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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER F-21-12**

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

and

**An Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity for
Approval of Contracts and Rates for Public Utility Service to Provide Thermal Energy Service
to Delta School District Number 37**

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
D.M. Morton, Commissioner
R.D. Revel, Commissioner
September 20, 2012

O R D E R

WHEREAS:

- A. On November 28, 2011, FortisBC Energy Inc. (FEI) filed an application (the Application) for a Certificate of Public Convenience and Necessity (CPCN) for the construction and operation of thermal energy projects at 19 individual sites for the Delta School District Number 37 (Delta School District), under sections 45 and 46 of the *Utilities Commission Act* (Act), and for the approval of rates and rate design established by an Energy System Rate Development Agreement (RDA) and individual Energy System Service Agreements (Service Agreements) entered into between FEI and Delta School District, as just and reasonable rates under sections 59 through 61 of the Act;
- B. By Order G-205-11 dated December 2, 2011 the British Columbia Utilities Commission (Commission) established a written hearing process and regulatory timetable to review the Application;
- C. By Letter L-4-12, dated January 13, 2012, the Commission subsequently added a Supplementary Commission Information Request to FEI regarding additional A2 Exhibits and Commission Information Requests directed to two Interveners, Delta School District and to Corix Utilities Inc. (Corix);
- D. On March 9, 2012, the Commission issued its Decision and Order G-31-12 granting the CPCN on the condition that the RDA and the Service Agreements be assigned to an affiliate of FEI and denied approval of the proposed rate and rate design but indicated that it would accept for filing a rate and rate design with certain modifications;

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E. The following Interveners filed applications for Participant Assistance/Cost Award (PACA) funding:

- BC Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC), filed March 1, 2012; and
- Corix, filed March 29, 2012;

F. By letter dated June 11, 2012 to the Commission, FEI provided comments on the PACA applications indicating that it objected to Corix receiving PACA funds;

G. The Commission reviewed the PACA applications with regard to the criteria and rates set out in the PACA Guidelines in Commission Order G-72-07 and concludes that PACA funding should be awarded to Corix and BCSEA-SCBC in the amounts requested in the applications as set out in the Reasons for Decision that are Appendix A to the Order.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 118 (1) of the Act, the Commission awards funds in the following amounts with respect to the participants for their participation in the proceeding:

Participant	Application	Award
Corix	\$18,144.00	\$18,144.00
BCSEA-SCBC	\$11,025.35	\$11,025.35

2. FEI is directed to reimburse the above noted participants for the award amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of September 2012.

BY ORDER

Original signed by:

L.A. O'Hara
Commissioner

Applications for Participant Assistance /Cost Award
In the Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity for
Approval of Contracts and Rates for Public Utility Service to Provide Thermal Energy Service
to Delta School District Number 37

REASONS FOR DECISION

1. INTRODUCTION

On November 28, 2011, FortisBC Energy Inc. (FEI) filed an application for a Certificate of Public Convenience and Necessity (CPCN) for the construction and operation of thermal energy projects at 19 individual sites for the Delta School District Number 37 (Delta School District) and for the approval of rates and rate design established by an Energy System Rate Development Agreement (RDA) and individual Energy System Service Agreements (Service Agreements) entered into between FEI and Delta School District (FEI Delta CPCN Proceeding).

On March 9, 2012, the Commission issued its Decision and Order G-31-12 granting the CPCN on the condition that the RDA and the Service Agreements be assigned to an affiliate of FEI, and denied approval of the proposed rate and rate design but indicated that it would accept for filing a rate and rate design with certain modifications. FEI assigned the agreements to FortisBC Alternative Energy Services Inc. (FAES) and the Commission granted the CPCN with Order C-3-12. The rates and rate design were approved on June 25, 2012 via Commission Order G-88-12.

The Commission received two applications from Interveners pursuant to section 118 of the *Utilities Commission Act* (UCA) for Participant Assistance/Cost Award (PACA) funding for the FEI Delta CPCN Proceeding. The BC Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC) filed March 1, 2012 for an award of \$11,025.35 and Corix filed March 29, 2012 for an award of \$18,144.00.

The Commission's PACA Guidelines as set out in Appendix A to Commission Order G-72-07 state that the Commission will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. The Commission will then consider the following:

- (i) Will the Participant be affected by the outcome?
- (ii) Has the Participant contributed to a better understanding of the issues by the Commission?
- (iii) Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- (iv) Has the Participant joined with other groups with similar interests to reduce costs?
- (v) Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration of the proceeding? (This criterion will not, by itself, disqualify a Participant for pursuing a relevant position in good faith and with reasonable diligence.)
- (vi) Any other matters appropriate in the circumstances.

2. PROCEEDING AND PREPARATION DAYS

As outlined in Section 4 of the PACA Guidelines, the term “proceeding day” encompasses the following: workshop days, negotiation days, pre-hearing conference days, hearing days and oral argument days. In addition, the Commission Panel may award costs for preparation days which is typically on a ratio of up to two days per proceeding day. The number of proceeding days and the ratio used for the purposes of calculating awards may vary among Participants.

The Commission Panel has determined that for those Interveners who did not have Commission Information Requests directed to them, the number of proceeding days in the FEI Delta CPCN proceeding is 2.5 days with an allowable preparation time of 5.0 days for a total of 7.5 days. For those Interveners who were directed to respond to Commission Information Responses, the number of proceeding days is 3.5 days and the number of preparation days is 7.0 days for a total of 10.5 days.

3. PACA APPLICATIONS

The Commission received two PACA applications summarized as follows:

- BC Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC) filed March 1, 2012 for PACA funding of \$11,025.35; and
- Corix Utilities Inc. (Corix) filed March 29, 2012 for PACA funding of \$18,144.00.

4. AWARDS OF INDIVIDUAL PACA APPLICATION AMOUNTS

The Commission Panel has reviewed the two PACA applications, has considered the comments of FEI, and makes the following determinations with respect to cost awards:

BCSEA-SCBC Application

BCSEA-SCBC claims for costs totalling \$11,025.35 (including HST). FEI expressed no concerns with regard to the claims submitted by BCSEA-SCBC. The Commission Panel considers the BCSEA’s participation as reflective of its interest in the proceedings, is satisfied that it made a good contribution and that the amount of time being claimed for is consistent with PACA Guidelines and not unreasonable. **Accordingly, the BCSEA-SCBC claim for a cost award for \$11,025.35 is granted.**

Corix Application

Corix has claimed for costs totalling \$18,144.00 (including HST). FEI raised issue with respect to Corix’s entitlement to PACA funding under Commission Guidelines stating that Corix has sufficient financial resources to participate in Commission proceedings without access to PACA funding. FEI made reference to Commission Order F-16-06 where the Commission considered PACA applications from gas marketers in regard to the Residential Commodity Unbundling Project and denied PACA funding to gas marketers on the basis that the gas marketers in question were subsidiaries of national or international organizations with substantial financial resources.

While funding may not have been made available in the past for these reasons, the Commission Panel considers Corix's contribution to this proceeding to be a unique circumstance. The Panel notes that Corix's participation resulted in significant evidence in this proceeding in relation to more specific details with regard to the application of the cost of service model, the mechanics and risks regarding the recovery of the Thermal Energy Services (TES) deferral account and the challenges of segregation and cross-subsidization between FEI lines of business than could be explored in the more high-level Inquiry into Alternative Energy Solutions and Other New Initiatives (AES Inquiry). Evidence resulting from Corix's participation in the FEI Delta CPCN Proceeding, while centered on its own interests, was of value to the interests of all competitors of the FEU's alternative energy services. The Panel believes that the costs associated with Corix's participation are fair and reasonable, and that Corix provided value to the proceeding and impacted the outcome of the Commission's Decision on this Application. Further, the Commission Panel believes that costs incurred by Corix in relation to this PACA request extend beyond costs that Corix should bear independently.

The Commission Panel considers that the amounts of time being claimed are reasonable and consistent with the estimates of proceeding and preparation time applicable for this proceeding. **Accordingly, the Corix claim for a cost award of \$18,144.00 is granted.** The Commission notes that approval of this award is based on the fact that, as the initial TES application by FEI and the timing of such in advance of a decision on the AES Inquiry, the FEI Delta CPCN Proceeding was a unique situation. Approval of PACA funding should not be construed by Corix as an indication that PACA applications would be approved for future FEI TES applications because it is the Commission's policy to not fund commercial enterprises.