



**ORDER NUMBER**

**F-27-19**

**IN THE MATTER OF**

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Creative Energy Vancouver Platforms Inc.

Application for a Fuel Cost Adjustment Charge Rate Rider

Participant Assistant/Cost Award Application

**BEFORE:**

T. A. Loski, Commissioner/Panel Chair

B. A. Magnan, Commissioner

R. I. Mason, Commissioner

on November 6, 2019

**ORDER**

**WHEREAS:**

- A. On February 28, 2019, Creative Energy Vancouver Platforms Inc. (CEV) filed with the British Columbia Utilities Commission (BCUC) a Fuel Cost Adjustment Charge (FCAC) Rate Rider application (Application), seeking approval of a FCAC Rate Rider of \$4.80 per thousand pounds steam (M#), effective March 1, 2019;
- B. By Order G-52-19, dated March 8, 2019, the BCUC approved a FCAC Rate Rider of \$4.80/M# on an interim and refundable basis, effective March 1, 2019. Further, the BCUC established the regulatory timetable for the review of the Application, which included one round of information requests (IRs), deadline for letters of comment, deadline for CEV to respond to letters of comment and further process to be determined;
- C. By Order G-100-19 dated May 7, 2019, the BCUC approved an amended regulatory timetable which included a second round of IRs and a request for submissions on further process, including whether the regulatory process should move to a streamlined review process (SRP), final argument, or another procedural process;
- D. By Order G-126-19 dated June 11, 2019, the BCUC established the remainder of the regulatory timetable with the filing of written final and reply arguments;
- E. On September 18, 2019, the BCUC issued Order G-226-19 with accompanying reasons for decision, which, among other things, approved on a permanent basis the establishment of a FCAC Rate Rider;
- F. The following participants filed a Participant Assistance/Cost Award (PACA) application with the BCUC with respect to their participation in the proceeding:

| Date            | Participant   | Application |
|-----------------|---|-------------|
| August 30, 2019 | British Columbia Old Age Pensioners' Organization <i>et al.</i> | \$8,311.38  |
| August 16, 2019 | Commercial Energy Consumers Association of British Columbia     | \$17,974.60 |

- G. By email dated October 2, 2019, CEV stated that it has no comments on the PACA applications; and
- H. The BCUC has reviewed the PACA applications in accordance with the criteria and rates set out in the PACA Guidelines, attached to BCUC Order G-97-17, and concludes that cost awards are warranted.

**NOW THEREFORE** pursuant to section 118(1) of the *Utilities Commission Act*, the BCUC orders as follows:

- For reasons outlined in Appendix A to this Order, funding is awarded to the following interveners in the listed amount for their participation in the CEV FCAC Rate Rider proceeding:

| Participant   | Award       |
|---|-------------|
| British Columbia Old Age Pensioners' Organization <i>et al.</i> | \$8,311.38  |
| Commercial Energy Consumers Association of British Columbia     | \$17,312.68 |

- CEV is directed to reimburse the above-noted participants for the awarded amount in a timely manner.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 6<sup>th</sup> day of November 2019.

BY ORDER

*Original signed by:*

T. A. Loski,  
Commissioner

Creative Energy Vancouver Platforms Inc.  
Application for a Fuel Cost Adjustment Charge Rate Rider  
Participant Assistant/Cost Award Application

## REASONS FOR DECISION

---

### 1.0 Background

By Order G-226-19 with accompanying Decision dated September 18, 2019, the British Columbia Utilities Commission (BCUC), among other things, approved on a permanent basis the establishment of a Fuel Cost Adjustment Charge (FCAC) Rate Rider.

Participant Assistance/Cost Award (PACA) applications were filed by the Interveners for their participation in the proceeding, as listed and summarized below:

| Date            | Participant   | Application |
|-----------------|---|-------------|
| August 30, 2019 | British Columbia Old Age Pensioners' Organization <i>et al.</i> | \$8,311.38  |
| August 16, 2019 | Commercial Energy Consumers Association of British Columbia     | \$17,974.60 |

Section 118 of the *Utilities Commission Act* (UCA) provides that “The Commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding.”

### 2.0 PACA Guidelines

The Panel, in its review of the PACA applications, was guided by the PACA Guidelines attached as Appendix 1 to BCUC Order G-97-17, which set out the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates.

### 3.0 Criteria for a cost award

Section 7.1 of the PACA Guidelines, related to the use of professional services, “...expects participants to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, expert witnesses and case managers.” Further Sections 7.2 to 7.4 of the PACA Guidelines include the following guidance as it relates to the use of professional services:

#### *Professional Fees*

- 7.2 Maximum daily fees in Attachment A are based on an 8 hour day. Awards may be prorated for partial funding days. Where the actual billing rate for an 8 hour day is less than the maximum daily fee, the lesser amount will be used for the award.
- 7.3 Maximum daily fees in Attachment A do not include provisions for goods and services tax (GST) and provincial sales tax (PST), which will also be allowed, pursuant to Section 12.1.

- 7.4 Legal counsel are expected to perform legal services and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task. Participants are expected to use legal services in a cost-effective manner, giving regard to the years of experience required to perform tasks.

Section 1 of Attachment A to the PACA Guidelines, which outlines maximum daily fees as they relate to legal counsel and consultants and specialist/expert witnesses, is provided below:

1. Professional fees

a. Legal counsel

| Years Since Call  | Maximum Daily Fee |
|-------------------|-------------------|
| Articling student | \$850             |
| 0–4               | \$1900            |
| 5–7               | \$2250            |
| 8–12              | \$2550            |
| 12+               | \$2800            |

b. Consultants and specialist/expert witnesses

| Years of Related Experience | Maximum Daily Fee |
|-----------------------------|-------------------|
| Consultant 0–4              | \$950             |
| Consultant 5–7              | \$1300            |
| Consultant 7+               | \$1850            |
| Specialist /Expert Witness  | \$2150            |

c. Case managers: maximum \$600 per day.

## 4.0 PACA applications

Pursuant to section 14.2.4 of the PACA Guidelines, CEV was provided with copies of the Interveners’ PACA applications. In their reply dated October 2, 2019, CEV stated it has no comment on the PACA applications.

### 4.1 CEC

CEC represents the interests of commercial ratepayers who are or may be potentially affected in the future by the results of a proceeding. In this proceeding, CEC seeks a cost award of \$17,974.60.

#### *BCUC Determination*

In its consideration of the PACA Guidelines, the Panel considers that CEC contributed to a better understanding of the issues raised in this proceeding. CEC actively participated and the number of days that CEC has claimed for legal and consulting fees is within the Panel’s expectation of funding days for this proceeding.

However, the Panel notes that the funding days and the daily rate used by the CEC in their PACA application are not consistent with the invoices submitted to the CEC by their legal counsel. Specifically, the number of funding days claimed by the CEC on their PACA application for senior legal counsel exceeds the number of days that the CEC was invoiced, and the rate claimed by the CEC on their PACA application for junior legal counsel exceeds the

rate that the CEC was invoiced. Further, the total funding days in the PACA application exceeds the total amount indicated in the source invoices.

CEC's PACA application claims a daily rate of \$1,900 for junior legal counsel, however, source invoices indicate that legal counsel invoiced CEC at a daily equivalent fee of \$1,760. Section 7.2 of the PACA Guidelines states "Where the actual billing rate for an 8 hour day is less than the maximum daily fee, the lesser amount will be used for the award." Therefore, the lesser of the two amounts, \$1,760 per day, shall be used for the calculation of the portion of the award related to junior legal counsel services.

The table below compares the funding days indicated in the PACA applications compared against actual invoiced amounts:

|                           | Funding Days-<br>Per PACA | Funding Days-<br>Per Invoice | Difference  |
|---------------------------|---------------------------|------------------------------|-------------|
| Consultant – D. Craig     | 3.60                      | 3.60                         | -           |
| Legal Counsel – C. Weafer | 3.21                      | 3.00                         | 0.21        |
| Legal Counsel – P. Weafer | 0.43                      | 0.46                         | -0.03       |
| <b>Total</b>              | <b>7.24</b>               | <b>7.06</b>                  | <b>0.18</b> |

As indicated above, the funding days for services provided by senior legal counsel is overstated while junior counsel funding days is slightly understated when compared to invoices provided by CEC. It is the Panel's view that funding days should be based on actual invoiced time, and therefore CEC's funding days for the senior legal counsel shall be reduced to 3.00 days and those for the junior legal counsel shall remain at 0.46 days, commensurate with the invoices.

**For the reasons stated above, the Panel awards CEC participant costs of \$17,312.68, inclusive of applicable taxes. The award is calculated as follows:**

|                     | Daily Rate | Days              | Total      | GST      | PST      | Total              |
|---------------------|------------|-------------------|------------|----------|----------|--------------------|
| Consulting Services | \$1,850.00 | 3.60              | \$6,660.00 | \$333.00 | -        | \$6,993.00         |
| Sr. Legal Counsel   | \$2,800.00 | 3.00              | \$8,400.00 | \$420.00 | \$588.00 | \$9,408.00         |
| Jr. Legal Counsel   | \$1,760.00 | 0.46 <sup>1</sup> | \$814.00   | \$40.70  | \$56.98  | \$911.68           |
| <b>Total Award</b>  |            |                   |            |          |          | <b>\$17,312.68</b> |

## 4.2 BCOAPO

BCOAPO's interest in this proceeding stems from its members, a group of community organizations that work for and represent the interests of low and fixed income residents of BC. In this proceeding, BCOAPO seeks a cost award of \$8,311.38.

<sup>1</sup> Equivalent days for Jr. Legal Counsel are 3.7 hours / 8 hours per day = 0.4625 days.

*BCUC Determination*

In its consideration of the PACA Guidelines, the Panel considers that BCOAPO contributed to a better understanding of the issues raised in this proceeding. BCOAPO actively participated and the number of days that BCOAPO has claimed for legal and consulting fees is within the Panel's expectation of funding days for this proceeding.

**For the reasons stated above, the Panel awards BCOAPO participant costs of \$8,311.38, inclusive of applicable taxes. The award is calculated based on the equivalent number of funding days per the invoices submitted and multiplied by the appropriate daily rate.**