



**ORDER NUMBER
F-10-22**

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

and

CB Powerline Ltd.
Application for a Certificate of Public Convenience and Necessity
Participant Assistance/Cost Award Application

BEFORE:

T. A. Loski, Panel Chair
C. Brewer, Commissioner
W. M. Everett, QC, Commissioner

on February 17, 2022

ORDER

WHEREAS:

- A. On September 11, 2020, CB Powerline Ltd. (CBP) filed an application with the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA) (Application);
- B. By Orders G-248-20, G-317-20, G-18-21, G-47-21, G-101-21, G-128-21A, G-229-21 and G-247-21, the BCUC established and later amended the regulatory timetable for the review of the Application, which included two rounds of information requests (IRs) to CBP from the BCUC, one round of Panel IRs to CBP, two rounds of IRs to CBP from the intervener Okanagan Indian Band (OKIB), the filing of evidence by OKIB and IRs on that evidence, and written final and reply arguments;
- C. By Order F-15-21 dated April 21, 2021, the BCUC awarded interim Participant Assistance/Cost Award (PACA) funding to OKIB in the amount of \$22,640 as an advance against the BCUC's final cost award determination;
- D. On December 17, 2021, by Order G-383-21 with decision issued concurrently, the BCUC issued its final determinations on the Application;
- E. On October 20, 2021, OKIB filed a PACA application with the BCUC with respect to its participation in the proceeding requesting \$92,441 as a final award, which application was later amended by email dated February 9, 2022 to \$85,490;
- F. On January 19, 2022, CBP provided its submissions regarding OKIB's PACA application;
- G. On January 26, 2022, OKIB provided its reply to CBP's submissions; and

- H. The BCUC has reviewed the PACA application and the submissions made by CBP and OKIB in accordance with the criteria and rates set out in the PACA Guidelines, attached to Order G-97-17, and determines the following cost award should be approved for OKIB.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act* and for the reasons outlined in Appendix A to this order, the BCUC orders as follows:

1. Funding is awarded to OKIB in the amount of \$59,210 for its participation in the proceeding, less the interim PACA funding award of \$22,640.
2. CBP is directed to reimburse OKIB for the awarded amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of February 2022.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

CB Powerline Ltd.
Application for a Certificate of Public Convenience and Necessity
Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Background

On September 11, 2020, CB Powerline Ltd. (CBP) applied to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA)(Application).

The regulatory process for the review of the Application, established by orders of the BCUC, comprised of a series of information requests, written evidence and final arguments. The Okanagan Indian Band (OKIB) was registered as an intervener in the proceeding on February 18, 2021, and participated fully in the regulatory process from that point onward.

On December 17, 2021, by Order G-383-21 with decision issued concurrently, the BCUC issued its final determinations on the Application. The BCUC determined that Crown consultation with OKIB on the Project had not been adequate up to the point of the decision to support issuing the CPCN. CBP was directed to demonstrate to the BCUC that OKIB has been adequately consulted no later than six months from the issuance of the decision. If CBP can provide evidence that Crown consultation with OKIB is adequate, then the BCUC will issue a CPCN to CBP for the Project.

On October 20, 2021, an application for Participant Assistance/Cost Award (PACA) was received from OKIB with respect to its participation in the proceeding. OKIB filed a revised PACA application on February 9, 2022.

1.1 Interim PACA award

By Order F-15-21 dated April 21, 2021, the BCUC awarded interim PACA funding to OKIB in the amount of \$22,640 as an advance against the BCUC's final cost award determination.

1.2 Legislative Framework

Section 118 of the *Utilities Commission Act* (UCA) provides 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.

Order G-97-17 dated June 15, 2017, sets out the BCUC's PACA Guidelines. Section 3.0 of the PACA Guidelines relates to participant eligibility for a cost award. Section 4.3 of the PACA Guidelines provides that the BCUC, determining the amount of a participant's cost award, may consider the following:

- (a) Has the participant contributed to a better understanding by the BCUC of the issues in the proceeding?
- (b) To what degree will the participant be affected by the outcome of the proceeding?
- (c) Are the costs incurred by the participant fair and reasonable?
- (d) Has the participant joined with other groups with similar interests to reduce costs?

- (e) Has 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?
- (f) The funding day calculation for funding in accordance with Sections 4.1 and 4.2, if one is provided.
- (g) Any other matters which the BCUC determines appropriate in the circumstances.

When granted, the Panel has discretion as to the amount that may be awarded to a participant on a PACA application.

2.0 PACA Application Review

OKIB filed its PACA application with the BCUC on October 20, 2021, and subsequently filed a revised application on February 9, 2022, to correct errors in the funding days requested and the daily rate charged by one of its consultants. The following table summarizes the cost award requested by OKIB:

OKIB - Professional Fees	Rate	Time	Amount
Legal Counsel – JFK Law Corporation			
Claire Truesdale	\$2,550	7.1	\$18,105
Justin Fontaine	\$2,250	19.3	\$43,425
Consultant – H3M Environmental Ltd.			
Bill Berzins	\$1,480	5.25	\$7,770
Consultant – Kwusen Research & Media Ltd.			
Alissa Cartwright	\$1,300	5.2	\$6,760
Towagh Behr	\$1,480	1	\$1,480
Case Manager – OKIB, Territorial Stewardship Division			
Colleen Marchand	\$600	13.25	\$7,950
Total funding			\$85,490
Interim cost awarded			(\$22,640)
Remaining payable			\$62,850

On January 19, 2022, CBP provided its submissions regarding OKIB's PACA application and submitted that OKIB should be awarded PACA funding below the amount applied for because, in part, it is not clear that OKIB significantly advanced the BCUC's understanding of the issues and, further, because the funding days applied for in respect of legal counsel and case manager are excessive. CBP further submitted that OKIB's total funding be reduced to \$37,573.

On January 26, 2022, OKIB replied to CBP's comments, submitting that it participated in the proceeding as efficiently as possible given its limited capacity, that its contributions to the proceeding were valuable and that OKIB meets the criteria in the PACA Guidelines for full amount sought in its application.

On February 9, 2022, OKIB responded to a request on behalf of BCUC Staff for an estimate of the time spent by its legal counsel on each task listed in the PACA application. OKIB provided this information on a confidential basis.

BCUC Determination

Having considered the PACA Guidelines and the submissions by both OKIB and CBP, the Panel finds that OKIB is eligible for a PACA award and notes that CBP does not dispute OKIB's eligibility, but rather disputes the amount of the PACA award being sought.

The Panel acknowledges that OKIB contributed to a better understanding by the BCUC of the issues in this proceeding. In particular, the Panel found OKIB submissions in respect of the duty to consult contributed to a better understanding of the issues. The Panel finds the cost sought for OKIB's consultants and case manager to be reasonable.

However, the Panel notes that the total amount of costs being sought in respect of legal services totals \$61,530. OKIB has provided, on a confidential basis, an estimate of the time spent by its legal counsel on the written tasks noted in the PACA application. The Panel finds the amounts being claimed for certain legal services are excessive and not reasonable. In particular, the Panel finds the time spent on the submissions on procedural processes and the written evidence to be excessive.

Further, the Panel notes that OKIB is applying for legal costs in respect to time spent submitting interim and final PACA applications. In the Panel's view, it is not reasonable to apply for these costs, as they relate to matters of billing.

The Panel finds a maximum of 15 funding days for legal counsel services to be fair and reasonable for the amount of regulatory effort necessary to participate fully in the proceeding. **Therefore, the Panel awards OKIB \$59,210, inclusive of applicable taxes, less the \$22,640 interim funds already awarded.**

OKIB - Professional Fees	Funding Award
Legal Counsel – JFK Law Corporation	
Claire Truesdale	\$12,750 (5 days)
Justin Fontaine	\$22,500 (10 days)
Consultant – H3M Environmental Ltd.	
Bill Berzins	\$7,770
Consultant – Kwusen Research & Media Ltd.	
Alissa Cartwright	\$6,760
Towagh Behr	\$1,480
Case Manager – OKIB, Territorial Stewardship Division	
Colleen Marchand	\$7,950
Total funding	\$59,210
Interim cost awarded	(\$22,640)
Remaining payable	\$36,570