

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



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-24-08**

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**

**Applications for Participant Assistance/Cost Awards  
in an Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Okanagan Transmission Reinforcement Project**

**BEFORE:**

A.W.K. Anderson, Panel Chair  
and Commissioner

N.F. Nicholls, Commissioner

M.R. Harle, Commissioner

October 23, 2008

**O R D E R**

**WHEREAS:**

- A. On December 14, 2007, FortisBC Inc. ("FortisBC") applied (the "Application") to the British Columbia Utilities Commission (the "Commission") for a Certificate of Public Convenience and Necessity ("CPCN") for the Okanagan Transmission Reinforcement Project (the "OTR Project"); and
- B. By letters dated June 26 and August 26, 2008, Mr. Colin Harlinton ("Mr. Harlinton") applied for Participant Assistance/Cost Award ("PACA") funding for his participation in the proceeding; and
- C. On July 23, 2008, South Okanagan for Alternate Route/Wiltse Holdings Ltd. ("SOFAR/Wiltse") applied for PACA funding for their participation in the proceeding and on August 18, 2008 amended the application; and
- D. On August 8, 2008, the British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO") applied for PACA funding for its participation in the proceeding; and
- E. On August 14, 2008, Mr. Alan Wait ("Mr. Wait") applied for PACA funding for his participation in the proceeding; and
- F. By letter dated September 15, 2008 to the Commission, FortisBC commented on the cost award applications; and
- G. By Order C-5-08 and Decision dated October 2, 2008, the Commission approved a CPCN for the Project; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** F-24-08

2

H. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines in Commission Order No. G-72-07 and has concluded that, after making certain changes to the amounts of funding requested, certain cost awards should be approved for Participants in the proceeding, as set out in the Reasons for Decision that are attached as 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 awards funds to the following for their participation in the proceeding.

	<u>Application</u>	<u>Award</u>
Mr. Harlinton	\$ 622.17	\$ 622.17
SOFAR/Wiltse	51,899.83	21,590.40
BCOAPO	13,938.35	13,938.35
Mr. Wait	211.06	211.06

2. FortisBC is directed to reimburse the above-noted Participants for the Award amounts in a timely manner.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 23<sup>rd</sup> day of October 2008.

BY ORDER

*Original signed by:*

A.W.K. Anderson  
Commissioner and Panel Chair

Attachment

Applications for Participant Assistance/Cost Awards  
in an Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Okanagan Transmission Reinforcement Project

**REASONS FOR DECISION**

---

**1.0 INTRODUCTION**

On December 14, 2007, FortisBC Inc. ("FortisBC") applied (the "Application") to the British Columbia Utilities Commission (the "Commission") for a Certificate of Public Convenience and Necessity ("CPCN") for the Okanagan Transmission Reinforcement Project (the "OTR" Project).

By Order C-5-08 and Decision dated October 2, 2008, the Commission approved a CPCN for the OTR Project.

As set out in the Order that accompanies these Reasons for Decision, the Commission received four applications pursuant to Section 118 of the Utilities Commission Act for Participant Assistance/Cost Award ("PACA") funding for the OTR Project proceeding. Section 118 provides that the Commission Panel may make cost awards for participants in a proceeding. The Commission's PACA Guidelines are set out in Appendix A to Order No. G-72-07, and include the following provisions:

"The Commission Panel will determine whether a Participant is eligible or ineligible for an award. In determining an award of all or any portion of a Participant's costs, the Commission Panel will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. If this criterion is not met, the Participant will typically not receive a cost award except, possibly, for out-of-pocket disbursements.

Except in limited circumstances, it is expected that only ratepayer groups will establish a 'substantial interest in a substantial issue' so as to be eligible for an award in a revenue requirements proceeding. For the purposes of this section, the principal interest of 'ratepayer groups' will be the rate impacts of the revenue requirement to be paid by the ratepayer Participants. The Commission Panel will also consider other characteristics of the Participant, including the scope and significance of the principal concerns of the Participant.

Participants other than 'ratepayer groups' may be eligible for funding in energy supply contract, rate design, resource plan, and CPCN proceedings provided that the Participant meets the 'substantial interest in a substantial issue' criterion.

The Commission Panel will then consider the following:

- (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."

"In some circumstances, an individual Participant that does not qualify for an award, pursuant to Participant eligibility criteria as set forth in section 1, may be reimbursed for disbursements to travel to a proceeding that is more than 100 km. from the Participant's residence."

## **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, hearing days and oral argument days. The proceeding days for the OTR Project were:

<u>Activity</u>	<u>Proceeding Days</u>
Pre-Hearing Conference; February 27, 2008	0.25
Oral Hearing; June 24 and 25, 2008	<u>2.00</u>
<b>Total Proceeding Days</b>	<b>2.25</b>

The Guidelines provide that the Commission Panel may award costs for preparation days on a ratio of up to two days per proceeding days, although after the proceeding the Commission may adjust this ratio with adequate justification from participants.

In the case of the OTR proceeding, the Commission Panel finds that the standard calculation of preparation days does not adequately reflect the fact that, in accordance with Order G-35-08, some issues were addressed solely through a written process, while other issues were examined at the Oral Hearing. The Commission Panel determines that two additional preparation days should be included in order to reflect the time required to review the written issues. **Therefore, the Commission Panel determines that 8.75 days will be the maximum eligible for PACA funding.**

### **3.0 INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS**

The Commission Panel has reviewed the PACA applications and determines that the following amounts of cost awards are awarded to Participants in the OTR Project proceeding.

#### BCOAPO

On August 8, 2008, the British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO") applied for PACA funding for its participation in the proceeding. BCOAPO applied for six days of legal counsel fees at a cost of \$9,408.00, disbursements of \$1,117.85 and consultant fees of \$3,412.50, for a total request of \$13,938.35.

In its letter dated September 15, 2008, FortisBC stated that the application of BCOAPO appears to be consistent with the PACA Guidelines.

BCOAPO represents ratepayer groups and participated actively and constructively in the proceeding. BCOAPO counsel did not attend the Pre-hearing Conference and has correctly excluded it from its PACA application. **The Commission Panel finds that BCOAPO meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$13,938.35.**

#### SOFAR/Wiltse

On July 23, 2008, South Okanagan for Alternate Route/Wiltse Holdings Ltd. ("SOFAR/Wiltse") applied for PACA funding for their participation in the proceeding and on August 18, 2008 amended the application. The SOFAR/Wiltse revised application is for 22.2 days of legal counsel fees at a cost of \$44,830.80, disbursements of \$1,524.90 plus \$76.25 GST on disbursements, and consultant's fees of \$5,467.88, for a total request of \$51,899.83.

In its letter dated September 15, 2008, FortisBC noted the application of SOFAR/Wiltse exceeds the PACA Guidelines, and that this is attributed in part to the representation of two client groups. FortisBC observed that the PACA Guidelines encourage individuals and Intervenor groups to join for the purpose of reducing costs, and does not provide for duplication of funding under these circumstances.

The Commission Panel determines that SOFAR meets the criteria for PACA eligibility. As a private developer seeking to increase the development potential of his land, an Intervenor such as Wiltse might not be eligible for PACA funding in some proceedings but, in this case, the Commission Panel considers that there may be other public interest benefits served by Wiltse's intervention and therefore has not prorated/reduced SOFAR/Wiltse's claim because of Wiltse's involvement. However, the Commission Panel agrees with FortisBC that the PACA

Guidelines do not provide for duplication of funding when counsel represents two client groups. The Commission Panel also notes that SOFAR/Wiltse counsel did not participate in the Pre-hearing Conference, and that the eligible number of days for counsel should therefore be eight.

Wiltse's consultant, Mr. Grifone, addressed just one of many issues in the proceeding and was not required to review or comment on most aspects of the OTR Application. Mr. Grifone appears to have many years of experience but he did not appear as an 'expert' witness in this proceeding. Therefore, the Panel finds that the portion of the award related to Mr. Grifone's fees should be limited to three days at \$1250 per day plus GST.

**In summary, the Commission Panel awards SOFAR/Wiltse \$16,128.00 (8 x \$1800 x 1.12) for counsel, \$3937.50 (3 x \$1250 x 1.05) for the consultant, and \$1524.90 for disbursements, for a total award of \$21,590.40.**

#### Mr. Harlingten

By letters dated June 26 and August 26, 2008, Mr. Colin Harlingten ("Mr. Harlingten") requested PACA funding of \$622.17 for the airfare and other expenses of his expert witness, Dr. Blank.

In its letter dated September 15, 2008, FortisBC stated that the application of Mr. Harlingten appears to be consistent with the Commission's PACA Guidelines.

As an individual Intervenor, Mr. Harlingten does not meet all criteria for full PACA funding. However, his application is for only the travel costs of his consultant, who spoke to matters which were within the scope of the proceeding and of interest to other Intervenor. **The Commission Panel awards Mr. Harlingten the full amount of his claim for \$622.17.**

#### Mr. Wait

On August 14, 2008, Mr. Alan Wait ("Mr. Wait") applied for PACA funding for \$211.06 of travel expenses.

In its letter dated September 15, 2008, FortisBC stated that the application of Mr. Wait appears to be consistent with the PACA Guidelines.

**The Commission Panel awards Mr. Wait the full amount of \$211.06 claimed for travel expenses.**