

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-18-08**

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
in a Filing by the Insurance Corporation of British Columbia
respecting Regional Claim Centres Allocation**

BEFORE: L.F. Kelsey, Panel Chair
A.W.K. Anderson, Commissioner
P.E. Vivian, Commissioner
June 30, 2008

ORDER

WHEREAS:

- A. On December 21, 2007 the Insurance Corporation of British Columbia ("ICBC") submitted a filing respecting the Regional Claim Centres Allocation ("RCCA"), which included an updated work effort study relating to the Regional Claim Centres Allocator ("the Filing"). The Filing by ICBC proposed a regulatory timetable consisting of a Workshop and Negotiated Settlement Process ("NSP"); and
- B. By Order No. G-2-08 dated January 7, 2008, the Commission established a Regulatory Timetable that included a Workshop and NSP; and
- C. By Letter No. L-2-08 dated January 17, 2008, the Commission amended the Regulatory Timetable for the Workshop to be held on the morning of February 20, 2008 and the NSP to commence following the Workshop; and
- D. At the Workshop ICBC presented information to Commission staff and Registered Intervenors. The NSP commenced immediately following the Workshop with NSP discussions concluding on the same day; and
- E. A Negotiated Settlement Agreement dated February 20, 2008 ("2008 NSA") was reached between ICBC and many of the participants; and
- F. The Commission by Order No. G-73-08 approved the 2008 NSA; and
- G. On March 31, 2008, the British Columbia Old Age Pensioners Organization *et al* ("BCOAPO") applied for a Participant Assistance/Cost Award ("PACA") for its participation in the RCCA proceeding; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-18-08**

2

- H. On May 22, 2008, Mr. Russell Sykes applied for a PACA for his participation in the RCCA proceeding; and
- I. In a letter dated May 23, 2008, the Commission provided ICBC with an opportunity to comment on the PACA Applications of BCOAPO and Mr. Sykes pursuant to section 2 of the Participant Assistance/Cost Awards ("PACA") Guidelines established by Commission Order No. G-72-07; and
- J. In a letter dated June 6, 2008 to the Commission, ICBC did not comment on the BCOAPO PACA Application but did raise a number of issues regarding Mr. Sykes' PACA Application; 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.

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	\$6,128.85	\$6,128.85
Mr. Russell Sykes	4,748.79	398.79
	<hr/>	<hr/>
	\$10,877.64	\$6,527.64

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 30th day of June 2008.

BY ORDER

Original signed by

L.F. Kelsey
Panel Chair

Attachment

Insurance Corporation of British Columbia
a Filing respecting Regional Claim Centres Allocation

Participant Assistance/Cost Award Applications

REASONS FOR DECISION

1.0 INTRODUCTION

On December 21, 2007 the Insurance Corporation of British Columbia (“ICBC”) submitted a filing respecting the Regional Claim Centres Allocation (“RCCA”), which included an updated work effort study relating to the Regional Claim Centres Allocator (“the Filing”). The Filing by ICBC proposed a regulatory timetable consisting of a Workshop and Negotiated Settlement Process (“NSP”). By Order No. G-2-08 dated January 7, 2008, the Commission established a Regulatory Timetable that included a Workshop and NSP. By Letter No. L-2-08 dated January 17, 2008, the Commission amended the Regulatory Timetable for the Workshop to be held on the morning of February 20, 2008 and the NSP to commence following the Workshop. At the Workshop ICBC presented information to Commission staff and Registered Intervenor. The NSP commenced immediately following the Workshop with NSP discussions concluding on the same day. A Negotiated Settlement Agreement dated February 20, 2008 (“2008 NSA”) was reached between ICBC and many of the participants. The Commission by Order No. G-73-08 approved the 2008 NSA.

As set out in the Order that accompanies these Reasons for Decision, the Commission received two applications pursuant to Section 118 of the Utilities Commission Act for Participant Assistance/Cost Award (“PACA”) funding for the RCCA proceeding. Section 118 provides that the Commission Panel may make cost awards for participants in a proceeding. The Commission’s PACA Guidelines are set out in Appendix A to Order No. G-72-07, and state:

“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."

2.0 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 that the maximum number of funding days eligible for reimbursement is 3, which is comprised of 1 proceeding day (February 20, 2008 Workshop and NSP) and 2 preparation days.

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	\$6,128.85
Mr. Russell Sykes	4,748.79
	<hr/>
	\$10,877.64

4.0 PACA APPLICATION AWARDS

The Commission Panel has reviewed the PACA Applications and their supporting materials and determines the following amounts of cost awards.

BCOAPO

BCOAPO claims a total of \$6,128.85 which includes counsel fees of \$5,040.00 and consultant fees of \$1,088.85.

The counsel fees from BCOAPO are based on 2.5 days at a daily maximum rate of \$1,800 for Mr. Quail. The funding days and daily rate for counsel are consistent with the PACA Guidelines. BCOAPO retained the services of its consultant, Mr. Allister Hickson, from Satyatas Consulting. The total consulting services of Mr. Hickson is 0.85 days at a daily rate of \$1,220 per day. The funding day and daily rate for the consultant are consistent with the PACA Guidelines.

The total award for BCOAPO is \$6,128.85.

Mr. Russell Sykes

Mr. Sykes claims a total of \$4,748.79 which includes fees of \$4,350.00 plus disbursements of \$398.79.

The fees of \$4,350.00 relate to workshop/NSP proceeding, review of application, preparing information requests, analysis of the responses to information requests, preparing/filing documents, dealing with communications, and research for Mr. Sykes for 3 days at \$1,450 per day. The \$1,450 per day is at the level for an Expert Witness/Specialist for consulting services.

The \$398.79 of disbursements including taxes were for photocopying, postage, fax, deliveries, meals, parking, internet service, supplies, printing, and use of car for deliveries/attending meetings.

On January 14, 2008 Mr. Sykes registered for a 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. In a letter dated February 15, 2008, the Commission responded to Mr. Sykes' January 14, 2008 letter, which contained a number of requests directed to the Commission. The Commission letter provided preliminary comments which stated that the Commission does not normally fund individuals except under very unusual circumstances but any reasonable out-of-pocket disbursements that an individual incurs during a proceeding may be funded and that Mr. Sykes would not qualify as a consultant to himself thus a daily consultant rate was not warranted.

Mr. Sykes' submits that his claim is more than fair and reasonable since his participation assisted the Commission Panel and staff, and participants in the NSP, and was of value to the policyholders and general public.

The Commission Panel has considered Mr. Sykes' PACA application in accordance with the PACA Guidelines set out in Appendix A to Order No. G-72-07. The Commission Panel has reviewed the ICBC letter dated June 6, 2008.

In its letter of June 6, 2008, ICBC raises a number of issues for consideration by the Commission Panel. ICBC acknowledges that in the RCCA proceeding, Mr. Sykes submitted more Information Requests than other intervenors. However, ICBC did not note any significant participation or contribution during the RCCA proceeding review process by Mr. Sykes. ICBC observes that in the Reasons for Decision in Appendix A to Order No. G-73-08 the Commission acknowledged the concerns expressed by the Insurance Bureau of Canada

and Mr. Sykes regarding the independence of the Work Effort Study and the validation of the Work Effort Study. However, ICBC notes that the Reasons for Decision also stated Mr. Sykes' lengthy submission included many details of the Filing that were simply recitals of evidence that was already on the record. Mr. Sykes also addressed many issues that were beyond the scope of the RCCA proceeding. The Commission Panel considered that, while some points made by Mr. Sykes were relevant, many of the matters addressed by him were out of scope and not relevant to the matters at issue in the RCCA proceeding.

The June 6, 2008 letter from ICBC also raises the issue regarding whether the costs incurred by Mr. Sykes are fair and reasonable. ICBC suggests that Mr. Sykes' participation in the RCCA proceeding was similar to his participation in the 2007 Revenue Requirements and Rate Design Application proceedings, which in the Reasons for Decision to Order No. F-11-08, the Commission determined that Mr. Sykes did not represent a substantial interest and that he would be minimally affected by the outcome. ICBC notes that the claim for consultant fees are at a rate of \$1,450 per day which is at the maximum level for an Expert Witness/Specialist to assist within the expert's area of expertise in a proceeding. ICBC notes that Expert Witness consulting fees are higher than those allowed for individual participants, which according to the PACA Guidelines are at a rate up to a maximum of \$175 per proceeding day with evidence of foregone earnings. ICBC notes that Mr. Sykes has not provided any evidence of foregone earnings in his Application.

The Commission Panel finds that Mr. Sykes does not have a substantial interest in a substantial issue in the proceeding and will be minimally affected by the outcome. As indicated in the Commission letter dated February 15, 2008 to Mr. Sykes, the Expert Witness/Specialist rate is not warranted since Mr. Sykes does not qualify as a consultant to himself. While the Commission Panel acknowledges Mr. Sykes' participation in the NSP, 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. The claim for fees of \$4,350.00 is denied.

The Commission Panel allows Mr. Sykes' disbursements cost of \$398.79 for out-of-pocket expenses.

The total award for Mr. Sykes is \$398.79.

Mr. Sykes in his PACA Application states that to the extent the Commission Panel denies his claim, he requests reconsideration by the Commission Panel. Section 2 of the PACA Guidelines states: "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." It is necessary for Mr. Sykes to make a reconsideration application after the issuance of the Commission Decision on his PACA Application. The reconsideration application should establish a *prima facie* case justifying the reconsideration.