



**ORDER NUMBER**  
**F-14-23**

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

and

British Columbia Utilities Commission  
An Inquiry into the Regulation of Municipal Energy Utilities  
Participant Assistance/Cost Award Application

**BEFORE:**

T. A. Loski, Panel Chair  
C. M. Brewer, Commissioner  
W. M. Everett, KC, Commissioner  
B. A. Magnan, Commissioner

on April 11, 2023

**ORDER**

**WHEREAS:**

- A. On August 1, 2019, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the regulation of energy utilities affiliated with municipalities and regional districts in British Columbia (Inquiry). Stage 1 of the Inquiry focused on wholly owned and operated Local Government Corporations;
- B. By Orders G-177-19, G-316-19, G-14-20, G-241-21, G-381-21 and G-28-22, the BCUC established and furthered a regulatory timetable for the Inquiry. The regulatory timetable included, among other things, intervenor registration, written submissions, intervenor evidence, BCUC and intervenor information requests, and written final and reply submissions;
- C. On November 10, 2022, the BCUC issued the Stage 1 Final Report, and requested submissions regarding the eligibility for Participant Assistance/Cost Award (PACA), any limits on the amounts which may be claimed, and the timing of applications. Submissions were received from the BC Community Solar Coalition, British Columbia Hydro and Power Authority, BC Sustainable Energy Association (BCSEA), Borealis GeoPower (BGP), Commercial Energy Consumers Association (the CEC), City of Surrey (Surrey), City of Vancouver (Vancouver), Don Flintoff (Flintoff), and FortisBC;
- D. By letter dated January 13, 2023, the BCUC concluded that (i) eligibility for cost awards will be based on section 3 of the PACA Guidelines, (ii) placing a cap on possible cost awards is not appropriate at this time, and (iii) PACA applications should be made at the conclusion of each stage of the Inquiry. The BCUC invited participants to submit PACA applications for Stage 1 of the Inquiry by January 31, 2023;
- E. The following intervenors filed PACA applications with the BCUC with respect to their participation in Stage 1 of the Inquiry:

Date	Participant	Application
January 14, 2003	Flintoff	\$21,030.80
January 26, 2023	Canadian Geothermal Energy Association (CANGEA)	\$4,728.13
January 27, 2023	BGP	\$11,662.50
January 28, 2023	BCSEA	\$19,326.30
January 31, 2023	City of Abbotsford (Abbotsford)	\$6,462.26
January 31, 2023	City of North Vancouver (North Vancouver)	\$23,960.55
January 31, 2023	Vancouver	\$48,728.00
January 31, 2023	City of Richmond (Richmond)	\$86,092.35
January 31, 2023	Surrey	\$15,595.00
January 31, 2023	The CEC	\$6,313.13

F. 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 in the amounts stipulated below should be approved.

**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
Flintoff	\$2,842.00
CANGEA	\$4,728.13
BGP	\$11,662.50
BCSEA	\$19,326.30
Abbotsford	\$6,462.26
North Vancouver	\$23,960.55
Vancouver	\$48,728.00
Richmond	\$16,138.08
Surrey	\$15,595.00
The CEC	\$6,313.13

**DATED** at the City of Vancouver, in the Province of British Columbia, this 11<sup>th</sup> day of April 2023.

BY ORDER

*Original signed by:*

T.A. Loski  
Commissioner  
Attachment

British Columbia Utilities Commission  
An Inquiry into the Regulation of Municipal Energy Utilities  
Participant Assistance/Cost Award Application

## REASONS FOR DECISION

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### 1.0 Background

On August 1, 2019, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the regulation of energy utilities affiliated with municipalities and regional districts in British Columbia (Inquiry). Stage 1 of the Inquiry focused on wholly owned and operated Local Government Corporations.

By Orders G-177-19, G-316-19, G-14-20, G-241-21, G-381-21 and G-28-22 the BCUC established and furthered a regulatory timetable for the Inquiry including, among other things, intervenor registration, written submissions, intervenor evidence, and BCUC and intervenor information requests.

The BCUC issued its Final Stage 1 Report on November 10, 2022, and subsequently requested submissions<sup>1</sup> from interveners regarding eligibility for Participant Assistance/Cost Award (PACA), views on limiting the amount of PACA that could be claimed, and the timing of PACA applications.

By letter dated January 13, 2023, the BCUC concluded that: eligibility for cost awards will be based on section 3 of the PACA Guidelines; placing a cap on possible cost awards is not appropriate at this time; and that applications should be made at the conclusion of each stage of the Inquiry. Participants were invited to submit PACA applications by January 31, 2023. PACA applicants were requested to clearly allocate professional time between the different components of the Inquiry, as outlined in a supporting spreadsheet, and to describe any collaboration with other groups with similar interests that took place during Stage 1 of the Inquiry.<sup>2</sup>

Applications for PACA were received from the following participants: Mr. Don Flintoff (Flintoff); Borealis Geopower Inc. (BGP); BC Sustainable Energy Association (BCSEA); City of Abbotsford (Abbotsford); City of North Vancouver (North Vancouver); City of Vancouver (Vancouver); City of Richmond (Richmond); City of Surrey (Surrey), and the Commercial Energy Consumers Association of BC (the CEC).

### 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 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 BCUC for which a cost award is sought. Participant includes, but is not limited to, interveners in a proceeding.

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<sup>1</sup> Exhibit A-25.

<sup>2</sup> Exhibit A-26.

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 BCUC;
- (b) represents an interest or policy perspective relevant to the BCUC'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.

Regarding professional fees, Section 7.7 of the PACA Guidelines states that expert witnesses are expected to provide services related to their specialized technical expertise and provide fair, objective and non-partisan opinion evidence. Expert witnesses may be paid in accordance with the maximum daily fee in Attachment A.

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.

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."

The BCUC 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 BCUC 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 Apprehension of Bias

By Letter dated September 9, 2021, Richmond applied for, amongst other things, the disqualification of the Chair of the Panel for the Inquiry, Commissioner T. Loski, on the grounds of a reasonable apprehension of bias (Richmond Application).

By letter dated September 24, 2021, the BCUC invited interveners to make submissions regarding the Richmond Application.<sup>3</sup>

By letter dated December 13, 2021, Richmond's Application was denied, with reasons.<sup>4</sup>

In response to the request by the BCUC for PACA applicants to clearly allocate professional time between the different components of the Inquiry, the following applicants requested cost awards for the "Submissions on Apprehension of Bias" component: Flintoff; Abbotsford; BCSEA; Richmond; Surrey; and the CEC.

#### *Panel Determination*

Before considering the merits of the specific PACA applications, the Panel will first consider whether it is appropriate for costs incurred in respect of the Richmond Application to be eligible for a cost award.

The Panel concludes that Richmond should not be compensated by ratepayers for costs respecting the Richmond Application as:

1. The Richmond Application was denied;<sup>5</sup>
2. The Richmond Application unnecessarily lengthened the duration of the Inquiry; and
3. The submission of Mr. Marc Eliesen, for whom Richmond requests professional fees at the maximum daily rate allowable for an Expert Witness, did not contribute to a better understanding of the issues in the Richmond Application nor the Inquiry, as discussed further in section 4.2, below.

While the Panel is sensitive to avoid creating a chilling effect on any future apprehension of bias applications, given the seriousness of such allegations and the ultimate denial of Richmond's claims relating to Apprehension of Bias, the Panel finds that it would neither be fair nor reasonable for ratepayers to bear such costs in this instance. As such, costs incurred by Richmond in association with its application are not eligible for a cost award.

The Panel notes that the BCUC requested responses from interveners on the Richmond Application and, therefore, the Panel finds that it is reasonable and appropriate for intervener costs associated with such responses to be eligible for a cost award.

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<sup>3</sup> Exhibit A-18, pp. 1–2.

<sup>4</sup> Exhibit A-21, pp. 2–19.

<sup>5</sup> Exhibit A-21, p. 16.

## 4.0 PACA Applications

### 4.1 PACA Review

Ten interveners filed PACA applications with the BCUC with respect to their participation in the Inquiry. The following table lists the interveners and summarizes the cost award sought by each intervener in its respective PACA application:

Date	Participant	Application
January 14, 2003	Flintoff	\$21,030.80
January 26, 2023	CanGEA	\$4,728.13
January 27, 2023	BGP	\$11,662.50
January 28, 2023	BCSEA	\$19,326.30
January 31, 2023	Abbotsford	\$6,462.26
January 31, 2023	North Vancouver	\$23,960.55
January 31, 2023	Vancouver	\$48,728.00
January 31, 2023	Richmond	\$86,092.35
January 31, 2023	Surrey	\$15,595.00
January 31, 2023	The CEC	\$6,313.13

Each of the PACA applications received was reviewed in terms of the eligibility requirements, the number of funding days claimed, and whether the level of participation has met with the BCUC's criteria and requirements.

#### *Panel Determination*

The Panel is guided by the PACA Guidelines in its review of the PACA applications. The Panel is satisfied that all PACA applicants meet the eligibility criteria outlined in the BCUC's PACA Guidelines for a cost award in this Inquiry.

The Panel notes that no funding day calculation was provided in the Inquiry.

With the exception of Richmond and Flintoff, whose PACA applications are discussed separately below, the Panel finds that the applicants made substantive contributions to the Inquiry, contributed to the Panel's better understanding, and the funding amounts requested are reasonable and consistent with the rates established in the PACA Guidelines. **The Panel therefore approves in full the following interveners' funding requests as set out below:**

Participant	Amount approved
CanGEA	\$4,728.13
BGP	\$11,662.50
BCSEA	\$19,326.30
Abbotsford	\$6,462.26
North Vancouver	\$23,960.55
Vancouver	\$48,728.00
Surrey	\$15,595.00
The CEC	\$6,313.13

## 4.2 Richmond PACA Application

Richmond seeks a cost award of \$86,092.35 in its PACA Application,<sup>6</sup> as summarised in the following table:

Professional Fees		
Participant Activity	Days	Total Costs including applicable taxes
Submissions on the Regulation of Municipal Energy Utilities (Oct 2019)	7.3125	\$12,057.10
Submission Updates and Responses (Jan-Mar 2022)	1.975	\$4,080.98
Submissions on Apprehension of Bias	7	\$15,050.00
Other (In explanatory notes described by Richmond as: “FOI requests re Submissions of Apprehension of Bias”) <sup>7</sup>	15.6125	\$30,834.77
<b>Total professional fees</b>		<b>\$62,022.85</b>
<b>Disbursements</b>		<b>Total Cost including applicable taxes</b>
Printing/photocopying from Young Anderson Barristers & Solicitors		\$21.35
File opening fee - Owen Bird Law Corporation		\$48.15
BCUC invoices for FOI Administration <sup>8</sup>		\$24,000.00
<b>Total disbursements</b>		<b>\$24,069.50</b>
<b>Total PACA claim</b>		<b>\$86,092.35</b>

<sup>6</sup> Richmond PACA revised application, dated February 10, 2023.

<sup>7</sup> The Richmond PACA revised application, dated February 10, 2023, attachment 2023-02-10-Richmond-PACA-Application-Stage1-Revised-CostTables.xlsx includes, among other sheets, eight sheets for Professional Fees Information with the tab prefix “Prof. Fees – YA”.

<sup>8</sup> Richmond PACA revised application, dated February 10, 2023, attachment 2023-02-10-Richmond-PACA-Application-Stage1-Revised-CostTables.xlsx, sheet: Disbursements & Other – BCUC.

### *Panel determination*

Richmond is seeking a cost award of \$86,092.35, comprised of the professional fees for seven external legal counsel, one expert witness, and two consultants, and disbursements for printing and photocopying costs related to Freedom of Information and Protection of Privacy Act (FOI), a file opening fee, and invoices from the BCUC to Richmond for its FOI requests.

The Panel has concluded that Richmond should not be compensated by ratepayers for costs respecting the Richmond Application, as discussed in section 3.0 above. The Panel therefore declines Richmond's request for:

1. cost awards of \$15,050.00 for professional fees for expert witness costs attributed to the Richmond Application, identified by Richmond as falling under the "Submissions on Apprehension of Bias" portion of the Inquiry; and
2. cost awards of \$30,834.77 for professional fees attributed to legal counsel in the category of "Other" related to the Richmond Application, which were identified by Richmond as "FOI requests re Submissions of Apprehension of Bias" in its PACA Application.

The Panel notes that, in addition to the reasons previously discussed for denying these costs, Section 7.7 of the PACA Guidelines provides that "expert witnesses are expected to provide services related to their specialized technical expertise...". The Panel does not consider Mr. Eliesen's professional background and qualifications to be of a nature that would qualify him as an expert witness regarding apprehension of bias. Awarding professional fees to Richmond for costs associated with Mr. Eliesen's submissions on this topic would therefore not be appropriate.

Richmond has claimed disbursements related to FOI requests, including printing for Young Anderson and BCUC invoices for FOI requests made by the city in association with the Richmond Application. The Panel notes that the FOI process is outside of the BCUC hearing processes.<sup>9</sup> Furthermore, the records arising from this FOI request were not filed in the Inquiry and as such did not help inform the Panel's decision. The Panel therefore declines the amount of \$24,000 claimed for costs attributed to the FOI process, and printing charges of \$21.35 that Richmond identified as associated with Young Anderson activities on the FOI request.

Richmond has also claimed disbursements related to "File opening fees" for Owen Bird of \$48.15. This cost appears to relate to the creation of a new file by Owen Bird, Richmond's legal consultant, to initiate the provision of legal services for the Inquiry. 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 Panel does not accept that Richmond's legal consultant's "File opening fee" is a necessary cost that arises directly from the issues of the Inquiry or directly supports Richmond's participation in the Inquiry. Instead, the cost is a result of Richmond'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 declines Richmond's request to cover the file opening fee of \$48.15.

The Panel finds the remaining funding amounts requested by Richmond to be reasonable and consistent with the rates established in the PACA Guidelines. Further, the Panel considers that Richmond's participation contributed to a better understanding of the issues in the Inquiry.

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<sup>9</sup> Exhibit A-16.



Accordingly, funding is awarded to Richmond in the amount of \$16,138.08, inclusive of applicable taxes. The award is calculated as follows:

	Days	Subtotal	Applicable taxes	Total
Submissions on the Regulation of Municipal Energy Utilities (Oct 2019)	7.3125	\$12,057.10	\$0	\$12,057.10
Submission Updates and Responses (Jan-Mar 2022)	1.975	\$3,814.00	\$266.98	\$4,080.98
<b>Total PACA Award</b>				<b>\$16,138.08</b>

### 4.3 Flintoff PACA Application

Flintoff has sought a cost award of \$21,030.80 in professional fees, based on the maximum daily rate for a consultant with seven plus years of relevant experience, for a total period of 10.15 days.

In his request to intervene, Flintoff notes that his participation in the Inquiry is that of a “Private Person,” and states that his reason for intervening is that “as my municipality as a District Energy Utility, I am affected as a taxpayer.” Flintoff further states that he is someone with several years experience with the definition of a public utility, and believes that he has expertise relevant to the matter that would contribute to the BCUC’s decision making.<sup>10</sup> In his PACA application, Flintoff notes that he did not join with any other groups with similar interests to reduce costs.<sup>11</sup>

#### *Panel determination*

Based on the foregoing, the Panel concludes that Flintoff’s participation in the Inquiry was that of an individual representing his own interests and falls within the definition of an “individual participant” as defined in Section 1.0(b) of the PACA Guidelines.

Section 7.11 of the PACA Guidelines states that, generally, the BCUC will limit awards for individual participants 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.

The Panel has considered the PACA criteria in section 4.3 and finds that Flintoff’s participation did contribute to a better understanding of the issues in the Inquiry. In line with Attachment A of the PACA Guidelines, we consider it fair and reasonable to award the maximum rate for forgone earnings of \$250 per proceeding day. The Panel notes that this is consistent with the recent BCUC PACA decisions respecting individual participants, including Mr. Flintoff.<sup>12</sup>

<sup>10</sup> Exhibit C3-1, pp. 1–2.

<sup>11</sup> Flintoff PACA application, dated January 14, 2023.

<sup>12</sup> See, for example, BCUC Order F-12-23 with accompanying Reasons for Decision, pp. 4–5, 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.

**Accordingly, funding is awarded to Flintoff in the amount of \$2,842.00, inclusive of applicable taxes.**

The award is calculated as follows:

	Daily Rate	Days	Subtotal	Applicable taxes	Total PACA Award
Flintoff	\$250	10.15	\$2,537.50	\$304.50	\$2,842.00