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ORDER NUMBER
F-37-20

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

and

FortisBC Energy Inc.
Complaint filed by Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc.
Application for Participant Assistance/Cost Award

BEFORE:
B. A. Magnan, Panel Chair
T. A. Loski, Commissioner

on October 29, 2020

ORDER

WHEREAS:

A. On September 4, 2019, Cascadia Energy Ltd., Direct Energy Marketing Limited and Access Gas Services Inc. (collectively BCGMC) filed a complaint with the British Columbia Utilities Commission (BCUC) (Complaint). BCGMC requested that the BCUC inquire into FortisBC's Energy Inc.'s (FEI) administration of Rate Schedules 22, 23, 25 and 27 related to transportation customer service;

B. By Order G-135-18 dated July 20, 2018, the BCUC approved amendments to the transportation service customer balancing rules, including implementation of daily balancing for all transportation service customers, a reduction of the daily balancing tolerance and changes to daily balancing charges;

C. By Order G-340-19 dated December 20, 2019, and as furthered by Orders G-82-20 and G-87-20, the BCUC set out a regulatory timetable to review the Complaint, which consisted of one round of BCUC information requests (IRs), BCGMC and FEI reply comments, BCUC and BCGMC IRs to FEI, and written final arguments;

D. On August 10, 2020, the BCUC issued Order G-210-20 with reasons for decision which dismissed the Complaint and denied BCGMC's request to establish an inquiry to review FEI's administration of its transportation service, thereby closing the complaint.

E. BCGMC filed a Participant Assistance/Cost Award (PACA) application with the BCUC with respect to its legal and consulting costs related to its participation in the proceeding as follows:

Date	Participant	Application
May 27, 2020 (revised on September 3, 2020	BCGMC (revised application)	$58,412.00

F. By letter dated August 21, 2020, FEI provided comments on BCGMC's PACA application in opposition to a cost award to BCGMC on the basis that BCGMC had not filed a PACA budget estimate consistent with Section 14.1 of the PACA Guidelines, and that regulatory costs incurred by BCGMC are a regular part of doing business under the transportation model and such costs should be borne by BCGMC and their members and their customers;

G. By letter dated August 28, 2020, BCGMC submitted a response to FEI's August 21, 2020 comments on BCGMC's PACA application;

H. By letter dated September 16, 2020, FEI provided comments on BCGMC's revised PACA application noting that the requested funding days appear excessive and requesting the BCUC to consider the BCGMC's ability to meet its own hearing expenses without a cost award;

I. The BCUC has reviewed the PACA application in accordance with the criteria and rates set out in the PACA Guidelines attached to BCUC Order G-97-17 and FEI's and BCGMC's comments regarding the PACA applications and makes the following determination on the cost award.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act,* and for reasons outlined in Appendix A to this order, the BCUC denies BCGMC's application for a cost award.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of October 2020.

BY ORDER

Original signed by:

B. A. Magnan
Panel Chair/Commissioner

Attachment

FortisBC Energy Inc.
Complaint filed by Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc.
Application for Participant Assistance/Cost Award

REASONS FOR DECISION

1.0 Background

On September 4, 2019, Cascadia Energy Ltd., Direct Energy Marketing Limited and Access Gas Services Inc. (collectively BCGMC) filed a complaint with the British Columbia Utilities Commission (BCUC) (Complaint). BCGMC requested that the BCUC inquire into FortisBC's Energy Inc.’s (FEI) administration of Rate Schedules 22, 23, 25 and 27 related to transportation customer service.

By Order G-135-18 dated July 20, 2018, the BCUC approved amendments to the transportation service customer balancing rules, including implementation of daily balancing for all transportation service customers, a reduction of the daily balancing tolerance and changes to daily balancing charges for gas supply shortfalls. Order G-135-18 directs FEI to file a written report with the BCUC on transportation service balancing by June 1, 2022.

By Order G-340-19 dated December 20, 2019, and as furthered by Orders G-82-20 and G-87-20, the BCUC set out a regulatory timetable to review the Complaint, which consisted of one round of BCUC information requests (IRs), BCGMC and FEI reply comments, BCUC and BCGMC IRs to FEI, and written final arguments.

On August 10, 2020, the BCUC issued Order G-210-20 with reasons for decision which dismissed the Complaint and denied BCGMC’s request to establish an inquiry to review FEI’s administration of its transportation service, thereby closing the complaint. Order G-210-20 also directed FEI to engage in stakeholder review with all shipper agents and include results of that review in the transportation service balancing report to be filed with the BCUC by June 1, 2022, as directed by BCUC Order G-135-18.

A Participant Assistance/Cost Award (PACA) application and subsequent revised application were filed by BCGMC for its participation in the proceeding:

Date	Participant	Application
May 27, 2020 (revised on September 3, 2020)	BCGMC (revised application)	$58,412.00

By letters dated August 21 and September 16, 2020, FEI provided comments on BCGMC’s PACA application and revised PACA application, respectively, in opposition to a cost award to BCGMC.

On August 28, 2020, BCGMC submitted a response to FEI’s August 21, 2020 comments on BCGMC’s PACA application. On September 9, 2020, BCGMC submitted invoices in support of its revised PACA application.

2.0 Criteria for Cost Awards

Section 118(1) of the *Utilities Commission Act* (UCA) provides that:

> (1) 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.
>
> (2) If the commission considers it to be in the public interest, the commission may pay all or part of the costs of participants in proceedings before the commission that were commenced on or after April 1, 1993 or that are commenced after June 18, 1993.
>
> (3) Amounts paid for costs under subsection (2) must not exceed the limits prescribed for the purposes of this section.

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

Under section 2.3 of the PACA Guidelines:

> The Commission may award costs for work completed after a proceeding is initiated and until the Commission issues a final order.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The BCUC will consider whether the participant:

- (a) is directly or sufficiently affected by the BCUC's decision; or
- (b) has experience, information, or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making.

Section 3.2 of the PACA Guidelines describes the general characteristics of a participant in a proceeding that would meet the eligibility criterion.

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.

Sections 7.0 through 13.0 of the PACA Guidelines outline the types of eligible costs that can be awarded to participants including, among other things, professional fees, foregone earnings, childcare expenses, disbursements, tax costs and other costs.

3.0 Review of the PACA Application

In its PACA application, BCGMC notes its members are gas marketers who represent about 30 percent of FEI's total Transportation Service demand and 48 percent of Transportation Service customers. BCGMC members and its customers are directly affected economically and operationally by FEI's administration of its Transportation Services. BCGMC submits that it raised reasonable concerns regarding FEI's administration of its Transportation Services, and notes that BCUC determined BCGMC's complaint warranted further investigation and established a formal proceeding to review the complaint.[1]

In its revised PACA application, BCGMC requests a cost award of $58,412.00 based on 20 days of funding for legal fees in its revised PACA application.

FEI Comments

FEI's August 21, 2020 comments on BCGMC's original PACA application opposes a cost award. FEI notes that BCGMC did not file a PACA budget estimate, which is required under section 14.1 of the PACA Guidelines for cost awards exceeding $10,000. FEI further submits that BCGMC is comprised of commercial entities representing their own primary interests in the proceeding. Given that BCGMC operates under the transportation model for profit, any regulatory costs incurred are part of normal operating costs under the transportation model, and such costs should be borne by the BCGMC and recovered from their members and their own customers. Further, FEI believes the BCGMC have the ability and means to support the costs of their own participation in regulatory processes without a PACA award and, therefore, should do so.[2]

On September 16, 2020, FEI submitted comments on BCGMC's revised PACA application restating its earlier opposition to BCGMC's PACA application, and further submitting that the funding days claimed appear excessive for the proceeding. FEI requests that the BCUC consider the BCGMC's ability to meet its own hearing expenses without a cost award, as has been done in the past, citing BCUC Order F-16-06.[3]

BCGMC Reply Comments

In BCGMC's reply to FEI's comments dated August 28, 2020, BCGMC submits additional reasons that its PACA application should be granted, noting that BCGMC members are separate entities that collaborated to present a joint complaint in order to be efficient with the BCUC's and FEI's resources, and that in the end, the BCUC decided that several of the issues raised by the BCGMC should be included in the upcoming process leading to FEI's Transportation Model Report. BCGMC submits it was compelled to raise these issues now, rather than wait several years for the Transportation Model Report, because these issues have substantial economic and operational implications for its business now.[4]

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[1] BCGMC Revised PACA Application dated September 3, 2020, pp.1-2.
[2] FEI letter dated August 21, 2020, p. 2.
[3] FEI letter dated September 16, 2020, p. 2.
[4] BCGMC letter dated August 28, 2020, pp. 1-2.

BCGMC's submission also addresses FEI's main comments specifically. BCGMC submits that although no PACA budget estimate was filed, no party is prejudiced by the failure to file the budget estimate, and BCGMC submits that it is eligible for a cost award in accordance with the criteria set out in section 3 of the PACA Guidelines.[5]

Panel Determination

Although it may be that, in this instance, no party is prejudiced by BCGMC's failure to file a PACA budget estimate, the Panel notes that in this case it could have been beneficial to BCGMC to file one. Filing a budget estimate would have allowed BCUC staff to review the estimate in advance of the application and provide comment that a portion or all of the PACA requested was at risk of not being funded. Regardless, the Panel does not consider filing a PACA budget estimate to be a requirement for a PACA award over $10,000 and the absence of a budget estimate has no bearing on the Panel's determination.

In its review of BCGMC's PACA application, the Panel is guided by the PACA Guidelines which set out the eligibility requirements and criteria used in assessing cost awards. Specifically, the Panel considers the following criteria for a cost award under section 4.3 of the PACA Guidelines.

> (a) Has the participant contributed to a better understanding by the Commission of the issues in the proceeding?
>
> …
>
> (c) Are the costs incurred by the participant fair and reasonable?
>
> …
>
> (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?
>
> …
>
> (g) Any other matters which the Commission determines appropriate in the circumstances.

In determining whether the costs incurred by BCGMC are fair and reasonable, the Panel considers whether this proceeding was a reasonable time to address the issues brought forth in the Complaint. The Panel notes the three members of BCGMC participated as individual interveners in the 2016 FEI Rate Design Application (RDA) proceeding which resulted in Order G-135-18 issued on July 20, 2018, approving amendments to the transportation service customer balancing rules. Order G-135-18 also directed FEI to file a written report with the BCUC on transportation service balancing by June 1, 2022 and encouraged FEI to engage in stakeholder review in advance of the report. Since the Panel found no issue with FEI's administration of the Transportation Model in Order G-210-20, the Panel considers that BCGMC's Complaint arises from matters related to the design of the Transportation Model itself. The Panel considers that the 2016 RDA proceeding or 2022 stakeholder engagement in advance of the Transportation Model Report are the appropriate times to revisit the design of the Transportation Model.

The Panel notes BCGMC's Complaint was responsible for initiating the entire proceeding, which as discussed above, led to significant regulatory efforts for FEI and the BCUC outside of the already established review process for the Transportation Model. BCGMC also made multiple submissions which resulted in lengthening the proceeding, including the February 20, 2020 apprehension of bias assertion and April 15, 2020 request for extension to file information requests to FEI.

[5] BCGMC letter dated August 28, 2020, pp.2-3.

The Panel also considers it appropriate to review the impacts that BCGMC's Complaint and the resultant proceeding had on the BCUC's regulation of the FEI Transportation Model. As a result of this proceeding, the BCUC has not directed FEI to change the way it administers its transportation service and has made no significant changes to the Transportation Model Report or stakeholder review outlined by Order G-135-18. In Order G-210-20, FEI was directed to include certain topics in its stakeholder review in advance of the transportation model report, but the panel considers that stakeholders would have already had an opportunity to address all of these issues as part of the stakeholder review regardless of this complaint proceeding.

FEI requested that the Panel "consider the BCGMC's ability to meet its own hearing expenses without a cost award."[6] FEI cited Decision and Order F-16-06, in which the BCUC denied a PACA application on the basis that the applicant had the ability to meet its hearing expenses without an award. The Panel notes this decision was made pursuant to a previous revision of the PACA guidelines as established by Order G-15-04, which stated, "If the Commission panel considers it to be an appropriate consideration in a proceeding, the Commission panel may consider the Participant's ability to participate in the proceeding without an award." The current PACA Guidelines do not contain this provision, but the Panel considers BCGMC's ability to pay its own regulatory costs as a relevant consideration under section 4.3 (g) of the PACA Guidelines. BCGMC is made up of three (3) commercial entities operating under the transportation model, and the Panel considers that BCGMC's members and its customers are able to bear and should bear the cost of regulatory proceedings as a part of their normal operating costs under the transportation model.

For the above reasons, the Panel finds that an award of PACA for the regulatory costs associated with BCGMC's participation in the proceeding is not warranted. The Panel finds that BCGMC's Complaint and resulting proceeding were not the appropriate time or venue to address the design of the transportation model and that BCGMC has not made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding. **Therefore, the Panel denies BCGMC's application for a cost award.**

Finally, the Panel has identified multiple issues with the hours of PACA funding claimed by BCGMC based on the invoices provided. BCGMC's submitted invoices include 63.5 hours of legal services,[7] while BCGMC's revised PACA application requests 20 days of funding for legal fees.[8] BCGMC does not offer an explanation for this discrepancy in hours in its application or response to FEI's comments. It appears to the Panel that the 20 days of funding requested in BCGMC's PACA application, in the amount of $58,413, are intended to correspond with the amount of funding required to entirely cover BCGMC's invoiced legal expenses of $58,413. Per sections 7.2-7.4 and Appendix A of the PACA Guidelines, the maximum daily rate eligible for PACA funding for legal expenses is $2800, prorated based on the hours of legal services performed. The submitted invoices also contain hours which were billed before the proceeding was initiated by way of Order G-340-19 or after Order G-210-20 with reasons for decision was issued.[9] In accordance with section 2.3 of the PACA Guidelines, costs may only be awarded for "work completed after a proceeding is initiated and until the Commission issues a final order." Even if the BCUC were to approve any cost award, it would be for an amount significantly less than the 20 days of funding in BCGMC's PACA application or the 63.5 hours indicated in the supporting invoices.

[6] FEI letter dated September 16, 2020, p. 2.
[7] BCGMC email dated September 9, 2020.
[8] BCGMC Revised PACA Application dated September 3, 2020, p. 4.
[9] BCGMC email dated September 9, 2020.