

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** F-22-07

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**Application for Participant Assistance/Cost Award Funding
Customer Complaints regarding the proposed site of
the FortisBC Inc. Naramata Substation Project**

BEFORE: L.F. Kelsey, Commissioner
L.A. O'Hara, Commissioner October 23, 2007

O R D E R

WHEREAS:

- A. On August 20, 2007, Mr. William J. Andrews submitted an application for a Participant Assistance/Cost Award ("PACA") on behalf of Naramatians Against Fortis Substation ("NAFS") for its participation in the proceeding (the "Proceeding") to review the Customer Complaints regarding the proposed site of the Naramata Substation Project; and
- B. By letter dated October 3, 2007, FortisBC Inc. ("FortisBC") stated that it considers the application by NAFS for participant funding to be in excess of the Commission's PACA Guidelines as well as in excess of recent participant funding awards for FortisBC proceedings of similar complexity, including the CPCN Applications for the Black Mountain Substation Project, Ellison Substation Project, and Big White Supply Project, and the Big White Rate Design Application; and
- C. By Order No. G-124-07 dated October 12, 2007, the Commission issued its Decision on the Customer Complaints regarding the proposed site of the Naramata Substation Project; and
- D. By letter dated October 19, 2007, NAFS replied to the FortisBC letter of October 3, 2007; and

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2

E. The Commission Panel has reviewed the PACA application with regard to the criteria and rates set out in the Guidelines in Commission Order No. G-72-07 and has concluded that, after making changes to the amount of funding requested, as set out in Appendix A to this Order, and for the Reasons for Decision that are set out in Appendix B to this Order, a PACA award should be approved for NAFS with respect to its participation in this proceeding.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 118(1) of the Utilities Commission Act, the Commission awards funds to Naramatians Against Fortis Substation for its participation in the proceeding to review the Customer Complaints regarding the proposed site of the Naramata Substation Project.

| | <u>Application</u> | <u>Award</u> |
|------------------------------------------------|---------------------------|---------------------------|
| Naramatians Against Fortis Substation ("NAFS") | \$38,507.01 | \$16,539.81 |
| TOTAL | <u>\$38,507.01</u> | <u>\$16,539.81</u> |

2. FortisBC is directed to reimburse the above noted participant by way of a cheque to William J. Andrews, Barrister and Solicitor, in Trust, for the total amounts awarded in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of October 2007.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachments

Application for Participant Assistance/Cost Award Funding
Customer Complaints regarding the proposed site of
the FortisBC Inc. Naramata Substation Project

CHANGES TO PARTICIPANT ASSISTANCE/COST AWARD FUNDING

| <u>Applicant</u> | <u>Description</u> | <u>Hearing Days</u> | <u>Preparation Days</u> | <u>Rate</u> | <u>Amount</u> | <u>Total</u> |
|------------------|----------------------|---------------------|-------------------------|-------------|---------------|---------------------------|
| NAFS | Counsel | 2 | 4 | \$1,800 | | \$10,800.00 |
| | Site Visit | | 1 | \$1,800 | | 1,800.00 |
| | Travel | | 2 x ½ day | \$900 | | 900.00 |
| | GST 6% | | | | 810.00 | 810.00 |
| | PST 7% | | | | 945.00 | 945.00 |
| | Disbursements | | | | 1,284.81 | 1,284.81 |
| | Revised Award | | | | | <u>\$16,539.81</u> |

Note:

As a signed Affidavit was submitted in the NAFS application confirming that the applied-for GST cannot be recovered by the Participant seeking the award through an Input Tax Credit, GST has been allowed.

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REASONS FOR DECISION

1.0 INTRODUCTION

On July 9, 2007 the British Columbia Utilities Commission (the “Commission”) issued Order No. C-7-07 and related Reasons for Decision wherein it determined the proposed site of the FortisBC Naramata Substation Project.

The Commission received an application from Naramatians Against Fortis Substation (“NAFS”) pursuant to section 118 of the Utilities Commission Act for a Participant Assistance/Cost Award (“PACA”) for the Customer Complaints regarding the proposed site of the Naramata Substation Project proceeding. The PACA cost award requested in the application totalled \$38,507.01.

Section 118 provides that the Commission Panel may make cost awards for participation in a proceeding. The Commission’s PACA Guidelines are set out in Appendix A to Order No. G-72-07 and state:

“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.

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."

2.0 PROCEEDING AND PREPARATION DAYS

Section 4 of the PACA Guidelines state that the proceeding days may include workshop days, negotiation days, pre-hearing conference days, 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 part days. The Oral Hearing, held on July 24, 2007, extended into an evening session in preference to reconvening for a second day. **For purposes of determining the cost award, the Commission Panel determines that the Proceeding should count as two days.** Following the established guidelines this would provide for four preparation days.

3.0 PACA APPLICATION

The Commission Panel has reviewed the PACA Application which is for 18.3 days of legal expenses plus disbursements for a total of \$38,507.01. The Budget Estimate submitted by NAFS on May 15, 2007 was for six days of legal expenses plus disbursements for a total of \$12,613.80.

3.1 FortisBC's Comments on Review of the PACA Application by NAFS

FortisBC recognizes the interest and full participation of NAFS in the proceeding to determine a location for the new substation. FortisBC notes, however, that the claim for reimbursement of 18.3 days for legal counsel is substantially in excess of the Commission's PACA Guidelines and the estimate of six days that Mr. Andrews quotes from the May 28, 2007 Staff Review Letter. It also exceeds participant funding awards for recent FortisBC proceedings of similar complexity, including the Black Mountain Substation Project, Ellison Substation Project, and Big White Supply Project CPCN Applications, and the Big White Rate Design Application.

3.2 Naramatians Against Fortis Substation

NAFS, in its application for a participant cost award, requests that the Commission exercise its discretion to approve a PACA award in this application in excess of the amount typically indicated by the Guidelines, for the following reasons:

1. The time spent by counsel for NAFS in preparation (two rounds of IRs, reviewing IR responses, preparing written evidence) and written final argument that substantially shortened the length of the Oral Hearing.
2. Counsel for NAFS spent a considerable amount of time coordinating the participation of individual intervenors who were also members of NAFS so as to help provide the Commission with the most useful and legally relevant evidence and argument. In addition, counsel helped to streamline the intervenors' interactions with the Commission by explaining the procedures, explaining the evidence and issues, and obviating numerous unnecessary applications to the Panel.
3. NAFS chose to follow the Commission's practice of making maximum use of written procedures so as to maximize the accuracy and precision with which the issues are handled. The reality is that two days of preparation for a one day oral hearing simply does not allow for the extensive use of written procedures, including IRs, written evidence, IR responses, undertakings and written final argument.
4. In its Budget Estimate, NAFS indicated that the interests of the intervenor CORE are sufficiently distinct that NAFS would participate separately. That is what transpired. As noted, NAFS went to considerable efforts to coordinate and cooperate with individual intervenors who were members or supporters of NAFS so as to improve efficiency and prevent any duplication of efforts.
5. As stated in the Budget Estimate, NAFS does not have the financial resources to mount a professional quality intervention in this proceeding without the prospect of participant funding.

4.0 COMMISSION DETERMINATION

The PACA Guidelines approved by Commission Order No. G-72-07 had an effective date of July 5, 2007. This proceeding commenced before this date; however, the Oral Hearing occurred after the effective date, on July 24, 2007. **The Commission Panel determines that the PACA Guidelines approved by Order No. G-72-07 should apply in this case.**

The Commission Panel notes in the NAFS' budget letter of May 15, 2007 and application for a cost award of August 20, 2007 that NAFS is an organization of some 130 members and has retained William J. Andrews to represent them in this matter. **The Commission Panel determines that NAFS is eligible for a PACA Award.**

NAFS argues that two days of preparation for a one day oral hearing simply does not allow for the extensive use of written procedures, including IRs, written evidence, IR responses, undertakings and written final argument. The Commission Panel has considered this argument and, in its view, six days, based on two hearing days, under most circumstances should be appropriate. In these rather unique circumstances, however, the Commission Panel considers that it is reasonable to recognize the necessity for a site visit and preliminary client meeting, which occurred on April 30, 2007 and to recognize that out of town travel to and from the hearing was required. The Commission Panel notes that Counsel bills for half time for travel.

For these reasons **the Commission Panel makes the following adjustments to the amount of the award which, under the Guidelines, may be awarded to an eligible Intervenor. In this case an award is made consisting of one day for a site visit and preliminary client meeting, four preparation days, two days for the Hearing and two half days (billed at half time) for a total of seven and one half days, all at the approved rate for Counsel of \$1,800.00 per day. Full reimbursement of disbursements in the amount of \$1,284.81 is approved. The total award is \$16,539.81.**