



**ORDER NUMBER
F-35-23**

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

and

Wyse Meter Solutions Inc.
Investigation into Status as a Public Utility
Participant Cost Award Application

BEFORE:

B. A. Magnan, Panel Chair
E. B. Lockhart, Commissioner

on August 23, 2023

ORDER

WHEREAS:

- A. On July 22, 2022, by Order G-203-22, the BCUC established a public hearing to investigate the status as a public utility of Wyse Meter Solutions Inc. (Wyse) and issued a regulatory timetable which included public notice, intervener registration, letters of comment, BCUC and Intervener information requests (IR), with further process to be determined (Wyse Investigation);
- B. By Orders G-216-22, G-249-22, G-294-22, G-378-22, G-383-22, and G-20-23 the BCUC further amended the regulatory timetable for an additional round of BCUC and intervener IR, final argument and reply argument;
- C. On June 28, 2023, the BCUC issued Decision and Order G-169-23 finding Wyse to be a public utility;
- D. The following intervener filed a Participant Cost Award (PCA) application with the BCUC with respect to its participation in the Wyse Investigation:

Date	Participant	Application
July 6, 2023	British Columbia Old Age Pensioners' Organization, et al (BCOAPO)	\$41,742.86

- E. On July 25, 2023, by letter, Wyse provided its comments on the PCA application. BCOAPO filed reply comments by letter dated August 1, 2023; and
- F. The BCUC has reviewed the PCA application in accordance with the criteria and rates set out in Part VI of the Rules of Practice and Procedure, attached to Order G-72-23, and determines that PCA funding is warranted.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, and for the reasons set out in Appendix A to this order, the BCUC orders as follows:

1. PCA funding is awarded to BCOAPO in the listed amount for its participation in the Wyse Investigation:

Participant	Award
BCOAPO	\$31,310.30

2. Wyse is directed to reimburse BCOAPO for the above noted PCA funding in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of August 2023.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

Wyse Meter Solutions Inc.
Investigation into Status as a Public Utility

Participant Cost Award Application

REASONS FOR DECISION

1.0 BACKGROUND

On October 6, 2021, the British Columbia Utilities Commission (BCUC) received a complaint concerning, amongst other things, an allegation that Wyse Meter Solutions Inc. (Wyse) was charging customers for additional costs, such as delivery charges and late fees, that were outside of its role as a submetering provider, and that Wyse was operating as a public utility at multiple premises in British Columbia (BC) (Wyse Complaint). On July 6, 2022, the BCUC suspended the Wyse Complaint and four other subsequent unresolved complaints against Wyse and on July 19, 2022, the BCUC launched an investigation into Wyse's status as a public utility (Wyse Investigation).

The written hearing included public notice, letters of comment, intervener registration, BCUC and Intervener information requests (IR), IR responses, final argument and reply argument from Wyse. On June 28, 2023, the BCUC issued Decision and Order G-168-23, finding Wyse to be a public utility under the *Utilities Commission Act* (UCA).

On July 6, 2023, one intervener, British Columbia Old Age Pensioners' Organization et al. (BCOAPO), filed a Participant Cost Award application (PCA Application) with the BCUC in accordance with Part VI of the BCUC's Rules of Practice and Procedure (BCUC Rules). By letter dated July 25, 2023, Wyse provided its comments on the PCA Application. BCOAPO filed its reply comments by letter dated August 1, 2023.

2.0 LEGISLATIVE FRAMEWORK

Utilities Commission Act

Section 118(1) of the UCA provides that:

The 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.

BCUC's Rules Part VI – Participant Cost Awards

PCA provisions are set out in Part VI of the BCUC's Rules, established by Order G-178-22, as amended by Order G-72-23 dated April 2, 2023. Rule 31.01 defines a participant as an applicant in a proceeding or a party that has been granted intervener status in a proceeding.

Pursuant to Rule 32.01, "the BCUC may, in a proceeding, award costs to a participant or participants, determine the amount of such award, if any, and order a participant or participants to pay all or part of the costs of another participant or participants."

Rule 36.01 states that the BCUC will consider the following criteria:

- (a) whether such costs were necessarily and properly incurred in the conduct of the proceeding;
- (b) whether such costs are reasonable;
- (c) whether the participant has demonstrated through its participation that it has:
 - i. Contributed to a better understanding by the BCUC of one or more of the issues in the proceeding;
 - ii. Made reasonable efforts to combine or coordinate its participation with that of one or more participants with similar interests, in order to avoid duplication and reduce costs;
 - iii. Engaged in conduct or activity that resulted in a more efficient and/or shorter proceeding;
 - iv. Refrained from conduct or activity that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
 - v. Refrained from conduct or activities which the BCUC considers inappropriate or irresponsible;
 - vi. Made reasonable efforts to ensure participation in the proceeding, including information requests, issues raised, evidence, cross-examination, and arguments, was within the scope of the proceeding or not unduly repetitive;
 - vii. Engaged in conduct consistent with the participant's approved scope of participation in the proceeding;
 - viii. Incurred time participating in the proceeding that was proportionate to the scope of the proceeding and/or the complexity or novelty of the proceeding;
 - ix. Complied with the BCUC's orders, directions, and rules; and
- (d) any other matter the BCUC determines appropriate in the circumstances.

The maximum hourly rates for professional services are set out in Attachment A to the Rules.

3.0 PCA APPLICATION

BCOAPO seeks a cost award totalling **\$41,742.86** which includes:¹

- 57.9 hours for legal counsel - Ms. Worth (hourly \$350; \$22,696.80 total)
- 52.9 hours for legal counsel - Ms. Mis (hourly \$285; \$16,885.68 total)
- 8.0 hours for legal counsel - Ms. Kimmett (hourly \$240; \$2,150.40 total)
- \$9.50 of disbursements for printing

¹ BCOAPO PCA Application, dated July 6, 2023.

On July 25, 2023, Wyse advised it “has no comment on the amount of time spent by BCOAPO et al set out in the PCA”.² However, Wyse submits that “the Inquiry looked broadly, for the first time, at the regulation of submetering in British Columbia”³ and that the costs should not be borne by Wyse. Wyse goes on to state that the costs should be treated as costs allocated as in other investigation processes of the BCUC which deal with sectoral issues.⁴

Wyse further submits that it has already incurred significant costs participating in the investigation,⁵ and that the allocation of the PCA costs amortized over Wyse’s small customer base would be disproportionate and unreasonable.⁶

In reply, BCOAPO states that Wyse had not challenged the PCA Application on any of the specific grounds established in the BCUC Rules.⁷ BCOAPO asserts that “Wyse, either knew or should have known a cost award or awards were not only possible, but likely in this case”⁸ and did not file an objection or engage with any party to this process to express any concerns about the possibility of a cost award.⁹

BCOAPO submits that Wyse’s costs incurred to participate in the proceeding are not a valid legal basis upon which to oppose the PCA application.¹⁰ BCOAPO further submits that Wyse cannot recover these costs from its ratepayers without convincing the BCUC that any such recovery is justifiable.¹¹

4.0 PANEL DETERMINATION

The Panel has reviewed BCOAPO’s PCA Application in consideration of the BCUC’s Rules, Wyse’s comments and BCOAPO’s reply comments, and for the reasons set out below, **the Panel awards BCOAPO \$31,310.30 inclusive of taxes, which is to be reimbursed by Wyse.**

BCOAPO Cost Award

While Wyse declined to comment on the reasonableness of BCOAPO’s PCA Application, the Panel must consider BCOAPO’s PCA Application for reasonableness and against the criteria as set out in the Rules. Upon review, the Panel has identified several concerns with BCOAPO’s PCA Application, as discussed below.

BCOAPO’s total PCA Application for an award of 118.8 hours equates to 14.85 days of legal counsel time, 53.2 hours (6.65 days) of which were spent on IR No. 1 and 22.7 hours (2.83 days) were spent on IR No. 2. BCOAPO counsel spent 42.9 hours (5.36 days) preparing Final Argument.¹² While we are satisfied that BCOAPO’s IRs and Final Argument contributed to a better understanding of the issues in the Wyse Investigation pursuant to Rule 36.01 (c)(i), we do not find that the time spent on IRs or Final Argument to be reasonable.

² Wyse Letter dated July 25, 2023, p. 1.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid., p. 2.

⁷ BCOAPO, letter dated August 1, 2023, pp. 3-4.

⁸ Ibid., p. 5.

⁹ Ibid.

¹⁰ Ibid., p. 7.

¹¹ Ibid., p. 8.

¹² Based on an 8-hour day.

In awarding PCA, we must consider the Rules, in particular Rule 36.01(c)(vii), and the time spent by BCOAPO participating and whether this was proportionate to the scope, complexity and/or novelty of the proceeding. This investigation was established to investigate the public utility status of Wyse. While novel in that Wyse is the first entity of its kind to be investigated, the issues explored, and determination(s) needed to be made by this Panel were not. This is evidenced by the complexity of, and issues pursued by BCOAPO IRs, and the topics raised in BCOAPO's Final Argument.

The Panel finds the number of hours billed by BCOAPO's legal counsel drafting IRs and the time spent in preparing Final Argument to be disproportionate relative to the scope and complexity of this proceeding and finds a twenty five percent reduction in the number of hours claimed by BCOAPO's counsel to be warranted.

In consideration of the above, pursuant to section 118(1) of the UCA and the Rules, the Panel awards the following to BCOAPO for its participation in the Wyse Investigation:

Awarded PCA				
Category	Hourly Rate	Hours Adjusted	Hours Awarded	Amount Awarded
Legal Counsel (12+ years)	\$350	-14.5	43.4	\$15,198.75
Legal Counsel (5-7 years)	\$285	-13.2	39.7	\$11,307.38
Legal Counsel (0-4 years)	\$240	-2.0	6.0	\$1,440.00
Legal Counsel Total		-29.7	89.1	\$27,946.13
Disbursements				\$9.50
Total before Taxes				\$27,955.63
Taxes				\$3,354.68
Total PCA Awarded				\$31,310.30

PCA Cost Recovery

The Panel concurs with BCOAPO that Wyse should have been aware that a party that is granted intervenor status in a proceeding can apply for a PCA cost award. Not only is this possibility provided for in the Rules, but it was made clear this was BCOAPO's intention, given its request to intervene indicated PCA would be sought for its participation. The Panel also agrees with BCOAPO that costs incurred by Wyse for its participation in the hearing do not preclude intervenors from being awarded PCA for their efforts.

Wyse argues that it has already incurred significant costs for its participation in the investigation, but we note that these costs are related to an investigation which arose as a direct result of Wyse's business activities and are normal business expenses. Further, while Wyse's "significant costs" have not been quantified, Wyse has, and continues to collect from customers, a charge related to "regulatory costs".¹³

¹³ Exhibit B-5, BC Hydro IR 1.2.2; Exhibit B-11, BCUC IR 8.1.

Further, as for Wyse's argument that the costs amortized over its rate base would be "disproportionate and unreasonable", as a regulated public utility, Wyse is expected to participate in regulatory processes, and required to file a Revenue Requirements Application in which it can make a submission to the BCUC for approval of the mechanism(s) to recover regulatory costs, including amortization and deferral accounts.

We do not agree with Wyse that the "costs incurred should be treated as costs allocated as in other investigation processes of the BCUC which deal with sectoral issues."¹⁴ While some BCUC initiated processes may warrant PCA amounts to be paid by the BCUC, we do not find it appropriate for the Wyse Investigation. As noted above, this process was initiated as a direct result of business activities specific to Wyse and was an investigation into the public utility status of Wyse. It was not a process that investigated the wider submetering industry in BC. **Therefore, pursuant to section 118(1) of the UCA, the Panel orders that the BCOAPO's PCA costs of \$31,310.30 for participation in this proceeding are to be paid by Wyse.**

¹⁴ Wyse Letter dated July 25, 2023, p. 1.