



**ORDER NUMBER
F-22-22**

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

and

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Advanced Metering Infrastructure Project
Interim Participant Assistance/Cost Award Application

BEFORE:

R. I. Mason, Panel Chair
C. M. Brewer, Commissioner
E. B. Lockhart, Commissioner

on September 29, 2022

ORDER

WHEREAS:

- A. On May 5, 2021, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA) for FEI's Advanced Metering Infrastructure (AMI) Project (Application);
- B. On September 8, 2021, the Coalition for the Reduction of Electropollution (CORE) requested to intervene in the FEI AMI CPCN proceeding. On October 22, 2021, CORE advised the BCUC it had joined with the individual interveners Mr. and Ms. de Raadt, Mr. Schluschen, and Ms. Noble to be jointly represented by legal counsel to coordinate their interests;
- C. On July 4, 2022, CORE filed an application for interim Participant Assistance/Cost Award (PACA) funding (Interim PACA Application). On August 12, 2022, CORE filed a revised application for interim PACA funding (Revised Interim PACA Application). CORE submitted a PACA budget in the amount of \$222,915.00;
- D. By letter dated August 31, 2022, FEI provided its comments on the Revised Interim PACA Application, stating it defers to the BCUC to determine whether CORE has 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. FEI provided additional comments on whether CORE has used the professional services of its legal counsel and case manager most efficiently and cost-effectively, and whether expert witnesses provided services related to their expertise and the appropriateness of the time claimed;
- E. By letter dated September 7, 2022, CORE provided its response to FEI's comments, stating its budget for legal fees is based on costs incurred to date and an estimate of future costs. Further, CORE submits the 14-

days of professional fees included in its budget is an estimate and is not reflective of work completed to date; and

- F. The BCUC has reviewed the Revised Interim PACA Application in accordance with the criteria and rates set out in the BCUC's PACA Guidelines, attached to Order G-97-17, and determines that an interim cost award should be granted as an advance against the BCUC's final cost award determination.

NOW THEREFORE for the reasons outlined in Appendix A to this order, pursuant to section 118(1) of the *Utilities Commission Act*, the BCUC orders as follows:

1. Interim funding in the listed amount is awarded to CORE as an advance against the BCUC's final cost award for participation in the FEI AMI CPCN proceeding:

Participant	Award
CORE	\$74,305.00

2. FEI is directed to reimburse CORE for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of September 2022.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity for the
Advanced Metering Infrastructure Project
Interim Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 Introduction

On May 5, 2021, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA) for FEI's Advanced Metering Infrastructure (AMI) Project (Application).

On September 8, 2021, the Coalition for the Reduction of Electropollution (CORE) submitted a request to intervene in the FEI AMI CPCN proceeding.¹ On October 22, 2021, CORE advised the BCUC it had joined with the individual interveners Mr. and Ms. de Raadt, Mr. Schluschen, and Ms. Noble to be jointly represented by legal counsel to coordinate their interests,² in accordance with the BCUC's request.³

On July 4, 2022, CORE filed an application for interim Participant Assistance/Cost Award (PACA) funding (Interim PACA Application). On August 12, 2022, CORE filed a revised application for interim PACA funding (Revised Interim PACA Application). CORE submitted a PACA budget in the amount of \$222,915.00.

1.1 Summary of Interim Funding Request

In the Revised Interim PACA Application, CORE outlines its cost estimate of \$222,915.00 (Revised PACA Budget). The budget includes the legal counsel fees required for tasks such as legal advice to CORE regarding process, information requests and submissions, legal research, reviewing hearing exhibits, drafting information requests and drafting submissions on further process. It also includes the expert consultant fees for CORE's intervener evidence, foregone earnings, case manager fees and disbursements.

In the Revised Interim PACA Application, CORE claims:

- 14 days time for each of three legal counsels (42 days time total);
- 14 days time for each of three expert witnesses (42 days time total);
- 14 days time for a case manager;
- 14 days foregone earnings for two participants (28 days time total); and
- Disbursements.

In response to BCUC Staff questions, CORE provided invoices for its legal counsel and disbursements incurred to date. CORE explains that invoices from its consultants are not yet available.

CORE's Revised Interim PACA Application budgets funding for three legal counsels. The table below summarizes the professionals and rates for legal counsel:

¹ Exhibit C7-1.

² Exhibit C7-4.

³ Exhibit A-16.

Name	Years of Experience	Daily Rate (\$)	Number of Days	Total (Incl. tax)
W.L. (Bill) McElhaney, K.C.	37	\$2,800.00	14	\$41,160.00
Alexander W. Yiu	14	2,800.00	14	\$41,160.00
Selina T. Sahota	1	1,900.00	14	\$27,930.00

The table below summarizes CORE's estimate of fees for its expert witnesses:

Name	Role	Daily Rate (\$)	Number of Days	Total (Incl. tax)
Dr. Paul Heroux	Expert Witness	\$2,150.00	14	\$31,605.00
Dr. Anthony Miller	Expert Witness	2,150.00	14	\$31,605.00
Dr. Magda Havas	Expert Witness	2,150.00	14	\$31,605.00

The table below shows CORE's estimate of fees for its case manager:

Name	Role	Daily Rate (\$)	Number of Days	Total (Incl. tax)
Sharon Noble	Case Manager	\$600.00	14	\$8,820.00

The table below shows the budget for disbursements and foregone earnings:

Name	Daily Rate (\$)	Number of Days	Total (Incl. tax)
Postage/Courier/Delivery	n/a	n/a	\$105.00
Telephone/Long Distance	n/a	n/a	\$525.00
Printing/Photocopying	n/a	n/a	\$1,050.00
Foregone Earnings	\$250.00	14 days x 2 people	\$7,350.00

CORE explains it is seeking funding for foregone earnings for Hans Karow and Marcus Schluschen. Mr. Schluschen has contributed to the proceeding by finding experts and contributing information requests. Mr. Karow has contributed in similar ways, in addition to filing the request to intervene as the head of CORE.

CORE provided invoices for disbursements incurred to date from Ackroyd LLP, including costs for telephone calls and photocopying, and costs for obtaining published research articles.

1.1 FEI Comments on CORE's Revised Interim PACA Application

In response to CORE's Revised Interim PACA Application, FEI provided its comments, stating it defers to the BCUC to determine whether CORE has 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. FEI provided

additional comments on whether CORE has used legal services cost-effectively and appropriateness of time claimed for expert witnesses.

FEI states that CORE's Revised Interim PACA Application lists the services of two senior legal counsel, one junior legal counsel and a case manager. For the work completed as identified in CORE's Revised Interim PACA Application, FEI sees no indication that these professional services were coordinated to ensure that the work was done in a cost-effective manner, for the lowest possible cost, and that the work avoided duplication as much as possible. FEI states there is no indication as to why the use of two senior legal counsel resources was required.

FEI states that in its rebuttal evidence to CORE,⁴ FEI provided submissions that CORE's expert witnesses provided considerable evidence outside of their specialized technical expertise and provided certain examples. Further, FEI notes each expert witness claims 14 days' time, although the testimony provided varied in length (e.g. Dr. Miller's submission was 4 pages).

1.2 CORE's Reply Comments

In reply to FEI's comments, CORE states that its Revised Interim PACA request is based on invoices received to date and estimates for work yet to be completed, in accordance with the BCUC's PACA Guidelines, attached to Order G-97-17 (PACA Guidelines).⁵ CORE notes it has already reduced its estimate of total costs to be incurred after the BCUC's decision declining an oral hearing. CORE states that it has taken efforts to keep professional fees as low as possible and preserve minimal duplication of effort. CORE provides an example of CORE's legal representation taking on a junior counsel to initially review the documentary evidence and senior counsel provides services on an advisory basis to divide roles between counsel. CORE submits the role of its case manager includes tasks not executed by legal counsel, such as coordinating, managing separate groups, and distilling communication from members to legal counsel.

1.3 Reasons for Decision Outline

The Panel has reviewed the Revised Interim PACA Application in accordance with the PACA Guidelines. In these reasons for decision, the Panel addresses CORE's eligibility for interim PACA funding, and provides an explanation of the interim funding awarded to CORE. Additionally, the Panel provides recommendations for CORE to address in its final PACA application upon the conclusion of this proceeding.

2.0 Eligibility for Interim PACA Funding

Section 5.1 of the PACA Guidelines states that for interim funding applications, the BCUC must be satisfied that (a) the participant has demonstrated a need for financial assistance; and (b) the proceeding is lengthy.

In its Revised Interim PACA Application, CORE states, pursuant to section 5.1(a) of the BCUC PACA Guidelines, that they are in need of financial assistance. CORE is a grass-roots organization that was founded in 1992. Membership in CORE is not regulated nor is it fee based. CORE does not receive funding from outside sources. CORE's activities are funded through the personal savings of individual members.

Further, CORE states the proceeding is lengthy, CORE is a registered intervener and has contributed to a better understanding of issues in the proceeding. CORE states its members will be directly affected by the outcome of

⁴ Exhibit B-26.

⁵ https://docs.bcuc.com/documents/Guidelines/2021/G-97-17_BCUC_PACA-Guidelines.pdf

the proceeding. CORE states that it heeded the BCUC's request for it to join together with other interveners to coordinate efforts and obtain legal counsel. For these reasons, CORE submits it is eligible for funding.

Panel Determination

The Panel finds that CORE is eligible for interim PACA funding.

The Panel recognizes CORE's need for financial assistance as it has no other sources of funding. The proceeding has been sufficiently lengthy to justify an interim award; it has been approximately one year since CORE applied to intervene on September 8, 2021.

3.0 Amount of Interim Funding Award

Having determined CORE is eligible for interim PACA funding, the Panel now considers what amount of interim funding is warranted, and under what conditions. Sections 5.3 to 5.5 of the PACA Guidelines provide the following guidance:

5.3 Upon completion of the process set out in Sections 14.2.3 and 14.2.7, interim funding may be ordered by the Commission for: (a) costs, or a portion thereof, that have been incurred after the proceeding has begun; or (b) estimated costs not yet incurred.

5.4 Interim funding ordered by the Commission typically does not exceed 50 percent of the participant's budget estimate.

5.5 If interim funding is granted, the Commission will make a determination as to whether the amount (a) constitutes a final award for costs already incurred; or (b) constitutes an advance against the Commission's final cost award determination after the conclusion of the proceeding.

Panel Determination

The Panel finds that the appropriate amount of CORE's interim PACA funding is \$74,305.00, being one third of CORE's Revised PACA Budget of \$222,915.00.

Interim PACA funding does not normally exceed 50 percent of a participant's budget estimate. This is in part because interim PACA funding is an advance against a possible future PACA award, and no determination is made at the time of the interim award as to the eligibility of any part of the PACA budget. Limiting the interim funding to one half of the PACA budget reduces the likelihood that a participant is asked to refund interim funding for amounts later determined to be ineligible.

In this case, the Panel has several concerns about the eligibility of the amounts in CORE's Revised PACA Budget, which are set out in section 4 below. To minimize the likelihood of requiring CORE to refund interim funding later determined to be ineligible, while still providing CORE financial support during this proceeding, the Panel awards interim funding of one third of CORE's Revised PACA Budget.

4.0 Recommendations for CORE's Filing of a Final PACA Application

In making a determination of a final PACA application, the BCUC considers factors from section 4 of the PACA Guidelines, including whether the costs incurred by the participant are fair and reasonable.

It is not clear to the Panel how CORE's activities to date have been allocated between the legal counsels. As noted above, the Panel makes no determination on this matter. However, to assist CORE in its filing of a final PACA application, the Panel recommends that CORE demonstrates how it has:

- avoided unnecessary duplication of effort between multiple legal counsels; and
- assigned work cost-effectively between senior and junior legal counsels.

Further, CORE's submitted materials do not contain evidence of forgone earnings. Section 8.1 of the PACA Guidelines states: "Participants claiming foregone [sic] earnings must provide proof of actual foregone [sic] earnings, except where to do so would be unreasonably difficult, in which case, some indication of the usual daily earnings must be provided." The BCUC may require CORE to provide proof of actual forgone earnings in its final PACA application in order for the amounts to be eligible. Evidence will also be required of why GST is applicable to forgone earnings.

The BCUC will consider whether CORE's total PACA requested in a final PACA application is just and reasonable, including scrutinizing the details of legal invoices for work related to the Application, and, if necessary, adjusting the amounts recoverable. The BCUC will also reduce any final PACA award by the total of all interim awards granted during the proceeding, including the \$74,305.00 awarded in these reasons for decision. If the final PACA award is less than the interim funding granted in these reasons for decision, the balance will be recoverable from CORE.