



ORDER NUMBER
F-34-20

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

and

Creative Energy Vancouver Platforms Inc.
COVID-19 Deferral Account Application
Participant Assistance/Cost Award Application

BEFORE:

A. K. Fung, QC, Panel Chair
E. B. Lockhart, Commissioner

on October 5, 2020

ORDER

WHEREAS:

- A. On May 29, 2020, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the British Columbia Utilities Commission (BCUC) for approval, pursuant to sections 59 to 61 and 91 of the *Utilities Commission Act*, of customer relief measures and a COVID-19 Deferral Account for each of its Core Steam (Core) and Northeast False Creek (NEFC) systems (Application);
- B. By Order G-151-20 dated June 12, 2020, the BCUC granted interim approval of the Application for Creative Energy;
- C. The regulatory process, established by Order G-175-20 dated June 30, 2020, included among other things, the filing of information requests (IRs) by two interveners, and written final and reply arguments;
- D. The following interveners registered in the proceeding:
 - British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO); and
 - The Commercial Energy Consumers Association of British Columbia (CEC);
- E. By Order G-214-20 dated August 14, 2020, with decisions issued concurrently, the BCUC made various determinations on the Application, including granting final approval of customer relief measures and COVID-19 deferral accounts for Creative Energy's Core and NEFC systems;
- F. The following participants filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in the proceeding:

Date	Participant	Application
August 28, 2020	The CEC	\$7,942.37
September 4, 2020	BCOAPO	\$6,113.63

- G. On September 9, 2020, in accordance with Section 14 of the BCUC's PACA Guidelines approved by Order G-97-17, the BCUC sought comment from Creative Energy on the PACA applications;
- H. Creative Energy did not provide any comments on the PACA applications; and
- I. The BCUC has reviewed the PACA applications, in accordance with the criteria and rates set out in the PACA Guidelines attached to BCUC Order G-97-17, and makes the following determinations.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, the BCUC orders as follows:

- Funding is awarded to the following interveners in the listed amounts for their respective participation in Creative Energy's COVID-19 Deferral Account Application proceeding:

Participant	Award
The CEC	\$7,891.97
BCOAPO	\$6,113.63

- For the reasons outlined in Appendix A to this order, funding to the CEC for the "Open File Charge" is denied.
- Creative Energy is directed to reimburse the above-noted participants for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of October 2020.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Creative Energy Vancouver Platforms Inc.
COVID-19 Deferral Account Application
Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Background

On May 29, 2020, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval to establish customer relief measures and a COVID-19 Deferral Account for each of its Core Steam (Core) and Northeast False Creek (NEFC) systems (Application). The following parties registered as interveners in this proceeding:

- British Columbia Old Age Pensioners' Organization et al. (BCOAPO); and
- The Commercial Energy Consumers Association of British Columbia (CEC).

The BCUC established and later amended a regulatory timetable for the review of the Application, which includes, among other things, the filing of information requests (IRs), and written final and reply arguments. By Order G-214-20 dated August 14, 2020, the BCUC issued its decision on Creative Energy's customer relief measures and COVID-19 deferral accounts.

Following the filing of Creative Energy's Reply Argument on August 4, 2020, the following participants filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their respective participation in the proceeding:

Date	Participant	Application
August 28, 2020	The CEC	\$7,942.37
September 4, 2020	BCOAPO	\$6,113.63

Subsequent to the PACA application filings, Creative Energy was afforded the opportunity to comment on the PACA requests. Creative Energy did not provide any comments on the PACA applications.

2.0 Criteria for Cost Awards

Section 118(1) of the *Utilities Commission Act* (UCA) provides that "[t]he commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding."

The PACA Guidelines as set out in Appendix A attached to BCUC Order G-97-17 dated June 15, 2017, set out the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The BCUC will consider whether the participant:

- (a) is directly or sufficiently affected by the BCUC's decision; or
- (b) has experience, information, or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making.

Section 3.2 of the PACA Guidelines describes the general characteristics of a participant in a proceeding that would meet the eligibility criterion.

If the participant is eligible for a cost award, the Panel then considers the following in determining the amount of a participant's cost award in accordance with section 4.3 of the PACA Guidelines:

- (a) Has the participant contributed to a better understanding by the BCUC of the issues in the proceeding?
- (b) To what degree will the participant be affected by the outcome of the proceeding?
- (c) Are the costs incurred by the participant fair and reasonable?
- (d) Has the participant joined with other groups with similar interests to reduce costs?
- (e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?
- (f) The funding day calculation for funding in accordance with sections 4.1 and 4.2, if one is provided.
- (g) Any other matters which the BCUC determines appropriate in the circumstances.

Sections 7.0 through 13.0 of the PACA Guidelines outline the types of eligible costs that can be awarded to participants including, among other things, professional fees, foregone earnings, childcare expenses, disbursements, tax costs and other costs.

With respect to disbursements and other costs, section 10.1 states "[d]isbursements directly related to the participant's participation in the proceeding may be allowed." Section 13.1 of the PACA Guidelines provides an overarching inclusion of "other costs the Commission deems reasonable and justified."

3.0 Review of PACA Requests

The Panel, in its review of BCOAPO's and the CEC's PACA applications, was guided by the PACA Guidelines, which set out the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates. In its consideration of the PACA Guidelines, the Panel considers that BCOAPO and the CEC contributed to a better understanding of the issues raised in this proceeding. BCOAPO and the CEC actively participated in the proceeding, and the number of days both have claimed for legal and consulting fees is within the Panel's expectation of funding days for this proceeding.

BCOAPO and the CEC both claimed for disbursements and/or other costs. BCOAPO claimed \$1.58 (inclusive of tax) for printing and photocopying, and the CEC claimed \$50.40 (inclusive of tax) for an “Open File Charge.” In assessing the reasonableness and fairness of the disbursements and other costs, the Panel must consider whether those costs are necessarily or properly incurred in the conduct of the proceeding.

The Panel acknowledges that the proceeding was conducted through a written process and accepts that the printing and photocopying charges claimed by BCOAPO are reasonable and justified. However, the “Open File Charge” claimed by the CEC appears to relate to the creation, by the CEC’s legal consultant, of a new file to initiate the provision of legal services for this proceeding. The Panel questions whether this charge is reasonable and justified.

In determining whether a particular cost should be awarded following a proceeding, the Panel considers it important to review the context and nature of the cost in question. The Panel notes that the terms “disbursements directly related to the participant’s participation” and “other costs the Commission deems reasonable and justified” in section 10.1 and 13.1 of the PACA Guidelines, respectively, limit the scope of recoverable costs. The question becomes whether a properly incurred cost is recoverable because it arises directly from the factual issues raised in the proceeding, as opposed to the specific circumstances and business practices of the participant.

The purpose of permitting the recovery of disbursements and other costs is to provide the participant with a means by which to be reimbursed for costs that arise directly from the issues of the proceeding or for materials or services that directly support its participation in the proceeding. The Panel does not accept that the CEC’s legal consultant’s “Open File Charge” is a necessary cost that arises directly from the issues of the proceeding or directly supports the CEC’s participation in the proceeding. Instead the cost is a result of the CEC’s legal consultant’s existing cost structure and thus while it may represent a standard business practice for that consultant, it is not necessary for the conduct of the proceeding, and accordingly does not reflect the intent of the cost awards under the PACA Guidelines. For these reasons, the Panel finds that the “Open File Charge” claimed by the CEC not to be a reasonable or justified cost which should form part of the CEC’s PACA award.

The Panel awards participant costs of \$6,113.63 and \$7,891.97, inclusive of applicable taxes, to BCOAPO and the CEC respectively.