



**ORDER NUMBER**  
**F-32-22**

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

and

FortisBC Energy Inc.  
Application for Common Rates and 2022 Revenue Requirements for the  
Fort Nelson Service Area  
Participant Assistance/Cost Award Application

**BEFORE:**

A. K. Fung, KC, Panel Chair  
E. B. Lockhart, Commissioner  
A. Pape-Salmon, Commissioner

on December 2, 2022

**ORDER**

**WHEREAS:**

- A. On August 12, 2021, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 of the *Utilities Commission Act*, an application for approval to set the delivery rates and the Revenue Stabilization Adjustment Mechanism (RSAM) rate rider for the Fort Nelson service area (FEFN), effective January 1, 2022 (2022 Delivery Rates), and to implement common delivery rates and cost of gas rates for FEFN with FEI, effective January 1, 2023 (Common Rates) (together, the Application);
- B. By Orders G-227-21, G-315-21, G-20-22, G-86-22 and G-150-22, the BCUC established and amended regulatory timetables for the review of the Application, which included one round of BCUC and intervener information requests (IRs) to FEI on 2022 Delivery Rates and Common Rates, written final and reply arguments on 2022 Delivery Rates, a second round of BCUC and intervener IRs to FEI on Common Rates, intervener and FEI rebuttal evidence on Common Rates and corresponding IRs, and written final and reply arguments on Common Rates. Subsequently, by Order G-200-22, the BCUC established a further regulatory timetable to allow for supplemental arguments and FEI reply related to a late letter of comment received pertaining to the Common Rates component of the Application;
- C. The following parties registered as interveners in the proceeding:
  - Fort Nelson & District Chamber of Commerce (FNDCC);
  - Northern Rockies Regional Municipality (NRRM); and
  - Residential Consumer Intervener Association (RCIA).

- D. By Order F-4-22 dated January 26, 2022, the BCUC awarded interim Participant Assistance/Cost Award (PACA) funding to FNDCC and NRRM in the amount of \$14,498.19 and \$14,442.19, respectively, as an advance against the BCUC’s final cost award determination;
- E. By Order G-114-22 dated April 29, 2022, the BCUC issued its decision on the 2022 Delivery Rates component of the Application;
- F. By Decision and Order G-278-22 dated October 6, 2022, the BCUC issued its decision on the Common Rates component of the Application, approving, among other things, FEI’s request to implement common delivery rates and cost of gas rates for the FEFN, and to set Fort Nelson’s midstream rates at 5 percent of FEI’s midstream rates, effective January 1, 2023;
- G. The following interveners filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in the proceeding:

Date (2022)	Participant	Application
August 26	RCIA	\$31,074.75
October 21 and updated November 4	FNDCC	\$42,728.63
October 21 and updated November 4	NRRM	\$77,641.13

- H. By letters dated October 26, 2022 and November 21, 2022, FEI provided its comments on the PACA applications, stating, among other things, that FNDCC and NRRM are claiming amounts for legal counsel fees which are in excess of the applicable maximum daily fees in the PACA Guidelines and that the BCUC should apply the maximum daily fees when determining the final cost awards;
- I. By November 25, 2022, FNDCC and NRRM replied to FEI’s comments; and
- J. The BCUC has reviewed the PACA applications in accordance with the criteria and rates set out in the PACA Guidelines attached to BCUC Order G-97-17, and the submissions of parties regarding the PACA applications and makes the following determinations on the cost awards.

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

- 1. Funding is awarded to the following interveners in the listed amounts, inclusive of applicable taxes, for their respective participation in the FEI Application for Common Rates and 2022 Revenue Requirements for the Fort Nelson Service Area proceeding:

Participant	Final Award	Interim Award	Remaining Payable
RCIA	\$30,562.88	N/A	\$30,562.88
FNDCC	\$42,728.63	\$14,498.19	\$28,230.44
NRRM	\$77,641.13	\$14,442.19	\$63,198.94

2. FEI is directed to reimburse the above-noted participants for their respective awarded amounts in a timely manner.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 2<sup>nd</sup> day of December 2022.

BY ORDER

*Original signed by:*

A.K. Fung, KC  
Commissioner

Attachment

FortisBC Energy Inc.  
Application for Common Rates and 2022 Revenue Requirements for the  
Fort Nelson Service Area

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**REASONS FOR DECISION**

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**1.0 Background**

On August 12, 2021, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 of the *Utilities Commission Act*, an application for approval to set the delivery rates and the Revenue Stabilization Adjustment Mechanism (RSAM) rate rider for the Fort Nelson service area (FEFN), effective January 1, 2022 (2022 Delivery Rates), and to implement common delivery rates and cost of gas rates for FEFN with FEI, effective January 1, 2023 (Common Rates) (together, the Application).

The BCUC established and later amended a regulatory timetable for the review of the Application, which included:<sup>1</sup>

- Public notice and intervener registration;
- One round of BCUC and intervener information requests (IRs) to FEI on 2022 Delivery Rates and Common Rates;
- A second round of BCUC and intervener IRs to FEI on Common Rates;
- Intervener and FEI rebuttal evidence on Common Rates, and corresponding IRs; and
- Written final and reply arguments on 2022 Delivery Rates and Common Rates.

Subsequently, the BCUC established a further regulatory timetable to allow for supplemental arguments and FEI reply related to a late letter of comment received pertaining to the Common Rates component of the Application.<sup>2</sup>

On April 29, 2022 and October 6, 2022, the BCUC issued its decision on the 2022 Delivery Rates component of the Application and Common Rates component of the Application, respectively. The BCUC approved, among other things, an increase in delivery rates of 3.41 percent for FEFN and FEFN RSAM rate rider in the credit amount of \$0.416 per GJ, effective January 1, 2022. The BCUC also approved FEI's request to implement common delivery rates and cost of gas rates for the FEFN, and to set Fort Nelson's midstream rates at 5 percent of FEI's midstream rates, effective January 1, 2023.<sup>3</sup>

**1.1 Legislative Framework**

Section 118 of the UCA provides that the BCUC may order a participant in a proceeding before the BCUC to pay all or part of the costs of another participant in the proceeding.

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<sup>1</sup> Orders G-227-21, G-315-21, G-20-22, G-86-22 and G-150-22 dated September 21, 2021, November 3, 2021, January 31, 2022, March 24, 2022, and June 3, 2022, respectively.

<sup>2</sup> Order G-200-22 dated July 20, 2022.

<sup>3</sup> Order G-114-22 dated April 29, 2022; Decision and Order G-278-22 dated October 6, 2022.

As a proceeding that commenced prior to June 30, 2022, the BCUC’s Participant Assistance/Cost Award Guidelines (PACA Guidelines) attached to BCUC Order G-97-17 dated June 15, 2017 are applicable to this proceeding.<sup>4</sup> Section 3.0 of the PACA Guidelines relates to participant eligibility for a cost award and Section 4.0 relates to criteria for a cost award. In accordance with section 4.3 of the PACA Guidelines, the BCUC considers the following in determining the amount of a participant’s cost award:

- (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.

Sections 7.0 through 13.0 of the PACA Guidelines outline the types of eligible costs that may be awarded to participants including, among other things, professional fees, disbursements, taxes and other costs.

## 2.0 PACA Applications

The BCUC received applications for Participant Assistance/Cost Award (PACA) funding from all three interveners with respect to their participation in the proceeding:

Date (2022)	Participant	Application
August 26	Residential Consumer Intervener Association (RCIA)	\$31,074.75
October 21 and updated November 4	Fort Nelson & District Chamber of Commerce (FNDCC)	\$42,728.63
October 21 and updated November 4	Northern Rockies Regional Municipality (NRRM)	\$77,641.13

FNDCC and NRRM jointly participated in the review of the 2022 Delivery Rates component of the Application and filed joint IRs and final arguments for the Common Rates component. RCIA did not participate in the 2022 Delivery Rates component of the Application.<sup>5</sup>

Pursuant to Section 14 of the PACA Guidelines, FEI was provided a copy of the PACA applications with the opportunity to provide comments. Intervenors were also given the opportunity to reply to FEI’s comments.

<sup>4</sup> Order G-178-22, dated June 30, 2022, Directive 2.

<sup>5</sup> Order G-114-22, Appendix A (Reasons for Decision), Section 1.3, p. 7; Decision and Order G-278-22 dated October 6, 2022, Section 1.2, p. 2.

## 2.1 Interim PACA Awards

On January 26, 2022, the BCUC awarded interim PACA funding to FNDCC and NRRM in the amount of \$14,498.19 and \$14,442.19, respectively, as an advance against the BCUC's final cost award determination.<sup>6</sup>

## 3.0 Review of the PACA Applications

The Panel, in its review of the PACA applications, is guided by the PACA Guidelines as noted in Section 1.1 above.

### 3.1 RCIA

RCIA requests a cost award of \$31,074.75, inclusive of applicable taxes, based on \$1,176.00 for legal fees (0.4 days) and \$29,898.75 (17.8 days) for consulting fees, which includes:

- 9.3 days for the services of Mr. Ryall, consultant;
- 8.1 days for the services of Mr. Mason, consultant;
- 0.2 days for the services of Mr. Helland, consultant;
- 0.1 days for the services of Mr. Walsh, consultant; and
- 0.1 days for the services of Mr. Potyok, consultant.

In support of its PACA application, RCIA included, among other things, a breakdown of the time spent on the proceeding for all professionals noted above, wherein Mr. Mason's time breakdown included 3.0 hours described as "PACA Submission."<sup>7</sup>

On October 26, 2022, FEI provided its comments on the RCIA's PACA application, stating that it has no further comment in respect of RCIA's PACA application if the BCUC is satisfied that the participant 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.

### *Panel Determination*

The Panel, having considered the criteria in the PACA Guidelines, finds that RCIA is eligible for PACA funding in this proceeding as it represents the direct interests of residential ratepayers, both in FEFN and the remainder of FEI's service territory. The Panel also considers that RCIA contributed to a better understanding of the issues raised in this proceeding. However, the Panel notes that RCIA's supporting timesheet for Mr. Mason includes 3 hours of time spent related to "PACA Submission." The Panel considers that it is not reasonable for the cost award to include these costs, as they relate to matters of billing. **Therefore, the Panel awards RCIA a cost award of \$30,562.88, inclusive of applicable taxes, which is based on a reduction of 3 hours billed by Mr. Mason. The award is calculated as follows:**

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<sup>6</sup> Order F-4-22.

<sup>7</sup> RCIA PACA Application, Excel Attachment "FEFN Common Rates – RCIA Time Entries." Calculated as 0.5 hours + 2.5 hours = 3.0 hours from Cells E45 and E46, respectively.

	Daily Rate	Funding Days	GST	PST	Total
Legal Counsel	\$2,800	0.4	\$56.00	N/A	\$1,176.00
Consultant – Mr. Ryall	\$1,850	9.3	\$860.25	N/A	\$18,065.25
Consultant –Mr. Mason	\$1,300	7.725 <sup>8</sup>	\$502.13	N/A	\$10,544.63
Consultant –Mr. Helland	\$1,850	0.2	\$18.50	N/A	\$388.50
Consultant –Mr. Walsh	\$1,850	0.1	\$9.25	N/A	\$194.25
Consultant –Mr. Potyok	\$1,850	0.1	\$9.25	N/A	\$194.25
<b>Total Award</b>					<b>\$30,562.88</b>

### 3.2 FNDCC and NRRM

FNDCC represents businesses in Fort Nelson<sup>9</sup> and NRRM represents the community of Fort Nelson broadly, including residents and businesses.<sup>10</sup>

FNDCC requests a cost award of \$42,728.63, inclusive of applicable taxes, based on \$41,288.63 for legal fees (11.15625 days) and \$1,440 (6 days) for case management. NRRM requests a cost award of \$77,641.13, inclusive of applicable taxes, based on \$41,288.63 for legal fees (11.15625 days) and \$36,352.50 (24.5625 days) for a specialist/expert witness.

In FNDCC and NRRM’s PACA applications, FNDCC and NRRM state that they engaged common legal counsel with Norton Rose Fulbright (Mr. Manhas) as an “efficiency and cost saving measure” that would allow the interests of each intervener to be represented whilst avoiding a duplication of effort in areas of overlapping interest. In addition, the parties negotiated billing discounts from counsel and had the charges waived for disbursements and work performed by articling students or associates. As such, FNDCC and NRRM each request legal fees in relation to their respective share of the total cost of legal counsel (shared 50/50) for 11.15625 funding days based on effective daily rates, after billing discounts, of \$3,295.69 and \$3,495.69 depending on the supporting invoice for the services rendered.<sup>11</sup>

On November 21, 2022, FEI provided its comments on FNDCC and NRMM’s PACA applications, stating, among other things, that FNDCC and NRRM are claiming amounts for legal counsel fees which are in excess of the maximum daily fee in the PACA Guidelines of \$2,550 (8-12 years since call), applicable in this case. FEI submits that the BCUC should apply the maximum daily fees when determining the final cost awards.<sup>12</sup>

In reply, FNDCC and NRRM each requested that the Panel consider awarding the full amount of the applied-for cost awards and provided a list of several factors to be considered.<sup>13</sup>

<sup>8</sup> 7.725 days calculated as 8.1 days - (3 hrs /8 hours).

<sup>9</sup> Exhibit C1-1, p. 2.

<sup>10</sup> Exhibit C2-1, p. 1.

<sup>11</sup> FNDCC PACA Application, PDF p. 5; NRRM PACA Application, PDF pp. 16–17.

<sup>12</sup> FEI Comments on PACA Applications dated November 21, 2022, p. 2.

<sup>13</sup> FNDCC Reply Comments on PACA Application dated November 24, 2022, p. 1; NRRM Reply Comments on PACA Application dated November 25, 2022, pp. 1–2; NRRM PACA Application, PDF p. 17.

### *Panel Determination*

The Panel, having considered the criteria in the PACA Guidelines, finds that FNDCC and NRRM are each eligible for PACA funding as they represent ratepayer groups in Fort Nelson and contributed to a better understanding of the issues raised in this proceeding.

In consideration of Section 4.3 of the PACA Guidelines, in order for participants to receive an award in excess of the maximum daily fees, the Panel views that they would have to demonstrate that the costs incurred meet the Panel's expectations for fair and reasonable costs.

The Panel notes that while FNDCC and NRRM do not necessarily represent the same ratepayer groups, the interveners acknowledge areas of overlapping interest.<sup>14</sup> The Panel is persuaded that FNDCC and NRRM's efforts to coordinate their participation through shared legal counsel avoided a duplication of services and allowed the Panel to receive wider input than might otherwise have been the case. The Panel finds, therefore, that the requested cost awards are fair and reasonable considering the reduction in the number of days claimed by each intervener for its participation in the proceeding. For that reason, the Panel considers it appropriate to exercise its discretion not to apply the maximum daily fee guidelines as a strict maximum for these cost awards. **For the above reasons, the Panel awards FNDCC \$42,728.63 as applied-for, inclusive of applicable taxes, less the interim funds of \$14,498.19 already awarded. The Panel awards NRRM \$77,641.13 as applied-for, inclusive of applicable taxes, less the interim funds of \$14,442.19 already awarded.**

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<sup>14</sup> NRRM PACA Application, PDF p. 17.