



ORDER NUMBER
F-29-21

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

and

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Tilbury Liquefied Natural Gas Storage Expansion Project
Interim Participant Assistance/Cost Award Application

BEFORE:

A. K. Fung, QC, Panel Chair
T. A. Loski, Commissioner
R. I. Mason, Commissioner
D. M. Morton, Commissioner

on October 14, 2021

ORDER

WHEREAS:

- A. On December 29, 2020, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for the approval of a Certificate of Public Convenience and Necessity (CPCN) for the Tilbury Liquefied Natural Gas Storage Expansion (TLSE) Project;
- B. By Order G-26-21 dated January 26, 2021, the BCUC established a regulatory timetable for a review of the Application;
- C. On May 7, 2021, Tsleil-Waututh Nation (TWN) requested to intervene in the proceeding;
- D. August 13, 2021, TWN filed an application for interim Participant Assistance/ Cost Award (PACA) funding (Interim PACA Application). TWN seeks \$66,938.00 in interim PACA funding;
- E. By letter dated September 20, 2021, FEI provided its comments on the Interim PACA Application, stating if the BCUC is satisfied that the TWN has met the eligibility requirements, that the funding days claimed are appropriate, that the level of participation has met with the BCUC's criteria and requirements, and that its claim for its estimate of costs not yet incurred is appropriate, then FEI has no further comment; and
- F. The BCUC has reviewed the Interim PACA Application in accordance with the criteria and rates set out in the PACA Guidelines, attached to Order G-97-17, and concludes that the cost award sought by TWN should be adjusted and made as an advance against the BCUC's final cost award determination.

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

1. Interim funding is awarded, as an advance against the BCUC's final cost award determination after the conclusion of the proceeding, to TWN in the listed amount for participation in the FEI TLSE Project CPCN proceeding:

Participant	Award
TWN	\$33,469.00

2. FEI is directed to reimburse TWN for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of October 2021.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Tilbury Liquefied Natural Gas Storage Expansion Project
Interim Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Introduction

On December 29, 2020, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for the approval of a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project (Application). By Order G-26-21 dated January 26, 2021, the BCUC established a regulatory timetable for a review of the Application.

On May 7, 2021, Tsleil-Waututh Nation (TWN) requested to intervene in the proceeding. August 13, 2021, TWN filed an application for interim Participant Assistance/ Cost Award (PACA) funding (Interim PACA Application). TWN responded to clarifying questions from BCUC staff by emails dated August 27, 2021 and October 12, 2021. TWN seeks \$66,938.00 in interim PACA funding.

1.1 Summary of Interim Funding Request

In the Interim PACA Application, TWN outlines cost estimates ranging from \$66,938.00 to \$107,775.00 for legal counsel fees required for tasks including preparation of two rounds of information requests, preparation and attendance for a procedural conference, preparation of final submissions, and associated co-ordination and administrative tasks.

TWN is seeking funding for costs already incurred (\$14,837.00 in June and July 2021) as well as estimated costs not yet incurred. TWN is applying for \$66,938.00 (the lowest budget summary) in interim funding at this time, with the understanding that its final requested cost award request may be up to \$107,775.00 (the highest budget summary).

The budget estimate summary does not provide a breakdown of costs by individual, rather a “blended rate” of \$375/hr (i.e. \$3,000/day) is used which TWN says is an average of the rates for its legal counsel. The table below summarizes the professionals and rates from Miller Titerle identified as counsel for TWN:

Name	Daily Rate (\$)
Joelle Walker	4000
Serin Remedios	3040
Jordan Ardanaz	2640
Kelty McKerracher	2320

1.2 FEI Comments on Interim PACA Application

By letter dated September 20, 2021, FEI filed its response to the Interim PACA Application. FEI submits it has reviewed the TWN’s Interim PACA Application and if the BCUC is satisfied that the TWN has met the eligibility requirements, that the funding days claimed are appropriate, that the level of participation has met with the

BCUC's criteria and requirements, and that its claim for its estimate of costs not yet incurred is appropriate, then FEI has no further comment.

1.3 Reasons for Decision Outline

The Panel has reviewed the Interim PACA Application in accordance with the PACA Guidelines attached to Order G-97-17 (Guidelines). In these reasons for decision, the Panel addresses TWN's eligibility for interim PACA funding, and provides an explanation of the adjustments to the interim funding award sought by TWN. Additionally, the Panel provides recommendations for TWN to address in its final PACA application to the BCUC upon the conclusion of this proceeding.

2.0 Eligibility for Interim PACA Funding

Section 5.1 of the Guidelines states that for interim funding applications, the BCUC must be satisfied that (a) the participant has demonstrated a need for financial assistance; and (b) the proceeding is lengthy.

In response to BCUC staff questions, TWN stated:

TWN notes that we are out of pocket for both legal fees and TWN staff hours related to our participation to date. As previously stated, TWN policy mandates that there must be complete cost recovery for all TWN activities associated with consultation and accommodation. It is challenging for TWN to participate in activities which are not at least partially funded upfront. Thus, to prevent burdening the Nation with uncovered costs, TWN requests interim funding for costs already incurred and the estimated minimum costs not yet incurred. Upon conclusion of the proceedings, TWN will seek financial assistance for any additional costs, if necessary.¹

Panel Determination

The Panel is satisfied that TWN meets the criteria for eligibility for interim PACA funding. We observe that the current regulatory timetable extends to November 2021, which is 11 months following the filing of the Application, with further regulatory process to be determined. Therefore, it is likely this proceeding will be lengthy.

3.0 Amount of Interim Funding Award

Having determined TWN is eligible for interim PACA, the Panel now considers what amount of interim funding award is warranted, and under what conditions. Sections 5.3 to 5.5 of the Guidelines provide the following guidance:

5.3 Upon completion of the process set out in Sections 14.2.3 and 14.2.7, interim funding may be ordered by the Commission for: (a) costs, or a portion thereof, that have been incurred after the proceeding has begun; or (b) estimated costs not yet incurred.

5.4 Interim funding ordered by the Commission typically does not exceed 50 percent of the participant's budget estimate.

¹ Email dated October 12, 2021.

5.5 If interim funding is granted, the Commission will make a determination as to whether the amount (a) constitutes a final award for costs already incurred; or (b) constitutes an advance against the Commission's final cost award determination after the conclusion of the proceeding.

Panel Determination

The Panel determines that interim funding of \$33,469.00 should be made as an advance against the BCUC's final cost award determination after the conclusion of the proceeding.

In making this determination, the Panel awards TWN 50% of the amount sought in its Interim PACA Application, which represents the low budget estimate for the proceeding. The Panel considers this award is consistent with section 5.4 of the Guidelines, which the Panel sees no reason to diverge from in this instance.

Interim funding is granted as an advance on a final cost determination pursuant to Section 5.5 (b) of the Guidelines. The Panel notes that for interim funding awards granted under Section 5.5 (b), a participant must file a final cost award under Section 14.0 of the Guidelines at the conclusion of the proceeding. For further clarity, the award of interim funding under Section 5.5 (b) does not guarantee the recovery of funds, and does not represent the Panel's endorsement of any costs incurred or estimated as outlined in the Interim PACA Application. In the event the interim award outlined above exceeds the amount of a final award, the BCUC reserves the right to require that any difference be reimbursed to FEI. While the Panel is not making a final determination on costs in this order, we make a number of observations regarding the Interim PACA Application, and provide suggested matters for TWN to consider in preparation of a final PACA Application to address areas where the Panel considers there is a risk of not being funded altogether or fully.

Firstly, the Panel notes that the daily rates for each of the four legal counsel listed in the Interim PACA Application exceeds the maximum daily fees set out in Attachment A of the Guidelines, as outlined in the table below:

Name	Years since call	Daily Rate (\$)	Max. Daily Rate – PACA Guidelines (\$)
Joelle Walker	12+	4000	2800
Serin Remedios	0-4	3040	1900
Jordan Ardanaz	0-4	2640	1900
Kelty McKerracher	Student	2320	850

The Panel expects that TWN's final PACA application will adhere to the maximum daily rate outlined in the Guidelines, or that TWN will provide justification for why it should be reimbursed for rates higher than those in the Guidelines.

Additionally, the Panel observes that Section 7.4 of the Guidelines states:

Legal counsel are expected to perform legal services and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task. Participants are expected to use legal services in a cost-effective manner, giving regard to the years of experience required to perform tasks.

The BCUC has previously made cost adjustments to PACA applications where there were concerns regarding the efficient use of multiple legal counsel.² The Panel observes that it is not clear from the Interim PACA Application why four legal counsel are required by TWN in this proceeding or how that would amount to an efficient use of legal services. The Panel expects TWN's final application to address Section 7.4 of the Guidelines, for example, by providing detailed invoices outlining tasks undertaken by each individual, an explanation of why multiple lawyers are required, and an explanation of how legal services have been used in a cost-effective manner.

The Panel also notes that the TWN has not provided any explanation as to the basis upon which the Panel can determine that a blended rate for the four professionals listed in the Interim PACA Application would be appropriate, given the expected amount and allocation of time and effort required from each of them. This further supports the Panel's expectation that TWN's final PACA application clearly identifies the tasks undertaken and time expended by each individual in question, as supported by legal invoices.

² See, for example, Order F-22-20 and Reasons, p. 5.