



**ORDER NUMBER
F-48-20**

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

and

British Columbia Hydro and Power Authority
Transmission Service Market Reference-Priced Rates Application
Application for Participant Assistance/Cost Award

BEFORE:

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

on December 8, 2020

ORDER

WHEREAS:

- A. On October 31, 2019, the British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of an amended Freshet Rate (Rate Schedule 1892) and approval of a new optional rate, the Incremental Energy Rate (IER, Rate Schedule 1893), pursuant to sections 58 to 60 of the *Utilities Commission Act* (Application);
- B. By Orders G-327-19, G-49-20, G-111-20, G-136-20, and G-179-20, the BCUC established and later amended a regulatory timetable for the review of the Application, which included, among other things, three rounds of BCUC and intervener information requests to BC Hydro, written final and reply arguments on the Freshet Rate portion of the Application, written final and reply arguments on the IER portion of the Application, one round of Panel IRs to BC Hydro, and supplementary final and reply arguments on the IER portion of the Application;
- C. By Order G-104-20 dated May 1, 2020, the BCUC made its final determinations on the Freshet Rate portion of the Application, including approving the Freshet Rate on a permanent basis;
- D. By Order F-29-20 dated August 13, 2020, the BCUC awarded interim PACA funding to the Association of Major Power Customers of BC (AMPC) in the amount of \$12,586.00;
- E. By Order G-256-20 dated October 14, 2020, the BCUC made its final determinations on the IER portion of the Application, including approving the IER as a pilot program effective from January 1, 2020 to March 31, 2024;

- F. The following participants (Applicants) filed Participant Assistance/Cost Award (PACA) applications with the BCUC for final awards with respect to their participation in the proceeding:

Date (2020)	Participant	Application
April 20 and updated November 6	Movement of United Professionals (MoveUp)	\$3,469.20
August 4	BC Sustainable Energy Association (BCSEA)	\$19,206.95
August 27	Clean Energy Association of BC (CEABC)	\$32,368.00
August 31	AMPC	\$25,172.00
September 1	BC Old Age Pensioners' Organization et al. (BCOAPO)	\$42,758.45
September 18	Commercial Energy Consumers Association of BC (the CEC)	\$18,011.67

- G. On November 10, 2020, BC Hydro provided its comments regarding the PACA applications and stated, among other things, that it finds the cost claims made by the Applicants to be substantially consistent with the PACA Guidelines, and that each of the Applicants contributed towards a better understanding of the Application;
- 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 BC Hydro's comments regarding the PACA applications and makes the following determinations on the cost awards.

NOW THEREFORE pursuant to section 118(1) of the UCA, the BCUC orders as follows:

1. For the reasons outlined in Appendix A to this order, funding is awarded to the following interveners in the listed amounts, inclusive of applicable taxes, for their participation in the proceeding:

Participant	Final Award	Interim Award	Remaining Payable
MoveUp	\$3,431.58	N/A	\$3,431.58
BCSEA	\$19,206.95	N/A	\$19,206.95
CEABC	\$32,368.00	N/A	\$32,368.00
AMPC	\$23,768.85	\$12,586.00	\$11,182.85
BCOAPO	\$42,758.45	N/A	\$42,758.45
CEC	\$17,961.27	N/A	\$17,961.27

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

DATED at the City of Vancouver, in the Province of British Columbia, this 8th day of December 2020.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

British Columbia Hydro and Power Authority
Transmission Service Market Reference-Priced Rates Application
Application for Participant Assistance/Cost Award

REASONS FOR DECISION

1.0 Background

On October 31, 2019, the British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of an amended Freshet Rate (Rate Schedule 1892) and approval of a new optional rate, the Incremental Energy Rate (IER, Rate Schedule 1893), pursuant to sections 58 to 60 of the *Utilities Commission Act* (Application).

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The following participants (Applicants) filed Participant Assistance/Cost Award (PACA) applications with the BCUC for final awards with respect to their participation in the proceeding.

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On November 10, 2020, BC Hydro provided its comments regarding the PACA applications and stated, among other things, that it finds the cost claims made by the Applicants to be substantially consistent with the Participant Assistance/Cost Award Guidelines, and that each of the Applicants contributed towards a better understanding of the Application.

2.0 Criteria for Cost Awards

Section 118 of the *Utilities Commission Act* (UCA) provides that:

- (1) 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) If the commission considers it to be in the public interest, the commission may pay all or part of the costs of participants in proceedings before the commission that were commenced on or after April 1, 1993 or that are commenced after June 18, 1993.
- (3) Amounts paid for costs under subsection (2) must not exceed the limits prescribed for the purposes of this section.

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.

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 of the PACA Guidelines 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 Applications

The Panel, in its review of the PACA applications, 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 all Applicants are eligible for PACA funding in this proceeding as they represent the direct interests of ratepayer groups. The Panel considers that each Applicant contributed to a better understanding of the issues raised in this proceeding and that the number of days claimed by each Applicant for both legal and consulting fees is within the Panel’s expectation of funding days for this proceeding.

With the exception of certain items in the PACA applications of MoveUP, AMPC, and the CEC discussed below, the Panel approves PACA awards in the amounts of the applications.

3.1 MoveUP

MoveUP’s PACA application includes a claim for 0.25 days of consulting time at a daily rate of \$2,150.00, for a total consulting claim of \$602.00 inclusive of tax. Within the consulting claim total is an amount of \$37.60 for PST on consulting fees.

MoveUP provided invoices in support of its PACA application which indicate that 2.0 hours of consulting time were billed at an hourly rate of \$275.00 (or a daily rate of \$2,200.00). The invoices include 5% GST and no PST, for a tax-inclusive total of \$577.50.

Section 7.5 of the PACA Guidelines states that, “[c]onsultants are expected to provide services related to their technical expertise and may be paid in accordance with the fees listed in Attachment A,” while Attachment A to the PACA Guidelines indicates that the maximum daily fee for a “Specialist /Expert Witness” is \$2150/day.

Based on the invoiced consulting fees and the maximum daily rates specified in Attachment A to the PACA Guidelines, the Panel excludes the claimed PST on consulting fees of \$37.60 and awards MoveUP total participant costs of \$3,431.58, inclusive of applicable taxes. The award is calculated as follows:

	Daily Rate	Days	Total	GST	PST	Total
Consulting Services	\$2,150.00	0.25	\$537.50	\$26.88	-	\$564.38
Legal Counsel	\$2,800.00	1.0	\$2,560.00	\$128.00	\$179.20	\$2,867.20
Total Award						\$3,431.58

3.2 AMPC

APMC’s PACA application includes a claim for 2.5 days of consulting time at a daily rate of \$1,850.00, for a total consulting claim of \$5,180.00 inclusive of tax. Within the consulting claim total is an amount of \$323.75 for PST on consulting fees.

AMPC provided invoices in support of its PACA application, which indicate that 27.25 hours of consulting time were billed at an hourly rate of \$132.00. The invoices include 5% GST and no PST, resulting in a tax-inclusive total of \$3,776.85.

Section 7.2 of the PACA Guidelines states that “[w]here 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 Panel limits the maximum daily rate to \$1,056.00 plus GST for consulting based on 8-hour days using the actual hourly billing rate of \$132.00 plus GST. Additionally, the Panel views that funding days should be based on actual invoiced time, and therefore AMPC’s funding days for consulting are increased to 3.40625 days based on the 27.25 hours invoiced.

For the reasons stated above, the Panel awards AMPC total participant costs of \$23,768.85, inclusive of applicable taxes. The award is calculated as follows:

	Daily Rate	Days	Total	GST	PST	Total
Consulting Services	\$1,056.00	3.40625	\$3,597.00	\$179.85	-	\$3,776.85
Legal Counsel	\$2,550.00	7.00	\$17,850.00	\$892.50	\$1,249.50	\$19,992.00
Total Award						\$23,768.85

3.3 The CEC

The CEC’s PACA application includes a claim for disbursements and/or other costs of \$50.40 (inclusive of tax) 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.

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 sections 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 the “Open File Charge” of \$50.40 claimed by the CEC not to be a reasonable or justified cost which should form part of the CEC’s PACA award.

For the reasons stated above, the Panel awards the CEC total participant costs of \$17,961.27, inclusive of applicable taxes.