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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-6-11**

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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 an Application by British Columbia Hydro and Power Authority
for Acceptance of Capital Expenditures relating to the
Columbia Valley Transmission Project**

BEFORE: M.R. Harle, Panel Chair/Commissioner
L.A. O'Hara, Commissioner January 27, 2011

O R D E R

WHEREAS:

- A. On January 22, 2010, the British Columbia Transmission Corporation (BCTC) filed an application (the Application), pursuant to sections 45 and 46 of the *Utilities Commission Act*, with the British Columbia Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity to construct and operate the Columbia Valley Transmission Project (CVT Project) as described in the Application;
- B. By Order G-54-10 dated March 24, 2010 the Commission established a written public hearing process with one round of Information Requests (IRs) to review the Application;
- C. By Order C-5-10 dated September 3, 2010, the Commission granted a Certificate of Public Convenience and Necessity to the British Columbia Hydro and Power Authority (BC Hydro) as successor to BCTC for the entirety of the CVT Project as described in the Application;
- D. By letter received July 10, 2010, The British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) applied for Participant Assistance/Cost Award (PACA) funding for its participation in the proceeding;
- E. By email dated November 8, 2010, the Lake Windermere District Rod and Gun Club (LWDRGC) applied for PACA funding for its participation in the proceeding;
- F. By letter dated November 30, 2010, the Ktunaxa Nation Council applied for PACA funding for its participation in the proceeding;
- G. By letter dated November 30, 2010, the Sexqeltkemc (Lakes Division) of the Secwepemc Nation applied for PACA funding for its participation in the proceeding;

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- H. By letters dated October 22 and December 21, 2010, BC Hydro commented on the PACA applications;
- I. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines in Commission Order G-72-07 and has concluded that 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>Interim Award</u>	<u>Award</u>	<u>Balance Owing</u>
BCOAPO	\$5,735.63		\$5,735.63	\$5,735.63
Lakes Division	\$8,558.00		\$2,808.00	\$2,808.00
Ktunaxa Nation	\$41,547.32	\$12,843.50	\$24,972.96	\$12,129.46
LWDRGC	\$848.70		\$848.70	\$848.70

2. BC Hydro is directed to reimburse the above-noted Participants for the Balance Owing amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of January 2011.

BY ORDER

Original signed by:

M.R. Harle
Commissioner

Attachment



IN THE MATTER OF

**APPLICATIONS FOR PARTICIPANT ASSISTANCE/COST AWARDS
IN AN APPLICATION BY BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
FOR ACCEPTANCE OF CAPITAL EXPENDITURES RELATING TO THE
COLUMBIA VALLEY TRANSMISSION PROJECT**

REASONS FOR DECISION

January 27, 2011

BEFORE:

M.R. Harle, Commissioner
L.A. O'Hara, Commissioner

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1.0 INTRODUCTION

On January 22, 2010, the British Columbia Transmission Corporation (BCTC) filed an application (the Application), pursuant to sections 45 and 46 of the *Utilities Commission Act*, RSBC 1996, c. 473 (*the Act*), with the British Columbia Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Columbia Valley Transmission Project (CVT Project) as described in the Application. By Order G-54-10 dated March 24, 2010, the Commission established a written public hearing process with one round of Information Requests (IRs) to review the Application.

On June 3, 2010, the *Clean Energy Act*, SBC 2010, c. 22 (*CEA*), received Royal Assent. Pursuant to Part 7 of that *CEA*, all of BCTC's interests in the Application and in the CVT Project were transferred to and became vested in the British Columbia Hydro and Power Authority (BC Hydro) as of July 5, 2010. The BCTC Final Submission anticipated that the Commission's decision on the Application would not be made before the coming into force of Part 7 of the *CEA* and requested that if the decision was made after that date, the CPCN should be issued in the name of BC Hydro. By Order C-5-10 dated September 3, 2010, the Commission granted a CPCN to BC Hydro for the entirety of the CVT Project as described in the Application.

The Commission received four applications pursuant to section 118 of the *Act* for Participant Assistance/Cost Award (PACA) funding for the CVT 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 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.

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 addition, the Commission typically does not provide funding to an Intervener for counsel or a consultant who is directly affiliated with the Intervener.

2.0 PROCEEDING AND PREPARATION DAYS

Section 4 of the PACA Guidelines states that proceeding days eligible for PACA funding may include workshop days, negotiation days, pre-hearing conference days, hearing days and oral argument days. The proceeding days for the CVT Project consisted of a one half day for a Procedural Conference on March 17, 2010. The Guidelines provide that the Commission may award costs for preparation days on a ratio of up to two days per proceeding day. This standard results in one day for preparation plus the one half proceeding day or one and one half days in total to review the Application.

In the case of a written review proceeding, the Commission considers that the standard calculation of preparation days eligible for PACA funding is not particularly helpful. Commission staff contemplated that a full participation would include the review of all aspects of this Application including: need, timing, costs, risks, alternatives, public stakeholder involvement and First Nation's consultation. The activities contemplated in the review included, but were not limited to: review of the Application, development of IRs, review and responses to the IRs of other participants, review of the Applicant's final submission and preparation of a final submission.

Based on the above elements, Commission staff's preliminary estimate of a reasonable amount of time for a full participation review was a maximum of 9 days of counsel time, up to 7 days for consultants and up to 11 days for a case manager.

The Commission Panel considers that the Application was relatively straightforward. The Commission's scope was to determine if the application for a CPCN to construct and operate the CVT Project as described in the Application was in the public interest. The First Nation's component of the review consisted of a determination of the adequacy of consultation and accommodation.

The Commission Panel reviewed staff's preliminary estimate as well as the evidence and submissions of the Interveners that contributed to a better understanding by the Commission Panel in reaching a decision on the Application for a CPCN. The Commission Panel considers that amendments to the regulatory timetable, the added analysis of the integration of BCTC with BC Hydro during the proceeding, the Toby Creek crossing amendment, and written evidence filed on First Nation's assessment warrants additional time to be added to staff's preliminary estimate. Accordingly, the Commission Panel determines that a reasonable amount of time for Interveners to contribute to the Commission's understanding, in a full participation review of the CVT proceeding, is up to a maximum of 10 days of counsel time, up to 8 days for a consultant(s) and up to 12 days for a case manager.

3.0 INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS

The Commission has reviewed the final PACA applications for the participants that intervened in the CVT Project proceeding and awards the following amounts to the Participants:

3.1 The British Columbia Old Age Pensioners' Organization et al. (BCOAPO)

On July 10, 2010, BCOAPO applied for PACA funding for its participation in the proceeding. BCOAPO applied for 2.5 days of legal counsel fees at a cost of \$3,360.00 and 1.81 days of consultant fees at a cost of \$2,375.63, for a total request of \$5,735.63.

In its letter dated October 22, 2010 BC Hydro responded that the application of BCOAPO appears to be reasonable, appropriate and consistent with the PACA Guidelines.

Contribution Analysis

- BCOAPO was represented at the Procedural Conference;
- BCOAPO submitted 24 IRs;
- BCOAPO filed a Final Submission which addressed the need for the Project, the alternatives and route options considered, First Nations issues, project risks and property/right-of-way issues;
- The Commission Panel agrees with BC Hydro that BCOAPO's claim is reasonable and appropriate in consideration of their level of contribution;
- BCOAPO's application is consistent with the PACA Guidelines.

Commission Determination

The Commission Panel finds that BCOAPO participated actively and constructively in the proceeding, contributed to a better understanding of the issues by the Commission, has met all the criteria for PACA reimbursement and awards the full amount of its claim for \$5735.63.

3.2 The Sexqeltkemc (Lakes Division) of the Secwepemc Nation

On November 30, 2010 the Lakes Division applied for PACA funding for its participation in the proceeding. The Lakes Division applied for 2.6 hours of legal counsel fees at a rate of \$200/hr and a cost of \$708, 4.75 days (38 hours) of consultant fees at a rate of \$75/hr and a cost of \$2,850 and \$5,000 for case manager fees (no rate or number of hours specified), for a total request of \$8,858.

In its letter dated December 21, 2010 BC Hydro commented that:

- The Lakes Division participated in some aspects of the proceeding including the Procedural Conference;
- Considering the nature of the evidence provided and limited participation, in BC Hydro's view the Lakes Division marginally contributed to a better understanding of the issues in this proceeding;
- The Lakes Division's final application for PACA funding is substantially and appropriately lower than initial budget expectations;

- The use of counsel was minimal, however, the application for case manager funding appears to be excessive and unsubstantiated by detailed invoices;
- PACA funding for the Lakes Division should be reduced to better reflect the effort and contribution to the CVT Project Proceeding.

Contribution Analysis

- Chief Nelson Leon was the Lakes Division representative at the 0.5 day Procedural Conference. The PACA Guideline's calculation results in **1.5 days** for one of legal counsel, a case manager or a consultant to prepare for and attend the Procedural Conference. As the practice of the Commission is not to support funding for counsel or a consultant that is affiliated with the Intervener, the case manager rate applies in this instance;
- On May 20, 2010 the Lakes Division submitted Exhibit C8-2 disputing the adequacy of BC Hydro's consultation. The Commission Panel notes that a part of this submission reiterated the presentation of "The Four Pillars" that Chief Leon had previously presented at the Procedural Conference. Since this submission contains a duplication of previous evidence, the Commission Panel therefore believes a reasonable amount of time to compile this document is **0.5 days** for a case manager;
- On June 4, 2010, the Lakes Division responded to BCUC's four IRs as Exhibit C8-3:
 - The first IR was a request for a copy of "Our Oral Histories are our Iron Posts". A copy of a thesis that was prepared in 2008 by their consultant, Dr. Ron Ignace was provided.
 - The second IR asked for reconciliation of the Shuswap Indian Band (SIB) assuming the leadership role in negotiations with the Lakes Division's assertion that they have not had specific negotiations on the Project.
 - The third IR asked for an explanation as to why the Splatshin First Nation (which is a member of the Lakes Division) signed a letter of support for the SIB and yet still claims a failure to consult and accommodate.
 - The fourth IR asked for the specific impacts from the CVT project on the Lakes Division's Aboriginal rights and title. The Commission Panel notes that the reply did not answer the question and was mostly comprised of an 'Energy Goals and Objectives' submission which the Lakes Division had previously developed and which is not pertinent to this Application;
- On aggregate, the Commission Panel believes a reasonable time to respond to these IRs from the Commission is **1 day** for a consultant's time and **1 day** for a case manager's time;
- The Commission Panel agrees with BC Hydro that the Lakes Division's evidence marginally contributed to a better understanding of the issues in this proceeding since:
 - no IRs were submitted asserting or challenging BC Hydro's assessment of the Lake's Division strength of claim (on the Haida spectrum) in the Project area;

- there was no assertion on specific adverse potential impacts as a result of the Project on their asserted rights and how the level of consultation with BC Hydro fell short of addressing these specific concerns;
- portions of the evidence submitted were not pertinent to the issues before the Commission (particularly arguments associated with their Four Pillars/Iron Posts);
- In addition, the Commission Panel is of the view that the Lakes Division demonstrated marginal participation in the review of the Application by not submitting a final argument;
- The claim for legal fees is reasonable and supported by receipts.

Commission Determination

The Commission Panel appreciates that the Lakes Division confined their use of legal counsel to 2.6 hours and used a case manager in order to reduce legal costs. However, for the reasons stated above the Commission Panel finds the Lakes Division made only a marginal contribution to a better understanding of the issues before the Commission. The Commission Panel awards the Lakes Division 3 days for a case manager at a cost of \$1,500, 1 day for a consultant at a cost of \$600 and 2.6 hours of legal counsel fees (as submitted) at a cost of \$708 for a total award of \$2,808.

3.3 The Ktunaxa Nation Council (KNC)

On November 30, 2010 the KNC applied for PACA funding for its participation in the proceeding. The KNC applied for legal counsel fees at a cost of \$35,594.36¹, 71.8 hours for a case manager at a rate of \$500/day and a cost of \$5,140 and disbursements at a cost of \$812.96 for a total request of \$41,547.32.

In its letter dated December 21, 2010 BC Hydro commented that:

- The daily rates charged for legal counsel and case manager appear to be consistent with the PACA Guidelines;
- The KNC contributed to all aspects of the proceeding and actively participated in the Procedural Conference;

¹ Invoices submitted demonstrate use of 3 separate legal counsel at the rates of \$1,800, \$1,600 and \$1,080 per day or an equivalent of 17.3 hours at the single \$1,800/day senior rate.

- The KNC made substantial submissions on the issue of aboriginal consultation including providing information requests (IRs), responses to IRs, regulatory process submissions, written evidence and argument;
- The CVT Project is the first major transmission line project in the upper Columbia Valley in many years and provided an opportunity to canvass aboriginal issues in the area;
- The passage of the *Clean Energy Act* and the integration of BCTC with BC Hydro during the proceeding, somewhat increased the work required for KNC's analysis and participation. That said, the amount of PACA funding requested by the KNC is significantly higher than any other participant and, in BC Hydro's view, appears excessive;
- It is unclear to BC Hydro whether the use of a case manager helped reduce the effort of legal counsel and may be duplicative;
- Substantive involvement of a second senior counsel in the proceeding may also be duplicative;
- BC Hydro supports some reduction of the amount requested to be more comparable with other participants in the CVT Project proceeding.

Contribution Analysis

- The KNC was represented by legal counsel at the 0.5 day Procedural Conference. The PACA Guideline's calculation is **1.5 days** for one of legal counsel, a case manager or a consultant to prepare for and attend the Procedural Conference;
- The Commission Panel agrees with BC Hydro that the KNC actively participated in the Procedural Conference;
- The KNC submitted evidence which supported their strength of claim in the Project area and identified the specific potential impacts of the Project on their asserted rights;
- The KNC submitted seven IRs:
 - The first IR addressed the timing of the Project.
 - The second IR queried the anticipated provincial revenues resulting from the new transmission line.
 - The next four IRs were concerned with the role of BC Hydro verses BCTC acting as the Crown's agent.
 - The last IR asked for identification of consultation components to be completed after the BCTC final submission.
- The KNC responded to one IR from the Commission requesting actions that BCTC could take to fulfill a high level of consultation;

- The KNC filed a Final Submission comprised of 90 points which addressed all of the KNC First Nation's concerns;
- The Commission Panel agrees with BC Hydro that the KNC contributed to all aspects of the proceeding and considers that the participation of the KNC explored all areas of the KNC's concerns which contributed to a better understanding of First Nation's issues;
- The KNC did not utilize consultants for this proceeding which supports the funding of additional days of legal counsel;
- The Commission Panel was satisfied with the overall focus and the quality of evidence presented;
- The Commission Panel considered the over budget explanations for legal fees that were provided in the application and believes these explanations largely describe the activities that are a normal course of an application review;
- There is an 8.5 hour claim for case manager fees for preparation of the PACA budget. Estimating and invoicing is considered a normal business overhead expense, hence this expense is inappropriate. Counsel fees for this activity are also not appropriate for PACA reimbursement. The claimed 71.8 hours (in Exhibit B of the application) minus the 8.5 hours or approximately 8 days at a cost of \$4,000.00 meet the PACA Guideline requirements.
- There is a calculation discrepancy in Exhibits A and B of the PACA application associated with the case manager's claim; 71.8 hours in Exhibit B does not equate to 10.3 days and \$5,140 in Exhibit A based on \$500/day. Exhibit B was used to calculate the award since it is more detailed. This results in a claim for approximately 9 days at \$500/day or \$4,500.
- The Commission Panel agrees with BC Hydro that the level of PACA funding associated with legal fees appears to be excessive and finds that there is a duplication in counsel charges associated with the KNC intervention letter, the preparation of the outline for the final written argument, for the review of BC Hydro's final submission, and for the preparation of the KNC's final written submission.
- The Commission Panel also finds there is some duplication of case manager and senior counsel in the area of coordinating legal assignments and activities among the three counsels.
- The claimed amount of \$812.96 for disbursements is reasonable, conforms to the PACA Guidelines and is supported by receipts.

Commission Determination

The Commission Panel finds that the KNC participated actively and constructively in the proceeding, as well as contributed to a better understanding of the issues by the Commission. However, the Commission Panel also finds that part of the KNC's PACA funding request should be reduced for the reasons stated above. Therefore, the Commission awards the KNC PACA reimbursement as follows:

KNC				Award		
	Days	Rate \$/day	Total including tax	Days	Rate \$/day	Total including tax
Counsel	17.3 ²	\$1,800	\$35,594.36	10	\$1,800	\$20,160.00
Case Manager	9 ³	\$500 ⁴	\$5,140.00 ⁵	8	\$500	\$4,000.00
Disbursements			\$812.96			\$812.96
Total			\$41,547.32			\$24,972.96

After deducting the interim payment in the amount of \$12,843.50 leaves a balance of \$12,129.46 payable to the KNC.

3.4 The Lake Windermere District Rod and Gun Club (LWDRGC)

On November 8, 2010 the LWDRGC applied for PACA funding for its participation in the proceeding. The LWDRGC applied for disbursements at a cost of \$848.70 as its total claim for its contribution in the review of the CVT Project. The costs claimed are for office supplies and equipment required for mapping an alternate route to the Toby Creek crossings. These costs are in alignment with their original PACA budget submission.

In its letter dated December 21, 2010 BC Hydro commented that:

- The LWDRGC actively participated in the proceeding, including the IR process and final submissions, particularly in relation to environmental concerns;

² Invoices submitted indicate use of 3 separate legal counsels at the rates of \$1,800, \$1,600 and \$1,080 per day or an equivalent of 17.3 days at the single \$1,800/day senior rate.

³ 71.8 hours day retracted from Exhibit B in the PACA application and based on an 8 hour day

⁴ Based on an 8 hour day

⁵ As noted above in the Contribution Analysis section- this amount should be \$4,500

- In BC Hydro's view, the LWDRGC's PACA application is reasonable and appropriate, although not well-supported by receipts or invoices.

The Commission Panel has reviewed the LWDRGC application for PACA funding, considered BC Hydro's comments on the application and weighted the contribution and relevance of their submissions in contributing to a better understanding of the issues by the Commission. The LWDRGC was established in May 1919 to protect wildlife and the environment in BC. The LWDRGC's main concerns are the Project's impacts on wildlife and associated habitat, closeness to back country lakes and recreational sites, environmental damage due to construction and line losses

Contribution Analysis

- The LWDRGC asked several IRs in their areas of interest;
- The LWDRGC joined forces with other groups to successfully lobby BCTC to divert the Toby Creek crossings;
- The LWDRGC submitted a final argument;
- The claim for disbursements are not supported by receipts. However the Commission Panel accepts that these costs are reasonable. Given the amount of funding applied for and the contribution made by the LWDRGC, further documentation will not be required.

Commission Determination

The Commission Panel finds that the LWDRGC contributed to a better understanding of the issues by the Commission and therefore awards the LWDRGC the full amount of their PACA application for disbursements in the amount of \$848.70.