BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER F-22-09

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 196, Chapter 473

and

Applications for Participant Assistance/Cost Awards
British Columbia Hydro and Power Authority
2008 Long Term Acquisition Plan ("2008 LTAP")

BEFORE: A.J. Pullman, Panel Chair
M.R. Harle, Commissioner
R.J. Milbourne, Commissioner

August 26, 2009

O R D E R

WHEREAS:

A. On June 12, 2008 British Columbia Hydro and Power Authority ("BC Hydro") filed its 2008 LTAP Application with the British Columbia Utilities Commission (the "Commission") for review of its long term resource plan for acquiring demand-side and supply-side resources to meet demand in British Columbia; and

B. By Commission Order G-96-08 dated June 17, 2008, the Commission established a Procedural Conference for September 9, 2008 to hear submissions on the principal issues arising from or related to the Application, and the procedure for the review of the Application; and

C. Commission Order G-126-08 dated September 11, 2008 ordered, among other things, that the Oral Hearing was to commence on January 8, 2009. A second Procedural Conference was set as a result of a proposed amendment of the Hearing schedule by BC Hydro's letter to the Commission dated November 14, 2008. BC Hydro requested that the Commission issue early orders with respect to the Mica Units 5 and 6 Definition phase expenditure request and with respect to the Fort Nelson Generating Station Upgrade Project Definition and Implementation phase expenditures requests. As a result of the Second Procedural Conference held on November 28, 2008, the Commission issued Order G-178-08 dated November 28, 2008 to amend the regulatory timetable and established that the Oral Hearing would commence on February 19, 2008; and

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D. By Order G-69-09 dated June 8, 2009, the Commission determined that the $30 million expenditures in F2009, F2010 and F2011 to undertake and complete the Definition phase work for Mica Units 5 and 6 were in the public interest; and

E. By Order G-75-09 dated June 15, 2009, the Commission determined that the $140.1 million expenditures to complete the Definition phase and Implementation phases of Fort Nelson Generating Upgrade Project Case 3.2 were in the public interest under section 44.2(3)(a) of the Act; and

F. By Order G-91-09 dated July 27, 2009 and Reasons for Decision issued concurrently with the Order, the Commission rejected the 2008 LTAP as it was determined that it was not in the public interest. The Order also accepted certain expenditures requested by BC Hydro to be in the public interest and made certain endorsements requested by BC Hydro; and

G. On June 22, 2009, the Peace Valley Environmental Association ("PVEA") filed an application for a Participant Assistance/Cost Award ("PACA") with respect to its participation in the proceeding; and

H. On June 26, 2009, the Commercial Energy Consumers Association of British Columbia ("CEC") filed an application for a PACA with respect to its participation in the proceeding; and

I. On June 29, 2009, the Joint Industry Electricity Steering Committee ("JIESC") filed an application for a PACA for its participation in the proceeding; and

J. On July 1, the BC Sustainable Energy Association and Sierra Club of British Columbia ("BCSEA") filed an application for a PACA for its participation in the proceeding; and

K. On July 2, 2009, the British Columbia Old Age Pensioners Association *et al.* ("BCOAPO") filed an application for a PACA for its participation in the proceeding. On the same date, Van Port Sterilizers Inc. ("Vanport") filed an application for a PACA for its participation in the proceeding; and

L. On July 3, 2009, the Energy Solutions for Vancouver Society *et al.* ("ESVI") filed an application for a PACA for its participation in the proceeding; and

M. On July 7, 2009, the Independent Power Producers Association of British Columbia ("IPPBC") filed an application for its participation in the proceeding; and

N. By letter to the Commission dated July 24, 2009, BC Hydro stated that it did not object to the PACA applications made by BCOAPO, BCSEA, CEC, ESVI, JIESC, IPPBC and PVEA. BC Hydro also stated that it did not believe that a PACA award was warranted for Vanport; and

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O. The Commission has reviewed the applications for cost awards with regard to the criteria and rates as set out in Order G-72-07 and has concluded that, after making a number of changes to the amounts of funding requested for, certain cost awards should be approved for participants in the proceeding. The Reasons for Decision are set out in Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

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
British Columbia Old Age Pensioners' Association *et al.*	$112,603.47	$104,539.00
British Columbia Sustainable Energy Association and Sierra Club of British Columbia	$158,393.31	$137,227.00
Commercial Energy Consumers of British Columbia	$167,717.13	$103,051.00
Energy Solutions for Vancouver Island	$ 27,026.75	$ 27,026.75
Independent Power Producers Association of British Columbia	$161,974.57	$112,079.00
Joint Industry Electricity Steering Committee	$161,049.00	$137,818.00
Peace Valley Environmental Association	$ 44,856.00	$ 44,856.00
Van Port Sterilizers Inc.	$ 14,425.60	$ 0.00

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of August, 2009.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair

Attachment

British Columbia Hydro and Power Authority
2008 Long Term Acquisition Plan

Application for Participant Assistance/Cost Awards

REASONS FOR DECISION

1.0 INTRODUCTION

On June 12, 2009 British Columbia Hydro and Power Authority ("BC Hydro") filed its 2008 Long Term Acquisition Plan ("2008 LTAP") with the British Columbia Utilities Commission (the "Commission") for the review of its long term resource plan for acquiring demand-side and supply-side resources to meet demand in British Columbia.

By Order G-69-09 dated June 8, 2009 and by Order G-75-09 dated June 15, 2009, the Commission issued early orders with respect to Mica Units 5 and 6 and with respect to Fort Nelson Generating Unit Upgrade (FNGU3"). The orders approved the expenditures requests as it was determined that the Definition phase work for Mica Units 5 and 6 and the FNGU3 are in the public interests. By Order G-91-09 dated July 27, 2009 and Reasons for Decision issued concurrently with the Order, the Commission rejected the 2008 LTAP as it was determined to be not in the public interest.

Section 118 of the *Utilities Commission Act* (the "Act") provides that the Commission may make cost awards for participation in a proceeding. In this proceeding, the Commission received eight applications pursuant to the Commission's Participant Assistance/Cost Awards ("PACA") Guidelines. The Guidelines are set out in Appendix A to Order G-72-07 issued under Section 118 of the Act and include the following provisions on eligibility and disbursements:

> The Commission Panel will determine whether a Participant is eligible or ineligible for an award. In determining an award of all or any portion of a Participant's costs, the Commission Panel will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. If this criterion is not met, the Participant will typically not receive a cost award except, possibly, for out-of-pocket disbursements.
>
> Except in limited circumstances, it is expected that only ratepayer groups will establish a "substantial interest in a substantial issue" so as to be eligible for an award in a revenue requirements proceeding. For the purposes of this section, the principal interest of "ratepayer groups" will be the rate impacts of the revenue requirement to be paid by the ratepayer Participants. The Commission Panel will also consider other characteristics of the Participant, including the scope and significance of the principal concerns of the Participant.
>
> Participants other than "ratepayer groups" may be eligible for funding in energy supply contract, rate design, resource plan, and CPCN proceedings provided that the Participant meets the "substantial interest in a substantial issue" criterion. The Commission Panel will then consider the following:
>
> (i) 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 interest to reduce costs?
(v) Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration of the proceeding? (This criterion will not, by itself, disqualify a participant for pursuing a relevant position in good faith and with reasonable diligence)
(vi) Any other matters appropriate in the circumstances.

Pursuant to the PACA Guidelines, BC Hydro was provided with copies of the cost award applications and the opportunity to comment on them. In a letter dated July 24, 2009 to the Commission, BC Hydro commented that it does not object to the participant assistance requests made by British Columbia Old Age Pensioners' Association *et al.* ("BCOAPO"), British Columbia Sustainable Energy Association and Sierra Club of Canada BC Chapter (collectively "BCSEA"), Commercial Energy Consumers of British Columbia ("CEC"), Energy Solutions for Vancouver Island ("ESVI"), Independent Power Producers Association of British Columbia ("IPPBC"), Joint Industry Electricity Steering Committee ("JIESC"), Peace Valley Environmental Association ("PVEA"). BC Hydro stated that the issues raised by Van Port Sterilizers Inc. ("Vanport") contributed little to an understanding of issues within the scope of the LTAP proceeding, and instead focused on pursuing "a commercial solution within a regulatory forum," which wasted the Commission's, Intervenors' and BC Hydro's time. BC Hydro stated that a PACA award was not warranted for Vanport.

2.0 PROCEEDING AND PREPARATION DAYS

Section 4 of the PACA Guidelines states that proceeding days may include workshop days, negotiation days, pre-hearing conference days, hearing days and oral argument days. The Commission Panel has determined the number of proceeding days for the 2008 LTAP as follows:

Activity	Proceeding Days	
Procedural Conferences (2)	September 9, 2008	0.25
	November 27, 2008	0.25
Oral Hearing	February 19 to March 6, 2009	12.0
	March 12, 2009	0.25
Oral Argument	June 1, 2009	0.75
TOTAL PROCEEDING DAYS		**13.5**

The Guidelines provide that the Commission Panel may award costs for preparation days on a ratio of up to two days per proceeding days, although after the proceeding the Commission may adjust this ratio with adequate justification from participants.

The Commission Panel has allowed a 2:1 ratio of preparation time to proceeding days in this proceeding. Therefore the maximum number of days for funding PACA is 40.5 days, i.e., 13.5 days plus 27 days.

3.0 PACA APPLICATIONS

The Commission received applications from BCOAPO, BCSEA, CEC, ESVI, IPPBC, JIESC, PVEA, and Vanport.

The PACA applications are summarized as follows:

	Amount
British Columbia Old Age Pensioners' Association *et al.*	$112,603.47
British Columbia Sustainable Energy Association and Sierra Club of British Columbia	$158,393.31
Commercial Energy Consumers of British Columbia	$167,717.13
Energy Solutions for Vancouver Island	$27,026.75
Independent Power Producers Association of British Columbia	$161,974.57
Joint Industry Electricity Steering Committee	$161,049.00
Peace Valley Environmental Association	$44,856.00
Van Port Sterilizers Inc.	$14,425.60

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS

The Commission Panel has reviewed the PACA Applications and determines that the following amendments will be made to the amounts of cost awards requested.

BCOAPO

On July 2, 2009, BCOAPO applied for 45 days of legal counsel fees at a composite daily rate of $1,600 for Mr. Quail and Ms Worth. The total amount of counsel fee requested is $80,640 which can be broken down into $72,000 fees and $8,640 applicable taxes.

The application also included consultant fees for three consultants, Messrs. Harper, Fleury and Fussell totaling $31,963.31 which can be broken down into $1,476.56 (1.125 days) for Mr. Harper, $2,268.00 (3.375 days) for Mr. Fleury and $28,218.75 (21.5 days) for Mr. Fussell. The amounts are inclusive of applicable GST.

The grand total of the BCOAPO request is $112,603.47. The Commission Panel finds that BCOAPO meets the necessary criteria for PACA funding. The request for counsel fee for 45 days is reduced to 40.5 days based on the maximum number of days for funding.

The total award for BCOAPO, after adjustment for counsel fees and related taxes, is $104,539.00.

BCSEA

On July 1, 2009, BCSEA applied for 51 days of legal counsel fees at a daily rate of $1,800. The total amount of counsel fee requested is $103,123.52 which can be broken down into $91,800 fees, $307.52 disbursements, $6,426.00 PST and $4,590.00 GST.

The application also included fees for case manager for 21.438 days at a daily rate of $500. The requested funding is $13,634.86 which can be broken down into $10,719 case manager fees and $2,915.90 travel and meals reimbursements. Also included in the application is $41,635.18 for three expert witnesses, 14.625 days for Mr. Plunkett ($21,206), 11.781 days for Mr. Wyatt ($14,727), 1.125 days for Mr. Chernick ($1,631), and 2.938 days for Mr. Love ($1,880) plus travel and meals reimbursement of $2,191.10.

The total amount requested by BCSEA is $158,393.31. The Commission Panel finds that BCSEA meets the necessary criteria for PACA funding. The request for counsel fee for 51 days is reduced to 40.5 days based on the maximum number of days for funding.

The total award for BCSEA, after adjustment for counsel fees and related taxes, is $137,227.00.

CEC

On June 26, 2009, CEC applied for 50.38 days of legal counsel fees at a daily rate of $1,800. The amount requested is $101,681.97 which can be broken down into $90,667.50 fees, $127.70 disbursements, $6,347.43 PST and $4,539.34 GST. The application also included fees for Mr. Craig for 50.32 days at a daily rate of $1,250. The total requested is $66,035.16 which can be broken down into $62,890.63 plus $3,144.53 GST.

The total amount requested by CEC is $167,717.13. The Commission Panel finds that CEC meets the necessary criteria for PACA funding. The request for counsel fee and consultant fee is reduced to 40.5 days based on the maximum number of days for funding. The Commission Panel finds that the role of Mr. Craig is akin to that of a case manager, and accordingly the daily rate is reduced to $500.

The total award for CEC, after adjustment for counsel fees, consultant fees and their respective applicable taxes, is $103,051.00

ESVI

On July 3, 2009, ESVI applied for a funding of $27,026.75 based on 40.5 days of consultant's work at $600 daily rate totaling $24,300; $1,511.75 of travel and meals reimbursements; and applicable taxes of $1,215.00.

The Commission Panel finds that ESVI meets the necessary criteria for PACA funding. **The total award for ESVI is based on the amount in its application at $27,026.75.**

IPPBC

On July 6, 2009, IPPBC applied for 46.5 days of legal counsel fees at a daily rate of $1,800. The total amount of counsel fee requested is $94,774.57 which can be broken down into $83,700 fees, $5,859 PST, $4,185 GST and $1,030.57 disbursements.

The application included consultant fees for Mr. Weimer for 45 days at $1,250 daily rate totaling $59,062.50 inclusive of GST, together with funding for Mr. Davis as case manager for $2,625 (5 days at $500 daily rate including GST) as well as expert witness Dr. Jaccard for $5,512.50 (3.62 days at $1,450 daily rate).

The total of the IPPBC request is $161,974.57. The Commission Panel finds that IPPBC meets the necessary criteria for PACA funding. The Commission Panel finds that Mr. Weimer's role in the proceeding is akin to that of a case manager and accordingly the request for consultant's fee for 45 days is reduced to 35.5 days (to account for 5 days due to Mr. Davis based on 40.5 days for maximum funding). The counsel fee for 46.5 days is reduced to 40.5 days based on the maximum number of days for funding.

The total award for IPPBC, after adjustment for counsel fees, consultant fees and related taxes, is $112,079.00.

JIESC

On June 29, 2009, JIESC applied for 39 days of legal counsel fees at a daily rate of $1,800. The total counsel fee requested is $78,624 which can be broken down into $70,200 legal fees and $8,424 applicable taxes.

The application also included consultant's fees for 58.2 days at a daily rate of $1,250 or $72,750 plus $3,637.50 applicable taxes, totaling $76,387.50. Also included is a request for funding a case manager for 11.5 days at a daily rate of $500, totaling $6,037.50 inclusive of taxes.

The total of the JIESC is $161,048.50. The Commission Panel finds that JIESC meets the necessary criteria for PACA funding. The request for consultant's fee for 58.2 days is reduced to 40.5 days based on the maximum number of days for funding.

The total award to JIESC, after adjustment for consultant's fee and related taxes, is $137,818.00

PVEA

On June 29, 2009, PVEA applied for 22.25 days of legal counsel fees at a daily rate of $1,800. The total counsel fee requested is $44,856.00 based on $40,050 legal fees and $4,806 applicable taxes.

The Commission Panel finds PVEA meets the necessary criteria for PACA funding. **The total award for PVEA is based on the amount in its application for $44,856.**

Vanport

On July 2, 2009, Vanport applied for an award of $14,426.00 which included $12,880 time costs related to time spent from July 2007 until the end of the proceeding in June 2009 plus PST and GST.

The Commission Panel finds Vanport does not meet the criteria for PACA funding based on the PACA Guidelines and agrees with the comments made by BC Hydro that Vanport was pursuing a commercial solution within a regulatory forum. **Accordingly, the Commission Panel denies Vanport's application for PACA funding.**

SUMMARY

The applicants' claims, adjustments by the Commission Panel and the total awards are summarized in the table below:

	CLAIM	ADJUSTMENTS	AWARD
BCOAPO	$112,603.47	$8,064.00	$104,539.00
BCSEA	$158,394.69	$21,168.00 based on reduction in counsel fees.	$137,227.00
CEC	$167,717.13	$64,665.87 based on reduction of $19,893 in counsel fees and $44,772 in case manager's fees.	$103,051.00
ESVI	$27,026.75	$0	$27,026.75
IPPBC	$161,974.51	$49,895.57 based on reduction of $12,096 in counsel fees and reduction of $37,800 in case manager's fees.	$112,079.00
JIESC	$161,049.00	$23,231	$137,818.00
PVEA	$44,856.00	$0	$44,856.00
Vanport	$14,425.60	$14,425.60	$0