

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-14-09**

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.b cuc.com>

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102



**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application for Participant Assistance/Cost Award
regarding Applications for Reconsideration of
A Decision approving for FortisBC Inc.
a Certificate of Public Convenience and Necessity
for the Ellison Substation Project**

BEFORE:

L.F. Kelsey, Commissioner
L.A. O'Hara, Commissioner
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

April 21, 2009

O R D E R

WHEREAS:

- A. On October 27, 2006 FortisBC Inc. ("FortisBC") applied to the British Columbia Utilities Commission (the "Commission") for a Certificate of Public Convenience and Necessity ("CPCN") for the Ellison Substation Project (the "Ellison Substation"); and
- B. Following a review of the Application that included an oral public hearing on April 2, 2007, the Commission issued Order C-4-07 granting FortisBC a CPCN to construct the Ellison Substation Project – Option 1; and
- C. By Order G-75-07 dated June 28, 2007, the Commission approved the Lochrem Road site for the Ellison Substation, as applied-for in the Application; and
- D. By letter dated September 18, 2008, the Concerned Citizens of Quail Ridge and Lochrem Road ("CCQRLR") applied for a reconsideration of the Commission's Decision as set out in Orders C-4-07 and G-75-07 (the "Decision"); and
- E. By letter dated September 23, 2008, the Quail Ridge Residents Association ("QRRR") also applied for a reconsideration of the Decision; and

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- F. By Letter L-50-08 dated October 22, 2008, the Commission established a written comment process on the Reconsideration Applications to address the reconsideration phase one issue of whether a reasonable basis exists to allow a reconsideration; and
- G. By Letter L-8-09 dated February 3, 2009, the Commission issued its Reasons for Decision denying the applications of CCQRLR and QRRR for a further expanded reconsideration, and reaffirmed the approval for the Ellison Substation as set out in Orders C-4-07 and G-75-07; and
- H. By letter dated February 3, 2009, the QRRR filed a Participant Assistance/Cost Award ("PACA") application with respect to the reconsideration application; and
- I. By letter dated March 16, 2009 FortisBC advised the Commission that the amount requested by QRRR is reasonable but noted that the Commission's PACA Guidelines (Order G-72-07) do not address funding for regulatory processes post-Decision, and questioned whether the reconsideration applications were in the interests of ratepayers in general; and
- J. The Commission has reviewed the application for cost award with regard to the criteria and rates set out in Order G-72-07.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act* and the Reasons for Decision attached as Appendix A, the Commission awards \$8,870.40 to the Quail Ridge Residents Association with respect to the reconsideration of the Commission's Decision as set out in Orders C-4-07 and G-75-07 regarding the FortisBC CPCN for the Ellison Substation Project.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of April 2009.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

Applications for Reconsideration of
a Decision approving for FortisBC Inc.
a Certificate of Public Convenience and Necessity
for the Ellison Substation Project

Participant Assistance Cost Award
Reconsideration pursuant to Order G-166-08

REASONS FOR DECISION

INTRODUCTION

This Application for a Participant Assistance Cost Award, commonly referred to as PACA, was made by the Quail Ridge Residents' Association following its participation in the reconsideration of a Decision of the Commission approving the construction of the Ellison Substation in the general area of the Quail Ridge development. The Association received PACA funding for its participation in the proceeding that led to the Decision, and this Application is somewhat unusual in that it relates to expenses incurred by the Association for its participation in post-Decision activities.

The request for a reconsideration of the Decision was initiated by the Association and the Concerned Citizens of Quail Ridge and Lochrem Road when information became available, subsequent to the approval of the substation construction, that there was the potential for the operation of the substation to interfere with the navigation systems at the Kelowna Airport. Should interference with the navigation systems occur, possible mitigation measures included substantial redesign or, in the extreme, the relocation of the substation.

The request for a reconsideration of the Decision was reviewed following established Commission procedures for reconsideration. A reconsideration hearing of limited scope was conducted and the Commission Panel denied the applications for a further expanded reconsideration and reaffirmed the approval for the substation as set out in Orders C-4-07 and G-75-07.

The Association submitted a PACA budget of \$10,080 for its reconsideration activities and the budget was acknowledged by Commission staff. At that time staff advised the Association that the Commission generally does not provide PACA funding for post-Decision activities and warned that the Association was at serious risk of receiving no funding.

Following the reconsideration hearing, the Association submitted the Application for reimbursement of \$8,870.40 in expenses all of which are consistent with the Commission guidelines (Order G-72-07). Fortis BC, the project proponent, considers the amount requested reasonable in relation to the duration of the process, notes that the Commission's guidelines do not address funding for regulatory processes post-Decision and questions whether the applications for reconsideration were in the interests of ratepayers in general.

The issue then is, in the circumstances of this reconsideration, should PACA funding be provided for post-Decision activities.

DECISION AND REASONS

The Commission Panel finds that in the rather unique circumstances of the initial proceeding and the reconsideration which followed, the Application by the Association for reimbursement of expenses, as detailed above should be approved.

In the application by FortisBC for the Ellison Substation and in the subsequent oral hearing the proximity of the substation to the airport was both described in some detail and discussed at some length. An alternative to locate the substation even closer to the airport was also explored and rejected for reasons unrelated to the technical matters considered in this reconsideration. During the initial proceedings the requirements of Transport Canada and Nav Canada with respect to interference with navigation systems were not raised as an issue by FortisBC although Transport Canada "minimums" were raised in connection with the alternative siting option, albeit in a different context. Had this issue been raised, a full review of the possible impact of these requirements on the substation as proposed would have been an integral part of the hearing process. Eligible expenses on the part of the Association for this matter would have been reimbursed. The Commission Panel notes in the relevant Transport Canada document:

"Consultation... must take place at an early stage in the project in order to avoid costly redesign or undue pressure when seeking building and site approvals. It is recommended that consultation take place at the building concept stage, before site approval is sought."
(Commission Letter L-8-09, p. 2)

In making its decision on the reconsideration request, the Commission Panel noted “Had FortisBC followed this recommendation and presented the issues associated with radio interference in the original CPCN Application, the Commission Panel dealing with the CPCN Application would have had the relevant information before it, on the record, and could have afforded the matter the attention it deserved then, and precluded much of the time, effort, expense and delay that has now come to pass. (Commission Letter L-8-09, p. 2)

The Commission Panel is of the view that it is reasonable that FortisBC should have made itself aware of the requirements of Transport Canada and Nav Canada and carried out appropriate consultation prior to making its application to the Commission for approval for the construction of the Substation. Had this occurred, the entire matter could have been considered during initial hearing. The matter would not have been raised as a reconsideration. Therefore, the Commission concludes that the Association should not bear responsibility that a reconsideration was needed to consider this aspect of the project.

While the Commission generally does not provide participant assistance cost award funding for post-Decision activities the Commission Panel notes that the guidelines do not prohibit such an award. In the rather unusual circumstances described above, the Commission Panel considers reimbursement of costs as requested by the Association to be warranted.