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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-16-10**

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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 the Application by
British Columbia Hydro and Power Authority
for the Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest
in the Waneta Dam and Associated Assets

BEFORE: A.W.K. Anderson, Commissioner and Panel Chair
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

May 27, 2010

O R D E R

WHEREAS:

- A. On June 17, 2009 British Columbia Hydro and Power Authority (BC Hydro) entered into a non-binding master term sheet (the Term Sheet) with Teck Metals Ltd. (Teck) and Teck Resources Limited that contemplates the sale and purchase (Waneta Transaction) of an undivided one-third interest in the Waneta Dam on the Pend d'Oreille River and associated assets (the Waneta Assets); and
- B. On July 6, 2009 BC Hydro made a filing (Filing) pursuant to section 44.2(1) of the *Utilities Commission Act* (the Act) requesting acceptance by the British Columbia Utilities Commission (the Commission) that proceeding with the expenditures contemplated in the Term Sheet is in the public interest pursuant to section 44.2(3)(a) of the Act; and
- C. By Order G-12-10 dated February 3, 2010, the Commission accepted the expenditure schedule in the Filing, and on March 12, 2010 released its Reasons for Decision; and
- D. By Order F-30-09 dated October 27, 2009, the Commission granted \$27,512.50 of interim Participant Assistance/Cost Award (PACA) funding to the Okanagan Nation Alliance (ONA) for its participation in the proceeding to review the Filing (the Proceeding); and
- E. By Order F-33-09 dated November 19, 2009, the Commission granted \$22,750.00 of interim PACA funding to the Sinixt Nation, otherwise known as the Arrow Lakes or Lakes Indians (the Sinixt) for its participation in the Proceeding; and
- F. On January 8, 2010 the British Columbia Public Interest Advocacy Centre submitted a PACA application on behalf of the BC Old Age Pensioners' Organization *et al.* (BCOAPO) for its participation in the Proceeding; and
- G. On February 4, 2010 the Independent Power Producers Association of BC (IPPBC) submitted a PACA application for its participation in the Proceeding; and

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- H. On January 4, 2010 Mr. Alan Wait submitted a PACA application for his participation in the Proceeding; and
- I. On February 5, 2010 the Commercial Energy Consumers Association of British Columbia (CEC) submitted a PACA application for its participation in the Proceeding; and
- J. On February 12, 2010 the Sinixt submitted a PACA application for its participation in the Proceeding; and
- K. On February 20, 2010 the BC Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA, et al) submitted a PACA application for its participation in the Proceeding; and
- L. On March 17, 2010 the Ktunaxa Nation Council (KNC) submitted a PACA application for its participation in the Proceeding; and
- M. On March 19, 2010 the ONA submitted a PACA application for its participation in the Proceeding; and
- N. The Joint Industry Electricity Steering Committee (JIESC) did not submit a PACA application for a Cost Award for its participation in the Proceeding; and
- O. By letters dated March 23 and April 6, 2010, BC Hydro commented on the PACA applications; and
- P. Commission Order G-72-07 established Guidelines for PACA applications. Section 1 of the PACA Guidelines regarding Participant Eligibility is attached as Appendix B to this Order; and
- Q. The Commission Panel has reviewed the PACA applications and comments from BC Hydro with regard to the criteria and rates set out in the PACA Guidelines and has concluded, after making certain changes to the amounts of funding requested, PACA awards should be approved for participants in the proceeding for 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 Act, the Commission awards funds to the following participants for their participation in the Proceeding that reviewed the BC Hydro Filing for the Waneta Transaction.

Participant	Application	Award	Interim Award	Remaining Payable
BCOAP0 <i>et al.</i>	\$17,579.62	\$17,579.62	\$0.00	\$17,579.62
IPPBC	\$45,990.00	\$19,971.00	\$0.00	\$19,971.00
Alan Wait	\$662.16	\$662.16	\$0.00	\$662.16
CEC	\$21,110.26	\$21,110.26	\$0.00	\$21,110.26
Sinixt	\$60,435.95	\$30,108.35	\$22,750.00	\$7358.35
BCSEA, <i>et al.</i>	\$9,072.00	\$9,072.00	\$0.00	\$9,072.00
KNC	\$66,330.27	\$42,409.22	\$0.00	\$42,409.22
ONA	\$83,369.10	32,396.15	\$27,512.50	\$4,883.65
TOTAL Award	\$304,549.36			\$123,046.26

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2. BC Hydro is directed to reimburse the above-noted participants for the Remaining Payable amounts that have been awarded in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of May 2010.

BY ORDER



A.W.K. Anderson
Commissioner

Attachments



IN THE MATTER OF

APPLICATIONS FOR PARTICIPANT ASSISTANCE/COST AWARDS

**REGARDING THE APPLICATION BY
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
for the Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest
in the Waneta Dam and Associated Assets**

REASONS FOR DECISION

May 27, 2010

BEFORE:

A.W.K. Anderson, Commissioner and Panel Chair
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

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1.0 INTRODUCTION

On June 17, 2009 British Columbia Hydro and Power Authority (BC Hydro) entered into a non-binding master term sheet (the Term Sheet) with Teck Metals Ltd. (Teck) and Teck Resources Limited that contemplated the sale and purchase (Waneta Transaction) of an undivided one-third interest in the Waneta Dam on the Pend d'Oreille River and associated assets (the Waneta Assets). On July 6, 2009 BC Hydro made a filing (Filing) pursuant to section 44.2(1) of the *Utilities Commission Act* (the Act) requesting acceptance by the British Columbia Utilities Commission (the Commission) that proceeding with the expenditures contemplated in the Term Sheet is in the public interest pursuant to section 44.2(3)(a) of the Act. By Order G-12-10 dated February 3, 2010, the Commission accepted the expenditure schedule in the Filing and on March 12, 2010 released its Reasons for Decision.

As set out in the Order that accompanies these Reasons for Decision, the Commission received eight applications totaling \$304,549.36 pursuant to section 118 of the Act for Participant Assistance/Cost Award (PACA) funding for the Waneta Transaction proceeding (Proceeding). By letters dated March 23 and April 6, 2010, BC Hydro commented on the PACA applications. The Commission Panel applied the Commission's PACA Guidelines in its review of the applications. After making several adjustments, the Commission Panel approved PACA funding totaling \$123,046.20, in addition to \$50,262.50 of interim funding approved earlier in the 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 Order G-72-07, and section 1 of the Guidelines dealing with Participant Eligibility is attached as Appendix B of the Order that accompanies these Reasons.

The PACA Guidelines expect that, except in limited circumstances, only ratepayer groups will establish a "substantial interest in a substantial issue" in a revenue requirements proceeding, and so be eligible for PACA funding. Participants other than ratepayer groups may be eligible for PACA funding in other proceedings, providing they meet the substantial interest in a substantial issue criterion. In some circumstances, an individual Participant that does not qualify for an award pursuant to the 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.

Each PACA applicant must demonstrate that it contributed to a better understanding of the issues by the Commission, and that its costs are fair and reasonable.

2.0 PROCEEDING AND PREPARATION DAYS ELIGIBLE FOR FUNDING

Section 4 of the PACA Guidelines state that the 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 partial days.

Commission Order G-97-09A and Letter L-61-09 established a Regulatory Timetable for a written public hearing to review the Filing, and anticipated that an Oral Phase of the hearing might be required. In the review letters that responded to filed PACA budgets, Commission staff noted that the Procedural Conference and Workshop together represent one proceeding day, assumed two days of oral hearing, and assessed that a further six days of legal counsel and consultant effort to prepare and review written submissions appeared likely to be required for full participation in the written hearing. Staff estimated that a total of 15 days for each of legal counsel and consultants would be eligible for funding.

In its letters of comment dated March 23 and April 6, 2010, BC Hydro states that, as Commission Letter L-103-09 determined that an Oral Phase of hearing was not required, staff's estimate of 15 days of funding should be reduced

considerably to reflect participation in the written hearing. BC Hydro states that several Interveners claiming 15 days or more have not provided good reasons for their numbers, and that the amounts requested by other Interveners in the order of five days is more reasonable. At the same time, BC Hydro recognizes that individual Interveners have different interests and therefore respond differently to their substantive issues. BC Hydro considers that the estimate for First Nations participants may require an upward adjustment to recognize that First Nation issues were a large portion of the review of the Waneta Filing.

Commission Determination

In the case of the Waneta Transaction proceeding, the Commission Panel believes that the calculation of preparation days based on proceeding days does not appropriately reflect the fact that the review proceeded through a written process. At the same time, the Commission Panel is mindful that section 118(1) of the Act refers to “the costs of another participant in the proceeding.” The Commission had a responsibility in this proceeding to assess the adequacy of consultation and accommodation with First Nations but this responsibility did not extend to carrying out the consultation. Consequently, the Commission considers that PACA funding can be awarded only for participation in the proceeding, and not for capacity funding related to consultation.

The Procedural Conference on August 17, 2009 and the Workshop on September 24, 2009 together represent one proceeding day, and with preparation time justify three days of funding. There was no oral phase, two sets of Information Requests to BC Hydro and limited Information Requests to Interveners. After reviewing the issues that were prominent in the proceeding and the participation of Interveners, the Commission Panel determines that staff’s estimate of the number of days of funding for written submissions should be increased by 50 percent, or three days.

First Nations Interveners were principally and more or less solely concerned with the assessment of the adequacy of consultation and accommodation. This is a very important issue, but only one of the issues that needed to be reviewed in the proceeding. Consequently, the Commission Panel concludes that no further adjustments are needed to its determination on the number of days that are eligible for PACA funding for full participation.

The Commission Panel determines that up to 12 days of each of legal counsel and consultant time are eligible for PACA funding for full participation in the Proceeding.

3.0 PACA APPLICATIONS

In this section, the Commission Panel reviews each of the PACA applications and makes determinations on the amounts of cost awards to Participants in the Waneta Transaction proceeding.

3.1 BCOAPO, *et al.*

On January 8, 2010 the British Columbia Public Interest Advocacy Centre submitted a PACA application on behalf of the BC Old Age Pensioners’ Organization *et al.* (BCOAPO) for its participation in the Proceeding. BCOAPO applied for 4.0 days of legal counsel fees at a cost of \$8,064.00 and 7.25 days of consultant fees at \$9,515.62, for a total request of \$17,579.62.

In its letters dated March 23 and April 6, 2010, BC Hydro made no specific reference to the BCOAPO application.

Commission Determination

BCOAPO represents ratepayer groups and participated actively in the proceeding. The daily rates for legal counsel and consultant comply with the Guidelines, and the times for counsel and consultant are within the number of days that the Commission Panel determined is eligible for funding. **The Commission Panel finds that BCOAPO meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$17,579.62.**

3.2 IPPBC

On February 4, 2010 the Independent Power Producers Association of BC (IPPBC) submitted a PACA application for its participation in the Proceeding. IPPBC applied for 15 days of legal counsel fees at a cost of \$30,240.00 and 12 days of consultant fees at \$15,750.00, for a total request of \$45,990.00.

IPPBC submitted that it has a substantial interest in a number of substantial interests in the proceeding. The water rental fees paid by members of IPPBC are indexed to BC Hydro's rate increases. IPPBC also submitted its members have an interest in the reliability of the BC Hydro system since they must interconnect with that system, that the Province's Energy Plan requires BC Hydro to plan for the integration of future generation resources, and that it needs to ensure that informed choices are made about energy acquisition alternatives. IPPBC also submitted that the complexity of the Transaction required it to spend a considerable amount of time to understand and properly evaluate it, and that it contributed to a better understanding of certain issues by the Commission.

In its letter dated March 23, 2010, BC Hydro stated that IPPBC provided no good reason for its claim of 15 days, and indicated that the request was unreasonable when compared to requests by other Interveners in the area of five days.

Commission Determination

IPPBC does not represent a ratepayer group as defined in the Guidelines, but it may still be eligible for PACA funding to the extent it demonstrates "a substantial interest in a substantial issue" in the matter under review. The Commission Panel accepts that IPPBC has an interest in several issues in the proceeding, including the reliability of the BC Hydro system, and factors that may affect the comparison of energy acquisition alternatives. While IPPBC has an interest in planning for the integration of future energy resources, this was not a relevant issue in the proceeding.

While the interests of IPPBC were somewhat limited and peripheral, its information requests and submissions contributed to the Commission Panel's understanding of some issues. Therefore, and considering the level of participation of IPPBC relative to that of other Interveners, the Commission Panel concludes that PACA funding should be provided to IPPBC for up to one-half of the maximum number of days that are funded for a full substantial interest and full participation. **As calculated in the following table, the Commission Panel determines that IPPBC is awarded six days of PACA funding in the amount of \$19,971.00.**

IPPBC	Application			Award					
	Days	Rate \$/day	Total Including Tax	Days	Rate \$/day	Total	GST@ 5%	PST@ 7%	Total Including Tax
Counsel	15	\$1,800	\$30,240.00	6	\$1,800	\$10,800.00	\$540.00	\$756.00	\$12,096.00
Consultant	12	\$1,250	\$15,750.00	6	\$1,250	\$7,500.00	\$375.00	0	\$7,875.00
Total			\$45,990.00						\$19,971.00

3.3 Alan Wait

On January 4, 2010 Mr. Alan Wait submitted a PACA application for his participation in the Proceeding. Mr. Wait applied for travel expenses of \$662.16 to attend the September 24, 2009 Workshop.

In its letters dated March 23 and April 6, 2010, BC Hydro made no specific reference to Mr. Wait's application.

Commission Determination

Mr. Wait is a ratepayer of FortisBC Inc., which buys power from BC Hydro. The requested funding is consistent with the Commission's PACA Rate Sheet. **The Commission Panel awards Mr. Alan Wait the full amount of his claim for \$662.16.**

3.4 CEC

On February 5, 2010 the Commercial Energy Consumers Association of British Columbia (CEC) submitted a PACA application for its participation in the Proceeding. CEC applied for 4.95 days of legal counsel fees at a cost of \$9,954.01 and 8.5 days of consultant fees at \$11,156.25, for a total request of \$21,110.26.

In its letters dated March 23 and April 6, 2010, BC Hydro made no specific reference to the CEC application.

Commission Determination

CEC represents a ratepayer group and participated actively in the proceeding. The daily rates for legal counsel and consultant comply with the Guidelines, and the times for counsel and consultant are within the number of days that the Commission Panel determined is eligible for funding. **The Commission Panel finds that CEC meets all the criteria for PACA reimbursement and awards the full amount of its claim for \$21,110.26.**

3.5 Sinixt

By Order F-33-09 dated November 19, 2009, the Commission granted \$22,750.00 of interim PACA funding to the Sinixt Nation, otherwise known as the Arrow Lakes or Lakes Indians (the Sinixt) for its participation in the Proceeding.

On February 12, 2010 the Sinixt submitted a PACA application for its participation in the Proceeding. The Sinixt applied for 25 days of legal counsel fees at a cost of \$39,200.00, 15 days of consultant fees at \$12,000.00, and 15 days of case manager fees. The Sinixt application also included \$957.60 for Sinixt hardware, \$548.35 for legal disbursements and \$230.00 for case manager expenses, for a total request of \$60,435.95.

The Sinixt state they are an indigenous people whose history includes traditional use of the lands and waters at the site of the Waneta Dam, and that the prospective impacts of the Transaction on Sinixt rights are substantial. The Sinixt submit that the funding request is larger than expected due to the legal and factual complexity of the matter, including three First Nations asserting opposing positions on the facts, and the unexpected need to deal with several reply submissions.

In its letters dated March 23 and April 6, 2010, BC Hydro indicated that the request of the Sinixt for 25 days of funding was unreasonable, compared to other Interveners who requested in the area of five days. BC Hydro noted that the participation of the Sinixt did not start until October 23, 2009, and that the Sinixt did not send Information Requests to BC Hydro. In the view of BC Hydro, the Sinixt reply submissions to the Okanagan Nation Alliance were only necessary because of issues that the Sinixt raised, and the submissions were not relevant to the Commission's determinations on the matter. Finally, BC Hydro concludes that there was little correlation between the efforts by the Sinixt and its contribution to a better understanding of the issues by the Commission, since no evidence was advanced about potential adverse effects arising from the Transaction.

Commission Determination

BC Hydro submitted that the Sinixt have a low to moderate strength of claim, and that the scope of the duty to consult and accommodate is "towards the low end" of the spectrum determined by the courts. The Commission Panel found that BC Hydro's placement on the spectrum was reasonable (Waneta Reasons for Decision, pp. 29-33). Consequently, the Commission Panel finds that the Sinixt have a substantial interest in the proceeding and are eligible for PACA funding.

The Commission Panel found that the participation of the Sinixt generally contributed to its understanding of First Nations issues. However, submissions of the Sinixt related to the strength of its claim relative to that of other First Nations were not relevant to the matters under consideration in the proceeding, and were not helpful. For this reason, and considering that the Sinixt did not participate in the August 17, 2009 Workshop, the Commission Panel concludes that the days that the Sinixt is eligible for PACA funding should be reduced by two days, to 10 days.

The PACA Guidelines support the use of case managers where this reduces the use of legal counsel or enables a coalition of interest groups with similar interests to participate. The Commission Panel concludes that the case manager should be funded, up to the maximum number of days that the Sinixt are eligible for.

The PACA includes \$957.60 for Sinixt hardware, which the invoice shows to be computer facilities. This capital expenditure is not a suitable cost for PACA funding, and the Commission Panel denies the request.

For the foregoing reasons, the Commission Panel awards the Sinixt PACA funding in the amount of \$30,108.35 as calculated in the following table, which after deducting the interim payment amount of \$22,750.00 leaves a Remaining Payable amount of \$7,358.35.

<u>Sinixt</u>	<u>Application</u>			<u>Award</u>					
	<u>Days</u>	<u>Rate \$/day</u>	<u>Total Including Tax</u>	<u>Days</u>	<u>Rate \$/day</u>	<u>Total</u>	<u>GST@ 5%</u>	<u>PST@ 7%</u>	<u>Total Including Tax</u>
Counsel	25	\$1,400	\$39,200.00	10	\$1,400	\$14,000.00	\$700.00	\$980.00	\$15,680.00
Consultant	15	\$800	\$12,000.00	10	\$800	\$8,000.00	\$400.00	0	\$8,400.00
Case Mgr.	15	\$500	\$7,500.00	10	\$500	\$5,000.00	\$250.00	0	\$5,250.00
Disburse.			\$778.35						\$778.35
Hardware			\$957.60						\$0.00
Total			\$60,435.95						\$30,108.35

3.6 BCSEA

On February 20, 2010, the BC Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA) submitted a PACA application for its participation in the Proceeding. BCSEA applied for 4.5 days of legal counsel fees, for a total request of \$9,072.00.

BCSEA submits that it has a substantial interest in several issues in the proceeding, including need and cost of the power, the characterization of the power as “clean or green” generation within British Columbia, the impacts on the Trail smelter and municipal tax base, and the adequacy of First Nations consultation. BCSEA states that it contributed to the Commission’s better understanding of issues in the proceeding.

In its letters dated March 23 and April 6, 2010, BC Hydro made no specific reference to the BCSEA application.

Commission Determination

BCSEA does not represent a ratepayer group as defined in the Guidelines, but it may still be eligible for PACA funding to the extent it demonstrates “a substantial interest in a substantial issue” in the matter under review. The Commission Panel accepts that BCSEA has an interest in several issues in the proceeding, it considers that the interests of BCSEA were somewhat limited and peripheral. Nevertheless, the Commission Panel concludes that information requests and submissions of BCSEA contributed to its understanding of some issues.

Therefore, the Commission Panel concludes that PACA funding should be provided to BCSEA for up to one-half of the maximum number of days that are funded for a full substantial interest and full participation. Since the amount of funding requested by BCSEA was less than one-half of the funding that is eligible for full participation, there is no need to adjust the request. **The Commission Panel determines that BCSEA is awarded PACA funding in the full requested amount of \$9,072.00.**

3.7 KNC

On March 17, 2010 the Ktunaxa Nation Council (KNC) submitted a PACA application for its participation in the Proceeding. The KNC applied for 30.59 days of legal counsel fees at a cost of \$44,263.05, approximately 21.31 days of consultant fees at \$9,522.82, and 21.74 days of case manager fees at \$10,870.00. The KNC application also included \$1,674.40 for disbursements, for a total request of \$66,330.27.

The KNC submit that the assessment of the adequacy of BC Hydro's consultation with the KNC is a substantial interest in a substantial issue, and that they contributed significantly to a better understanding of the issues. The KNC state that the funding request is larger than expected because of the significance and somewhat adversarial nature of the review of First Nations issues in the proceeding, the involvement of other First Nations groups with competing claims, and the need to deal with unanticipated procedural matters and information requests.

In its letters dated March 23 and April 6, 2010, BC Hydro recognized the extent of the KNC's participation, including the preparation of original documents dealing with the Waneta Transaction and the BC Hydro consultation process. BC Hydro also stated that KNC's evidence provided a better understanding of the issues, particularly in regard to the KNC strength of claim and water and fishery issues surrounding the Waneta Dam. This contributed to the BC Hydro proposal to act as a conduit for First Nations concerns to the Waneta Operating Committee. Nevertheless, BC Hydro believes that a small reduction in the amount applied for is warranted because significant portions of the KNC evidence was not directly relevant to the Commission's determination, particularly evidence on past grievances associated with the construction of the Waneta Dam.

Commission Determination

BC Hydro submitted that the KNC have a low to moderate strength of claim, and that the scope of the duty to consult and accommodate is "towards the low end" of the spectrum determined by the courts. The Commission Panel found that BC Hydro's placement on the spectrum was reasonable (Waneta Reasons for Decision, pp. 29-33). Consequently, the Commission Panel finds that the KNC have a substantial interest in the proceeding and are eligible for PACA funding.

The Commission Panel found that the participation of the KNC was generally helpful, and contributed to its understanding of First Nations issues. Therefore, the Commission Panel concludes that the KNC should be awarded PACA funding up to the full amount of the 12 days that it determined is eligible in this proceeding. This will result in a reduction to the amount of legal counsel and case manager time requested. The 12 days of legal counsel time will be funded at the rate for senior counsel, notwithstanding that the Commission Panel does not disagree with the KNC's use of more junior counsel where appropriate.

The KNC requested funding for approximately 21.31 days of consulting time at a total cost of \$8,132.65 plus \$1,390.17 for reimbursement for out-of-pocket expenses. As the amount requested is approximately equivalent to the cost of 12 days at the rate in the PACA Guidelines for a junior consultant of \$640.00 per day, the Commission Panel concludes that the request for consultant fees should be approved.

The PACA Guidelines support the use of case managers where this reduces the use of legal counsel or enables a coalition of interest groups with similar interests to participate. The Commission Panel concludes that the case manager should be funded, up to the maximum number of days that the KNC are eligible for.

For the foregoing reasons, the Commission Panel awards the KNC PACA funding in the amount of \$42,409.22.

<u>KNC</u>	<u>Application</u>			<u>Award</u>					
	<u>Days</u>	<u>Rate \$/day</u>	<u>Total Including Tax</u>	<u>Days</u>	<u>Rate \$/day</u>	<u>Total</u>	<u>GST@ 5%</u>	<u>PST@ 7%</u>	<u>Total Including Tax</u>
Counsel	30.59		\$44,263.05	12	\$1,800	\$21,600.00	\$1,800.00	\$1,512.00	\$24,912.00
Consultant	21.31		\$8,132.65	12					\$8,132.65
Cons. Disb			\$1,390.17						\$1,390.17
Case Mgr.	21.74	\$500	\$10,870.00	12	\$500	\$6,000.00	\$300.00	0	\$6,300.00
Disburse.			\$1,674.40						\$1,674.40
Total			\$66,330.27						\$42,409.22

3.8 ONA

By Order F-30-09 dated October 27, 2009, the Commission granted \$27,512.50 of interim Participant Assistance/Cost Award (PACA) funding to the Okanagan Nation Alliance (ONA) for its participation in the Proceeding.

On March 19, 2010 the ONA submitted a PACA application for its participation in the Proceeding. The ONA appear to have applied for 44.49 days of legal counsel fees at a cost of \$74,644.25, four days of consultant fees at \$2,560.00, and three days of case manager fees at \$1,500.00. The ONA application also included \$4,644.85 for legal disbursements, for a total request that appears to be \$83,369.10.

The ONA PACA application only provides detailed invoices for legal services, an affidavit verifying that the services were provided, and an invoice from ONA in relation to the services provided by the case managers and consultants. There is no discussion as to why ONA is eligible for PACA funding, the contribution that it made to the proceeding, or why the requested amount is as high as it is.

In its letters dated March 23 and April 6, 2010, BC Hydro notes that the ONA does not provide an explanation as to the amount of the requested amount, as required by the PACA Guidelines in order to ensure that ratepayer interests are met. BC Hydro acknowledges that the ONA participated in the information request process, and that its evidence in respect of its strength of claim in the vicinity of the Waneta Dam was helpful. However, a portion of the ONA evidence was not directly relevant to the Commission's determination, particularly evidence on past grievances associated with the construction of the Waneta Dam. BC Hydro believes that the ONA request for legal counsel time is high and should be reduced.

Commission Determination

The Commission Panel is disappointed in the quality of the ONA application. It is unclear and unorganized, makes no effort toward alignment with the PACA Guidelines or staff's review letter, and fails badly to meet the standards that the Commission expects for filings from law firms with experienced counsel and other associated resources.

BC Hydro submitted that the ONA have a low to moderate strength of claim, and that the scope of the duty to consult and accommodate is "towards the low end" of the spectrum determined by the courts. The Commission Panel found that BC Hydro's placement on the spectrum was reasonable (Waneta Reasons for Decision, pp. 29-33). Consequently, the Commission Panel finds that the ONA have a substantial interest in the proceeding and are eligible for PACA funding.

The Commission Panel found that the participation of the ONA was generally helpful, and contributed to its understanding of First Nations issues. Therefore, the Commission Panel concludes that the ONA should be awarded PACA funding up to the full amount of the 12 days that it determined is eligible for this proceeding. This will result in a reduction to the amount

of legal counsel time requested. The 12 days of legal counsel time will be funded at the rate for senior counsel. Although it believes that the concern is adequately dealt with by limiting legal counsel funding to the 12 days that are eligible for full participation, the Commission Panel feel obliged to question the need for six lawyers to be involved with this matter. It is not at all clear that this is efficient.

The PACA Guidelines support the use of case managers where this reduces the use of legal counsel or enables a coalition of interest groups with similar interests to participate. The Commission Panel concludes that the case managers should be funded, up to the three days that the ONA applied for.

The PACA application includes \$4,644.85 for legal disbursements, including three air fares to the Okanagan. The Commission Panel concludes that only one airfare should be funded, and that the disbursements amount should be reduced by \$531.55 and \$689.15, to \$3,424.15.

For the foregoing reasons, the Commission Panel awards the ONA PACA funding in the amount of \$32,396.15 as calculated in the following table, which after deducting the interim payment amount of \$27,512.50 leaves a Remaining Payable amount of \$4,883.65.

ONA	Application			Award					
	Days	Rate \$/day	Total Including Tax	Days	Rate \$/day	Total	GST@ 5%	PST@ 7%	Total Including Tax
Counsel	44.49		\$74,664.25	12	\$1,800	\$21,600.00	\$1,800.00	\$1,512.00	\$24,912.00
Consultant	4.00		\$2,560.00	4.00		\$2,560.00			\$2,560.00
Case Mgr.	3.00		\$1500.00	3.00		\$1,500.00			\$1,500.00
Disburse.			\$4,644.85						\$3,424.15
Total			\$83,369.10						\$32,396.15

4.0 SUMMARY OF COMMISSION DETERMINATIONS

The Commission Panel determines that the following amounts of PACA funding are awarded to Participants.

Participant	Application	Award	Interim Award	Remaining Payable
BCOAPO <i>et al.</i>	\$17,579.62	\$17,579.62	\$0.00	\$17,579.62
IPPBC	\$45,990.00	\$19,971.00	\$0.00	\$19,971.00
Alan Wait	\$662.16	\$662.16	\$0.00	\$662.16
CEC	\$21,110.26	\$21,110.26	\$0.00	\$21,110.26
Sinixt	\$60,435.95	\$30,108.35	\$22,750.00	\$7358.35
BCSEA, <i>et al.</i>	\$9,072.00	\$9,072.00	\$0.00	\$9,072.00
KNC	\$66,330.27	\$42,409.22	\$0.00	\$42,409.22
ONA	\$83,369.10	32,396.15	\$27,512.50	\$4,883.65
TOTAL Award	\$304,549.36			\$123,046.26

Section 1 of Participant Assistance/Cost Award Guidelines

Section 1, Participant Eligibility

The Commission Panel in a proceeding may award costs for participation, pursuant to these Guidelines, under section 118 of the Act. The Commission Panel may establish a maximum aggregate award amount (funding cap) for a proceeding.

A Participant is an individual or an organization, which actively participates in a proceeding of the Commission.

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 requirements 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.