

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-7-11**



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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  
Hugh Keenleyside Spillway Gates Project**

**BEFORE:** D. A. Cote, Commissioner February 1, 2011

**O R D E R**

**WHEREAS:**

- A. On July 16, 2010 British Columbia Hydro and Power Authority (BC Hydro) filed an application (the Application) with the British Columbia Utilities Commission (the Commission) under section 44.2(1)(b) for acceptance, pursuant to sections 44.2(3)(a) of the *Utilities Commission Act* (the Act), that capital expenditures BC Hydro anticipates making in respect of the Hugh Keenleyside Spillway Gates Project (Project) are in the public interest;
- B. By Order G-125-10 dated July 30, 2010 the Commission established a written public hearing process with one round of Intervener Information Requests to review the Application;
- C. By Order G-177-10 dated November 25, 2010 the Commission determined that the expenditures as described in the Application are in the public interest in accordance with section 44.2(4)(a) of the Act;
- D. By letter dated October 19, 2010 The British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) applied for Participant Assistance/Cost Awards (PACA) funding for its participation in the proceeding;
- E. By letter dated November 29, 2010 the Sinixt Nation Society (SNS) applied for PACA funding for its participation in the proceeding;
- F. By letter dated December 1, 2010 the Commercial Energy Consumers Association of British Columbia (CEC) applied for PACA funding for its participation in the proceeding;

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- G By letter dated December 21, 2010 BC Hydro commented on the PACA applications;
- 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 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>
CEC	\$7,819.00		\$7,294.00	\$7,294.00
BCOAPO	\$2,243.94		\$2,243.94	\$2,243.94
SNS	\$21,788.84	\$3,264.80	\$6,273.08	\$3,008.28

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 *first* day of February 2011.

BY ORDER

*Original signed by:*

D.A. Cote  
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  
HUGH KEENLEYSIDE SPILLWAY GATES PROJECT**

**REASONS FOR DECISION**

**February 1, 2011**

**BEFORE:**

**D. A. Cote, Commissioner**

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## **1.0 INTRODUCTION**

On July 16, 2010, British Columbia Hydro and Power Authority (BC Hydro) filed an application (the Application) with the British Columbia Utilities Commission (the Commission) under section 44.2(1)(b) for acceptance, pursuant to sections 44.2(3)(a) of the *Utilities Commission Act* (the Act), of the capital expenditures BC Hydro anticipates making in respect of the Hugh Keenleyside (HKL) Spillway Gates Project (Project), as being in the public interest. By Order G-125-10 dated July 30, 2010, the Commission established a written public hearing process with one round of Intervener Information Requests (IR's) to review the Application. By Order G-177-10 dated November 25, 2010, the Commission determined that the expenditures as described in the Application are in the public interest in accordance with section 44.2(4)(a) of the Act.

As set out in the Order that accompanies these Reasons for Decision, the Commission received three applications pursuant to section 118 of the Act for Participant Assistance/Cost Award (PACA) funding for the Project proceeding. Section 118 provides that the Commission 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.

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 Project were a one half day for a BC Hydro Stakeholder Workshop on August 11, 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 would result 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's preliminary estimate of a reasonable amount of time for a full participation was up to a maximum of 2.5 days of counsel time, up to 2.5 days for consultants and up to 2 days for a case manager. Full participation would include the review of all aspects of the application including: need, timing, costs, alternatives, public stakeholder involvement and First Nations' consultation. This estimate includes, but is not limited to: review of the Application, development of information requests (IRs), review and responses to the IRs of other participants, review of the applicant's final submission and preparation of a final submission.

The Commission considers that the Application was relatively straightforward. The scope of the Commission's review was to determine if the replacement and upgrades to existing equipment on BC Hydro property (which did not involve changes to the existing water license or to water flows) 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 reviewed staff's preliminary estimate as well as the evidence and submissions of the Interveners that contributed to a better understanding by the Commission in reaching a decision on the Application. The Commission has determined that a reasonable amount of time for Interveners to contribute to the Commission's understanding, in a full participation review, is up to a maximum of 3 days of counsel time and up to a maximum of 3.5 days for a consultant(s). The Commission's determination is somewhat higher than staff's estimate due to recognition of added evidence on the need and justification for the Project. The advancement of this additional evidence contributed to a better understanding by the Commission in reaching a decision on the Application.

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

The Commission has reviewed the final PACA applications, considered BC Hydro's December 21, 2010 comments on the applications, weighed the participant's level of contribution to a better understanding of the issues by the Commission and awards the following amounts to the Participants:

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

On October 19, 2010 BCOAPO applied for PACA funding for its participation in the proceeding. BCOAPO applied for 0.5 days of legal counsel fees at a rate of \$1,800/day and a cost of \$1008.00 (HST included) and 0.875 days of consultant fees at a rate of \$1,250/day and a cost of \$1,235.94 (HST included), for a total request of \$2,243.94 (HST included).

In its letter dated December 21, 2010 BC Hydro responded that the level of funding sought by BCOAPO appears to be consistent with their level of participation in the proceeding.

#### Contribution Analysis

- BCOAPO was not represented at the Stakeholder Workshop;
- BCOAPO submitted 14 IRs;
- BCOAPO filed a Final Submission which addressed the need for the Project, costs, the alternatives considered and consultation with First Nations and public stakeholders;
- BCOAPO contributed in a full participation review;
- The Commission considers BCOAPO's participation was limited in depth and concurs with BC Hydro that the level of their request for reimbursement for PACA funding appears reasonable for their level of contribution;
- BCOAPO's contribution was relevant to the issues before the Commission.

#### **Commission Determination**

**The Commission Panel finds that BCOAPO participated 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 \$2,243.94.**

#### **3.2 The Commercial Energy Consumers Association of British Columbia (CEC)**

On December 1, 2010 the CEC applied for PACA funding for its participation in the proceeding. The CEC applied for 1.19 days of legal counsel fees at a rate of \$1,800/day and a cost of \$2,394.00 (HST included) and 3.87 days of consultant fees at a rate of \$1,250 and a cost of \$5,425.00 (HST included), for a total request of \$7,819.00 (HST included).

In its letter dated December 21, 2010 BC Hydro responded that the level of funding sought by the CEC appears to be consistent with their level of participation in the proceeding.

#### Contribution Analysis

- The CEC was represented at the Stakeholder Workshop by a consultant;
- The CEC submitted 65 IR's;
- The CEC filed a Final Submission which addressed the Project's risk assessment, potential failure scenarios, absence of a quantified reliability assessment, equipment assessment, costs, alternatives, and consultation with First Nations and public stakeholders;
- The CEC contributed in a full participation review;
- The CEC's main focus was in the areas of risk and reliability;
- In Order G-177-10 and the corresponding decision, the Commission found portions of the statistical evidence presented by the CEC was of limited assistance in determining if the Project was in the public interest. The Commission finds that a maximum of 3.5 days for the CEC consultant is a reasonable time for their contribution to a better understanding of the issues by the Commission;
- The Commission concurs with BC Hydro that the level of legal costs is consistent with their level of contribution.

#### **Commission Determination**

**The Commission finds that CEC contributed to a better understanding of the issues by the Commission and has met all the criteria for PACA reimbursement. The Commission finds that the maximum allotment 3.5 days at a rate of \$1,250/day for a total of \$4,900 (HST included) is fair and reasonable for the CEC consultant's participation in the proceeding. The claim for legal fees is awarded as claimed for 1.19 days at a rate of \$1,800/day for a total of \$2,394 (HST included). The total award is therefore \$4,900 + \$2,394 = \$7,294 (HST included).**

#### **3.3 The Sinixt Nation Society (SNS)**

On November 29, 2010 the SNS applied for PACA funding for its participation in the proceeding. The SNS applied for 10.3 days of legal counsel fees at a rate of \$1400/day and a cost of \$16,441.60 (HST included), associated legal disbursements at a cost of \$1,722.24 and 2.5 days of consultant fees at a rate of \$1450/day and a cost of \$3,625.00 (no HST claimed) for a total request of \$21,788.84 (HST included).

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

- The Sinixt PACA application is more than three times greater than the adjusted budget estimate as set out by the Commission in Order F-27-10;



- The Sinixt is seeking the recovery of legal services totalling 10.3 days which includes three days of legal services for the review of BC Hydro's responses to Commission and Intervener IRs;
- In contrast, the total amount of legal services claimed by BCOAPO and CEC for the full proceeding is 0.5 and 1.19 days respectively;
- No supporting documentation has been provided for the 2.5 days of consulting service of Dr. Goodale with respect to the specific consultation services rendered;
- There does not appear to be much correlation between the amount of time and effort spent by the Sinixt and the impact of its contribution to a better understanding of the issues by the Commission;
- The Sinixt focussed on past grievances associated with the original construction of the facility and provided no evidence as to the potential adverse effects arising from the Project itself;
- The majority of evidence and submissions provided by Sinixt were not relevant to the issues before the Commission.

#### Contribution Analysis

- The SNS's counsel attended the Stakeholder Workshop;
- The Commission notes that the SNS claim for 3 days of legal costs to prepare for and attend the BC Hydro stakeholder workshop is twice the PACA guidelines of **1.5 days** for legal counsel. The Commission considers that the PACA guidelines provide a reasonable length of time to prepare for, travel and attend a less than one half day workshop;
- The Commission agrees with BC Hydro that three days of legal services for the review of BC Hydro's responses to Commission and Intervener IRs appears excessive and believes a maximum of up to **0.5 day** for a full participation review is a reasonable amount of time for this task;
- The SNS submitted three IRs:
  - The first IR asked for a diagram of the property boundaries of the HKL dam, particulars of the dam's benefits to generating facilities and if the current condition of the dam's equipment is due to a lack of testing.
  - The second IR asked for copies of archeological reports and details of consultation during the dam's original construction.
  - The third IR asked if construction of the Project poses a public risk and requested certain hydrological data;
- The SNS filed a Final Submission which addressed the SNS's interests on:
  - 14 points of Sinixt history supporting their asserted strength of claim to the project area;

- 5 points on the failure of BC Hydro to analyze the SNS strength of claim;
  - 5 points on the archeological impacts of the inundation caused by the HKL dam's construction;
  - 6 points on the HKL dam's disruption to fisheries navigation;
  - 3 points on the failure to consult on historical infringements;
  - 1 point asserting denial of capacity funding;
- The Commission concurs with BC Hydro that the SNS focussed on past grievances associated with the original construction of the facility and provided no evidence as to the potential adverse effects arising from the Project itself;
  - There were no arguments, other than those affecting the SNS, contained in the Final Submission, hence the SNS confined their contribution to partial review of the proceeding;
  - The remaining points in the Final Submission had limited or no relevance to the Project or to the issues before the Commission (i.e. to determine if the Project was in the public interest and the adequacy of First Nations' consultations), particularly submissions on historical infringements associated with the original construction of the HKL dam;
  - In its decision granting approval for the Project in Order G-177-10, the Commission found that the duty to consult with First Nations is not triggered by the Project and the issues raised by the SNS do not result in inadequate consultation. In short, the majority of evidence and arguments advanced by the SNS did not contribute to a better understanding of the issues by the Commission;
  - On balance, the Commission believes a reasonable amount of legal counsel time for the SNS's partial participation in the review of the proceeding is **2.5 days** at a rate of \$1,400/day and a cost of \$3,920 (HST included);
  - In regard to the contribution of the SNS consultant for 2.5 days at the Expert Witness/Specialist maximum rate of \$1,450/day:
    - The PACA guidelines stipulate a maximum daily rate for a consultant with 10 or more years of related experience is \$1,250. The \$1,450/day maximum rate for an Expert Witness/Specialist is generally only applicable for oral testimony. As the Application review was by way of a written process, the Expert Witness/Specialist rate is not applicable.
    - In Commission staff's August 24, 2010 letter to SNS counsel, Mr. Aaron was advised that "Commission staff is of the opinion that the proposed consultant(s) are unlikely to qualify as Specialist(s)".
    - The Commission finds that there is no supporting documentation depicting what consulting work was actually done.
    - The PACA application states that the consultant assisted in providing evidence regarding the SNS strength of claim and the impact of the Project (emphasis added) on the SNS interests.

- The Commission notes that no evidence was filed stating the adverse impacts on the SNS asserted rights that would result from the Project. The Commission finds that **1.5 days** at a rate of \$1,250/day and a cost of \$1,875.00 is a fair and reasonable amount for the SNS consultant's contribution to a better understanding of the issues by the Commission.
- In regard to the claim for \$1,722.24 in legal disbursements:
  - The claim is not supported by receipts (requested by Commission staff);
  - Reasonable economy airfare from Castlegar to Vancouver (return) was quoted to Commission staff at \$299.08;
  - The PACA guidelines provide \$49.00 for breakfast/lunch/dinner and \$30.00/night for private accommodation as the daily rate for out of town participants. One day's expenses and one night's lodging is considered reasonable;
  - The remaining expenses of: parking transportation and telephone/fax charges is estimated at \$100.00.

The Commission believes that a total of **\$478.08** for legal disbursements would be reasonable when unsupported by receipts.

#### **Commission Determination**

**For the foregoing reasons, the Commission determines that the SNS's partial participation in the proceeding marginally contributed to a better understanding of the issues before the Commission and awards the SNS PACA reimbursement as follows:**

<u>SNS</u>	<u>Application</u>	<u>Interim Award</u>	<u>Award</u>	<u>Balance Owing</u>
Legal Fees	\$16,441.60		<b>\$3,920.00</b>	
Consultant	\$3,625.00		<b>\$1,875.00</b>	
Disbursements	\$1,722.24		<b>\$478.08</b>	
<b>Total</b>	<b>\$21,788.84</b>	<b>\$3,264.80</b>	<b>\$6,273.08</b>	<b>\$3,008.28</b>