



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-31-09**

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

and

**An Application by Independent Power Producers of British Columbia
for Reconsideration of Commission Order F-22-09 regarding the
British Columbia Hydro and Power Authority
2008 Long Term Acquisition Plan Application**

BEFORE: A.J. Pullman, Panel Chair and Commissioner
R.J. Milbourne, Commissioner
M.R. Harle, Commissioner
October 23, 2009

O R D E R

WHEREAS:

- A. By Order F-22-09 and Reasons for Decision attached thereto dated August 26, 2009 ("Decision"), the British Columbia Utilities Commission (the "Commission") awarded funds to various Intervenor for their participation in the British Columbia Hydro and Power Authority ("BC Hydro") 2008 Long Term Acquisition Plan ("2008 LTAP") Application; and
- B. The Decision allows the maximum number of days for funding Participant Assistance/Cost Award ("PACA") at 40.5 days. The Decision provides, among other things, that the award to the Independent Power Producers of British Columbia ("IPPBC") should be adjusted by \$49,895.57 to account for a reduction of \$12,096 in counsel fees and \$44,772 in fees to Mr. Weimer. The reduction in Mr. Weimer's fees is based on the Commission Panel's finding that the role of Mr. Weimer in the proceeding was akin to that of a case manager instead of a consultant; and
- C. On September 4, 2009, IPPBC filed an application for Reconsideration ("Application") of Commission Order F-22-09. IPPBC submits that the funding of Mr. Weimer as a case manager rather than as a consultant is an error in fact and Mr. Weimer's status as a consultant was recognized in the Commission's PACA award for the BC Hydro F2009/F2010 Revenue Requirements Application (Order F-13-09). IPPBC requests that the Commission restore Mr. Weimer to the full consultant's rate of \$1,250 per day, for the full 40.5 days allowed by the PACA Guidelines; and
- D. By letter dated September 21, 2009, the Commission allowed the Application to proceed directly to a second phase reconsideration. The second phase allows the Commission to hear full arguments on the merits of the Application from IPPBC, BC Hydro and other Intervenor who wish to make submissions. The Commission's letter requested Parties to address the principal issue of whether the F-22-09 award of costs for Mr. Weimer as a case manager, rather than as a consultant as applied for, is reasonable and appropriate in light of Commission Letter L-9-07 and Order F-10-07 notwithstanding Order F-13-09; and
- E. Four parties filed written submissions with the Commission: Texada Island Community Association ("TAN"), British Columbia Old Age Pensioners Association *et al.* ("BCOAP"), BC Hydro, and the B.C. Sustainable Energy Association and the Sierra Club of British Columbia ("BCSEA"); and

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- F. TAN submits that if the person in question worked virtually exclusively, or in large part, in terms of hours for that organization, or had an administrative role within the organization, then the contractual arrangements between the parties were effectively employer and employee despite legal contracts to the contrary; and
- G. BCOAPO submits that it has no objection to a reclassification of Mr. Weimer's role in the LTAP for the purposes of a PACA award; and
- H. BC Hydro submits that it does not have any comments on the IPPBC Application; and
- I. BCSEA submits that IPPBC has established a *prima facie* case on the issue of sufficiency of reasons with significant material implications to both IPPBC and BC Hydro and meets the criteria for reconsideration. As to the merits, BCSEA submits that it has no information regarding the role Mr. Weimer undertook for IPPBC during the 2008 LTAP proceeding beyond observing his participation. On this basis, BCSEA submits that it appears to BCSEA that Mr. Weimer's role was that of a consultant within the context of the PACA Guidelines. BCSEA also submits that it takes no position regarding the number of days for which IPPBC should be granted a cost award for Mr. Weimer's services; and
- J. In its reply dated October 5, 2009, IPPBC responds to TAN's submissions by stating that Mr. Weimer has never been an employee of the IPPBC and has never had such an exclusive working relationship with the association. IPPBC also observes that BCOAPO and BCSEA expressed no objections and require no response. IPPBC also points out that Mr. Weimer's status as a consultant was recognized by the Commission in Order F-24-09 dated September 14, 2009; and
- K. The Commission Panel has reviewed the Application and all the submissions and determines that IPPBC's request for relief should be granted for the reasons set out in the Reasons for Decision attached as Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

- 1. The award to IPPBC made in paragraph 1 of Commission Order F-22-09 is varied. The amount of IPPBC's award is increased by the sum of \$30, 375 plus applicable taxes.
- 2. BC Hydro is directed to reimburse IPPBC for the amount awarded in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of October 2009.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair and Commissioner

Attachment

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REASONS FOR DECISION

The Commission Panel has read IPPBC's submission dated September 24, 2009, the submissions of TAN, BCOAPO, BCSEA and BC Hydro dated September 28, 2009 and IPPBC's Reply dated October 5, 2009. In particular, IPPBC's letter of September 4, 2009 drew the Commission Panel's attention to the July 31, 2009 letter from IPPBC to the Commission Secretary, which sets out in greater detail the activities undertaken by Mr. Weimer before, during and after the 2009 LTAP oral hearing and included Mr. Weimer's resume, which indicates that he has been an independent consultant since 1990. The Commission Panel therefore finds, based on the evidence provided by IPPBC, that Mr. Weimer is an independent consultant for the purposes of IPPBC's PACA application in these proceedings. There is no evidence before the Commission to support a finding that Mr. Weimer works either exclusively or in large part for IPPBC.

As a result, the Commission Panel accepts Mr. Weimer's status as a consultant and orders BC Hydro to increase IPPBC's PACA award by an amount of (\$1,250 - \$500) times 40.5 days or \$30,375 plus applicable taxes and paragraph 1 of Order F-22-09 is to be varied accordingly.