

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



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-3-14**

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

Applications for Participant Assistance/Cost Awards  
in the Application by FortisBC Inc.  
for a Radio-off Advanced Metering Infrastructure Option

**BEFORE:** L.F. Kelsey, Commissioner  
D.M. Morton, Commissioner  
N.E. MacMurchy, Commissioner

February 4, 2014

**ORDER**

**WHEREAS:**

- A. By Order G-72-07 dated July 5, 2007, the British Columbia Utilities Commission (Commission) approved Participant Assistance/Cost Award (PACA) Guidelines, included as Appendix A to the Order. Pursuant to the PACA Guidelines, an application for a cost award must be made by filing a written application with the Commission within thirty days following the last day of a proceeding;
- B. On August 30, 2013, FortisBC Inc. (FortisBC) filed an application for a Radio-Off Advanced Metering Infrastructure (AMI) Meter Option (the Application);
- C. Order G-154-13 dated September 18, 2013, established a written hearing process and a Regulatory Timetable for the review of the Application (the Proceeding). The Regulatory Timetable was subsequently amended by Orders G-160-13 and G-176-13;
- D. The Proceeding concluded on November 20, 2013, coincident with FortisBC's Reply Argument. On December 19, 2013, the Commission issued Order G-220-13 and the accompanying Reasons for Decision regarding the Application;
- E. By January 22, 2014, the Commission received PACA Applications from the following Interveners in the Proceeding:
  - British Columbia Pensioners' and Seniors' Organization *et al.*,
  - British Columbia Sustainable Energy Association and Sierra Club of BC,
  - Commercial Class Energy Consumers Association of British Columbia,
  - Irrigation Ratepayers Group,
  - Director of Electoral Area "D" of the Regional District of Central Kootenay, and
  - Citizens for Safe Technology Society;

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F. Pursuant to the PACA Guidelines, FortisBC was provided an opportunity to comment on the PACA Applications and submitted letters of comment dated January 17, 2014 and January 27, 2014; and

G. The Panel has considered the PACA Applications in the context of the PACA Guidelines.

**NOW THEREFORE** pursuant to section 118(1) of the *Utilities Commission Act* and for the Reasons for Decision attached as Appendix A of this Order, the Commission orders as follows:

1. Funding is awarded to the following Interveners for their participation in the FortisBC Inc. Radio-off AMI Meter Option proceeding:

<b>Intervener</b>	<b>Final Application</b>	<b>Participant Assistance Cost Award</b>
British Columbia Pensioners' and Seniors' Organization <i>et al.</i>	\$4,978.06	\$4,978.06
BC Sustainable Energy Association and Sierra Club of BC	\$5,286.49	\$5,286.49
Commercial Class Energy Consumers Association of BC	\$6,961.50	\$6,305.25
Irrigation Ratepayers Group	\$5,241.60	\$5,241.60
Electoral Area D Regional District of Central Kootenay	\$628.00	\$628.00
Citizens for Safe Technology Society	\$32,578.10	\$5,452.85

2. FortisBC is directed to reimburse the Participants for the amounts that have been awarded in a timely manner.

**DATED** at the City of Vancouver, in the Province of British Columbia, this *Fourth* day of February 2014.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner

Attachment



**IN THE MATTER OF**

**APPLICATIONS FOR PARTICIPANT ASSISTANCE/COST AWARDS  
IN THE FORTISBC INC. APPLICATION  
FOR A RADIO-OFF ADVANCED METERING INFRASTRUCTURE  
METER OPTION**

**REASONS FOR DECISION**

**February 4, 2014**

**BEFORE:**

L.F. Kelsey, Commissioner  
D.M. Morton, Commissioner  
N.E. MacMurchy, Commissioner

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## **1.0 INTRODUCTION**

On December 19, 2013, the British Columbia Utilities Commission (Commission) issued Order G-220-13 and the accompanying Reasons for Decision on the FortisBC Inc. (FortisBC) Application for a Radio-off Advanced Metering Infrastructure (AMI) Meter Option. Subsequently, the Commission received Participant Assistance/Cost Award (PACA) applications from six Interveners that participated in the FortisBC Radio-off AMI Meter Option Proceeding (the Proceeding).

Section 118(1) of the *Utilities Commission Act* (Act) provides that the Commission may order a Participant in a proceeding before the Commission to pay all or part of the costs of another Participant in the proceeding. By Order G-72-07 dated July 5, 2007, the Commission issued its PACA Guidelines. PACA funding is intended to offset costs incurred by eligible Participants in a proceeding who might not otherwise be able to participate without assistance. In determining the amount of funding to be allowed, the Commission also considers the fact that the Participant's cost award will ultimately be borne by the ratepayers of the public utility being ordered to pay them. Therefore, the Commission also seeks to ensure that the ratepayers of the public utility have received value for any Participant cost award it makes.

Applications for PACA funding received from the following six Participants are assessed in these Reasons for Decision.

1. British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO)
2. British Columbia Sustainable Energy Association and Sierra Club of BC (BCSEA)
3. Commercial Class Energy Consumers Association of British Columbia (CEC)
4. Irrigation Ratepayers Group (IRG)
5. Director of Electoral Area "D" of the Regional District of Central Kootenay (RDCK)
6. Citizens for Safe Technology Society (CSTS)

## **2.0 PACA GUIDELINES**

The PACA Guidelines discuss the eligibility requirements and criteria used in assessing the amount of an award, the process for applying for a cost award and eligible costs and rates.

The first issue the Panel will consider is whether the Participant has a substantial interest in a substantial issue in the proceeding. Provided the Participant meets the substantial interest in a substantial issue criteria the Commission Panel determines the entitlement to a full or partial award taking into account the criteria in section 1 of the PACA Guidelines including:

- 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 proceeding?
- vi. Any other matters appropriate in the circumstances.

If the Panel considers it to be an appropriate consideration in a proceeding, the Panel may consider the Participant's ability to participate in the proceeding without an award.

A Participant that intends to apply for a cost award must submit a budget estimate as prescribed in the PACA Guidelines. Commission staff will reply with a review letter that includes an estimate of proceeding days and an estimate of preparation days that may be funded and identify any issues with the Participant's budget estimate. The Commission staff advice is not binding on the Participant or the Commission Panel and is provided only to forewarn Participants of some potential issues that may affect funding. At the close of the proceeding, normally the last day of the argument phase of the proceeding, the Participant has 30 days to submit an application for a cost award in writing with supporting information as described in the

PACA Guidelines. This Proceeding concluded on November 20, 2013, coincident with FortisBC's Reply Argument. The Commission received four PACA Applications before the filing deadline and two PACA Applications, one from each of IRG and RDCK, were received subsequent to the 30 day deadline.

The PACA Guidelines set out eligible rates and costs and define "proceeding day" as "may include workshop days, negotiation days, pre-hearing conference days, hearing days, and oral argument days, and will not include town hall meeting days." Specific allowance is made for disbursements such as direct expenses related to the Participant's participation in the proceeding.

Section 4 of the PACA Guidelines specifies the Maximum Daily Fee for professional services including legal, consultant and case managers. The Guidelines are clear that costs and awards be based on the lesser of the actual billing rates or the Maximum Daily Fees specified based on qualification and be prorated for part days. Section 4 d) describes factors that the Panel will consider in determining the level of award for consultants. The Panel may award fees for an Expert Witness/Specialist that exceed the Maximum Daily Fee; however, the Participant must seek approval in advance for fees that exceed the Maximum Daily Fee.

The Panel considers the criteria above, the information provided by the Participant with respect to any variances from the Participant's budget estimate and any variances from the initial staff estimates. The party being asked to pay, in this case FortisBC, is also given an opportunity to comment on the PACA funding applications.

In these Reasons for Decision, the Panel has taken into account the scope of the Proceeding when assessing the PACA Applications in the context of the PACA Guidelines. By way of Order G-154-13 dated September 18, 2013, the Commission Panel established a written hearing process for the review of the Application and outlined the scope of the written hearing. The Reasons for Decision accompanying Order G-220-13 reiterated that the scope was limited to the following principles:

- **Customers may choose to opt-out of accepting a wireless transmitting meter.**
- **Customers who choose to opt-out will be provided with an AMI meter that has the wireless transmit functions disabled. Transmit functions on these meters will remain disabled until the individual chooses to opt back in to the AMI program; in the event that the customer moves to a new property, the opt-out choice will move with the customer.**
- **The incremental cost of opting-out of the AMI program will be borne by the individual choosing to opt-out.<sup>1</sup>**

### **3.0 DETERMINATION OF FINAL AWARDS**

#### **3.1 FortisBC Comments on the PACA Applications**

By letter dated January 17, 2014, FortisBC provided comments on the PACA Applications received by the Commission from BCPSO, BCSEA, CEC, IRG and CSTS (FortisBC Comment Letter). In the letter, FortisBC comments that PACA funding in the claimed amount should be awarded to BCPSO, BCSEA, CEC and IRG. FortisBC does not oppose awarding PACA funding in the claimed amount to IRG, despite its late application, "[g]iven that CSTS was previously permitted to apply for PACA funding approximately two months past the deadline in the closely-related Advanced Metering Infrastructure CPCN proceeding..." (FortisBC Comment Letter, p. 7)

With respect to CSTS, FortisBC states that the CSTS PACA Application "significantly exceeds fair and reasonable costs" and "CSTS should be awarded substantially less PACA funding than it seeks, in a total amount not exceeding \$7,200." (FortisBC Comment Letter, pp. 3, 7) The CSTS PACA Application is discussed in detail in Section 3.8 of these Reasons for Decision.

By letter dated January 27, 2014, FortisBC provided comments on the RDCK PACA Application received by the Commission. (FortisBC RDCK Comment Letter) In the letter, FortisBC comments that PACA funding in the claimed amount should be

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<sup>1</sup> BC Utilities Commission Order G-220-13 and Reasons for Decision regarding the FortisBC Inc. Application for a Radio-Off Advanced Metering Infrastructure Meter Option, pp. 6, 7

awarded to RDCK and that "...in this instance, FortisBC does not object to RDCK's late application in the Radio-Off Option Proceeding." (FortisBC RDCK Comment Letter, p. 2)

### **3.2 Eligibility**

The Panel recognizes all six PACA applicants as registered Interveners in the Proceeding. Each of these Interveners has satisfied the Panel that they represent the interests of ratepayers in the FortisBC service area and have a substantial interest in a substantial issue in the Proceeding. The Panel therefore confirms that the Participants meet this PACA eligibility requirement.

### **3.3 Maximum Total Participant Days**

In assessing PACA awards for the FortisBC AMI Radio-off Meter Option Proceeding the Panel will first determine a reasonable basis for arriving at an award based on contributions from legal counsel, case managers and consultants or any combination thereof (based on an eight hour work day) per Participant.

In determining these maximum award levels the Panel considered Commission staff's original estimate as the starting point.

By Order G-154-13 dated September 18, 2013, the Commission Panel established a written hearing process for the review of the Application, including one round of Information Requests (IRs) to FortisBC from Commission staff and Interveners. Commission staff provided its estimate of *3 professional days in total* in response letters to Interveners' budget estimates, based on the regulatory process and timetable established by Order G-154-13. Staff informed Interveners where their PACA funding may be at risk based on each budget estimate provided.

Subsequently, by Order G-176-13 dated October 24, 2013, the Commission Panel directed FortisBC to file complete responses to specific IRs and respond to additional questions.

The Commission staff estimate is for "professional days" rather than "proceeding days". In this instance and the reasons outlined immediately below, the Panel finds "professional days" to be a reasonable basis for arriving at an award based on contributions from legal counsel, case managers and consultants. First, the scope of the Proceeding was narrow and, as discussed in Section 2.0 of these Reasons for Decision, limited to the principles outlined in Order G-154-13 and reiterated in the Reasons for Decision accompanying Order G-220-13. Second, given that a written hearing process was established by Order G-154-13 rather than an oral hearing and the Proceeding was narrow in scope, the Panel recognizes that Interveners may have taken various approaches in terms of their use of resources. The Panel considers that using "professional days" rather than "proceeding days" provided Participants with maximum flexibility in terms of deploying resources.

In assessing PACA awards the Panel determines that a Participant's maximum award will be based on up to four professional days in total per Participant, for any combination of legal, case manager and consultant days (based on an eight hour work day). This is consistent with the Commission staff estimate of three professional days in total, plus one additional professional day for a total of four professional days to account for the added process as directed by the Panel in Order G-176-13.

### **3.4 PACA Awards**

The following table sets out the amounts claimed for PACA funding by the Interveners in the Proceeding.

<b>Intervener</b>	<b>Final Application</b>
BCPSO	\$4,978.06
BCSEA	\$5,286.49
CEC	\$6,961.50
IRG	\$5,241.60
RDCK	\$628.00
CSTS	\$32,578.10

Considering the magnitude of the CSTS PACA Application as compared to the five other PACA Applications received by the Commission, a substantial part of these Reasons for Decision focuses on the CSTS PACA Application.

The Panel has considered the PACA Applications received in the context of the criteria outlined in Section 1 of the PACA Guidelines below.

- i. Will the Participant be affected by the outcome?

The Panel is persuaded that all six Participants that applied for a cost award meet the PACA requirements concerning the effect of the outcome on them.

- ii. Has the Participant contributed to a better understanding of the issues by the Commission?

The Panel is satisfied that the majority of Participants that applied for a cost award have contributed in some way to a better understanding of the issues by the Commission. In instances where this is not the case, the Panel has discussed this criteria with respect to the individual Participants in the relevant sections below.

- iii. Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?

The Panel is satisfied that the costs incurred for the purposes of participating in the Proceeding are fair and reasonable for the majority of Participants that applied for a cost award. The Panel has considered specific issues relating to this criteria with respect to the individual Participants in the relevant sections below.

- iv. Has the Participant joined with other groups with similar interests to reduce costs?

The Panel is satisfied that, when applicable, Participants have done so.

- v. Has the Participant engaged in conduct that tended to unnecessarily lengthen the proceeding

Generally, the Panel is satisfied that the Participants that applied for a cost award did not unnecessarily lengthen the Proceeding. However, the Panel notes that several of the Interveners did pursue issues that were out of scope which required extra effort and expense by the Applicant. Most notably, BCPSO did pursue a limited number of issues that were out of scope and CSTS asked a significant number of IRs that were out of scope. The Panel has provided further discussion with respect to CSTS in Section 3.8 below.

- vi. Any other matters appropriate in the circumstances.

Any other matters appropriate in the circumstances are discussed further with respect to the individual Participants in the sections below.

### **3.5 BCPSO and BCSEA**

BCPSO submitted its PACA Application on December 13, 2013 for a total of \$4,978.06 based on 3 days of legal services, 0.41 days of consultant services and \$4.73 in expenses. BCSEA submitted its PACA Application on December 12, 2013 for a total of \$5,286.49 based on 2.3 days of legal services and 9.9 hours (or 1.24 days) of case manager services.

The Panel notes that all fees claimed for legal, case manager and consultant services are in accordance with the PACA Guidelines and considers them appropriate given the qualifications of the resources employed.

**The Panel directs FortisBC to reimburse the BCPSO and BCSEA for the full applied-for PACA amounts of \$4,978.06 and \$5,286.49, respectively, inclusive of expenses and applicable taxes.**



### 3.6 CEC

CEC submitted its PACA Application on December 20, 2013 for a total of \$6,961.50 based on 1.5 days of legal services and 3.0 days of consultant services. The Panel notes that all fees claimed for legal and consultant services are in accordance with the PACA Guidelines and considers them appropriate given the qualifications of the resources employed.

In the FortisBC Comment Letter, FortisBC notes that "...[the CEC consultant] Mr. Craig's resume, which is required under the PACA Guidelines, has not been provided to FortisBC. However, FortisBC acknowledges Mr. Craig's level of experience based on his participation in past proceedings before the Commission (including the Advanced Metering Infrastructure CPCN) and does not object to the daily rate of \$1,250/day." (FortisBC Comment Letter, p. 3) The Panel notes that this is also the case for the BCPSO consultant, Mr. Harper. For future PACA Applications, the Panel reminds Participants that Section 2 of the PACA Guidelines clearly states that "[i]n each case the consultant's resume must be provided."

As noted in Section 3.3 of these Reasons for Decision, the Panel has determined that the maximum award will be based on up to four professional days in total per Participant, for any combination of legal, case manager and consultant days (based on an eight hour work day). The CEC PACA Application is based on 4.5 days of professional services, including legal and consultant services, which exceeds the maximum number of professional days by 0.5 days. While the Commission recognizes the contribution by CEC to the Proceeding, fairness to FortisBC ratepayers makes it important to ensure that the costs borne by ratepayers are reasonable from the perspective that Interveners being reimbursed should engage resources and use them in the most cost effective manner possible. The Panel is not persuaded that the efforts made by CEC warrant an award that is in excess of the maximum participant days of four professional days. **The Panel finds it appropriate to reduce the CEC PACA application amount by 0.5 consultant days, for a total of 1.5 legal days and 2.5 consultant days. The Panel directs FortisBC to reimburse the CEC for a PACA amount of \$6,305.25<sup>2</sup>, inclusive of expenses and applicable taxes.**

### 3.7 IRG and RDCK

IRG submitted its PACA Application on January 8, 2014 for a total of \$5,241.60 based on 2.6 days of legal services. RDCK submitted its PACA Application on January 22, 2014 for a total of \$628.00 based on 31.4 hours (3.925 days) of research and support services.

The Panel notes that all fees claimed for legal, research and support services are in accordance with the PACA Guidelines and considers them appropriate given the qualifications of the resources employed.

As noted in Section 3.1 of these Reasons for Decision, both IRG and RDCK submitted PACA Applications subsequent to the 30 day deadline set by the PACA Guidelines. FortisBC does not object to the late applications by both IRG and RDCK. **In this instance, the Panel considers it appropriate that FortisBC reimburse both IRG and RDCK for the full applied-for PACA amounts. Therefore, the Panel directs FortisBC to reimburse both IRG and RDCK for the PACA amounts of \$5,241.60 and \$628.00 respectively, inclusive of expenses and applicable taxes, despite the fact that their applications for a cost award were made after the 30 day deadline.** For future PACA Applications, the Panel reminds Participants that Section 2 of the Guidelines clearly states that "An application for a cost award must be made by filing a written application with the Commission Panel within thirty days following the last day of the proceeding (or such time as the Commission Panel directs) setting out the reasons for such an award. The "last day of the proceeding" will normally be the last day of the argument phase of the proceeding, which may be either the day reply argument is filed or the day of the oral phase of argument."

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<sup>2</sup> CEC PACA Application amount \$6,961.50 less \$656.25 (0.5 days consultant services x \$1,250 daily fee of \$1,250 x GST rate of 5%)  
FBC AMI Radio-Off Meter Option

### 3.8 CSTS

#### 3.8.1 PACA Application

On December 17, 2013, CSTS submitted its PACA Application (CSTS PACA Application). CSTS uses the following definitions to apply to terms used in its PACA Application:

- “Former Proceedings” means the BCUC proceedings that resulted in BCUC Order C-7-13; ... and
- “opt out” means the opportunity for a [FortisBC] customer to opt out of accepting a radio-frequency emitting smart meter or AMI meter.” [CSTS PACA Application, p. 1]

The CSTS PACA Application is for funding in the amount of \$32,578.10, broken down as follows:

Statement of Account of D. M. Aaron – Dec. 17, 2013	
Legal services	18,630.00
Case management services	6,250.00
GST	1,244.00
PST	1,741.60
Invoice of E. Anderson – Dec. 1, 2013	
Consultant Services	4,712.50
<b>TOTAL</b>	<b>32,578.10</b>

This funding amount is based on 10.35 days of legal services, 5 days of case manager services and 3.25 of consultant services.

#### 3.8.2 PACA Budget

By letter dated October 11, 2013, CSTS provided a budget estimate in relation to its participation as an Intervener in the Proceeding (CSTS PACA Budget). In this letter, in addition to responding to the PACA Guidelines eligibility considerations, CSTS stated: “We anticipate that these proceedings will require 50% of the proceeding and preparation days required in the Former Proceedings” and “Applying our 50% estimate in relation to the Former Proceedings, this budget is based on 23 days for legal and up to 15.5 days for any combination of consultant and case management” (CSTS PACA Budget, p. 4).

CSTS further explained that it “intends to adduce opinion evidence from Erik Anderson on the economics of [FortisBC]’s proposed opt out fee” and further “these proceedings will require the use of [Erik Anderson] for the duration of five days at the rate of \$1,450 per day...” (CSTS PACA Budget, p. 5).

By letter dated October 16, 2013, Commission staff responded to the CSTS PACA Budget noting “Commission staff advice is not binding on the Participant or the Commission Panel, and is provided only to forewarn Participants of the potential issues that may place funding by the Commission at risk.” (Commission Staff Review Letter, p. 1) Further, following a recital of the scope of the Proceeding from directive 2 of Commission Order G-154-13, Commission staff noted, “The “substantial interest in a substantial issue” criteria will be limited to the opt-out principles outlined in Orders C-7-13 and G-154-13 and accordingly some of the broader interests of the Participant group may not be relevant in this proceeding.” (Commission Staff Review Letter, p. 2)

With respect to the quantum of the CSTS PACA Budget, Commission staff advised that “Commission staff estimates that a maximum of three professional days in total is adequate for this proceeding, based on staff’s current view of how the proceeding will progress” and “Commission staff notes that the CSTS estimate of proceeding and preparation days significantly exceeds the staff estimate and accordingly, CSTS could be at risk for non-recovery of a portion of its expenditures.” (Commission Staff Review Letter, pp. 2, 3)

### 3.8.3 CSTS PACA Eligibility

#### **Has the Participant contributed to a better understanding of the issues by the Commission?**

In considering the issues in this Proceeding the **Panel reviewed the IRs and submissions of CSTS in detail and found that they contributed limited value to a better understanding of the issues by the Commission.** CSTS submitted 43 IRs. Several were statements rather than questions or were irrelevant and unnecessary (e.g., IRs 4, 6, 26). A few asked for information that was contained in the Application (e.g., IR 1) and a significant number were considered by the Panel to be out of scope (e.g., IRs 14, 31, 32, 33 and 34).

The Final Submissions of CSTS contained, amongst other topics, several proposals for alternatives to the methodologies and operational details proposed in the Application but provided little or no economic analysis of those proposals. Some were not consistent with the opt-out principles established by Order C-7-13 and repeated in Order G-154-13 (e.g., opt out fee increases should be restricted to the rate of inflation.) Also, with respect to the activities and proposed fees in the FortisBC Application the Final Submissions did not critique the inputs to the total cost for each activity and the related proposed fee.

#### **Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?**

**The Panel does not consider the costs incurred by CSTS for the purposes of participating in the Proceeding to be fair and reasonable.** The Panel arrives at this conclusion by considering the scope and nature of the Proceeding, the advice and caution of Commission staff in its letter of October 16, 2013, and a comparison with PACA Application amounts of other Interveners in this Proceeding.

In its budget estimate, CSTS anticipated that “these proceedings will require 50% of the proceeding and preparation days required in the Former Proceedings.” It describes the facts to be of a “complex and technical nature.” In the PACA Application CSTS refers to “several difficult and complex issues of fact and law” (p. 7). This estimate of the work is, in the view of the Panel, entirely unreasonable. The Former Proceedings followed an application by FortisBC of some 150 pages, supported by approximately 500 pages of appendices, included two scheduled rounds of IRs, and a two part proceeding including a written hearing process and two weeks of oral hearing. In contrast, the Proceeding followed an application by FortisBC of nine pages with three appendices totaling seven pages and a regulatory process, which is contained in Order G-154-13 dated September 18, 2013, requiring one round of IRs and a written hearing. The Panel notes that this Order predates CSTS’s budget estimate submission by over three weeks.

Commission staff in its letter of October 16, 2013, estimates that a maximum of three professional days in total is adequate for this Proceeding and noted that the CSTS estimate of proceeding and preparation days significantly exceeds the staff estimate and accordingly, CSTS could be at risk for non-recovery of a portion of its expenditures.

CSTS appears to have organized and deployed its resources generally in keeping with the approach in its budget estimate in spite of the differences between the current Proceeding and the Former Proceedings and the advice of Commission staff.

In contrast to this application from CSTS for a participant cost award of \$32,578.10, the PACA Applications from other Interveners in this Proceeding, and dealt elsewhere in these Reasons for Decision, range from approximately \$600 to \$7,000. All other Interveners were considered by the Panel to have made some contribution to a better understanding of the issues by the Commission.

#### **Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration of the proceeding?**

CSTS did not engage in conduct that tended to lengthen the duration of the Proceeding. However, it did pursue issues that were out of scope which required extra effort and expense by the Applicant. One example is the subject of IRs 32, 33 and 34 which concern retention of analog meters and the related practice in several other jurisdictions.

**Any other matters appropriate in the circumstances.**

The Panel addresses these other matters.

- A) The PACA Guidelines establish that, 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.

CSTS submits that such a consideration would be appropriate in the circumstances. CSTS states "Given the complexity of the factual and legal issues in these proceedings, CSTS would not have been able to participate in these proceedings without having retained the services of an experienced lawyer and consultant. Indeed, the ability of CSTS to hire these professionals (and effectively articulate its position) has been contingent on and premised on the likelihood of a reasonable PACA award in accordance with the funding principles set out in the PACA Guidelines." (CSTS PACA Application, p. 5)

The Panel has no evidence on the financial capacity of CSTS. It therefore approaches the cost award CSTS claims based on the other criteria referred to in these Reasons for Decision.

- B) The CSTS application for a cost award states "The Staff Estimate anticipated that these proceedings would require 3 proceeding days." CSTS then states "The Guidelines provide that the Commission Panel may award costs for preparation days on a ratio of up to 2 days per proceeding day, although after the proceeding the Commission Panel may adjust this ratio for a written proceeding" (CSTS PACA Application, p. 6). The Panel notes that this reference to the PACA Guidelines is not accurate. The correct quote is "The Commission Panel may award costs for preparation days, typically on a ratio of up to 2 days per proceeding day. Such ratio may be adjusted after the proceeding, by the Commission Panel, with adequate justification from Participant(s)" (Order G-72-07, p. 4).

CSTS then arrives at a total of nine days and submits the following: "The Staff Estimate of 3 proceeding days would, on a 2:1 ratio, justify an additional 6 days of preparation time, totaling 9 days." (CSTS PACA Application, p. 6)

Whether a Panel decides that preparation days should be awarded in any given proceeding is for the Panel hearing the proceeding to decide. In the Panel's view, the Commission staff's estimate for the Proceeding is quite clear. "Commission staff estimates that a maximum of **three professional days** in total is adequate for this proceeding." (Commission Staff Review Letter, p. 2) (emphasis added)

- C) CSTS requests funding for legal counsel at a rate of \$1,800 per day in accordance with PACA Guidelines for senior counsel with 10+ years since call. To be correct the PACA Guidelines provide for a "Maximum Daily Fee" of \$1,800 for 10+ years since call. FortisBC correctly notes "CSTS was awarded legal fees at a daily rate of \$1,600 for Mr. Aaron's assistance in the Advanced Metering Infrastructure CPCN proceeding [Former Proceedings], and submits that the same daily rate is appropriate in the Radio-Off Option Proceeding. Mr. Aaron's experience before the Commission remains limited. ... Legal fees should be assessed at \$1,600 per day." (FortisBC Comment Letter, p. 5) The Panel agrees with FortisBC and finds there to be no reason in these circumstances to depart from the PACA decision for the Former Proceedings with respect to the rate per day, should it be awarded, for CSTS legal counsel. The Panel therefore finds the request for funding at \$1,800 per day to be unreasonable.
- D) In the CSTS PACA Budget, CSTS states its intention to adduce opinion evidence from consultant Erik Anderson on the economics of [FortisBC]'s proposed opt-out fee and states that it will require the use of this consultant for five days at the rate of \$1,450 per day. (CSTS PACA Budget, p. 5) The Panel notes that \$1,450 per day is the PACA Guidelines Maximum Daily Fee for an Expert Witness/Specialist. In its PACA Application CSTS states "CSTS originally intended to adduce opinion evidence from Erik Anderson on the economics of [FortisBC]'s proposed opt-out fee, but given that no *viva voce* hearing was held, Mr. Anderson's role was limited to that of a consultant. We submit that a daily rate of \$1,450 is justified in accordance with the rate for an "expert witness / specialist" as prescribed by the PACA Guidelines." (CSTS PACA Application, p. 9) As the Panel noted above, Order G-154-13

dated September 18, 2013 establishing a written hearing process, predated CSTS's submission of its PACA Budget by over three weeks. Further, the Regulatory Timetable attached to Order G-154-13 did not contemplate the filing of Intervener evidence. CSTS knew or should have known before the PACA Budget was submitted that no "viva voce" hearing would be held and that the Regulatory Timetable did not contemplate the filing of Intervener evidence. Nor did CSTS request an amendment to the Regulatory Timetable to file evidence.

With respect to the contribution of the consultant, while CSTS may have found his assistance to be of some value, the Panel notes there was essentially no economic analysis of the proposals put forward by CSTS nor any challenge to inputs to the total cost for each activity and the related proposed fee in the FortisBC Application. Further, the Panel does not consider the matters under consideration to have been complex, particularly when compared to the matters under review in the Former Proceedings. The contribution of the Consultant was not obvious to the Panel. The Commission Staff Review Letter reminded CSTS that the "Panel will consider factors such as ...complexity of the issue and overall contribution of the consultant in determining an appropriate cost award." (Commission Staff Review Letter, p. 3)

**The Panel considers retaining an Expert Witness/Specialist and subsequently requesting reimbursement at an Expert Witness/Specialist rate of \$1,450 to have been avoidable and unhelpful. The Panel takes these factors into account in its final award to CSTS.**

- E) In its budget estimate, CSTS sought case management funding at a per diem rate of \$500. This is consistent with PACA Guidelines. (CSTS PACA Budget, p. 5) However, the CSTS PACA Application requests an award of \$1,250 per day for five days of case management. In support of this request CSTS states: "In support of our submissions as to the appropriate rate for case management, we rely on the following statement by the Commission at page 15 of Order F-26-13:

How CSTS managed its legal, consultant and case manager resources is a matter for CSTS's discretion; however, FortisBC ratepayers should only pay for what is reasonable. The Panel determines that an award for consultant/case manager time should be made but not at the rate for a senior lawyer. ... The Panel notes the PACA Guidelines allows awards to be made for a junior lawyer of up to \$1,200 per day and a consultant with 10 plus years of experience up to \$1,250 per day. With these guidelines in mind the Panel considers an award of \$1,250 per day for 22 days to be reasonable." (CSTS PACA Application, pp. 8-9)

The Panel considers this request for a case management award of \$1,250 per day to be unreasonable. As noted above, the CSTS estimate clearly anticipates a case manager at \$500 per day. A more complete review of Order F-26-13 page 13, on which CSTS relies in its application, reveals the following actual text:

"For this activity the Maximum Participant Award Days allows 25 days (31 days less 6 days disallowed for the written phase). CSTS claims three days for a case manager at \$500 per day, a rate consistent with PACA Guidelines. This reduces the 25 days noted above to 22 days. CSTS claims all time at a senior counsel rate for the reasons described above; however, in the view of the Panel this is unreasonable when the work could have been accomplished by a consultant or junior counsel. The Panel notes the PACA Guidelines allows awards to be made for a junior lawyer of up to \$1,200 per day and a consultant with 10 plus years of experience up to \$1,250 per day. With these guidelines in mind the Panel considers an award of \$1,250 per day for 22 days to be reasonable." (Order F-26-13, Appendix A, p. 13)

**Having reviewed the CSTS budget estimate and this portion of Order F-26-13 the Panel does not accept the CSTS request for case management funding at \$1,250 per day.**

### Commission Panel Decision

The Panel determines that CSTS is a legitimate Intervener and satisfies a number of the criteria in the PACA Guidelines. Although the Panel has no evidence of the financial capacity of CSTS to participate in the Proceeding without an award it determines that CSTS, as is the case for other registered Interveners in this Proceeding, is eligible for an award.

The Panel finds that the contribution of CSTS to a better understanding of the issues in the Proceeding by the Commission to be of limited value. The Panel also determines that the overall quantum of the application to be unreasonable and the rates claimed for legal counsel, Expert Witness/Specialist and case manager to be unacceptable. CSTS was aware or should have been aware of the scope and the nature of the Proceeding before it organized its resources and proceeded to apply those resources in spite of the cautions expressed by Commission staff. There is no record of CSTS questioning the advice from Commission staff, seeking additional guidance or seeking an amendment to the Regulatory Timetable.

How CSTS managed its legal, consultant and case manager resources is a matter for CSTS's discretion; however, FortisBC ratepayers should only pay for what is reasonable.

For all the foregoing reasons, the Panel concludes that it should use the PACA awards made to other Interveners in this proceeding who employed professional resources as a guideline for an award to CSTS. This excludes RDCK as it did not employ professional resources. These approved awards are \$4,978.06, \$5,286.49, \$6,305.25 and \$5,241.60 with the average being \$5,452.85. Further and for the same reasons, the Panel does not consider the contribution by CSTS to warrant an award at the high end of this range. The Panel considers it reasonable to award CSTS the average which is \$5,452.85. **Accordingly, the Panel directs FortisBC to reimburse CSTS for a PACA amount of \$5,452.85, inclusive of expenses and applicable taxes.**