



**ORDER NUMBER
F-34-23**

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

and

FortisBC Energy Inc.
Biomethane Energy Recovery Charge Rate Methodology and
Comprehensive Review of a Revised Renewable Gas Program
Interim Participant Assistance/Cost Award Application

BEFORE:

D. M. Morton, Panel Chair
D. A. Cote, Commissioner
R. I. Mason, Commissioner

on August 22, 2023

ORDER

WHEREAS:

- A. On December 17, 2021, in accordance with British Columbia Utilities Commission (BCUC) Orders G-35-21 and G-242-21, FortisBC Energy Inc. (FEI) filed its Stage 2 Comprehensive Review and Application for Approval of a Revised Renewable Gas Program (Application);
- B. By Orders G-3-22, G-103-22 and G-165-22A, G-28-23, G-86-23, G-112-23, and G-142-23, the BCUC established and amended regulatory timetables for the review of the Application, which included, among other matters, a procedural conference, two rounds of BCUC and intervener information requests (IRs), intervener evidence, FEI rebuttal evidence, and an evidentiary update by FEI;
- C. On October 29, 2020, BC Sustainable Energy Association (BCSEA) filed a Request to Intervene in the FEI Biomethane Energy Recovery Charge Rate Methodology and Comprehensive Review of a Revised Renewable Gas Program proceeding (Proceeding);
- D. On April 18, 2023, BCSEA filed its Participant Assistance/Cost Award (PACA) budget estimate for the amount of \$142,837.50. On May 4, 2023, FEI was informed of BCSEA's PACA budget estimate as per Section 14 of the BCUC's PACA Guidelines;
- E. On June 27, 2023, the BCUC received an application from BCSEA for interim PACA funding (Interim PACA Application) seeking \$137,082.67 in interim PACA funding for its participation in the Proceeding;
- F. By letter dated July 24, 2023, FEI provided its comments on the Interim PACA Application, stating if the BCUC is satisfied that the participant has met the eligibility requirements, the funding days claimed are

appropriate, and the level of participation has met with the BCUC's criteria and requirements, then FEI has no further comment; and

- G. The BCUC has reviewed the Interim PACA Application in accordance with the criteria and rates set out in the PACA Guidelines attached to Order G-97-17 and determines that an adjusted cost award should be approved.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act*, the BCUC orders as follows:

1. Interim funding is awarded to BCSEA in the listed amount for their participation in the Proceeding, which constitutes an advance against the BCUC's final cost award determination after the conclusion of the Proceeding:

Participant	Award
BCSEA	\$71,418.75

2. FEI is directed to reimburse BCSEA for the awarded amount in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of August 2023.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

FortisBC Energy Inc.
Biomethane Energy Recovery Charge Rate Methodology and
Comprehensive Review of a Revised Renewable Gas Program
Interim Participant Assistance/Cost Award Application

REASONS FOR DECISION

1.0 INTRODUCTION

On December 17, 2021, in accordance with British Columbia Utilities Commission (BCUC) Orders G-35-21 and G-242-21, FortisBC Energy Inc. (FEI) filed its Stage 2 Comprehensive Review and Application for Approval of a Revised Renewable Gas Program (Application).

On June 27, 2023, BC Sustainable Energy Association (BCSEA) submitted a request for interim Participant Assistance / Cost Award (PACA) funding (Interim PACA Application) seeking \$137,082.67 for its participation in the Proceeding. BCSEA is a registered intervener in the proceeding.

1.1 Summary of Interim Funding Request

In the Interim PACA Application, BCSEA requests funding for legal counsel fees and professional consultant fees for tasks such as reviewing the Application, preparing information requests (IR), reviewing IR responses, addressing legal and procedural issues, reviewing intervener evidence, and reviewing FEI's submissions regarding treatment of carbon credits. BCSEA also requests funding for specialist/expert witness fees and consulting fees related to the preparation of intervener evidence on the cost effectiveness of electric heat pumps as compared to gas-fired equipment.

In the Interim PACA Application, BCSEA requests funding for:

- 23.47 days time for legal counsel
- 27.28 days total time for two consultants
- 11.75 days total time for two expert witnesses

The requested funding above is for work performed between June 21, 2021 and June 14, 2023. BCSEA provided invoices to support all requested funding days. The table below summarizes the professional fees and funding rates in the PACA Application:

Professional Role	Name	Years of Experience	Daily Rate (\$)	Number of Days	Total (Incl. tax, \$)
Legal Counsel	William J. Andrews	30+	2,800	23.47	73,601.92
Consultant	Thomas Hackney	20+	1,850	12.4	24,087.00
Consultant	Elizabeth Bourguet	2	950	14.88	14,131.25
Specialist/Expert Witness	Chris Neme	30+	2,150	2.47	5,307.81
Specialist/Expert Witness	Jim Grevatt	30+	2,150	9.28	19,954.69
Total					\$137,082.67

1.2 PACA Budget Estimate

BCSEA submitted a PACA budget estimate dated April 18, 2023, in the amount of \$142,837.50. The PACA budget estimate was submitted prior to FEI's May 8, 2023, request to modify the regulatory timetable regarding an update on a carbon tax matter and assumed the Proceeding would advance to written final arguments.

The table below summarizes the professional fees and funding rates in BCSEA's PACA budget estimate:

Professional Role	Name	Years of Experience	Daily Rate (\$)	Number of Days	Total (Incl. tax, \$)
Legal Counsel	William J. Andrews	30+	2,800	25	78,400.00
Consultant	Thomas Hackney	20+	1,850	15	29,137.50
Consultant	Elizabeth Bourguet	2	950	10	9,500.00
Specialist/Expert Witness	Chris Neme	30+	2,150	2	4,300.00
Specialist/Expert Witness	Jim Grevatt	30+	2,150	10	21,500.00
Total					\$142,837.50

1.3 FEI Comments on BCSEA's Interim PACA Application

On July 24, 2023, FEI provided its comments in response to BCSEA's Interim PACA Application, stating it defers to the BCUC to determine whether BCSEA 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.

FEI was also informed of BCSEA's PACA budget submission on May 4, 2023, noting the budget amount of \$142,837.50.

1.4 Reasons for Decision Outline

The Panel has reviewed the Interim PACA Application in accordance with the PACA Guidelines attached to Order G-97-17 (PACA Guidelines). In these reasons for decision, the Panel addresses BCSEA's eligibility for interim PACA funding, and provides an explanation of the interim funding amount awarded to BCSEA.

2.0 ELIGIBILITY FOR INTERIM PACA FUNDING

Section 5.1 of the PACA Guidelines states that for interim funding applications, the BCUC must be satisfied that (a) the participant has demonstrated a need for financial assistance; and (b) the proceeding is lengthy.

BCSEA submits that interim PACA is warranted, taking into account that as of the time of the PACA Application:

- the proceeding has been going on for an unusually long time (24 months);
- BCSEA's work effort has been substantial (\$137,082.67 in costs to date of Interim PACA Application); and
- there is no regulatory timetable specifying when the proceeding will end at the time of Interim PACA Application.

BCSEA notes that financial certainty is important both to BCSEA's own regulatory team (Mr. Andrews and Mr. Hackney) and to its expert consultants, Energy Futures Group (EFG). In particular, BCSEA notes that EFG's work (costed at \$39,393.75) is completed, subject only to anticipated minor assistance with BCSEA's final argument and to the remote possibility of EFG personnel being called to testify in an oral hearing. EFG's work on this proceeding began some 16 months ago (in February 2022). BCSEA submits that in their experience, an extended period of financial uncertainty exacerbates the difficulty in attracting qualified expert witnesses for BCUC proceedings.

Panel Determination

The Panel finds that BCSEA is eligible for interim PACA funding.

The Panel recognizes BCSEA's need for financial assistance given the costs BCSEA has incurred for its work on the Proceeding to-date and accepts BCSEA's statement that it "does not have the ability to participate in Commission proceedings without the benefit of PACA funding." The proceeding has been sufficiently lengthy to justify an interim award. It has been over two years since FEI submitted the proposed scope and timing for the Application and approximately 20 months since FEI filed the Application.

3.0 AMOUNT OF INTERIM FUNDING AWARD

Having determined BCSEA is eligible for interim PACA funding, the Panel now considers what amount of interim funding is warranted, and under what conditions. Sections 5.3 to 5.5 of the PACA Guidelines provide the following guidance:

- 5.3 Upon completion of the process set out in Sections 14.2.3 and 14.2.7, interim funding may be ordered by the Commission for: (a) costs, or a portion thereof, that have been incurred after the proceeding has begun; or (b) estimated costs not yet incurred.
- 5.4 Interim funding ordered by the Commission typically does not exceed 50 percent of the participant's budget estimate.

- 5.5 If interim funding is granted, the Commission will make a determination as to whether the amount (a) constitutes a final award for costs already incurred; or (b) constitutes an advance against the Commission's final cost award determination after the conclusion of the proceeding.

BCSEA submits that the costs for the evidence prepared by EFG is reasonable, noting its relevance and complexity of work required; and that the total amount requested for its participation is reasonable given the workload required.

BCSEA further submits that this is an appropriate case for the BCUC to exercise its discretion under Section 5.4 of the PACA Guidelines to grant an interim award that exceeds 50 percent of applicant's budget estimate.

In response to BCUC staff questions, BCSEA further explained why the BCUC can, and in this case, should grant BCSEA an interim award that exceeds 50 percent of its PACA budget estimate. BCSEA again emphasized the importance of financial certainty and additionally stated:

First, this is a PACA application for "costs, or a portion thereof, that have been incurred after the proceeding has begun," not an application for "estimated costs not yet incurred." BCSEA submits that section 5.4 has a 'moral hazard' rationale that is much more strongly oriented to applications for costs not yet incurred than to applications for costs that have already been incurred. This interpretation is supported by the Guidelines' reference to the applicant's budget estimate, which is a document that is highly relevant to an application for estimated costs not yet incurred and of secondary relevance to an application for recovery of costs already incurred.

Second, this is an application for a "final award for costs already incurred," not for "an advance against the Commission's final cost award determination after the conclusion of the proceeding." The Commission Panel's cost award determination after the conclusion of the proceeding can and will take into account the size of any interim grant made during the course of the proceeding for costs already incurred.

Panel Determination

The Panel finds that the appropriate amount of BCSEA's interim PACA funding is \$71,418.75, representing 50% of BCSEA's PACA Budget Estimate of \$142,837.50. Interim funding is granted as an advance on a final cost determination pursuant to Section 5.5 (b) of the Guidelines.

As the Proceeding is ongoing, it is premature to evaluate how BCSEA has contributed to a better understanding of the issues in the Proceeding, whether BCSEA's costs are fair and reasonable, or other considerations pursuant to Section 4.3 of the Guidelines. The Panel does not find it appropriate to make a judgement on the reasonableness of BCSEA's costs prior to completion of the proceeding.

Pursuant to Section 5.4 of the Guidelines, interim PACA funding does not normally exceed 50 percent of a participant's budget estimate. This is in part because interim PACA funding is an advance against a possible future PACA award, and no determination is made at the time of the interim award as to the eligibility of any part of the PACA budget. Limiting the interim funding to one half of the PACA budget reduces the likelihood that a participant is asked to refund interim funding for amounts later determined to be ineligible.

The Panel notes that for interim funding awards granted under Section 5.5 (b), a participant must file a final cost award under Section 14.0 of the Guidelines at the conclusion of the proceeding.