



**ORDER NUMBER
F-26-23**

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
Participant Assistance/Cost Award Application

BEFORE:

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

on July 27, 2023

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. By September 8, 2021, British Columbia Sustainable Energy Association (BCSEA), British Columbia Old Age Pensioners' Organization et al. (BCOAPO), Commercial Energy Consumers Association of British Columbia (the CEC), the Coalition for the Reduction of Electropollution (CORE) and the Residential Consumer Intervener Association (RCIA) registered as interveners 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);
- D. By Order F-22-22, dated September 29, 2022, the BCUC awarded interim PACA funding to CORE in the amount of \$74,305;
- E. By Order C-2-23, dated May 15, 2023, the BCUC granted a CPCN to FEI for the AMI Project;
- F. The following interveners filed PACA Applications with the BCUC with respect to their participation in the proceeding:

Participant	Application
BCSEA	\$41,758.15
BCOAPO	\$58,293.34
The CEC	\$91,118.39
CORE	\$188,038.50*
RCIA	\$60,847.50

*less the Interim Award granted by Order [F-22-22](#): \$74,305

- G. By letter dated June 26, 2023, FEI provides its comments on the PACA Applications, stating that in its view, if the BCUC is satisfied with the applicants, then FEI has no objections to them receiving the PACA awards they have requested; and
- H. 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 determines the following cost awards should be granted.

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. Funding is awarded to the following interveners in the listed amounts below for their participation in the FEI AMI CPCN proceeding:

Participant	Award
BCSEA	\$41,758.15
BCOAPO	\$58,293.34
The CEC	\$91,118.39
CORE	\$103,720.00
RCIA	\$60,847.50

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

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of July 2023.

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
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).

By September 8, 2021, British Columbia Sustainable Energy Association (BCSEA), British Columbia Old Age Pensioners' Organization et al. (BCOAPO), Commercial Energy Consumers Association of British Columbia (the CEC), the Coalition for the Reduction of Electropollution (CORE) and the Residential Consumer Intervener Association (RCIA) registered as interveners 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.

By Order F-22-22, dated September 29, 2022, the BCUC awarded CORE interim PACA funding in the amount of \$74,305.

By Order C-2-23, dated May 15, 2023, the BCUC granted a CPCN to FEI for the AMI Project.

1.1 Reasons for Decision Outline

The Panel has reviewed the PACA Applications in accordance with the PACA Guidelines. In these Reasons for Decision, the Panel addresses eligibility for PACA funding, and provides an explanation of the funding awarded to each intervener.

2.0 Legislative Framework

Section 118(1) of the UCA provides that "The 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."

The PACA Guidelines as set out in Appendix A attached to BCUC Order G-97-17 dated June 15, 2017, stipulate the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates.

¹ Exhibit C2-1; Exhibit C3-1; Exhibit C4-1; Exhibit C7-1; Exhibit C1-1.

² Exhibit C7-4.

³ Exhibit A-16.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. If the participant is eligible for a cost award, the Panel then considers 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.

Attachment A to the PACA Guidelines sets out the rate schedules for the maximum daily fees with respect to professional services.

3.0 PACA Applications

The following table summarizes the total cost award sought by each intervener in its respective PACA Application:

Date	Participant	Application
December 6, 2022	BCSEA	\$41,758.15
March 10, 2023	BCOAPO	\$58,293.34
November 17, 2022	The CEC	\$91,118.39
December 9, 2022	RCIA	\$60,847.50
December 20, 2022**	CORE	\$188,038.50*

*less the Interim Award granted by Order [F-22-22](#): \$74,305.

**CORE filed its Revised PACA Application June 9, 2023 and responses to BCUC staff questions July 6, 2023.

Pursuant to Section 14 of the PACA Guidelines, on June 26, 2023, FEI provided its comments on the PACA Applications. FEI states it has reviewed the PACA Applications and if the BCUC is satisfied that participants have met the eligibility requirements and the funding claimed and level of participation are appropriate, then FEI has no further comment.

3.1 BCSEA

BCSEA seeks a cost award of \$41,758.15 in its PACA Application, which includes:⁴

- 3.9 days for consultant Thomas Hackney; and
- 10.9 days for legal counsel Bill Andrews.

3.2 BCOAPO

BCOAPO seeks a cost award of \$58,293.34 in its PACA Application, which includes:⁵

- 11 days for consultant Russ Bell;
- 10.7 days for legal counsel Leigha Worth;
- 1.4 days for legal counsel Kristen Barham; and
- 0.2 days for legal counsel Irina Mis.

3.3 The CEC

The CEC seeks a cost award of \$91,118.39 in its PACA Application, which includes:⁶

- 29.9 days for consultants David Craig and Janet Rhodes;
- 7.44 days for legal counsel Christopher Weafer; and
- 4.59 days for legal counsel Patrick Weafer.

3.4 RCIA

RCIA seeks a cost award of \$60,847.50 in its PACA Application, which includes:⁷

- 14.3 days for consultant. Brady Ryall;
- 17.3 days for consultant Samuel Mason;
- 1.3 days for consultant Peter Helland;
- 2.3 days for consultant Michael Walsh;
- 0.7 days for consultant Matthew Matusiak; and
- 0.6 days for legal counsel Fred Cass.

⁴ BCSEA PACA Application, dated December 6, 2022.

⁵ BCOAPO PACA Application dated March 10, 2023.

⁶ The CEC PACA Application dated November 17, 2022.

⁷ RCIA PACA Application dated December 9, 2022.

3.5 CORE

CORE seeks a cost award of \$188,038.50 in its revised PACA Application, which includes:⁸

- 5 days for expert consultant Dr. Magda Havas;
- 5.2 days for expert consultant Dr. Paul Héroux;
- 11.575 days for legal counsel William McElhanney;
- 26.3625 days for legal counsel Alex Yiu; and
- 32.30 days for legal counsel Selina Sahota.

By Order F-22-22, dated September 29, 2022, the BCUC previously awarded CORE interim PACA funding in the amount of \$74,305. To clarify, CORE seeks a total award of \$188,038.50, inclusive of its interim award of \$74,305.

4.0 BCUC Determination

The Panel approves the PACA Applications from BCSEA, BCOAPO, the CEC, RCIA. We consider the amounts to be reasonable and note there is no opposition from FEI.

The PACA amounts requested by CORE are considerably higher than those claimed by any other participant in this proceeding. However, CORE consisted of seven interveners, which grouped together at the direction of the Panel, and thus likely avoided an even larger cost.

The Panel is generally satisfied that the amounts claimed by CORE are reasonable and notes no opposition from FEI. However, several issues arise from CORE's PACA Application:

- CORE has claimed for legal time associated with its reconsideration request of November 21, 2021, which was a separate proceeding from the FEI AMI Proceeding;
- CORE has claimed for legal time associated with the preparation of its PACA Application;
- CORE has provided inconsistent support for its claim for time spent by its expert Dr. Héroux; and
- CORE has claimed GST amounts from the invoices from its law firm, Ackroyd LLP, but also stated that the GST amounts can be recovered as an input tax credit.

The Panel will address each of these issues below, and the extent to which they affect the PACA amounts that the Panel will award to CORE.

4.1 CORE – Reconsideration Request

On November 21, 2021, CORE filed a request for reconsideration (Reconsideration Request), asking the BCUC to reconsider the procedural decision made by this Panel on September 14, 2021 (Exhibit A-14) declining CORE's request to extend the regulatory timetable of the FEI AMI Proceeding and to direct FEI to republish its public notice.

⁸ CORE Revised PACA Application dated June 9, 2023.

The BCUC did not summarily dismiss the Reconsideration Request, which it was entitled to do pursuant to Rule 28.01 had the Reconsideration Request failed “to establish, on its face, any reasonable grounds for reconsideration of the decision.” However, on completion of the hearing, the BCUC denied CORE’s request to reconsider this Panel’s earlier decision.

In its PACA Application for the FEI AMI Proceeding, CORE has claimed hours for time spent by its legal counsel on the Reconsideration Request. The total time billed by CORE for the Reconsideration was \$5,235 plus GST for a total of \$5,496.75 for 23.7 hours, broken down as follows:

Lawyer	Time (hours)	Daily Rate	Subtotal	Total Cost with Taxes
Selina T. Sahota	20.4	\$1600	\$4080	\$4284.00
Alexander W. Yiu	2.3	\$2800	\$805	\$845.25
W.L. McElhanney, KC	1.0	\$2800	\$350	\$367.50

Panel Determination

The Reconsideration Request was handled by the BCUC as a separate proceeding from the FEI AMI Proceeding. The Panel would have expected CORE to file any PACA request associated with this proceeding within 30 days of the end of the proceeding, in accordance with section 14.2.2 of the BCUC’s PACA Guidelines.

However, the Panel will address CORE’s request for PACA for the Reconsideration Request as part of its overall request for PACA for the FEI AMI Proceeding. The Panel recognizes that CORE is not an experienced intervener with the BCUC, and the matter of the Reconsideration Request is closely linked to the activities of the FEI AMI Proceeding.

The Panel approves CORE’s request for \$5,235 to support the Reconsideration Request for the following reasons.

The BCUC did not summarily reject the Reconsideration Request, which it was entitled to do had the Reconsideration Request failed “to establish, on its face, any reasonable grounds for reconsideration of the decision.” While the BCUC denied the Reconsideration Request, the Panel is satisfied that the Reconsideration Request had sufficient merit for the BCUC to conduct a hearing and thus was not frivolous, vexatious or a waste of time.

The BCUC generally awards PACA to interveners and not to applicants in a proceeding. In the Reconsideration Request proceeding CORE was the applicant and not an intervener, as it was in the FEI AMI Proceeding. However, PACA Guideline 1(d) states that the definition of a participant is not limited to interveners, and means “an individual or an affected group that actively participates in a proceeding of the Commission for which a cost award is sought.” CORE meets this test because it actively participated in the Reconsideration Request proceeding and was directly affected by its outcome.

4.2 CORE – Time Spent Preparing PACA Application

In its legal invoice dated December 20, 2022, attached to CORE’s PACA Application dated December 20, 2022, CORE claims 5.3 hours of legal time for its legal counsel to prepare its PACA Application:

Lawyer	Date	Time (hours)	Daily Rate	Subtotal	Total Cost with Taxes
STS	07/28/22	1.6	\$1600	\$320	\$336.00
STS	09/06/22	2.0	\$1600	\$400	\$420.00
STS	09/07/22	1.5	\$1600	\$300	\$315.00
STS	10/24/22	0.2	\$1600	\$40	\$42.00
TOTAL		5.3		\$1,060	\$1,113.00

Panel Determination

The Panel denies CORE’s request for PACA funding for its legal counsel to prepare its PACA Application.

Section 4.2(b) of the PACA Guidelines states:

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 [Emphasis added]

The intent of the PACA Guidelines is that the BCUC will consider compensating a participant’s efforts directly related to the proceeding, such as preparation of information requests, final arguments, and letters of comment. The Panel does not consider it reasonable to compensate participants for the ancillary activities of their legal counsel, such as billing. This finding is consistent with previous BCUC decisions that have denied requests for PACA from participants for billing-related activities of their legal counsel.⁹

The Panel denies CORE’s claim for 5.3 hours of time by its legal counsel, and reduces CORE’s PACA claim by \$1,060, before GST.

4.3 CORE – Time Claimed for Dr. Héroux

Dr. Héroux’s invoice was provided in CORE’s PACA Application dated December 20, 2022. Dr. Héroux’s invoice claimed 5.2 days’ time, or 41.6 hours, invoiced at \$270 per hour, for a total of \$11,232. No GST was applied on the invoice.

In response to BCUC staff questions, CORE stated the BCUC should adjust Dr. Héroux’s invoice to reflect the maximum daily rate payable to experts under the PACA Guidelines of \$2,150 per day. CORE attached a revised PACA Application claiming a total of 5.2 days’ time for Dr. Héroux at \$2,150 per day, plus \$559 of GST, for a total of \$11,739.¹⁰ CORE’s earlier PACA Application, with a rate for Dr. Héroux of \$270 per hour, equivalent to \$2,160 per day, exceeds the maximum amount for an expert under the PACA Guidelines.

⁹ Orders F-27-22 and F-1-23A.

¹⁰ CORE Revised PACA Application dated June 9, 2023.

In CORE's response to BCUC further staff questions, dated July 6, 2023, CORE provided a revised invoice from Ackroyd LLP, which included a charge for Dr. Héroux's invoice of \$11,232 plus GST of \$561.60, for a total of \$11,793.60.¹¹

Panel Determination

The Panel awards CORE \$11,180 for time spent by Dr. Héroux.

Dr. Héroux, in his invoice of December 12, 2022, stated that he spent 5.2 days as an expert witness for CORE. There is no evidence that he spent any different amount of time on this activity. The Panel is willing to reimburse CORE for Dr. Héroux's 5.2 days at the maximum rate of \$2,150 per day permitted under the BCUC's PACA Guidelines, or a total of \$11,180. This is consistent with CORE's revised PACA Application of June 9, 2023.

The Panel denies CORE's PACA Application to be compensated for \$11,232 for Dr. Héroux's time, based on a rate of \$270 per hour, or \$2,160 per 8-hour day, which exceeds the maximum permitted under the BCUC's PACA Guidelines. This amount of \$11,232 was claimed by CORE in its original PACA Application of December 20, 2022 and its answer to staff questions dated July 6, 2023. CORE has provided no explanation to justify why a higher amount is appropriate.

4.4 CORE – GST

CORE's PACA Application dated December 20, 2022, attached invoices from its expert consultants and from its legal firm, Ackroyd LLP. Invoices from expert consultants Dr. Héroux and Dr. Havas, did not have GST applied. Invoices from Ackroyd LLP, dated July 28, 2022 and December 20, 2022, did have GST applied.¹²

In response to BCUC staff questions, CORE's revised PACA Application, dated June 9, 2023, states GST should be applied to both legal fees and consultants' invoices.¹³

In response to BCUC further staff questions dated July 6, 2023, CORE submitted an invoice from Ackroyd LLP invoicing consultants' fees from Dr. Héroux and Dr. Havas with GST applied. CORE states, "We further confirm our understanding that the claimed GST amounts can be recovered by an Input Tax Credit."¹⁴

Panel Determination

Pursuant to PACA Guideline 12.1, GST amounts associated with a participant's costs may be recoverable as part of a PACA request if the amounts are not recoverable by the participant through an Input Tax Credit. CORE has indicated that it can recover the GST amounts through an Input Tax Credit, therefore the GST amounts on its invoices from its legal counsel are not recoverable as part of its PACA request.

¹¹ CORE Response to BCUC Staff Questions July 6, 2023.

¹² CORE PACA Application dated December 20, 2022.

¹³ CORE Revised PACA Application dated June 9, 2023, pp. 3-4.

¹⁴ CORE Response to BCUC Staff Questions July 6, 2023.

4.5 CORE – Summary Determination

CORE's revised PACA Application of June 9, 2023, is as follows:

	Time (days)	Daily Rate	Subtotal	GST	Total
Dr. Paul Héroux	5.2	\$2,150.00	\$11,180.00	\$559.00	\$11,739.00
Dr. Magda Havas	5	\$2000.00	\$10,000.00	\$500.00	\$10,500.00
W.L. McElhanney, KC	11.58	\$2,800.00	\$32,410.00	\$1,620.50	\$34,030.50
Alexander W. Yiu	26.36	\$2,800.00	\$73,815.00	\$3,690.00	\$77,505.00
Selina T. Sahota	32.30	\$1,600.00	\$51,680.00	\$2,584.00	\$54,264.00
TOTAL			\$179,085.00	\$8,954.25	\$188,038.50

CORE was awarded an interim amount of \$74,305 on September 29, 2022.¹⁵

Panel Determination

The Panel approves CORE's PACA Application of \$179,085, as per its revised PACA Application of June 9, 2023, subject to the following amendments:

- \$1,060 for legal counsel to assist with CORE's PACA request is denied; and
- GST is not recoverable.

FEI is directed to reimburse CORE for \$103,720 (\$179,085 less the denied amount of \$1,060 and the interim funding of \$74,305).

¹⁵ Order F-22-22.