



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-14-14**

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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 2
Applications for Participant Assistance/Cost Awards**

BEFORE: D.A. Cote, Commissioner/Panel Chair
L.A. O'Hara, Commissioner
C. van Wermeskerken, Commissioner
May 26, 2014

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. The Order also established that all public utilities regulated by the Commission would be considered applicants in the GCOC proceeding. The GCOC proceeding was initiated to review and decide upon, among other things, the setting of an appropriate cost of capital for a benchmark low-risk utility and a generic methodology or process for each utility to determine its unique cost of capital in reference to the benchmark. The GCOC proceeding took place in two stages as established by Order G-148-12 dated October 11, 2012 (respectively, the Stage 1 and Stage 2 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. The Stage 1 proceeding was reviewed by way of an oral public hearing that commenced on December 12, 2012. On May 10, 2013, the Commission issued Order G-75-13 and accompanying Decision in that proceeding;
- D. A Procedural Conference took place on April 25, 2013 for the Stage 2 proceeding. At the Procedural Conference, the Commission Panel stated, among other things, its intention to continue to be guided by the principles established in Order F-5-06 for PACA funding purposes in the Stage 2 proceeding. Participants were requested to make submissions on this issue;
- E. Following the Procedural Conference, in its Reasons for Decision accompanying Order G-77-13 dated May 13, 2013, the Commission Panel noted that none of the parties raised concerns with respect to PACA costs allocation being in accordance with the principles established in Order F-5-06. Directive 4 of Order G-77-13 provides that PACA costs for Stage 2 will be allocated in accordance with Order G-5-06;

- F. The Stage 2 proceeding was reviewed by a written hearing process. The Commission issued Order G-47-14 and accompanying Decision on the proceeding on March 25, 2014;
- G. Two Registered Interveners filed PACA applications for the Stage 2 proceeding: the British Columbia Pensioners' and Seniors' Organization and the Industrial Customers Group of FortisBC Inc. (ICG). They filed their PACA applications on January 17, 2014 and February 3, 2014 respectively;
- H. FortisBC Utilities (FBCU)¹, Pacific Northern Gas Ltd. (PNG), Corix Multi-Utility Services Inc. (Corix), British Columbia Hydro and Power Authority (BC Hydro), River District Energy (RDE) and Central Heat Distribution Limited (CHDL) were asked to provide comments to the Commission on the PACA applications;
- I. By letters to the Commission dated March 4, 2014 and March 7, 2014 respectively, 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 March 4, 2014, BC Hydro commented that based on Directive 4 of Order F-5-06 it does not expect to be allocated a portion of the PACA funding and therefore has no comment to make on the requested awards;
- J. On May 6, 2014, ICG filed a revised PACA application. The utilities who responded with comments on ICG's original application were provided with the opportunity to comment on ICG's revised application. Only BC Hydro responded with a letter which said that it had no further comments; and
- K. 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 the principles established by Order F-5-06, and has concluded that after making certain changes to the amounts requested in the Reasons for Decision that are set out in Appendix A to this Order, certain cost awards should be approved for BCPSO and ICG in this proceeding.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, the Commission orders as follows:

- 1. The Commission awards funds of \$92,662.84 to the following for their participation in the Stage 2 proceeding:

	Application (\$)	Award (\$)
BCPSO	41,686.84	41,686.84
ICG	103,248.00	50,976.00
TOTAL	144,934.84	92,662.84

- 2. In order to expedite the payment of the PACA awards noted above, FBCU, except FEI, are to pay the participants and collect the pro-rata costs from the regulated utilities noted below.

¹ FBCU is composed of FortisBC Energy Inc. (FEI), FortisBC Energy (Vancouver Island) Inc. (FEVI), FortisBC Energy (Whistler) Inc. (FEW) and FortisBC Inc. (FBC)

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3. The total PACA allocation to utilities is as follows:

FEI/FEVI	2013 Energy Sales (GJ x 1000)	PACA Allocation of Costs
FEI	179,562	0.00
BC Hydro	180,943	0.00
PNG	5,934	13,028.43
PNG (N.E.)	5,245	11,515.69
FEVI	19,762	43,388.59
FEW	706	1,550.06
FBC	9,058	19,887.35
Corix	140	307.38
CHDL	1,356	2,976.55
RDE	4	8.78
TOTAL		\$92,662.84

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of May 2014.

BY ORDER

Original signed by:

D.A. Cote
Commissioner/Panel Chair

Attachment

GENERIC COST OF CAPITAL PROCEEDING — STAGE 2
Applications for Participant Assistance/Cost Awards

REASONS FOR DECISION

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. The list of utilities regulated by the Commission was further divided into Affected Utilities and Other Utilities.

On June 1, 2012, by Order G-72-12, the Commission established, among other things, 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 dated May 9, 2006.

On October 11, 2012, following a Procedural Conference, the Commission issued Order G-148-12 which established that the review of Stage 1 would be by way of an oral public hearing to commence on December 12, 2012. In addition, the Order also established that a Stage 2 would be added to the GCOC proceeding.

On May 10, 2013, the Commission issued Order G-75-13 and its Decision on Stage 1 of the GCOC proceeding.

A Procedural Conference for the Stage 2 GCOC proceeding took place on April 25, 2013. At the Procedural Conference, the Commission Panel stated, among other things, its intention to continue to be guided by the principles established in Order F-5-06 for PACA funding purposes in Stage 2. Subsequent to the Procedural Conference the Commission noted in its Reasons that were attached to Order G-77-13 that none of the parties raised concerns with respect to PACA costs being allocated in accordance with these principles. Directive 4 of Order G-77-13 provides that PACA costs for Stage 2 will be allocated in accordance with Order F-5-06.

The GCOC proceeding Stage 2 Decision was issued on March 25, 2014, accompanied by Order G-47-14.

British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO) and Industrial Customer Group of FortisBC Inc. (ICG) filed their respective PACA applications on January 17, 2014 and February 3, 2014. The ICG filed a revised application on May 6, 2014.

FortisBC Utilities (FBCU), Pacific Northern Gas (PNG), British Columbia Hydro and Power Authority (BC Hydro), Corix, River District Energy (RDE), and Central Heat Distribution Limited (CHDL) were provided with copies of the PACA applications and the opportunity to comment. FBCU, PNG and BC Hydro filed their comments with the Commission during the period between March 4 and March 7, 2014. In their respective letters, FBCU 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 in accordance with the principles established by Order F-5-06, it does not expect to be allocated a portion of the PACA funding and therefore has no comment to make on the requested awards. The other utilities did not file comments.

The Commission Panel will consider the matters related to the application of PACA cost allocation principles first before considering matters related to BCPSO and ICG PACA Applications.

2.0 APPLICATION OF PACA COST ALLOCATION PRINCIPLES

The Commission Panel considers the key principles established in Order F-05-06 with application to this proceeding are as follows:

1. The allocation of PACA awards to affected utilities is to be based on their most recent year's actual pro-rata energy sales converted to gigajoules.
2. Utilities not participating in or affected by any determinations made in that proceeding should not share in the PACA award cost allocation.

Accordingly, the Commission Panel determines that the allocation of the PACA awards to the affected utilities is to be based on their actual pro-rata 2013 energy sales converted to gigajoules.

In addition, the Commission Panel determines that BC Hydro and FEI are not affected by the cost of equity review in Stage 2 of this proceeding and no PACA award costs will be allocated to them.

3.0 BCPSO AND ICG PACA APPLICATIONS

3.1 PACA Applications

The Commission received the PACA applications from BCPSO and ICG for Stage 2 of the proceeding. The PACA applications total amounts are summarized as follows:

	Budget (\$)	Application (\$)
BCPSO	54,596.50	41,686.84
ICG	102,399.60	103,248.00
TOTAL	\$156,996.10	\$144,934.84

3.2 PACA Guidelines

Section 118 of the *Utilities Commission Act* (the Act) provides that the Commission may make cost awards for participation in a proceeding. The Guidelines are set out in Appendix A to Order G-72-07 issued under section 118 of the Act and includes 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?
- (iv) 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.)
- (v) 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.”

3.3 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.

In the Stage 2 GCOC proceeding the regulatory review activities included the evidence submitted by the nine utilities from three separate groupings, two rounds of Information Requests (IRs) on the utilities’ evidence and IRs on Intervener Evidence from one Intervener. **Considering the breadth and scope of the proceeding the Commission Panel determines the number of proceeding days for Stage 2 should range from 8 to 18 days.** The number of days will vary depending on the number of utilities an intervener was actively reviewing.

3.4 Individual Applications and Award Amounts

The Commission Panel has reviewed the PACA applications and finds that both of the applicants are eligible for PACA funding as they have demonstrated a “substantial interest in a substantial issue.”

As outlined in Section 3.2, the Commission Panel must also consider a list of other criteria in addition to the “substantial interest in a substantial issue” criterion. Relevant to this proceeding and included among these are the following:

- whether the Participant contributed to a better understanding of the issues by the Commission;
- whether the costs incurred by the participant for participating in the proceeding are fair and reasonable.

BCPSO

BCPSO, in its application dated January 17, 2014, applied for a combined 18 days of legal costs at a daily rate of \$1,800 for Ms. Braithwaite, a daily rate of \$1,400 for Mr. Kung, and a daily rate of \$1,200 for Ms. Pritchard. The total invoiced number of days was pro-rated at 60 percent for Ms. Braithwaite, 20 percent for Mr. Kung and 20 percent for Ms. Pritchard. The total amount of legal counsel fees applied for is \$32,256.00.

BCPSO's PACA application also includes its consultant's invoice for 7.06 days from Econalysis Consulting Services at \$1,250 per day for a total amount of \$9,266.26. Including disbursements, the invoice amount from BCPSO is \$41,686.84.

The Commission Panel notes that BCPSO actively participated in the two rounds of IR process and filed questions to utilities in Group 1, Group 2, as well as Corix in Group 3. BCPSO also filed Final Submissions in response to those of FBC, FEVI/FEW, as well as Final Submissions in response to those of Groups 2 and 3 utilities.

The Commission Panel considers BCPSO's total invoice of \$41,686.84 to be reasonable given the scope of the proceeding and the number of utilities reviewed.

The total award for BCPSO is \$41,686.84 which is the sum of consulting costs amounting to \$9,266.25 (\$8,825.00 fees and \$441.25 GST) and legal fees of \$32,256.00 (\$28,800 fees, \$1,440.00 GST and \$2,016.00 PST) and disbursement expenses of \$164.59.

ICG

On February 3, 2014, the Industrial Customers Group of FortisBC Inc. (ICG) applied for PACA funding of \$93,018.00. This applied for cost award was later revised to \$103,248.00 by letter dated May 6, 2014. The applied for costs were comprised of \$16,128.00 legal fees for Mr. Hobbs and \$87,120.00 for Dr. Safir's expert witness fees.

The legal fees are based on 8 days at a daily rate of \$1,800 for legal counsel and the expert witness fees for Dr. Safir's 33 days engagement at \$330/hour or \$2,640/day.

The Commission Panel acknowledges that Dr. Safir filed intervenor evidence in this proceeding. However, the Panel has concerns with respect to the amount of time applied for, the need for an expert witness and the contribution Dr. Safir's evidence made in contributing to a better understanding of the issues by the Commission. Some examples of the Commission Panel's concerns follow:

- (A) Dr. Safir based his evidence on the premise that the 2009 cost of capital proceeding² which determined the cost of capital for FEI, the benchmark utility also considered FBC and determined a fair premium for FBC relative to the benchmark. As discussed in our GCOC Stage 2 Decision, the Commission Panel is of the view that this premise is unfounded and the evidence did not support it.
- (B) ICG and the BCPSO were the only Interveners in the Stage 2 proceeding. ICG was concerned with only FBC and therefore its scope was significantly narrower than that of BCPSO which dealt with all nine utilities. In spite of this, the time allotment claimed by ICG is significantly greater than that of BCPSO.

In a letter to the ICG dated August 20, 2013, the Commission approved Dr. Safir as an expert witness at the same rate as in Stage 1. In this same letter it was pointed out that an assessment for cost of capital in Stage 2 is driven more by business risk review than the financial modelling and capital market analyses required in Stage 1 where Dr. Safir was an acknowledged cost of capital specialist. The Commission Panel notes that ICG was also cautioned to rely upon Dr. Safir only where his expertise is required.

² In the Matter of Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., Terasen Gas (Whistler) Inc. and Return on Equity and Capital Structure Decision, December 16, 2009.

Taking all of these factors into consideration, the Commission Panel is not persuaded that the additional costs for Dr. Safir were required. His evidence was of limited value in assisting the Commission in reaching a better understanding of the issues. In addition, the Panel considers the applied for 33 days on behalf of Dr. Safir to be excessive. As indicated earlier in Section 3.0, the Panel determined that the number of proceeding days should range from 8 to 18 days depending on the number of utilities the participant was actively reviewing. Dr. Safir's evidence had a very narrow focus which was restricted to FBC only. **Given that Dr. Safir focused his submissions on only one utility, the Commission Panel finds the applied for 33 days of expert witness time greatly exceeds the range considered appropriate for funding purposes in this proceeding.**

The Panel has determined that the PACA award for ICG's claim for expert witness fees should be reduced by 60 percent to 13.2 days, resulting in an award of \$34,848 (13.2 x \$2,640).

The Commission Panel finds the legal fees invoiced based on 8 proceeding days to be in line with the Commission Panel's determination in Section 3.0 above and approves the applied for amount of \$14,400 plus \$720 GST and \$1,008 PST.

The total award for ICG is \$50,976.00 which is the sum of \$16,128 for legal costs and \$34,848.00 for expert witness fees.

4.0 PACA ALLOCATION TO UTILITIES

Directive 4 of Order G-77-13 determined that PACA costs are to be allocated among Affected Utilities and Other Utilities as defined in this Proceeding in accordance with the principles established in Order F-5-06.

As indicated in Section 2.0, for purposes of PACA costs allocation, the Commission Panel determines that BC Hydro and FEI are not affected by the cost of equity review in Stage 2 of this proceeding and therefore should not share in the PACA award cost allocation.

The Commission Panel further determines that the allocation of the PACA cost awards to the affected utilities is to be based on their actual pro-rata 2013 energy sales converted to gigajoules. Based on the 2013 regulated volume converted to GJ, the PACA allocation of costs is as follows:

FEI/FEVI	2013 Energy Sales (GJ x 1000)	PACA Allocation of Costs
FEI	179,562	0.00
BC Hydro	180,943	0.00
PNG	5,934	13,028.43
PNG (N.E.)	5,245	11,515.69
FEVI	19,762	43,388.59
FEW	706	1,550.06
FortisBC	9,058	19,887.35
Corix	140	307.38
Central Heat Distribution Limited	1,356	2,976.55
River District Energy	4	8.78
TOTAL		\$92,662.84