

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-32-09**

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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
A.W.K. Anderson, Commissioner
D.A. Cote, Commissioner
M.R. Harle, Commissioner
R.K. Ravelli, Commissioner

October 26, 2009

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. By letter dated June 26, 2009 (Exhibit A-15), the Commission established a schedule for reviewing interim Participant Assistance/Cost Award ("PACA") applications for funding up to the June 24, 2009 Procedural Conference. Additionally, in its letter, the Commission asked Participants requesting PACA for the remainder of the Inquiry, and those who had not already submitted interim requests, to file their budgets by August 14, 2009; and
- D. On August 17, 2009 and September 21, 2009, the Commission issued Orders F-20-09 and F-26-09 respectively, awarding interim funds pursuant to section 118(1) of the UCA; and
- E. By letter dated October 2, 2009 (Exhibit A-28), the Commission provided information to Participants on PACA funding for the remainder of the Section 5 Inquiry whereby a bi-monthly approval process was outlined and organized into a number of Interim Funding Periods; and
- F. By the October 15, 2009 deadline established for Interim Funding Period 2 (in Exhibit A-28), the Commission received eleven applications requesting a total of \$311,218 pursuant to section 118 of the Act for PACA funding for the following Participants:

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Participant	Application
BC First Nations Energy and Mining Council	\$ 50,976.32
BC Old Age Pensioners Association, <i>et al.</i>	\$ 24,199.00
BC Sustainable Energy Association, <i>et al.</i> ("BCSEA, <i>et al.</i> ")	\$ 39,499.19
Carrier Sekani Tribal Council, <i>et al.</i>	\$ 12,800.20
Energy Solutions for Vancouver Island, <i>et al.</i>	\$ 5,699.25
Haisla Nation	\$ 15,343.50
Hwilitsum First Nation	\$ 36,389.07
Stó:lō Tribal Council	\$ 7,618.10
Toquaht Nation	\$ 31,822.54
Treaty 8 Tribal Association	\$ 71,475.12
We Wai Kai Nation (Cape Mudge Indian Band)	\$ 15,395.50
Total Application	\$ 311,217.79

- G. The Commission has reviewed the Period 2 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:

- Pursuant to section 118(1) of the Act, and subject to paragraph 2 of this Order, the Commission awards funds to the following for their participation in the Inquiry:

Participant	Awarded
BC First Nations Energy and Mining Council	\$ 25,039.21
BC Old Age Pensioners Association, <i>et al.</i>	\$ 24,199.00
BC Sustainable Energy Association, <i>et al.</i>	\$ 17,670.02
Carrier Sekani Tribal Council, <i>et al.</i>	\$ 12,800.20
Energy Solutions for Vancouver Island, <i>et al.</i>	\$ 5,699.25
Haisla Nation	\$ 7,215.00
Hwilitsum First Nation	\$ 20,956.16
Stó:lō Tribal Council	\$ 7,618.10
Toquaht Nation	\$ 9,769.54
Treaty 8 Tribal Association	\$ 16,721.44
We Wai Kai Nation (Cape Mudge Indian Band)	\$ 7,215.00
Total Award	\$ 154,902.92

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2. If BC Hydro, the British Columbia Transmission Corporation, and FortisBC Inc. (the “Utilities”) or any one of them, have material concerns about the level or value of expenditures for Period 2 of one or more of the PACA applicants, they are to file a letter of comment with the Commission within ten (10) days of this Order, and to provide a copy of the letter to the affected PACA applicant. The PACA applicant will have ten (10) days from the date of the filing of the letter of comment to file a reply with the Commission. In the event that a letter of comment is received, the PACA applicant’s interim award is subject to further order of the Inquiry Panel.
3. In the absence of the filing of a letter of comment by the Utilities, or any one of them, BC Hydro is directed to pay the Participant the amount of the Participant’s award in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of October 2009.

BY ORDER

Original signed by:

Liisa O’Hara
Panel Chair/Commissioner

Attachment

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

PERIOD 2 INTERIM AWARDS

REASONS FOR DECISION

1.0 INTRODUCTION

On October 2, 2009, the Commission issued a letter (Exhibit A-28) providing information to Participants on Participant Assistance/Cost Award ("PACA") funding for the remainder of the Section 5 Inquiry. In the letter, the Inquiry Panel implicitly acknowledged that the normal practice for PACA funding could create a barrier to effective participation in the Inquiry and accordingly allowed for interim funding in the unique circumstances of the Inquiry.

The letter outlines a bi-monthly approval process for interim PACA applications and organizes the process into a number of periods as shown below:

Period Number	Period Start	Period End	PACA Application Filing Date
1	Inquiry Start	June 24, 2009	July 3, 2009
2	June 24, 2009	September 30, 2009	October 15, 2009
3	October 1, 2009	November 30, 2009	December 15, 2009
4	December 1, 2009	January 31, 2010	February 15, 2010
5	February 1, 2010	March 31, 2010	April 15, 2010
6	April 1, 2010	May 31, 2010	June 15, 2010
7	June 1, 2010	Inquiry End	To be determined

* Note: Original table in Exhibit A-28 incorrectly showed some dates as 2009 when in fact they were supposed to read 2010. A corrected table was published in Exhibit A-29 and is reproduced, in part, above.

In order to expedite the bi-monthly approval process, the Inquiry Panel also took the exceptional step of asking BC Hydro, BCTC, and FortisBC (the "Utilities") to provide their comments to individual PACA applications on an exception only basis. The normal practice on PACA applications has been for the Utilities to provide their comments in advance of any PACA award by a Commission Panel.

The Inquiry Panel had previously agreed to allow PACA applicants to reply to the comments about their individual PACA applications made by the Utilities.

As part of the expedited process, the Inquiry Panel has decided to issue provisional interim awards. The amount of the PACA applicant's interim award will be subject to the filing of any letter of comment from the Utilities, or any one of them, on an exception basis within ten (10) days of the order making the interim award, copying the affected PACA applicant, with a right of reply by the PACA applicant within ten (10) days of the filing of the letter of comment and the Inquiry Panel's further determination. If no letter of comment is received within the time provided for the filing of letters of comment, the interim award is to be paid by BC Hydro in a timely manner. In the event that a letter of comment is received, the PACA applicant's interim award is subject to further order of the Inquiry Panel.

Copies of the individual PACA applications will be forwarded to the Utilities at the time of the issuing of these Reasons for Decision.

Section 118 provides that the Commission may make cost awards for participation in a proceeding. The Commission's PACA Guidelines ("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 PERIOD 2 PROCEEDING AND PREPARATION DAYS

Section 4 of the 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 Inquiry Panel's determination of the number of prorated proceeding days in Period 2 is as follows:

<u>Duty to Consult with First Nations</u>	<u>Proceeding Days</u>
Procedural Conference – August 18	1
Procedural Conference – August 19	1
TOTAL	2.0

The Inquiry Panel acknowledges that preparation of written and oral arguments in advance of the third Procedural Conference was uniquely complex and time consuming. Accordingly, the Inquiry Panel finds that a ratio of 3:1 preparation days for each conference day for legal counsel is reasonable, resulting in a total number of eight (8) days that can attract funding as the maximum for legal counsel for Period 2, subject to other funding criteria. The Inquiry Panel also finds the standard ratio of 2:1 preparation days for each conference day for a consultant is reasonable because no expert witness duties or preparation of technical evidence was required. This finding results in a total number of six (6) days that can attract funding as the maximum for a consultant for Period 2, subject to other funding criteria.

The Inquiry Panel wants to ensure that all Participants understand that these are interim awards only, in which maximum days are determined by formula. In its application, BCSEA, *et al.* requests the right to apply in a future Period for reimbursement of time not reimbursed in a current Period. BCSEA, *et al.* states, in part:

“...it is possible that during the period in which the main oral hearing occurs the number of proceeding days will yield a number of reimbursable days that exceeds the number of lawyer, case manager and expert days invoiced during that period alone. Essentially, some of the time not reimbursed in earlier periods will be brought forward as preparation for the main hearing. BCSEA, *et al.* view this approach as implicit in the concept that the bi-monthly PACA approval process will count cumulatively up to the approved budget filed by the Participant.”

The Inquiry Panel agrees that BCSEA, *et al.*'s comments accurately interpret the concept of the cumulative bi-monthly PACA process. Additionally, Participants are reminded that 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.

3.0 PERIOD 2 PACA APPLICATIONS

By the October 15, 2009 deadline established, the Commission received eleven applications summarized below:

Participant	Application
BC First Nations Energy and Mining Council	\$ 50,976.32
BC Old Age Pensioners Association, <i>et al.</i>	\$ 24,199.00
BC Sustainable Energy Association, <i>et al.</i>	\$ 39,499.19
Carrier Sekani Tribal Council, <i>et al.</i>	\$ 12,800.20
Energy Solutions for Vancouver Island, <i>et al.</i>	\$ 5,699.25
Haisla Nation	\$ 15,343.50
Hwiltsum First Nation	\$ 36,389.07
Stó:lō Tribal Council	\$ 7,618.10
Toquaht Nation	\$ 31,822.54
Treaty 8 Tribal Association	\$ 71,475.12
We Wai Kai Nation (Cape Mudge Indian Band)	\$ 15,395.50
Total Application	\$ 311,217.79

4.0 PERIOD 2 PRE-FUNDING FOR RELEVANT STUDIES

By the October 15, 2009 deadline established, the Commission did not receive any detailed requests to pre-fund studies in support of relevant evidence to be submitted to the Inquiry.

5.0 ADJUSTMENTS TO INDIVIDUAL PERIOD 2 PACA APPLICATION AMOUNTS

5.1 Maximum Days

Individual Period 2 PACA applications have been adjusted to reflect the maximums:

- six (6) allowed proceeding and preparation days for one consultant; and
- eight (8) allowed proceeding and preparation days for one counsel.

In some instances, the Inquiry Panel has also allowed two days for funding of a case manager at a maximum rate of \$500 per day. In addition to this general adjustment, the Inquiry Panel has 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. In determining the rate awarded for counsel, the Inquiry

Panel has considered the rate requested in the application and the years of call of the counsel in conjunction with the PACA guidelines.

5.2 Expenses

A number of Participants applied for reimbursement of travel expenses that were not associated with the third Procedural Conference and/or for reimbursement for multiple team members. In its October 2, 2009 letter (Exhibit A-28) the Commission stated:

“Some Participants have applied for reimbursement of costs associated with attendance and preparation for BC Hydro sponsored activities. The Inquiry Panel will not provide PACA funds for participation in these BC Hydro activities.”

Individual Period 2 PACA applications have been adjusted to allow, where applied for, travel expenses for one counsel, one consultant, and one case manager to the third Procedural Conference, and other relevant expenses as supported by receipts.

5.3 Joint Efforts to Reduce Costs

In its October 2, 2009 letter (Exhibit A-28) the Commission stated:

“Participants are strongly encouraged to combine their efforts wherever possible to reduce costs or increase the effectiveness of their participation. The Inquiry Panel will review all applications for interim and final funding for the undertaking of studies to determine whether there may be, or has been, a duplication of work. If Participants are not able to satisfy the Inquiry Panel that duplication could have been avoided, interim or final funding for the studies may be denied.”

In light of identical joint written (Exhibits C83-3, C83-4, C83-5, C84-3, C84-4 and C84-5) and oral submissions on First Nations Consultation Issues, the Inquiry Panel was not satisfied that applications from We Wai Kai (Cape Mudge Indian Band) and Haisla Nation warranted separate awards. Accordingly, the Period 2 award for these Participants was adjusted to award 4 days of legal counsel work for each, plus reasonable expenses.

6.0 INTERIM APPLICATIONS BY PARTICIPANTS WITHOUT AN APPROVED BUDGET

By letter dated June 26, 2009 (Exhibit A-15), the Commission asked Participants requesting participant assistance for the remainder of the Inquiry, and those who had not already submitted interim requests, to file their budgets by August 14, 2009. In addition, in its October 2, 2009 letter (Exhibit A-28) the Commission detailed the expedited PACA approval process which contemplates the filing of budgets. Between October 7, 2009 and October 9, 2009, Commission Staff issued letters to those Participants who filed budgets with the Commission informing Participants of the budget approved for the expedited bi-monthly cost awards from June 25, 2009 until the end of the oral hearing.

The Commission received a Period 2 PACA application from Carrier Sekani Tribal Council, *et al.* (“CSTC, *et al.*”) who have not submitted a budget to the Commission. In their October 13, 2009 application, CSTC, *et al.* referenced their August 11, 2009 letter to the Commission commenting on their inability to file a budget at that time and stated that:

“It is unclear how many proceeding days will take place, whether and to what extent our clients may require the services of one or more consultants and whether will we be able to continue to pursue our clients’ interest on a cooperative basis. As such, we find ourselves in no better position at this time to submit a budget estimate that is anything but speculative.”

Section 2 of the PACA Guidelines requires a budget, and all other PACA applicants have filed budgets which were approved by the Commission. While the Inquiry Panel has awarded bi-monthly funds to CSTC, *et al.* for Period 2, it will not continue to do so in future periods until a budget is received and approved.

7.0 PERIOD 2 COST AWARDS

Taking into account these adjustments, the PACA amounts applied for have been recalculated to determine the amount of the award. The BC Old Age Pensioners Association, *et al.* did not apply for interim funding for what is now referred to as Period 1 and their award includes funds for both interim Periods 1 and 2. The Period 2 awards, adjusted from the application amounts, are shown below:

Participant	Application	Awarded
BC First Nations Energy and Mining Council	\$ 50,976.32	\$ 25,039.21
BC Old Age Pensioners Association, <i>et al.</i>	\$ 24,199.00	\$ 24,199.00
BC Sustainable Energy Association, <i>et al.</i>	\$ 39,499.19	\$ 17,670.02
Carrier Sekani Tribal Council, <i>et al.</i>	\$ 12,800.20	\$ 12,800.20
Energy Solutions for Vancouver Island, <i>et al.</i>	\$ 5,699.25	\$ 5,699.25
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Treaty 8 Tribal Association	\$ 71,475.12	\$ 16,721.44
We Wai Kai Nation (Cape Mudge Indian Band)	\$ 15,395.50	\$ 7,215.00
Totals	\$ 311,217.79	\$ 154,902.92

As outlined in Exhibit A-28, these awards will count cumulatively up to the approved budget filed by the Participant. Participants are again reminded that these are interim awards, and costs above this approved budget amount may be applied for at the end of the oral hearing. 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.