



ORDER NUMBER
F-28-19

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

and

FortisBC Energy Inc.
Application for Acceptance of the Biogas Purchase Agreement
Between FortisBC Energy Inc. and the City of Vancouver
Participant Assistance/Cost Award Application

BEFORE:

D. M. Morton, Panel Chair
A. K. Fung, QC, Commissioner
R. I. Mason, Commissioner

on November 29, 2019

ORDER

WHEREAS:

- A. On September 21, 2018, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) an application for acceptance of a Biogas Purchase Agreement (BPA) between FEI and the City of Vancouver (COV) pursuant to section 71 of the *Utilities Commission Act* (UCA) (Application);
- B. Under the BPA, FEI intended to: purchase landfill gas from the COV; construct and operate facilities on COV land to upgrade landfill gas to renewable natural gas (RNG); and construct interconnection facilities including a 500-metre pipeline to connect to FEI's existing natural gas distribution system (together, the Project);
- C. By Order G-219-18, the BCUC established a regulatory timetable for review of the Application, which was subsequently amended pursuant to Orders G-234-18 and G-14-19. The timetable included intervenor registration, intervenor and FEI written submissions, FEI reply to intervenor submissions, BCUC and intervenor information requests (IR), a procedural conference and final and reply arguments;
- D. By December 4, 2018, the British Columbia Ministry of Energy, Mines & Petroleum Resources, the COV and the Commercial Energy Consumers Association of British Columbia (CEC) registered as intervenors;
- E. On June 6, 2019, the BCUC issued Order G-122-19 with accompanying Reasons for Decision, which adjourned the proceeding for 60 days to allow FEI to restructure and resubmit to the Panel the Project and/or its BPA with the COV in a way that provides the required certainty to FEI's RNG acquisition cost so as to qualify as a prescribed undertaking within the specified cost threshold under the provisions of the Greenhouse Gas Reduction (Clean Energy) Regulation;

- F. On July 16, 2019, FEI filed a response to BCUC Decision and Order G-122-19 (Response);
- G. By Order G-182-19 dated August 1, 2019, the BCUC established a regulatory timetable for review of the Response which included BCUC and intervener IRs, FEI's response to IRs and further process to be determined;
- H. By Order G-223-19, the BCUC amended the regulatory timetable to include a Streamlined Review Process, which was held on September 25, 2019;
- I. On September 27, 2019, by Order G-235-19 with accompanying Reasons for Decision, the BCUC made its final determinations on the Application;
- J. CEC filed a Participant Assistance/Cost Award (PACA) application with the BCUC with respect to its legal and consulting costs related to its participation in the proceeding:

Date	Participant	Legal	Consulting	Total PACA
October 25, 2019	CEC	\$13,620.32	\$8,974.35	\$22,594.67

- K. By letter dated November 14, 2019, FEI provided its comments on the PACA application; and
- L. The BCUC has reviewed the PACA application in accordance with the criteria and rates set out in the PACA Guidelines, attached to BCUC Order G-97-17, and considers the following order is warranted.

NOW THEREFORE pursuant to section 118(1) of the UCA, the BCUC orders as follows:

1. For reasons outlined in Appendix A to this order, funding related to consulting costs is awarded to CEC in the amount below for its participation in the Application:

Participant	Award
Commercial Energy Consumers Association of British Columbia	\$8,974.35

2. For reasons outlined in Appendix A to this order, funding related to legal costs to CEC is denied. CEC has the opportunity to refile a PACA application for its legal costs within 30 days of this order, should it so choose.
3. FEI is directed to reimburse CEC for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of November 2019.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

FortisBC Energy Inc.
Application for Acceptance of the Biogas Purchase Agreement
Between FortisBC Energy Inc. and the City of Vancouver

REASONS FOR DECISION

1.0 Background

By Order G-235-19 with accompanying Reasons for Decision dated September 27, 2019, the British Columbia Utilities Commission (BCUC) accepted for filing the Biogas Purchase Agreement (BPA) between FortisBC Energy Inc. (FEI) and the City of Vancouver (COV).

A Participant Assistance/Cost Award (PACA) application was filed by the Commercial Energy Consumers Association of British Columbia (CEC) for its participation in the proceeding, as listed and summarized below:

Date	Participant	Application
October 25, 2019	Commercial Energy Consumers Association of British Columbia	\$22,594.67

Section 118 of the *Utilities Commission Act* (UCA) provides that “[t]he 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.”

2.0 PACA Guidelines

The Panel, in its review of the PACA application, was guided by the PACA Guidelines attached as Appendix A to BCUC Order G-97-17, which 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.

3.0 Criteria for a Cost Award

Section 7.1 of the PACA Guidelines related to the use of professional services “...expects participants to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, expert witnesses and case managers.” Further, Sections 7.2 to 7.4 of the PACA Guidelines include the following guidance as it relates to the use of professional services:

7.0 Professional Fees

7.2 Maximum daily fees in Attachment A are based on an 8 hour day. Awards may be prorated for partial funding days. Where the actual billing rate for an 8 hour day is less than the maximum daily fee, the lesser amount will be used for the award.

7.3 Maximum daily fees in Attachment A do not include provisions for goods and services tax (GST) and provincial sales tax (PST), which will also be allowed, pursuant to Section 12.1.

- 7.4 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 tasks.

Section 1 of Attachment A to the PACA Guidelines, which outlines maximum daily fees as they relate to legal counsel and consultants and specialist/expert witnesses, is provided below:

1. Professional fees

a. Legal counsel

Years Since Call	Maximum Daily Fee
Articling student	\$850
0–4	\$1900
5–7	\$2250
8–12	\$2550
12+	\$2800

b. Consultants and specialist/expert witnesses

Years of Related Experience	Maximum Daily Fee
Consultant 0–4	\$950
Consultant 5–7	\$1300
Consultant 7+	\$1850
Specialist /Expert Witness	\$2150

c. Case managers: maximum \$600 per day.

4.0 CEC's PACA Application

CEC represents the interests of commercial ratepayers who are or may be potentially affected in the future by the results of a proceeding. In this proceeding, CEC seeks a cost award of \$22,594.67.

Pursuant to Section 14.2.4 of the PACA Guidelines, FEI was provided with copies of the CEC's PACA application. In their reply letter, FEI stated "...if the BCUC is satisfied that the participants have met the eligibility requirements, that the funding days claimed are appropriate, and that the level of participation has met with the BCUC's criteria and requirements, then FBC has no further comment."¹

BCUC Determination

In its consideration of the PACA Guidelines, the Panel considers that CEC contributed to a better understanding of the issues raised in this proceeding. CEC actively participated and the number of days that CEC has claimed for legal and consulting fees is within the Panel's expectation of funding days for this proceeding. To further assess

¹ FortisBC Energy Inc., letter dated November 13, 2019.

CEC's PACA application, the BCUC requested CEC to provide invoices for costs incurred throughout the proceeding, pursuant to Section 14 of the PACA Guidelines:

- 14.2.1 To make a final application for a cost award, a participant must file a completed Participant Assistance/Cost Award Application form by email to commission.secretary@bcuc.com, or via mail, courier, or personal delivery to the Commission Secretary, Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3. The Commission may request supporting receipts and invoices.

Consulting Services

CEC's PACA amount for consulting services is outlined in the table below:

Consulting Services	Daily Rate	Days	Total	GST	PST	Total
	\$1,850.00	4.62	\$7,511.00	\$427.35	-	\$8,974.35

The procedural timetable consisted of intervener IRs, intervener submissions, intervener information requests, a procedural conference, final and reply arguments and a streamlined review process. The Panel is satisfied that CEC's PACA application, both in terms of the number of proceeding days and total costs related to consulting services, is reasonable. Further, the PACA application for consulting services is fully supported by the invoices provided by CEC.

Legal Services

CEC's PACA claim for consulting services is outlined in the table below:

	Daily Rate	Days	Total	GST	PST	Total
Legal Counsel – C. Weafer	\$2,800	4.16	\$11,648	\$581.80	\$815.36	\$13,045.76
Legal Counsel – P. Weafer	\$1,900	0.27	\$513	\$25.65	\$35.91	\$574.56

The Panel is satisfied that CEC's PACA application in terms of the number of proceeding days is reasonable. The Panel, however, notes inconsistencies between CEC's PACA application and legal services invoices related to daily rates and the number of proceeding days as discussed further below.

Daily Rates

Rate Schedule 1, attached as Attachment A to the PACA Guidelines, applies to each individual providing legal or consulting services. Section 7.2 of the PACA Guidelines states “Maximum daily fees in Attachment A are based on an 8-hour day.” Therefore, the maximum daily fee charged by an individual service provider can be determined by multiplying the hourly fee as reflected on the invoice by eight hours to arrive at a daily equivalent fee.

The table below compares the daily equivalent fees invoiced for the CEC’s junior and senior legal counsel to the applicable daily rates per Rate Schedule 1 and the daily rate included in the CEC PACA application:

	Hourly Rate per Invoice	Daily Equivalent Fee per Invoice	Rate Schedule 1 Maximum Daily Rate	CEC PACA Application Daily Rate
Sr. Legal Counsel (2019)	\$375.00	\$3,000.00	\$2,800.00	\$2,800.00
Jr. Legal Counsel	\$220.00	\$1,760.00	\$1,900.00	\$1,900.00

For CEC’s senior legal counsel, the daily equivalent fee invoiced in 2019 exceeds the maximum daily rate and the CEC, consistent with the PACA guidelines, used the maximum daily rate in their PACA application. For CEC’s junior legal counsel, the daily equivalent fee invoiced is less than the maximum daily rate, however, the CEC used the maximum daily rate in their PACA application, not the lower invoiced daily rate.

Proceeding Days

Review of CEC’s invoices for junior and senior legal counsel shows that services are invoiced by the hour (or parts thereof). Pursuant to Section 7.2 of the PACA Guidelines, the total number of invoiced hours charged can be divided by 8 hours to arrive at the equivalent number of proceeding days. The equivalent number of proceeding days for CEC’s junior and senior counsel, calculated using invoiced hours, compared to the number of proceeding days included in the CEC’s PACA application are different, as shown in the table below.

	Hours per Invoice	Equivalent Days per Invoice	CEC PACA Application Days
Sr. Legal Counsel	32.5	4.0625	4.16
Jr. Legal Counsel	2.3	0.2875	2.7

The CEC has included more days for senior legal counsel services in its PACA application than the CEC was invoiced for senior legal counsel services.

The Panel awards CEC participant costs of \$8,974.35, inclusive of applicable taxes, related to consulting services. Due to the inconsistencies between the CEC’s PACA application and the invoices for legal services, the Panel denies CEC’s participant costs related to legal services. CEC has the opportunity to refile a PACA application for legal services within 30 days of this order, should it so choose.