

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-6-15**

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 Energy Inc.
for Approval of Code of Conduct and Transfer Pricing Policy for
Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment**

BEFORE: L. A. O'Hara, Panel Chair/Commissioner
K. A. Keilty, Commissioner
N. E. MacMurchy, Commissioner

March 26, 2015

O R D E R

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 June 27, 2014, FortisBC Energy Inc. (FEI) filed an application for Approval of FEI's Code of Conduct and Transfer Pricing Policy (COC and TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (Application). FEI was directed in the Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives dated December 27, 2012 (AES Inquiry Report) to undertake a collaborative process to establish COC and TPP for Affiliated Regulated Businesses consistent with the guidelines and principles in the AES Inquiry Report;
- C. By letter dated August 18, 2014, the Commission advised all parties that a pre-hearing conference was warranted in order to address matters that had arisen from the Application;
- D. By Order G-143-14 dated September 18, 2014, the Commission ordered, among other things, a regulatory timetable for a written hearing process;
- E. By Order G-31-15 dated February 27, 2015 which accompanied the decision on this Application, the Commission directed FEI to, among other things, comply with the findings and determinations in the decision by amending the COC and TPP in a manner consistent with the Commission determinations;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-6-15**

2

- F. Between the period December 19, 2014 and January 7, 2015, the Commission received PACA applications from the following Interveners in the proceeding:
1. British Columbia Old Age Pensioners' Organization *et al.*;
 2. British Columbia Sustainable Energy Association and Sierra Club of BC; and
 3. The Coalition for Open Competition.
- G. Pursuant to the PACA Guidelines, FEI was provided an opportunity to comment on the PACA applications. FEI filed a letter of comment on February 3, 2015; and
- H. The Panel has considered the PACA applications in the context of this proceeding and the PACA Guidelines.

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

1. Funding is awarded to the following Interveners for their participation in the proceeding:

Intervener	Amount in Application	Participant Assistance Cost Award
British Columbia Old Age Pensioners' Organization <i>et al.</i>	\$15,284.64	\$12,260.64
BC Sustainable Energy Association and Sierra Club of BC	\$12,099.68	\$12,099.68
The Coalition for Open Competition	\$9,572.85	\$9,397.50

2. FEI is directed to reimburse the above PACA applicants for the amounts that have been awarded in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of March 2015.

BY ORDER

Original signed by:

L. A. O'Hara
Panel Chair/Commissioner

Attachment

1.0 INTRODUCTION

FortisBC Energy Inc. (FEI) filed its application for Approval of Code of Conduct and Transfer Pricing Policy (COC and TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM) on June 27, 2014 (Application). The Application was developed by FEI following a consultation process as directed by the British Columbia Utilities Commission (Commission) in the report issued following the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other Initiatives (AES Inquiry Report).

A pre-hearing conference took place on September 5, 2014 to hear submissions about the Application and the review process going forward.¹ In the letter establishing the pre-hearing conference dated August 18, 2014, the Panel advised parties that, at that stage, it did not anticipate a more extensive process, and accordingly, Participant Assistance/Cost Award (PACA) funding would not be made available at that time.

After the pre-hearing conference, the Commission concluded that it needed supplementary information and evidence on the record before proceeding to the argument phase. By Order G-143-14 dated September 18, 2014, the Commission established a written hearing process, which included a regulatory timetable for FEI's filing of supplementary information. The Regulatory Timetable did not include a date for the filing of PACA budgets.

Section 118(1) of the *Utilities Commission 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 Participant Assistance/Cost Award (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.

Normally, in accordance with the PACA Guidelines, each Intervener would submit a PACA budget and in turn would be provided with a review letter from Commission staff. In this instance, no parties filed PACA budgets and consequently no Commission staff letter was sent to draw to the attention of each individual PACA budget.

Between December 19, 2014 to January 7, 2015, the Commission received three PACA applications. They were from the following Interveners:

1. British Columbia Pensioners' and Seniors' Organization *et al.* (BCOAPO);
2. British Columbia Sustainable Energy Association and Sierra Club of BC (BCSEA-SCBC); and
3. The Coalition for Open Competition (the Coalition).

On December 19, 2014, Commission staff circulated a letter to all registered parties stating that:

Participants should be mindful that: (1) by letter dated August 18, 2014, the Commission Panel stated that it did not "anticipate a more extensive process, and accordingly, Participant Assistance/Cost Award funding will not be made available at this time"; and (2) for the purposes of PACA, a proceeding begins when the Commission Panel issues an order establishing a hearing, and normally ends the day reply argument is filed or the day of the oral phase of argument.

¹ The conference was deliberately coined a pre-hearing conference instead of a procedural conference because the Commission panel members intended to hear submissions on substantive issues as well as procedural matters.

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 criterion the 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.

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 Commission Panel acknowledges that, since its August 18, 2014 letter advising all parties that it did not anticipate a more extensive process, the Application's review process had extended as a result of the volume of supplementary information and evidence filed by FEI as well as FEI's detailed responses to Commission and interveners IRs. The Panel therefore accepts the PACA applications despite the fact that these PACA applicants had not filed their budgets earlier. The time for filing PACA applications in this proceeding began to run on December 9, 2014, coincident with the filing of reply submissions. All the PACA applications were received during the period from December 19, 2014 to January 7, 2015.

The PACA Guidelines set out eligible rates and costs. Section 4 of the PACA Guidelines states that "'proceeding day' 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 further 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 an award for consultants.

The party being asked to pay, in this case FEI, was also given an opportunity to comment on the PACA funding applications.

3.0 PROCEEDING DAYS AND ELIGIBILITY

3.1 Proceeding days

The written hearing process involved FEI filing supplementary information and evidence, one round of information requests (IRs) from the Commission and Interveners to FEI, final submissions from FEI and interveners, and reply submissions. Whereas the right of reply is normally reserved for the applicant, the review for this Application extended the right to all parties to reply to other Interveners' final submissions.

The PACA applications from the three Interveners are summarized as follows:

Intervener	Total Amount	Comments
BCOAPO	\$15,284.64	Included counsel fees for pre-filing days and disbursements.
BCSEA-SCBC	\$12,099.68	Included counsel fees for pre-filing days and case manager fees
Coalition	\$9,572.85	Included consultant's fees for work after September 18, 2014
TOTAL	\$36,957.32	

The Panel notes that among the PACA applicants, the Coalition filed IRs to FEI but BCOAPO and BCSEA -SCBC did not submit IRs.

The Panel is aware of the Commission staff letter dated December 19, 2014, circulated to all parties to remind participants the definition of a proceeding day for purposes of the PACA Guidelines. The Commission staff letter is not binding on the Panel or the PACA applicants.

In assessing PACA awards for this proceeding, the Panel first determines a reasonable basis for arriving at an award based on contributions (based on an eight hour work day) from legal counsel, case managers, consultants, any combination thereof per Participant.

In a letter to supplement its PACA application (revised dated December 29, 2014), BSCSA-SCBC ask the Commission to determine that the "Proceeding" for which contributions are eligible for a cost award includes the FEI-led consultation process and procedures which included Intervener submissions at the Commission's request in August 2014, and including the September 5, 2014 pre-hearing conference. BCSEA-SCBC submit that in the circumstances of the present matter, the Commission should exercise its discretion to determine that the "proceeding" for PACA purposes in the present matter begins prior to the September 18, 2014 hearing order.

The Panel disagrees with BCSEA-SCBC's characterization of proceeding days in its submission.

The Panel determines that under the PACA Guidelines there would normally be a maximum of six proceeding days eligible for PACA funding, subject to actual billing and the level of active participation of each PACA applicant. For the reasons set out below the Panel finds that up to seven days are eligible for PACA funding in this proceeding.

This Panel is aware that the FEI Application was filed pursuant to a recommendation from the AES Inquiry Report and that PACA applicants in this proceeding were also participants in the FEI-led consultation process. The Panel acknowledges their efforts in this regard but considers that: (a) the present matter is a continuation, or next phase of the AES Inquiry proceeding and as such, the PACA applicants are, or ought to be, reasonably familiar with the principles and guidelines issued under the AES Inquiry Report; and (b) any decision as to whether to depart from the PACA Guidelines should be discussed and debated in a bigger forum, other than

this PACA proceeding with only three applicants. The Panel finds that any substantive changes to the PACA Guidelines should follow after a thorough review of the PACA guidelines involving all interested parties. This would be a more appropriate forum to deal with issues such as clarifying the time period that should be eligible for PACA funding. For the above reasons, the Panel has assessed the applications within the context of the current PACA applications.

Nevertheless, the Panel determines it to be appropriate to increase the maximum number of days allowable for funding. For example, in determining the six proceeding days for funding, the Commission Panel allows for the pre-hearing conference as a proceeding day because the Panel requested a number of substantive issues be submitted at the conference. In addition, the Panel is prepared to accept up to 1.0 additional day to acknowledge the work leading up to the pre-hearing conference. This allowance for up to one additional day applies only to the unique circumstances of this proceeding.

FEI provided its comments by letter dated February 3, 2015, on the PACA applications and submitted that “With respect to when the proceeding began for the purposes of PACA funding eligibility, FEI has no comment, and relies upon Commission Panel’s determination in that regard.”

The maximum period eligible for PACA funding is itemized as follows:

Eligible proceeding days	Time Allowance
Review of Application	1.0 day
Pre-hearing Conference	0.5 day
Review of FEI Supplementary Information	0.5 day
Participation in IR to FEI	2.0 days (1.0 to submit IRs and 1.0 for review of FEI’s responses)
Final Argument	1.0 day
Reply Argument	1.0 day
Sub-Total	6.0 days
Preparatory work for Pre-hearing Conference	1.0 day
Total eligible days	7.0 days

3.2 Eligibility

The Panel recognizes BCOAPO as a ratepayer group. In the consultation process, BCOAPO took the position as advancing the interest of ratepayers on both sides of FEI/FAES.² In its PACA application, BCOAPO submits that it represents the interests of FEI’s low and fixed income residential ratepayers. The Panel finds that BCOAPO has a substantial interest in a substantial issue in the proceeding.

BCSEA-SCBC is a joint intervention from BCSEA and SCBC. BCSEA is committed to promote the understanding, development and adoption of sustainable energy, energy efficiency and energy conservation in B.C. SCBC is an organization for British Columbians from all walks of life who care about a broad range of environmental issues including climate change and clean energy. BCSEA-SCBC describe their members as ratepayers of FEI and potential ratepayers of the public utility operated by FAES and other public utilities. The Panel finds that BCSEA-SCBC has a substantial interest in a substantial issue in the proceeding.

² FortisBC Alternative Energy Services

The Coalition is made up of four organizations in the energy service sector: Mechanical Contractors Association of British Columbia; Heating, Refrigeration and Air Conditioning Institute of Canada; Independent Contractors and Business Association; and Ameresco Canada Inc. It submits that it has had and continues to have a substantial interest in the matter of how FEI interacts with its TES affiliate FAES, the most significant for the Coalition's participation in the process is that it brought a unique perspective that went beyond that of the rate-payer interveners and the other participants in the proceeding.

In FEI's letter of comment on the PACA applications, FEI submits that the Coalition's participation is one of self interest in the issue of competition in the thermal energy services marketplace. FEI further submits that the Coalition consists of large, sophisticated commercial entities with substantial financial means who could still participate if there was no opportunity for reimbursement of costs to do so. To support its submission, FEI cited two examples, one of which was Order F-28-14 where the Coalition was denied a PACA award as it was a group representing the interests of its members and is not a ratepayer group. FEI requested that the Commission deny the Coalition's request.

The Panel is cognizant of the determination in Order F-28-14 which was a decision on PACA applications that came from a revenue requirements application (RRA) hearing. The Panel differentiates a RRA hearing from this COC and TPP proceeding because the matter at hand is a continuation of the issues that arose from the AES Inquiry proceeding. In that proceeding PACA was awarded to the energy services sector group - Energy Services Association of Canada in Order F-2-13. The Panel agrees with the Coalition that it offers a unique perspective not otherwise available to the Commission. Therefore, the Panel considers the Coalition eligible for PACA funding consideration.

4.0 COMMISSION DETERMINATION ON PACA APPLICATION AMOUNTS

4.1 PACA Awards

The amounts claimed for PACA funding by the three applicants are:

Applicant	Amount
BCOAPO	\$15,284.64
BCSEA-SCBC	\$12,099.68
Coalition	\$9,572.85

The Panel has considered the PACA applications received in the context of the criteria outlined in Section 2.0 above.

4.2 BCOAPO

BCOAPO filed its PACA application on December 19, 2014 for a total of \$15,120.00 based on 7.5 days of counsel services, and \$147.00 in expenses, and applicable taxes. The daily rate for counsel is within the Guidelines.

The Panel considers that BCOAPO contributed to better understanding of some issues in this proceeding. Fees claimed for legal services are in accordance with the Guidelines and the Panel considers it appropriate given the qualifications of the resources employed.

BCOAPO is eligible for five days out of a maximum of six as it did not participate in filing IRs to FEI and one preparatory day, allowing it a total of six days eligible for funding. The number of days applied for exceeds the total number of days eligible for funding by 1.5 days. The reduction results in an award of \$12,260.64 comprising \$10,800.00 for legal services, \$147.00 in disbursements, and applicable taxes.

BCOAPO Application		Approved		Difference
Legal Counsel		Legal Counsel		
7.5 days at \$1,800	= \$13,500.00	6 days at 1,800	= \$10,800.00	
GST (5%)	= \$675.00	GST	= \$540.00	
PST (7%)	= \$945.00	PST	= \$756.00	
TOTAL	= \$15,120.00	TOTAL	= \$12,096.00	
Disbursement	= \$147.00	Disbursement	= \$147.00	
GST	= \$7.35	GST	= \$7.35	
PST	= \$10.29	PST	= \$10.29	
GRAND TOTAL	= \$15,284.64	GRAND TOTAL	= \$12,260.64	TOTAL = -\$3,024.00

The Panel directs FEI to reimburse the BCPSO for a PACA amount of \$12,260.64

4.3 BCSEA-SCBC

BCSEA-SCBC filed its PACA application (revised) on December 29, 2014, for a total of \$12,099.68 based on 5.8 days of counsel services and 0.775 days of case manager services.

The Panel considers that BCSEA-SCBC contributed to a better understanding of most of the issues in the proceeding. The daily rates claimed by BCSEA-SCBC are in line with the PACA Guidelines. BCSEA-BCSC did not file IRs and is eligible for up to 5 proceeding days out of a maximum of six days plus up to one additional day recognizing work to prepare for the pre-hearing conference for a total of six days. As BCSEA-SCBC's claim is within the maximum period eligible for PACA funding, the Panel approves the claim as per the BCSEA-SCBC's application.

BCSEA-SCBC Application		Approved		Difference
Legal Counsel		Legal Counsel		
5.8 days at \$1,800	= \$10,440.00	Total	= \$10,440.00	
GST (5%)	= \$522.00	GST	= \$522.00	
PST (7%)	= \$730.80	PST	= \$730.80	
TOTAL	= \$11,692.80	TOTAL	= \$11,692.80	
Case Manager		Case Manager		
0.775 days at \$500	= \$387.50	Total	= \$387.50	
GST (5%)	= \$19.38	GST	= \$19.38	
TOTAL	= \$406.88	TOTAL	= \$406.88	
GRAND TOTAL	= \$12,099.68	GRAND TOTAL	= \$12,099.68	TOTAL = \$0.00

FEI is directed to reimburse BCSEA for the fully applied for a PACA amount of \$12,099.68.

4.4 Coalition

The Coalition filed its application on January 7, 2015 for a total of \$9,572.85 based on 7.1 days of consultant fees and 0.4 days of case manager services.

The Panel considers that the Coalition contributed to a better understanding of most of the issues in the proceeding. The daily rates claimed by Coalition are in line with the PACA Guidelines and it is eligible for six 'proceeding' days and one 'preparatory' day for a total of seven days.

Coalition Application	Approved	Difference
Consultant 7.1 days at \$1,250 = \$8,917.00 GST (5%) = \$445.85 TOTAL = \$9,362.85	Consultant 7.0 days at \$1,250 = \$8,750.00 GST = \$437.50 TOTAL = \$9,187.50	
Case Manager 0.4 days at \$500 = \$200.00 GST (5%) = \$10.00 TOTAL = \$210.00	Case Manager Total = \$200.00 GST = \$10.00 TOTAL = \$210.00	
GRAND TOTAL = \$9,572.85	GRAND TOTAL = \$9,397.50	TOTAL = -\$175.35

FEI is directed to reimburse Coalition for a PACA amount of \$9,397.50.