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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER F-5-07

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Application for Participant Assistance/Cost Awards
in a filing by British Columbia Hydro and Power Authority
of Energy Supply Contracts with Alcan Inc.
LTEPA Amending Agreement and Amended and Restated
Long-Term Electricity Purchase Agreement

BEFORE: R.H. Hobbs, Chair
A.J. Pullman, Commissioner
N.F. Nicholls, Commissioner

February 15, 2007

O R D E R

WHEREAS:

A. On November 1, 2006, British Columbia Hydro and Power Authority ("BC Hydro"), pursuant to Section 71 of the Utilities Commission Act (the "Act"), filed the Long-Term Electricity Purchase Agreement ("LTEPA") Amending Agreement dated October 27, 2006 to which was attached the form of Amended and Restated LTEPA between Alcan Inc. ("Alcan") and BC Hydro, and a letter dated October 27, 2006 from Alcan to BC Hydro and the Province (the "October 27, 2006 letter"); and

B. In its November 1, 2006 filing, BC Hydro requested that the Commission issue an Order accepting the LTEPA Amending Agreement and the Amended and Restated LTEPA as filed, pursuant to Section 71 of the Act ("the s. 71 Filing"); and

C. By Order No. G-176-06 dated December 29, 2006 and Reasons for Decision dated February 2, 2007, the Commission denied the request to accept the LTEPA Amending Agreement and the Amended and Restated LTEPA for filing; and

D. On January 5, 2007, the British Columbia Old Age Pensioners' Organization et al. ("BCOAPO") applied for a Participant Assistance/Cost Award ("PACA") in the proceeding and on January 9, 2007 amended its application; and

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E. On January 18, 2007, the Sierra Club of Canada, B.C. Chapter; BC Sustainable Energy Association; and Peace Valley Environment Association ("SCCBC et al.") applied for a PACA for its participation in the proceeding; and

F. On January 19, 2007, the Independent Power Producers Association of British Columbia ("IPPBC") applied for a PACA for its participation in the proceeding; and

G. On January 24, 2007, the Commercial Class Energy Consumers Association of British Columbia ("CEC") applied for a PACA for its participation in the proceeding, and on February 7, 2007 verbally amended its application; and

H. By letter dated February 2, 2007, BC Hydro estimated the number of proceeding days for the proceeding as 5.5 days, yielding an upper limit of 16.5 proceeding and preparation days for which costs can be awarded under the PACA Guidelines set out in Commission Order No. G-15-04; and

I. In its letter, BC Hydro observed that none of the requests for funding of each of legal, consulting and case management costs exceed this time Guideline, and made no specific comments on any of the PACA funding applications; and

J. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the Guidelines in Commission Order No. G-15-04 and has concluded that, after making a number of changes to the amounts of funding requested for the Reasons for Decision that are set out in Appendix A to this Order, certain cost awards should be approved for participants in the proceeding.

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NOW THEREFORE:

1. Pursuant to Section 118(1) of the Utilities Commission Act, the Commission awards funds to the following for their participation in the proceeding.

	Application	Award
BCOAPO	$35,391.35	$32,552.14
SCCBC et al.	33,552.45	1,074.72
IPPBC	49,054.95	34,195.05
CEC	33,476.52	13,043.03
TOTAL	**$151,475.27**	**$80,864.94**

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

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of February 2007.

BY ORDER

Original signed by

Robert H. Hobbs
Chair

British Columbia Hydro and Power Authority
Energy Supply Contracts with Alcan Inc.
LTEPA Amending Agreement and Amended and Restated
Long-Term Electricity Purchase Agreement

Participant Assistance/Cost Award Applications

REASONS FOR DECISION

1.0 INTRODUCTION

On November 1, 2006, BC Hydro submitted the LTEPA Amending Agreement and the Amended and Restated LTEPA with Alcan (collectively, the "Contracts"), and requested that the Commission accept them for filing as an Energy Supply Contract, pursuant to Section 71 of the Utilities Commission Act (the "Section 71 Filing"), by December 31, 2006.

After a Procedural Conference in the 2006 IEP/LTAP proceeding on November 8, 2006, by Order No.G-142-06 the Commission established an Oral Public Hearing and a regulatory timetable for the review of the Section 71 Filing. A Procedural Conference for the Section 71 Filing was held on November 29, 2006. The Oral Hearing commenced on December 6, 2006 and concluded on December 11th, and reply argument was presented orally on December 21, 2006. The Commission issued Order No. G-176-06 on December 29, 2006 and Reasons for Decision on February 2, 2007. The Commission denied the request to accept the Contracts for filing as Energy Supply Contracts, found that the Contracts are not in the public interest and declared that the Contracts are wholly unenforceable.

As set out in the Order that accompanies these Reasons for Decision, the Commission received four applications pursuant to Section 118 of the Utilities Commission Act for Participant Assistance/Cost Award ("PACA") funding for the VITR proceeding. The PACA cost awards requested in the applications total $151,475.27.

Section 118 provides that the Commission Panel may make cost awards for participation in a proceeding. The Commission's PACA Guidelines are set out in Appendix A to Order No. G-15-04, and state:

> "In determining an award of all or any portion of a Participant's costs, the Commission panel will consider the following:
>
> i. Does the Participant represent a substantial interest in the proceeding and will the Participant be affected by the outcome?
>
> ii. Has the Participant contributed to a better understanding of the issues by the Commission?
>
> iii. Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
>
> iv. Has the Participant joined with other groups with similar interests to reduce costs?
>
> v. Any other matters appropriate in the circumstances.
>
> If the Commission panel considers it to be an appropriate consideration in a proceeding, the Commission panel may consider the Participant's ability to participate in the proceeding without an award."

2.0 PROCEEDING AND PREPARATION DAYS

Section 4 of the PACA Guidelines state that proceeding days may include workshop days, negotiation days, pre-hearing conference days, and hearing days; and that the Commission Panel may award costs for preparation days, typically on a ratio of up to two preparation days per proceeding day.

Maximum daily costs for legal counsel and consultants are based on an eight-hour day and are to be prorated for part days. The Commission Panel's determination of the number of prorated proceeding days, including the Procedural Conference of November 29, 2006 and the Oral Hearing days, is 4.5 days, which results in 13.5 days as the maximum number of days that typically may receive funding. The Commission Panel has decided that, in this proceeding, legal counsel fees can be reimbursed for a maximum of 13.5 days, but that consultant or case manager fees will only be awarded to a maximum of 9 days.

3.0 PACA APPLICATIONS

The Commission received PACA applications from British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO"), Sierra Club of Canada (BC Chapter) *et al*. ("SCCBC *et al*."), Independent Power Producers of British Columbia ("IPPBC"), and Commercial Energy Consumers' Association of British Columbia ("CECBC"). The four applications summarized in the table below.

	Application
BCOAPO	$35,391.35
SCCBC *et al*.	33,552.45
IPPBC	49,054.95
CECBC	33,476.52
TOTAL	**$151,475.27**

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATION AMOUNTS

The Commission Panel has reviewed the four PACA applications and determines that the following reductions will be made to the amounts of cost awards requested in the applications:

BCOAPO

BCOAPO's apportionment of counsel fees is accepted but the total days are reduced from 15 to the maximum 13.5 days. The adjustment to counsel fees results in a reduction of $2375.46 (1.5 days x $1494/day plus 6% GST) The BCOAPO daily rate of $1,250 for the consultant exceeds the rate per the PACA Guidelines of $1,200 for 10+ years of related experience. The $50 adjustment to the consultant's daily rate results in a downward adjustment to the Bill of Cost in the amount of $463.75 ($50/day x 8.75 days plus 6% GST). The BCOAPO adjusted cost award amount is $32,552.14.

SCCBC *et al.*

The Commission Panel does not consider SCCBC *et al.* to represent a substantial interest in this proceeding. SCCBC *et al.*'s objective of "minimizing environmental harm from Alcan's smelting operations" is, in the Commission Panel's view, far removed from the key issues under consideration in this proceeding. The Commission Panel also finds that SCCBC *et al.* has not established how the groups that comprise SCCBC *et al.*

will be impacted by the outcome of the proceeding. However, SCCBC *et al*. was an active participant in the proceeding and will receive an award equal to its out-of-pocket expenses for the case manager to attend the hearing. The SCCBC *et al.* adjusted cost award amount is $1,074.72

<u>IPPBC</u>

IPPBC's counsel fees are adjusted downward from 16.5 to the maximum 13.5 days, resulting in a reduction of $5796.90 (3 days x $1710/day plus GST and PST). After reviewing the role of IPPBC's consultant in this proceeding, the Commission Panel has concluded that his participation was partly as a case manager, and partly as a consultant familiar with the F2006 Call terms and contracts. As a result, 50% of the allowable time is awarded the consultant rate of $1200/day and 50% is awarded at a case manager rate of $500/day which, when applied to the maximum 9 days, results in consultant/case manager costs of $8109.00 (9 days x [.5 x $1200 + .5 x $500] plus GST). The IPPBC adjusted cost award amount is $34,195.05.

<u>CECBC</u>

Although CECBC represents a substantial interest in this proceeding, CECBC's participation was noticeably less than that of most other intervenors and the Commission Panel finds that CECBC did not make a significant contribution to a better understanding of the issues. Consequently, the cost award is based on counsel fees only, for only 50% of the maximum allowable days. No award is made for the consultant's fees. The CECBC adjusted cost award amount is $13,043.03 (6.75 days x $1710/day plus GST and PST).