



**ORDER NUMBER
F-6-16**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

An Application for Participant Assistance/Cost Awards
in the FortisBC Inc.
Application for Stepped and Stand-by Rates for Transmission Voltage Customers

BEFORE:

L. A. O'Hara, Commissioner
R. D. Revel, Commissioner

on March 4, 2016

ORDER

WHEREAS:

- A. On March 28, 2013, FortisBC Inc. (FortisBC) filed an application with the British Columbia Utilities Commission (Commission) for approval of new rates for transmission voltage customers (Application) under sections 58-61 of the *Utilities Commission Act*;
- B. British Columbia Hydro and Power Authority (BC Hydro), Zellstoff Celgar Limited Partnership (Celgar), International Forest Products Limited, the British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), and the BC Municipal Electric Utilities registered as interveners;
- C. On January 31, 2014, by Order G-12-14, the Commission determined that its review of the issues in the Application that did not overlap with the issues then being considered in the BC Hydro Rate Schedule 3808 Application (RS 3808 Proceeding), would proceed by way of a written hearing (Stage I);
- D. On May 26, 2014, by way of Order G-67-14, the Commission made a determination on Stage I;
- E. By Order F-18-14A, the Commission awarded Participant Assistance/Cost Award (PACA) funding of \$20,398.59 to BCOAPO and \$52,820 to Celgar for their participation in the review of Stage I;
- F. The review of the Application continued with the Commission making a determination on Stages II and III by Order G-46-15 and Order G-93-15, respectively;
- G. BCOAPO filed a PACA application for Stage II on December 19, 2014 and Stage III on May 26, 2015, requesting a reward of \$14,698.13 and \$2,267.48, respectively;
- H. By Order F-16-15, dated April 1, 2015, the Commission awarded PACA funding as applied for to BCOAPO for their participation in the review of Stage II and Stage III;

- I. The review of the Application continued with the Commission making a determination on Stage IV by Order G-149-15, dated September 22, 2015, and a final determination of the Application in Stage V by Order G-214-15, dated December 24, 2015;
- J. On January 14, 2016, BCOAPO filed a PACA Application for \$9,163.35 for their participation in the review of Stage IV and Stage V of the Application;
- K. On January 22, 2016, Celgar filed a PACA Application of \$241,838.33 for their participation in the review of Stages II, III, IV and V of the Application;
- L. On January 27, 2016, the Commission issued a letter to FortisBC requesting comments on the PACA applications which FortisBC replied to on February 10, 2016; and
- M. With regard to the criteria and rates set out in the PACA Guidelines in Commission Order G-72-07 the Commission has reviewed the PACA applications and the comments from FortisBC.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, and for the reasons attached to this Order, the British Columbia Utilities Commission approves:

1. Funding is awarded to the British Columbia Old Age Pensioners' and Seniors' Organization *et al.* for their participation in Stages IV and V, and Zellstoff Celgar Limited Partnership for Stages II, III, IV, and V of the FortisBC Inc. Application for Stepped and Stand-By Rates for Transmission Voltage Customers proceeding as follows:

REGISTERED INTERVENER	AWARD
British Columbia Old Age Pensioners' and Seniors' Organization <i>et al.</i> (Stage IV and V)	\$9,163.35
Zellstoff Celgar Limited Partnership (Stages II, III, IV, and V)	\$59,390.00
TOTAL	\$68,553.35

2. FortisBC Inc. is directed to reimburse the above interveners for the approved award amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this

day of March 2016.

BY ORDER

L. A. O'Hara
Commissioner

Attachment

An Application for Participant Assistance/Cost Awards (PACA)
in the FortisBC Inc.
Application for Stepped and Stand-by Rates for Transmission Voltage Customers

REASONS FOR DECISION

1.0 INTRODUCTION

The Panel has reviewed the PACA applications by the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) and Zellstoff Celgar Limited Partnership (Celgar) while taking into consideration the relevant guidelines as set out in the British Columbia Utilities Commission (Commission) Order G-72-07 (PACA Guidelines).

The Panel also considered comments provided by FortisBC Inc. (FBC), by letter dated February 10, 2016. In regard to the application of BCOAPO, FBC notes that the funding request is within the limits established by the PACA Guidelines, and accordingly FBC considers it to be reasonable. However, regarding the Celgar application, FBC provided the following, more extensive comments.

(i) Eligibility

FBC acknowledges that in Order F-18-14A, issued on July 10, 2014 and related to the Stage I Decision, the Commission determined that Celgar was eligible for PACA funding. However, FBC points out the Panel's clarification that "...this ruling should not be considered precedent setting. Each case for a for-profit company like Celgar will be considered on its own merits."¹

(ii) Objections to the PACA application

FBC objects to the magnitude of the amounts claimed because

- Celgar is making a claim for the funding activities that should be on its own account;
- The amounts claimed by Celgar are not in accordance with the PACA Guidelines; and
- The claim is excessive.

(iii) Summary recommendation

FBC suggests that the Commission reduce the Celgar award to a more reasonable level that better reflects the PACA Guidelines and the contribution that Celgar's intervention made to the Commission's determinations on the final structure of Rate Schedule 37 (RS 37).

2.0 ADJUSTMENTS TO INDIVIDUAL PACA APPLICATION AMOUNTS

2.1 Review process background

The review of the FBC Application for Stepped and Stand-by Rates for Transmission [Voltage] Customers (Application) extended over a period of almost three years. The original Application was filed on March 28, 2013. In the Stage I Decision, on May 26, 2014, the Commission declined to approve the proposed RS 37 and directed FBC to file a revised RS 37, and submit a filing on the appropriate Contract Demand and Stand-by Contract Demand levels for Celgar.

¹ Order F-18-14A, Reasons for Decision, p. 4 of 6.

By way of the Stage II Decision, issued on March 24, 2015, the Commission approved the form of RS 37, other than defining the penalty provisions. The Commission also gave FBC an opportunity to review the directed RS 37 language to ensure it would be workable for the utility.

After receiving submissions, the Commission issued the Stage III Decision on May 29, 2015, which approved the penalty component of RS 37, tariff sheets and tariff language, and set for Celgar the Rate Schedule 31 Contract Demand as well as the Stand-by Demand Limit. The Commission also gave FBC and Celgar an opportunity to make further submissions on the Stand-by Billing Demand.

In the Stage IV Decision the Commission approved the Celgar Stand-by Billing Demand and directed FBC and Celgar to attempt to negotiate an agreement on the retroactive application of rates.

After successful negotiations, on December 23, 2015, the Commission issued the Stage V Decision approving the executed Agreement between the parties on the retroactive application of rates.

2.2 BCOAPO

BCOAPO has previously received PACA funding of \$20,398.59 for Stage I (Order F-18-14A) and \$16,965.61 for Stages II and III (Order F-16-15), which totals \$37,364.20. For the remaining review process covering Stages IV and V, BCOAPO applied for funding for 4 legal counsel days and 0.84 consultant days. The application for \$9,163.35 is consistent with the PACA Guidelines, the proceeding days are within an acceptable range and no concerns were raised by FBC. **Accordingly, the Panel awards the full amount of BCOAPO's request.** With this award, the total granted through the entire proceeding for BCOAPO amounts to \$46,527.55.

2.3 Celgar

In the Reasons for Decision attached to Order F-18-14A, the Commission provided a comprehensive review of Celgar eligibility from the perspective of a for-profit company in general and specifically from the perspective of having a significant interest in Stepped and Stand-by Rates in FBC territory. The Panel determined that "Celgar has contributed to a better understanding of the issues by the Commission and is therefore eligible to some level of PACA funding even if it might be able to participate without an award."² The review of the current PACA application will be based on that foundation.

2.3.1 Celgar PACA Application

By way of Order F-18-14A the Commission awarded Celgar \$52,820 for its participation in the review leading to the Stage I Decision. The current PACA application by Celgar seeks participant funding for legal and consulting fees charged for the work related to Stages II, III, IV and V of the review process. In essence, the invoices submitted cover work performed during the period April 1, 2014 to December 31, 2015. The specifics of the Celgar PACA application totalling \$241,838.33 are shown in table below.

² Order F-18-14A, Reasons for Decision, pp. 3-4.

Attachment 1 - PACA Interim Award Claim		
Legal Fees	Robert Hobbs	\$128,145.00
	PST	\$8,970.15
	GST	\$6,407.25
	Total Legal Fees:	\$143,522.40
Consultants	Dennis Fitzgerald	\$8,160.00
	GST	\$408.00
	Subtotal	\$8,568.00
	Joe Linxwiler	\$11,825.00
	PST and GST (NA)	0
	Elroy Switlishoff	\$72,600.00
	GST	\$3,630.00
	Subtotal	\$76,230.00
	Total Consultants	\$96,623.00
Total Claim, plus disbursements of \$1,692.93 (travel Mr. Switlishoff)		\$241,838.33
Note 1: Hobbs -- PST Registration No. PST-1007-2383, GST Registration No. 86240 4084 RT0001		
Note 2: Switlishoff -- GST Registration No. 848072724RT0001		
Note 3: Fitzgerald -- GST Registration No. 809895014RT0001		

In its Application dated January 22, 2016, Celgar confirms that the legal counsel fees included do not involve any consulting days. Moreover, Celgar points out that the actual legal counsel days incurred far exceed those claimed in the Attachment because the claim excludes all legal fees incurred and paid to Sangra Moller.

Celgar submits that in these proceedings it was by far the most affected participant. Celgar further submits "Given the large sums involved and the importance to Celgar, both historically as to its refund claim, and in establishing its future Stand-by Rate, Celgar was compelled to fully and vigorously participate throughout all stages of the Application."³

2.3.2 FBC submissions

The key reasons for FBC's objections are summarized as follows.

1. Celgar is making a claim for funding of activities that should be on its own account

FBC submits that Celgar is not entitled to a large portion of costs claimed for proceedings following the Stage II Decision because the form of the RS 37 service to be implemented was largely complete. The Stage III Decision added the only remaining generic aspect of the rate in RS 37; namely, the penalty language. All activities leading to the Stage IV and Stage V decisions were devoted to setting Celgar specific service parameters and included negotiations between FBC and its customer Celgar. FBC further submits it does not believe it is appropriate for other customers to fund consulting and legal counsel fees to help Celgar prepare for negotiations which did not contribute to the Commission's better understanding of issues that were already addressed in Stages I and II. Noting that the Stage III Decision was issued on May 29, 2015, FBC point out that Celgar submitted invoices for the July – December 2015 period totaling more than \$70,000.

³ Celgar Letter, January 22, 2016, p. 2.

In support of its views, FBC also refers to PACA awards granted after the FBC's 2009 Cost of Service Application and Rate Design Application (the 2009 COSA and RDA) process. At that time, the Commission found that efforts directed at securing a favourable outcome for a single customer (Celgar) should not come at a cost to all other FBC's ratepayers.⁴

2. The amounts claimed are not in accordance with the PACA Guidelines

FBC states that the claims made by Celgar exceed the amounts permissible in the PACA Guidelines, or by virtue of a lack of information cannot be properly evaluated. By way of examples, FBC notes the hourly charge of Mr. Linxwiler at \$1,720 per day compared to the Guideline maximum for Expert Witness of \$1,450 per day and the lack of detail provided by Mr. Hobbs.

3. Celgar's claim is excessive

FBC refers to Order F-18-14A that confirmed an estimated 10 proceeding days required for the Stage I proceeding to provide for two rounds of Information Requests (IRs), filing of intervenor evidence, responding to IRs and making final submissions. In contrast, FBC notes that from April to December 2014, a period of low level activity, Celgar's invoices total over \$128,000. FBC points out that this amount alone, without the 2015 invoices, exceeds Celgar's Stage I claim of some \$106,000. It should also be noted that for the Stage I proceeding, the Commission awarded Celgar \$52,820.

Furthermore, FBC submits "...not only is Celgar attempting to claim expenses that have not been incurred to further the better understanding of the Commission of issues related to determining the form of Stand-by Service, it has made submissions that were unsolicited in the process that have been disregarded by the Commission in making determinations."⁵

Commission determination

The Panel concurs with most of the FBC's three areas of objections as addressed further below.

First, Celgar as a for-profit corporation should not claim for PACA funding of activities that should be on its own account. Most of the activities in Stages IV and V focused on issues that in the normal course of business a utility and its customer are expected to handle. In addition, Celgar submissions during those stages did not contribute to the Commission's better understanding of generic issues related to the Stand-by Rate. The Panel also agrees with the PACA findings of the Commission after the 2009 COSA and RDA decision. The key reason for the significant reduction in the Celgar award that time was a single customer issue. The Panel found:

"...the establishment of a GBL between it and FortisBC would have benefitted Celgar and would have been unlikely to benefit FortisBC's other customers, and for this reason the Commission Panel considers that funds Celgar expended to make its case before the Commission should be for its account alone and should not be borne by all FortisBC's customers."⁶

Second, the Panel is disappointed to note that the invoices submitted by Mr. Hobbs for legal counsel work do not indicate hours, days or the daily rate. Therefore, the Panel has no choice but to make an arbitrary adjustment. The hourly rates of \$150 and \$160 submitted by Mr. Switliff and Mr. D. Fitzgerald respectively translate into \$1,200 and \$1,280 respectively, while the maximum daily fee for a senior consultant is \$1,250. **The Panel will allow a daily rate of \$1,200 for Mr. Switliff and \$1,280 for Mr. D. Fitzgerald. In regard to**

⁴ Order F-31-10, Appendix A, p. 6.

⁵ FBC Letter dated February 10, 2016, p. 5.

⁶ Order F-31-10, Appendix A, p. 6.

Mr. Linxweiler's daily rate of \$1,720 which is above the Guideline rate of \$1,450 for an Expert Witness, the Panel will continue to respect the advance approval dated July 23, 2013, and grant a daily rate of \$1,720.

Third, the Panel views the Celgar claim is excessive and notes that this seems to be a pattern with Celgar PACA claims. For the Stage I proceeding, which was the most involved and most generic providing potential benefits for future users of RS 37 and other customers, Celgar claimed \$105,895.20. After an extensive analysis, the Panel awarded Celgar \$52,820.

As another benchmark, the Panel refers to the PACA awards granted to BCOAPO, the other active intervener in the proceeding. In Order F-18-14A, the Panel granted BCOAPO its request without any adjustments. That claim provided for 7.5 legal counsel days in the Stage I proceeding. By comparison, the Panel granted Celgar legal counsel 12 days, which is higher by a factor of 1.6. Consistent with the rationale that Celgar's participation was significantly greater than that of BCOAPO.

In the subsequent stages, the Panel will use the same factor of 1.6. For Stages II to V, BCOAPO was awarded funding for a total of 10.5 legal counsel days. **Therefore, the Panel determines that for Stages II to V, 17 legal counsel days is sufficient** (1.6 times 10.5 days). In this case, unlike Order F-18-14A, the Panel accepts Celgar's assurance that the legal counsel work did not include any consulting work. **As a result, the PACA award for legal counsel will be based on \$1,800 per day.**

For Mr. Fitzgerald, as a consultant, and Mr. Linxwiler, as the Expert Witness, the Panel accepts their claims of \$8,160 and \$11,825 respectively, even though Mr. Fitzgerald rate is slightly above the PACA Guidelines.

The Panel notes that the awards for these two consultants already amount to acceptance of 13.25 consulting days. In addition, Celgar is claiming 60.5 consulting days for Mr. Switlishoff. In the Panel's view the total of 76.25 consulting days to cover Stages II to V of the process is clearly excessive. Especially, in light of the findings above that Celgar should not be making a claim for funding of activities that should be on its own account. **Accordingly, the Panel determines that the total number of days awarded to the three consultants should not exceed 17 days.** This finding means that for Mr. Switlishoff only 3.75 days can be included. The Panel believes that this is a reasonable outcome as from the Panel's perspective, the expertise of the other two consultants added more value to the Panel's deliberations regarding the aspect of the proceeding that did not address the Celgar specific issues.

For the reasons stated above, the Panel awards Celgar PACA funding of \$59,390.

Celgar PACA Award

	DAYS	DAILY RATE	TOTAL	INDIRECT TAX
Legal fees	17.00	\$1,800	\$30,600	\$3,672
Mr. Fitzgerald	6.375	\$1,280	\$8,160	\$408
Mr. Linxwiler	6.875	\$1,720	\$11,825	\$0
Mr. Switlishoff	3.75	\$1,200	\$4,500	\$225
TOTAL	34		\$55,085	\$4,305