

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-26-10A**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Applications for Participant Assistance/Cost Awards
in an Application by British Columbia Hydro and Power Authority
for Acceptance of Capital Expenditures relating to the
Stave Falls Spillway Gates Replacement Project

BEFORE: L.F. Kelsey, Commissioner September 8, 2010

O R D E R

WHEREAS:

- A. On December 23, 2009, British Columbia Hydro and Power Authority (BC Hydro) filed an application (the Application) for acceptance, pursuant to sections 44.2(3)(a) of the *Utilities Commission Act* (the Act), that the capital expenditures BC Hydro anticipates making in respect of the Stave Falls Spillway Gates Replacement Project (Project) are in the public interest;
- B. By Order G-81-10 dated May 13, 2010, the Commission approved the expenditures required by BC Hydro to complete the Stave Falls Spillway Gates Replacement Project, as described in the application in the amount of \$61.5 million, are in the public interest in accordance with section 44.2(3)(a) of the Act;
- C. By letter dated May 21, 2010, the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) applied for Participant Assistance/Cost Award (PACA) funding with respect to its participation in the proceeding;
- D. By letter dated June 4, 2010, the Commercial Energy Consumers Association of British Columbia (CEC) applied for PACA funding with respect to its participation in the proceeding;
- E. By letter dated July 7, 2010, BC Hydro commented that the time allotments and charge rates used by the CEC and BCOAPO appear to be reasonable;
- F. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines in Commission Order G-72-07 and has concluded that cost awards should be approved for Participants in the proceeding, as set out in the Reasons for Decision that are attached as Appendix A to this Order.

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2

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 Participants with respect to their participation in the proceeding.

| | <u>Application</u> | <u>Award</u> |
|--------|--------------------|--------------|
| CEC | \$9978.94 | \$6861.75 |
| BCOAPO | \$3790.50 | \$3790.50 |

2. BC Hydro is directed to reimburse the above-noted Participants for the Award amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of September 2010.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment



IN THE MATTER OF

PARTICIPANT ASSISTANCE/COST AWARD APPLICATIONS

REGARDING THE

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

APPLICATION FOR ACCEPTANCE OF CAPITAL EXPENDITURES

RELATING TO THE STAVE FALLS SPILLWAY GATES REPLACEMENT PROJECT

REASONS FOR DECISION

September 8, 2010

BEFORE:

L.F. Kelsey, Commissioner

TABLE OF CONTENTS

| | PAGE NO. |
|--|-----------------|
| 1.0 INTRODUCTION | 1 |
| 2.0 PROCEEDING AND PREPARATION DAYS | 2 |
| 3.0 INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS | 2 |

1.0 INTRODUCTION

On December 23, 2009, British Columbia Hydro and Power Authority (BC Hydro) filed an application (the Application) for acceptance, pursuant to sections 44.2(3)(a) of the *Utilities Commission Act*, that the capital expenditures BC Hydro anticipates making in respect of the Stave Falls Spillway Gates Replacement Project are in the public interest.

By Order G-81-10 dated May 13, 2010, the Commission approved the expenditures required by BC Hydro to complete the Stave Falls Spillway Gates Replacement Project.

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 Stave Falls Spillway Gates Replacement Project proceeding. Section 118 provides that the Commission may make cost awards for participants in a proceeding. The Commission's PACA Guidelines are set out in Appendix A to Order G-72-07, and include the following provisions:

“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.

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, hearing days and oral argument days. The proceeding days for the Stave Falls Spillway Gates Replacement Project were:

| <u>Activity</u> | <u>Proceeding Days</u> |
|-------------------------------------|------------------------|
| BC Hydro Workshop; January 18, 2010 | 0.5 |
| Total Proceeding Days | 0.5 |

The Guidelines provide that the Commission 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 the case of the Stave Falls Spillway Gates Replacement proceeding, which utilized a written process, the Commission finds that the standard calculation of preparation days is not helpful given the limited number of proceeding days relative to the body of material to be reviewed. After consideration, the Commission is of the view the preparation time should be increased from one to one and a half preparation days to reflect the time required to review the written materials and prepare submissions. **Accordingly, the Commission has determined that 2.0 days for each of legal counsel and consultants will be the maximum eligible for PACA funding.** This is consistent with staff's estimates at the outset of the process.

3.0 INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS

In its letter dated July 7, 2010, BC Hydro responded that the time allotments and charge rates used in the PACA applications appear to be reasonable.

The Commission has reviewed the PACA applications and determines that the following cost awards be made to the two PACA Applicants in the Stave Falls Spillway Gates Replacement Project proceeding.

BCOAPO

On May 21, 2010, the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) applied for PACA funding for its participation in the proceeding. BCOAPO applied for 2 days of legal counsel fees at a cost of \$2,688.00 and 0.84 days consultant fees of \$1,102.50, for a total request of \$3,790.50.

BCOAPO represents ratepayer groups and participated actively and constructively in the proceeding. BCOAPO counsel attended the Workshop. **The Commission finds that BCOAPO meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$3,790.50.**

CEC

On June 4, 2010, the Commercial Energy Consumers Association of British Columbia (CEC) applied for PACA funding for its participation in the proceeding. CEC applied for 1.13 days of legal counsel fees at a cost of \$2,268.00 and 5.9 days of consultant fees at a cost of \$7,710.94, for a total request of \$9978.94.

The CEC, which represents the commercial class customers' interests, participated actively and constructively in the proceeding and its consultant attended the Workshop. Further, in its letter dated July 7, 2010, BC Hydro commented that the CEC contributed to a greater understanding of certain key issues. Accordingly, **the Commission finds that CEC meets all the criteria for PACA reimbursement. However, the Commission has reviewed the PACA Application for CEC and has determined the amount requested is excessive given the circumstances and has reduced the claimed amount of \$9,978.94 to \$6,861.75.** The reasons for this are as follows:

- The Commission considers the Application to be straightforward and is satisfied that up to 2 days each for counsel and consultant is a satisfactory amount of time.
- The CEC has far exceeded its initial budget request of \$6,450. All of this is in consultant time.
- The view of the Commission is that some of the areas explored by the consultant appeared to take an excessive amount of time (for example 7 hours to review the BC Hydro submission and 13 hours to prepare the CEC submission).
- Finally, the view of the Commission is that some areas were explored in greater detail and to a greater extent than required in reaching a decision. An example of this is the number of detailed questions concerning the probabilities and scenarios of gate failures.

Having considered the foregoing factors as well as BC Hydro's comments with respect to the contribution of the CEC, the Commission finds that the claim for consultant time was unnecessarily excessive and should be decreased to 3.5 days, which is .5 days higher than the originally submitted budget.

The award is calculated as follows:

| | Counsel | | | Consultant | | |
|------------------------|--------------------------|------------------------------|-------------------|--------------------------|------------------------------|-------------------------|
| | <u>Maximum</u> | <u>Application</u> | <u>Award</u> | <u>Maximum</u> | <u>Application</u> | <u>Award</u> |
| Total Days | 2.0 | 1.13 | 1.13 | 3.0 | 5.88 | 3.5 |
| Cost | 2.0 X \$1800= \$3,600 | 1.13 X \$1800= \$2,025.00 | \$2025.00 | 3.0 X \$1250= \$3,750 | 5.88 X \$1250= \$7,343.75 | 3.5 X \$1250=\$4,375 |
| Disbursements @ 10% | \$360 | | | \$375 | | |
| Sub Total | \$3,960.00 | \$2,025.00 | \$2,025.00 | \$4,125.00 | \$7,343.75 | \$4,375.00 |
| Taxes | \$475.20 | \$243.00 | \$243.00 | \$206.25 | \$367.16 | \$218.75 |
| Total | \$4,435.20 | \$2,268.00 | \$2,268.00 | \$4,331.25 | \$7,710.94 | \$4,593.75 |

The Commission finds the CEC award to be \$6,861.75 (\$2,268.00 + \$4,593.75).

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of September 2010.

Original signed by:

L.F. KELSEY
COMMISSIONER