



ORDER NUMBER
F-24-23A

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

British Columbia Hydro and Power Authority
Application for Orders Regarding the John Hart Dam Seismic Upgrade Project
Participant Assistance/Cost Award Application

BEFORE:

W. M. Everett, KC, Panel Chair
E. B. Lockhart, Commissioner

on June 15, 2023

ORDER

WHEREAS:

- A. On December 20, 2021, British Columbia Hydro and Power Authority (BC Hydro) applied to the British Columbia Utilities Commission (BCUC) for an order, pursuant to section 44.2 of the Utilities Commission Act (UCA). In the application BC Hydro sought acceptance of the schedule of capital expenditures it has made or anticipates making during the period addressed by the schedule (Expenditure Schedule) for the implementation of the John Hart Dam Seismic Upgrade Project (Project) as being in the public interest (Application). The Project has an estimated cost range of \$645.6 million to \$922.7 million;
- B. The BCUC established a regulatory timetable for review of the Application, which included public notification, intervener registration, a workshop, BC Hydro filing an evidentiary update (including an updated Project Cost Estimate), three rounds of information requests (IRs), and final and reply arguments;
- C. On May 5, 2023, by Decision and Order G-107-23, the BCUC issued its final determination on the Application;
- D. The following interveners filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in the proceeding:

Participant	Award
British Columbia Old Age Pensioners' Organization et al. (BCOAPO)	\$40,009.87
Commercial Energy Consumers Association of British Columbia (CEC)	\$62,557.61
Residential Consumer Intervener Association (RCIA)	\$33,323.72
Wei Wai Kum & We Wai Kai First Nations	\$39,880.00

- E. By letter dated May 23, 2023, BC Hydro provided comments on the PACA applications, stating it does not oppose the intervener PACA submissions for the Project; and
- 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 for the Reasons for Decision set out in Appendix A to this order, the following cost award should be approved.

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

1. For the Reasons for Decision attached as Appendix A to this order, funding is awarded to the following interveners in the listed amounts for their participation in the proceeding:

Participant	Award
British Columbia Old Age Pensioners' Organization et al. (BCOAPO)	\$40,009.87
Commercial Energy Consumers Association of British Columbia (CEC)	\$49,317.32
Residential Consumer Intervener Association (RCIA)	\$33,323.72
Wei Wai Kum & We Wai Kai First Nations	\$39,880.00

2. BC Hydro 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 30th day of June 2023.

BY ORDER

Original signed by:

W. M. Everett, KC
Commissioner

Attachment

British Columbia Power Authority
Application for Orders Regarding the John Hart Dam Seismic Upgrade Project
Participant Assistance/Cost Award Application

REASONS FOR DECISION

BACKGROUND

On December 20, 2021, British Columbia Hydro and Power Authority (BC Hydro) applied to the British Columbia Utilities Commission (BCUC) for an order, pursuant to section 44.2 of the Utilities Commission Act (UCA). In the application BC Hydro sought acceptance of the schedule of capital expenditures it has made or anticipates making during the period addressed by the schedule (Expenditure Schedule) for the implementation of the John Hart Dam Seismic Upgrade Project (Project) as being in the public interest (Application). The Project has an estimated cost range of \$645.6 million to \$922.7 million.

The BCUC established a regulatory timetable for review of the Application, which included public notification, intervener registration, a workshop, BC Hydro filing of an evidentiary update (including an updated Project Cost Estimate), three rounds of information requests (IRs), and final and reply arguments.

On May 5, 2023, by Decision and Order G-107-23, the BCUC issued its final determination on the Application.

Participant Assistance/Cost Award (PACA) applications were received from the following interveners and are evaluated in these Reasons for Decision:

- British Columbia Old Age Pensioners' Organization et al. (BCOAPO)
- Commercial Energy Consumers Association of British Columbia (CEC)
- Residential Consumer Intervener Association (RCIA)
- Wei Wai Kum & We Wai Kai First Nations (WWK/WWK)

1.0 Legislative and Regulatory Framework

Section 118 (1) of the UCA provides that the BCUC may order a participant in a proceeding to pay all or part of the costs of another participant in the proceeding.

Order G-97-17 outlines the BCUC's PACA Guidelines (PACA Guidelines), which are applicable to proceedings initiated prior to June 30, 2022. These guidelines 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 4.3 of the PACA Guidelines outlines the considerations in determining the amount of a participant's cost award, including:

- a. Whether the participant contributed to a better understanding by the BCUC of the issues in the proceeding;
- b. The degree to which the participant will be affected by the outcome of the proceeding;

- c. If the costs incurred by the participant are fair and reasonable;
- d. Whether the participant joined with other groups with similar interest to reduce costs;
- e. Whether the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring its participation was not unduly repetitive;
- f. The funding day calculation for funding, if one is provided; and
- g. Consideration of any other matters which the BCUC determines appropriate in the circumstances.

Section 7.0 of the PACA Guidelines provides the information and expectations regarding professional fees, including the use of professional services. Participants are expected 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. The BCUC may adjust cost awards where any duplication appears to have occurred.

Attachment A to the PACA Guidelines sets out the rate schedules for the maximum daily fees with respect to professional services.

2.0 PACA Applications

Subsequent to the filing of BC Hydro's reply argument on February 7, 2023, the following participants filed, pursuant to PACA Guideline 14.2.2, PACA applications with the BCUC with respect to their participation in the proceeding:¹

Participant Assistance / Cost Award (PACA) Applications

Participant	Legal	Consulting	Other	Total Application
BCOAPO	\$29,052.59	\$10,936.28	\$21.00	\$40,009.87
CEC	\$24,728.20	\$37,829.41	-	\$62,557.61
RCIA	\$2,719.50	\$30,604.22	-	\$33,323.72
WWK/WWK	\$30,920.00	\$8,960.00	-	\$39,880.00

The table below summarizes the number of funding days submitted by each intervener for both legal counsel and consultant services:

Participant Assistance / Cost Award (PACA) Funding Days

Participant	Legal Counsel	Consultant	Total
BCOAPO	9.11	5.63	14.74
CEC	8.73	23.38	32.11
RCIA	0.93	20.44	21.37
WWK/WWK	11.25	8.00	19.25

¹ On June 5, 2023, BCOAPO and RCIA filed revised PACA applications to correct calculation errors in their PACA applications.

Pursuant to section 14.2.4 of the PACA Guidelines, BC Hydro was provided an opportunity to comment on the intervenor PACA applications.

By letter dated May 23, 2023, BC Hydro provided its comments on the PACA applications stating:

BC Hydro recognizes the complexity of the John Hart Dam Seismic Upgrade Project and that the amount of information provided by BC Hydro regarding the John Hart Facility, as well as the Campbell River System as a whole, was substantial; including, for example, the Economic Valuation of the System, issues related to Dam Safety, seismic withstand deficiencies, and targets of the John Hart Dam and other facilities on the Campbell River System.

BC Hydro therefore does not oppose the intervenor PACA submissions for the Project. BC Hydro notes that the John Hart Dam Seismic Upgrade Project is the first of three planned projects for the Campbell River System and will be followed by the Ladore Spillway Seismic Upgrade Project and the Strathcona Discharge Upgrade Project, and intervenor PACA for those projects should be determined independently of any PACA awarded for the John Hart Dam Seismic Upgrade project.²

Panel Determination

The Panel has reviewed the PACA applications in accordance with the criteria and rates set out in the PACA Guidelines and finds that the cost awards sought by BCOAPO, RCIA and Wei Wai Kum & We Wai Kai First Nations be approved in full.

The Panel finds that the cost award sought by the CEC should be approved in part for the reasons set out below.

3.0 Commercial Energy Consumers of British Columbia

The CEC filed its PACA application with the BCUC on February 17, 2023. The following table summarizes the cost award requested by the CEC:

The CEC-Professional Fees	Funding Days	Daily Rate	Amount
Legal Counsel – Owen Bird Law Corporation			
Christopher P. Weafer	6.1125	\$2,800	\$19,168.80
Patrick J. Weafer	2.6125	\$1,900	\$5,559.40
Consultant - The CEC			
David Craig	6.625	\$1,850	\$12,873.40
Janet Rhodes	8.250	\$1,850	\$16,031.00
Edlira Gjoshë	8.500	\$1,000	\$8,925.00

² Letter from BC Hydro dated May 23, 2023.

The CEC submitted a PACA budget, pursuant to section 14.1.1 of the PACA Guidelines, which estimated 29 funding days required for consultant services and 14 days for legal counsel services, with a total cost estimate, including taxes, of \$93,286.96. By letter dated April 19, 2022, BCUC staff informed CEC that, in its opinion, the number of budgeted days by the CEC exceeds staff's estimate for the proceeding and that a portion of CEC's budget estimate may be at risk of not being funded.

The Panel acknowledges that the CEC contributed to a better understanding by the BCUC of the issues in this proceeding. Having considered the PACA Guidelines, the Panel finds that the CEC is eligible for a PACA award. However, the Panel notes that the CEC's requested PACA funding for consultants is much greater than that requested by other Interveners, who also contributed to a better understanding of the issues in the proceeding. As a point of comparison, the CEC PACA request of \$37,829.41 for consultants is 24 percent higher than that of RCIA. The Panel finds the PACA funding sought relative to the CEC contribution to the proceeding is not consistent with other interveners in the Proceeding and therefore is not reasonable.

The CEC claims a total of 32.11 funding days for consultants and legal counsel services, which is 50 percent higher than that of RCIA.

Based on the invoices provided by the CEC, the Panel notes that there may not be an efficient use of CEC's consultants. For example, one consultant appears to have been primarily involved in preparing IRs and attending the Workshop but was not involved in writing final argument. Further, having different persons involved in different phases of the proceeding necessarily means that more overall time is needed to review materials. In the Panel's view, these efforts appear to be an inefficient management of the consultants' time or unnecessary duplication.

The Panel appreciates the contribution interveners bring to the hearing process and acknowledges that in order to understand and properly participate in the proceeding interveners need to actively participate by, among other things, properly reviewing the application, considering procedure, preparing and reviewing information requests, attending workshops and/or hearings and preparing written arguments. However, for the foregoing reasons, the Panel finds that the PACA amount claimed by the CEC is not reasonable. Accordingly, the Panel determines that reducing the PACA funding of \$37,829.41 sought by the CEC for the time of its consultants by 35 percent is fair and reasonable. The Panel therefore awards the CEC \$49,317.32 in total PACA funding.