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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-25-15**

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

and

**British Columbia Sustainable Energy Association
and the Sierra Club of British Columbia regarding an
Application for Reconsideration of Order F-1-15**

BEFORE: D. M. Morton, Commissioner/Panel Chair
D. A. Cote, Commissioner February 27, 2015
N. E. MacMurphy, Commissioner

O R D E R

WHEREAS:

- A. By Orders F-28-14 and F-29-14, dated October 27, 2014, the British Columbia Utilities Commission (Commission) approved the Participant Assistance/Cost Award (PACA) funding to participants involved in the Performance Based Ratemaking proceedings from FortisBC Energy Inc. and FortisBC Inc. for the period of 2014 through 2019 (PBR proceedings);
- B. On November 10, 2014, the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA - SCBC) filed a reconsideration request pertaining to Orders F-28-14 and F-29-14;
- C. By Order F-1-15 dated January 8, 2015, the Commission determined that BCSEA-SCBC failed to make a *prima facie* case to warrant a full reconsideration of Orders F-28-14 and F-29-14, and determined that the reconsideration will not proceed to Phase Two;
- D. On January 21, 2015, BCSEA-SCBC wrote to the Commission requesting a reconsideration of Order F-1-15. BCSEA-SCBC alleged, among other things, that:
 - the Commission failed to examine whether there was a *prima facie* case to warrant reconsideration;
 - the Panel presiding over Order F-1-15 was not impartial in reviewing its previous decision;
 - the Panel's restated decision to reduce the award by \$100,000 was and/or is arbitrary and excessive, warranting reconsideration; and
 - Order F-1-15 has significant material implications warranting reconsideration.

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- E. BCSEA-SCBC also request that reconsideration of Order F-1-15 be conducted by a different panel of the Commission;
- F. The Commission has considered the BCSEA-SCBC's request and determines that there is a *prima facie* case to proceed to a Phase Two of reconsideration process.

NOW THEREFORE, pursuant to section 99 of the *Utilities Commission Act*, and for the reasons attached to this order as Appendix A, the Commission orders that:

1. Phase Two of BCSEA-SCBC's reconsideration request dated January 21, 2015, shall proceed according to the Regulatory Timetable below:

ACTION	DATE (2015)
BCSEA-SCBC to file evidence, if any	Monday, March 9
Commission Information Request	Monday, March 16
BCSEA-SCBC Response to Commission Information Request	Monday, March 23
FEI and FBC to provide comments to the Commission	Monday, March 30
BCSEA-SCBC response to FEI and FBC's comments	Wednesday, April 8

2. The scope of the reconsideration process is limited to whether the \$100,000 reduction is arbitrary.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of February 2015.

BY ORDER

Original signed by:

D. M. Morton
Commissioner/Panel Chair

Attachment

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REASONS FOR DECISION

By letter dated January 21, 2015, the B.C. Sustainable Energy Association and Sierra Club B.C. (BCSEA-SCBC) requested a reconsideration pursuant to section 99 of the *Utilities Commission Act*, of Order F-1-15. Order F-1-15 denied reconsideration of previous Participant Assistance /Cost Award (PACA) orders. BCSEA-SCBC state the following errors of fact and law warrant reconsideration:

- (a) The Panel failed to examine whether there is a sufficient *prima facie* case to warrant reconsideration.
- (b) The Panel in Order F-1-15 is not impartial in reviewing its own previous decision.
- (c) The Panel's restated decision to cut the award by \$100,000 is arbitrary and excessive and warrants reconsideration.
- (d) The Order has significant material implications warranting reconsideration.

The Panel determines that the reconsideration request, limited to whether the Panel's decision to reduce the award by \$100,000 is arbitrary, will proceed to Phase Two. Further review will proceed in accordance with the Regulatory Timetable within Order G-25-15. Issue (c) will be addressed first.

Issue (c) The decision to cut the award is arbitrary and excessive

The Commission finds that there is a *prima facie* case to reconsider whether the PACA funding awarded for expenditures made by BCSEA-SCBC for expert witnesses as well as legal counsel and case management fees related to the FortisBC Energy Inc. and FortisBC Inc. Performance Based Ratemaking for the period of 2014 through 2019 proceedings is arbitrary. The Commission will not reconsider other issues raised in the initial reconsideration nor issues (a), (b) and (d) in this reconsideration request, for reasons provided below.

Issue (a) Failure to examine whether there is sufficient *prima facie* case to warrant reconsideration

BCSEA-SCBC have failed to make a *prima facie* case that the Panel in the previous reconsideration decision failed to examine whether there was a sufficient *prima facie* case to warrant proceeding to Phase Two of the reconsideration process. BCSEA-SCBC cites several passages in the Reasons for Decision to support its submission that the Panel applied a Phase Two test instead of the Phase One test for reconsideration. Considered in isolation and separate from the full decision, those comments cited by BCSEA might support BCSEA-SCBC's position. However, the Panel's Reasons are issued to be read in their entirety. Doing so provides the needed context and it becomes clear that the Panel was applying the Phase One test. This is made clear by the following passage, on page 3 of the Reasons to Order F-1-15, which immediately precedes the comments relied upon by BCSEA-SCBC:

The Panel has reviewed the submissions of BCSEA-SCBC and FEI/FBC and finds that, for reasons articulated below, BCSEA-SCBC have failed to make a *prima-facia* [*sic*] case that the Commission made an error of fact or law...

Issue (b) The Panel is not impartial

BCSEA-SCBC incorrectly state that a *prima facie* basis has been established to show the Panel was not impartial and defended its position to cut the BCSEA-SCBC budget rather than applying the proper reconsideration criteria. BCSEA-SCBC submit in part that impartiality is displayed by the Panel applying a Phase Two test at Phase One of the reconsideration. This has been addressed in issue (a) above.

BCSEA-SCBC further incorrectly state that a *prima facie* case has been made that the Panel was not impartial as a result of the Panel's comments concerning BCSEA-SCBC's "ratepayer" representative status and the use of staff's budget review letter in the Reasons. The Panel rejects these submissions as establishing a *prima facie* basis to warrant reconsideration. A threshold higher than disagreeing with the Panel's findings must be met before a finding of impartiality can be made. The original reconsideration decision made it explicitly clear that in the PACA decision (Order F-1-15), there was no finding that BCSEA-SCBC did or did not represent a ratepayer group. BCSEA-SCBC mischaracterized the Panel's previous decision. The Panel made the point that the members of BCSEA-SCBC, whether customers of the utilities or not, had a narrower focus than representatives of more traditional ratepayer groups. The Panel set out that narrower focus relying mainly on the comments arising from BCSEA-SCBC in the proceedings.

The Panel is not persuaded that it erred on a *prima facie* basis in relying on the comments surrounding the staff budget review letter. The Panel noted in its Reasons that staff expressed concerns to BCSEA-SCBC about its proposed budget being too high. BCSEA-SCBC submit that the Panel relied upon staff's advice as a reason for the reduction without acknowledging the limitations expressly included in staff's letter that the advice was not binding upon BCSEA-SCBC or the Panel. What BCSEA-SCBC fails to acknowledge is that the Panel put in place maximum budget awards higher than those suggested by staff in the initial budget proposals. By doing so, the Panel demonstrated that it was not constrained by staff's advice and there was no need to mention the limitations stated in staff's budget review letter.

The Panel presiding over Order F-1-15 will continue to hear the reconsideration request as it is in the best position to determine the proper cost award as the panel members have presided over the entire proceedings giving rise to the request for a cost award.

Issue (d) Material implications

BCSEA-SCBC submit that "Order F-1-15 has significant material implications warranting reconsideration because it represents a serious financial blow and affects the organization's ability to participate in future regulatory processes."¹ The Panel notes that BCSEA-SCBC listed this issue as an error of fact or law justifying reconsideration. However, the reconsideration criteria actually requires the applicant to first establish an error of fact or law on a *prima facie* basis and then show that the error has significant material implications. Therefore, the Panel will treat this aspect of BCSEA-SCBC's submission as a submission on the significant material implications part of the test rather than as a separate error of fact or law. Significant material implications by themselves do not establish an error of fact or law.

The Panel is not persuaded on a *prima facie* basis that the impact of a reduced cost award upon BCSEA-SCBC's operations has, in itself, any significant material implications that warrant proceeding to Phase Two. The Panel is not satisfied that the cost award to BCSEA-SCBC has any significant material implications for the substantive matters being adjudicated before the Panel. The cost award, which represents partial indemnity for the costs

¹ BCSEA-SCBC Reconsideration Application, January 21, 2015, p. 13.

incurred by BCSEA-SCBC, is a narrowly focused inquiry into whether BCSEA-SCBC's contribution to the proceedings warrants an award of costs and, if so, the quantum of those costs. There is no other direct implication for any other party involved in the proceeding nor does it touch upon any of the substantive issues in the proceedings.

As considered under issue (c) above, the Commission will consider whether the decision to cut BCSEA-SCBC's award by \$100,000 was arbitrary. The Panel is persuaded that there is another significant material implication arising from the issue it is allowing to be reconsidered. If the Panel did act in an arbitrary manner, then jurisdictional issues arise which would certainly have significant material implications.