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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-3-08**

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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 Approval of the 2007 Rate Design Application ("2007 RDA") – Phase II**

BEFORE: A.J. Pullman, Panel Chair
R.J. Milbourne, Commissioner January 17, 2008
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 Oral 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. The public hearing for Phase II commenced on September 4, 2007 and was concluded on September 7, 2007; and
- E. By Commission Order No. G-171-07 dated December 21, 2007 and attached Reasons for Decision, the Commission rendered its decision on the relief sought by the Heiltsuk Tribal Council and Shearwater Marine Ltd. ("Heiltsuk/Shearwater") in Phase II of the BC Hydro RDA; and
- F. On October 18, 2007, the Joint Industry Electricity Steering Committee ("JIESC") applied for a PACA for its participation in both Phase I and Phase II of the proceeding; and
- G. On November 13, 2007, Heiltsuk/Shearwater applied for a PACA for their participation in Phase II of the proceeding; and

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- H. In a letter dated November 29, 2007 to the Commission, BC Hydro commented on the cost award application from Heiltsuk/Shearwater; and
- I. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the Guidelines in Commission Order No. G-72-07 and has concluded that, after making some changes to the amounts of funding requested, certain cost awards should be approved for Heiltsuk/Shearwater in the proceeding as set out in the Reasons for Decision that are attached as Appendix A to this Order.

NOW THEREFORE pursuant to Section 118(1) of the Act, the Commission awards \$23,595.55 to Heiltsuk/Shearwater for their participation in the proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of January 2008.

BY ORDER

Original signed by:

A,J. Pullman
Panel Chair

Attachment

British Columbia Hydro and Power Authority
2007 Rate Design Application (“2007 RDA”) –PHASE II

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.

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 Phase I of this proceeding, the Commission received five applications pursuant to the PACA Guidelines under Section 118. The Commission issued Order No. F-24-07 dated November 28, 2007 with Reasons for Decision approving certain cost awards for the PACA applicants for their participation in Phase I of the proceeding.

The Commission’s PACA Guidelines are set out in Appendix A to Order No. G-72-07. Section 1 in Appendix A to the Order states that:

“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?
- 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."

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 29, 2007 to the Commission, BC Hydro made comments on the Heiltsuk/Shearwater application.

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	= 3	September 4, 5, 7
Half proceeding day (0.5)	= 1	July 27 meeting (Commission-directed negotiation)

Total proceeding days = $3 + (1 \times .05) = 3.5$

Based on a ratio of two preparation days for each proceeding day, **the total maximum number of days for funding for this proceeding is 10.5 days (3.5 + 7).**

3.0 PACA APPLICATIONS

The Commission has received applications from the Joint Industry Electricity Steering Committee ("JIESC") and the Heiltsuk Tribal Council/Shearwater Marine Ltd. ("Heiltsuk/Shearwater").

The PACA application from the JIESC for Phase II was included in its Phase I PACA application. In its application, JIESC had not addressed its eligibility with respect to Phase II considering Section 1 of the Guidelines. The Commission Panel has determined that in Phase II, the JIESC does not meet the "substantial interest in a substantial issue" threshold criterion and therefore decides that the JIESC is not eligible for funding.

Heiltsuk/Shearwater applied for \$61,252.06 based on actual legal fees of \$54,093, the applicable PST of \$3,786.51, allowances of \$3,372.55 for out-of-town participants and disbursements. In the alternative, Heiltsuk/Shearwater applies for a funding of \$26,059.06 which is composed of \$18,900 in legal fees, \$3,786.51 in claim for PST, and \$3,372.55 in total allowances and disbursements.

4.0 ADJUSTMENTS TO HEILTSUK/SHEARWATER PACA APPLICATION AMOUNT

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

Heiltsuk/Shearwater's claim based on actual cost was on the basis of its exceptionally active level of participation, the additional discovery and procedural challenges, and the significant impact of its submissions on the nature and form of the Phase II proceeding. The legal fees of \$54,093.00 are made up of 189.8 hours at \$285 per hour. In the alternative, Heiltsuk/Shearwater asked 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 acknowledges the active participation level of Heiltsuk/Shearwater in Phase II of the proceeding. Nonetheless, the Commission Panel has taken this active participation into consideration and Heiltsuk/Shearwater was awarded the total allowable funding days in Phase I notwithstanding that its interest in Zone II-NIA issues was a discrete issue among many other rate design issues in the 2007 RDA Phase I proceeding. The Commission Panel agrees with BC Hydro's concern that if the Commission were to award actual costs to intervenors based on the special circumstances cited by Heiltsuk/Shearwater, this would establish an undesirable precedent.

In the alternative, Heiltsuk/Shearwater claims a total of \$18,900 which is based on an 8-hour maximum daily rate of \$1,800. The Commission Panel notes that the alternative claim includes PST of \$3,786.51 which is based on the actual legal cost claim of \$54,093.00.

The Commission Panel does not disagree with Heiltsuk/Shearwater that additional time was incurred for a July 27, 2007 meeting and the Commission Panel therefore allows that meeting to be counted towards a proceeding day. The Commission Panel has determined 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 $10.5 \text{ days} \times \$1,800 = \$18,900$ plus the applicable PST of \$1,323.00. This results in a downward adjustment of \$2,463.51 ($\$3,786.51 - \$1,323.00$) from the alternative claim of \$26,059.06. The Commission Panel finds that the allowances and disbursements claimed by Heiltsuk/Shearwater are generally in accordance to the PACA Guidelines and no adjustments are made.

The total award for Heiltsuk/Shearwater after adjusting for PST is \$23,595.55.