

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-1-10**



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

**British Columbia Transmission Corporation
Reconsideration of the
Interior to Lower Mainland Transmission Project**

Application for Participant Assistance/Cost Award Funding – Second Interim Awards

BEFORE: A.J. Pullman, Commissioner
A.A. Rhodes, Commissioner
P.E. Vivian, Commissioner

January 7, 2010

O R D E R

WHEREAS:

- A. On November 5, 2007, the British Columbia Transmission Corporation ("BCTC") applied pursuant to sections 45 and 46 of the *Utilities Commission Act* ("the Act") for a Certificate of Public Convenience and Necessity ("CPCN") for the Interior to Lower Mainland ("ILM") Transmission Project (the "ILM Project"); and
- B. On August 5, 2008 the British Columbia Utilities Commission ("Commission") issued its Decision accompanied by Order C-4-08 that granted BCTC the CPCN for the ILM Project subject to conditions; and
- C. The Court of Appeal for British Columbia released its decision in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 on February 18, 2009. Madam Justice Huddart, on behalf of the Court, stated at paragraph 15:

"I would remit the scoping decision to the Commission for reconsideration in accordance with this Court's opinion, once certified, and direct that the effect of the CPCN be suspended for the purpose of determining whether the Crown's duty to consult and accommodate the Appellants had been met up to that decision point"; and

- D. On June 30, 2009 the Commission by Order G-83-09 ordered, in part, that Intervenor's intending to apply for participant assistance had to submit a budget estimate by July 9, 2009 consistent with the Commission's Participant Assistance/Cost Award ("PACA") Guidelines and Order G-72-07; and

- E. On August 25, 2009 following review of the PACA Applications received, the Commission by Order F-21-09 issued interim funding awards pursuant to section 118(1) of the *Utilities Commission Act* to five intervenors: Hwlitsum First Nation ("Hwlitsum"), Kwikwetlem First Nation ("Kwikwetlem"), Coldwater, Cook's Ferry, Siska and Ashcroft Bands (collectively, "Nlaka'pamux Bands"), Upper Nicola Band, the Okanagan Nation Alliance, and the Nlaka'pamux Nation Tribal Council (collectively, "NNTC et al."), and Stó:lō Tribal Council ("STC"). On September 24, 2009, the Commission issued Order F-27-09 increasing the Hwlitsum interim award; and
- F. On December 3, 2009 the Commission by Order G-144-09 ordered, in part, that Revised PACA Budget Estimates for a Second Interim Cost Award were due on December 7, 2009; and
- G. The Commission received six requests for an accelerated approval process for the Second Interim Awards. The six intervenors requesting a Second Interim Cost Awards are Kwikwetlem, Nlaka'pamux Bands, NNTC et al., STC, Stó:lō Hydro Ad Hoc Committee ("SHAC") and Hwlitsum; and
- H. BCTC provided its comments on the requests for Second Interim Cost Awards on December 16, 2009; and
- I. The Commission has reviewed the PACA Applications with regard to the criteria set out in the PACA Guidelines and has concluded that certain Second Interim Cost Awards should be approved for intervenors in the proceeding in accordance with the Reasons for Decision that are set out in Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 118(1) of the *Utilities Commission Act*, the Commission approves the following Cumulative Interim Cost Awards, subject to reduction by the amount of the First Interim Cost Award approved by Order G-21-09 and subject to paragraph 3 of this Order:

Participant	Cumulative Interim Cost Award	First Interim Cost Award	Second Interim Cost Award
Kwikwetlem	\$69,275.03	\$27,182.00	\$42,093.03
Nlaka'pamux Bands	56,831.50	20,232.50	36,599.00
NNTC et al.	127,959.32	35,000.00	92,959.32
STC	51,776.87	13,975.50	37,801.37
SHAC	49,440.40	0.00	49,440.40
Hwlitsum	50,000.00	25,287.34	24,712.66
Total	\$405,283.12	\$121,677.34	\$283,605.78

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-1-10**

3

2. BCTC is directed to pay the Intervenor the amount of the Intervenor's Second Interim Cost Award in a timely manner.
3. In the event that the final cost award approved by the Commission for an Intervenor is less than the Intervenor's Cumulative Interim Cost Award amount approved by this Order, the Intervenor is required to reimburse the difference to BCTC.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of January 2010.

BY ORDER

Original signed by:

A.J. Pullman
Commissioner

Attachment

British Columbia Transmission Corporation
Reconsideration of the
Interior to Lower Mainland Transmission Project

Application for Participant Assistance/Cost Award Funding – Second Interim Awards

REASONS FOR DECISION

1.0 INTRODUCTION

On November 5, 2007, the British Columbia Transmission Corporation (“BCTC”) applied pursuant to sections 45 and 46 of the *Utilities Commission Act* (“the Act”) for a Certificate of Public Convenience and Necessity (“CPCN”) for the Interior to Lower Mainland (“ILM”) Transmission Project (the “ILM Project”). On August 5, 2008 the British Columbia Utilities Commission (“Commission”) issued its Decision accompanied by Order C-4-08 that granted BCTC the CPCN for the ILM Project subject to conditions.

The Court of Appeal for British Columbia released its decision in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 on February 18, 2009. Madam Justice Huddart, on behalf of the Court, stated at paragraph 15:

“I would remit the scoping decision to the Commission for reconsideration in accordance with this Court’s opinion, once certified, and direct that the effect of the CPCN be suspended for the purpose of determining whether the Crown’s duty to consult and accommodate the Appellants had been met up to that decision point”.

On August 25, 2009 the Commission by Order F-21-09 issued interim funding awards to five Intervenor First Nations (“Hwilitsum”), Kwikwetlem First Nation (“Kwikwetlem”), Coldwater, Cook’s Ferry, Siska and Ashcroft Bands (collectively, “Nlaka’pamux Bands”), Upper Nicola Band, the Okanagan Nation Alliance, and the Nlaka’pamux Nation Tribal Council (collectively, “NNTC et al.”), and Stó:lō Tribal Council (“STC”). Subsequently, the Commission issued Order F-27-09 amending the Hwilitsum interim award.

On December 3, 2009 the Commission issued Order G-144-09 ordering, in part, that the revised Participant Assistance Cost Award (“PACA”) Budget Estimates for a Second Interim Cost Award were due on December 7, 2009.

In response to the registration deadline, the Commission received six requests for an accelerated approval process for the Second Interim Cost Awards. The six Intervenor First Nations requesting Second Interim Cost Awards are Kwikwetlem, Nlaka’pamux Bands, NNTC et al., STC, Stó:lō Hydro Ad Hoc Committee (“SHAC”) and Hwilitsum.

2.0 PARTICIPANT ASSISTANCE/COST AWARD FUNDING AND INTERIM AWARDS

Subsection 118(1) of the Act states: “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.” The Commission provides costs awards to participants to allow them to bring information to the Commission Panel that is relevant, useful,

and of value for the Commission Panel to make an informed decision. The Commission's PACA Guidelines attached as Appendix A to Order No. G-72-07 provide the participant eligibility criteria and application requirements for cost awards.

Section 3 of the PACA Guidelines addresses Interim Awards and states:

"In exceptional circumstances, the Commission Panel may approve the costs of retaining a consultant, Expert Witness/Specialist, or lawyer by a Participant under an accelerated approval process. If an accelerated approval process is approved, one of the following reimbursement alternatives may be ordered.

- (a) reimbursement of a consultant's, Expert Witness/Specialist's, or lawyer's approved invoice, or a portion thereof, that has been received after the regulatory proceeding has begun, but may be before the proceeding has concluded; or
- (b) advance payment(s) not to exceed fifty percent of the higher of the amount actually paid by the Participant and the Budget Estimate net of those items that may not be funded as per the advice from Commission staff pursuant to section 2.

In the case of 3(b) above, the Participant would also be required to file an application under Section 2 at the conclusion of the hearing, and the approved award, net of the advance payments, would be payable as per Section 2."

3.0 REQUESTS FOR AN ACCELERATED APPROVAL PROCESS FOR INTERIM AWARDS

As noted in section 1.0, the Commission received six requests for an accelerated approval process for Second Interim Cost Awards.

BCTC was provided a copy of the six requests. On December 18, 2009 BCTC provided general comments on all six applications and made some specific comments on the NNTC et al. and Hwlitsum applications.

In its comment letter, BCTC states, in part:

"All of the budget estimates submitted generally follow the Commission's guidelines, and with two exceptions, arrive at a similar cost structure for the projected length of the proceeding. BCTC questions the size of the budget estimates for both Hwlitsum First Nation and the UNB, ONA and NNTC, which are substantially larger than those of the other Intervenor. Given that the First Nation intervenors are not regular participants in Commission proceedings, BCTC believes that it also may be prudent to remind participants that final PACA awards may not be for the same amounts as Budget Estimates or interim funding."

To date, the proceeding has had three procedural conferences lasting less than full days (3 hours, 1 hour, and 1.5 hours). For this proceeding a half day for each procedural conference is reasonable given the time to set aside time, set-up, and attend. The Oral Public Hearing is scheduled for up to 15 days. Further, there may be one day for Oral Argument. This suggests a maximum of 17.5 proceeding days. Two preparation days for each

proceeding day suggests maximum funding days totalling 52.5 days. Many Intervenor have legal counsel estimates with more than the 52.5 days. Further allowances for Intervenor Evidence, Rebuttal Evidence, and complexity of issues may warrant further funding days for some Intervenor.

3.1 Kwikwetlem First Nation

Kwikwetlem submits it qualifies for an Interim Award under the PACA Guideline's accelerated approval process. The Kwikwetlem's Budget Estimate is \$138,550.05 consisting of legal fees (\$136,300) and disbursements (\$2,250.05). Kwikwetlem estimates 77.5 days of legal fees based on 10+ years of call and 5-10 years of call. The legal services include review of the application, Intervenor submissions, preparation and review of information requests, procedural conference attendance and preparation, rebuttal evidence, preparation and attendance at the oral hearing, and final argument, including oral argument. Kwikwetlem submits it is a small Band with very limited resources and the submission is made for "exceptional circumstances". Kwikwetlem requests the Commission provide a Second Interim Cost Award to assist with expenses.

The Commission Panel finds that the estimated days for legal fees is reasonable given the complexity and nature of the proceeding. Also, the Commission Panel finds that 50 percent of the Kwikwetlem Budget Estimate or \$69,275.03 is an appropriate cumulative advance payment in this proceeding. By Order No. G-21-09 Kwikwetlem previously received an Interim Cost Award of \$27,182.00.

The Commission approves a cumulative Interim Award of costs to Kwikwetlem of \$69,275.03. BCTC is to issue a cheque in the amount of \$42,093.03 to Kwikwetlem. Kwikwetlem will need to justify all of its costs in its final application for costs to ensure it meets the criteria stated in the PACA Guidelines. The final award by the Commission will be based on a total submission of costs that conform to the PACA Guidelines including the total maximum funding days allowed. In the event that the final award amount is less than the total approved Interim Award amount, Kwikwetlem is required to reimburse the difference back to the utility.

3.2 Nlaka'pamux Bands

The Nlaka'pamux Bands submit they qualify for an Interim Award under the PACA Guideline's accelerated approval process as they are a small First Nation with very limited resources. The Bands' submission is made for "exceptional circumstances". The Nlaka'pamux Bands' Budget Estimate is \$113,663.00 consisting of legal fees (\$109,070.00) and disbursements (\$4,593.00). The Nlaka'pamux Bands estimates 69.25 days of legal fees based on 10+ years of call and 1-5 years of call. The Nlaka'pamux Bands request a Second Interim Cost Award to assist the Nlaka'pamux Bands with its expenses.

The Commission Panel finds that 50 percent of the Nlaka'pamux Bands Budget Estimate or \$56,831.50 is an appropriate cumulative advance payment in this proceeding. By Order No. G-21-09 the Nlaka'pamux Bands previously received an Interim Cost Award of \$20,232.50.

The Commission approves a cumulative Interim Award of costs to the Nlaka'pamux Bands of \$56,831.50. BCTC is to issue a cheque in the amount of \$36,599.00 to the Nlaka'pamux Bands. The Nlaka'pamux Bands will need to justify all their costs in their final application to ensure they meet the criteria stated in the PACA Guidelines. The final award by the Commission will be based on the total submission of costs that conform to the PACA Guidelines including the total maximum funding days allowed. In the event that the final award amount is less than the total approved Interim Award amount, the Nlaka'pamux Bands are required to reimburse the difference back to the utility.

3.3 NNTC et al.

The NNTC et al. submit they qualify for an Interim Award under the PACA Guideline's accelerated approval process as they have limited resources and it would provide them with certainty related to funding. The NNTC et al. are seeking a Second Interim Cost award of 50 percent of their Budget Estimate. The Budget Estimate requests an amount of \$255,918.63 which the Commission Panel has calculated by adding up the various components of the Budget Estimate, although the total amount is not expressly stated in the request.

The detailed costs included in the Budget Estimate are:

Item	Amount
Estimate of Legal Fees: 102 days + Disbursements and other costs	\$137,100.00
UNB Case Manager – 30 days x \$500/day + accommodation + meals + mileage	\$15,287.32
ONA Case Manager – 30 days x \$500/day + accommodation + meals + mileage	\$16,610.19
NNTC Case Manager – 30 days x \$500/day + accommodation + meals + mileage	\$15,909.67
UNB Consultants – Cultural Heritage Resources 10 days x \$800 – Governance Liaison Researcher 3 days x \$640	\$9,920.00
ONA Consultants – GIS Technician 6.5 days x \$800 – Qualitative Data Analyst 8 days x \$1250 + air + accommodation + meals	\$16,184.75
NNTC Consultants – Research Coordinator 10 days x \$800 – Cultural Heritage Resources Manager 10 days x \$800 – GIS Technician 10 days x \$800 + mileage + accommodation + meals – Archaeologist 10 days x \$800 + mileage + accommodation + meals	\$33,801.90
Disbursements for 3 Representatives to attend the oral hearing UNB \$1,455.08 ONA \$1,557.98 NNTC \$1,449.20	\$4,462.26
UNB/ONA/NNTC Witness Panel Members UNB/ONA \$3,484.44 NNTC \$3,158.10	\$6,642.54
Total Budget Estimate	\$255,918.63
Request for 50 percent of Budget Estimate as Interim Award	
Total Interim Award Request	\$127,959.32

The Commission Panel is concerned with the large difference between the NNTC et al. Budget Estimate compared to those of other Intervenor. Notably, the level of consulting services appears to be disproportionately high relative to other Intervenor. The legal fees include 102 days that are substantially more than Kwikwetlem's 77.5 days. The Commission Panel recognizes the need for consultants, but is very concerned with the extensive level of anticipated work to be performed by the three case managers and the various consultants. In the final application for award the NNTC et al. will need to demonstrate in detail and justify the level of use for each of the case managers and consultants that aided the Commission in a greater understanding of the relevant issues. Failure to provide sufficient information to justify an award may result in a reduced cost award from that requested.

Based on the NNTC et al. submission, the Commission Panel believes that the anticipated disbursements for three representatives from UNB, ONA and NNTC to attend the hearing in a representative capacity for 6 days each are reasonable. The Commission Panel also believes that the anticipated disbursements for the Witness Panels are reasonable.

Although the Commission Panel has concerns regarding the level of days required for legal services, case managers, and consultants, the Commission finds that 50 percent of the NNTC et al. Budget Estimate of \$255,918.63 is acceptable for the purpose of a Second Interim Cost Award. By Order No. G-21-09 NNTC et al. previously received an Interim Cost Award of \$35,000.00.

The Commission approves a cumulative Interim Award of costs to the NNTC et al. of \$127,959.32. BCTC is to issue a cheque in the amount of \$92,959.32 to the NNTC et al. The NNTC et al. will need to justify all their costs in their final application to ensure they meet the criteria stated in the PACA Guide lines. The final award by the Commission will be based on the total submission of costs that conform to the PACA Guidelines including the total maximum funding days allowed. The Commission Panel may be persuaded as a result of reviewing the final application that the case managers' and consultants' costs were reasonably incurred and helpful to the Commission and therefore eligible for reimbursement in the final cost award. However, based on the information currently provided to date, the NNTC et al. may not receive full reimbursement in the final cost award for the case managers and consultants. The purpose of this proceeding is to hear evidence on the adequacy of consultation up to the point of the decision of August 5, 2008. In the event that the final award amount is less than the total approved Interim Award amount, the NNTC et al are required to reimburse the difference back to the utility.

3.4 Stó:lō Tribal Council

The STC submits it qualifies for an Interim Award under the PACA Guideline's accelerated approval process.

The costs in the Budget Estimate are summarized below:

Item	Amount
<u>May 15 – November 30, 2009</u> Dave Joe Law Corporation 14 hours x \$225/hr = \$3,150 Underhill, Boies, Parker Law Corporation 72 hours x \$225/hr + taxes + disbursements = \$17,917.73 Research Expense: Gentian Environmental Research Consulting 19.5 days x \$500/day = \$9,750 Consultation & Research Expense – Stó:lō Tribal Council Otis Jasper – 2 days x \$500/day = \$1,000 Frank Andrew – 2 days x \$500/day = \$1,000 Steering Committee Honoraria – 1 meeting x \$100/person x 5 people = \$500 Steering Committee meeting – Food costs = \$150.00 Total Consultation & Research Expense \$2,650	
Total First Request	\$33,467.73
<u>Period December 1, 2009 till end of Reconsideration</u> Legal Services: 34 days x \$1800/day = \$61,200 Consultant – Gentian Environmental Research Consulting 12 days x \$500/day = \$6,000 Consultant – Land & Resource Management Outreach Coordinator 2 days x \$500/day = \$1,000 Honoraria for Steering Committee Members \$2,000 Witnesses: reimbursement for foregone earnings \$1,050 Food Costs: Oral Hearing and Witnesses \$586.00 Food Costs: Lunch 2 S'olh Temexw Steering Committee Meetings \$360.00 Travel Costs: Travel and Hotel \$900.00	
Total Second Request	\$73,096.00
Total Budget Estimate	\$106,563.7.
Request for minimum 50 percent of Budget Estimate as Interim Award	
Total Interim Award Request	\$53,281.87

The Commission Panel has concerns regarding (1) \$500/day award for possible employees of the Stó:lō Tribal Council; (2) Steering Committee Honoraria; and (3) Steering Committee food costs. The Commission normally reimburses for foregone earnings to the level of \$175/day. The Commission does not normally reimburse for honoraria (\$2,500) and food costs in meetings (\$510), and declines to do so at this time. The re-calculated Budget Estimated without honoraria and food costs for meetings is \$103,553.73.

The Commission Panel finds that 50 percent of the STC Budget Estimate without honoraria and food costs for meetings or \$51,776.87 is an appropriate cumulative advance payment in this proceeding. The STC will need to provide further documentation that the two individuals are consultants and not employees of STC. By Order No. G-21-09 STC previously received an Interim Cost Award of \$13,975.50.

The Commission approves a cumulative Interim Award of costs to the STC of \$51,776.87. BCTC is to issue a cheque in the amount of \$37,801.37 to the STC. The STC will need to justify all its costs in its final application to ensure it meets the criteria stated in the PACA Guidelines. The final award by the Commission will be based on the total submission of costs that conform to the PACA Guidelines including the total maximum funding days allowed. In the event that the final award amount is less than the total approved Interim Award amount, the STC is required to reimburse the difference back to the utility.

3.5 Stó:lō Hydro Ad Hoc Committee

SHAC represents six Stó:lō First Nations. SHAC submits it has no ability to participate in further phases of the proceeding without participant assistance funding. SHAC explains it did not seek intervenor funding previously since it became actively involved in the proceeding upon a review responses by BCTC to BCUC Information Request No. 1.

The budget estimate of SHAC is shown below:

Item	Amount
<u>September 1, 2009 to December 4, 2009</u>	
Legal Services: 90.4 hours at \$200 and \$220/hr = \$18,844	
Consultants: 16.5 hours at \$90 and \$130 per hour = \$1,595	
Disbursements \$70.80	
Total First Portion	\$20,509.80
<u>Period December 5, 2009 till end of Reconsideration</u>	
Legal Services: 43 days x \$1400/day = \$60,200	
Technical / Environmental Consultants: 1.5 days x \$1250/day = \$1,875	
Witnesses (2 attending): Proceeding – 2 days at \$1,250 per day x 2 = \$5,000 Preparation – 4 days at \$1,250 per day x 2 = \$10,000	

Disbursements: Travel, Meals, and Accommodation for 2 witnesses = \$1,196 Scanning/Printing/Courier = \$100	
Total Second Portion	\$78,371.00
Total Budget Estimate	\$98,880.80

The Commission Panel finds that 50 percent of the SHAC Budget Estimate or \$49,440.40 is an appropriate cumulative advance payment in this proceeding.

The Commission approves a cumulative Interim Award of costs to the SHAC of \$49,440.40. BCTC is to issue a cheque in the amount of \$49,440.40 to the SHAC. The SHAC will need to justify all its costs in its final application to ensure it meets the criteria stated in the PACA Guidelines. The final award by the Commission will be based on the total submission of costs that conform to the PACA Guidelines including the total maximum funding days allowed. In the event that the final award amount is less than the total approved Interim Award amount, the SHAC is required to reimburse the difference back to the utility.

3.6 Hwlitsum First Nation

Hwlitsum submits it qualifies for a Second Interim Award under the PACA Guideline's accelerated approval process as they have limited resources and it would provide them with certainty related to funding. Hwlitsum's Budget Estimate is \$211,696.52 which appears to contain a calculation error. The Commission Panel has re-calculated the Budget Estimate to be \$201,696.52 consisting of legal fees, consulting costs, and disbursements. The details of the re-calculated Budget Estimate are shown below.

Item	Amount
<u>Part 1: March 23, 2009 to November 30, 2009</u>	
Legal Counsel: March 23, 2009 to July 9, 2009 68 hours x \$200 per hour + expenses = \$14,756.55	
July 10, 2009 to November 30, 2009 118.7 hours x \$200 per hour + expenses = \$25,739.25	
Consultant March 23, 2009 to July 9, 2009 6 days x \$1000 per day + expenses = \$6,551.38	
July 10, 2009 to November 30, 2009 15.75 days x \$1000 per day + expenses = \$17,281.34	
Total Part 1	\$64,328.52
<u>Part 2: Dec. 1, 2009 till end of Reconsideration</u>	
Legal Counsel: 49 days x \$1600 per day = \$78,400.00	

Consultant: 50 days x \$1000 per day = \$50,000.00	
Transportation, Meals, and Accommodation = \$8,968.00	
Total Part 2	\$137,368.00
Total Budget Estimate	\$201,696.52
Request for 50 percent of Budget Estimate as Interim Award	
Total Interim Award Request	\$100,848.26

Hwlitsum seek a cumulative interim cost award for half of the total Budget Estimate.

The Hwlitsum projects approximately 72 days legal services and 72 days for consulting services. This level of resources appears to be higher than other First Nation intervenors that in many cases are representing more than one First Nation. STC has a Budget Estimate of 43.6 days of legal services and 37.5 days for consultants. SHAC has a Budget Estimate of 55 days of legal services and 3.7 days for consultants. The Nlaka'pamux Bands has a Budget Estimate of 69.25 days of legal services and no consulting services. In the case of Kwikwetlem, representing one First Nation, the Budget Estimate includes 77.5 days for legal services and no consulting services. Each Intervenor seeking participant cost awards is expected to participate in a manner that would assist the Commission Panel to make an informed decision. The Commission Panel would normally expect the level of effort to be commensurate with the time required to address the substantial interest in a substantial issue criterion for the Intervenor.

In this proceeding the level of consultation required by the Crown on the Haida spectrum and the adequacy of the Crown's consultation should serve as a guide for a First Nation's level of participation to address the substantial issue criterion. A high level on the Haida spectrum would suggest a greater level of participation by a First Nation to aid the Commission Panel in arriving at its decision on whether the Crown has adequately discharged its duty. Conversely, a low level on the Haida spectrum suggests a lower level of participation by a First Nation.

The Commission Panel is concerned that the Hwlitsum may be utilizing resources that may not receive full cost award funding. The Hwlitsum in its final application for a cost award will need to demonstrate that it meets the PACA Guidelines, has participated effectively and efficiently, and provided useful information to the Commission Panel. At this time, it appears to the Commission Panel that the intervention by the Hwlitsum may be more comparable (and possibly less so) to that of the STC and SHAC. In this proceeding STC and SHAC represent multiple First Nations. Based on this comparison the appropriate Budget Estimate for the Hwlitsum is \$100,000. Therefore, Commission Panel finds that 50 percent of the \$100,000 or \$50,000.00 is an appropriate cumulative advance payment in this proceeding.

The Commission approves a cumulative Interim Award of costs to the Hwlitsum of \$50,000.00. By Order F-21-09 and Order F-24-09 the Hwlitsum previously received interim awards of \$16,622.38 and \$8,664.96, totalling \$25,287.34. **Therefore, BCTC is to issue a cheque in the amount of \$24,712.66 for the difference.** The Hwlitsum will need to justify all its costs in its final application to ensure it meets the criteria stated in the PACA Guidelines. The final award by the Commission will be based on the total submission of costs that conform to

the PACA Guidelines including the total maximum funding days allowed. In the event that the final award amount is less than the total approved Interim Award amount, the Hwlitsum is required to reimburse the difference back to the utility.

4.0 FINAL AWARDS

The Commission Panel in providing the Second Interim Cost Awards has not disallowed any final costs at this time, though the Commission Panel has declined to include certain honoraria and food costs in the Budget Estimates. However, each participant should be mindful of justifying all the costs in the final application based on the criteria stated in the PACA Guidelines and take into consideration the Commission staff letter providing comments or concerns on the funding request. The Commission generally awards costs for legal and consulting based on the number of proceeding days plus preparation days. The Commission expects participants to provide information of value that would be helpful in the Commission Panel in making its decision. This should be done in a reasonable and cost effective manner. Participants should make the effort to minimize costs where possible. Participant funding to eligible participants is intended to aid the Commission in gaining a full understanding of the relevant issues. Participants who do not demonstrate that their participation has allowed the Commission to gain a fuller understanding are at risk for not receiving their full funding requests.

The final awards by the Commission will be based on the total submission of costs that conform to the PACA Guidelines. In the final application each participant is to include a full accounting of all costs with invoices that include actual hours, rate charged, and itemized purpose for each segment of time. The justification for the rate must be provided along with the resume or CV or years of call (if not already provided). It is not sufficient to show costs were incurred. To receive a cost award the participant must demonstrate how the use of each resource contributed to the Commission's greater understanding of the relevant issues in the proceeding. In the event that the final award amount is less than the total approved Interim Award amount, the participant is required to reimburse the difference back to the utility.

The specific context for each participant will be different. Those participants with significant issues would suggest a greater need for a higher cost award than those participants with less significant issues. Final cost awards to participants may not be the same as the Budget Estimates or the interim funding allowed.