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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-2-13**

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

and

An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

BEFORE: N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner January 29, 2013
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

O R D E R

WHEREAS:

- A. On May 24, 2011, the British Columbia Utilities Commission (Commission) issued Order G-95-11 establishing an Inquiry into FortisBC Energy Inc.'s (FEI) Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (Inquiry);
- B. Procedural Conferences took place on June 15, 2011 and January 25, 2012;
- C. By Order G-9-12 dated January 31, 2012, the Commission established a Written Public Hearing format for the Inquiry;
- D. Registered Interveners who filed evidence in the Inquiry included the Energy Services Association of Canada (ESAC), Ferus Inc., Corix Utilities Inc. (Corix), Clean Energy Fuels, and the Coalition for Renewable Natural Gas;
- E. By Order G-201-12 dated December 27, 2012, the Commission issued the Inquiry Report which set forth principles and guidelines to be applied to regulated public utilities which intend to offer products and services outside traditional utility activities;
- F. Between May 14, 2012 and July 10, 2012, the following five Interveners filed applications for Participant Assistance/Cost Award (PACA) funding:
 - British Columbia Old Age Pensioners' Organization *et al.* [BCOAPO *et al.* as the British Columbia Pensioners' and Seniors' Organization was then known] (BCPSO);
 - Commercial Energy Consumers Association of British Columbia (CEC);
 - BC Sustainable Energy Association and Sierra Club British Columbia, B.C. Chapter (BCSEA);
 - Corix; and
 - ESAC;

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- G. By letter dated July 26, 2012 to the Commission, FortisBC Energy Utilities (FEU) provided comments regarding the PACA applications, specifically objecting to the PACA applications of Corix and ESAC, and noting the significant disparity between the costs incurred by ESAC and the other PACA applicants;
- H. By letter dated January 11, 2013, the Commission invited ESAC to respond to the comments made by the FEU;
- I. By letter dated January 18, 2013, counsel for ESAC responded to the Commission's letter dated January 11, 2013;
- J. The Commission has reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines and has concluded that the PACA cost applications should be approved as claimed, 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 approves:

1. PACA funding in the following amounts with respect to their participation in the proceeding:

Applicants	Application Amount	Award
British Columbia Pensioners' and Seniors' Organization (BCPSO, formerly known as BCOAPO <i>et al.</i>)	\$31,302.36	\$31,302.36
BC Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA <i>et al.</i>)	\$41,729.53	\$41,729.53
Commercial Energy Consumers of B.C.	\$35,280.00	\$35,280.00
Corix Utilities Inc.	\$58,968.00	\$58,968.00
Energy Services Association of Canada	\$104,450.00	\$104,450.00

2. FEI is directed to reimburse the above-noted participants for the award amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of January 2013.

BY ORDER

Original signed by:

N.E. MacMurchy
Panel Chair

Attachment

An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

REASONS FOR DECISION

1.0 INTRODUCTION AND BACKGROUND

By Order G-95-11 dated May 24, 2011, the British Columbia Utilities Commission (Commission), pursuant to sections 23, 72, 82 and 83 of the *Utilities Commission Act* (the *Act*), established an Inquiry into FortisBC Energy Inc. (FEI) offering Products and Services in Alternative Energy Solutions and New Initiatives (AES Inquiry).

This AES Inquiry was established, in part, in response to a letter of complaint from an industry organization, the Energy Services Association of Canada (ESAC), with support from Corix Utilities Inc. (Corix). The letters and submissions from ESAC and Corix, along with other participants, contributed to the scope and issues of the Inquiry as set forth in Order G-118-11 dated July 8, 2011.

The Commission has received five applications from Interveners pursuant to section 118 of the *Act* for Participant Assistance/Cost Award (PACA) funding totaling \$271,729.89.

The Commission PACA Guidelines are set out in Appendix A to Order G-72-07 and state that the Commission Panel will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. 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

The AES Inquiry held two Procedural Conferences, the first on June 15, 2011 and the second on January 25, 2012.

The key stakeholders in this Inquiry were: FEI, its shareholders and ratepayers, ESAC, Corix and other Registered Interveners that may be affected by the way FEI does business in the AES and New Initiative activities. In addition to evidence filed by FEI, five of the Registered Interveners also filed Intervener Evidence. They are:

- 1) ESAC;
- 2) Corix;
- 3) Ferus Inc., LNG Division (Ferus);
- 4) Clean Energy Fuels;
- 5) Coalition for Renewable Natural Gas.

With the exception of Commission staff, who were allowed two rounds of questions which were posed through Information Requests (IRs) to FEI, each participant was allowed one round of IRs to FEI. All parties were given the opportunity to ask one round to IRs on the Intervener Evidence.

Order G-9-12 established that the Inquiry would proceed by way of a Written Hearing.

The Commission Panel considers that while the Written Hearing format lent itself to a more efficient and effective public hearing, the Inquiry involved complex business, policy and legal issues and voluminous materials. In addition, the Inquiry was poly-centric in nature with five parties filing evidence and responding to IRs, and all parties having the right to reply to each others' arguments. Furthermore, additional submissions were made on the issues of CPCN thresholds for AES and New Initiatives as well as the Greenhouse Gas Reduction Regulation (s. 18 of the *Clean Energy Act*). All these issues substantially increased the time and effort required from each party to the proceeding. While the Commission Panel acknowledges that the Written Hearing format normally does not have proceeding days calculated for the purpose of awarding PACA funding, we have allowed a total of 22 proceeding days for the purposes of awarding PACA for the AES Inquiry.

3.0 PACA APPLICATIONS

The Commission received five PACA applications as summarized in the table below:

APPLICANTS	AMOUNT
British Columbia Pensioners' and Seniors' Organization (BCPSO, formerly known as BCOAPO <i>et al.</i>)	\$31,302.36
BC Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA <i>et al.</i>)	\$41,729.53
Commercial Energy Consumers of B.C.	\$35,280.00
Corix	\$58,968.00
ESAC	\$104,450.00

Note: all PACA applications with the exception of ESAC's included the applicable HST

As the party responsible to pay the funding awards, the FEU were given the opportunity to comment on the PACA applications. In a letter dated July 26, 2012, FEU stated that they did not have any comments on the PACA applications submitted by the applicants with the exception of Corix and ESAC. They objected to their PACA applications citing that the public interest, and in particular, the customer interest, is ill-served by extending PACA funding to parties like Corix and ESAC, irrespective of their legitimate interest in the proceeding. Furthermore, FEU noted the significant disparity between the costs claimed by ESAC relative to those claimed by the other PACA applicants, notably Corix, which is seeking roughly half the costs claimed by ESAC, despite the fact that Corix filed expert evidence.

By letter dated January 11, 2013, the Commission Panel provided ESAC with the opportunity to respond to the comments made by there.

On January 18, 2013, ESAC responded, stating that ESAC's contribution went beyond the interests of its members to address the broader issues of concern to the public at large as well as those specifically affecting the FEU's ratepayers. ESAC described the additional effort it undertook as a result of receiving and responding to IRs from five parties and its lack of institutional knowledge compared to other traditional interveners. ESAC also referenced the Delta School District Certificate of Public Convenience and Necessity proceeding before the Commission where it did not seek PACA funding but it was drawn into a full review and consideration of the evidence and issues raised.

4.0 AWARDS OF INDIVIDUAL PACA APPLICATION AMOUNTS

The Commission Panel has reviewed the five PACA applications and makes the following determinations with respect to cost awards.

BCPSO

On July 23, 2012, the BCPSO applied for a total of \$31,302.36 which is composed on \$16,600 counsel fees, \$12,698 consultant fees, and applicable taxes and disbursements.

The Commission Panel finds that BCPSO has a substantial interest in a substantial issue in the proceeding and the amount that it is applying for falls within the PACA Guidelines and within the Commission Panel's estimated number of days as stated in Section 2.0. **Accordingly, the BCPSO's claim for a cost award of \$31,302.36 is granted.**

BCSEA

On May 14, 2012, the BCSEA applied for a total of \$41,729.53 which is composed of \$38,505.60 counsel fees and applicable taxes, \$2,881.25 case manager fees and \$342.68 case manager expenses.

The Commission Panel finds that BCPSO has a substantial interest in a substantial issue in the proceeding and the amount that it is applying for falls within the PACA Guidelines and within the Commission Panel's estimated number of days as stated in Section 2.0. **Accordingly, the BCSEA's claim for a cost award of \$41,729.53 is granted.**

CEC

On May 16, 2012, the CEC applied for a total of \$35,280 which is composed of \$16,380 counsel fees plus applicable taxes and \$18,900 consultant fees plus applicable taxes.

The Commission Panel finds that BCPSO had a substantial interest in a substantial issue in the proceeding and the amount that it is applying for falls within the PACA Guidelines and within the Commission Panel's estimated number of days as stated in Section 2.0. **Accordingly, the CEC's claim for a cost award of \$35,280 is granted.**

Corix

On July 6, 2012, Corix applied for a total of \$58,968 which is composed of \$39,600 counsel fees, \$13,050 expert witness fees, and applicable taxes. FEU object to Corix's PACA application on the basis that the public interest is best served by limiting PACA funding to those interveners that truly need to be subsidized by customers as a whole.

FEU argue that Corix is a large, sophisticated commercial entity with substantial financial means and that the Commission Panel should exercise its authority under the PACA Guidelines and determine that Corix had the ability to participate in the proceeding and meet its own hearing expenses without an award. FEU cite Order F-16-06 to show that entities with a legitimate interest in the outcome of a proceeding have been denied a cost award in the past, where the participant has had the ability to participate without financial assistance.

The Commission Panel agrees with FEU that Corix is a large, sophisticated commercial entity and that it has the financial means to participate. The Commission Panel also acknowledges that the PACA Guidelines give the Panel the ability to deny Corix its cost award. However, the Commission Panel notes that the Inquiry covered areas not normally covered in recurring utility applications and is cognizant that traditional ratepayer groups would not be able to offer the same perspective as other energy services providers, such as Corix.

The Commission Panel considers that the evidence tendered by Corix, and its active participation in the process, were of assistance to the Inquiry. In this instance, the Commission Panel determines that the issue as to whether to award PACA funding to Corix does not rest on whether it could afford to participate, but whether it would have invested its resources to participate fully without the assistance of cost award. The Commission Panel finds that Corix ought to be compensated. The Commission Panel finds the amount that Corix is applying for falls within the PACA Guidelines and within the Commission Panel's estimated number of days. **Accordingly, the Corix's claim for a cost award of \$58,968 is granted.**

ESAC

On July 6, 2012, ESAC applied for a total of \$104,450, which is composed of \$50,450 consultant fees and \$54,000 legal fees. ESAC is the only PACA applicant that has not included the 12 percent HST in its application.

FEU have objected to ESAC's application for the same reasons they objected to Corix's application. They also argue that there is significant disparity between ESAC's requested cost award and those of the other PACA applicants. They note that Corix provided expert evidence whereas ESAC did not and further note that Corix's application is seeking roughly half the amount of ESAC's.

In its letter to the Commission dated January 18, 2013, ESAC defended its substantially higher cost with the following reasons:

- (a) it was especially diligent and expended increased effort because of perceived retribution from FEU;
- (b) it is a new participant in Commission processes and the AES was a completely new experience;
- (c) ESAC's directors and members had to be educated in order for its counsel to obtain instructions;
- (d) additional time and expense were devoted to researching the Competition Act;
- (e) it was drawn into a full review of the Delta School District (DSD) proceeding even though it did not participate and did not seek PACA funding.

The Commission Panel wishes to treat ESAC's PACA application in the same manner it treats Corix's, that is, not in terms of whether ESAC could afford to participate, but whether ESAC offered a perspective not hitherto available to the Commission. The Commission Panel recognizes that ESAC, unlike Corix and the other Interveners, has not been a regular participant in regulatory proceedings before the Commission. We also acknowledge that stemming from ESAC's letter of complaint it did have a perspective on the issues that was of value to the proceeding. Accordingly, the Panel finds that the issues raised by ESAC and responded to by FEU required time for analysis and response which was not necessarily the case for other participants. For these reasons the Panel accepts that ESAC required additional time to provide its input. Additionally, the Commission Panel notes ESAC's explanation that its consultant did not provide expert evidence because it would have been duplicative of the expert evidence put forward by Corix. The Panel accepts the time required by ESAC's consultant given ESAC's limited background in dealing with regulatory issues in British Columbia. However, we note that better communication between Corix and ESAC would have resulted in less need for consultant time. ESAC is asked to be mindful of this if they intend to apply for PACA funding in future proceedings.

Accordingly, ESAC's application for \$104,450 is granted. The Commission Panel notes that in ESAC's letter dated January 18, 2013 to the Commission, it compared its request of \$104,450.00 with other Inquiry PACA application requests that have included the HST. **The Commission Panel determines that \$104,450 should be the full amount awarded to ESAC. In other words, ESAC's total award will be cut back by the \$12,534 which would otherwise be payable for HST, (or \$104,450*12 percent).**