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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-17-13**

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

**and**

**Generic Cost of Capital Proceeding – Stage 1  
Applications for Participant Assistance/Cost Awards**

**BEFORE:** D.A. Cote, Commissioner/Panel Chair  
R. Giammarino, Commissioner  
M.R. Harle, Commissioner  
L.A. O'Hara, Commissioner

June 13, 2013

**O R D E R**

**WHEREAS:**

- A. By Order G-20-12 dated February 28, 2012, the British Columbia Utilities Commission (Commission) established a Generic Cost of Capital (GCOC) proceeding to review: (a) the setting of the appropriate cost of capital for a benchmark low-risk utility; (b) the possible return to a Return on Equity Automatic Adjustment Mechanism (ROE AAM) for setting an ROE for the benchmark low-risk utility; and (c) the establishment of a deemed capital structure and deemed cost of capital methodology, particularly for those utilities without third-party debt. The Order also established that all participating public utilities regulated by the Commission are divided into Affected Utilities and Other Utilities for the purpose of the GCOC proceeding;
- B. By Order G-72-12 dated June 1, 2012, the Commission established, among other things, that the Participant Assistance/Cost Award (PACA) costs would be allocated among Affected and Other Utilities in accordance with the principles established in Order F-5-06;
- C. Further to a Procedural Conference that took place on October 4, 2012, the Commission issued Order G-148-12 dated October 11, 2012, which established an oral public hearing;
- D. The oral public hearing took place over a period of seven days between December 12 to December 21, 2012;
- E. On May 10, 2013, the Commission issued its Decision on the Stage 1 of the GCOC proceeding together with Order G-75-13;
- F. On March 14, 2013, Industrial Customers Group of FortisBC Inc. (ICG) and the British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO) filed their respective applications for Participant Assistance/Cost Award (PACA) for their participation in the proceeding;

- G. On March 21, 2013, Commercial Energy Consumers of B.C. (CEC) filed its application for PACA for its participation in the proceeding;
- H. On March 27, 2013, Corix Multi-Utility Services Inc. (Corix) filed its application for PACA for its participation in the proceeding;
- I. On March 28, 2013, the Association of Major Power Customers of British Columbia (AMPC) filed AMPC's and the BC Utility Customers' (comprising of the expert witness's cost jointly sponsored by AMPC, CEC and BCPSO) applications for PACA for their participation in the proceeding;
- J. FortisBC Utilities (FBCU), Pacific Northern Gas Ltd. (PNG), Corix as well as British Columbia Hydro and Power Authority (BC Hydro) were asked to provide comments to the Commission on the PACA applications;
- K. By respective letters dated May 17 and May 28, 2013, to the Commission, FBCU and PNG commented that as long as the Commission is satisfied with the amounts applied for, they have no further comments. By letter dated May 28, 2013, BC Hydro commented that it does not believe that Corix's application for PACA funding should be approved, and if the Commission does decide to award PACA funding to Corix, then Corix should also be required to fund a portion of that award in accordance with the principles set out in Order F-5-06;
- L. The Commission reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines in Commission Order G-72-07, and has concluded that cost awards are 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** pursuant to section 118(1) of the *Utilities Commission Act*, the Commission orders as follows:

- 1. The Commission awards funds of \$477,650.34 to the following for their participation in the proceeding:

	<b>Application (\$)</b>	<b>Award (\$)</b>
AMPC	210,103.54	202,921.41
BCPSO	53,721.51	53,721.51
CEC	17,469.20	17,469.20
Corix	44,085.11 (USD)	44,658.22
ICG	158,880.00	158,880.00
<b>TOTAL</b>	<b>\$484,259.36</b>	<b>\$477,650.34</b>

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2. In order to expedite the payment of the PACA awards noted above, FEI is to pay the participants and collect the pro-rata costs from the regulated utilities noted below.
  
3. The total PACA allocation to utilities is as follows:

<b>FEI/FEVI</b>	<b>2012 Energy Sales (GJ x 1000)</b>	<b>PACA Allocation of Costs</b>
FEI/FEVI (at 50%)		\$238,825
BC Hydro	179,978	107,983
PNG	4,054	2,432
PNG (N.E.)	5,423	3,254
FEI/FEVI	198,301	118,964
FEW	725	435
FortisBC	8,075	4,845
Corix	126	75
Central Heat Distribution Limited	1,395	837
<b>TOTAL</b>		<b>\$238,825</b>

**DATED** at the City of Vancouver, in the Province of British Columbia, this            14<sup>th</sup>            day of June 2013.

BY ORDER

*Original signed by:*

D.A. Cote  
Commissioner/Panel Chair

Attachment

**GENERIC COST OF CAPITAL PROCEEDING - STAGE 1**  
Applications for Participant Assistance/Cost Awards

**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

On February 28, 2012, the British Columbia Utilities Commission (Commission) issued Order G-20-12 and established the Generic Cost of Capital (GCOC) proceeding pursuant to section 82 of the *Utilities Commission Act* (the Act). That Order established that all participating public utilities regulated by the Commission were considered applicants in the GCOC proceeding and further divided the list of utilities regulated by the Commission into Affected Utilities and Other Utilities.

On June 1, 2012, by Order G-72-12, the Commission issued the Minimum Filing Requirements for Affected Utilities and a Preliminary Timetable for the Stage 1 of this proceeding. In addition, the Commission established that Participant Assistance/Cost Award (PACA) costs will be allocated among Affected Utilities and Other Utilities in accordance with the principles established in Order F-5-06.

On October 11, 2012, following a Procedural Conference, the Commission issued Order G-148-12 which established an oral public hearing to commence on December 12, 2012.

An oral public hearing on matters related to Stage 1 took place over a period of seven days between December 12, and December 21, 2012. On May 10, 2013, the Commission issued its Decision on the Stage 1 of the GCOC proceeding together with Order G-75-13.

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 and disbursements:

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."

"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."

FortisBC Utilities<sup>1</sup> (FBCU), Pacific Northern Gas Ltd. (PNG), and Corix Multi-Utility Services (Corix), as well as British Columbia Hydro and Power Authority (BC Hydro) were provided with copies of the PACA applications and the opportunity to comment on them. FEU, PNG and BC Hydro filed their comments with the Commission during the period between May 17 and May 28, 2013, FEU and PNG indicated that as long as the Commission is satisfied with the amounts applied for, they have no further comments. BC Hydro commented that it does not believe that Corix's PACA funding should be approved, and if the Commission does decide to award PACA funding to Corix, then Corix should also be required to fund a portion of that award in accordance with the principles set out in Order F-5-06. Corix made no submissions to the Commission.

## 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 GCOC proceeding as follows:

<u>Activity</u>	<u>Proceeding Days</u>	
Procedural Conference	October 4, 2012	0.25
Oral Hearing	December 12 – 21, 2012	7.00
Extended Hours	December 13 – 21, 2012	<u>0.75</u>
<b>Total Proceeding Days</b>		<b>8.00</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 day, although after the proceeding the Commission may adjust this ratio with adequate justification from participants. No participant has requested a higher ratio than the ratio of 2:1 be established for the purpose of funding PACA applications although AMPC, in its application, requested that some of its legal costs be

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<sup>1</sup> FortisBC Utilities (FBCU) are made up of four utilities FortisBC Energy Inc. (FEI), FortisBC Energy (Vancouver Island) Inc. (FEVI), FortisBC Energy (Whistler) Inc. (FEW) and FortisBC Inc. (FortisBC).

funded for an articulated student Mr. Brad Comborough who assisted Mr. Wallace in this proceeding. AMPC submitted that it is reasonable that the Commission award costs for 16 preparation days at the rate of \$1,200 per day for Mr. Comborough.

AMPC submits that the GCOC proceeding was of the scale and level of complexity that was unusual and involved preparation and detailed argument that was much more concentrated and complex than is encountered in a typical utility proceeding. Furthermore, AMPC played a very significant role and took the lead in ensuring that the Commission could form a balanced perspective. AMPC submits that Mr. Comborough played an extensive role in drafting the AMPC/CEC Final Submission. Further, because he has finance background, Mr. Comborough was able to contribute to the proceeding in a number of ways which reduced legal costs due to the lower rate.

The Commission Panel notes that AMPC's request for 16 additional days of funding is equivalent to requesting a total of 40 days or a 4:1 ratio of preparation time to proceeding days (i.e., 40 = 8 proceeding days + 32).

**The Commission Panel is persuaded by AMPC's representation of Mr. Comborough's contribution, his reduced legal costs, and AMPC's overall lead role in the proceeding. The Commission Panel determines that 24 days (8.0 + 16.0) will be the maximum number of days for funding for all applicants with the exception of AMPC which has a ratio of 4:1 preparation to proceeding days.**

### 3.0 PACA APPLICATIONS

The Commission received the PACA applications from British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO), Commercial Energy Consumers of British Columbia (CEC), Industrial Customer Group of FortisBC Inc. (ICG), Corix, and AMPC who also submitted an application on behalf of the BC Utility Customers, a group comprising of AMPC, BCPSO and CEC that worked together to sponsor an expert witness.

The PACA applications total amounts are summarized as follows:

AMPC/BC Utility Customers		\$210,103.54
BCPSO		53,721.51
CEC		17,476.20
ICG		158,880.00
Corix	\$44,085.11 USD	44,658.22 <sup>2</sup>
<b>TOTAL</b>		<b>\$484,259.36</b>

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

The Commission Panel has reviewed the PACA applications and finds that all the applicants can demonstrate their eligibility through "substantial interest in a substantial issue." However, one of the criteria in the PACA Guidelines is that the Commission Panel may also consider the Participant's ability to participate without an award which usually

<sup>2</sup> Conversion rate of US\$1=C\$1.013, based on daily average noon rates published by the Bank of Canada from December 12 to December 21, 2012.

means that the Commission usually does not award PACA funds to individual businesses, utilities and municipalities, except under unusual circumstances.

The Commission has determined that a number of amendments will be made to the amounts of cost awards requested:

#### AMPC

On March 27, 2013, AMPC applied for PACA funding for its participation as a ratepayer group in the process as well as for the legal and expert witness costs which the BC Utility Customers retained in the GCOC proceeding. AMPC applied for a total of 40 days of legal counsel costs at a total cost of \$69,888 which is composed of 24 days of Mr. Wallace at \$43,200 and 16 days of Mr. Comborough at \$19,200 and \$7,488 applicable HST.

**The Commission agrees with AMPC with respect to the additional 16 days that exceed the 24 days calculated by the Commission for funding and approves the legal counsel costs.**

AMPC also applied on behalf of the BC Utility Customers for PACA funding for Dr. Booth for a total of \$119,840 based on \$350 hourly rate for 42.8 days and applicable HST (Ontario) at \$15,579.20 as well as disbursements of \$5,352. AMPC requests the Commission award PACA funding of \$350 per hour for Dr. Booth despite a pre-approved rate of \$300/hour, noting a miscommunication on rates and citing that Dr. Booth's costs are quite reasonable in light of the length and complexity of the Proceeding and the valuable contribution he made.

The Commission Panel notes Dr. Booth's contribution and approves the number of days claimed by Dr. Booth for PACA funding. However, the \$350/hour rate claimed by Dr. Booth has not been pre-approved and therefore the Commission approves a rate of \$330/hour which is the same rate claimed by Dr. Safir, the expert witness retained by another ratepayer group, the Industrial Customer Group of FortisBC Inc. (ICG). The Commission Panel, after adjusting the hourly rate for Dr. Booth and applicable HST (Ontario), awards \$133,033.41 to Dr. Booth based on \$112,992 fees (42.8 days at \$2,640 per day) and applicable HST of \$14,688.96.

**The total award for AMPC is \$202,921.41 which is the sum of \$69,888 legal fees and \$133,033.41 expert witness fees.**

#### BCPSO

On March 14, 2013, the British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO) applied for 22.5 days of legal costs at an individual's daily rate of \$1,800 for Ms. Braithwaite and Ms. Worth and at a daily rate of \$1,400 for Mr. Kung. BCPSO's PACA application also includes its consultant's invoice of 8.13 days from Econalysis Consulting Services at \$1,250 per day. The Commission Panel accepts BCPSO's total invoice of \$53,721.51.

**The total award for BCPSO is \$53,721.51 which is the sum of consulting costs amounting to \$11,382 (\$10,162.50 fees and \$1,219.50 HST) and legal fees of \$42,336.00 (\$37,800 fees and \$4,536 HST) and miscellaneous expenses.**

#### CEC

On March 21, 2013, Commercial Energy Consumers Association of British Columbia (CEC) applied for a total of \$17,476.20 based on \$6,451.20 in legal fees and \$11,025.00 in consulting fees.

The Commission Panel notes that CEC submitted a budget for \$64,050.00 and further notes the limited participation of CEC and in this proceeding. The Commission Panel accepts CEC's reduced amount in its PACA application noting that it worked together with other interveners.

**The total award for CEC is \$17,476.20.**

Corix

On March 27, 2013 Corix Multi-Utility Services Inc. (Corix) applied for PACA funding for the invoice from its expert witness Ms. Ahern of AUC Consultants Inc. Corix submits that the expenses are related exclusively to retaining an expert witness for the purposes of providing evidence on cost of capital issues specific to smaller utilities and that the Commission, by letter dated August 22, 2012, stated that "while it is not normal practice for utilities to be funded by PACA.... Corix's participation is crucial to the cost of capital issues for smaller utilities in the Proceeding." The amount requested for PACA funding is \$44,085.11 in US funds which is consisted of professional services of approximately 20 days at US \$2,000/day and around \$2,950 in disbursements.

The Commission finds the expert witness fees in terms of the number of days and the daily charge rate to be reasonable.

FBCU and PNG did not submit any objections to Corix applying for PACA. BC Hydro, by letter dated May 28, 2013, raised the following points: Corix had earlier indicated that it would not be seeking recovery of any costs incurred in the course of the GCOC proceeding and also requested that it be excused from funding any of the PACA due to its small size and limited number of customers. BC Hydro sees no reason in principle why smaller utilities should be eligible for PACA funding since all utilities benefit from the right to earn a return on equity and accordingly should pay their proportionate costs of this proceeding, at least on a *prima facie* basis. BC Hydro is of the view that Corix's application for funding is inconsistent with BC Hydro's view on the principle of eligibility and also inconsistent with Corix's earlier stated intention. BC Hydro takes the position that if the Commission does decide to award PACA funding to Corix, Corix should also be required to fund a portion of that award in accordance with the principles set out in Order F-5-06.

On BC Hydro's first point, the Commission Panel notes that Corix has adhered to its earlier stated intention that it would not apply for funding of PACA for Corix's own costs. The PACA application has not included Corix management and legal counsel costs and Corix PACA application is exclusively for its expert witness Ms. Ahern.

On the second point, the Commission Panel also agrees with BC Hydro that, in principle, utilities should not be eligible for PACA funding. The Commission has indeed reminded Corix in a letter dated August 22, 2012 that "it is not normal practice for utilities to be funded by PACA." In our view, what distinguishes Corix's PACA application at hand from the Commission's normal practice is that this GCOC proceeding is the first instance in which the Commission has the opportunity to embark on a comprehensive cost of capital review of thermal energy services (TES). These TES have created, over the last few years, a number of new on-site thermal energy systems and district energy systems which are subject to the Commission oversight. The Commission invited Corix to put forward an expert witness to improve the evidentiary record of the GCOC proceeding which hitherto has been non-existent.

With respect to Corix being required to fund a portion of that award in accordance with the principles set out in Order F-5-06, the Commission is in agreement with BC Hydro.

**The total award for Corix is \$44,685.21 which is the Canadian currency equivalent of US \$44,085.11 (converted by US \$1=C\$1.013).**



## ICG

On March 14, 2013, Industrial Customers Group of FortisBC Inc. (ICG) applied for PACA funding of \$158,880 based on \$40,500 legal fees plus \$4,860 applicable HST and \$113,520 expert witness cost.

The legal fees are based on 22.5 days at a daily rate of \$1,800 for legal counsel and the expert witness Dr. Safir's 43 days engagement at \$330.

The Commission Panel finds the applied for fees for ICG's legal counsel and expert witness reasonable and approves the applied for amount.

**The total award for ICG is \$158,880 which is the sum of \$45,360 legal costs and \$113,520.00 expert witness fees.**

## **5.0 PACA Allocation to Utilities**

Order G-72-12 dated June 1, 2012, determined that PACA costs will be allocated among Affected Utilities and Other Utilities as defined in this Proceeding in accordance with the principles established in Order F-5-06.

Order F-5-06 determined that FEI and FEVI (formerly known as TGI and TGVI) should be responsible for 50 percent of the approved PACA awards and the remaining 50 percent of the PACA awards should be shared by FEI and FEVI as well as PNG, PNG (N.E.), Terasen Gas (Squamish) Inc., FEW, FortisBC, BC Hydro. The Commission Panel notes that Terasen Gas (Squamish) Inc. has ceased to exist whereas the scope of the GCOC proceeding has expanded into small district energy systems and on-site systems. Therefore, the Commission Panel determines that Corix, Central Heat Distribution Limited (CHD), and River Energy District (RDE) should also share in the PACA award cost allocation.

Based on the 2012 regulated volume converted to GJ, the PACA allocation of costs is as follows:

### **Part A 50% of \$477,650.34**

FEI/FEVI	\$238,825.17
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### **Part B Remaining 50% shared by all Affected and Other Utilities**

Utility	2012 Energy Sales ('000 GJ)	Cost Allocation
BC Hydro	179,978 (45.21%)	\$107,983
FortisBC	8,075 (2.03%)	4,845
Corix	126 (0.032%)	75
FEI	178,863 (44.93%)	107,314
FEVI	19,417 (4.88%)	11,650
PNG (N.E.)	5,423 (1.36%)	3,254
PNG – West	4,054 (1.02%)	2,432
FEW	725 (0.18%)	435
CHD	1,395 (0.35%)	837
RDE	2 (0.00%)	0
<b>TOTAL</b>	<b>100%</b>	<b>\$238,825</b>