



**ORDER NUMBER
F-36-20**

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

and

Creative Energy Vancouver Platforms Inc.
2019-2020 Revenue Requirements Application for the
Core Steam System and Northeast False Creek Service Areas
Participant Assistance/Cost Award Application

BEFORE:

A. K. Fung, QC, Panel Chair
K. A. Keilty, Commissioner
E. B. Lockhart, Commissioner

on October 14, 2020

ORDER

WHEREAS:

- A. On December 19, 2019, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed with the British Columbia Utilities Commission (BCUC) its 2019-2020 Revenue Requirements Application (RRA) for the core steam system (Core Steam System) and Northeast False Creek (NEFC) service areas (Application);
- B. In the Application, Creative Energy requests for the Core Steam System, among other things, the following approvals:
 - (i) Permanent approval to maintain rates for the Core Steam System (Steam Rates) at 2019 interim approved rates, effective January 1, 2019;
 - (ii) Interim and permanent approval of an increase in Steam Rates of 4.2 percent, effective January 1, 2020; and
 - (iii) Interim and permanent approval to establish a Deferral Account Rate Rider (DARR) to recover specific non-rate base regulatory and pension-related deferred costs from Core Steam System customers over a two-year amortization period, commencing January 1, 2020;
- C. Creative Energy also requests for the NEFC service area, among other things, the following approvals:
 - (i) Permanent approval to maintain NEFC's fixed and variable rates (Hot Water Rates) at 2019 interim approved rates, effective January 1, 2019;

- (ii) Interim and permanent approval of an increase in Hot Water Rates of 3.7 percent, effective January 1, 2020; and
 - (iii) Interim and permanent approval to charge a Fuel Cost Adjustment Charge (FCAC) Rate Rider to NEFC customers to recover the existing FCAC Rate Rider in effect for Core Steam System customers, effective January 1, 2020 and ending February 28, 2021;
- D. By Order G-7-20A, the BCUC approved the following on an interim and refundable basis, effective January 1, 2020: a 4.2 percent increase in Steam Rates; a 3.7 percent increase in Hot Water Rates; a DARR of \$0.29 per thousand pounds of steam for Core Steam System customers; and a FCAC Rate Rider of \$16.15 per megawatt hour for NEFC customers;
- E. By Orders G-7-20A, G-29-20 and G-103-20, the BCUC established and amended the regulatory timetable for the review of the Application, which included Creative Energy filing an evidentiary update and a proposal for the potential recovery of the balance in its Fuel Switch Study and Long term Resource Plan (LTRP) Deferral Account, two rounds of information requests (IRs) by the BCUC and interveners, and the filing of written final and reply arguments;
- F. The following parties registered as interveners in the proceeding:
- FortisBC Alternative Energy Services Inc.; and
 - Commercial Energy Consumers Association of British Columbia (the CEC);
- G. On September 2, 2020, by Decision and Order G-227-20 issued concurrently, the BCUC made various determinations on the Application, including approving 2019 interim Steam Rates and Hot Water Rates as permanent for the Core Steam System and NEFC service areas, respectively, and establishing the 2020 revenue requirement and rates for each of the two service areas;
- H. The following participant filed a Participant Assistance/Cost Award (PACA) application with the BCUC with respect to its participation in the proceeding:

Date	Participant	Application
June 25, 2020	The CEC	\$19,255.08

- I. On September 10, 2020, in accordance with section 14 of the BCUC's PACA Guidelines approved by Order G-97-17, the BCUC provided Creative Energy the opportunity to comment on the PACA application;
- J. Creative Energy did not provide any comment on the PACA application; and
- K. The BCUC has reviewed the PACA application in accordance with the criteria and rates set out in the PACA Guidelines, attached to BCUC Order G-97-17, and makes the following determinations.

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

1. Funding is awarded to the following intervener in the listed amount for its participation in the Creative Energy 2019-2020 Revenue Requirements Application for the Core Steam System and Northeast False Creek Service Areas proceeding:

Participant	Award
The CEC	\$19,204.68

2. For the reasons outlined in Appendix A attached to this order, funding to the CEC for the “Open File Charge” is denied.
3. Creative Energy is directed to reimburse the above-noted participant for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of October 2020.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

Creative Energy Vancouver Platforms Inc.
2019-2020 Revenue Requirements Application for the
Core Steam System and Northeast False Creek Service Areas

REASONS FOR DECISION

1.0 Background

On December 19, 2019, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed with the British Columbia Utilities Commission (BCUC) its 2019-2020 Revenue Requirements Application (RRA) for the core steam system (Core Steam System) and Northeast False Creek (NEFC) service areas (Application).

By Orders G-7-20A, G-29-20 and G-103-20, the BCUC established and later amended a regulatory timetable for the review of the Application, which included, among other things, two rounds of information requests (IRs) by the BCUC and interveners, and the filing of written final and reply arguments. On September 2, 2020, by Decision and Order G-227-20, the BCUC issued its decision on the Application.

The BCUC received one Participant Assistance/Cost Award (PACA) application with respect to the Commercial Energy Consumers Association of British Columbia's (the CEC's) participation in this proceeding, as summarized below:

Date	Participant	Application
June 25, 2020	The CEC	\$19,255.08

In accordance with Section 14 of the BCUC's PACA Guidelines approved by Order G-97-17, on September 10, 2020, the BCUC sought comment from Creative Energy on the PACA application.

Creative Energy did not provide any comments.

2.0 Criteria for Cost Awards

Section 118(1) of the *Utilities Commission Act* (UCA) provides that "[t]he 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."

The PACA Guidelines as set out in Appendix A attached to BCUC Order G-97-17, 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.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The BCUC will consider whether the participant:

- (a) is directly or sufficiently affected by the BCUC's decision; or
- (b) has experience, information, or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making.

Section 3.2 of the PACA Guidelines describes the general characteristics of a participant in a proceeding that would meet the eligibility criterion. Included among examples of these is a participant representing the direct

interests of ratepayer groups or affected groups in relation to matters that are regulated by the BCUC. If the participant is eligible for a cost award, the Panel then considers the following in determining the amount of a participant's cost award in accordance with section 4.3 of the PACA Guidelines:

- (a) Has the participant contributed to a better understanding by the BCUC of the issues in the proceeding?
- (b) To what degree will the participant be affected by the outcome of the proceeding?
- (c) Are the costs incurred by the participant fair and reasonable?
- (d) Has the participant joined with other groups with similar interests to reduce costs?
- (e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?
- (f) The funding day calculation for funding in accordance with sections 4.1 and 4.2, if one is provided.
- (g) Any other matters which the BCUC determines appropriate in the circumstances.

Sections 7.0 through 13.0 of the PACA Guidelines outline the types of eligible costs that can be awarded to participants including, among other things, professional fees, foregone earnings, childcare expenses, disbursements, tax costs and other costs.

With respect to disbursements and other costs, section 10.1 states, "[d]isbursements directly related to the participant's participation in the proceeding may be allowed." Section 13.1 of the PACA Guidelines provides an overarching inclusion of "other costs the Commission deems reasonable and justified."

3.0 Review of the PACA Request

The CEC is composed of members, which are commercial class customers of Creative Energy representing a significant portion of Creative Energy's rate base, whose interests are significantly impacted by the Application.¹ The CEC requests a cost award of \$19,255.08 based on \$8,579.20 for legal fees (3.25 days), \$10,625.48 for consultant fees (5.47 days), and \$50.40 for disbursements for an "Open File Charge", inclusive of applicable taxes.

Panel Determination

The Panel, in its review of the CEC's PACA application, is guided by the PACA Guidelines, 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. In its consideration of the PACA Guidelines, the Panel finds that the CEC is eligible for PACA funding in this proceeding as it represents the direct interests of a ratepayer group. The Panel considers that the CEC contributed to a better understanding of the issues raised in this proceeding and that the number of days claimed for both legal and consulting fees is within the Panel's expectation of funding days for this proceeding.

As noted above, the disbursement claimed by the CEC is for an "Open File Charge" which appears to relate to the creation, by the CEC's legal consultant, of a new file to initiate the provision of legal services for this proceeding. The Panel questions whether this charge is reasonable and justified.

¹ CEC PACA Application, p. 2.

In determining whether a particular cost should be awarded following a proceeding, the Panel considers it important to review the context and nature of the cost in question. The Panel notes that the terms “disbursements directly related to the participant’s participation” and “other costs the Commission deems reasonable and justified” in section 10.1 and 13.1 of the PACA Guidelines, respectively, limit the scope of recoverable costs. The question becomes whether a properly incurred cost is recoverable because it arises directly from the factual issues raised in the proceeding, as opposed to the specific circumstances and business practices of the participant.

The purpose of permitting the recovery of disbursements and other costs is to provide the participant with a means by which to be reimbursed for costs that arise directly from the issues of the proceeding or for materials or services that directly support its participation in the proceeding. The Panel does not accept that the CEC’s legal consultant’s “Open File Charge” is a necessary cost that arises directly from the issues of the proceeding or directly supports the CEC’s participation in the proceeding. Instead the cost is a result of the CEC’s legal consultant’s existing cost structure and thus while it may represent a standard business practice for that consultant, it is not necessary for the conduct of the proceeding, and accordingly does not reflect the intent of the cost awards under the PACA Guidelines. For these reasons, the Panel finds that the “Open File Charge” claimed by the CEC not to be a reasonable or justified cost, which should form part of the CEC’s PACA award.

The Panel awards the CEC a total cost award of \$19,204.68, inclusive of applicable taxes.