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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-31-10**

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IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 196, Chapter 473

and

FortisBC Inc. 2009 Rate Design Application  
Applications for Participant Assistance/Cost Awards

**BEFORE:** A.J. Pullman, Panel Chair  
L.A. O'Hara, Commissioner  
M.R. Harle, Commissioner  
December 14, 2010

**O R D E R**

**WHEREAS:**

- A. On October 30, 2009, pursuant to sections 58 and 61 of the *Utilities Commission Act* (the Act), FortisBC Inc. (FortisBC) filed its 2009 Rate Design and Cost of Service Analysis Application (Application) for approval by the British Columbia Utilities Commission (Commission);
- B. On December 15, 2009, a Procedural Conference was held in the City of Kelowna, following which on December 21, 2009, the Commission issued Order G-166-09, amending the initial Regulatory Timetable, and establishing that an Oral Public Hearing would be held in the City of Kelowna, commencing Monday, May 3, 2010;
- C. The oral public hearing was held in the City of Kelowna, commencing Monday, May 3, 2010 and concluding Friday, May 7, 2010. An Oral Phase of Argument was held in Vancouver on September 7, 2010;
- D. On October 19, 2009 the Commission issued Order G-156-10 with Reasons for Decision;
- E. On or around October 7, 2010, the following groups or individuals filed applications for a Participant Assistance/Cost Award (PACA) with respect to their participation in the proceeding:
  - British Columbia Old Age Pensioners' Association *et al.* (BCOAPO);
  - Big White Ski Resort (BWSR);
  - Mr. Andy Shadrack;
  - Mr. Alan Wait;
  - Mr. Norman Gabana;
  - British Columbia Municipal Electric Utilities (BCMEU);
  - Zellstoff Celgar Limited Partnership (Celgar);
  - Irrigation Ratepayers Group (IRG); and
  - Rate 30 Customer Group.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-31-10**

4

- F. By letter dated November 29, 2010, FortisBC commented to the Commission that it did not dispute the parties' eligibility for funding, but noted that the funding requests of BWSR, Celgar and IRG exceeded the amounts permitted by the Commission's guidelines and expressed concern that Celgar had constrained its intervention to "a narrow scope of limited interest to other participants";
- G. The Commission has reviewed the applications for cost awards with regard to the criteria and rates as set out in Order G-72-07 and has concluded that, after making a number of changes to the amounts of funding requested, as set out in the Reasons for Decision attached as Appendix A to this Order, certain cost awards should be approved for participants in the proceeding.

**NOW THEREFORE** pursuant to section 118(1) of the *Utilities Commission Act*, the Commission awards funds to the following for their participation in the proceeding:

	APPLICATION	AWARD
BCOAPO	\$44,842.21	\$44,842.21
BWSR	\$38,645.97	\$27,875.97
BCMEU	\$84,379.39	\$84,379.39
Celgar	\$152,745.00	\$73,451.49
Andy Shadrack	\$1,688.38	\$1,688.38
Rate 30 Customer Group	\$7,644.26	\$7,644.26
Alan Wait	\$2,101.34	\$2,101.34
IRG	\$62,389.35	\$48,117.44
Norman Gabana	\$1,196.00	\$1,196.00
<b>TOTAL</b>	<b>\$395,631.90</b>	<b>\$291,296.48</b>

Dated at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of December 2010.

BY ORDER

*Original signed by:*

A.J. Pullman  
Panel Chair/Commissioner

Attachment



**IN THE MATTER OF**

**FORTIS INC.**  
**2009 RATE DESIGN APPLICATION**  
**APPLICATIONS FOR PARTICIPANT ASSISTANCE/COST AWARDS**

**REASONS FOR DECISION**

**December 14, 2010**

**BEFORE:**

A.J. Pullman, Panel Chair / Commissioner  
L.A. O'Hara, Commissioner  
M.R. Harle, Commissioner

***TABLE OF CONTENTS***

	<b>Page No.</b>
1.0 INTRODUCTION .....	3
2.0 PROCEEDING AND PREPARATION DAYS .....	4
3.0 PACA APPLICATIONS .....	4
4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS .....	5

## **1.0 INTRODUCTION**

On October 30, 2009 FortisBC Inc. (FortisBC) filed its 2009 Rate Design Application (Application) with the British Columbia Utilities Commission (the Commission). On October 19, 2010 the Commission issued Order G-156-10 with Reasons for Decision.

Section 118 of the *Utilities Commission Act* (the Act) provides that the Commission may make cost awards for participation in a proceeding. In this proceeding, the Commission received five applications pursuant to the Commission's PACA Guidelines. The Guidelines are set out in Appendix A to Order G-72-07 issued under section 118 of the Act and include the following provisions on eligibility for awards:

"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); and
- (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."

Where an individual Participant does not qualify for an award, the Participant may still be reimbursed for travel:

“In some circumstances, an individual Participant that does not qualify for an award, pursuant to Participant eligibility criteria as set forth in Section 1, may be reimbursed for disbursements to travel to a proceeding that is more than 100 km. from the Participant’s residence.”

Pursuant to the PACA Guidelines, FortisBC was provided with copies of the cost award applications and the opportunity to comment on them. In a letter dated November 29, 2010 to the Commission, FortisBC made comments on the applications, stating that it does not dispute the parties’ eligibility for participant funding. FortisBC notes that the funding requests of BWSR, Celgar, and the IRG exceed the amounts permitted by the Guidelines, and states:

“It is also of concern that those parties that are requesting funding in excess of that which is contained in the Guidelines largely constrained their interventions to a narrow scope of limited interest to other participants. This is especially true of Zellstoff-Celgar who presented much of its evidence on issues that itself (sic) introduced that did not form part of the original application, and now wish to pass the costs of doing so onto FortisBC ratepayers in general”.

## **2.0 PROCEEDING AND PREPARATION DAYS**

Section 4 of the PACA Guidelines states that proceeding days may include workshop days, negotiation days, pre-hearing conference days, hearing days and oral argument days. The Commission Panel has determined the number of proceeding days for the Application as follows:

<u>Activity</u>	<u>Proceeding Days</u>	
Procedural Conference	December 15, 2009	1.00
Oral Hearing	May 3-7, 2010	5.00
Oral Phase of Argument	September 7, 2010	<u>1.00</u>
<b>Total Proceeding Days</b>		<b>7.00</b>

The PACA Guidelines provide that the Commission Panel may award costs for preparation days on a ratio of up to two days per proceeding days, although after the proceeding the Commission may adjust this ratio with adequate justification from participants.

In this case, the Commission Panel does not consider that the nature of the proceedings can be said to provide “adequate justification” to depart from the standard ratio and accordingly the Commission Panel determines that 21 days (7+14) will be the maximum number of days for funding for all applicants.

## **3.0 PACA APPLICATIONS**

The Commission received applications from the British Columbia Old Age Pensioners Association *et al.* (BCOAPO), Big White Ski Resort (BWSR), Mr. Andy Shadrack, Mr. Alan Wait, Mr. Norman Gabana, British Columbia Municipal Electric Utilities (BCMEU), Zellstoff Celgar Limited Partnership (Celgar), Irrigation Ratepayers Group (IRG), and Rate 30 Customer Group.

The PACA applications are summarized as follows:

	APPLICATION
BCOAPO	\$44,842.21
Big White Ski Resort	\$38,645.97
BCMEU	\$84,379.39
Zellstoff-Celgar	\$152,745.00
Andy Shadrack	\$1,688.38
Rate 30 Customer Group	\$7,644.26
Alan Wait	\$2,101.34
IRG	\$62,389.35
Norman Gabana	\$1,196.00
<b>TOTAL</b>	<b>\$395,631.90</b>

#### **4.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATIONS AND AWARD AMOUNTS**

The Commission Panel has reviewed the PACA applications and, with the exception of Celgar which is discussed below, finds that all the applicants can demonstrate their eligibility through “substantial interest in a substantial issue.” The Commission Panel has determined, however, that adjustments are required to the awards requested by certain Participants. Therefore, the Commission Panel makes the following awards:

##### BCOAPO

On October 7, 2010, BCOAPO applied for 18.0 days of legal counsel fees at a daily rate of \$1,450 at a cost of \$28,224 including applicable GST/PST/HST, travel expenses of \$1,445.60, and consultant fees plus applicable taxes of \$15,172.50, for a total request of \$44,842.21.

The Commission Panel considers that BCOAPO’s claim meets the Guidelines and accepts it.

**The Commission Panel approves a total award for BCOAPO in the sum of of \$44,842.21.**

##### Big White Ski Resort

On October 4 2010, BWSR applied for PACA funding for its participation in the proceeding, in the amount of \$38,645.97, being an unspecified amount of consultant days at an unspecified daily rate in the amount of \$37,020.00 plus GST plus disbursements of \$1,625.97 for a total claim of \$38,645.97.

The Commission Panel adjusts the amount of BWSR’s claim for consultant’s fees to \$26,250.00 being 21 days at \$1,250 per diem.

**The Commission Panel approves a total award for BWSR, after the adjustment for fees, in the sum of \$27,875.97**

BCMEU

On October 8, 2010 BCMEU applied for PACA funding for its participation in the proceeding, as follows:

	Days	Rate	Fees	Expenses	Total
Legal Counsel	21.00	1,800	37,800.00	1,965.27	39,765.27
Consultant	9.18	1,250	11,468.75	148.01	11,616.76
Expert Witness	21.00	1,450	30,450.00	2,547.36	32,997.36
<b>TOTAL</b>			<b>79,718.75</b>	<b>4,660.64</b>	<b>84,379.39</b>

The Commission Panel considers that BCMEU's claim meets the Guidelines and accepts it.

**The Commission Panel approves a total award for BCMEU in the sum of \$84,379.39.**

Zellstoff Celgar Limited Partnership (Celgar)

On October 7, 2010, Celgar applied for PACA funding for its participation in the proceeding in the amount of \$152,745.15. The following table summarizes the claim (after adjustments for clerical errors):

	Days	Rate	Fees	Expenses	Total
Legal Counsel	29.50	1,800	53,100.00	856.50	53,956.50
Consultant	29.50	1,450	42,775.00	994.41	43,769.41
Expert Witness	15.00	2,300	34,500.00	4,344.99	38,844.99
Case Manager	18.50	500	14,000.00		14,000.00
<b>TOTAL</b>			<b>144,375.00</b>	<b>6,195.90</b>	<b>150,570.90</b>

In its PACA Application Celgar submits that it has a substantial interest in the following two broad categories of substantial issues in this proceeding:

- a) Celgar is a ratepayer and as such has a significant interest in the cost of service analysis and the rate design issues; and
- b) Celgar is a customer and as such has a significant interest in whether or not FortisBC has an obligation to serve the load requirement of Celgar.

The Commission Panel accepts Celgar's assertion that it has a significant interest in the RDA as it was the only customer in RS33 and took specific exception to FortisBC's proposed allocation of certain costs to that customer class. The Commission Panel has considered Celgar's assertion that having a significant interest in whether or not FortisBC has an obligation to serve its load requirement, makes it eligible *per se* to claim PACA funding. At p.97 of its Decision the Commission found that the establishment of a GBL between it and FortisBC would have benefitted Celgar and would have been unlikely to benefit FortisBC's other customers, and for this reason the Commission Panel considers that the funds Celgar expended to make its case before the Commission should be for its account alone and should not be borne by all FortisBC's other customers.

In its PACA Application Celgar submits that that the actual number of days spent, the complexity of the issues to be addressed in argument related to self-generation and RS33 cost of service and rate design, and the preponderance of the issues identified by the Commission Panel for Celgar in the oral phase of the argument provide adequate justification for calculating an award based on 29.5 days.



For the reason stated above, the Commission Panel considers that much of the time spent by Celgar related to the GBL issue and accordingly the Commission Panel sees no reason to award Celgar more days than the 21 days it has found appropriate for this proceeding.

In its PACA Application, Celgar requests that the rate for Mr. Linxwiler be established at \$2,300 per day. Mr. Linxwiler has appeared before the Commission in previous proceedings, most recently in the BC Hydro rate design proceeding. Celgar submits that Mr. Linxwiler's actual costs should be recoverable because of his unique qualifications and his contribution to a better understanding of the issues by the Commission, including the cost of service analysis and the contract provisions. Celgar notes that the Guidelines give the Commission Panel discretion to establish a per diem in excess of the "Maximum Daily Fee" for an expert/specialist.

The Commission Panel notes that the Commission has in the past agreed prospectively to higher daily rates for certain consultants or expert witnesses. In this case no request was made to the Commission Panel for a higher rate for Mr. Linxwiler. The Commission Panel also notes that BCMEU claimed \$1,450 per day for Dr Rosenberg, a US based consultant with similar credentials to those presented by Mr Linxwiler.

The Commission Panel rejects Celgar's application for \$2,300 per day for Mr Linxwiler, and will allow \$1,450 for the full 21 days which Mr Linxwiler's four invoices support.

The Commission Panel notes that Celgar's application includes 29.5 days for a regulatory consultant at \$1,450 per day for a total of \$43,769.41 (including expenses of \$994.91). In the Commission Panel's view the consultant was primarily engaged in the GBL issue rather than the COSA which was addressed by Mr Linxwiler's testimony. Accordingly the Commission Panel rejects Celgar's claim for a Regulatory Consultant.

The Commission Panel notes that Celgar's application includes 18.5 days for a case manager at \$500 per day, totalling \$14,000. The Commission Panel considers that a case manager is more customary in instances where a number of customers have joined together and finds it inappropriate in this proceeding and disallows it.

Accordingly the Commission Panel awards Celgar the following PACA funding:

CATEGORY	DAYS	RATE	SUB-TOTAL	EXPENSES	TOTAL
Legal Counsel	21.0	\$1,800	37,800.00	856.50	38,656.50
Expert Witness	21.0	\$1,450	30,450.00	4,344.99	34,794.99
<b>TOTAL</b>			<b>68,250.00</b>	<b>5,201.49</b>	<b>73,451.49</b>

**The Commission Panel approves a total award for Celgar, after adjustments, in the sum of in the sum \$73,451.49.**

#### Irrigation Rate Payers Group

The IRG claims \$62,389.35, mainly comprising legal counsel at \$50,000 (being an unspecified number of days at an unspecified daily rate), expenses of \$3,768.94, foregone earnings of \$2,472.50, and GST/PST/HST of \$6,147.91. The IRG's claim is for an amount of days in excess of 21 and the Commission Panel rejects the excess days and allows 21 days at \$1,800 per day. The Commission Panel also reduces foregone earnings in respect of Ms Allison by allowing two days at \$175 per day as opposed to her claim of \$810.00

**The Commission Panel approves a total award for IRG, after adjustments, in the sum of in the sum of \$48,117.44.**

Ratepayer 30 Group

The Ratepayer 30 Group claimed \$7,644.26 being legal fees of 3 days at \$1,800 per day, expenses of \$1,425.23 and taxes of \$819.03.

The Commission Panel considers that the Ratepayer 30 Group's claim meets the Guidelines and accepts it.

**The Commission Panel approves a total award for the Rate 30 Group in the sum of \$7,644.26.**

Andy Shadrack, Norman Gabana and Alan Wait

These interveners submitted PACA requests for \$1,688.38, \$1,196.00 and \$2,101.34 respectively being out of pocket expenses in accordance with the Guidelines.

The Commission Panel considers that these interveners' claims meet the Guidelines and accepts them.

**The Commission Panel approves total awards in the sums of \$1,688.38, \$1,196.00 and \$2,101.34 respectively for Mr. Shadrack, Mr. Garbana and Mr. Wait.**