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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-20-11**

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

**and**

**An Application by Commercial Energy Association of British Columbia  
for Reconsideration of Order F-13-11**

**BEFORE:** D.A. Cote, Commissioner/Panel Chair  
M.R. Harle, Commissioner  
L.A. O'Hara, Commissioner

July 28, 2011

**O R D E R**

**WHEREAS:**

- A. By Order F-13-11 and Reasons for Decision attached there to dated March 17, 2011, the British Columbia Utilities Commission (Commission) awarded funds to various Interveners for their participation in the British Columbia Hydro and Power Authority (BC Hydro) Fiscal 2011 Revenue Requirements Application (F2011 RRA);
- B. On April 20, 2011, counsel for the Commercial Energy Association of British Columbia (CEC) applied for reconsideration of Order F-13-11, pursuant to section 99 of the *Utilities Commission Act* (Reconsideration Application);
- C. By Letter L-41-11 dated May 20, 2011, the Commission Panel established, in accordance with the Procedural Guidelines, a two-phase process and set out the timetable for Phase 1 where participants could comment as to whether there is a reasonable basis for allowing the reconsideration;
- D. On May 25, 2011, the BC Sustainable Energy Association and the Sierra Club of BC (BCSEA) filed a submission supporting the CEC request for reconsideration;
- E. By Letter L-50-11 dated June 14, 2011, the Commission informed the CEC that the Commission Panel considered that the claim of error in law or fact had been established on a *prima facie* basis and allowed the Reconsideration Application to proceed to the second phase. The Panel also requested that any participant having submissions in addition to those made in Phase 1 do so by Friday, June 24, 2011;

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F. Additional submissions were received from the following Interveners:

- BCSEA
- Association of Major Power Customers of British Columbia (AMPC)
- Clean Energy Association of BC
- British Columbia Old Age Pensioners Association et al (BCOAPO)
- Vernon Ruskin

G. All of the Intervener submissions supported the Application for reconsideration of the CEC's claim for fees related to participation in the BC Hydro F2011 RRA;

H. The Commission Panel has reviewed the Reconsideration Application, the submissions from the Interveners and CEC and has reconsidered CEC's participation in the BC Hydro F2011 RRA proceeding. The Commission Panel has determined that the Participant Assistance/Cost Award (PACA) funding to CEC in Order F-13-011 should be varied.

**NOW THEREFORE** pursuant to section 99 of the *Utilities Commission Act*, the Commission as outlined in the Reasons for Decision attached as Appendix A, varies paragraph 1 of Order F-13-11 and orders the PACA award to the CEC be increased by \$18,200 (13 X \$1,250 plus HST).

**DATED** at the City of Vancouver, in the Province of British Columbia, this 28<sup>th</sup> day of July 2011.

BY ORDER

*Original signed by:*

D.A. Cote  
Commissioner/Panel Chair

Attachment



**IN THE MATTER OF**

**COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA  
APPLICATION FOR RECONSIDERATION OF  
PARTICIPANT ASSISTANCE/COST AWARD ORDER F-13-11  
REGARDING THE BRITISH COLUMBIA HYDRO AND POWER AUTHORITY  
F2011 REVENUE REQUIREMENTS APPLICATION**

**REASONS FOR DECISION**

**July 28, 2011**

**BEFORE:**

D.A. Cote, Commissioner  
L.A. O'Hara, Commissioner  
M.R. Harle, Commissioner

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## 1.0 BACKGROUND

On March 17, 2011, the British Columbia Utilities Commission (BCUC, Commission) issued Order F-13-11 awarding funds for participation of the Interveners in the British Columbia Hydro and Power Authority's (BC Hydro) Fiscal 2011 Revenue Requirements Application (F2011 RRA). As outlined in the Reasons for Decision accompanying the Order, the Commercial Energy Consumers Association of British Columbia (CEC) claimed for costs totalling \$87,869.61. CEC's claim was based upon a total of 16.85 days for legal counsel, 18 days for a consultant and 20.5 days for what it described as expert evidence. Of this amount, 38.5 days was for consulting and expert evidence undertaken by Mr. David Craig who played a dual role. BC Hydro in its comments on the CEC's application took exception to the cost claim for Mr. Craig's time preparing expert evidence. While BC Hydro did not deny that there was some value in the analysis of Mr. Craig making it worthy of payment of some of the costs, it disagreed with both the amount and the characterization of the analysis as expert evidence. As outlined in the Reasons for Decision, the Commission Panel viewed the contribution of Mr. Craig as that of a consultant and was not convinced that the CEC had established a need for expert evidence. Therefore, the Panel saw no reason to vary from the maximum of 20 days which had been awarded for participant consulting requirements. Accordingly, the amount claimed by the CEC was reduced by \$25,900 and the adjusted cost award was \$61,969.61.

On April 20, 2011, the CEC applied for reconsideration of Order F-13-11 pursuant to section 99 of the *Utilities Commission Act*. Specifically, the CEC requested reconsideration of the decision to vary the amount awarded to Mr. Craig who served as consultant and prepared expert evidence during the proceeding (Application).

On May 20, 2011, the Commission initiated Phase 1 of the Reconsideration Process which was established to consider whether the Application has established a *prima facie* case to warrant full consideration. BC Hydro and the other Interveners were provided the opportunity to provide comments to the Commission and address specific questions concerning the scope of the proceeding and whether there was justification for a reconsideration process. By letter of May 25, 2011, the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA) responded in support of the CEC request for reconsideration stating that "it would be unfair not to compensate the CEC for Mr. Craig's work preparing expert evidence in the F11 RRA proceeding".

By Letter L-50-11 on June 14, 2011, BCUC informed the CEC that the Commission Panel considered that the claim of error in law or fact had been established on a *prima facie* basis. The Panel cited the fact that it was not clear that unfiled expert evidence had been prepared and it did not take into account the fact that Mr. Craig had taken responsibility for preparing evidence for the scheduled oral hearing. Accordingly, the Commission allowed the Application to proceed to the second phase. Additionally, CEC was directed to submit the unfiled material prepared by Mr. Craig as expert evidence by June 17, 2011.

## 2.0 CEC SUBMISSIONS

The CEC in its Application for reconsideration stated its letter dated October 13, 2010 proposed a one week delay in the Default Schedule dates beginning with the filing date for Intervener Evidence. The CEC's letter specifically stated:

"The CEC's intervener evidence will not be completed until October 29, 2010 due to the recent active participation of David Craig, the person who (sic) will prepare the CEC evidence, in the negotiated settlement process which process terminated yesterday, October 12, 2010."

It is the CEC's submission that this letter provided notice to all parties that Mr. Craig would be working on intervener expert evidence and notes that no party raised an objection. Further, it is the CEC's position that the amendment of the timetable was made to allow the work on expert evidence to be completed. (Exhibit B-1, pp. 1-2)

In its letter of June 16, 2011, the CEC filed the material which was being prepared for the scheduled Oral Hearing as part of the F2011 RRA. In addition, it provided an explanation of why the material was needed and the work which was required to complete it. The CEC states that evidence was developed to address concerns with the Deferral Account Rate Rider (DARR) mechanism. The purpose of the evidence was "... related to the appropriate design criteria for the deferral account and the amortization of the balances into revenue requirements." The CEC states that it has been working on developing models to understand the issues related to these matters for a number of years. (Exhibit B-2, p. 2)

The CEC states that because the parties and BC Hydro had reached their "bottom lines" it was aware the negotiated settlement process (NSP) was going to fail. This occurred at a time which was earlier than BC Hydro's formal notice of failure of the NSP process letter to the Commission on October 13, 2011. There were no submissions as to when this actually occurred. The CEC states that based on discussions with Interveners during the NSP process, it started to prepare new versions of its model with greater analytical capability. This involved running simulations of the DARR account operations under different design criteria with increased run times and required numerous manual steps to prepare the data. Presumably this work accounts for a significant amount of the time requirements. The CEC notes that the evidence preparation was based on these new model versions which were prepared over a couple of weeks. During this process the potential for information requests (IRs) was considered which led to bringing on an associate to prepare another version of the model with greater capability and processing speed. The CEC noted that these were included with the unfiled evidence and would have been used to answer IRs. The CEC notes that these new models were not complete at the time the NSP was re-established and the decision was made to complete them to avoid losing the intellectual investment. (Exhibit B-2, p. 2)

With respect to fees, the CEC states it has claimed for “only hours between the point at which the CEC recognized that the NSP was going to fail and the time the NSP was reinstated and covered modeling, analysis and evidence preparation.” The claim does not include any of the costs of the associate brought on to improve the model capability nor did it include any time Mr. Craig put in following the reinstatement of the NSP. However, because of the tight timelines and the amount of work required, it was done over weekends as well as week days. (Exhibit B-2, p. 2)

### **3.0 INTERVENER SUBMISSIONS**

Submissions were received from the following Interveners:

- Association of Major Power Customers of British Columbia (AMPC)
- Clean Energy Association of B.C.
- British Columbia Old Age Pensioners Association et al (BCOAPO)
- B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA)
- Vernon Ruskin

All of the Intervener submissions supported the Application for reconsideration of the CEC’s claim for fees related to participation in the BC Hydro F2011 RRA.

BCSEA in Phase 1 of this proceeding confirmed the following with respect to Mr. Craig’s involvement in the preparation of expert evidence:

- Their expectation that Mr. Craig would be preparing expert evidence as referenced in the CEC’s letter of October 13, 2010 to the Commission.
- Mr Craig presented this evidence during the NSP process.
- The expert evidence influenced the outcome of the NSP and was heavily discussed by all participants.
- The expert evidence, in its view, was not filed following the NSP settlement because there was no need to do so.

BCSEA states that the CEC undertook to prepare expert testimony. Had the NSP not been reinstated, the evidence would have been available for the Oral Hearing which had been previously scheduled. The BCSEA further states that it agreed with the assertion of the CEC that the evidence of Mr. Craig made a significant contribution to the settlement and resulted in cost savings related to further hearing processes. (Exhibit C-1)

BCOAPO submits that in its view the CEC pursued evidentiary issues which were likely to come into play. They confirm that this was in fact the case as the analysis and evidence of Mr. Craig was used in a material way. However, BCOAPO further submits that even if it hadn’t “...this should not be fatal to their entitlement to expect full recovery of their costs.” In the view of BCOAPO, the CEC proceeded to prepare the material in a

constructive and diligent manner and did so in good faith and should not be penalized because the process went to an NSP. (Exhibit C-2-1)

AMPC did not take a position on how much should be paid or the number of days worked should be awarded. However, AMPC was supportive of the principle that costs should be awarded for the preparation of expert evidence where it is not submitted to either the stakeholders or the Commission in final form. AMPC made no submissions with respect to the importance of the expert evidence in the NSP in reaching an agreement. (Exhibit C-4-1)

BC Hydro made no new submissions during the reconsideration process. However, the Commission Panel notes that BC Hydro in its letter of February 11, 2011, expressed its disagreement with the characterization of Mr. Craig's analysis as expert evidence. In addition, BC Hydro noted its concern with the number of days claimed which it described as "surprisingly high" although commenting that the analysis provided by Mr. Craig was of some assistance in furthering the discussions.

#### **4.0 COMMISSION PANEL DECISION**

The Commission Panel acknowledges that based upon the submissions of the Interveners and the Applicant, it is clear that significant work was undertaken prior to the resumption of the NSP to prepare the materials for an anticipated Oral Hearing. It is also clear that the information which was prepared played a material role in the eventual settlement. Therefore, the issue the Panel must deal with is not whether there is a basis for the CEC's claim but whether the cost of the claim is reasonable. More specifically, the question facing the Panel is whether the 20.5 days claimed by the CEC for expert evidence is reasonable given the circumstances, and if not, what number of days would be more appropriate.

The CEC states it has claimed only for the time period between the date it established that the NSP process was likely to fail and the time the NSP was reinstated. Based on a claim of 20.5 days this would mean that the CEC's began work on preparation of the evidence on September 27, 2011 if holidays and weekends were taken or October 5, 2011 if Mr. Craig worked straight through taking no days off for holidays or weekends. Of concern to the Commission Panel is that in the CEC's letter of October 13, 2011 there is no indication that Mr. Craig had been preparing expert evidence for some time. The excerpt from this letter specifically (see Section 2.0) identifies Mr. Craig as the person (who) will prepare the CEC evidence (emphasis added). In addition, the Panel notes that this same excerpt states that the evidence will not be completed until October 29, 2010, due to Mr. Craig's active participation in the negotiated settlement process. Yet based on the previous timeline scenarios Mr. Craig was actively involved on a full time basis in the preparation of this evidence between 8 and 17 days prior to the date of BC Hydro's letter notifying the Commission that the initial NSP process had been terminated. In spite of these inconsistencies, the Commission Panel acknowledges that the initial NSP was protracted and allowed some time for other work to be undertaken. However, the Panel does agree with BC Hydro that the number of days claimed does appear excessive given the circumstances. Therefore, the Commission Panel is prepared to support the awarding of costs for a total of 15 days (10 working days for the period following the termination of the initial NSP and 5 working days for the period prior) to the CEC for the



preparation of Intervener evidence. Deducting the costs for 2 days previously awarded in Order F-13-11, the Panel will vary its Decision and awards costs for an additional 13 days for the preparation of evidence by the CEC. **A further cost award of \$18,200 (13 x \$1250 plus HST) is granted to the CEC.**