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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-7-10**

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

and

**Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and
Terasen Gas (Whistler) Inc. [collectively (Terasen Utilities)]
Return on Equity and Capital Structure
Applications for Participant Assistance/Cost Awards**

BEFORE: A.J. Pullman, Panel Chair
D.A. Cote, Commissioner
M.R. Harle, Commissioner
March 2, 2010

O R D E R

WHEREAS:

- A. On May 15, 2009, the Terasen Utilities filed with the British Columbia Utilities Commission (the Commission) pursuant to sections 59 and 60 of the *Utilities Commission Act*, an application for Return on Equity and Capital Structure (ROE Application); and
- B. By Commission Order G-53-09 dated May 21, 2009, the Commission established a Procedural Conference to take place on June 9, 2009. Further to the Procedural Conference, the Commission issued Order G-70-09 dated June 9, 2009 which established a Regulatory Timetable for the Application and determined that it would be heard by way of an Oral Hearing Process; and
- C. The Oral Hearing took place from September 28, 2009 to October 1, 2009. An Oral Phase of Argument was held on November 24, 2009; and
- D. On December 16, 2009 the Commission issued Order G-158-09 with Reasons for Decision; and
- E. On December 7, 2009, the Commercial Energy Consumers of British Columbia (CEC) filed an application for Participant Assistance/Cost Award (PACA) for its participation in the proceeding; and
- F. On December 9, 2009, the Joint Industry Electricity Steering Committee (JIESC) filed an application for PACA for its participation in the proceeding; and
- G. On December 23, 2009, the British Columbia Old Age Pensioners' Association *et al.* (BCOAPO) filed an application for PACA with respect to its participation in the proceeding; and
- H. On December 24, 2009, the BC Utility Customers, an Intervenor group composed of JIESC, CEC and BCOAPO, filed an application for approval of Dr. Laurence Booth's charges for appearing as a witness; and

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- I. On December 24, 2009, the Industrial Customer Group (ICG) filed an application for PACA with respect to its participation in the proceeding; and
- L. By letter dated January 14, 2010 the Terasen Utilities commented to the Commission that they were of the view that each request was not unreasonable, and therefore had no objection to the PACA applications and amounts sought therein; and
- M. 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 in 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.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, the Commission awards funds to the following for their participation in the proceeding:

	<u>Application</u>	<u>Award</u>
BCOAPO	\$30,398.55	\$25,156.95
CEC	\$52,972.31	\$42,438.38
JIESC	\$79,130.10	\$61,359.38
BC Utility Customers	\$85,857.56	\$85,857.56
ICG	\$32,342.24	\$23,525.60
TOTAL	\$280,700.76	\$238,337.86

DATED at the City of Vancouver, in the Province of British Columbia, this 2nd day of March 2010.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair/Commissioner

Attachment

Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and
Terasen Gas (Whistler) Inc. [collectively (Terasen Utilities)]

Return on Equity and Capital Structure
Applications for Participant Assistance/Cost Awards

REASONS FOR DECISION

1.0 INTRODUCTION

On May 15, 2009 Terasen Utilities filed its Return on Equity and Capital Structure (ROE Application) with the British Columbia Utilities Commission (the Commission). On December 16, 2009 the Commission issued Order G-158-09 with Reasons for Decision.

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 five applications pursuant to the Commission's 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 interests 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.

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."

"In some circumstances, an individual Participant that does not qualify for an award, pursuant to Participant eligibility criteria as set forth in Section 1, may be reimbursed for disbursements to travel to a proceeding that is more than 100 km. from the Participant's residence."

Pursuant to the PACA Guidelines, Terasen Utilities was provided with copies of the cost award applications and the opportunity to comment on them. In a letter dated January 14, 2010 to the Commission, Terasen Utilities made comments on the applications, stating that they are of the view that each request is not unreasonable and therefore have no objection to the PACA applications and amounts sought therein.

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 ROE Application as follows:

<u>Activity</u>	<u>Proceeding Days</u>	
Procedural Conference	June 9, 2009	0.25
Oral Hearing	September 28 -30	3.00
Oral Argument	October 1, 2009	0.50
	November 24, 2009	<u>0.50</u>
Total Proceeding Days		4.25

The PACA 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.

In its application dated December 9, 2009 to the Commission, Joint Industry Electricity Steering Committee (JIESC) stated that it was playing a leading role in this proceeding and because of its technical nature and legal complexity, the legal counsel of JIESC was forced to spend considerable additional time beyond the standard allowance. It was therefore requesting a total of 28.6 days for the legal counsel for JIESC for PACA funding purposes.

The Commission Panel finds that counsel from JIESC provided the leadership role among the ratepayer groups in the various stages of the oral hearing process and played a central role in articulating the issues. The Commission Panel agrees, to a large extent, with JIESC's comments and will allow a 4:1 ratio of preparation time to proceeding days in this instance.

Therefore, the Commission Panel determines that 12.75 days (8.5 + 4.25) will be the maximum number of days for funding for all applicants with the exception of JIESC, where the Commission Panel determines that the maximum number of days for funding is 21.25 days (17.00 + 4.25) on the grounds that JIESC played the leading role in the Intervention.

3.0 PACA APPLICATIONS

The Commission received applications from the British Columbia Old Age Pensioners Association *et al.* (BCOAPO), Commercial Energy Consumers of British Columbia (CEC), JIESC, Industrial Customer Group (ICG) and the joint ratepayers' group composed of BCOAPO, CEC, JIESC [collectively referred to as the BC Utility Customers].

The PACA applications are summarized as follows:

	<u>Application</u>
BCOAPO	\$30,398.55
CEC	\$52,972.31
JIESC	\$79,130.10
BC Utility Customers	\$85,857.56
ICG	\$32,342.24
TOTAL	\$280,700.76

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS

The Commission Panel has reviewed the PACA applications and finds that all the applicants can demonstrate their eligibility through "substantial interest in a substantial issue." The Commission Panel has determined that the following amendments will be made to the amounts of cost awards requested: (a) adjustment to the days applied for funding from all applicants; and (b) adjustments based on relative contribution to the better understanding of the issues by the Commission.

BCOAPO

On December 23, 2009, BCOAPO applied for 16.0 days of legal counsel fees at a 60:40 composite rate of \$1,440 at a cost of \$25,804.80 including applicable PST and GST, and consultant fees plus applicable taxes of \$4,593.75, for a total request of \$30,398.55.

The Commission Panel adjusts the amount of its claim by 3.25 days of legal counsel fees (16.0 minus 12.75) using the same composite rate. After the adjustment for counsel fees and related taxes, the new total is \$25,156.95.

The total award for BCOAPO, after the adjustments for maximum number of days for funding, is \$25,156.95.

CEC

On December 7, 2009, the CEC applied for PACA funding for its participation in the proceeding. The CEC applied for 15.94 days of legal counsel fees at a cost of \$28,692 plus GST and PST, and consultant fees at 15.875 days totalling \$19,843.80 plus GST, for a total request of \$52,972.31

The Commission Panel adjusts the amount of CEC's claim by 3.19 days for both counsel fees and consultant fees.

The total award for CEC, after the adjustment for fees and applicable taxes, is \$42,438.38.

JIESC

On December 9, 2009 the JIESC applied for PACA funding for its participation in the proceeding. The JIESC applied for 28.6 days of legal counsel fees at a cost of \$51,280 plus GST and PST, consultant fees of 15 days totalling \$18,750 plus GST, and 3.4 days for case manager fee at \$500 per day (plus GST) for a total request of \$79,130.10.

The Commission Panel agrees with JIESC that it played a lead role on behalf of the ratepayers group in the proceeding but does not agree with JIESC that it is justified to apply for 28.6 days of funding for its legal counsel. The Commission Panel finds that there is adequate justification to apply a ratio of 4 days per proceeding day for JIESC's counsel. As a result, the application is adjusted to 21.25 days from 28.6 days for JIESC's legal counsel and from 15 days to 12.75 days for its consultant.

The award for JIESC, including applicable taxes is: \$1,785 for case manager, \$16,734.38 for consultant and \$42,840.00 for legal counsel for a total award of \$61,359.38.

ICG

On December 24, 2009, the ICG applied for PACA funding for its participation in the proceeding. The ICG applied for a total of 18 days of legal counsel time at a composite daily rate of \$1,500 and disbursements of \$1,877.00, for a total of \$32,342.24.

The Commission Panel adjusts the amount of ICG's claim by 5.25 days (18 minus 12.75) at the composite rate for counsel's fees. The total award after the adjustment for fees and applicable taxes is \$23,525.60.

The total award for ICG, after the adjustments for maximum number of days for funding, is \$23,525.60.

BC Utility Customers

On December 24, 2009, the BC Utility Customers applied for PACA funding for their participation in respect of the expert witness fees payable to Dr. Laurence Booth for \$83,766.38 and disbursements in the amount of \$2,091.18 for a total cost of \$85,857.56.

The Commission, by letter dated July 22, 2009 to Mr. Brian Wallace, counsel acting on behalf of the BC Utility Customers, approved the revised budget for Dr. Laurence Booth's appearance in the proceeding at \$100,320 based on \$2,640 per day.

The Commission Panel accepts the applied-for amount and the award for BC Utility Customers is \$85,857.56.