



**ORDER NUMBER
F-28-18**

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

and

and the *Insurance Corporation Act*, RSBC 1996, Chapter 228, as amended

and

Insurance Corporation of British Columbia
2018 Basic Insurance Rate Design Application
Participant Assistance/Cost Award Application

BEFORE:

D. M. Morton, Panel Chair/Commissioner
B. A. Magnan, Commissioner
A. K. Fung, QC, Commissioner

on November 27, 2018

ORDER

WHEREAS:

- A. On August 9, 2018, by Orders in Council No. (OIC) 458/18 and 459/18, respectively, the Lieutenant Governor in Council directed the Insurance Corporation of British Columbia (ICBC) to apply to the British Columbia Utilities Commission (BCUC), by August 15, 2018, for approval of rate design amendments as set out in OIC 458/18 (the 2018 Rate Design Directive), and directed the BCUC to regulate and fix the rates using the factors, criteria and guidelines set out in OIC 458/18 within 45 days of ICBC's application;
- B. On August 15, 2018, in accordance with OIC 458/18, ICBC filed its 2018 Basic insurance Rate Design Application (Application);
- C. By Order G-152-18 dated August 16, 2018, the BCUC established a regulatory timetable that included a Streamlined Review Process (SRP) as well as ICBC and intervener oral arguments to be held on September 4, 2018 and September 6, 2018, respectively;
- D. On September 4, 2018, Mr. McCandless, Movement of United Professionals (MoveUP), Mr. Litman, Toward Responsible Educated Attentive Driving (TREAD), BC Old Age Pensioners' Organization *et al.* (BCOAPO), Mr. Landale, ICBC, BCUC staff and the Panel participated at the SRP. Interveners who participated at the SRP also provided arguments;

- E. By Order G-188-18 with accompanying reasons for decision dated September 28, 2018, the BCUC approved the Application with the exception of Table 2 on page 11 of Schedule D of the Tariff. The BCUC directed ICBC to report on information technology implementation, customer communications, and the impact of the new rate design to ensure its proper and timely delivery;
- F. To date, the following participants have filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in the proceeding:

Date	Participant	Application
September 17, 2018	Mr. Litman	\$15,490.76
September 28, 2018	MoveUP	\$7,526.40
October 19, 2018	BCOAPO	\$ 14,940.59

- G. By letter dated November 7, 2018, ICBC provided its comments on the PACA applications. On November 9, 2018, Mr. Litman provided clarification on his PACA application and his comments in response to ICBC;
- H. On October 24, 2018, TREAD requested an extension to file its PACA application and the Panel granted the extension request; and
- I. The BCUC has reviewed the PACA applications in accordance with the criteria and rates set out in the PACA Guidelines, attached to Order G-97-17, and made determinations on the cost awards.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, the BCUC orders as follows:

1. Funding is awarded to the following interveners in the listed amounts for their participation in the ICBC 2018 Basic Insurance Rate Design Application proceeding:

Participant	Award
Mr. Litman	\$1,496.72
MoveUP	\$7,526.40
BCOAPO	\$ 14,940.59

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 27th day of November 2018.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

Insurance Corporation of British Columbia
2018 Basic Insurance Rate Design Application
Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Background

On August 15, 2018, in accordance with Order in Council No. 458/18, the Insurance Corporation of British Columbia (ICBC) filed its 2018 Basic insurance Rate Design Application (2018 RDA). The BCUC reviewed the application by way of a Streamlined Review Process (SRP) and one round of final arguments.

By Order G-188-18 with accompanying reasons for decision dated September 28, 2018, the BCUC approved the 2018 RDA with the exception of Table 2 on page 11 of Schedule D of the Tariff. The BCUC directed ICBC to report on information technology implementation, customer communications, and the impact of the new rate design to ensure its proper and timely delivery.

Following the BCUC's decision on the 2018 RDA, Mr. Litman, MoveUP and BCOAPO filed Participant Assistance/Cost Award (PACA) applications for their participation in the proceeding. The three PACA applications received to date are summarized as follows:

Date	Participant	Application
September 17, 2018	Mr. Litman	\$15,490.76
September 28, 2018	MoveUP	\$7,526.40
October 19, 2018	BCOAPO	\$ 14,940.59

The Panel, in its review of the PACA applications, was guided by the PACA Guidelines set out in BCUC Order G-97-17, and considered the written comments by ICBC dated November 7, 2018 and by Mr. Litman dated November 12, 2018.

2.0 PACA Guidelines

The PACA Guidelines set out the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates. Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The BCUC will consider whether the participant:

- (a) is directly or sufficiently affected by the BCUC's decision; or
- (b) has experience, information, or expertise relevant to a matter before the BCUC that would contribute to the BCUC'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 criteria. Among those to be considered is whether a participant represents the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the BCUC.

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 BCUC 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 BCUC determines appropriate in the circumstances.

3.0 Funding days

Section 4.1 of the PACA Guidelines states for each proceeding for which a cost award is available, the BCUC may determine the number of funding days, subject to a funding cap if established for the proceeding. Section 4.2 of the PACA Guidelines provides guidance in determining the number of funding days. 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. For an oral/in-person proceeding or an oral/in-person portion of a proceeding, funding days will typically be determined by the number of proceeding days and may include preparation days on a ratio of 2 funding days per proceeding day.

BCUC determination

The Panel has considered the events set out in the regulatory timetable and determines that 7.25 days for participants is the typical number of funding days for PACA for the 2018 RDA, as shown in the table below:

Action	Number of Funding Days (Incl. Preparation and Participation)
BCUC and intervener questions to ICBC in advance of the SRP	2
SRP	3
Intervener argument	2.25

The Panel did not establish a funding cap for the 2018 RDA. The Panel finds the number of days noted above is a typical number of funding days as the regulatory review process consisted of questions to ICBC in advance of an SRP, an SRP, and final arguments.

4.0 PACA Applications

4.1 Mr. Litman

Mr. Litman represents himself as a BC resident affected by ICBC's insurance price structure.¹ Mr. Litman is a transportation policy analyst based in Victoria, BC. He requests an amount of \$15,490.76 based on \$14,448.00 for specialist/expert witness fees (6 days), and \$1,042.76 for disbursements and other costs, inclusive of taxes.

ICBC notes that although Mr. Litman submitted his daily rate as a specialist/expert witness, he identified himself as an individual at the SRP. ICBC considers that he should only be eligible to receive foregone earnings, childcare, and disbursements as per Section 7.11 of the PACA Guidelines. ICBC further notes that the Mr. Litman did not seek prior approval and "was never qualified by BCUC during the proceeding as a specialist or expert witness."² As such, ICBC submits that BCUC should adjust Mr. Litman's requested amount in a similar manner as in Order F-12-18 (2017 Revenue Requirements Application PACA Award).³

ICBC notes that Mr. Litman submitted a total of 2 days for the SRP and Oral Arguments phase of the proceeding, but the September 6, 2018 Oral Arguments portion of the proceeding was not a full eight hour day. According to the transcripts, it started at 8:32 a.m. and ended at 1:36 p.m.⁴ In response to ICBC's comments, Mr. Litman urged the BCUC to take into account the fact that travelling from Victoria added preparation and travel time.⁵

BCUC determination

In its consideration of the PACA Guidelines, the Panel finds that Mr. Litman is eligible for PACA funding as an individual participant. In accordance with Section 7.11 of the PACA Guidelines, generally, the BCUC will limit awards for individual participants to foregone earnings, childcare and disbursements. The BCUC may award individual participants professional fees if it deems those fees are warranted for the individual to participate effectively. For the reasons outlined below, the Panel finds that Mr. Litman's application for specialist/expert fees at a daily rate of \$2,150 per day is not warranted for his participation in the 2018 RDA. The Panel therefore limits his award to \$250 per day for foregone earnings as an individual participant.

The Panel will first address ICBC's comment on the number of funding days and then move to the amount of daily fees that the Panel considers reasonable for Mr. Litman's participation. ICBC submits that the number of funding days associated with the Oral Argument was not a full eight hour day. The Panel acknowledges Mr. Litman's reply comment that he travelled from out-of-town to participate in the hearing. The Panel agrees with Mr. Litman that it should take into account consideration to compensate for an out-of-town participant's travel time to participate in a hearing. In any event, as outlined in section 3.0 of these reasons above, the determination of the typical number of funding days that is appropriate for the regulatory review process lies in the Panel's discretion.

The Panel will now consider Mr. Litman's PACA award amount. The Panel finds that Mr. Litman did not contribute to a better understanding of the issues related to the 2018 RDA because the topics he pursued were generally out of scope for the 2018 RDA. On several occasions, the Panel requested Mr. Litman to pause and resume participation after familiarizing himself with the Orders in Council applicable to the 2018 RDA.⁶ While

¹ Mr. Litman Request to Intervene dated August 22, 2018

² ICBC comments on the PACA Application dated November 7, 2018, p. 1.

³ ICBC comments on the PACA Application dated November 7, 2018, p. 1.

⁴ 2018 RDA SRP Transcript

⁵ Mr. Litman's email dated November 12, 2018, p. 1.

⁶ Transcript Vol 1, pp. 94–95, 102, 175–178.

the Panel does not disagree that Mr. Litman has some expertise on the transportation sector, his participation was primarily focused on usage-based insurance and similar matters he had previously pursued in past ICBC proceedings. In addition, Mr. Litman in his oral final arguments attempted to introduce evidence after the record had been closed.⁷ Given these deficiencies, the Panel limits the number of funding days to 2 to cover the time Mr. Litman missed work in order to attend the SRP and Oral Argument.

With regard to the disbursements and other costs, the Panel notes that Mr. Litman has claimed \$1,042.76 inclusive of GST and PST, but has indicated he is able to recover the applied for GST through an Input Tax Credit.⁸ As per Section 12.1 of the PACA guidelines, only GST and PST costs that cannot be recovered through an input tax credit will be allowed. Therefore, the Panel has deducted the applicable GST on Mr. Litman's receipts for hotel accommodation and airfare which total \$46.04. Thus, the Panel awards \$996.72 for Mr. Litman's disbursements.

For the reasons listed above, the Panel awards Mr. Litman a cost award of \$1,496.72, inclusive of applicable taxes, calculated as follows:

	Days	Daily Rate	Total (Excl. Taxes)	GST	PST	Total (Incl. Taxes)
Foregone earnings	2	\$250.00	\$500.00	\$0	\$0	\$500.00
Disbursements	N/A	N/A	\$970.34	\$0	\$26.38	\$996.72
Total cost award						\$1,496.72

4.2 MoveUp

MoveUP is the trade union that represents the unionized employees of ICBC's workforce. As such, MoveUP and its members have a direct and material interest in a wide range of issues arising in the regulation of ICBC. MoveUP requests a cost award of \$7,526.40 for legal fees (2.4 days), inclusive of applicable taxes.

ICBC had no comment on MoveUP's application.

BCUC determination

In its consideration of the PACA Guidelines, the Panel finds that MoveUP is eligible for PACA funding in this proceeding as it is directly or sufficiently affected by the BCUC's decision. The Panel considers that MoveUP contributed to a better understanding of the issues raised in the 2018 RDA. MoveUP actively participated in the proceeding and the number of days that MoveUP has claimed for legal fees is within the Panel's expectation of funding days for the 2018 RDA.

For the reasons listed above, the Panel awards MoveUP a cost award of \$7,526.40 inclusive of applicable taxes, as applied for.

⁷ Transcript Vol 2, pp. 359–360.

⁸ Mr. Litman's email dated November 12, 2018, p. 1.

4.3 BCOAPO

BCOAPO is a group of community-based organizations which collectively represent the interests of low and fixed income residential ratepayers in British Columbia. BCOAPO requests a cost award of \$14,940.59 based on \$12,857.60 for legal fees (4.1 days), \$1,942.50 for consulting fees (1 day), and \$140.49 for disbursements and other costs, inclusive of tax.

ICBC had no comment on BCOAPO's application.

BCUC determination

In its consideration of the PACA Guidelines, the Panel finds that BCOAPO is eligible for PACA funding in this proceeding as it is a ratepayer group. The Panel considers that MoveUP contributed to a better understanding of the issues raised in the 2018 RDA. BCOAPO actively participated in the proceeding and the number of days that BCOAPO has claimed for legal and consultant fees is within the Panel's expectation of funding days for the 2018 RDA.

For the reasons listed above, the Panel awards BCOAPO a cost award of \$14,940.59 inclusive of applicable taxes as applied for.