



ORDER NUMBER

F-9-17

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

the Insurance Corporation Act, R.S.B.C. 1996, Chapter 228, as amended

and

Insurance Corporation of British Columbia

An Application for Approval of the Revenue Requirements for Universal Compulsory Automobile Insurance
Effective November 1, 2016

BEFORE:

D. A. Cote, Commissioner/Panel Chair

B. A. Magnan, Commissioner

R. I. Mason, Commissioner

on July 10, 2017

ORDER

WHEREAS:

- A. On August 25, 2016, the Insurance Corporation of British Columbia (ICBC) filed with the British Columbia Utilities Commission (Commission) its 2016 Revenue Requirements Application (2016 RRA) for Universal Compulsory Automobile Insurance (Basic insurance);
- B. By Orders G-142-16 dated September 2, 2016 and G-163-16 dated November 10, 2016, the Commission established a Regulatory Timetable for the review of the ICBC 2016 RRA, which included two rounds of information requests, an intervener evidence process, and written final arguments;
- C. On December 16, 2016, the Lieutenant Governor in Council issued Order in Council No. 960, amending *Special Direction IC2 to the British Columbia Utilities Commission (Special Direction IC2)*, which adds that for the Policy Year (PY) 2016, the Commission must issue its final general rate change order by January 16, 2017 and the PY 2016 rate change must not exceed 4.9 percent (OIC 960/16);
- D. By Order G-195-16 dated December 20, 2016, the Commission suspended the Regulatory Timetable under Order G-163-16 and advised that an amended regulatory timetable will be issued;
- E. By letter dated December 20, 2016, the Commission invited ICBC and registered interveners to make submissions as to whether or not the requested PY 2016 Basic insurance rate change of 4.9 percent should be approved on a permanent basis;

- F. By Order G-2-17 dated January 12, 2017, in accordance with OIC 960/16 and after considering the submissions by the 2016 RRA participants, the Commission approved a 4.9 percent Basic insurance permanent rate increase for the PY 2016;
- G. By Order G-23-17 dated February 24, 2017, the Commission ordered that the remaining process would be limited to providing written arguments on two outstanding requests from the ICBC Application: (i) an allocation methodology for the deferral premium acquisition cost between Basic insurance and Optional insurance (DPAC Allocation Methodology) and the proposal to discontinue the quarterly reporting requirements for government initiatives and continue reporting government initiatives annually as a chapter in each revenue requirements application (Government Initiatives Reporting Requirement);
- H. On May 16, 2017, the Commission issued Order G-71-17, with accompanying reasons for decisions approving both the DPAC Allocation Methodology and Government Initiatives Reporting Requirement;
- I. The following participants in the ICBC 2016 RRA filed Participant Assistance/Cost Award (PACA) applications with the Commission with respect to their participation in the proceeding:

Date	Participant	Application
April 21, 2017	British Columbia Old Age Pensioners' Organization <i>et al.</i> (BCOAPO)	\$25,980.00
April 26, 2017	Mr. Richard T. Landale	\$142.80
May 16, 2017	Toward Responsible Educated Attentive Driving (TREAD)	\$42,112.00

- J. On May 31, 2017, ICBC provided comments on the PACA applications by the participants;
- K. On June 9, 2017, TREAD provided reply comments to ICBC; and
- L. The Commission reviewed the PACA applications with consideration of the PACA Guidelines attached to Order G-143-16, and amended by Order G-97-17.

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

1. Funding is awarded to the following participants in the listed amounts for their participation in the Insurance Corporation of British Columbia Application for Approval of the Revenue Requirements for Universal Compulsory Automobile Insurance proceeding:

Participant	Award
British Columbia Old Age Pensioners' Organization <i>et al.</i>	\$25,980.00
Mr. Richard T. Landale	\$142.80
Toward Responsible Educated Attentive Driving (TREAD)	\$32,961.60

2. ICBC is directed to reimburse the above-noted participants for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of July 2017.

BY ORDER

Original signed by:

D. A. Cote
Commissioner

Attachment

Insurance Corporation of British Columbia
An Application for Approval of the Revenue Requirements for Universal Compulsory Automobile Insurance
Effective November 1, 2016

REASONS FOR DECISION

1.0 BACKGROUND

The British Columbia Utilities Commission (Commission) received Participant Assistance/Cost Award (PACA) applications from three participants in the Insurance Corporation of British Columbia (ICBC) Application for Approval of the Revenue Requirements for Universal Compulsory Automobile Insurance Effective November 1, 2016 (2016 RRA). The three participants submitting PACA applications are as follows:

- British Columbia Old Age Pensioners Organization *et al.* (BCOAPO);
- Mr. Richard Landale (Mr. Landale); and
- Toward Responsible Educated Attentive Driving (TREAD)

ICBC's 2016 RRA was filed on August 25, 2016. By Orders G-142-16 dated September 2, 2016 and G-163-16 dated November 10, 2016, the Commission established a Regulatory Timetable for the review of the Application, which included two rounds of information requests (IR), an intervenor evidence process, and written final arguments.

On December 16, 2016, the Lieutenant Governor in Council issued Order in Council No. 960, amending *Special Direction IC2 to the British Columbia Utilities Commission (Special Direction IC2)*, which for the Policy Year (PY) 2016, directs the Commission to issue its final general rate change order by January 16, 2017 and the PY 2016 rate change must not exceed 4.9 percent (OIC 960/16).

On December 20, 2016, the Panel suspended the Regulatory Timetable and invited ICBC and registered intervenors to make submissions as to whether or not the requested PY 2016 Basic insurance rate change of 4.9 percent should be approved on a permanent basis. By Order G-2-17 dated January 12, 2017, the Panel approved a 4.9 percent permanent rate increase for PY 2016. By Order G-23-17 dated February 24, 2017, the Panel ordered the remaining process to be limited to providing written arguments on the two outstanding requests from the ICBC 2016 RRA that did not affect the PY 2016 Basic rates¹.

The Panel reviewed the PACA applications with consideration of the PACA Guidelines set out in Order G-143-16 and amended by Order G-97-17 (PACA Guidelines); ICBC's comments dated May 31, 2017; and TREAD's response to ICBC dated June 9, 2017.

2.0 PACA GUIDELINES

As set out by Order G-143-16 and amended by Order G-97-17, the PACA Guidelines provide the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates.

¹ The two outstanding requests were: (i) an allocation methodology for the deferral premium acquisition cost between Basic insurance and Optional insurance (DPAC Allocation Methodology) and the proposal to discontinue the quarterly reporting requirements for government initiatives and continue reporting government initiatives annually as a chapter in each revenue requirements application (Government Initiatives Reporting Requirement).

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The Commission will consider whether the participant:

- (a) is directly or sufficiently affected by the Commission's decision; or
- (b) has experience, information, or expertise relevant to a matter before the Commission that would contribute to the Commission's decision-making.

Section 3.2 of the PACA Guidelines describes the general characteristics of a participant in a proceeding that would meet the eligibility criterion. Included among examples of these is a participant representing the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the Commission.

If the participant is eligible for a cost award, the Panel would then consider the following in determining the amount of a participant's cost award in accordance with section 4.3 of the PACA Guidelines:

- (a) Has the participant contributed to a better understanding by the Commission of the issues in the proceeding?
- (b) To what degree will the participant be affected by the outcome of the proceeding?
- (c) Are the costs incurred by the participant fair and reasonable?
- (d) Has the participant joined with other groups with similar interests to reduce costs?
- (e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?
- (f) The funding day calculation for funding in accordance with Sections 4.1 and 4.2, if one is provided.
- (g) Any other matters which the Commission determines appropriate in the circumstances.

Section 4.1 provides that the Commission may determine the number of funding days, subject to a funding cap if established for the proceeding. The Panel did not establish a funding cap in the ICBC 2016 RRA. Section 4.2 of the PACA Guidelines provides guidance in determining the number of funding days of a proceeding.

The ICBC 2016 RRA was reviewed by way of a written hearing process. The regulatory review consisted of a half day procedural conference, two rounds of IRs, submissions on the permanent rate change in relation to OIC 960/16, submissions on further process subsequent to the approval of a permanent rate change, and one round of written final arguments.

Commission discussion

For a written proceeding or a written portion of a proceeding, funding days will typically be an estimate of the number of days required for participation in and preparation of written submissions such as information requests, final arguments and letters of comment. Accordingly, as shown in the table below, the Panel finds 8 to 9 funding days would be reasonable for full participation in the ICBC 2016 RRA.

Date	Item	Number of funding days (preparation and participation)
September, 29, 2016	IR No. 1 to ICBC	3
October 28, 2016	Procedural conference	1.5
November 29, 2016	IR No. 2 to ICBC	2
December 2016 to February 2017	Commission seeking comments regarding OIC 960/16 (Exhibit A-14), remaining process (Exhibit A-16), and written final arguments	2

3.0 PACA APPLICATIONS

The following table summarizes the final PACA Applications by the participants:

Date	Participant	Application
April 21, 2017	British Columbia Old Age Pensioners' Organization <i>et al.</i> (BCOAPO)	\$25,980.00
April 26, 2017	Mr. Richard T. Landale	\$142.80
May 16, 2017	Toward Responsible Educated Attentive Driving (TREAD)	\$42,112.00

On May 31, 2017, ICBC provided comments on the PACA applications by the participants. ICBC had no comments on Mr. Landale's application and one administrative comment regarding the input tax credit on BCOAPO's application. However, ICBC raised concerns as to whether TREAD's IRs contributed to a better understanding of the issues before the Commission. ICBC also pointed out a potential discrepancy on certain task entries and a calculation error.

On June 9, 2017, TREAD provided reply comments to ICBC.

3.1 BCOAPO

BCOAPO is a group of community-based organizations collectively representing the interests of low and fixed income residential ratepayers in British Columbia. BCOAPO requests a \$25,980.00 cost award based on the following: \$18,928.00 for legal counsel fees (7 days), \$7,048.50 for consultant fees (3.81 days), and \$3.50 for disbursements, inclusive of applicable taxes.

Commission determination

The Panel awards BCOAPO a cost award of \$25,980.00 inclusive of applicable taxes.

BCOAPO is eligible for a cost award as the group it represents is directly or sufficiently affected by the Commission's Decision on the ICBC 2016 RRA. BCOAPO participated in all aspects of the proceeding and the number of days that BCOAPO claimed for legal counsel and consultant fees are within the Panel's expectation of 8 to 9 funding days for full participation.

BCOAPO contributed to a better understanding by the Commission of the issues in the ICBC 2016 RRA. The matters BCOAPO explored in IRs include deferred premium acquisition cost, minimum capital test, legal costs, claims cost and trends, investments, operating expenses, and performance measures. The Panel considers these matters to be relevant in a revenue requirements proceeding. BCOAPO also submitted letters of comment when requested by the Panel.

BCOAPO claimed 3.81 days at \$1,850/day for a consultant, Mr. Wightman with 7 plus years of related experience. BCOAPO legal counsel fees are allocated as follows: 4 days for Mr. Seaborn with 12+ years since call at \$2,800/day and 3 days for Ms. Feeney with 0-4 years since call at \$1,900/day. BCOAPO also noted that it coordinated efforts with another intervener, Movement of United Professionals. The Panel finds that the costs incurred by BCOAPO's consultant and mix of legal counsel resources are fair and reasonable and commends BCOAPO for making an effort to join with another intervener thereby reducing costs.

For the reasons above, the Panel determines that awarding BCOAPO the requested cost award of \$25,980.00 is consistent with the PACA Guidelines. With regard to the input tax credit issue raised by ICBC in its comments, the Panel trusts that ICBC and BCOAPO can resolve this matter amongst themselves.

3.1 Mr. Landale

Mr. Landale represents himself as a senior citizen. He applied for \$142.80 out-of-pocket expenses related to printing costs. ICBC had no comment on Mr. Landale's application.

Commission determination

The Panel awards Mr. Landale a cost award of \$142.80 inclusive of applicable taxes. Section 10.1 of the PACA Guidelines states that disbursement directly related to the participant's participation in the proceeding may be allowed.

3.2 TREAD

TREAD is a ratepayer group established in September 2013 specifically for the purpose of representing ICBC policyholder interests in ICBC regulatory proceedings. TREAD requests approval of a \$42,112.00 cost award. TREAD's consultant Mr. Roberts, with 7+ years of related experience, claimed 3.8 days at \$1,850/day and its legal counsel Mr. Weisberg, with 12+ years since call, claimed 10.8 days at \$2,800/day. The claimed expenses for legal counsel exceeded the Panel's expectation of 8 to 9 funding days for full participation. TREAD has provided details for all legal activities with the exception of 1 day described as "All other document review and communications" that is not detailed among the listed activities. In addition, it has agreed to waive 0.2 days in response to an issue raised by ICBC.

The table below summarizes the comments by ICBC on May 31, 2017 and the response by TREAD filed on June 9, 2017:

	Comments by ICBC	Reply by TREAD
1	ICBC identified a disconnect for work entries regarding the Commission's Order G-163-16 regulatory timetable and Order G-165-16, the Commission's ruling on ICBC's confidentiality request for IR No. 1 responses. This totalled 0.7	TREAD provided assurance that there was no double counting for work related to the same document. However, TREAD is content to have the Commission reduce those entries by 0.2 days of counsel time to 0.5 days.

	days of counsel time.	
2	A number of TREAD IRs continued to address the issues of ICBC's communication of its RRA with respect to rate smoothing and matters that deal with ICBC's future plans for rate design. ICBC's position on these matters has been well documented in responses to TREAD in previous RRAs. ICBC believes that revisiting these matters did little to contribute to a better understanding of the real issues before the Commission, and it takes additional time and effort for ICBC to repeat its position in responses to IRs on these matters.	TREAD maintains that ICBC's communications remain inadequate regarding the true impacts on rates that must be paid by ICBC customers as a result of the rate band. TREAD submits that the deferral of rate design work that ICBC initiated continues to have potential impacts on annual RRA filings. TREAD considers that the impacts on revenue requirements is sufficient to justify them being dealt with in a RRA proceeding.
3	In many cases, TREAD's IRs contain a copy and paste of preambles of Commission IRs and only a slight variation on the Commission's original questions. ICBC questions whether these TREAD IRs have added value or contributed to a better understanding of the issues before the Commission.	TREAD's IR No. 1 expressly noted "With the intent of reducing ICBC's required effort in preparing Responses and to minimize the need for cross-referencing as much as possible, we have attempted to follow the same order of issues and use the same references as set out in BCUC IR No. 1." The value or contribution to the Commission's understanding of the issues that results from TREAD IRs lies in the evidence that they elicited, or could have, from ICBC.
4	The TREAD PACA application contained an error in the GST and PST calculations for Mr. Weisberg's preparation time. These errors also carried over into the row and column totals.	TREAD acknowledged an error in its calculation of GST and PST. TREAD notes that the correct amounts are \$980 GST and \$1,372 PST. ²

Commission determination

The Panel awards TREAD a cost award of \$32,961.60 inclusive of applicable taxes.

The Panel accepts that the members of TREAD are directly or sufficiently affected by the Commission's decision on the ICBC 2016 RRA and therefore, eligible for a cost award. In the following sections, the Panel will assess TREAD's participation in the ICBC 2016 RRA with consideration of sections 4.2 and 4.3 of the PACA Guidelines to determine the amount of cost award to be funded.

In the two rounds of IRs, TREAD explored a range of topics, including government directives, Optional capital transfers to Basic insurance, customer communications, rate design and spending, fraud, penalty and fines, operating expenses, legal costs, and claims savings. However, the Panel notes that in some of the IRs TREAD's legal counsel sought information on matters that were outside the Commission's jurisdiction or outside the scope of a revenue requirements application. For example, over five percent of TREAD's IRs asked about the origin of government directives³, any future transfers from Optional to Basic⁴, and the Optional insurance business⁵. All of these are areas which are the purview of government or outside the Commission's jurisdiction

² This correction changes TREAD's total PACA amount requested from \$42,112.00 to \$41,742.40.

³ For example, Exhibit B-2, 2016.1 RR TREAD.1.1

⁴ For example, Exhibit B-2, 2016.1 RR TREAD.2.3; Exhibit B-8, 2016.2 RR TREAD.20.2-3

⁵ For example, Exhibit B-8, 2016.2 RR TREAD.21.2-5

and therefore failed to contribute to the Panel's better understanding of the issues at play in this proceeding. Furthermore, almost 30 percent of TREAD's IR No. 2 is related to rate design⁶. The Panel agrees with ICBC that matters related to rate design were out of scope for a revenue requirements application in which ICBC is seeking a general rate change. Thus, the information sought was of limited value to ICBC's 2016 RRA review. Moreover, the rate design issue was previously addressed in the ICBC 2013 Decision⁷ after an extensive oral hearing process.

Concerning ICBC's comment on the formatting of IRs, the Panel agrees with TREAD that the value or contribution to the Commission's understanding of the issues is to be found in the evidence that TREAD elicited from ICBC. Interveners have the discretion to formulate IRs as they wish, as long as the Commission's Rules of Practice and Procedures are being followed. However, the Panel agrees with ICBC that TREAD's IRs sought very similar information when compared with the Commission IRs and therefore provided limited additional value to the Commission's understanding of the issues. Given that there was three days of separation between Commission and Intervener IRs there was no justification for such a large number of redundant questions.

The Panel estimates that approximately 35 percent of TREAD's IR No. 1 had some degree of redundancy. Some examples of these are as follows:

<p>2016.1 RR BCUC.27.1 Please provide a breakdown of the cost items that make up the \$23 million additional cost in PY 2016 due to increased injury claims staffing. Is the \$23 million exclusive to the 80 additional FTEs, which would mean on average each FTE would cost \$287,500 in PY 2016?</p> <p>2016.1 RR BCUC.18.1.1 ... how does the additional \$23 million in cost compare to the favourable impact implied by the lower short-term Personal and Commercial Bodily Injury trend?</p>	<p>2016.1 RR TREAD.3.2 Please provide a comparison of the \$23 million cost of increased injury claims staffing vs. any offsetting favourable impacts (e.g. savings) arising from the lower short-term Personal and Commercial Bodily Injury trend or other identified factors over the same period.</p>
<p>2016.1 RR BCUC.14.3.3 ICBC has rejected other prospective adjustments due to insufficient information. Please explain how ICBC came to a credible/sufficient estimate of the Counter Fraud benefits, if ICBC will not have the new fraud analytics tool until later in the 2016 Policy Year.</p> <p>2016.1 RR BCUC.50.2 Please explain and show how the Prospective Adjustment of \$21.1 million was calculated from the fraud analysis if the Proof of Concept had not been completed.</p>	<p>2016.1 RR TREAD.4.2 Please describe ICBC's confidence in the likelihood of achieving \$21.1 million of savings as a result of Counter-fraud program improvements. Given the covert nature of fraud, how is it possible for ICBC to estimate counter-fraud savings with such precision?</p>
<p>2016.1 RR BCUC.39.3 Are there any requirements that ICBC must sell Basic insurance policies, including renewals through Autoplan brokers? In other words, is it possible that</p>	<p>2016.1 RR TREAD.12.2 Are direct sales of Basic insurance to customers by ICBC expressly prohibited by the terms of any agreements with Autoplan brokers? If so, please</p>

⁶ For example, Exhibit B-8, 2016.2 RR TREAD.23.1, 2016.2 RR TREAD.23.2-4, 2016.2 RR TREAD.23.5; 2016.2 RR TREAD.23.7; 2016.2 RR TREAD.27.2-3; 2016.2 RR TREAD.27.5; 2016.2 RR TREAD.28.3-5; 2016.2 RR TREAD.29.1

⁷ http://www.bcuc.com/Documents/Proceedings/2014/DOC_41351_05-14-2014-ICBC-2013-Revenue%20Requirements-WEB.pdf (see pp. 50-51)

ICBC sells insurance policies directly to the customer? Please explain.	provide copies of such agreements and identify any relevant prohibitions in that regard? What date(s) do such agreements terminate or under what circumstances may ICBC terminate or renegotiate them?
--	--

In terms of TREAD's letter of comment related to remaining process, the Panel observes that submissions were made on rate design development and on procedural matters in past proceedings, matters that are not part of the scope of the ICBC 2016 RRA.⁸

On the positive side the Panel acknowledges that TREAD's final argument was focused and useful for the Panel to make a determination on the remaining two requests by ICBC in the 2016 RRA.

As noted, TREAD has agreed to reduce its claim for legal expenses by 0.2 days. In addition, the Panel is not persuaded that charging an additional day for undocumented activities is reasonable and denies this claim. This reduces the legal expense from 10.8 days to 9.6 days which is still in excess of the 8-9 day range considered reasonable for this proceeding. Given the Panel's comments with respect to the number of TREAD's IRs and submissions being out of scope or redundant and therefore not contributing to a better understanding of the issues, the Panel is not persuaded that approving legal fees outside of the range is warranted. Accordingly the Panel will approve 8.0 days for legal fees which is at the lower end of the range. With this adjustment, the cost award for legal fees is reduced to \$22,400 plus \$1,120 for GST and \$1,568 for PST totalling \$25,088.

The Panel notes that the primary claim from TREAD was for legal services performed by Mr. Weisberg, a very experienced lawyer. The Panel would like to remind TREAD that Section 7.4 of the PACA Guidelines states the following:

Legal counsel are expected to perform legal services and **may** be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task. Participants are expected to use legal services in a cost-effective manner, giving regard to the years of experience **required** to perform the task. [Emphasis added]

The purpose of this section is to provide guidance on the cost-effective use of legal services and tying the use of these services to the actual needs for a particular project. In the current proceeding BCOAPO took such an approach allocating the work between a senior and junior lawyer and relying on a consultant to prepare the draft IRs. The Panel accepts that as a practical matter and there may be times when it is not possible or practical to secure alternative services of a less experienced lawyer or a qualified consultant. To this end the Panel notes that the Commission has tried to take a reasonable approach and to this point has avoided relying upon Section 7.4 as a means of reducing costs. However, looking ahead TREAD is requested to consider this provision in future proceedings and where possible and reasonable apply resources on the basis of the experience required to perform the various tasks.

For the reasons above, the Panel determines that awarding TREAD a total cost award of \$32,961.60 inclusive of taxes, consisting of \$25,088 for legal counsel and \$7,873.60 for consultant, is consistent with the PACA Guidelines.

⁸ Order G-23-17, reasons for decision, p. 5