase II would cover issues in Items No. 6 and 7, i.e., NIA- and “Bella Bella NIA”-related issues on the Issues List; and Phase III would cover the BC Hydro Special Contract rates.

Section 118 of the *Utilities Commission Act* (the “Act”) provides that the Commission may make cost awards for participation in a proceeding. In this proceeding, the Commission received five applications pursuant to the PACA Guidelines under Section 118. The total cost from the applications is \$523,263.31.

The Commission’s PACA Guidelines are set out in Appendix A to Order No. G-15-04, as amended by Order No. G-72-07. Commission Order No. G-15-04, which was in effect at the time of the filing of budget estimates for this proceeding, states that:

“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 November 15, 2007 to the Commission, BC Hydro made comments on the five applications as well as a general commentary on claims that are made for costs that were incurred well before BC Hydro's filing of the 2007 RDA.

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. 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 2007 RDA as follows:

Full proceeding days	= 6	July 10, 12, 13, 16, 17, 18
Partial proceeding days (0.5)	= 2	July 9 ¹ , 11
Partial proceeding days (0.25)	= 2	May 5, July 19

$$\text{Total proceeding days} = 6 + (2*0.5) + (2*0.25) = 7.5$$

Based on a ratio of two preparation days for each proceeding day, **the total maximum number of days for funding for this proceeding is 22.5 days (7.5 + 15).**

3.0 PACA APPLICATIONS

The Commission received applications from the E-Plus Homeowners Group ("E-Plus Group"), the Commercial Energy Consumers' Association of British Columbia ("CEC"), the Joint Industry Electricity Steering Committee ("JIESC"), the British Columbia Old Age Pensioners Organization *et al.* ("BCOAPO") and the Heiltsuk Tribal Council/Shearwater Marine Ltd. ("Heiltsuk/Shearwater").

The PACA application amounts are summarized as follows:

¹ The majority of participants were excused by the Commission Panel for the afternoon.

	<u>Amount</u>
E-Plus Group	\$76,331.40
CEC	114,459.79
JIESC	153,193.21
BCOAPO	87,759.22
Heiltsuk/Shearwater	91,850.94
	<hr/> \$523,594.56

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATION AMOUNTS

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

E-Plus Group

E-Plus Group claims a total cost of \$76,331.40 based on counsel fees of \$62,875, disbursements of \$5,282.65 and applicable taxes. The Commission Panel notes a small discrepancy in the counsel fees of \$62,875 presented in the Invoice and the counsel fees of \$62,865 presented on page 2 of the application letter. E-Plus Group calculated its counsel fees based on 34.925 days times \$1,800 maximum daily rate. The number of days is based on 279.4 hours at 8 hours a day.

The Commission Panel notes that E-Plus Group calculated counsel fees based on the maximum daily fee of \$1,800 as set out in Appendix A of Order No. G-72-07 issued on July 5, 2007. The Commission Panel is of the view that the daily fees related to legal and consultants' services indicated in Order No. G-72-07 are not effective for proceedings which have commenced before the Order was issued on July 5, 2007. Only the rates related to meal, travel and accommodation expenses that are attached to Order No. G-72-07 are effective as of April 1, 2007.

The Commission Panel notes that E-Plus Group rate was a discrete topic in the rate design proceeding and that during the oral hearing, some testimonies and cross-examination topics were completely unrelated to the E-Plus Group rate design. Nonetheless, the Commission Panel notes that the E-Plus Group customers had joined together to reduce costs and that the counsel for E-Plus Group has to organize a hitherto unorganized customer group to articulate its position. The Commission Panel therefore decides that the E-Plus Group counsel should be awarded the total allowable days for PACA funding purposes. The Commission Panel finds that the counsel fees should be 22.5 days *\$1,710 = \$38,475. This results in a downward adjustment of \$27,572 (\$76,331.40 - \$48,759.40).

The disbursements are generally in accordance to the PACA Guidelines and no adjustments are made.

The total award for E-Plus Group, after adjusting for counsel fees and applicable taxes, is \$48,759.40.

CEC

CEC applied for a cost award of \$114,459.79 based on \$69,409.77 incurred for legal expenses and \$45,050.02 for consultancy fees.

The legal expenses from the CEC are based on 34 days at a daily rate of \$1,800 plus expenses plus the applicable taxes. The Commission Panel finds that the legal fees should instead be based on 22.5 days at \$1,710 or \$38,475. This results in a downward adjustment of \$25,679.68 (\$69,409.77-\$43,730.09) in legal fees.

The consultant's fees from Mr. David Craig are based on 34 days at \$1,250 per day. Commission Panel has reviewed the role of the CEC consultant in this proceeding and, based on CEC's contribution to the Commission's understanding of the issues, has concluded that his role was more akin to that of a case manager. As a result, the Commission Panel has determined that the award for the consultant fee should be at \$500/day for the allowable 22.5 days or \$11,250 (22.5*\$500) plus applicable taxes, a downward adjustment of \$33,125 (\$45,050 - \$11,925).

The total award for CEC, after a downward adjustment of \$58,804.70 (\$25,679.68+\$33,125), is \$55,655.09.

JIESC

The JIESC applies for participant funding for both Phase I and Phase II of the 2007 RDA proceeding. The Commission Panel has determined that it would consider Phase II PACA application separately from Phase I and therefore the claim for Phase II by JIESC is not considered.

The JIESC applied for participant funding for a total of \$153,193.21. This total is made up of \$66,664.35 (\$58,995 + \$7,669.35) in legal fees to Bull Housser & Tupper, \$43,844 (\$41,400+ \$2,550) in tariff and regulatory consulting service fees to LSM Consulting/Mr. Lloyd Guenther, \$18,874 (\$17,806 +\$1,068.36) in expert witness fees to FSI Strategies/Mr. Lloyd Guenther, and \$23,770.5 (\$19,110 + \$2,340+\$950) in expert witness fees to Linxwiler Consulting Services, Inc.

The Commission Panel notes that in Mr. Linxwiler's invoices to JIESC and in the Invoice Summary prepared by JIESC, Mr. Linxwiler had not invoiced JIESC for GST and the JIESC had not included the GST on the portion of Mr. Linxwiler's cost in the Invoice Summary. However, when submitting the total JIESC claim of cost to the Commission, JIESC has added a GST to Mr. Linxwiler's fees including a GST on currency conversion loss.

JIESC claims a total of \$58,995 in legal fees based on 34.5 days (for Phase I and Phase II) at a daily rate of \$1,710 and applicable taxes of \$7,669.35. The Commission Panel finds that the legal fees should be based on the allowable days and should therefore be \$38,475 (22.5*1,710). The downward adjustment including applicable tax is \$23,187.60 (\$66,664.35 - \$43,476.75).

JIESC applies for \$17,806 plus applicable taxes on behalf of Mr. Lloyd Guenther for expert witness testimony. The Commission Panel notes that the invoice from Mr. Guenther (FSI Strategies) dated August 2, 2007 relating to the preparation of expert evidence with respect to the proceeding was for a total of 52.25 hours (17.5 + 34.75) or 6.53 days whereas JIESC has applied for 12.28 days. JIESC is also applying for cost award at a daily rate of \$1,450 which is \$50 more than the daily maximum rate for an expert witness/specialist. The Commission Panel therefore finds that the expert witness fees to Mr. Guenther of FSI Strategies should be reduced to \$9,142 (6.53 days * \$1,400). The downward adjustment is \$9,183.84 (\$18,874.36 - \$9,690.52)

JIESC also applies for \$41,400 plus applicable taxes for Mr. Guenther's tariff and regulatory consulting services in this proceeding. The amount applied for is based on 34.5 days at a daily maximum rate of \$1,200. The Commission finds that the allowable days of 22.5 days should be adjusted for the award of 6.53 days for Mr. Guenther as an expert witness and therefore the total cost award to Mr. Guenther for consulting services should be based on 15.97 days at \$1,200 or \$19,164. The downward adjustment for consultancy services is \$23,187.60 (\$43,864.00 - \$20,313.84).

JIESC applies for \$22,425 plus GST for the services of expert witness Mr. Linxwiler. The \$22,425 is made up of US\$19,110 (\$12.25*US\$1560) in fees, US\$2,340 in expenses and \$975 in USD/CDN currency exchange conversion cost and the applicable GST. The Commission Panel approves the 12.25 days claimed by JIESC for its expert witness and approves the US\$1,560 daily rate for Mr. Linxwiler which exceeds the "Maximum Daily Fee". The only downward adjustment is made for the GST amount of \$1,345.50 which JIESC has applied to Mr. Linxwiler's rates, disbursements and currency exchange loss.

The total award for JIESC is \$95,906.11, which is a downward adjustment of \$57,287.10 (\$23,187.60 + \$23,570.16 + \$9,183.84 + \$1,345.50).

BCOAPO

BCOAPO claims a total of \$87,759.22 which is based on counsel fees of \$41,493.60 and consultants and expert witness fees of \$46,182.61 plus disbursements of \$83.01.

The counsel fees from BCOAPO are based on 24 days at a blended daily maximum rate of \$1,530 which is the average of \$1,710 for Mr. Quail and \$1,350 for Ms. Worth. The Commission Panel notes the respective contribution by Mr. Quail and Ms. Worth and accepts the blended daily rate. An adjustment is made for the number of days from 24 to 22.5, which results in a downward of adjustment of legal fees by \$2,295 to \$34,425 (22.5*\$1,530). The total downward adjustment including applicable taxes is \$2,593.35 to \$38,900.25.

BCOAPO has retained the services of two consultants, Econalysis Consulting and Mr. Colin Fussell; as well as two expert witnesses, Dr. Marvin Shaffer and Mr. Colin Fussell who also acted as witness for preparation of expert evidence.

The total consulting services of Econalysis Consulting and Mr. Fussell add up to 24.28 days which exceed the allowable days of 22.5. The Commission Panel therefore adjust the BCOAPO claim by a factor of .93. As a result, the award for Econalysis is \$13,424.50, a downward adjustment of \$1,241.66 (\$14,666.16 - \$13,424.50) and the award for Mr. Fussell is \$15,082.74, a downward adjustment of \$1,135.26 (\$16,218.00-\$15,082.74).

The Commission Panel accepts the claims by BCOAPO for the services of expert witnesses Dr. Marvin Shaffer and Mr. Fussell.

The Commission Panel has determined that travel expenses are not justified for non out-of-town participants and therefore BCOAPO's allowable disbursements are reduced by \$54.25 from \$83.00.

The total award for BCOAPO is \$82,734.70, a downward adjustment of \$5,024.52 (\$2,593.35 + \$1,241.66 + \$1,135.26 + \$54.25).

Heiltsuk/Shearwater

Heiltsuk/Shearwater claim an actual legal cost of \$91,850.94 for their participation in Phase I, or in the alternative, claim a total of \$73,508.94 which is based on an 8-hour maximum daily rate of \$1,800.

Heiltsuk/Shearwater claim that they have substantial interests in Phase I of the hearing, and that they were very active in Phase I hearing which all parties at the time expected would be the full extent of the 2007 RDA hearing. The Commission Panel notes that the alternative claim of \$73,508.94 is composed of PST of \$6,008.94 which is based on the actual cost claim of \$91,850.94.

/Shearwater ask the Commission to award costs based on their actual legal fees and PST in light of the additional discovery and procedural challenges and the significant impact of their submissions on the nature and form of the proceeding. In the alternative, Heiltsuk/Shearwater ask the Commission to consider a cost award for preparation days based on a ratio higher than the typical two days per proceeding day.

The Commission Panel notes that the Guidelines expressly states that "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." The Commission Panel therefore agrees with BC Hydro's observation that awarding such costs that were incurred well before BC Hydro had filed the 2007 RDA would be inconsistent with the PACA Guidelines.

The Commission Panel does not disagree with Heiltsuk/Shearwater that they have substantial interest in Phase I of the 2007 RDA proceeding which was, as described in the introductory section of the Reasons, intended to be the full extent of the 2007 RDA. The Commission Panel also notes that the Heiltsuk/Shearwater substantive interest in Zone II-NIA was a discrete issue and agrees with BC Hydro's observation that Phase I oral hearing was unnecessarily prolonged by the participation of the Heiltsuk/Shearwater. However, the Commission Panel is of the view that Heiltsuk/Shearwater were not entirely responsible for the prolonged process in Phase I of the proceeding.

The Commission Panel therefore decides that the Heiltsuk/Shearwater counsel should be awarded for the allowable days for PACA funding purposes. The Commission Panel finds that the counsel fees should be 24 days²*\$1,710 = \$41,040 plus the applicable PST. This results in a downward adjustment of \$30,006.54 from the alternative claim of \$73,508.94.

The total award for Heiltsuk/Shearwater, after adjusting for counsel fees and PST, is \$43,502.40.

5.0 SUMMARY

The participants' claims, adjustments by the Commission Panel, and the total awards are summarized in the Table below:

	Before Taxes	Taxes	Claim/Award
E-Plus Group Claim	\$68,157.65	\$8,173.75	\$76,331.40
Adjustment	<u>-24,400.00</u>	<u>-3,172.00</u>	<u>-27,572.00</u>
Award	\$43,757.65	\$5,001.75	\$48,759.40
CEC Claim	\$103,939.00	\$10,520.37	\$114,459.79
Adjustment	<u>-53,975.00</u>	<u>-4,829.28</u>	<u>-58,804.70</u>
Award	\$49,964.00	\$5,691.09	\$55,655.09
JIESC Claim	\$140,626.00	\$112,567.21	\$153,193.21
Adjustment	<u>-51,420.00</u>	<u>-5,867.10</u>	<u>-57,287.10</u>
Award	\$89,206.00	\$6,700.11	\$95,906.11
BCOAPO Claim	\$80,371.51	\$7,387.71	\$87,759.22
Adjustment	<u>-4,591.63</u>	<u>-6,893.92</u>	<u>-5,024.52</u>
Award	\$75,779.88	\$493.73	\$82,734.70
Heiltsuk/Shearwater Claim	\$67,500.00	\$6,008.94	\$73,508.94
Adjustment	<u>-26,460.00</u>	<u>-3,546.54</u>	<u>-30,006.54</u>
Award	\$41,040.00	\$2,462.40	\$43,502.40

² Heiltsuk/Shearwater participated in the July 9, 2007 afternoon hearing and the total number of days is 24 (8 hearing days + 16 preparation days).