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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER F-29-14**

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

**and**

**FortisBC Inc.  
Application for Approval of a Multi-Year Performance  
Based Ratemaking Plan for 2014 through 2018**

**BEFORE:** D. A. Cote, Commissioner/Panel Chair  
D. M. Morton, Commissioner  
N. E. MacMurchy, Commissioner October 27, 2014

**O R D E R**

**WHEREAS:**

- A. On July 5, 2013, FortisBC Inc. (FBC) applied to the British Columbia Utilities Commission (Commission) for approval of a proposed multi-year performance based ratemaking plan for the years 2014 through 2018 (FBC Application);
- B. On June 10, 2013, FortisBC Energy Inc. (FEI) applied to the Commission for approval of a multi-year performance based ratemaking (PBR) plan for the years 2014 through 2018 (FEI Application);
- C. A joint procedural conference for the FBC and FEI Applications took place on September 5, 2013. The Commission issued Order G-151-13 dated September 12, 2013, which established an oral public hearing to commence on March 11, 2014, to review PBR-related issues for FBC and FEI jointly. Non-PBR related issues were to be reviewed through a written process for each of the utilities;
- D. The Oral Public Hearing took place over a period of six days between March 11 and 18, 2014;
- E. By letter dated June 19, 2014, the Commission Panel issued additional information requests to FEI and FBC and invited all parties to participate in an oral argument phase;
- F. The Oral Argument Phase was held on Monday, July 14, 2014 and concluded the evidentiary record for the proceedings;
- G. Between July 31 and October 1, 2014, the Commission received applications for Participant Assistance/Cost Award (PACA) from the following Interveners for their participation in at least one of the proceedings:

- a. the British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO)
  - b. B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA)
  - c. Commercial Energy Consumers of British Columbia (CEC)
  - d. Canadian Office and Professional Employees Local 378 (COPE 378)
  - e. Industrial Customers Group (ICG)
  - f. Irrigation Ratepayers Group (IRG)
  - g. Mr. Gabana
  - h. Coalition for Competition (COC)
- H. By letters to the Commission, dated September 15 and October 16, 2014, FBC and FEI commented that as long as the Commission has no concerns with the time identified or the amounts applied for, the Companies have no comments on the amounts submitted by these first seven interveners;
- I. By letter dated October 1, 2014, FEI submitted that it did not consider the claim submitted by COC to be in accordance with the PACA Guidelines, and that COC should not be entitled to receive PACA funding for the FEI proceeding;
- J. 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 concludes that cost awards are approved for participants in these proceedings, 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 \$935,614.87 to the following for their participation in the proceeding:

| Intervener        | Application (\$)      | Award (\$)          |
|-------------------|-----------------------|---------------------|
| <b>BCOAPO</b>     | \$144,019.00          | \$144,019.00        |
| <b>BCSEA</b>      | \$259,952.35          | \$159,952.35        |
| <b>CEC</b>        | \$448,631.68          | \$439,811.67        |
| <b>COPE 378</b>   | \$72,735.75           | \$70,623.25         |
| <b>ICG</b>        | \$65,701.90           | \$65,701.90         |
| <b>IRG</b>        | \$54,940.20           | \$54,940.20         |
| <b>COC</b>        | \$17,709.00           | \$0.00              |
| <b>Mr. Gabana</b> | \$600.50              | \$566.50            |
| <b>Total</b>      | <b>\$1,064,290.38</b> | <b>\$935,614.87</b> |

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2. FortisBC Inc. is to pay the participants the awarded amounts according to the allocation below:

| Intervener        | Total Award (\$)  | FEI Portion (\$)    | FBC Portion (\$)    |
|-------------------|-------------------|---------------------|---------------------|
| <b>BCOAPO</b>     | \$144,019.00      | \$72,009.50         | \$72,009.50         |
| <b>BCSEA</b>      | \$159,952.35      | \$70,672.82         | \$89,279.53         |
| <b>CEC</b>        | \$439,811.67      | \$293,207.78        | \$146,603.89        |
| <b>COPE 378</b>   | \$70,623.25       | \$35,311.63         | \$35,311.63         |
| <b>ICG</b>        | \$65,701.90       |                     | \$65,701.90         |
| <b>IRG</b>        | \$54,940.20       |                     | \$54,940.20         |
| <b>COC</b>        | \$0.00            | -                   | -                   |
| <b>Mr. Gabana</b> | \$566.50          |                     | \$566.50            |
| <b>Total</b>      | <b>935,614.87</b> | <b>\$471,201.73</b> | <b>\$464,413.15</b> |

**DATED** at the City of Vancouver, in the Province of British Columbia, this 27<sup>th</sup> day of October 2014.

BY ORDER

*Original signed by:*

D. A. Cote  
Commissioner/Panel Chair

Attachment

FortisBC Energy Inc. and FortisBC Inc.  
Applications for Approval of a Multi-Year Performance  
Based Ratemaking Plan for 2014 through 2018

Applications for Participant Assistance/Cost Awards

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**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

On June 10, 2013, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission) for approval of a multi-year performance based ratemaking (PBR) plan for the years 2014 through 2018.

On July 5, 2013, FortisBC Inc. (FBC) also applied to the Commission for approval of a proposed multi-year PBR plan for the years 2014 through 2018.

By Order G-133-13 on August 28, 2014, a joint procedural conference to consider both applications was established for September 5, 2014. Among other things, this joint proceeding considered combining the regulatory review of these two proceedings in whole or in part.

Following the Procedural Conference, the Commission issued Orders G-150-13 and G-151-13 dated September 12, 2013, which established an oral public hearing to commence on March 11, 2014, to review PBR-related issues for both FEI and FBC. It was also determined that other non-PBR related issues would be handled separately and reviewed through a written process.

An oral public hearing on PBR-related matters took place over six days between March 11 and 18, 2014, followed by final arguments by the parties and reply arguments from FEI and FBC. Following these submissions, the Commission Panel issued additional information requests to FEI and FBC on June 19, 2014. Subsequently, all parties were invited to participate in an oral argument phase which took place on July 14, 2014.

Applications for Participant Assistance/Cost Awards (PACA) were received from the following participants in conjunction with the two proceedings and are assessed in these Reasons for Decision:

1. British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO)
2. Canadian Office and Professional Employees Union Local 378 (COPE)
3. Commercial Energy Consumers Association of British Columbia (CEC)
4. BC Sustainable Energy Association and Sierra Club of British Columbia (BCSEA)
5. Coalition for Open Competition (COC)
6. Industrial Customer Group (ICG)
7. Irrigation Ratepayers group (IRG)
8. Mr. Gabana

**2.0 PACA GUIDELINES**

The PACA Guidelines address eligibility requirements and criteria used to assess the amount of an award, the process for applying cost awards and eligible costs and rates.

The Commission Panel must first determine whether a participant has a substantial interest in a substantial issue

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in the proceedings. Where the Participant has met the “substantial interest in a substantial issue” criteria, the Panel determines the entitlement to an award considering the criteria in Section 1 of the PACA Guidelines which follow:

- (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 finds it to be appropriate, it may consider the participant’s ability to participate in the proceeding without an award. In addition, there are some circumstances where “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.”

A participant intending to apply for a cost award is required to submit a budget estimate as prescribed in the Guidelines. Commission staff reply with a review letter that includes an estimate of proceeding days and preparation days that may be funded as well as identifying any issues with the participant’s estimate. Commission staff advice is not binding on either the participant or the Commission Panel and is provided to forewarn participants of potential issues that could affect funding.

Section 4 of the PACA Guidelines states that the term “proceeding day” may include workshop days, negotiation days, pre-hearing conference days, hearing days and oral argument days. In addition to this, specific allowance is made for disbursements such as travel expenses for out of town Participants and direct expenses related to the Participant’s participation in the proceeding but does not include travel time.

### **3.0 PROCEEDING AND PREPARATION DAYS**

Given the description of a proceeding day and a review of the proceedings, the Commission Panel has determined the appropriate number of days for each of these proceedings to be as follows:

|                                       |                              |
|---------------------------------------|------------------------------|
| Joint PBR Workshop (June 19, 2013)    | 0.5                          |
| Workshop in Kelowna (July 25, 2013)   | 1.0 (FBC only)               |
| FEI DSM Workshop (May 15, 2013)       | 1.0 (FEI only)               |
| Procedural Conference (Sept. 5, 2013) | 0.5                          |
| Oral Hearing (Mar. 11- 18, 2014)      | 6.0                          |
| Oral Arguments (July 14, 2014)        | <u>0.5</u>                   |
|                                       | 8.5 days for each proceeding |

The PACA Guidelines provide that the Commission will typically award costs for preparation days on a ratio of up to two days per proceeding day. However, following the proceeding, the Commission Panel may adjust this ratio with adequate justification from participants. The PACA Guidelines also state that the number of proceeding days and the ratio used to calculate awards may vary among participants and members of the participant's team.

The Commission Panel considers the FEI and FBC PBR Applications to be a unique circumstance given the complexity of parts of the evidence and the scope of the proceeding. Added to this is the fact that the review of the PBR mechanism was combined in an oral hearing while other, non-PBR issues were reviewed separately in a written hearing. **Due to the complexities of these processes and the challenges created, the Commission Panel finds it appropriate to vary the typical 2:1 ratio of preparation to proceeding days. Accordingly, the Commission Panel has determined that a maximum ratio of 3 preparation days for each proceeding day is more appropriate for a participant that has contributed to an understanding the full range of issues covered in this proceeding. Further, in recognition of those participants that took part in both the FEI and the FBC proceedings, the Commission Panel makes an additional adjustment by increasing the number of allowed days by a further 33 percent.**

Based on this assessment, the maximum number of days allowed for an intervener, fully participating in either the FEI or FBC proceeding but not both, would be 34 days ( $8.5 + [8.5 \times 3 = 25.5] = 34$ ), and for those interveners participating in both proceedings, 45 days ( $34 \times 1.33$ ). These will serve as a basis for the Commission Panel's review of the intervener PACA applications for legal, consultant and case manager resources. Experts and expert witnesses will be considered separately.

#### 4.0 SUMMARY of PACA APPLICATIONS

Intervener PACA applications are summarized as follows:

**Table 1 Summary of PACA Applications**

| Application (\$) | Joint FEI/FBC       | FEI          | FBC          | Total                 |
|------------------|---------------------|--------------|--------------|-----------------------|
| BCPSO            | \$144,019.00        |              |              | \$144,019.00          |
| BCSEA            |                     | \$114,856.49 | \$145,095.86 | \$259,952.35          |
| CEC              | 448,631.18          |              |              | \$448,631.68          |
| COPE 378         | 72,735.75           |              |              | \$72,735.75           |
| ICG              |                     |              | 65,701.90    | \$65,701.90           |
| IRG              |                     |              | 54,940.20    | \$54,940.20           |
| COC              |                     | 17,709.00    |              | \$17,709.00           |
| Mr. Gabana       |                     |              | \$600.50     | \$600.50              |
| <b>TOTAL</b>     | <b>\$665,385.93</b> |              |              | <b>\$1,064,290.38</b> |

FEI and FBC were provided the opportunity to comment on each of these PACA funding applications. Other than concerns raised by FEI with respect to COC, which are discussed further in this decision, FBC and FEI submitted no other comments.

## 5.0 DETERMINATION OF PACA AWARD AMOUNTS

### 5.1 BCPSO

BCPSO submitted its PACA application on August 13, 2014, for a total of \$144,019. The application was based on 39 days of legal counsel totalling \$78,624, 43.6 days of consultants' fees and disbursements totalling \$64,729 and \$665 in general disbursements. On September 30, 2013, BCPSO had submitted a budget estimate totalling \$208,067. Staff's letter of September 13, 2013, expressed some concern that the projected number of days for Mr. Bell, its expert witness, was well beyond staff's estimate. The difference between projected and actual expenditures reflects a reduction in the number of days for Mr. Bell.

#### Commission Determination

The Commission Panel is satisfied that BCPSO represent the interests of ratepayers in both the FEI and FBC service areas and have a substantial interest in a substantial issue in the proceeding.

BCPSO has described itself as "a group of community based organisations who collectively represent the interests of low and fixed income residential ratepayers in British Columbia." The Panel is persuaded that the outcome of the proceeding will directly affect these ratepayers and therefore, BCPSO meets the PACA criteria requirements concerning the effect of outcomes.

The Panel notes that the fee levels claimed for legal and case management services are in accordance with the PACA Guidelines and finds them to be appropriate given the qualifications of the resources employed.

BCPSO participated fully in both the FEI and FBC proceedings and contributed to the review of a broad range of issues raised within the proceeding. Specifically, BCPSO submitted IRs for both PBR and Non-PBR issues, filed evidence and played an active role in the oral hearing and made final arguments for non-PBR issues for both FEI and FBC in addition to its submissions on elements of the PBR mechanism. The Commission Panel considers the BCPSO to have contributed significantly to a better understanding of the issues and has met the PACA criteria through its contributions.

The Commission Panel is persuaded that costs submitted by BCPSO are fair and reasonable given the breadth of issues it had addressed and its overall contribution to the proceeding. The Panel notes that BCPSO paid heed to staff's suggestion to reduce the number of days for its consultant and appeared to do so with no loss of effectiveness. In addition, the Panel notes that the rates applied for are all within the maximum daily fee as outlined in the PACA Guidelines and the number of days applied for are in keeping with the maximum numbers of days outlined for this proceeding. Further, the applied for disbursements appear reasonable given the circumstances. **Accordingly, the Commission Panel directs FEI and FBC to reimburse the full applied for PACA amount of \$144,019 inclusive of expenses and applicable taxes. PACA awards are to be allocated between FEI and FBC on an equal basis.**

### 5.2 BCSEA

BCSEA submitted its PACA applications for FEI and FBC totalling \$259,952.35 on July 31, 2014. Of this amount \$114,856.49 is applied to FEI and \$145,095.86 to FBC. The applications were based on 61.8 days of legal counsel totalling \$125,635.74, 45.9 days for a case manager totalling \$26,427.17 and 81.4 days for expert witnesses totalling \$107,889.44 inclusive of miscellaneous expenses and taxes. The amount of days for legal exceeds the 45 days allowed for full participation in both proceedings as outlined by the Commission in section 3.0. The

budget submitted on July 31, 2013, estimated total expenditures of \$207,218, split equally between FEI and FBC. Staff's letter of September 30, 2013, expressed concern that given the limited nature of BCSEA's interests in these proceedings, its projected number of days is high for both the written and oral portion of the proceeding. Staff continued by noting that BCSEA might be at risk for a portion of the costs. The difference between projected and actual expenditures reflects an increase in the number expert witness days which increased from an estimate of 40 days for the two utilities to 81.4 days. Total expenditures exceeded estimates by \$52,734.35.

### Commission Determination

The PACA guidelines state that 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. The Guidelines further state that 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.

In its PACA budget estimate letter, BCSEA did not identify itself as a ratepayer group, stating it is "a non-profit association of citizens, professionals and practitioners committed to promoting the understanding, development and adoption of sustainable energy, energy efficiency and energy conservation in British Columbia". Given this description, the Commission Panel is persuaded that the outcome of at least a part of this proceeding will have a direct effect on the interests of BCSEA and its members and consequently, is prepared to consider PACA funding for BCSEA in these circumstances. Accordingly, funding will be limited to only those areas where BCSEA made a contribution that led to a better understanding issues that lie within the interests of BCSEA, namely the "understanding, development and adoption of sustainable energy, energy efficiency and energy conservation in British Columbia".

In its budget estimate letter of July 31, 2013 BCSEA noted that "[w]hile the main emphasis of BCSEA, *et al's* participation in both proceedings is on EEC/DSM, BCSEA, *et al* will also address issues within the rubric of PBR Methodology and PBR Base Year Costs..." With respect to EEC/DSM issues there was a significant contribution to the Commission Panel's better understanding of the issues. The Commission Panel notes that BCSEA filed evidence totalling 81 pages, participated in the IR process and submitted a lengthy final argument. However, much of what was addressed concerned EEC/DSM or issues related to its core purpose. In the view of the Panel, the few IRs, interrogatories during the oral hearing and positions taken in final argument did little to inform the Commission Panel's understanding of non-EEC/DSM issues and notes that only 2 of its 58-page final argument addressed issues related to the FEI-FBC joint PBR plan. We therefore find BCSEA's overall contribution beyond those related to EEC/DSM to be very limited.

The Panel notes that the fee levels claimed for legal and case management services are in accordance with the PACA Guidelines and considers them to be appropriate given the qualifications of the resources employed.

The Commission Panel also notes that the staff letter pointed out to BCSEA that it considered the estimated number of days to be excessive and that it might not be reimbursed for a portion of the costs. In spite of the limited scope of BCSEA's contribution, the days for both legal counsel and the case manager exceeded the maximum number of days allowed as determined in Section 3.0. In addition, in spite of the concerns raised by staff, BCSEA exceeded its estimates of days required for experts by more than double with costs for experts totalling \$107,889.44 against a budget estimate of \$58,000. BCSEA states that the topics "proved to be



considerably more contentious and time consuming than anticipated in the budget.”<sup>1</sup> BCSEA did not resubmit a revised budget estimate nor did it inform the Commission of these circumstances.

Given BCSEA’s narrow focus in the proceeding and the significant expert cost overruns, the Commission Panel is not persuaded that BCSEA’s application for costs is fair and reasonable. In spite of BCSEA’s relatively narrow primary focus on EEC/DSM issues, the days and costs submitted substantially exceed those of BCPSO who contributed on a broader range of issues. We consider this to be unreasonable and do not accept BCSEA’s PACA application. The Commission Panel considers a reduction in the amount of \$100,000 to the requested amount to be more appropriate and in keeping with BCSEA’s contribution to the proceeding. **Accordingly, the Commission Panel directs FEI and FBC to reimburse BCSEA the amount of \$159,952.35 inclusive of expenses and applicable taxes. PACA awards are to be allocated between FEI and FBC based on the same ratio as claimed for in the application.**

### 5.3 CEC

On August 14, 2014 CEC submitted its PACA application totalling \$448,631. CEC suggests that these costs be split on a 2/3 to 1/3 basis between FEI and FBC respectively. The application was based on 49.375 days of legal expenses and disbursements totalling \$99,722.71, 68.63 days for its consultant totalling \$90,070 and \$258,838 (including disbursements) for its expert, Pacific Economic Group (PEG). The number of days submitted by CEC for counsel and its consultant exceed the maximum amounts as determined by the Commission in Section 3 of these Reasons for Decision.

CEC’s budget estimate, submitted on September 13, 2013, totalled \$355,050, which included \$114,050 for legal counsel and consultant and an estimate of \$241,000 for PEG, assuming it was involved in both the FEI and FBC proceedings (CEC did offer some alternatives to reduce PEG’s involvement). CEC proposed that the Commission approve a fixed cost budget for PEG to cover the evidentiary part of the proceeding. The Commission by letter of October 17, 2013, denied the request to vary the practice of withholding approval of PACA amounts until the proceeding has been completed. However, the Commission Panel did acknowledge PEG’s reputation and indicated that it understood the costs for PEG’s involvement would be substantial, stating that “[t]he lack of a pre-approval of costs should not discourage CEC from engaging the services of PEG.” In addition, the Commission Panel encouraged CEC to utilize the services of PEG for both FEI and FBC and be made available and prepared for cross-examination at the oral hearing portion of the proceeding.

#### Commission Determination

The Commission Panel is satisfied that CEC represent the interests of ratepayers in both the FEI and FBC service areas and have a substantial interest in a substantial issue in the proceeding.

CEC states that it has members that are commercial class customers of FBC and FEI and their interests are materially impacted by these proceedings. CEC also states that entities it will consult with and take direction from during the proceeding include representatives of the BC Greenhouse Growers Association, the Union of British Columbia Municipalities, the Building Owners and Managers Association and the British Columbia Chamber of Commerce among others. CEC also notes that it has been a participant in prior hearings for FEI and FBC and awarded costs for its contribution. The Commission Panel accepts the CEC submissions and is persuaded that the outcome of the proceeding will directly affect these ratepayers and their members. Therefore, CEC meets the PACA criteria requirements concerning the effect of the outcome on them.

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<sup>1</sup> BCSEA letter dated July 31, 2014, FBC PACA Application, p. 11.

The Commission Panel notes that the cost submission of \$258,838 on behalf of PEG exceeds the maximum estimate of \$241,000 submitted by CEC at the outset. However, we also note that PEG's contributions to an understanding of the issues surrounding the PBR Mechanism were complex and highly technical in nature. The Panel in its determinations relied heavily upon the evidence and submissions provided by PEG, and acknowledge that without their contribution the results of the proceeding may have differed significantly. **Given the value of PEG's contribution to this proceeding, the Commission Panel awards the costs of \$258,838 for expert services as applied for.**

The Panel notes that the fee levels claimed for legal and consultant services are in accordance with the PACA Guidelines and considers them to be appropriate given the qualifications of the resources employed.

As noted, the number of days submitted by CEC for counsel and its consultant were both in excess of the maximum allowable amounts as determined by the Commission in Section 3 of these Reasons. However, it is recognized that CEC played an important role in this proceeding and its consultant, Mr. D. Craig, prepared a lengthy and comprehensive review of the primary issues in CEC's final argument. Considering the significance of his contribution, the Commission Panel accepts that the additional days applied for in the case of Mr. Craig are justified. **The Commission Panel awards the full applied for amount of \$90,070.32 for CEC's consultant costs.** However, the Commission Panel is not persuaded that there is evidence to justify the additional 4.375 days over the 45 day maximum claim for legal counsel. **Therefore, the Commission Panel has determined that it is appropriate to reduce the applied for 49.375 days for legal counsel to 45 days. CEC is awarded legal costs of \$90,740 (\$1,800 x 45 = \$81,000 plus disbursements and applicable taxes (\$9,902.70)). Accordingly, the Commission Panel directs FEI and FBC to reimburse CEC an amount totalling \$439,811.67 for PACA expenses and applicable taxes. PACA awards are to be allocated between FEI and FBC on a 2/3 for FEI to 1/3 for FBC basis. The variance from the 50:50 cost allocation between FEI and FBC reflects estimates prepared by PEG for the two utilities (as outlined in CEC's letter of November 12, 2013) as well as CEC's overall recommendations.**

#### 5.4 COPE

COPE submitted its PACA application on July 31, 2014, for a total of \$72,735.75. The application was based on 23.4 days of legal counsel at the daily rate of \$1,800 totalling \$47,174.40 including applicable taxes, 16.25 days of experts' fees at \$1,450 per day totalling \$23,562.50 and disbursements totalling \$1,998.85. On September 17, 2013, COPE had submitted a budget estimate of totalling \$77,413.00. Staff's letter of October 2, 2013, noted that the Commission Panel may consider the participant's ability to participate in the proceeding without a PACA award because COPE is funded by union contributions and may not be eligible for funding under PACA Guidelines. Staff further advised that the number of COPE's issues is limited and a substantial effort must be made to demonstrate its contribution to the general understanding of these issues.

#### Commission Determination

COPE is the certified bargaining agent for many of FEI and FBC's employees. Its stated concern relates to the PBR methodology with "a broader interest in the financial status and prospects of the two utilities, and in the development and funding of their various programs and services which our members are employed to deliver."<sup>2</sup> As such, they do not qualify as a ratepayer group. Therefore, they are eligible to receive a PACA funding award in revenue requirement proceedings only in special circumstances. In its PACA application, COPE states that it took on the primary role in how Service Quality Indicators (SQIs) were treated and retained an expert on that topic.

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<sup>2</sup> COPE letter dated September 17, 2013, PACA Budget.

COPE submits that SQIs emerged as a central PBR issue noting that one of the utilities' two witness panels was convened to address this one topic in the oral hearing.

The Commission Panel agrees with COPE that the subject of SQIs was a significant issue in the proceeding and acknowledges that COPE played an important role in the development of the evidentiary record. Therefore, the Commission Panel is satisfied that COPE demonstrated a substantial interest in a substantial issue. However, passing this test does not necessarily qualify them to receive a PACA award because they do not represent a ratepayer group. Notwithstanding, the Commission Panel has **considered the importance of SQIs as an issue in this proceeding and the value of the contribution made by COPE and has determined that this qualifies as a special circumstance and payment of a PACA award to COPE in this instance is appropriate.**

While focused on a narrow topic, COPE participated in both the FEI and FBC proceedings. Specifically, COPE contributed to the evidentiary record through two rounds of IRs, filed evidence and testimony, answers to IRs on its evidence, played an active part in the oral hearing process and made contributions through its written and oral arguments. The Commission Panel considers COPE to have contributed significantly to a better understanding of the SQI issues and has substantially met the PACA criteria through its contributions.

The Commission Panel is persuaded that costs submitted by COPE are generally fair and reasonable given its overall contribution to the proceeding and our understanding of the issues. The one concern is the amount submitted on behalf of its expert, Ms. Alexander. The Panel notes that the daily rate claimed per day differs from the actual invoiced amount by \$130 and is prepared to order reimbursement only of the amounts corresponding to the invoices as submitted. The Panel notes that the rates applied for are all within the maximum daily fee as outlined in the PACA Guidelines and the number of days applied for are below the maximum numbers of days allowed for this proceeding which is in keeping with COPE's narrow scope. Further, the applied for disbursements appear reasonable given the circumstances. **Accordingly, the Commission Panel directs FEI and FBC to reimburse COPE for the full applied for PACA amount less the differences noted above. This equates to \$70,623.25 inclusive of expenses and applicable taxes. PACA awards are to be allocated between FEI and FBC on an equal basis.**

## 5.5 ICG

ICG submitted its PACA application for FBC on August 9, 2014 totalling \$65,701.90. The application was based upon 19.6 days of legal counsel totalling \$40,005.26 (including disbursements and taxes) and 10.6 days for a consultant totalling \$12,421 and 11 days for its expert totalling \$13,750 including taxes. On September 17, 2013, ICG submitted its budget estimate totalling \$67,750 for legal counsel, a consultant and an expert witness. Subsequent to this, on October 23, 2013, ICG by letter informed the Commission of its intent to increase the budget for its expert witness, Mr. T. Pullman to address two additional issues. The ICG estimate for this was an additional 11 days at \$1,450 totalling \$15,950. The reason for the difference between actual and estimated expenses is a reflection of the increase in the number of days for legal counsel from 15 to just under 20 offset by lower than expected consultant and expert costs.

### Commission Determination

The Commission Panel is satisfied that ICG represents a number of FBC industrial customers and therefore represents the interests of a segment of ratepayers in the FBC service area and has a substantial interest in a substantial issue in the proceeding.

ICG has stated that its interest in the proceeding is “to ensure that FortisBC continues to provide safe, reliable power at reasonable rates.”<sup>3</sup> Noting that this proceeding has a direct impact on rates, the Commission Panel is satisfied that the outcome will directly affect ICG’s clients and therefore meets the PACA criteria requirements concerning the outcome and its effect.

The Commission Panel notes that ICG’s concerns were limited to FBC only and therefore had a more narrow scope than some of the other interveners. However, this has been reflected in the number of days allotted to legal counsel, which is substantially below the maximum but is in keeping with the scope of ICG’s involvement. ICG participated fully in the FBC proceeding and contributed to a broad range of the issues being considered. Specifically, ICG contributed IR’s to both PBR and non-PBR issues, filed evidence on a number of issues and responded to related IRs, played an active role in the oral hearing and made Final Argument on a number of important issues. The Commission Panel is persuaded that ICG has contributed to a better understanding of the issues raised and has met the PACA criteria through these contributions.

The Commission Panel considers that the costs submitted by ICG are fair and reasonable given its contribution to this proceeding. In addition, the rates applied for are in keeping with the PACA Guidelines for fees and the claim given that the number of days was lower than what was originally estimated. **Accordingly, the Commission Panel directs FBC to reimburse the full applied for PACA amount of \$65,701.90 inclusive of expenses and applicable taxes.**

## 5.6 IRG

IRG submitted its PACA application for participation in the FBC proceeding totalling \$54,940.20 (inclusive of appropriate taxes) on August 20, 2014. The application was based upon 27.2 days for legal counsel at a rate of \$1,800 per day plus disbursements of \$105. There were no other expenses claimed for a case manager, consultant or experts. On September, 2013, IRG had submitted its budget estimate totalling \$51,730 which included 21.8 days for legal counsel. The primary reason for the difference between actual and estimated expenses relates to the 5.4 day increase in the number of days claimed for legal counsel. IRG made no claim for travel related expenses.

### Commission Determination

The Commission Panel is satisfied that the IRG represent interests of certain FBC ratepayers and have a substantial interest in a substantial issue in the proceeding.

IRG states that the irrigation ratepayers are representative of a distinct class of FBC ratepayers that have “substantial interests in important issues arising from the PBR proceedings and will be significantly affected by the rate and service impacts of the Commission’s Decision in respect of the FBC Application.” The Commission Panel accepts this description and is persuaded that the outcome of this proceeding will directly impact this ratepayer group and therefore IRG meets the PACA criteria concerning the effect of the outcome of the proceeding.

The Commission Panel notes that IRG intervened for FBC only and therefore had a more narrow scope than some of the other interveners. The IRG is claiming costs for legal counsel only and the number of total days claimed are less than the maximum allowed days for a single utility as outlined in Section 3.0 of these Reasons for Decision. In its application, IRG is claiming for costs related to its review of all of the IRs and other materials

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<sup>3</sup> ICG letter dated September 17, 2014, PACA Budget.

in evidence with emphasis on those specifically related to FBC. In addition, IRG reviewed FEI proceeding evidence noting that “some review was essential to ensure the utilities’ responses were consistent and to avoid missing material information regarding the PBR that may have been presented in the FEI responses but not included in the FBC Responses.”<sup>4</sup> In addition to reviewing the evidence, IRG was an active participant in the oral hearing, submitted a final argument and also took part in the oral argument phase of the proceeding. The Commission Panel has considered IRG’s contribution and is persuaded that IRG has assisted in our reaching a better understanding of the issues and therefore meets the PACA criteria.

The Commission Panel considers that the costs submitted by IRG are fair and reasonable given its level of contribution to this proceeding. In addition, the rates applied for are in keeping with the PACA Guidelines for fees and the claim for the number of days is less than the maximum for a review of a single utility. **Accordingly, the Commission Panel directs FBC to reimburse the full applied for PACA amount of \$54,940.20 inclusive of additional costs and applicable taxes.**

## 5.7 COC

COC identifies itself as being made up of the following energy services sector organizations:

- Mechanical Contractors Association of British Columbia;
- Heating, Refrigeration and Air Conditioning Institute of Canada; Independent Contractors and Business Association; and
- Ameresco Canada Inc.

COC submitted its PACA application for the FEI proceeding totalling \$17,709 inclusive of appropriate taxes on September 22, 2014. The application was based upon 12.69 days for consulting services at \$1,250 per day and 2.01 for a Case Manager at \$500 per day. COC had submitted its original budget estimate totalling \$26,906 on September 17, 2013. Actual expenses differed from the original estimate due to a lower requirement for consulting days.

Staff’s letter of September 30, 2013, pointed out that the Commission Panel may consider the participant’s ability to participate in the proceeding without an award and noted that “the Commission has typically interpreted the criteria in the PACA Guidelines to mean that it will not fund individuals, individual business interests or municipalities except under unusual circumstances.” Staff forewarned COC that it needed to demonstrate its contribution to the general understanding of the issues it intends to pursue.

COC states that it has a direct interest in this revenue requirements proceeding “as there are several matters regarding natural gas ratepayer funded activities that may impact the Thermal Energy Services (TES) marketplace.” COC noted that in this vein it pursued the following matters:

- Implication of the existing Code of Conduct and Transfer Pricing Policies;
- The awarding and administration of EEC funds;
- Use of confidential FEI customer information;
- FAES’ use of FEI resources;
- Common marketing activities;
- FortisBC website use; and
- Corporate Services allocation within the Fortis company group.

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<sup>4</sup> IRG letter dated August 20, 2014, PACA Application.

COC states that the outcome of this proceeding could substantially affect its members as COC members could be unfairly disadvantaged in the competitive thermal energy market.

In its letter of comment dated October 1, 2014, FEI states that it does not consider COC's claim to be in accord with the PACA Guidelines and should not be entitled to PACA funding for this proceeding. FEI argues that COC did not demonstrate a substantial interest in a substantial issue in the FEI Application. FEI pointed out that in Exhibit C6-1, COC's stated purpose was "in ensuring an open and competitive market place for thermal energy services ("TES") in British Columbia...." FEI contends that while COC has a substantial "self interest" in the issue of competition in the TES marketplace, the issue was neither significant or substantial in this proceeding citing that COC's IRs focused on issues that were previously explored in earlier hearings or on items that will be addressed imminently in a separate process.

FEI also submits that COC is not a ratepayer group. Rather, it is a group of associations and companies representing the self-interests of its members. It further submits that COC is made up of commercial entities of substantial means and would likely still participate if there was no opportunity for cost reimbursement.

### **Commission Determination**

**The Commission Panel denies COC's request for PACA funding** for the following two reasons:

#### Substantial Interest in a Substantial Issue

The issues raised by COC were not substantial and had little impact on the Decision in these proceedings. As pointed out by FEI, much of what was raised by COC was previously explored in the Alternative Energy Systems Inquiry and currently under review in the FEI Code of Conduct Transfer Pricing proceeding. The Panel notes that COC is a registered participant in that proceeding and its issues will be more appropriately addressed in that proceeding. Notwithstanding, the purpose of a revenue requirements proceeding is to review matters directly related to ratepayers and their impact on subsequent rates. The issues raised by COC, while important, were not substantive in the current proceeding.

#### PACA is for Ratepayer Groups

The Commission Panel agrees with FEI that COC is a group representing the interests of its members and is not a ratepayer group. The PACA Guidelines provide that "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." COC makes no claim to be a ratepayer group and the Commission Panel is not persuaded that a compelling case has been made that there are circumstances that justify awarding PACA to a non-ratepayer group pursuing its own interests.

In addition, as noted by FEI, the COC membership is made up of commercial entities and associations and it is likely that collectively they have the means to represent their interests without assistance.

### **5.8 Mr. Gabana**

Mr. Gabana is a registered intervener in the FBC proceeding only and his participation involved the submission of a small number of IRs in the first round and a comment letter dated October 31, 2013. Mr. Gabana travelled to Kelowna to attend FBC's workshop introducing the PBR application but did not attend or participate in any

other processes. Although Mr. Gabana did not explicitly clarify the amount of his total PACA request, it appears that his PACA claim is limited to out of pocket expenses.

#### **Commission Determination**

**The Commission Panel approves Mr. Gabana's PACA request with a small adjustment to the total mileage travelled. The Commission Panel directs FBC to reimburse Mr. Gabana the amount of \$566.50.**