



ORDER NUMBER
F-32-16

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Inquiry of Expenditures related to the adoption of the SAP Platform
British Columbia Utilities Commission Action on Complaint

Application for an Interim Participant/Assistance Cost Award

BEFORE:

D.M. Morton, Panel Chair/Commissioner
H.G. Harowitz, Commissioner
R.I. Mason, Commissioner

on December 21, 2016

ORDER

WHEREAS:

- A. On December 10, 2015, the British Columbia Utilities Commission (Commission) received a letter dated December 8, 2015 from Mr. Adrian Dix, MLA (Mr. Dix), which makes a number of statements and allegations against British Columbia Hydro and Power Authority (BC Hydro) pertaining to its conversion to SAP as its information technology platform;
- B. On May 3, 2016, the Commission issued Order G-58-16 establishing an inquiry to review BC Hydro's expenditures related to the adoption of the SAP platform (SAP Inquiry);
- C. On May 9, 2016, the Commission issued Order G-62-16, which set out a proposed scope of inquiry and a preliminary regulatory timetable, including written submissions on scope and procedure followed by a procedural conference to be held on June 1, 2016;
- D. Mr. Dix registered as an intervener in the SAP Inquiry;
- E. Subsequent to the procedural conference held on June 1, 2016, the Commission issued Order G-81-16 which, among other things, established a regulatory timetable for the SAP Inquiry. The regulatory timetable included BC Hydro's filing of consolidated information, one round of Commission and intervener information requests, submissions on further process, and a second procedural conference;
- F. By letter dated October 14, 2016, legal counsel for Mr. Dix filed a Budget Estimate and Application for Interim Funding pursuant to the Commission's Participant Assistance/Cost Award (PACA) Guidelines (Interim PACA Application);

- G. On October 27, 2016, Commission staff contacted Mr. Dix's legal counsel requesting further information regarding the Interim PACA Application;
- H. The second procedural conference was held on October 28, 2016;
- I. On November 16, 2016, legal counsel for Mr. Dix responded to Commission staff questions regarding the Interim PACA Application;
- J. By Order G-168-16 dated November 23, 2016, with accompanying reasons for decision, the Commission, among other things, established a further regulatory timetable which included a date for BC Hydro to file a witness list and witness statements and a date for BC Hydro and interveners to file submissions on further process;
- K. On December 13, 2016, BC Hydro filed a submission with the Commission stating that it has no comments on the Interim PACA Application; and
- L. The Commission reviewed the Interim PACA Application and the response from Mr. Dix's legal counsel in accordance with the criteria and rates set out in the PACA Guidelines attached to Commission Order G-72-07, and concludes that an interim cost award should not be approved.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission denies the application made by legal counsel for Mr. Adrian Dix, MLA for an interim Participant Assistance/Cost Award.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of December 2016.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

British Columbia Hydro and Power Authority
Inquiry of Expenditures related to the adoption of the SAP Platform
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REASONS FOR DECISION

1.0 BACKGROUND

On December 10, 2015, the British Columbia Utilities Commission (Commission) received a letter of complaint dated December 8, 2015 from Mr. Adrian Dix, MLA, (Mr. Dix), which makes a number of statements and allegations against British Columbia Hydro and Power Authority (BC Hydro) pertaining to its conversion to SAP as its information technology platform. The Commission, by letter dated December 11, 2015, requested BC Hydro to review the letter of complaint from Mr. Dix and provide a response to the Commission by January 8, 2016. On March 9, 2016, the Commission issued a series of questions to BC Hydro related to the information filed in Mr. Dix's December 8, 2015 letter of complaint and the information filed in BC Hydro's January 8, 2016 response document.

By Order G-58-16 dated May 3, 2016, the Commission established an inquiry to review BC Hydro's expenditures related to the adoption of the SAP platform (SAP Inquiry). The regulatory process to-date, established by Orders G-62-16, G-81-16 and G-146-16, has included intervener registration, submissions by interveners on the scope of the SAP Inquiry, a procedural conference held on June 1, 2016, BC Hydro's filing of consolidated information, one round of Commission and intervener information requests, and a second procedural conference held on October 28, 2016. Subsequent to the procedural conference held on October 28, 2016, the Commission issued Order G-168-16 and accompanying reasons for decision dated November 23, 2016 which, among other things, established a further regulatory timetable including deadlines for BC Hydro to file a witness list and witness statements followed by submissions from BC Hydro and interveners on further process.

On October 14, 2016, legal counsel for Mr. Dix submitted a Budget Estimate and Application for Interim Funding pursuant to the Participant Assistance/Cost Award (PACA) Guidelines (Interim PACA Application). On October 27, 2016, Commission staff contacted Mr. Dix's legal counsel requesting further information on the Interim PACA Application. Mr. Dix's legal counsel subsequently responded on November 16, 2016. BC Hydro was asked by Commission staff to provide comments on the Interim PACA Application and BC Hydro responded on December 13, 2016 by stating that it has no comments.

The Panel reviewed the Interim PACA Application while taking into consideration the PACA Guidelines set out in Commission Order G-72-07 and the submissions from Mr. Dix's legal counsel and from BC Hydro.

2.0 PACA GUIDELINES

Section 3 of the PACA Guidelines describes the circumstances under which interim PACA may be approved by the Commission and the mechanism by which interim PACA, if approved, may be awarded. Specifically, Section 3 states:

In exceptional circumstances, the Commission Panel may approve the costs of retaining a consultant, Expert Witness/Specialist, or lawyer by a Participant under an accelerated approval process. If an accelerated approval process is approved, one of the following reimbursement alternatives may be ordered.

- (a) reimbursement of a consultant's, Expert Witness/Specialist's, or lawyer's approved invoice, or a portion thereof, that has been received after the regulatory proceeding has begun, but may be before the proceeding has concluded; or
- (b) advance payment(s) not to exceed fifty percent of the higher of the amount actually paid by the Participant and the Budget Estimate net of those items that may not be funded as per the advice from Commission staff pursuant to Section 2.¹

3.0 INTERIM PACA APPLICATION

In the Interim PACA Application, Mr. Dix's legal counsel states: "Mr. Dix's full participation in this proceeding is essential and dependent on funding being made available on an interim basis. If Mr. Dix does not receive interim funding, his participation in the Inquiry will have to be limited."

Mr. Dix's legal counsel further states: "As an MLA and Official Opposition critic for BC Hydro, his [Mr. Dix] office is funded by the Legislature which does not permit nor is it sufficient to cover the expense of counsel during this Inquiry. As a member of the Legislature, Mr. Dix is not able to join with any other participants to take a common position and share the cost of counsel."

Mr. Dix's legal counsel submits that the SAP Inquiry has "effectively" been divided into two phases, with Phase 1 encompassing the entire regulatory process to-date and Phase 2 encompassing the "Hearing" stage, which counsel describes as being "unknown but probably lengthy in duration."

The Interim PACA Application requests funding for Phase 1 in the amount of \$33,527.24. This amount includes legal fees and disbursements.

Counsel was asked by Commission staff to "clearly explain why this [Mr. Dix's] situation should be considered 'an exceptional circumstance'" and why Mr. Dix "requires an interim award at this time to pay legal counsel rather than at the conclusion of the proceeding"? Mr. Dix's legal counsel responded as follows:

Mr. Dix is a key participant in the hearing process as the Opposition critic for BC Hydro and the complainant who brought this matter to the Commission's attention. However, as MLA his office is unable to pay for legal counsel in this Inquiry. In the absence of interim funding, Mr. Dix's participation through counsel will have to be restricted. Counsel is unable to provide Mr. Dix with *pro bono* representation to the degree required by these complex and labour intensive proceedings.

¹ Order G-72-07, Appendix A, p. 3.

Commission determination

The Panel denies the application made by legal counsel for Mr. Adrian Dix, MLA for an interim Participant Assistance/Cost Award. Mr. Dix's legal counsel has not provided sufficient justification to support a finding of "exceptional circumstances" in regards to Mr. Dix's participation and funding requirements in the SAP Inquiry.

Counsel for Mr. Dix describes the SAP Inquiry as having two "phases". The Panel disagrees with such a distinction being made in the regulatory process, as the majority of the Commission's public proceedings contain both what counsel describes as "preliminary procedural matters" and a "hearing," yet there is generally no separation of these components into distinct "phases" in other Commission proceedings. Further, when considering the date that the SAP Inquiry was established – May 3, 2016 by Order G-58-16 – the length thus far of the proceeding in comparison to other larger Commission proceedings is not "exceptional".

The Panel is not persuaded by counsel's response to Commission staff questions regarding the necessity of interim funding. Mr. Dix's legal counsel submits both in the Interim PACA Application and in response to Commission staff questions that Mr. Dix's "participation through counsel will have to be restricted" without interim funding; however, as outlined by counsel in the Interim PACA Application, Mr. Dix has participated without restriction up to this point. In fact, the Panel notes that the Interim PACA Application was not filed until almost six months into the SAP Inquiry, at which time over half of the legal costs applied for in the Interim PACA Application had already been incurred.

The Panel is also unclear as to the meaning of counsel's statement that it is "unable to provide Mr. Dix with *pro bono* representation". The Panel's determination on interim PACA funding does not preclude Mr. Dix from applying for PACA at the conclusion of the SAP Inquiry, nor does it in any way impact the likelihood of PACA being approved at that time. Thus, the Panel does not agree with counsel's characterization of the services being "pro bono" which in the Panel's view means "free of charges". The Panel sees no reason why, based on Mr. Dix's participation in and contributions to the SAP Inquiry thus far, a cost award would not be granted at the conclusion of the SAP Inquiry; thus, the Panel does not consider it likely that counsel will be providing free legal services to Mr. Dix. As with all PACA applications, the Panel will review the final PACA application in accordance with the criteria and rates set out in the PACA Guidelines attached to Order G-72-07 when making its determination on the appropriate amount to be awarded at the conclusion of the proceeding.