



GSX Concerned Citizens Coalition

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8 March 2005

Mr. Robert J. Pellatt, Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
By email: commission.secretary@bcuc.com
(signed original by mail)

Dear Mr. Pellatt:

**Re: Project No. 3698354: Review of an Electricity Purchase Agreement
between BC Hydro and Duke Point Power LP**

**GSX Concerned Citizens Coalition, BC Sustainable Energy Association &
Society Promoting Environmental Conservation ("GSXCCC, et al")
Joint Application for an Award of Intervention Costs**

Pursuant to section 118 of the *Utilities Commission Act* and to the *British Columbia Utilities Commission Participant Assistance/Cost Award Guidelines* ("Cost Award Guidelines"); and pursuant to the GSXCCC *Budget Estimate* of 17 December 2004, revised 20 December 2004; and pursuant to Orders G-99-04 and G-106-04, the GSXCCC, *et al* hereby apply for an award of costs respecting their joint intervention in the BC Utilities Commission review of the Electricity Purchase Agreement ("EPA") between BC Hydro and Duke Point Power LP.

This application covers the time period from the Commission's order of 10 November 2004, establishing a procedural conference, to the conclusion of proceedings on 10 February 2005.

The following supporting documents are attached:

- Mr. Andrews's invoice
- Dr. Jaccard's invoice
- Mr. Miller's invoice, with receipts
- Mr. Hackney's invoice, with receipts
- Affidavit of Thomas Hackney regarding GSXCCC, *et al* award application
- Copy of the GSXCCC revised *Budget Estimate* of 20 December 2004
- BC Sustainable Energy Association ("BC SEA") letter of 14 December 2004, affirming its joint intervention with GSXCCC
- Society Promoting Environmental Conservation ("SPEC") letter of 10 January 2005, affirming its joint intervention with GSXCCC (hard copy only)

The resumes and qualifications of Mr.s Andrews, Miller and Hackney and Dr. Jaccard were attached to GSXCCC's original budget estimate.

Letters of authorization from the GSXCCC member groups were attached to the GSXCCC's original budget estimate.

The receipts for Mr. Andrews's expenses will follow under separate cover.

GSXCCC, *et al* are not able to claim an Input Tax Credit.

I. Eligibility of GSXCCC, *et al*

(i) Interests of the Participants in the proceeding:

GSXCCC

GSXCCC is a non-profit society incorporated under the BC *Society Act*. The goal of GSXCCC is to develop and promote environmentally, socially and economically sound energy policies and practices in British Columbia, Canada and internationally.

GSXCCC has approximately thirty-five individual members and nine member groups:

- Sierra Club of Canada, BC Chapter (over 5,000 members and supporters);
- Georgia Strait Alliance (1,100 members);
- Council of Canadians, Mid-Island Chapter (716 members);
- Council of Canadians, Cowichan Chapter (25 members);
- Council of Canadian, Victoria Chapter (2,100 members);
- Nanaimo Citizens Organizing Committee (a non-registered group of citizens in the Nanaimo area with an informal membership);
- Canadian Parks and Wilderness Society – BC (2,400 members);
- Pender Island Conservancy Association (155 members);
- Shawnigan Lake Watershed Watch (180 members).

As such, GSXCCC represents a considerable constituency throughout BC, though strongly weighted toward Vancouver Island.

All of GSXCCC's individual members are residents of BC, most or all living within the BC Hydro service area. As such, they have an interest in the rate impacts of the EPA on BC Hydro customers; they have an interest in the economic, social and environmental impact of the EPA on British Columbia; and they have an interest in the impact of the EPA on taxes in British Columbia.

All the member groups of GSXCCC are non-profit groups, based in BC. They generally represent a constituency that is concerned about social, economic and/or environmental harm that could result from the construction and operation of the Duke Point Power Project ("DPPP"), which is the subject of the EPA.

GSXCCC has participated as a registered intervenor in various regulatory proceedings concerning energy supply and demand on Vancouver Island, including the National Energy Board – Canadian Environmental Assessment Agency joint panel review of the proposed Georgia Strait Crossing (“GSX”) pipeline, the 2003 BCUC review of the proposed Vancouver Island Generation Project (“VIGP”) and the 2004 BCUC review of BC Hydro’s revenue requirements.

The evidence of the DPPP review has confirmed GSXCCC’s view that DPPP is essentially a renewal, under private ownership, of the proposed VIGP that was rejected by the Commission on September 8, 2003. Accordingly, GSXCCC sees the Commission’s recent review of the EPA as essentially a continuation of the Commission’s review of VIGP, albeit under s.71 of the *Act*.

BC SEA

BC SEA is a registered not-for-profit society under the *Society Act*. It has some 300 members province-wide, most or all of whom are within the BC Hydro service area. BC SEA’s purposes include promoting the development and use of sustainable energy and energy conservation in British Columbia. As such, BC SEA and its members have an interest in BC Hydro’s electricity rates, as well as the social, economic and environmental impacts of DPPP itself and the potential the construction and operation of DPPP to reduce opportunities for the development of sustainable energy and energy conservation.

SPEC

SPEC is a registered not-for-profit society under the *Society Act*. It has members across British Columbia, mostly within the BC Hydro service area. As such, SPEC and its members have an interest in the social, economic and environmental impacts of DPPP, as well as an interest in BC Hydro’s electricity rates.

None of the GSXCCC members or those of BC SEA or SPEC would gain a monetary return from the outcome of the review of the EPA.

(ii) Contribution of Participants to an understanding of the issues:

GSXCCC, *et al*, contributed the Commission’s understanding of the following issues (Please note that this is written prior to receipt of the Commission Panel’s Reasons for Decision.):

- 1. The statutory basis of the review.** GSXCCC, *et al* provided legal argument regarding the statutory basis of the Commission Panel’s review of the EPA. This included the burden of proof, the standard of proof, the “principle issue,” the statutory criteria of “public interest,” the Energy Policy requirement that new generation projects be done by IPPs, and the “precautionary principle” of customary international law.
- 2. Financial liability for greenhouse gas emissions.** GSXCCC, *et al* made Information Requests, filed written evidence by Dr. Mark Jaccard, responded to Information Requests, presented oral evidence and made final written argument

regarding financial liability for greenhouse gas (“GHG”) emissions as it relates to the comparison of Tier 1, Tier 2, No Award, and VIGP. Regardless of what conclusions the Commission ultimately draws regarding the effect of GHG financial liability on the relative merits of Tier 1, Tier 2, and No Award, GSXCCC, *et al* have provided the Commission with a much more sophisticated understanding of the current state of GHG financial liability factors than the Commission would otherwise have had in evidence. In the 2003 VIGP Decision, the Commission adopted the submission of GSXCCC and NCOC regarding the need to include the risk of financial liability for GHG emissions in the VIGP Benchmark. In the current EPA proceeding, GSXCCC, *et al* presented updated information and addressed how the regulatory difference between a CPCN and an EPA affects the GHG liability risk topic.

3. **The size of the capacity gap on Vancouver Island in 2007-08.** GSXCCC, *et al* were the only intervenors who thoroughly addressed this issue. GSXCCC, *et al* made Information Requests to BC Hydro, provided pre-filed expert evidence by Steve Miller, responded to Information Requests from BC Hydro, DPP and Commission staff, cross-examined BC Hydro witnesses, presented oral evidence, presented revised written evidence based on revised BC Hydro evidence, and addressed the issue in final written argument. In the VIGP Decision, the Commission Panel substantially reduced BC Hydro’s estimate of the size of the 2007/08 capacity gap for planning purposes, in large part as a result of the GSXCCC-NCOC evidence. BC Hydro brought new peak load forecasting evidence to the current EPA hearing, and GSXCCC, *et al* analyzed it thoroughly. GSXCCC, *et al* addressed both the forecasting conclusions and the forecasting methodology, with a view toward improving the transparency and reliability of BC Hydro’s peak load forecasting procedures.
4. **Appointment of Panel member to presidency of pipeline company.** GSXCCC, *et al* took the lead role in bringing to the Commission Panel’s attention the concerns regarding a reasonable apprehension of bias due to the appointment of a Panel member to the presidency of a North American gas pipeline company. Notably, the motion for recusal made by GSXCCC, *et al* was supported by most of the parties, including BC Hydro and DPP. In the result, the Panel member stepped down before the motion was ruled upon. GSXCCC, *et al* takes no pleasure in that outcome, but believes it was obligated to take action to protect the legal validity of the hearing process. GSXCCC, *et al* attempted at all times to frame the legal issue properly, so as to avoid any personal slights or personality conflicts.
5. **Succinct final argument on the merits.** GSXCCC, *et al* believes that its final argument provided the Commission Panel with a succinct, cogent summary of its case against approval of the EPA. The case was based on both the law and the evidence, and reflected the heartfelt views expressed by many members of the public at the Nanaimo Town Hall session.

(iii) Reasonableness of costs:

GSXCCC, *et al*'s general costs are fair and reasonable:

1. GSXCCC, *et al* kept to its *Budget Estimate*, taking into account the additional hearing days.
2. All costs applied for are in accord with those described as "reasonable" in the *Cost Award Guidelines*.
3. GSXCCC, *et al* obtained the services of counsel (Andrews) and experts (Jaccard and Miller) exactly as anticipated in the pre-application.
4. GSXCCC, *et al* minimized expenses wherever possible.
5. GSXCCC, *et al* made extensive use of volunteer time and effort, as well as covering many out-of-pocket expenses.
6. GSXCCC, *et al* participated fully and effectively in all phases of the hearing – pre-hearing conference, IR process, oral hearing, written argument and final oral argument – making maximum use of the legal and technical resources at its disposal.
7. GSXCCC, *et al* worked diligently and effectively with other intervenors to make joint use of legal and technical resources, so as to substantially reduce overall costs.
8. GSXCCC, *et al* communicated by email with a large constituency of members and interested others throughout the whole proceeding, and on a daily basis during the oral hearing. This informed GSXCCC, *et al*'s participation in the proceeding. It also provided a large number of the most interested and knowledgeable citizens with an evolving appreciation of the important facts and factors dealt with during the course of the Commission's proceeding.
9. The case manager's work facilitated the participation of several groups and intervenors, while reducing the workload of GSXCCC, *et al*'s legal counsel. The case manager kept the member groups of GSXCCC informed and enabled their views to be represented. The case manager also carried out the jointing of interventions between GSXCCC, BC SEA and SPEC, thus enabling BC SEA and SPEC to benefit from professional representation, while also reducing by two the number of parties in the order of cross-examination at the hearing. This work would otherwise have been billed at the rate for legal counsel.

(iii-a) Reasonableness of legal costs:

GSXCCC, *et al*'s legal costs are fair and reasonable:

10. GSXCCC, *et al*'s *Budget Estimate* was based on ten days of hearing, plus preparation. As it turns out, the hearing consumed 16 days of hearing, pre-hearing conference and 'town hall meeting.' Accordingly, GSXCCC, *et al* ask that the Commission revise the cap on participant funding for this proceeding, to take into account the additional hearing days.

11. William Andrews was called to the B.C. bar in 1984 and has practiced continuously since. His recent experience includes practice before the BC Utilities Commission, the National Energy Board, the Labour Relations Board, the Environmental Appeal Board, and the various Workers' Compensation appeal tribunals, as well as judicial reviews of administrative tribunal decisions before the BC Supreme Court and the BC Court of Appeal. Mr. Andrews represented the GSXCCC as an intervenor in the NEB-CEAA Joint Review Panel hearings concerning the proposed GSX pipeline, and represented GSXCCC-NCOC in the BCUC hearings concerning the VIGP proposal.
12. The legal and factual issues in the EPA proceeding were of a medium degree of complexity, warranting two days preparation per day of hearing as a general rule of thumb.
13. Mr. Andrews represented GSXCCC, *et al* effectively and efficiently. Certainly, nothing in his conduct warrants financial censure.
14. Mr. Andrews' invoice is based on the Commission's maximum daily fee of \$1,710 for eight hours. His invoice attaches a timesheet recording time spent on a daily basis, in minutes and converted to total hours and eight-hour days. As noted above, Mr. Andrews logged 52.9 days on this hearing, but has reduced the invoice to 48 days, to correspond to the guideline of two days preparation per day of hearing.

(iv) Joining with other groups to reduce costs:

GSXCCC is itself a coalition of nine member groups and some 35 individuals. The member groups and individuals in GSXCCC have expended considerable time and energy over the past five years (since the GSX pipeline proposal) researching the issues, educating themselves, identifying common interests and concerns, developing joint decision-making processes and articulating acceptable positions.

By joining with the intervenors, BC SEA and SPEC, GSXCCC further broadened the range of interests represented with one voice during the proceeding, while also contributing to the efficient use of the Commission's time at the hearing, by reducing by two the number of parties in the order of cross-examination. GSXCCC also canvassed other intervenors and offered several of them the opportunity to join interventions.

As in the VIGP hearings, the GSXCCC discussed co-operation with BC Public Interest Advocacy Centre ("PIAC"), representing the BCOAPO, *et al*. GSXCCC, *et al*'s interests and approach are sufficiently different from those of the BCOAPO, *et al* that it would have been impractical and unreasonable for them to have consolidated their participation in this proceeding. However, GSXCCC, *et al* and BCOAPO, *et al* successfully coordinated their respective efforts so as to avoid duplication during the proceeding.

(v) Need for a cost award:

Neither the GSXCCC nor its members, nor BC SEA, SPEC and their members would have had the means to participate effectively in this review without the prospect of an award of costs, as they would have been unable to retain legal counsel or expert witnesses.

II. Differences between the Budget Estimate and the Cost Award Application

No.	Item	Estimate	Application	Change
1	Andrews – legal fees	\$51,300.00	\$82,080.00	\$30,780.00
2	GST + PST on legal fees	\$7,182.00	\$11,491.20	\$4,309.20
3	Jaccard – expert witness fees	\$11,200.00	\$11,200.00	nil
4	GST – expert witness fees	\$784.00	\$784.00	nil
5	Miller – consultant fees	\$11,200.00	\$11,200.00	nil
6	GST on consultant fees	\$784.00	nil	-\$784.00
7	Hackney – case manager fees	\$7,200.00	\$7,200.00	nil
8	GST on case manager fees	\$504.00	nil	-\$504.00
9	Miller – consultant expenses	\$629.00	\$569.50	-\$59.50
10	Hackney – case manager expenses	\$1,676.00	\$2,537.52	\$861.52
11	Andrews – legal counsel expenses	\$314.50	\$130.00	-\$184.50
12	Long distance telephone	\$100.00	nil	-\$100.00
13	Andrews – copying	\$100.00	\$75.36	-\$24.64
	Total	\$92,973.50	\$127,267.58	\$34,294.08

Items 1 & 2: Mr. Andrews's legal fees & GST:

GSXCCC, *et al*'s *Budget Estimate* was based on ten days of hearing, plus preparation, as per the Commission's pre-hearing estimate. In fact, the hearing consumed 16 days of hearing, 'town hall meeting' and pre-hearing conference, and the requirement for legal work increased accordingly. Mr. Andrew's work on the EPA review came to 52.9 days; however he has reduced the billed amount to 48 days, to accord with the Commission's funding formula. GSXCCC, *et al* request that the Commission should vary the cap on funding awards to take into account the extra hearing days.

Item 6: GST on Mr. Miller's consultant fee:

Not required.

Item 8: GST on Mr. Hackney's case manager fee:

Not required.

Item 9: Mr. Miller's consultant expenses:

- Travel by ferry was \$81.50 cheaper than by air;
- Four days of meals cost \$89.00 more than the two days budgeted for;
- Accommodation costs were \$180 less;

- \$11 was charged for parking, not budgeted for; and
- \$162.00 was charged for mileage, not budgeted for.

Item 10: Mr. Hackney's case manager expenses

- Travel by ferry between Victoria and Vancouver was \$124.75 cheaper than by air;
- Car mileage between Victoria and Vancouver cost \$480.48, not budgeted for;
- Travel between Victoria and Nanaimo cost \$102.96, not budgeted for;
- Meals cost \$163.00 more than budgeted for, due to more hearing days than anticipated;
- Accommodation cost \$130.39 more than budgeted. It was charged at the BCUC established rate, rather than \$120 budgeted; however more days were charged due to (a) the need to stay over on Sunday nights to arrive in time for 8:30 a.m. commencements; (b) more hearing days than anticipated.
- Parking costs, \$109.44, were charged, not budgeted.

Item 11: Mr. Andrews's expenses

Air fare + parking cost \$10 more than budgeted;
Meals were not billed for;
Accommodation was not required.

Item 12: Long distance telephone

This item was not billed for.

Item 13: Copying

Slightly less copying was required than anticipated.

The joining of the interventions of GSXCCC, SPEC and BC SEA has not affected the *Budget Estimate* of GSXCCC or the costs reflected in this award application. Neither BC SEA nor SPEC had any budget for their interventions; nor did representing BC SEA and SPEC cause additional expenses.

III. Cost Award Application

1. Retain William J. Andrews, Barrister & Solicitor, as counsel for GSXCCC, *et al* during the hearing, pre-hearing conferences and the 'town hall' meeting (48.0 days @ \$1,710): **\$82,080.00.**

2. GST + PST on William J. Andrews fees (2 taxes @ 7%): **\$11,491.20.**

3. Retain Dr. Mark Jaccard, of MK Jaccard and Associates Inc., as an Expert witness/specialist regarding the comparison of the cost-effectiveness of Tier 1, Tier 2 and the No Award scenarios with respect to GHG emissions liability (8 days @ \$1,400): **\$11,200.00.**

4. GST on Dr. Jaccard's fees (@ 7%): **\$784.00.**
5. Retain Stephen Miller, of Steve Miller & Associates, as consultant (10+ years experience) regarding Vancouver Island load forecasting (8 days @ \$1400): **\$11,200.00.**
6. GST on Stephen Miller's fees: **nil.**
7. Retain Thomas Hackney, GSXCCC, as case manager (30 days @ \$240): **\$7,200.00.**
8. GST on Mr. Hackney's fees: **nil.**
9. Stephen Miller expenses (as invoiced): **\$569.50.**
10. Thomas Hackney expenses (as invoiced): **\$2,537.52.**
11. William J. Andrews expenses (as invoiced): **\$130.00.**
12. Long distance telephone: **nil.**
13. Copying (as invoiced): **\$75.36.**

Total Award Application: \$127,267.58

All the above is respectfully submitted and is true and accurate to the best of my knowledge and belief.

Signed,
Thomas Hackney
President, GSX Concerned Citizens Coalition