



ORDER NUMBER
F-1-25

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

and

British Columbia Hydro and Power Authority
Non-Integrated Areas Planning Regulatory Framework
Participant Cost Award Application

BEFORE:

M. Jaccard, Panel Chair
A. K. Fung, KC, Commissioner

on January 14, 2025

ORDER

WHEREAS:

- A. In Directive 85 of British Columbia Utilities Commission (BCUC) Decision and Order G-91-23 dated April 21, 2023 relating to the British Columbia Hydro and Power Authority (BC Hydro) Fiscal 2023 to 2025 Revenue Requirements proceeding, the BCUC directed BC Hydro to file its long-term resource plan (LTRP) for the non-integrated areas (NIAs) by March 31, 2024, and to include as part of that plan details of its NIA Diesel Reduction Strategy including proposed performance metrics for review and approval by the BCUC;
- B. On December 15, 2023, BC Hydro filed the Non-Integrated Areas Planning Regulatory Framework application (Application) for reconsideration of Directive 85 of BCUC Decision and Order G-91-23. The Application included BC Hydro's proposals for a modified regulatory framework for reviewing long-term resource planning in NIAs;
- C. The regulatory process for the review of the Application included: filing of an evidentiary update by BC Hydro, one round of information requests, letters of comment, and BC Hydro's reply to letters of comment;
- D. Gitga'at First Nation; Nuxalk Nation; Heiltsuk Nation; Yu Ka Whu'ten Forestry; Zone II Ratepayers Group; and BC Sustainable Energy Association registered as interveners in this proceeding;
- E. By Order G-266-24 and the accompanying decision dated October 22, 2024, the BCUC:
 - i. Rescinded Directive 85 in BCUC Decision and Order G-91-23 in its entirety;
 - ii. Directed BC Hydro to file Community Context Reports (CCRs) when filing applications for Certificates of Public Convenience and Necessity for projects in the NIAs, pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA); and
 - iii. Directed BC Hydro to file an annual report documenting BC Hydro's progress in the development of CCRs in NIAs, including the status of its consultation and public engagement;

- F. The following interveners filed Participant Cost Award (PCA) applications with the BCUC with respect to their participation in the proceeding:

| Date (2024) | Participant | Application |
|----------------------------------|--|-------------|
| October 24 | Gitga'at First Nation (GFN) | \$8,354.25 |
| October 28 | BC Sustainable Energy Association (BCSEA) | \$19,017.43 |
| October 29 | Kwadacha Nation and Tsay Keh Dene Nation (together, the "Zone II Ratepayers Group" or "Zone II RPG") | \$20,453.48 |
| December 9 (amended application) | Heiltsuk Nation | \$21,035.92 |

- G. By letter dated December 11, 2024, BC Hydro provided its comments on the PCA applications; and
- H. The BCUC has reviewed the PCA applications in accordance with the criteria and rates set out in the BCUC's Rules of Practice and Procedure and determines that the PCA applications should be approved with adjustments for certain interveners.

NOW THEREFORE pursuant to section 118 of the UCA, and for the reasons outlined in the decision accompanying this order, the BCUC orders as follows:

1. Costs are awarded to the following participants in the listed amounts for their participation in the BC Hydro's Non-Integrated Areas Planning Regulatory Framework proceeding:

| Participant | Award |
|--------------------------|-------------|
| GFN | \$8,354.25 |
| BCSEA | \$19,017.43 |
| Zone II Ratepayers Group | \$20,230.04 |
| Heiltsuk Nation | \$17,024.92 |

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

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of January 2025.

BY ORDER

Electronically signed by Mark Jaccard

M. Jaccard
Commissioner

British Columbia Hydro and Power Authority
Non-Integrated Areas Planning Regulatory Framework
Participant Cost Award Application

DECISION

1.0 Introduction

In Directive 85 of British Columbia Utilities Commission (BCUC) Decision and Order G-91-23 dated April 21, 2023 relating to the British Columbia Hydro and Power Authority (BC Hydro) Fiscal 2023 to 2025 Revenue Requirements proceeding, the BCUC directed BC Hydro to file its long-term resource plan (LTRP) for the non-integrated areas (NIAs) by March 31, 2024, and to include as part of that plan details of its NIA Diesel Reduction Strategy including proposed performance metrics for review and approval by the BCUC.

On December 15, 2023, BC Hydro filed the Non-Integrated Areas Planning Regulatory Framework application (Application) for reconsideration of Directive 85 of BCUC Decision and Order G-91-23. The Application included BC Hydro's proposals for a modified regulatory framework for reviewing long-term resource planning in NIAs.

The regulatory process for the review of the Application included: filing of an evidentiary update by BC Hydro, one round of information requests, letters of comment, and BC Hydro's reply to letters of comment.

The following interveners filed Participant Cost Award (PCA) applications with the BCUC with respect to their participation in the proceeding:

| Date (2024) | Participant | Application |
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| October 24 | Gitga'at First Nation (GFN) | \$8,354.25 |
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| December 9 (amended application) | Heiltsuk Nation | \$21,035.92 |

By letter dated December 11, 2024, BC Hydro provided its comments on the PCA applications, and stated the following:

In BC Hydro's view, each of BCSEA, GFN, Heiltsuk, and Zone II RPG actively participated in the proceeding and contributed to a better understanding by the BCUC of the issues in the proceeding. The information requests, letters of comment, and reply letters of comment were proportionate to the scope and complexity of the proceeding. We believe that each of the interveners are eligible for a cost award and that the applicants' costs fall within the rate schedules in the PCA Guidelines.

The Panel has reviewed the PCA applications in accordance with Part VI of the BCUC's Rules of Practice and Procedure (Rules).¹ The Panel has considered the PCA applications in light of all of the factors set out in the Rules.

Rule 36.01 provides that the BCUC will determine the amount of a cost award, if any, in accordance with the purpose of the PCA rules and that it will consider the following criteria, as applicable:

- (a) whether such costs were necessarily and properly incurred in the conduct of the proceeding;
- (b) whether such costs are reasonable;
- (c) whether the participant has demonstrated through its participation that it has:
 - i. Contributed to a better understanding by the BCUC of one or more of the issues in the proceeding;
 - ii. Made reasonable efforts to combine or coordinate its participation with that of one or more participants with similar interests, in order to avoid duplication and reduce costs;
 - iii. Engaged in conduct or activity that resulted in a more efficient and/or shorter proceeding;
 - iv. Refrained from conduct or activity that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
 - v. Refrained from conduct or activities which the BCUC considers inappropriate or irresponsible;
 - vi. Made reasonable efforts to ensure participation in the proceeding, including information requests, issues raised, evidence, cross-examination, and arguments, was within the scope of the proceeding or not unduly repetitive;
 - vii. Engaged in conduct consistent with the participant's approved scope of participation in the proceeding;
 - viii. Incurred time participating in the proceeding that was proportionate to the scope of the proceeding and/or the complexity or novelty of the proceeding;
 - ix. Complied with the BCUC's orders, directions, and rules; and
- (d) any other matter the BCUC determines appropriate in the circumstances.

The Panel also considers the following rules to be particularly relevant to the present applications in this proceeding:

- Rule 32.03 provides that: "A participant may only claim costs for participation in a proceeding from the date the proceeding is initiated until the issuance of the final decision or report."
- Rule 34.05.2 provides that: "The maximum hourly rates for professional services are set out in Attachment A."

Appendix A to the Rules provides that the maximum hourly rate for legal counsel with 5 to 7 years of experience since call to the Bar is \$285. The maximum hourly rate for professionals with less than 5 years of experience is \$240.

¹ Attached to BCUC Order G-296-24.

2.0 Determinations of Intervener PCA Applications

2.1 Gitga'at First Nation (GFN)

GFN's PCA application of \$8,354.25 is comprised of:

- 2.63 funding days for consultant services from Kepplegate Consulting; and
- 1.69 funding days for the consultant services from Benton Service.

Panel Determination

The Panel grants GFN's PCA application in full and determines that GFN is awarded \$8,354.25. The Panel considers the time incurred to be reasonable and does not identify concerns regarding GFN's overall cost award.

2.2 British Columbia Sustainable Energy Association (BCSEA)

BCSEA's PCA application of \$19,017.43 is comprised of:

- 3.84 funding days for its legal counsel W. Andrews; and
- 3.54 funding days for its consultant T. Hackney.

Panel Determination

The Panel grants BCSEA's PCA application in full and determines that BCSEA is awarded \$19,017.43. The Panel considers the time incurred to be reasonable and does not identify concerns regarding BCSEA's overall cost award.

2.3 Zone II Ratepayers Group

Zone II Ratepayers Group's PCA application of \$20,453.48 is comprised of:

- 6.594 funding days for its consultant L. Dong; and
- 2.9125 funding days for its legal counsel S. Ennis.

Panel Determination

The Panel determines that Zone II Ratepayers Group is awarded \$20,230.04, which is a reduction of \$223.44 from the funding award applied for.

The Panel observes that 0.7 hours from S. Ennis' services were provided after the decision was issued. As per Rule 32.03 which precludes claims for costs incurred following the issuance of the final decision, the funding request is reduced by \$223.44.²

2.4 Heiltsuk Nation

Heiltsuk Nation's PCA application of \$21,035.92 is comprised of:

- 5.5875 funding days for its legal counsel E. Barnes;
- 1.625 funding days for its legal counsel I. Thomas;

² Calculation of the deduction: (0.7 hours * 285\$/hour) * (1+(5% of GST + 7% of PST)) = \$223.44.

- 2.175 funding days for its legal counsel A. Prest; and
- \$1,000.42 for disbursements.

Panel Determination

The Panel determines that Heiltsuk Nation is awarded \$17,024.92, which is a reduction of \$4,011.00 from the funding award applied for. The Panel reviews the various components of that reduction below.

The Panel observes that 5 hours from E. Barnes' legal services and 5.40 hours from A. Prest's legal services were provided after the decision was issued. As per Rule 32.03 referenced above, the funding request is **reduced by \$2,721.00**, to account for these services rendered after the issuance of the final decision.³

The Panel notes that some of the legal counsel services were charged at an hourly rate higher than that established in Appendix A to the Rules. In Appendix A, the maximum hourly rate of \$285 for legal counsel applies to professionals with 5 to 7 years of experience. Upon review of the resumes attached with the Heiltsuk Nation's PCA application, the Panel observes that E. Barnes did not reach 5 years of call to the Bar until May 2024. Therefore, pursuant to the cost schedule set out in Appendix A to the Rules, the Panel determines that E. Barnes' hourly rate is reduced to the rate corresponding to less than 5 years' experience for legal services provided up to April 30, 2024 and **reduces the funding request by \$1,170.00**.⁴

In addition, the Panel notes 0.5 hours (\$120.00) were incurred by E. Barnes' legal services in invoice No. 47966 dated March 18, 2024 for the following task: "Finalize Interim Indigenous Capacity Funding Form and correspond with BCUC; review and consider internal communications from client group and BC Hydro re Revenue Sharing Application." The Panel disallows this charge as it pertains to Heiltsuk Nation's application for separate Indigenous Intervener Capacity Funding from the BCUC. The BCUC's Indigenous Intervener Capacity Fund is meant as initial funding to provide an Indigenous Nation assistance with upfront costs related to their participation as an intervener in a BCUC proceeding which do not form part of their PCA claim. The Panel considers that application for such funding is a separate process from the Nation's actual participation in the proceeding itself as an accepted intervener which triggers eligibility for PCA funding pursuant to the Rules. Therefore, the funding request is **reduced by \$120.00**, to account for the time spent in relation to the BCUC Indigenous Capacity Fund application.⁵ The calculation of this deduction takes into consideration that E. Barnes' hourly rate for this task has already been reduced per the Panel's determination pertaining to her years of call above.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of January 2025.

Electronically signed by Mark Jaccard

M. Jaccard
Panel Chair/Commissioner

Electronically signed by Anna Fung

A. K. Fung, KC
Commissioner

³ Calculation of the deduction: (5 hours * 285\$/hour) + (5.4 hours * 240\$/hour) = \$2,721.00.

⁴ Calculation of the deduction: (9.6 hours+16.1 hours+0.3 hours) *(285 \$/hour - 240 \$/hour) = \$1,170.00.

⁵ Calculation of the deduction: 0.5 hour * 240\$/hour = \$120.00.