

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



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-11-08**

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 Insurance Corporation of British Columbia ("ICBC")
for the approval of
the 2007 Revenue Requirements for Universal Compulsory Automobile Insurance
and
Rate Design for Universal Compulsory Automobile Insurance**

BEFORE: L.F. Kelsey, Panel Chair
A.W.K. Anderson, Commissioner
P.E. Vivian, Commissioner
February 26, 2008

ORDER

WHEREAS:

- A. On March 16, 2007 the Insurance Corporation of British Columbia ("ICBC") submitted an application to the British Columbia Utilities Commission ("Commission") for approval of the 2007 Revenue Requirements for Universal Compulsory Automobile Insurance ("Basic Insurance") including a filing of information relating to matters referenced in the Commission's Decision of July 13, 2006 (the "Revenue Requirements Application" or "RRA"); and
- B. On March 29, 2007 ICBC submitted to the Commission an Application Respecting Rate Design for Basic Insurance (the "Rate Design Application" or "RDA"); and
- C. By Order No. G-32-07, the Commission established that ICBC was to lead a Workshop with respect to the RRA and the RDA on April 23, 2007. The Order also established a Pre-hearing Conference to be held on the same date following the Workshop; and
- D. Following the Pre-hearing Conference held on April 23, 2007, by Order No. G-48-07 dated April 27, 2007, the Commission Panel ordered that the RRA and the RDA would be reviewed in a combined regulatory process but that each Application would have its own separate record of evidence. RRA non-actuarial matters were examined in a Written Hearing, and RRA actuarial matters and all RDA matters were examined in an Oral Public Hearing as per the Regulatory Agenda and Timetable attached as Appendix A to Order No. G-48-07; and

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- E. The Oral Public Hearing was held in Vancouver, B.C. and commenced on July 30, 2007 and concluded on August 2, 2007. The Commission issued its RRA Decision on January 9, 2008 accompanied by Order No. G-3-08. The Commission issued its RDA Decision on January 9, 2008 accompanied by Order No. G-4-08; and
- F. On October 17, 2007, the British Columbia Old Age Pensioners Organization *et al.* (“BCOAPO”) applied for a Participant Assistance Cost Award (“PACA”) for its participation in the RRA and RDA combined proceeding; and
- G. On November 5, 2007, Mr. Russell Sykes applied for a PACA for his participation in the RRA and RDA combined proceeding; and
- H. In a letter dated November 15, 2007, the Commission provided ICBC with an opportunity to comment on the PACA Applications of BCOAPO and Mr. Sykes pursuant to section 2 of the PACA Guidelines established by Commission Order No. G-15-04, as amended by Commission Order No. G-72-07 (“PACA Guidelines”); and
- I. In a letter dated November 28, 2007 to the Commission, ICBC did not comment on the BCOAPO PACA Application but did raise several issues regarding the PACA Application by Mr. Sykes, including whether Mr. Sykes’ participation contributed to a better understanding of the issues by the Commission, whether the costs requested in the PACA Application of Mr. Sykes are consistent with PACA Guidelines, and generally, how Mr. Sykes’ participation in the proceedings meets the criteria and considerations set out in the PACA Guidelines; and
- J. In its letter dated January 29, 2008 the Commission allowed Mr. Sykes an opportunity to respond to the November 28, 2007 ICBC letter. On February 6, 2008 Mr. Sykes in his letter advised that he would be responding to the ICBC letter by February 14, 2008. The Commission received on February 18, 2008 a letter from Mr. Sykes dated February 14, 2008 that provided his comments on the ICBC letter; and
- K. The Commission has reviewed the PACA Applications with regard to the criteria and rates set out in the PACA Guidelines and has concluded that certain cost awards should be approved for participants in the proceeding in accordance with the Reasons for Decision that are set out in Appendix A to this Order.

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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	\$55,178.14	\$55,178.14
Mr. Russell Sykes	22,807.00	457.00
	<hr/>	<hr/>
	\$77,985.14	\$55,635.14

ICBC is directed to reimburse the above noted participants for the total amounts awarded in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of February 2008.

BY ORDER

Original signed by

L.F. Kelsey
Panel Chair

Attachment

Insurance Corporation of British Columbia (“ICBC”)
2007 Revenue Requirements for Universal Compulsory Automobile Insurance
and
Rate Design for Universal Compulsory Automobile Insurance

Participant Assistance/Cost Award (“PACA”) Applications

REASONS FOR DECISION

1.0 INTRODUCTION

On March 16, 2007 the Insurance Corporation of British Columbia (“ICBC”) submitted an application to the British Columbia Utilities Commission (“Commission”) for approval of the 2007 Revenue Requirements for Universal Compulsory Automobile Insurance (“Basic Insurance”) including a filing of Information relating to matters referenced in the Commission’s Decision of July 13, 2006 (the “Revenue Requirements Application” or “RRA”). On March 29, 2007 ICBC submitted to the Commission an Application Respecting Rate Design for Basic Insurance (the “Rate Design Application” or “RDA”).

By Order No. G-32-07, the Commission established that ICBC was to lead a Workshop with respect to the RRA and the RDA on April 23, 2007. The Order also established a Pre-hearing Conference to be held on the same date following the Workshop. Following the Pre-hearing Conference held on April 23, 2007, by Order No. G-48-07 dated April 27, 2007, the Commission Panel ordered that the RRA and the RDA would be reviewed in a combined regulatory process but each Application would have its own separate record of evidence. RRA non-actuarial matters were examined in a Written Hearing process. RDA matters and RRA actuarial matters were examined in an Oral Public Hearing as per the Regulatory Agenda and Timetable attached as Appendix A to Order No. G-48-07

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, ICBC was provided with copies of the cost award applications and the opportunity to comment on them. In a letter dated November 28, 2008 to the Commission, ICBC did not comment on the BCOAPO PACA application but did provide questions and comments regarding the application by Mr. Sykes. In a Commission letter dated January 29, 2008, Mr. Sykes was given an opportunity to provide his comments on the ICBC letter of November 28, 2008. The Commission received on February 18, 2008 a letter from Mr. Sykes dated February 14, 2008 that provided his comments on the ICBC letter.

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 RRA and RDA combined proceeding as follows:

Full proceeding days	= 4	April 16; July 30 & 31; August 1
Partial proceeding day (0.5)	= 1	August 2

Total proceeding days = $4 + (1 \times 0.5) = 4.5$

Based on a ratio of two preparation days for each proceeding day, the total maximum number of days for funding for the RRA and RDA combined proceeding would be 13.5 days ($4.5 + (2 \times 4.5)$). It should be noted that the RRA non-actuarial matters were reviewed by a written hearing process and not included in the Oral Public Hearing.

3.0 PACA APPLICATIONS

The Commission received applications from the British Columbia Old Age Pensioners Organization *et al.* ("BCOAPO") and Mr. Russell Sykes.

The PACA application amounts are summarized as follows:

	<u>Amount</u>
BCOAPO	\$55,178.14
Mr. Russell Sykes	22,807.00
	<hr/> \$77,985.14

4.0 PACA APPLICATION AWARDS

The Commission Panel has reviewed the applications and their supporting materials and determines the following amounts of cost awards. Regarding Mr. Sykes' PACA application, the Commission has also considered the comments of ICBC and the rebuttal comments of Mr. Sykes.

BCOAPO

BCOAPO claims a total of \$55,178.14 which is based on counsel fees of \$28,526.85 and consultant fees of \$26,632.50 plus disbursements of \$18.79.

The counsel fees from BCOAPO are based on 16.5 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. The 16.5 days is above the 13.5 days when using a ratio of two preparation days for one hearing day. Considering that the RRA non-actuarial matters were reviewed by a written process and not included in the Oral Public Hearing the 16.5 days for legal counsel is reasonable.

BCOAPO retained the services of its consultant, Mr. Allister Hickson, from Satyatas Consulting. The total consulting services of Mr. Hickson is 20.9375 days which exceeds the allowable days of 13.5. The \$1,200 per day claim is at the Consultant 10+ years experience level. Considering that the RRA non-actuarial matters were reviewed by a written process and not included in the Oral Public Hearing and the volume of information reviewed in the RRA and RDA, the Commission Panel allows the 20.9375 days for the consultant.

The total award for BCOAPO is \$55,178.14.

Mr. Russell Sykes

Mr. Sykes claims a total of \$22,807.00 which includes fees of \$22,350.00 plus disbursements of \$457.00.

The fees of \$22,350.00 relate to workshops/hearings, review of applications and information requests, responses to information requests, preparing information requests, analysis of submissions, preparing/filing submissions, responding to Commission communications for two individuals: Mr. Sykes for 15 days at \$1,450 per day and C. Lewynsky for 3 days at \$200 per day. The \$1,450 per day is at the level for an Expert Witness/Specialist. With regards to the \$22,807 claim, Mr. Sykes estimates 60 percent of the time is for the RRA (\$13,684.00) and 40 percent for the RDA (\$9,123.00).

The \$457.00 of disbursements including taxes were for photocopying, postage, fax, deliveries, meals and parking on hearing days, internet services, and supplies used.

On May 4, 2007 Mr. Sykes registered for PACA with his "Budget Estimate" letter that did not include a budget amount for a PACA. The Commission Panel notes that it is customary practice and generally expected by the Commission that the Budget estimate include a budget amount.

The Commission Panel has considered Mr. Sykes' PACA application in accordance with the PACA Guidelines set out in Appendix A to Order No. G-15-04, as amended by Order No. G-72-07. The Commission Panel has reviewed the questions and comments provided by ICBC in its letter of November 28, 2007. Also, the Commission Panel has also reviewed Mr. Sykes' response to the ICBC letter dated November 28, 2007.

In its letter of November 28, 2007 ICBC acknowledges that Mr. Sykes will be affected by the outcome of the Commission's decisions on ICBC's applications, but no more than other ICBC Basic insurance policyholders. ICBC notes that the Information Requests and Final Submissions of Mr. Sykes were voluminous, but incomplete. ICBC stated that Mr. Sykes submitted "amended" Information Requests after the deadline for Information Requests, which were substantially altered from his original Information Requests, adding confusion to the process. ICBC also notes that Mr. Sykes submitted 14 letters to ICBC and/or the Commission regarding regulatory matters. ICBC further submits that it understands that it is expected that an Expert Witness/Specialist is a consultant hired by a participant group to assist within the expert's area of expertise in a proceeding. ICBC notes that it is pleased to see that Mr. Sykes has availed himself of internet services. In conclusion, ICBC questions how Mr. Sykes' participation in the proceedings meets the criteria and considerations as set out in the Guidelines.

Mr. Sykes in his letter dated February 14, 2008 responded to ICBC's questions and comments. Mr. Sykes states that he will be minimally affected by the outcome because the Basic premium on his car is small. However, Mr. Sykes claims that he became an intervenor, not to protect or defend his own interest, but rather to argue the position of the large majority who have been driving without claims or traffic/motor vehicle violations. Mr. Sykes also claims that the record shows that he qualifies as a participant other than ratepayer groups for funding in the rate design on the substantial interest in a substantive issue criterion. Mr. Sykes submits that the record provides many examples supporting the conclusion that he contributed to a better understanding of the issues by the Commission, which taken together and cumulatively are more than sufficient to justify his claim. Mr. Sykes maintains his information requests were clear, precise and concise. Regarding the fifth paragraph of the ICBC letter, Mr. Sykes considers his letters were necessary and reasonable. Mr. Sykes disagrees with ICBC's statement that the company made every effort to accommodate his special requests at additional cost and effort. Mr. Sykes maintains that ICBC has not provided evidence to support its assertion of what special needs ICBC met. Mr. Sykes submits that his motion at the Oral Hearing was not for personal benefit to himself, but rather aimed at making the hearing more effective and efficient. Mr. Sykes submits his participation is a matter of record (exhibits and transcripts). Mr. Sykes states his information requests and submissions indicate clearly that they were being filed even though they were incomplete. Also, Mr. Sykes submits that the Commission Panel can find in the record more than sufficient examples to justify his claim of where and how he contributed to a better understanding of issues by the Commission. Mr. Sykes states that he did use the internet to access exhibits and other information relating to the proceedings. Finally, Mr. Sykes maintains his claim in both proceedings is more than fair and reasonable in the circumstances.

The Commission Panel notes that Mr. Sykes has indicated that he will be minimally affected by the outcome. Mr. Sykes' intervened on his own behalf and his claim that he became an intervenor not to protect or defend his own interest, but rather to argue the position of the large majority who have been driving without claims or traffic/motor vehicle violations, has not been supported in his PACA application by any organization representing a large number of drivers. The Commission Panel finds that Mr. Sykes does not have a substantial interest in the proceedings and will be minimally affected by the outcome. While the Commission Panel acknowledges Mr. Sykes' participation in the Hearings, it is the view of the Commission Panel, that Mr. Sykes did not contribute in a material way to a better understanding of the issues by the Commission. Given that Mr. Sykes did not contribute to a better understanding of the issues, the Commission Panel finds the fees of \$22,350.00 included in Mr. Sykes' PACA Application are not fair and reasonable. The fees of \$22,350.00 are denied. The Commission Panel notes that it would be unusual for the Commission to award consulting costs to participants who consult for themselves since no actual consulting costs were incurred. The Commission Panel is pleased that Mr. Sykes used the internet to access exhibits and other information relating to the proceedings. However, the Commission Panel notes that the use of an email account by Mr. Sykes would provide more timely communication between all parties and also reduce courier costs for time sensitive non-bulk materials. The Commission Panel allows Mr. Sykes' disbursements cost of \$457.00 for out-of-pocket expenses.

The total award for Mr. Sykes is \$457.00.