



ORDER NUMBER
F-12-23

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

and

British Columbia Utilities Commission
Inquiry into the Regulation of Safety Stage 1
Participant Assistance/Cost Award Application

BEFORE:

D. M. Morton, Panel Chair
C. M. Brewer, Commissioner
R. I. Mason, Commissioner

on March 22, 2023

ORDER

WHEREAS:

- A. On September 23, 2020, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the role of the BCUC in the regulation of safety (Inquiry). Stage 1 of the Inquiry focused on (i) the nature and extent of the BCUC's jurisdiction to regulate the safety of public utilities under the *Utilities Commission Act* (UCA), (ii) the conditions, if any, under which the BCUC can forbear from regulating the safety of public utilities within its jurisdiction, as allowable under the UCA, and (iii) setting out a framework of key principles to guide the BCUC in carrying out its safety-related duties;
- B. By Orders G-241-20, G-342-20, G-34-21, G-209-21, G-296-21, G-356-21, and G-221-22, the BCUC established regulatory timetables for the Inquiry. The regulatory timetables included, among other things, intervenor registration, written submissions, a procedural conference, intervenor evidence, BCUC and intervenor information requests, written final and reply arguments, issuance of the draft Stage 1 report (Draft Report), and written submissions and reply submissions on the Draft Report;
- C. On December 22, 2022, the BCUC issued the final Stage 1 report;
- D. The following interveners filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in Stage 1 of the Inquiry:

Date	Participant	Application
January 17, 2023	Commercial Energy Consumers Association of BC (CEC)	\$31,155.43
January 30, 2023	Residential Consumer Intervener Group (RCIA)	\$16,108.98

February 1, 2023	Don Flintoff (Flintoff)	\$18,793.04
February 1, 2023	Borealis Geopower Inc. (BGP)	\$20,652.00
February 6, 2023	British Columbia Old Age Pensioners' Organization et al. (BCOAPO)	\$14,700.84

E. 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 determines that PACA funding is warranted.

NOW THEREFORE pursuant to section 118(2) of the UCA, and for the reasons set out in Appendix A to this order, the BCUC orders that funding is awarded to the following interveners in the listed amounts for their participation in Stage 1 of the Inquiry:

Participant	Award
CEC	\$31,155.43
RCIA	\$16,108.98
Flintoff	\$2,539.60
BGP	\$20,652.00
BCOAPO	\$14,700.84

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of March 2023.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

British Columbia Utilities Commission
Inquiry into the Regulation of Safety Stage 1
Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Background

On September 23, 2020, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the role of the BCUC in the regulation of safety (Inquiry). Stage 1 of the Inquiry focused on (i) the nature and extent of the BCUC's jurisdiction to regulate the safety of public utilities under the *Utilities Commission Act* (UCA), (ii) the conditions, if any, under which the BCUC can forbear from regulating the safety of public utilities within its jurisdiction, as allowable under the UCA, and (iii) setting out a framework of key principles to guide the BCUC in carrying out its safety-related duties.

On December 22, 2022, the BCUC issued the final Stage 1 report.

The Commercial Energy Consumers Association of British Columbia (CEC), Mr. Donald Flintoff (Flintoff), the Residential Consumer Intervener Association (RCIA), Borealis Geopower Inc. (BGP), and the British Columbia Old Age Pensioners' Organization et al. (BCOAPO) participated as interveners in the Inquiry.

2.0 Legislative Framework

Section 118(2) of the UCA provides that "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."

The Participant Assistance/Cost Award (PACA) Guidelines set out in Appendix A attached to BCUC Order G-97-17 dated June 15, 2017, stipulate the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates. Section 1.0 (b) defines an "individual participant" as a participant, who may be potentially affected by a proceeding, representing their own interests and not the interests of a group or organization. Section 1.0 (c) defines "participant" as an individual or an affected group that actively participates in a proceeding of the Commission for which a cost award is sought. Participant includes, but is not limited to, interveners in a proceeding.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. Section 3.2 states that generally a participant in a proceeding meets the eligibility criteria where the participant:

- (a) represents the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the Commission;
- (b) represents an interest or policy perspective relevant to the Commission's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) has an interest in property that is or may potentially be affected by the proceeding.

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.

Section 7.11 of the PACA Guidelines states that generally the BCUC will limit awards for individual participants to forgone earnings, childcare and disbursements. However, the BCUC may award individual participants professional fees if it deems those fees are warranted for the individual to participate effectively.

The Panel has discretion as to whether any PACA amount awarded should be for the full amount sought or should be adjusted. In accordance with Section 14.2.7 of the PACA Guidelines, the Commission will determine the participant's eligibility and the amount of the final cost award taking into account the criteria established in Sections 3.0, 4.0 and 7.0 through 12.0.

3.0 PACA Applications

The CEC, RCIA, Flintoff, BGP, and BCOAPO filed PACA applications with the BCUC with respect to their participation in the Inquiry. The following table summarizes the cost award sought by each intervener in its respective PACA application:

Date	Participant	Application
January 17, 2023	CEC	\$31,155.43
January 30, 2023	RCIA	\$16,108.98
February 1, 2023	Flintoff	\$18,793.04
February 1, 2023	BGP	\$20,652.00
February 6, 2023	BCOAPO	\$14,700.84

3.1 CEC PACA Application

The CEC seeks a cost award of \$31,155.43 in its PACA Application, which includes:¹

- 9.37 days for consultants David Craig and Janet Rhodes;
- 2.3125 days for legal counsel Christopher Weafer; and
- 2.6796 days for legal counsel Patrick Weafer.

3.2 RCIA PACA Application

RCIA seeks a cost award of \$16,108.98 in its PACA Application, which includes:²

- 9.875 days for consultant Mr. Samuel Mason;
- 0.75 days for consultant Mr. Peter Helland;
- 0.1875 days for consultant Mr. Michael Walsh; and
- 0.275 days for legal counsel Mr. Fred Cass.

3.3 Flintoff PACA Application

Flintoff seeks a cost award of \$18,793.04 in his PACA Application. Flintoff's claim consists of 9.07 days of Mr. Flintoff's time at the daily rate for a consultant with seven plus years of relevant experience.³

3.4 BGP PACA Application

BGP seeks a cost award of \$20,652.00 in its PACA Application, which includes:⁴

- 17.75 days for consultants Ms. Alison Thompson and Mr. Tim Thompson;
- 8.75 days for case managers Mr. Michael Bisnaire and Ms. Audrey Jamieson;
- 6.4 days for specialists Mr. Daniel Alonso Torres and Mr. Michael Saunders; and
- \$50.00 in disbursements for printing/photocopying.

3.5 BCOAPO PACA Application

BCOAPO seeks a cost award of \$14,700.84 in its PACA Application, which includes:⁵

- 2.18 days for legal counsel Ms. Leigha Worth;
- 2.34 days for legal counsel Ms. Kristin Barham;
- 1.35 days for legal counsel Ms. Irina Mis; and
- \$12.04 in disbursements for printing/photocopying.

¹ CEC PACA application, dated January 17, 2023, pp. 4–6, 8.

² RCIA revised PACA application, dated January 30, 2023, pp. 5–8.

³ Flintoff revised PACA application, dated February 1, 2023, pdf p. 1.

⁴ BGP PACA application, dated February 1, 2023, pp. 3–9.

⁵ BCOAPO revised PACA application, dated February 6, 2023, pp. 3–7.

4.0 BCUC Determination

The Panel has reviewed the PACA applications received in accordance with the criteria and rates set out in the PACA Guidelines attached to Order G-97-17 and determines that cost awards should be approved in full for the CEC, RCIA, BGP, and BCOAPO, and that a partial cost award should be approved for Flintoff. These reasons for decision explain the Panel's decision with respect to the adjustment to the funding award for Flintoff.

Flintoff

Flintoff has sought a cost award of \$18,793.04 in professional fees, based on the maximum daily rate for a consultant with seven plus years of relevant experience.

In his request to intervene, Flintoff notes that his participation in the Inquiry is that of a "Private Person", and that, as someone who has worked as a Class A field safety representative and held an operating permit for Simon Fraser University, he has an interest in (i) the scope of the BCUC in the area of safety; and (ii) how stray voltage from electrical systems may impact safety.⁶ In his PACA application, Flintoff notes that he did not join with any other groups with similar interests to reduce costs.⁷ Based on the foregoing, the Panel concludes that Flintoff's participation in the Inquiry was that of an individual representing his own interests.

As a "private person", Flintoff falls within the definition of an "individual participant" rather than a group. Individual participants are a category of participants that are subject to specific provisions within the PACA Guidelines, namely sections 7.11 and 10.3, as well as Rate Schedule I. Section 10.3 applies to meal expenses and travel rates, and is not under consideration. The applicable section is section 7.11 and Rate Schedule I.

Section 7.11 of the PACA Guidelines states that, generally, cost awards for individual participants will be limited to forgone earnings, childcare and disbursements. While the BCUC may award individual participants professional fees if it deems that those fees are warranted for the individual to participate effectively, the Panel does not consider that Flintoff meets this criterion. Flintoff has experience as an intervener in the BCUC's regulatory proceedings and has demonstrated his ability to participate effectively in the Inquiry without the need for professional guidance. There is no evidence in this proceeding that such fees are warranted to support Flintoff's participation. There are no other provisions in the PACA Guidelines under which professional fees are applicable for an individual participant.

The Panel is aware that Flintoff has received cost awards for professional fees previously.⁸ Determinations on PACA cost awards are at the sole discretion of the panel in question, based upon the facts available in the proceeding, and pursuant to section 75 of the UCA this Panel is not bound by any such prior awards. In addition, the Panel notes that there are two recent examples where the BCUC has declined to award professional fees to individual participants in BCUC proceedings.⁹ While Flintoff may have had the benefit of receiving cost awards at a consultant rate previously, this is not a basis for overcoming the principle set out in section 7.11 of the PACA Guidelines. It is clear to the Panel that Flintoff does not require professional fees to participate effectively in the Inquiry.

⁶ Exhibit C1-1, p. 1

⁷ Flintoff revised PACA application, dated February 1, 2023, pdf p. 5.

⁸ See, for example, BCUC Order F-4-19 with accompanying Reasons for Decision, p. 5.

⁹ BCUC Order F-42-20 with accompanying Reasons for Decision, pp. 7–9, and BCUC Order F-14-21 with accompanying Reasons for Decision, pp. 4–5.

The Panel has considered the criteria in section 4.3 and the criterion in section 7.11 of the PACA Guidelines which set out the allowable awards for individual participants. Because the Panel considers that Flintoff's participation did provide some better understanding of the issues in the Inquiry, we consider it fair and reasonable to award the maximum rate for forgone earnings, which, as outlined in Attachment A of the PACA Guidelines, is limited to \$250 per proceeding day per person. The Panel notes that in the two recent examples where the BCUC declined to award professional fees to an individual intervener, the BCUC awarded \$250 per proceeding day to the individual concerned.

Accordingly, funding is awarded to Flintoff in the amount of \$2,539.60, inclusive of applicable taxes.

The award is calculated as follows:

	Daily Rate	Days	Subtotal	Disbursements	GST & PST	Total
Flintoff	\$250	9.07	\$2,267.50	N/A	\$272.10	\$2,539.60

Original signed by:

C. M. Brewer, Commissioner

Original signed by:

R. I. Mason, Commissioner

Dissent of Commissioner Morton

Section 1 of the applicable PACA Guidelines defines the following terms:

- b) “individual participant” means a participant, who may be potentially affected by a proceeding, representing their own interests and not the interests of a group or organization;
- c) “participant” means an individual or an affected group that actively participates in a proceeding of the Commission for which a cost award is sought. Participant includes, but is not limited to, interveners in a proceeding;

My fellow Panel members have chosen to define Mr. Flintoff as an “individual participant” because he refers to himself as a “private person” in his PACA application. However, the PACA definition of “individual participant” does not refer to a “private person.” Further, my fellow Panel members “conclude that Flintoff’s participation in the Inquiry was that of an individual representing his own interests,” although his application makes no claim he is affected by the proceeding or representing his own interests.

Mr. Flintoff’s Application contains the following question and answer:

Please state how you are directly or sufficiently affected by the Commission's decision in this matter; or describe your experience, information, or expertise relevant to this matter that would contribute to the Commission's decision making:

As I work as a FSR Class A and have held an operating permit for SFU Burnaby as well as worked about 8 years at BCUC as its Senior Electrical Engineer, I believe that I have relevant experience in safety matters not to mention 45 years in Electrical Engineering in BC.

This is the basis on which the Panel accepted Mr. Flintoff’s intervention request.

The definition of “individual participant” requires the participant be affected by a proceeding, representing their own interests and not in the interests of a group or organization. I find that is not the case here so the definition of “individual participant” does not apply.

I find that the definition of “participant” applies to Mr. Flintoff. Mr. Flintoff applied as an Intervener, and the definition of “participant” explicitly includes an Intervener and includes an “individual”, therefore Mr. Flintoff is appropriately considered a “participant.”

Under the PACA Guideline definitions, a “participant” who is an individual is not required to be “affected”. However, section 3.1 of the Guidelines requires that [emphasis added]:

In determining whether a participant is eligible for a cost award in a proceeding, the Commission will consider whether the participant:

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

Section 3.2 of the PACA Guidelines further lays out the PACA eligibility criterion:

Generally a participant in a proceeding meets the eligibility criterion under Section 3.1 where the participant has the characteristics of the following examples:

- a) represents the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the Commission;
- b) represents an interest or policy perspective relevant to the Commission's mandate and to the proceeding for which cost award eligibility is sought; or
- c) has an interest in property that is or may potentially be affected by the proceeding.

Mr. Flintoff states "as I work as a FSR Class A and have held an operating permit for SFU Burnaby as well as worked about 8 years at BCUC as its Senior Electrical Engineer, I believe that I have relevant experience in safety matters not to mention 45 years in Electrical Engineering in BC."¹⁰ On its face and at the time of Mr. Flintoff's participation, I considered Mr. Flintoff's experience and expertise relevant to this matter and would potentially contribute to the Commission's decision-making. Further, Mr. Flintoff demonstrated no direct interest in the proceeding beyond, by virtue of his address, presumably being a customer of public utilities regulated by the BCUC. I do not consider this, in itself and in the absence of any other evidence, to be determinative of participation on the basis of a direct interest.

Mr. Flintoff's lack of a direct interest potentially enables him to represent an interest or policy perspective relevant to the Commission's mandate and to this proceeding. His previous regulatory experience may also have informed him of the BCUC's policy perspectives. I note, as an example, his submission:¹¹

There is a risk of some legislative overlap in the oversight of public utilities. However, sections 42 and 43 of the UCA provide BCUC extensive oversight privileges of public utilities that usually exceed those of other regulatory bodies. In the past, BCUC had established informal working relationships with these other regulatory bodies. However, the purpose of this inquiry may formalize some jurisdictional issues that were previously accomplished informally.

In my view, Mr. Flintoff's experience and expertise qualify him for an award potentially as high as the 7+ year consultant rate.

Mr. Flintoff has previously been awarded the maximum daily consultant rate for consultants with 7+ years of related experience. For example, in BCUC Order and Decision F-4-19, the BCUC awarded Mr. Flintoff the maximum daily consultant rate of \$1,850. In that decision, the BCUC stated that "[t]he preliminary scope of the Inquiry sought evidence on two main categories: the basis for regulation, and rate design and rate setting. The revised scope of Phase 1 focused on the definition of a public utility under the UCA and the interpretation of a prescribed undertaking. The Panel considers a daily fee of \$1,850 to be the appropriate for Flintoff."¹²

However, in Order F-22-20, Indigenous Inquiry, the Panel did not consider the maximum daily rate warranted and adjusted Mr. Flintoff's applied for daily rate of the maximum to \$950 per day with the comment that it is fair and reasonable.¹³

¹⁰ Exhibit C-1.

¹¹ Exhibit C1-2, p. 8.

¹² Order and Reasons F-4-19 EV Inquiry.

¹³ Order and Reasons F-22-20.

As a result of considering Mr. Flintoff an “individual participant” and denying him professional fees, my fellow Panel members have restricted him to a \$250 maximum daily rate. Given the circumstances of his intervention, I do not consider that to be fair and reasonable. In determining his award, I consider the criteria laid out in section 4.3 of the PACA Guidelines along with the basis of Mr. Flintoff’s intervention, his experience and the value to the Panel of Mr. Flintoff’s participation.

Mr. Flintoff actively participated in the proceeding with nine exhibits in the evidentiary record (including his intervener registration request), spanning the full scope and duration of the Inquiry. By so doing he contributed to a better understanding of the Inquiry. However, I do not see any evidence that he attempted to join other groups with similar interests to reduce costs.

I have previously found Mr. Flintoff to qualify for up to a maximum daily rate of \$1,850 per day. However, the maximum daily rate is not automatic. A participant with 7+ years of experience may be awarded anywhere between \$0 and \$1,850 per day, at the Panel’s discretion. I agree with my fellow Panel members that Flintoff’s participation in this proceeding did provide some better understanding of the issues in the Inquiry and therefore I find a daily rate of \$950 is just, reasonable and commensurate with his contribution to the proceeding.

Accordingly, I would award funding to Flintoff in the amount of \$9,650.48, inclusive of applicable taxes.

The award is calculated as follows:

	Daily Rate	Days	Subtotal	Disbursements	GST & PST	Total
Flintoff	\$950	9.07	\$8,616.50	N/A	\$1,033.98	\$9,650.48

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of March 2023.

Original signed by:

D. M. Morton
Commissioner