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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-24-13**

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

and

Applications for Participant Assistance/Cost Award  
for the FortisBC Alternative Energy Service Inc.  
Application for a Certificate of Public Convenience and Necessity  
for the Kelowna District Energy System and Rate Design and Rates

**BEFORE:** D.M. Morton, Panel Chair/Commissioner  
B.A. Magnan, Commissioner  
R.D. Revel, Commissioner  
September 20, 2013

## **O R D E R**

### **WHEREAS:**

- A. On November 2, 2012, FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (Commission) for a Certificate of Public Convenience and Necessity (CPCN) pursuant to sections 45 and 46 of the *Utilities Commission Act* (Act) to construct and operate the Kelowna District Energy System (KDES), which will provide Thermal Energy Services (TES) to buildings in the Kelowna City Centre, and for approval, under sections 59, 60 and 61 of the Act, of the proposed rate design and rates to recover the cost of service from customers, including three deferral accounts to be established specific to the KDES (the Application);
- B. By Order G-170-12, dated November 9, 2012, the Commission established a Written Hearing process and a Regulatory Timetable to review the Application. The Commission subsequently made a number of revisions to the Regulatory Timetable (Orders G-176-12, G-200-12, G-13-13 and G-41-13), which ultimately included three rounds of Information Requests (IR) from the Commission and Interveners and one round of IR from the Commission Panel;
- C. On November 28, 2012, the British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO) and the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA) registered as Interveners;
- D. On May 23, 2013, the BCSEA filed its application for Participant Assistance/Cost Awards (PACA) in an amount of \$9,275.18 and on June 4, 2013, the BCPSO filed its PACA application in an amount of \$4,719.75;

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- E. By Order C-8-13 dated July 26, 2013, the Commission granted to FAES, pursuant to sections 45 and 46 of the Act, a CPCN for the construction and operation of the KDES. Pursuant to sections 59 to 61 of the Act, the Commission denied, for the reasons outlined in the accompanying Decision, the rate design and rates as described in the Application;
- F. By letter dated August 28, 2013, FAES noted that it had reviewed the PACA applications and had no comments on the amounts submitted “so long as the Commission has no concerns with the time identified or the amounts applied for”; and
- G. The Commission has 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 should be granted for participants in the proceeding.

**NOW THEREFORE** for the reasons set out in the Reasons for Decision attached as Appendix A to this Order, and pursuant to section 118(1) of the *Utilities Commission Act*, the Commission approves the following:

1. Participant Assistance/Cost Awards in the following amounts with respect to the Interveners’ participation in the PNG(N.E.) CNG Virtual Pipeline CPCN proceeding:
- |       |            |
|-------|------------|
| BCPSO | \$4,719.75 |
| BCSEA | \$7,300.25 |
2. FAES is directed to reimburse the above noted participants for the respective amounts that have been awarded in a timely manner.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 20<sup>th</sup> day of September 2013.

BY ORDER

*Original signed by:*

D.M. Morton  
Panel Chair/Commissioner

Attachment

Applications for Participant Assistance/Cost Award  
for the FortisBC Alternative Energy Service Inc.  
Application for a Certificate of Public Convenience and Necessity  
for the Kelowna District Energy System and Rate Design and Rates

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REASONS FOR DECISION

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**1.0 INTRODUCTION**

On July 26, 2013, pursuant to sections 45 and 46 of the *Utilities Commission Act* (Act), the British Columbia Utilities Commission (Commission) issued Order C-8-13 granting a Certificate of Public Convenience and Necessity to FortisBC Alternative Energy Services (FAES) for the construction and operation of the Kelowna District Energy System (KDES). Pursuant to sections 59 to 61 of the Act, the Commission denied, for the reasons outlined in the accompanying Decision, FAES' proposed rate design and rates.

The Commission has received two applications from Interveners pursuant to section 118 of the Act for Participant Assistance/Cost Award (PACA) funding for the KDES CPCN and Rates proceeding totaling \$13,994.93.

The Commission PACA Guidelines set out in Appendix A to Order G-72-07 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.

**2.0 PROCEEDING AND PREPARATION DAYS**

The Written Hearing process involved three rounds of Information Requests (IR) from the Commission and the Interveners and one round of IR from the Commission Panel. However, the two Interveners in this proceeding, the British Columbia Pensioners' and Seniors' Organizations *et al.* (BCPSO) and the B.C. Sustainable Energy Associations and Sierra Club of British Columbia (BCSEA), did not submit IRs in the third round.

The BCPSO's budget estimate for preparation days included two counsel days at \$1,800 per day and three consultant days at \$1,250 per day with its actual PACA application being based on one counsel day and 2.06 consultant days. BCSEA's budget estimate included four days each for counsel (daily rate of \$1,800), consultant (daily rate of \$800) and case manager (daily rate of \$500) for a total of 12 preparation days. Its actual PACA application is based on 3.8 counsel days and 24.6 hours of case manager.

Due to the nature of the proceeding and the small number of Interveners, the Commission Panel will not set a standard number of proceeding days in this case.

### 3.0 PACA APPLICATIONS

The two PACA applications received by the Commission are summarized below.

• British Columbia Pensioners' and Seniors Organization <i>et al.</i>	\$4,719.75
• B.C. Sustainable Energy Association and Sierra Club of British Columbia	\$9,275.18
<b>TOTAL</b>	<b>\$13,994.93</b>

In its letter of comments dated August 28, 2013, FAES outlines the criteria by which the Commission should review the PACA applications, including that Participant must meet the "substantial interest in a substantial issue" criterion. FAES also notes that it has reviewed the PACA applications, and so long as the Commission has no concerns with the time or the amounts applied for, FAES has no comments on the amounts submitted.

### 4.0 COMMISSION DETERMINATIONS ON PACA APPLICATION AMOUNTS

The Commission Panel has considered the criteria outlined above and is satisfied that the Participants are eligible for the requested funding, subject to the adjustments below.

#### BCPSO

In its PACA application, the BCPSO notes on the one hand that: "the information requests submitted by BCPSO in this proceeding, and these submissions, address only the interests of BCPSO as customers of the local gas distribution utility" and on the other hand that "we believe the constituent groups of BCPSO do have a direct interest in the rates set for the Kelowna District Energy System as users of that system".

While the Panel understands that the primary concern of the BCPSO is that FortisBC Energy Inc.'s ratepayers not be negatively affected by FAES' thermal energy services (TES) projects, the Panel notes that the BCPSO appears somewhat confused by whose interests it represented in this FAES' proceeding. While the constituent groups of BCPSO may have a direct interest in the rates set for the KDES, the Panel notes that the BCPSO did not explore how and to what extent the KDES rates could affect them. In fact, in its PACA application, the BCPSO "makes no submission on the appropriateness of the rates proposed to be charged to district energy customers."

Despite the foregoing, **the Panel accepts the BCPSO's claim for a cost award of \$4,719.75.**

#### BCSEA

In its PACA application, BCSEA explains the difference between its initial budget and its final request: "BCSEA et al. initially budgeted to retain a consultant for technical DES issues, but later found that this work would not be necessary to address their concerns. The use of a case manager in this proceeding substantially reduced the time required to be spent by legal counsel."

The Panel questions BCSEA's decision not to hire a consultant at the proposed daily rate of \$800 per day and to instead use legal counsel at the daily rate of \$1,800 per day to perform some of the tasks a consultant could have performed. Based on BCSEA's submissions throughout the proceeding, as well as BCSEA's detailed invoices, the Panel estimates that an appropriate amount of time spent by legal counsel should have been no more than two days, broken down into: a) a half day to review the Application; b) a half day to review the IRs and IR responses; and c) one day to prepare the final argument. The Panel is of the view that the amount of time spent by legal counsel above those two days should be charged at the BCSEA's proposed consultant daily rate of \$800. The time spent by the case manager is acceptable. **As a result, the adjusted BCSEA cost award is reduced from \$9,275.18 to \$7,300.25.**

The Panel further notes that BCSEA has contributed to a better understanding of the broader policy issues in a number of TES applications thus far and fewer new policy issues were involved in the current proceeding. Thus, should BCSEA wish to participate in future TES proceedings, the Panel would encourage BCSEA to focus more on the specific issues of those future applications rather than on the broader policy issues that have already been explored.