



ORDER NUMBER
F-31-19

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

and

British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry
Interim Participant Assistance/Cost Award Application

BEFORE:

D. M. Morton, Panel Chair
C. M. Brewer, Commissioner
A. K. Fung, QC, Commissioner
E. B. Lockhart, Commissioner

on December 20, 2019

ORDER

WHEREAS:

- A. On March 11, 2019, the Lieutenant Governor in Council, by Order in Council (OIC) No. 108, requested the British Columbia Utilities Commission (BCUC), pursuant to section 5(1) of the *Utilities Commission Act* (UCA), to advise the Lieutenant Governor in Council respecting the regulation of Indigenous utilities in accordance with the terms of reference set out in section 3 of OIC No. 108 (Indigenous Utilities Inquiry);
- B. By Order G-71-19 dated March 28, 2019, the BCUC established a regulatory timetable for the Indigenous Utilities Inquiry, which includes one round of BCUC information requests (IRs) and one round of intervener IRs, with further process to be determined. The regulatory timetable was amended by Order G-110-19, Order G-190-19, Order G-214-19 and Order G-240-19;
- C. Kitselas Geothermal Inc. (KGI) and Canadian Geothermal Energy Association (CanGEA) applied for intervener status on May 21, 2019 and May 22, 2019 respectively;
- D. The following participants filed updated Interim Participant Assistance/Cost Award (PACA) applications (Interim PACA Applications) with the BCUC with respect to their participation in the proceeding pursuant to the BCUC's Participant Assistance/Cost Award (PACA) Guidelines for the period up to July 15, 2019:

Date	Participant	Application including GST
August 21, 2019	KGI	\$88,695.80
August 13, 2019	CanGEA	\$27,431.95

- E. BCUC staff requested further information regarding the Interim PACA Applications. KGI and CanGEA responded on August 13, 2019 and August 21, 2019, respectively;
- F. On September 9 and September 10, 2019, FortisBC Group of Companies¹ (FortisBC) and British Columbia Hydro and Power Authority (BC Hydro) provided their comments on the interim PACA applications. On December 10, 2019 Pacific Norther Gas provided their comments on the interim PACA applications;
- G. Section 5.5 of the PACA Guidelines, attached to BCUC Order G-97-17, states that if interim funding is granted, it is up to the BCUC's discretion whether such funding constitutes a final award for costs already incurred; or constitutes an advance against the BCUC's final cost award determination after the conclusion of the proceeding; and
- H. The BCUC has reviewed the Interim PACA applications in accordance with the criteria and rates set out in the PACA Guidelines, and concludes that the applicants' Interim PACA Applications should be approved at a scaled amount as final awards for costs incurred up to submission of written evidence on July 15, 2019.

NOW THEREFORE pursuant to section 118(1) of the UCA, the BCUC orders as follows:

Subject to the terms set out in the reasons for decision attached as Appendix A to this order final awards are in the amounts listed below are approved for the following interveners for their participation to July 15, 2019 in the Indigenous Utilities Inquiry:

Participant	Applied For	Award
KGI	\$88,695.80	\$32,946.77
CanGEA	\$27,431.95	\$7,756.95

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of December 2019.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

¹ Including FortisBC Energy Inc. (FEI), FortisBC Inc. (FBC), FortisBC Alternative Energy Services Inc. (FAES), and Mt. Hayes Limited Partnership (MHLP).

British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry
Participant Assistance/Cost Award Application

REASONS FOR DECISION

Table of Contents

Page no.

1.0	Introduction	2
1.1	The Applications	2
1.2	The Applicants	2
1.3	Legislative Framework.....	2
1.4	Review Process	3
2.0	PACA Funding for KGI.....	4
2.1	Eligibility for PACA Funding	4
2.2	Eligibility for Professional Fees.....	4
2.3	Eligibility for Disbursements and Other Costs.....	7
2.4	Summary of KGI Cost Award	7
3.0	CanGEA	7
3.1	Eligibility for PACA Funding	7
3.2	Eligibility for Professional Fees.....	8
3.3	Eligibility for Disbursements and Other Costs.....	9
3.4	Summary of CanGEA Cost Award	9

1.0 Introduction

On March 11, 2019, the Lieutenant Governor in Council directed the British Columbia Utilities Commission (BCUC) to provide recommendations to Government regarding the regulation of Indigenous utilities in British Columbia (Inquiry). The terms of the Inquiry have been outlined in Order in Council (OIC) No. 108. The BCUC established the Inquiry on March 19, 2019 by Order G-62-19.

By Order G-71-19, the BCUC established a regulatory process for the Inquiry. The regulatory timetable was amended by Orders G-110-19, G-190-19, G-214-19 and G-240-19, and includes a series of community input sessions, written evidence, oral hearing, one round of information requests, workshops on the draft report and comments on draft report.

1.1 The Applications

On July 29, 2019, Kitselas Geothermal Inc (KGI) and Canadian Geothermal Energy Association (CanGEA) filed applications for interim funding pursuant to the BCUC's Participant Assistance/Cost Award (PACA) Guidelines (Interim PACA Applications) for the period up to July 15, 2019. Following BCUC staff questions in August 2019, CanGEA and KGI provided updated interim PACA applications.

1.2 The Applicants

According to KGI's intervener application dated May 21, 2019,² KGI "is a First Nations majority-owned company that is committed to developing geothermal energy projects for the Kitselas First Nation and the surrounding area." KGI submits that as a First Nation majority-owned company, KGI would be impacted by the BCUC's recommendations as a result of this Inquiry.

On May 22, 2019, CanGEA applied to be an intervener. CanGEA is a national association focused on advancing the development of geothermal heat and electricity projects across Canada. According to its application³, CanGEA is participating in this Inquiry to ensure that geothermal energy as a utility is adequately represented and understood in the proceeding. CanGEA states it can provide information on geothermal utility projects (heat-only, electricity-only, and electricity and heating project) from around the world, with a focus on municipal and indigenous-owned projects.

KGI and CanGEA are both registered interveners in the Inquiry.

1.3 Legislative Framework

Section 118 of the *Utilities Commission Act* (UCA) states that the BCUC may order a participant in a proceeding before the BCUC to pay all or part of the costs of another participant in the proceeding.⁴

Order G-97-17 outlines the BCUC's Participant Assistance/Cost Award Guidelines (PACA Guidelines).⁵ Section 3.0 relates to participant eligibility for a cost award and Section 4.0 relates to criteria for a cost award. Some key criteria outlined in Section 4.0 include the considerations in determining the amount of the award the BCUC will

² Exhibit C6-1.

³ Exhibit C7-1.

⁴ *Utilities Commission Act*, RSBC 1996, c. 473, s. 118.

⁵ British Columbia Utilities Commission (BCUC), Participant Assistance/Cost Award (PACA) Guidelines, Order G-97-17 dated June 15, 2017.

consider, including whether the participant contributed to a better understanding by the BCUC of the issues in the proceeding, or whether the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive. Section 4.0 also specifies the BCUC may make adjustments for partial funding days in cost awards.

Section 5.0 of the PACA Guidelines specifies the application process, requirements, and considerations for assessing interim funding requests, including Sections 3.0 and 4.0 of the PACA Guidelines. The BCUC must be satisfied that the participant has demonstrated a need for financial assistance; and that the proceeding is lengthy. Specifically, in relation to determining the amount of interim funding, Section 5.5 states:

If interim funding is granted, the Commission will make a determination as to whether the amount

(a) constitutes a final award for costs already incurred; or

(b) constitutes an advance against the Commission's final cost award determination after the conclusion of the proceeding.

The Panel has discretion as to whether any interim PACA amount awarded should be for the full amount sought or should be scaled.

Section 7.0 outlines the BCUC's expectations for PACA applicants including the use of professional services in a cost-effective manner and making efforts to avoid duplication of services, and as such the BCUC may adjust cost awards where any duplication appears to have occurred. In addition, consultants, specialists and expert witnesses are expected to provide services specific to their technical expertise.

1.4 Review Process

BCUC staff requested additional information from KGI and CanGEA. KGI provided its response to BCUC staff questions on August 21, 2019, and CanGEA provided its response on August 13, 2019 in the form of an updated application. BC Hydro, PNG, and FortisBC Group of Companies⁶ (FortisBC) were provided with copies of the Interim PACA Applications and the applicants' responses to BCUC staff questions along with the opportunity to comment on the applications.

BC Hydro provided its comments on the Interim PACA Applications on September 10, 2019,⁷ stating that, in regard to KGI's application that the nine positions being applied for is "a greater number of roles and individuals than is commonly observed for a single intervener. It is unclear to BC Hydro that the costs of having this number of positions and individuals is fair and reasonable as instructed in the PACA guidelines." On September 9, 2019, FortisBC provided its response to the Interim PACA Applications.⁸ FortisBC has no comment on the applications themselves but notes that "if the BCUC is satisfied that the participants have met the eligibility requirements, that the funding days claimed are appropriate, and that the level of participation has met with the BCUC's criteria and requirements, then FortisBC has no further comment." Similarly, PNG had no further comment on the interim applications⁹. KGI provided its reply comments on September 13, 2019.¹⁰ In those comments KGI acknowledged BC Hydro's assessment that KGI's preparation time and consultation are beyond what is common

⁶ Including FortisBC Energy Inc. (FEI), FortisBC Inc. (FBC), FortisBC Alternative Energy Services Inc. (FAES), and Mt. Hayes Limited Partnership (MHLF).

⁷ [BC Hydro Interim PACA response](#)

⁸ [Fortis BC Interim PACA response](#)

⁹ [PNG Interim PACA response](#)

¹⁰ [KGI Interim PACA Response to BC Hydro](#)

for a single intervener. However, KGI argues this is due to KGI's inexperience in providing evidence to the BCUC and the complexity of KGI's intervention compared to BC Hydro's intervention.

2.0 PACA Funding for KGI

2.1 Eligibility for PACA Funding

KGI is applying under both Sections 5(a) and 5(b) of the PACA Guidelines. It states that the reason KGI is applying for interim funding is due to the length and cost of the hearing. When asked by staff to expand upon how the interim funding request meets the criteria of Section 5.0, KGI responded that it is majority-owned by the Kitselas Development Corporation, which in turn is 100 percent owned by Kitselas First Nation. The Nation did not budget for the Inquiry as there were only three months between the Inquiry being announced and when the input sessions began. KGI spent unbudgeted funds to prepare for the sessions and provide written evidentiary submissions, and as a company with minimal resources, KGI argues if it does not receive interim funding, the impact would be proportionately larger on Kitselas First Nation than on larger corporations with sufficient funds.

KGI is seeking \$88,695.80 for interim funding for costs incurred thus far (up to written evidence, due July 15, 2019) to participate in the Inquiry. It has also signalled it intends to apply for PACA funding again post final intervener submissions (due September 27, 2019) and again in February 2020 following the release of the final report.

Panel Determination

The Panel determines that KGI qualifies for an interim funding award but considers the amount being sought excessive.

2.2 Eligibility for Professional Fees

Efficiency and Avoiding Duplication

Section 7.1 of the PACA Guidelines states the BCUC “...expects participants to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, expert witnesses and case managers. The Commission may adjust cost awards where any duplication appears to have occurred.”¹¹

KGI sent three employees to the Victoria Community Input Session as well as provided testimony at four different Community Input Sessions (Williams Lake, Prince George, Prince Rupert and Victoria). KGI has claimed costs for appearances at multiple Community Input Sessions for its staff including:

- Mr. T. Thompson, who presented at the Williams Lake and Prince George Community Input Session and the Vancouver Oral Hearing;
- Mr. A. McDames, who presented at the Prince Rupert Community Input Session;
- Mr. C. Knight (a consultant employed by KGI from Conterra Advisory services) and Mr. E. Bolton, both presented on behalf of KGI at the same Community Input session in Victoria; and
- Ms. D. Kennedy (also a consultant from Conterra Advisory Service), who attended the same Victoria Community Input Session but did not present to the Panel.

¹¹ Emphasis added.

KGI used a case manager to coordinate the effective use of services, which is permitted under Section 7.10 of the PACA Guidelines. KGI seeks a total of 7.74 funding days for its case manager.

Funding Days

KGI is claiming for a total of 45.3 days spent by professionals on the Inquiry up to the point of having submitted written evidence.

The relevant criteria in the PACA Guidelines in regards to funding days are set out in Section 4.2 which states;

[i]n determining the funding days of a proceeding, the Commission will consider the following:
(a) for an oral/in-person proceeding or an oral/in-person portion of a proceeding, funding days will typically be determined by the number of proceeding days and may include preparation days on a ratio of 2 funding days per proceeding day. Proceeding days include workshop days, negotiation days, procedural conference days, oral hearing days, streamlined review process days, oral argument days, and other in-person processes in a proceeding. The Commission may make adjustments for partial funding days in cost awards.

Section 7.2 is also relevant and states “[m]aximum daily fees in Attachment A are based on an 8-hour day. Awards may be prorated for partial funding days. Where the actual billing rate for an 8-hour day is less than the maximum daily fee, the lesser amount will be used for the award.”

The Community Input Sessions were scheduled from 10:00 am – 3:00 pm with a lunch break, and typically finished early. In regards to the hours claimed by KGI in relation to attending and preparing for the community input sessions, KGI is claiming funding for the following:

- Mr. T. Thompson is claiming two eight-hour days for presenting at the Williams Lake and Prince George Community Input Sessions; and
- Mr. A. McDames, Mr. C. Knight, Ms. D. Kennedy and Mr. E. Bolton are claiming one eight-hour day each for presenting at or attending the Prince Rupert and Victoria Community Input Sessions.

Furthermore, in addition to the days claimed for attending the Community Input Sessions, KGI is claiming approximately 4.5 days to “debrief/documentation” of proceeding with KGI’s partner-Kitselas First Nation.

Specialists

Section 7.5 of the PACA Guidelines states “[c]onsultants are expected to provide services related to their technical expertise and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for specific tasks.”¹²

KGI is claiming the maximum daily rate of \$2,150 for a specialist for each of Mr. A. McDames, Mr. P. Thompson and Mr. T. Thompson.

The criteria for a specialist are outlined in Section 7.6 of the PACA Guidelines. The expectation is that specialists provide services related to their specialised technical expertise, and their expertise is related to the scope of the inquiry.

¹² Emphasis added.

Panel Discussion

BCUC staff prepared an estimate for Funding Days for participation in the full Inquiry. Staff estimates are not binding on the Panel, but rather are there to indicate reasonableness. KGI is claiming for approximately 45 days of preparation for work so far up until its written evidence submission on July 15, 2019.

The Panel notes KGI sent three representatives to the Victoria Community Input Session as well as providing testimony at four different Community Input Sessions (Williams Lake, Prince George, Prince Rupert and Victoria). While the Panel appreciates that KGI comprises different partners who want to provide their own opinions and refine their views upon hearing from other interveners, having multiple representatives attend the Community Input Sessions leads to unnecessary duplication and repetition. Although separate from the PACA Guidelines, the Panel notes that the Capacity Funding Framework¹³ for Community Input Sessions limits claims to presentation at one Community Input Session, and the Panel considers this is a fair starting point for PACA claims. However, the Panel recognizes the importance of having KGI's partner, Kitselas First Nation, present its own perspective on the Inquiry, and therefore determines that KGI should be awarded funding for presentation at one Community Input Session, plus the presentation of Mr. A. McDames.

Furthermore, the Panel considers that claiming a full eight-hour day for a half-day workshop is not appropriate and the daily rate should be pro-rated. In this regard and in accordance with Section 7.2 of the PACA Guidelines, the Panel would pro-rate the funding day for KGI representatives presenting at the Community Input Sessions from one full eight-hour day per proceeding to a 0.5 day.

With respect to the non-proceeding professional fees, the Panel is not persuaded that KGI's process thus far has been entirely efficient. The Panel recognizes the need to co-ordinate with KGI's partner, but considers that the 4.5 days claimed between Mr. C. Knight, Mr. E. Bolton and Mr. P. Thompson to "debrief/documentation" of the proceeding with Kitselas First Nation is excessive, and determines that two full days would be appropriate. While the Panel considers 7.74 days for a case manager to be on the high side, the BCUC supports the use of case managers where this reduces costs elsewhere.

The remainder of the professional fees claimed for preparation related to participation at Community Input Sessions and the filing of written evidence can be summarized in the table below:

Participant	Preparation Days
T. Thompson	10.38
E. Sibtain	1
D. Kennedy	5.75
A. Thompson	8.8
Total	25.93

The Panel considers that the total number of funding days claimed is excessive and that the oral submissions made by KGI were repetitive. Furthermore, the Panel notes that portions of KGI's oral and written submissions were addressing matters very specific to geothermal projects that were not in scope of this Inquiry. In consideration of the above, the Panel considers that a funding award of 10 days is appropriate.

¹³ Exhibit A-10.

With regards to the amounts claimed for specialists, the Panel determines Mr. T. Thompson, a regulatory specialist and Mr. P. Thompson, a consultant with 7+ years experience, be awarded a maximum daily consultant rate of \$1,850. The expert/specialist rate is typically reserved for individuals providing evidence or testimony on a subject related to their expertise where this expertise is directly relevant to the proceeding.

2.3 Eligibility for Disbursements and Other Costs

KGI has claimed travel expenses for one round trip for Mr. Tim Thompson from Calgary to Victoria (July 4, 2019), and Williams Lake (June 7, 2019) and one round trip from Vancouver to Prince George (June 27, 2019).

In addition, KGI claims one round trip for Mr. Edison and Mr. C. Bolton from Terrace to Vancouver for the Victoria session (July 4, 2019) for a total of \$2,863.05 + GST.

Panel Discussion

The Panel considers the claimed for travel expenses excessive due to the multiple appearances at Community Input Sessions and awards \$1,500 towards airfare.

2.4 Summary of KGI Cost Award

Taking into consideration the amended funding amount and days for Professional Fees and expenses, the Panel approves the following amount of interim PACA funding for KGI as a final award towards costs incurred thus far in the Inquiry.

Item	Days	Rate (\$ excl. GST/PST)	Total (\$ incl. Taxes)
T. Thompson, KGI – Oral Presentation	0.5	1,850	971.25
A. McDames, Kitselas First Nation - Oral Presentation	0.5	2,150	1,204.00
Co-ordination with Kitselas First Nation	2	1,850	3,885.00
Other Preparation	10	1,850	19,425.00
Case Manager	7.74	600	4,876.20
Airfare			1,500.00
Other Expenses			1,085.32
Total			\$32,946.77

3.0 CanGEA

3.1 Eligibility for PACA Funding

CanGEA is seeking a total of \$27,431.95 of interim funding for costs incurred up to providing written evidence and participating in Community Input Sessions.

In its Interim PACA Application, CanGEA states the reason for applying for interim funding is that due to the nature of its non-profit organisation's cashflow, interim funding is required to help cover costs incurred thus far

and to facilitate continued participation in the Inquiry. As per Section 5.1 of the PACA Guidelines, the BCUC will consider eligibility and amount for interim funding applications by applying Sections 3.0 and 4.0. In addition, the BCUC must be satisfied that: a) the participant has demonstrated a need for financial assistance; and (b) the proceeding is lengthy. While CanGEA did not provide evidence to fully “demonstrate a need,” the BCUC would expect from the nature of being a non-profit organisation that outlays to fund upfront participation costs may limit CanGEA’s ability to further fully participate in the Inquiry to the same degree.

The Panel determines that CanGEA qualifies for an interim funding award but considers the amount being sought excessive.

3.2 Eligibility for Professional Fees

Amongst other professional fees, CanGEA is claiming for one eight-hour day for attendance at the Fort St. John Community Input Session for Mr. Z. Harmer at a daily rate of \$950.

In relation to the professional service fees for CanGEA’s chair, Ms. A. Thompson, CanGEA is claiming the full amount for a specialist/expert witness of \$2,150 per day for the tasks of “brainstorming, submission oversight and editorial support.”

Similar to KGI, CanGEA is claiming 2.75 days for Mr. W. Fong as a case manager for a total cost of \$1,650.

Scope of Submission

CanGEA is a non-profit association for those interested in the geothermal sector in Canada. CanGEA states it is able to provide useful information and expert witness testimonial relating to geothermal heat and/or electricity utilities under different regulatory and ownership models. CanGEA also states that it has coordinated its submission with KGI.

The remainder of the professional fees for preparation by CanGEA are summarised below, please note the daily rate for A. Thompson is further discussed below:

Name	Days	Rate (\$)	Total (\$ incl. Taxes)
Z. Harmer	18.125	950.00	17,218.75
A. Thompson	1.5	1,850.00	2,775.00
M. Bisnaire	3.625	950.00	3,443.75
Total (\$)	23.25		23,437.50

Panel Discussion

The determinations on any award are based on the criteria stated in the PACA Guidelines, including, among other things, whether the participant has contributed to a better understanding by the BCUC of the issues in the proceeding, whether the participant joined with other groups with similar interest to reduce costs, whether the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding and whether the costs incurred are fair and reasonable.¹⁴ Consultants, specialists and expert

¹⁴ BCUC, PACA Guidelines, Section 4.3.

witnesses are expected to provide services related to their specialized technical expertise.¹⁵ At this time, CanGEA's submissions have demonstrated that its interests largely lie outside of the scope of this proceeding, and therefore it is questionable the degree to which it will be affected. In addition, in response to the key questions for the Inquiry, CanGEA largely deferred to its member KGI to provide a response and failed to answer all the questions.

To ensure consistency with the treatment of KGI's interim funding application, the Panel will revise the proceeding funding day for Mr. Z. Harmer from one full eight-hour day to a 0.5 day to reflect the actual timing of the Community Input Session attended. In accordance with Section 7.6 of the PACA Guidelines, the Panel is not convinced that the specialised technical expertise provided by Ms. A. Thompson was relevant to the Inquiry. As such, it is appropriate to scale the daily rate from the maximum specialist rate of \$2,150 to the maximum consultant rate of \$1,850. The Panel considers the proposed funding days for the case manager is reasonable and is comfortable with the total amount sought for this position.

The Panel considers that the CanGEA submissions were mostly out of scope, focusing on the geothermal industry with only tangential relevance to the Inquiry, and includes recommendations that are clearly not in scope. Therefore, the Panel considers the majority of the evidence did not contribute to a better understanding by the Panel. Based on the Panel's review of the CanGEA submissions, the Panel determines that 20 percent of the requested preparation costs, or \$4,687.50 should be awarded.

3.3 Eligibility for Disbursements and Other Costs

CanGEA has claimed travel expenses for one round trip for Mr. Z. Harmer from Calgary for attendance at the Fort St. John Community Input Session (June 25, 2019), for a total of \$944.50 including two nights accommodation at Fort St. John. When asked by BCUC staff to explain the necessity of two nights accommodation for a 10:00 a.m.–3:00 pm one-day community input session, CanGEA stated the timing of flight options was limited and while the preference would have been to fly in and out on the same day, this would not have been practical with the options available without missing out on part of the session.

Panel Discussion

The Panel considers CanGEA's travel expenses acceptable and awards \$944.50.

3.4 Summary of CanGEA Cost Award

Based on the above, the total interim cost award for CanGEA, applied as a final award towards its costs incurred to date in the Inquiry, is as follows:

Item	Total (\$ incl. Taxes)
Mr. Z. Harmer - Proceeding	475.00
Preparation Days	4,687.50
Mr. Fong - Case Manager	1,650.00
Expenses	944.45
Total	\$7,756.95

¹⁵ Ibid., Section 7.5, 7.6, 7.7.