

**ORDER NUMBER
F-26-16**

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

and

British Columbia Hydro and Power Authority
W.A.C. Bennett Dam Riprap Upgrade Project

BEFORE:

D. M. Morton, Panel Chair/Commissioner
N. E. MacMurchy, Commissioner
H. G. Harowitz, Commissioner

on November 4, 2016

ORDER

WHEREAS:

- A. On November 13, 2015, the British Columbia Hydro and Power Authority (BC Hydro) filed the W.A.C. Bennett Dam Riprap Upgrade Project application and statement of capital expenditures with the British Columbia Utilities Commission (Commission) under section 44.2(1)(b) of the *Utilities Commission Act* (UCA), requesting acceptance pursuant to section 44.2(3)(a) of the UCA (Application);
- B. On November 24, 2015, the Commission issued Order G-182-15 establishing the preliminary Regulatory Timetable for the review of the Application that included one round of written information requests and a procedural conference;
- C. By Orders G-15-16, G-31-16 and G-54-16, the Regulatory Timetable was amended to include:
 - a second round of information requests of limited scope;
 - a submission by the Saulteau First Nations (SFN) of their Traditional Use Study and a joint First Nations' Independent Technical Report;
 - a third round of information requests limited in scope to BC Hydro's Duty to Consult and the First Nations Consultation Process;
 - a second procedural conference; and
 - a written argument phase;
- D. The Commercial Energy Consumers Association of British Columbia, the British Columbia Old Age Pensioners' Organization *et al.*, McLeod Lake Indian Band and SFN registered as interveners and participated in the hearing. The Association of Major Power Customers of BC also registered as an intervener but did not actively participate;
- E. On May 27, 2016, the Commission issued Order G-78-16 approving the Application with Reasons for Decision on July 13, 2016;

- F. On August 15, 2016, the Commission issued Order F-18-16 approving the Participant Assistance/Cost Award (PACA) applications from the British Columbia Old Age Pensioners' Organization *et al.* and the Commercial Energy Consumers Association of British Columbia;
- G. On August 11, 2016, SFN submitted a PACA application after the requested filing deadline and with incomplete documentation to support the application. On August 19, 2016, SFN submitted a revised PACA application in the amount of \$75,508.25, including a request for confidential treatment of the included invoices. BC Hydro did not request access to the SFN invoices;
- H. On September 16, 2016, BC Hydro provided comments on the non-confidential portion of the SFN PACA application. In its letter, BC Hydro:
- states that it reviewed the application and agrees that SFN's participation contributed to a better understanding of the materials and issues;
 - notes that it was not provided copies of the confidential invoices and therefor does not comment on the eligibility of included activities or whether the claimed amounts are consistent with the Commission's PACA Guidelines; and
 - leaves it to the Commission's discretion to make determinations on the eligibility and consistency of the activities and claimed amounts; and
- I. The Panel has reviewed the PACA application with regards to the criteria and rates set out in the Commission's applicable PACA Guidelines and the comments from BC Hydro. The Panel finds that a reduction of 25 percent from SFN's requested award is warranted.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission orders as follows:

1. Participant Assistance Cost Award in the following amount with respect to Saulteau First Nations' participation in the proceeding for the British Columbia Hydro and Power Authority application for the W.A.C. Bennett Dam Riprap Upgrade Project:

Participant	Award
Saulteau First Nations	\$56,631.19

2. British Columbia Hydro and Power Authority is directed to reimburse Saulteau First Nations for the awarded amount in a timely manner.
3. The Commission will hold the invoices provided by Saulteau First Nations confidential.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of November 2016.

BY ORDER

Original signed by:

D. M. Morton
Panel Chair/Commissioner

Attachment

British Columbia Hydro and Power Authority
W.A.C. Bennett Dam Riprap Upgrade Project

REASONS FOR DECISION

1.0 SAULTEAU FIRST NATIONS' PACA APPLICATION

The Panel has reviewed the Saulteau First Nations' (SFN) Participant Assistance/Cost Award (PACA) application dated August 19, 2016 and the related comments from British Columbia Hydro and Power Authority (BC Hydro) provided by letter dated September 16, 2016. **The Panel determines for the reasons set out below, that a reduction of 25 percent from SFN's requested award is warranted.**

As the proceeding was initiated before August 31, 2016, Order G-72-07 provides the applicable PACA Guidelines. These guidelines address eligibility requirements and criteria used to assess the amount of an award, the process for applying cost awards and eligible costs and rates. Selected criteria from these guidelines are addressed below.

1.1 Does SFN have a substantial interest in a substantial issue in the proceeding?

The Panel finds that SFN meets the substantial interest in a substantial issue test. As described in their PACA application the W.A.C. Bennett Dam Riprap Upgrade Project area (Project Area) is within SFN's traditional territory, over which SFN have constitutionally protected treaty rights. Their members' land use within and adjacent to the Project Area includes hunting, trapping, fishing and gathering of plants and medicines. SFN also has a substantial interest in the Commission's determination of whether BC Hydro had discharged the Crown's duty to consult and accommodate Aboriginal peoples up to the point of the Commission's decision.

1.2 Has the Participant contributed to a better understanding of the issues by the Commission?

The Panel finds that SFN's participation in the proceeding materially increased the Panel's understanding of the issues. Having SFN participate in the proceeding was particularly beneficial in informing the Panel about the potential impacts of the project on the rights and interests of SFN (and other First Nations) and assessing the adequacy of Aboriginal consultation. SFN's participation resulted in modification of the regulatory process and an improved decision.

BC Hydro stated that SFN's participation resulted in a better understanding of the materials and issues for all parties involved.

However, the Panel finds that portions of SFN's submissions were not helpful and provided limited or no benefit in understanding the issues relating to the decision whether to accept or reject the Application and the evaluation of the adequacy of Aboriginal consultation. The Panel notes that: the Commission, pursuant to section 44.2 of the *Utilities Commission Act*, does not have the jurisdiction to place conditions on BC Hydro as part of the approval; the Commission owes the management of regulated utilities a level of deference on how they proceed with projects; the adequacy of consultation is to be assessed up to the time of the decision; and consultation and associated negotiations are conducted directly between BC Hydro and the affected First Nations and will continue through the life of the project. As such, the Panel finds portions of SFN's submissions to be repetitive and having a perceived focus on influencing future expectations for consultation, rather than clarifying consultation to date and assessing whether it was sufficient to this point in the process. While the Panel acknowledges that submissions regarding details of expected future consultation have the potential to be germane to the assessment of adequacy of consultation, the Panel finds that for the most part they were not. If

submissions regarding details of expected future consultation had revealed material impacts that appeared not to be addressed by existing or planned consultation then these submissions would have been justified and supported by PACA.

1.3 Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?

The Panel views the purpose of PACA funding to be to remove barriers to intervener participation in proceedings with the ultimate objective of improving Commission decisions through improved understanding of the issues relevant to the decision. While recognising there is often significant overlap of public and private interest, the purpose of PACA funding is not to advance the private interests of interveners to the extent those interests diverge from the public interest.

Based on the finding that portions of SFN's submissions had limited usefulness the Panel finds that a reduction of 25 percent from SFN's requested award is warranted. The Panel notes that the 25 percent reduction was arrived at qualitatively as there is not adequate basis to make a quantitative determination, nor does the Panel find it reasonable to attempt to construct one.