

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-25-08**

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 196, Chapter 473**

and

**Applications for Participant Assistance/Cost Awards
British Columbia Hydro and Power Authority
2008 Residential Inclining Block Rate Application**

BEFORE: A.J. Pullman, Panel Chair
R.J. Milbourne, Commissioner November 10, 2008
L.A. O'Hara, Commissioner

O R D E R

WHEREAS:

- A. On February 26, 2008, British Columbia Hydro and Power Authority ("BC Hydro") filed its 2008 Residential Inclining Block Rate Application ("RIB Application") with the British Columbia Utilities Commission ("the Commission") for the review and approval of a new, two-step, inclining block rate structure for its residential customers; and
- B. By Commission Order G-28-08 dated February 28, 2008, the Commission established a Procedural Conference to be held on April 28, 2008 regarding the regulatory processes for the RIB Application along with two other concurrent applications from BC Hydro: the Fiscal 2009/Fiscal 2010 Revenue Requirements Application and the Transmission Service Rate Re-pricing Application; and
- C. By Commission Order G-76-08 dated April 28, 2008, the Commission ordered that an Oral Public Hearing be held to review the RIB Application. The regulatory timetable for the proceeding included two rounds of Information Requests ("IRs") to BC Hydro, a timetable for the submissions of Intervenor Evidence, and IRs to Interveners; and
- D. The only Intervenor to file Evidence was Energy Solutions for Vancouver Island; and
- E. By Order G-124-08 dated August 28, 2008 and Reasons for Decision dated September 24, 2008, the Commission determined that it is in the public interest for BC Hydro to implement an inclining block residential rate structure; and
- F. On August 19, 2008, the British Columbia Old Age Pensioners' Association *et al.* ("BCOAPO") filed an application for a Participant Assistance/Cost Award ("PACA") with respect to its participation in the proceeding; and

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- G. On August 20, 2008, the British Columbia Sustainable Energy Association of British Columbia and the Sierra Club of Canada B.C. Chapter (collectively “BCSEA”) filed an application for a PACA with respect to its participation in the proceeding; and
- H. On August 27, 2008, the Rental Owners and Managers Society of BC (“ROMSBC”) filed an application for a PACA for its participation in the proceeding; and
- I. On September 11, 2008, the Commercial Energy Consumers of British Columbia (“CEC”) filed an application for a PACA for its participation in the proceeding; and
- J. On September 15, 2008, Energy Solutions for Vancouver Island (“ESVI”) filed an application for a PACA for its participation in the proceeding; and
- K. On September 16, 2008, the Joint Industry Electricity Steering Committee (“JIESC”) filed an application for a PACA for its participation in the proceeding; and
- L. By letter dated September 30, 2008, BC Hydro commented to the Commission that it believes that all six Intervenorers who have applied for assistance have a substantial interest in a substantial issue in the proceeding; that it supports the request from some Intervenorers that the typical 2:1 ratio of preparation time to proceeding days was insufficient and more time was necessary; and that it does not support ESVI’s request for additional funding of evidence work as it is not consistent with the PACA Guidelines; and
- M. The Commission has reviewed the applications for cost awards with regard to the criteria and rates as set out in Order 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 the Commission orders as follows:

1. Pursuant to Section 118(1) of the Utilities Commission Act, the Commission awards funds to the following for their participation in the proceeding:

	<u>Application</u>	<u>Award</u>
BCOAPO	\$65,730.48	\$60,186.48
CEC	\$45,612.42	\$45,491.21
JIESC	\$23,094.23	\$23,094.23
ROMSBC	\$1,019.48	\$ 1,029.12
ESVI	\$16,974.75	\$12,354.75
BCSEA	\$40,193.25	\$20,838.40

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DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of November 2008.

BY ORDER

Original signed by

A.J. Pullman
Panel Chair

Attachment

British Columbia Hydro and Power Authority
2008 Residential Inclining Block Rate Application

Applications for Participant Assistance/Cost Awards

REASONS FOR DECISION

1.0 INTRODUCTION

On February 26, 2008, British Columbia Hydro and Power Authority (“BC Hydro”) filed its 2008 Residential Inclining Block Rate Application (“RIB Application”) with the British Columbia Utilities Commission (the “Commission”). By Order G-124-08 dated August 28, 2008 and Reasons for Decision dated September 24, 2008, the Commission determined that it is in the public interest for BC Hydro to implement an inclining block residential rate structure.

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 six applications pursuant to the Commission’s Participant Assistance/Cost Awards (“PACA”) Guidelines. The Guidelines are set out in Appendix A to Order G-72-07 issued under Section 118 of the Act and include the following provisions on eligibility and disbursements:

“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."

"In some circumstances, an individual Participant that does not qualify for an award, pursuant to Participant eligibility criteria as set forth in Section 1, may be reimbursed for disbursements to travel to a proceeding that is more than 100 km. from the Participant's residence."

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 September 30, 2008 to the Commission, BC Hydro made comments on the six applications and some general comments on the ratio of preparation time to proceeding days.

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, hearing days and oral argument days. The Commission Panel has determined the number of proceeding days for the RIB Application as follows:

<u>Activity</u>	<u>Proceeding Days</u>	
Procedural Conference*	April 28, 2008	0.25
Oral Hearing	June 16-19, 2008	4.00
Oral Argument	August 15, 2008	<u>0.50</u>
Total Proceeding Days		4.75

*Note: The April 28, 2008 Procedural Conference was held jointly with two other BC Hydro proceedings, namely the Transmission Service Rate Re-pricing Application and the Fiscal 2009/Fiscal 2010 Revenue Requirements Application.

The Guidelines provide that the Commission Panel may award costs for preparation days on a ratio of up to two days per proceeding days, although after the proceeding the Commission may adjust this ratio with adequate justification from participants.

In its letter dated September 30, 2008 to the Commission commenting on the cost award applications, BC Hydro agreed with some of the Intervenor's submissions that the typical 2:1 ratio of preparation time to proceeding

days was insufficient, pointing out that its last residential rate restructuring took place in 1994 and that the move to an inclining block rate structure was “a sensitive and complex issue”. The Commission Panel agrees with BC Hydro’s comments and will allow a 3:1 ratio of preparation time to proceeding days in this instance.

Therefore, the Commission Panel determines that 19 days (14.25 + 4.75) will be the maximum number of days for funding.

3.0 PACA APPLICATIONS

The Commission received applications from the British Columbia Old Age Pensioners Association *et al.* (“BCOAPO”), British Columbia Sustainable Energy Association and Sierra Club of Canada BC Chapter (collectively “BCSEA”), Commercial Energy Consumers of British Columbia (“CEC”), Energy Solutions for Vancouver Island (“ESVI”), Rental Owners and Managers Society of BC (“ROMSBC”) and Joint Industry Electricity Steering Committee (“JIESC”).

The PACA applications are summarized as follows:

	<u>Amount</u>
BCOAPO	\$65,730.48
BCSEA	\$40,193.25
CEC	\$45,612.42
ESVI	\$16,974.75
ROMSBC	\$1,019.48
JIESC	\$23,094.23

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS

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

BCOAPO

On August 19, 2008, BCOAPO applied for 21.5 days of legal counsel fees at a cost of \$38,700.00 plus applicable PST and GST, disbursements of \$3.56 and total consultant fees, disbursements and applicable taxes of \$22,382.92, for a total request of \$65,730.48.

BCOAPO represents ratepayer groups and participated actively and constructively in the proceeding (Exhibit C10-1). The Commission Panel finds that BCOAPO meets all the criteria for PACA reimbursement and reduces the amount of its claim of 21.5 days by 2.5 days of legal counsel fees and related PST and GST. The Commission Panel also notes that BCOAPO has also been reimbursed for its participation in the April 28, 2008 Procedural Conference by Order F-22-08; therefore, a further 0.25 days is reduced from its total days claimed.

The total award for BCOAPO, after the adjustment for counsel fees and related taxes, is \$60,186.48.

CEC

On September 11, 2008, the CEC applied for PACA funding for its participation in the proceeding. The CEC applied for 14.98 days of legal counsel fees at a cost of \$26,955.00 plus GST and PST, disbursements of \$0.90 and consultant fees and disbursements of \$14,687.50 plus taxes, for a total request of \$45,612.42.

The CEC represents ratepayer groups and participated actively and constructively in the proceeding (Exhibit C4-1). **The Commission Panel finds that the CEC meets all the criteria for PACA reimbursement and the total award, after an adjustment for the arithmetic error of \$121.21, is \$45,491.21 being \$30,200.58 for counsel fees and taxes and \$15,290.63 for consultant's fees and taxes.**

JIESC

On September 16, 2008, the JIESC applied for PACA funding for its participation in the proceeding. The JIESC applied for 9.6 days of legal counsel fees at a cost of \$17,280.00 plus GST and PST, and consultant fees of \$3,562.50 plus taxes, for a total request of \$23,094.23.

The JIESC represents ratepayer groups and participated actively and constructively in the proceeding (Exhibit C1-1). **The Commission Panel finds that the JIESC meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$23,094.23.**

ROMSBC

On August 27, 2008, ROMSBC applied for PACA funding for its participation in the proceeding. ROMSBC applied for 14 hours of time spent at a total time cost of \$700.00, and disbursements of \$319.48, for a total request of \$1,019.48.

ROMSBC represents a ratepayer group and participated constructively in the proceeding (Exhibit C3-1). **The Commission Panel finds that ROMSBC meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$1,019.48 plus an adjustment of vehicle mileage cost and meal cost as per the PACA rate sheet, resulting in a total of \$1,029.12.**

ESVI

On September 15, 2008, ESVI applied for PACA funding for its participation in the proceeding. ESVI applied for 20.5 days of consultant time at a cost of \$600 per day for \$12,300 plus taxes, 3.5 days of evidence preparation time at \$1,000 per day for a total of \$3,500 plus taxes and disbursements of \$384.75, for a total request of \$16,974.75.

In its letter dated September 30, 2008, BC Hydro stated that it took exception to the application of ESVI (subject to the Commission's further review to ensure consistency with the PACA Guidelines) stating that ESVI's request for 3.5 days of evidence work at \$1,000 per day was not consistent with PACA Guidelines and that both the number of days and the billing rate should be adjusted.

ESVI did not claim to represent a ratepayer group (T2:113-116) but it was able to demonstrate to the Commission Panel a significant interest in the proceeding in that the RIB rate was designed by BC Hydro as a conservation rate and it participated constructively in the proceeding. **However, the Commission Panel agrees**

with BC Hydro's observation that ESVI's request for 3.5 days of evidence work is not consistent with the PACA Guidelines and finds that no costs should be awarded. The Commission Panel finds that otherwise the ESVI meets the criteria for PACA reimbursement and adjusts the amount of its claim of 20.5 proceeding days by 1.5 days of consultant fees and related GST.

The total award after adjustment is \$12,354.75.

BCSEA

On August 20, 2008, BCSEA applied for PACA funding for its participation in the proceeding. BCSEA applied for 19.1 days of legal counsel fees at a cost of \$34,380.00 plus PST and GST, and case manager costs and disbursements of \$1,686.40, for a total request of \$40,193.25.

In its intervention (Exhibit C11-1) BCSEA describes the BCSEA as a "non-profit association...promoting...energy conservation in British Columbia" and the SCCBC as "a non-profit organization of British Columbians...who care about...clean energy". BCSEA also stated that many of its members are ratepayers. The Commission Panel does not consider that BCSEA represents ratepayer groups for the purposes of PACA funding but considers that its interests in conservation demonstrate a significant interest in the proceeding in that the RIB was designed by BC Hydro as a conservation rate. In his opening statement, while strongly supporting cost effective conservation and efficiency measures, counsel for BCSEA expressed no position on the Application, indicating that BCSEA would await the evidence and the arguments before forming its views (T2:108-13). The cross-examination of the BC Hydro witness panel by counsel for BCSEA was prefaced by the observation "Please...don't assume from my questions that BCSEA or SCCBC is necessarily supporting or opposing a particular concept, I'm asking these questions to get information" (T3:509) and prompted two interjections from other counsel that the Commission's rules about friendly cross-examination were being breached (T3:525-26 and 529). The Commission Panel concludes that BCSEA did not participate particularly effectively in the proceedings.

The Commission Panel finds that while BCSEA meets the significant interest criterion for PACA reimbursement, it failed to make a significant contribution to the better understanding of the issues. **Accordingly, the Commission Panel directs that the amount of its claim should be reduced by 9.6 days of legal counsel fees, being a 0.1 day adjustment to the 19 days allowed by the Commission Panel and a 50 percent reduction for its lack of significant contribution to the better understanding of the issues, together with related PST and GST.**

The total cost award for BCSEA, after adjustment, is \$20,838.40.

5.0 SUMMARY

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

	CLAIM	ADJUSTMENTS	AWARD
BCOAPO	\$65,730.48	\$5,040 (based on 2.5 days above maximum of legal fees and applicable taxes)+\$450 awarded in Order F-22-08	\$60,186.48
CEC	\$45,612.42	\$121.21 (arithmetic errors)	\$45,491.21
JIESC	\$23,094.23	\$0	\$23,094.23
ROMSBC	\$1,019.48	\$6.94+\$2.70=\$9.64	\$1,029.12
ESVI	\$16,974.75	\$4,620 (\$3,675 based on 3.5 days of evidence and \$945 based on 1.5 days above maximum)	\$12,354.75
BCSEA	\$40,192.00	\$19,353.60 (based on 9.6 days for legal fees and applicable taxes)	\$20,838.40