

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-20-09**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Applications for Participant Assistance/Cost Awards
in an Inquiry into British Columbia's Electricity Transmission Infrastructure
and Capacity Needs for the Next 30 Years

BEFORE: L.A. O'Hara, Commissioner and Panel Chair August 17, 2009
A.W.K. Anderson, Commissioner
D.A. Cote, Commissioner
M.R. Harle, Commissioner
R.K. Ravelli, Commissioner

O R D E R

WHEREAS:

- A. Section 5(4) of the *Utilities Commission Act* ("UCA" or "Act") provides that the British Columbia Utilities Commission ("Commission") must conduct an inquiry ("Inquiry") to make determinations with respect to British Columbia's infrastructure and capacity needs for electricity transmission for the period ending 20 years after the day the Inquiry begins, or a different period if so specified by terms of reference issued by the Minister; and
- B. On December 11, 2008, the Minister responsible for administration of the Hydro and Power Authority Act ("Minister") issued Terms of Reference for the Inquiry which identify that the general purpose of the Inquiry is for the Commission to make determinations with respect to British Columbia's electricity transmission infrastructure and capacity needs for a 30-year period commencing from the date the Inquiry begins; and
- C. On May 5, 2009, the Commission issued a letter (Exhibit A-8) stating that the Commission Panel ("Panel") conducting the Inquiry would entertain requests for interim Participant Assistance/Cost Award ("PACA") applications to cover costs incurred for preparation and participation in the Inquiry during the period up June 24, 2009 ("interim period"); and
- D. At the Procedural Conference held on June 24, 2009, the Panel Chair, in her opening remarks, noted that not all applications for interim funding to date were final or complete, and invited submissions on the procedure and timing of final PACA applications for the interim period; and
- E. On June 26, 2009, the Commission issued a letter (Exhibit A-15) establishing a schedule for reviewing the interim cost award requests; and
- F. By the deadline established by Exhibit A-15, the Commission had received ten applications requesting a total of \$133,447.17 pursuant to section 118 of the Act for PACA funding for the following Participants:

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BC Sustainable Energy Association et al. ("BCSEA")	\$27,154.50
Carrier Sekani Tribal Council et al.	\$1,800.00
Cape Mudge Indian Band (We Wai Kai Nation)	\$4,026.40
Commercial Energy Consumers ("CEC")	\$26,118.52
Energy Solutions for Vancouver Island et al. ("ESVI")	\$6,286.00
First Nations Energy and Mining Council	\$39,827.46
Haisla Nation	\$4,026.40
Hwilitsum First Nation	\$21,791.12
Sto:lo Tribal Council	\$257.50
Mr. Terry Vulcano	\$2,159.27
TOTAL APPLICATIONS	<u>\$133,447.17</u>

- G. By letter dated July 20, 2009, British Columbia Hydro and Power Authority ("BC Hydro") provided its comments on the PACA applications submitted and provided general observations about the PACA applications but no comments on any individual application; and
- H. By letter dated July 20, 2009, British Columbia Transmission Corporation ("BCTC") provided its comments on the PACA applications submitted and provided general observations about the PACA applications but no comments on any individual application; and
- I. On July 28, 2009, BCSEA, CEC, ESVI, the Haisla Nation, the Hwilitsum First Nation, and the We Wai Kai Nation, provided responses to the comments of BC Hydro and BCTC; and
- J. The Commission Panel has reviewed the PACA applications with regard to the criteria and rates set out in the Guidelines in Commission Order G-72-07, and has concluded that, after adjusting the amounts of funding requested as set out in the Reasons for Decision attached as Appendix A to this Order, certain cost awards should be approved for Participants in the Inquiry.

NOW THEREFORE the Commission orders as follows:

- 1. Pursuant to section 118(1) of the Act, the Commission awards funds to the following for their participation in the Inquiry:

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BC Sustainable Energy Association et al.	\$21,277.07
Carrier Sekani Tribal Council et al.	\$1,800.00
Cape Mudge Indian Band (We Wai Kai Nation)	\$4,026.40
Commercial Energy Consumers	\$22,689.03
Energy Solutions for Vancouver Island et al.	\$4,711.00
First Nations Energy and Mining Council	\$27,909.78
Haisla Nation	\$3,864.95
Hwlitsum First Nation	\$21,791.12
Sto:lo Tribal Council	\$257.50
Mr. Terry Vulcano	\$2,159.27
TOTAL AWARDS	<u>\$110,486.12</u>

2. BC Hydro is directed to pay the Participants the amount of the Participant's award in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of August 2009.

BY ORDER

Original signed by:

Liisa O'Hara
Commissioner

Attachment

**Inquiry into British Columbia's Long-Term Transmission Infrastructure
Participant Assistance/Cost Award Applications**

INTERIM AWARDS - REASONS FOR DECISION

1.0 INTRODUCTION

On May 5, 2009, the British Columbia Utilities Commission (the "Commission") issued a letter (Exhibit A-8) stating that the Commission Panel ("Panel") conducting the Inquiry into British Columbia's Long-Term Electricity Transmission Infrastructure ("Inquiry") would entertain requests for interim PACA applications to cover costs incurred for preparation and participation in the Inquiry during the period up to and including June 24, 2009 ("interim period").

At the Procedural Conference held on June 24, 2009, the Panel Chair, in her opening remarks, noted that not all applications for interim funding to date were final or complete, and invited submissions on the procedure and timing of final PACA applications for the interim period. On June 26, 2009, The Commission issued a letter (Exhibit A-15), establishing the following schedule for reviewing the interim cost award requests:

ACTION	DATE (2009)
Submission of final requests for funding up to the June 24, 2009 Procedural Conference	July 3
Requests to the Utilities for comment	July 6
Comments from the Utilities	July 20
Reply comments, if any, from Participants	July 27

As set out in the Order that accompanies these Reasons, the Commission received ten applications pursuant to section 118 of the *Utilities Commission Act* ("Act") for Participant Assistance/Cost Award ("PACA") funding. The PACA cost awards requested in the applications total \$133,447.17

Section 118 provides that the Commission may make cost awards for participation in a proceeding. The Commission's PACA Guidelines are found in Appendix A to Order G-72-07 which sets out certain criteria a Commission Panel in a proceeding may use to determine the amount of an award, if any. If a Participant establishes that it has a "substantial interest in a substantial issue" in a proceeding, the Commission will consider the following factors:

- 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.

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, and hearing days; and that the Commission Panel may award costs for preparation days, typically on a ratio of up to two preparation days per proceeding day.

Maximum daily costs for legal counsel and consultants are based on an eight-hour day and are to be prorated for part days. The Commission Panel's determination of the number of prorated proceeding days is as follows:

	Proceeding Days
<u>Terms of Reference and Inquiry Issues and Processes</u>	
Workshop – April 17	.5
Procedural Conference – April 27	.5
<u>Inquiry Issues and Scoping</u>	
Workshop – June 18	1.0
Procedural Conference – June 24	1.0
TOTAL	3.0

The Commission Panel further finds that for the Procedural Conference days a ratio of two preparation days for each proceeding day is reasonable, resulting in a total provision of 4.5 days for the preparation for and attendance at the two Procedural Conferences. Because the attendance at the workshops need not have required much preparation, the Commission Panel accepts a claim up to 2.5 days for the preparation for and attendance at the two workshops. In total, this equals seven days as maximum that can attract funding, subject to the other funding criteria.

3.0 PACA APPLICATIONS

By the July 3 deadline established, the Commission had received ten applications summarized below:

BC Sustainable Energy Association et al.	\$27,154.50
Carrier Sekani Tribal Council et al.	\$1,800.00
Cape Mudge Indian Band (We Wai Kai Nation)	\$4,026.40
Commercial Energy Consumers	\$26,118.52
Energy Solutions for Vancouver Island et al.	\$6,286.00
First Nations Energy and Mining Council	\$39,827.46
Haisla Nation	\$4,026.40
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Mr. Terry Vulcano	\$2,159.27
TOTAL APPLICATIONS	<u>\$133,447.17</u>

4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATION AMOUNTS

Individual PACA applications have been adjusted to reflect the maximum of seven allowed proceeding and preparation days for one counsel and one consultant. In some instances, where applied for, the Commission Panel has also allowed for the funding of a case manager at a maximum rate of \$500 per day. In addition to this general adjustment, the Commission Panel had determined that the maximum consultant rate that will be allowed is \$1,250/day because no expert witness duties or preparation of technical evidence was required.

Taking into account those adjustments, the PACA amounts applied for have been recalculated to determine the amount of the final award. The only other adjustment made was where a consultant for the First Nations Energy and Mining Council appeared to have charged GST on expenses for which GST was already included. That oversight was corrected. The final cost awards are shown below.

BC Sustainable Energy Association et al.	\$21,277.07
Carrier Sekani Tribal Council et al.	\$1,800.00
Cape Mudge Indian Band (We Wai Kai Nation)	\$4,026.40
Commercial Energy Consumers	\$22,689.03
Energy Solutions for Vancouver Island et al.	\$4,711.00
First Nations Energy and Mining Council	\$27,909.78
Haisla Nation	\$3,864.95
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The Commission Panel notes that these are interim awards and will be included in any overall funding cap. Final awards will be based on the contribution and value provided by a PACA applicant to the Inquiry, as well as the other criteria established by the guidelines.

The Commission Panel also notes the comments of BC Hydro and BCTC about the potential benefit of a more detailed breakdown of activities undertaken, their purpose and the dates of the activities and the comments of the PACA Applicants in reply. The Hwlitsum First Nation raised a concern that disclosure of its application for costs to the utilities “gives rise to a breach of natural justice and procedural fairness” in that it allows the utilities to gain knowledge and insight into the Hwlitsum’s legal strategy. Other Participants who commented on that issue either did not object to the Commission stipulating the kind of detail it required or did not believe the comments of BC Hydro and BCTC applied to their application.

All Participants need to understand that the Commission Panel requires sufficient detail in the PACA applications to provide the Panel with a foundation upon which it can base the exercise of its discretion under section 118 of the Act. In the Panel’s view, this need not prejudice a Participant’s position, particularly considering that the requested disclosure is after the activity has taken place. For example, disclosing that one has spent x number of hours preparing a submission for a proceeding in which one is participating, does not say anything about the party’s strategy that has not already been made evident by the submission. Consequently, the Panel will continue to require a sufficient level of detail in future PACA applications. A Participant remains free to choose the level of detail it wishes to provide in support of its application. Ultimately, the burden rests with the Participant to persuade the Panel of the Participant’s entitlement to the PACA award it seeks.