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

and

British Columbia Sustainable Energy Association
and the Sierra Club of British Columbia regarding an
Application for Reconsideration of Order F-1-15

BEFORE:  D. M. Morton, Commissioner/Panel Chair
          D. A. Cote, Commissioner
          N. E. MacMurchy, Commissioner

May 5, 2015

O R D E R

WHEREAS:

A. By Orders F-28-14 and F-29-14, dated October 27, 2014, the British Columbia Utilities Commission
   (Commission) approved the Participant Assistance/Cost Award (PACA) funding to participants involved in the
   Performance Based Ratemaking proceedings from FortisBC Energy Inc. and FortisBC Inc. for the period of
   2014 through 2019 (PBR proceedings);

B. On November 10, 2014, the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA-SCBC)
   filed a reconsideration request pertaining to Orders F-28-14 and F-29-14;

C. By Order F-1-15 dated January 8, 2015, the Commission determined that BCSEA-SCBC failed to make a prima
   facie case to warrant a full reconsideration of Orders F-28-14 and F-29-14, and determined that the
   reconsideration will not proceed to Phase Two;

   BCSEA-SCBC alleged, among other things, that:
   • the Commission failed to examine whether there was a prima facie case to warrant reconsideration;
   • the Panel presiding over Order F-1-15 was not impartial in reviewing its previous decision;
   • the Panel's restated decision to reduce the award by $100,000 was and/or is arbitrary and excessive,
     warranting reconsideration; and
- Order F-1-15 has significant material implications warranting reconsideration.

E. By Order G-25-15, the Commission considered the BCSEA-SCBC’s request and determined that there is a *prima facie* case to proceed to a Phase Two of reconsideration process. The Commission limited the scope of the reconsideration process to whether the $100,000 reduction is arbitrary; and

F. The Commission has reviewed all of the evidence contained in this proceeding, the relevant records contain in the PBR proceedings, and BCSEA-SCBC’s PACA requests dated July 31, 2014.

**NOW THEREFORE,** pursuant to section 99 of the *Utilities Commission Act*, and for the reasons attached to this order as Appendix A, the Commission determines that the $100,000 reduction as outlined in Orders F-28-14 and F-29-14 was not arbitrary. The reconsideration request from BCSEA-SCBC is therefore denied.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 5th day of May 2015.

**BY ORDER**

*Original signed by:*

D. M. Morton  
Commissioner/Panel Chair

Attachment
British Columbia Sustainable Energy Association and
the Sierra Club of British Columbia
Application for Reconsideration of Order F-1-15

REASONS FOR DECISION

BACKGROUND

On June 10, 2013, Fortis BC Energy Inc. (FEI) filed its Application for Approval of a Multi-Year Performance Based Ratemaking Plan for 2014 through 2018 (FEI PBR). On July 5, 2013, FortisBC Inc. (FBC) also filed its Application for Approval of a Multi-Year Performance Based Ratemaking Plan for 2014 through 2018 (FBC PBR). In accordance with Orders G-150-13 and G-151-13, certain portions of the Application were combined and proceeded by way of an oral hearing (PBR Methodology). The remaining portions proceeded by way of a written hearing (non-PBR Issues).

On July 31, 2014, the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA-SCBC) submitted two Participant Assistance/Cost Award (PACA) applications, one for the FEI PBR Application, the other for the FBC PBR Application. BCSEA-SCBC’s PACA applications, split by PBR Methodology and non-PBR Methodology, are summarized in Figure 1.

![Figure 1 - BCSEA-SCBC PACA Submission](image)

<table>
<thead>
<tr>
<th></th>
<th>FEI</th>
<th>FBC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>PBR Methodology</td>
<td>$22,048</td>
<td>$22,048</td>
<td>$44,096</td>
</tr>
<tr>
<td>Non-PBR Methodology</td>
<td>$92,808</td>
<td>$123,048</td>
<td>$215,856</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$114,856</strong></td>
<td><strong>$145,096</strong></td>
<td><strong>$259,952</strong></td>
</tr>
</tbody>
</table>

On October 27, 2014, by Orders F-28-14 and F-29-14 (PACA Decisions), the Commission approved an award totalling $159,952.35 to BCSEA-SCBC, a reduction of $100,000 to the applied for amount. In the PACA Decisions, the Commission stated that “[g]iven BCSEA’s narrow focus in the proceeding and the significant expert cost overruns, the Commission is not persuaded that BCSEA’s application for costs is fair and reasonable.” The Commission also established a maximum award of 45 days for those interveners who participated in both proceedings.

On November 10, 2014, BCSEA-SCBC requested a reconsideration of the Commission’s decision (Reconsideration Request), alleging a number of specific errors of fact and law that, in its view, warrant reconsideration. In their Reconsideration Request, BCSEA-SCBC also stated that the reduction of $100,000 is arbitrary and an excessively large amount that it is a “tremendous financial blow” to its organization. They also submitted that the cutback, and the finding that BCSEA and SCBC are not ratepayer groups has “a serious chilling effect on the ability of groups representing environmentally minded ratepayers to participate on an equal footing with other interveners in Commission proceedings.”

1 Orders F-28-14 and F-29-14, Appendix A, p. 6.
2 Reconsideration Request, p. 5.
3 Ibid.
On January 8, 2015, by Order F-1-15, the Commission found that BCSEA-SCBC failed to make a *prima facie* case that the Commission made either an error of fact or law in its decision. Accordingly, the reconsideration did not proceed to Phase Two.

On January 21, 2015, BCSEA-SCBC applied for reconsideration of Order F-1-15. On February 27, 2015, by Order G-25-15, the Commission determined that there is a *prima facie* case to proceed to a Phase Two reconsideration process and established a regulatory timetable that included a Commission information request (IR), BCSEA-SCBC response to IR, comments from FEI and FBC and reply comments from BCSEA-SCBC. The Commission limited the scope of the reconsideration to whether the $100,000 reduction is arbitrary.

In response to Commission IRs, BCSEA-SCBC provided a further breakdown of its expenditures. This breakdown is shown in Figure 2.

*Figure 2 - Breakdown of BCSEA-SCBC PACA Expenditures*

<table>
<thead>
<tr>
<th>Category</th>
<th>FEI EEC</th>
<th>FBC EEC</th>
<th>Other Non-PBR</th>
<th>PBR</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td># Days</td>
<td>20.75</td>
<td>20.75</td>
<td>1.7</td>
<td>18.6</td>
<td>61.8</td>
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<tr>
<td>Cost (based on a daily rate of $1,800)</td>
<td>$37,350</td>
<td>$37,350</td>
<td>$3,060</td>
<td>$33,480</td>
<td>$111,240</td>
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<tr>
<td>Disbursements</td>
<td></td>
<td>$902</td>
<td></td>
<td>$145</td>
<td>$1,047</td>
</tr>
<tr>
<td>Tax</td>
<td>$4,482</td>
<td>$4,482</td>
<td>$367</td>
<td>$4,018</td>
<td>$13,349</td>
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<tr>
<td><strong>Total Legal</strong></td>
<td>$41,832</td>
<td>$42,734</td>
<td>$3,427</td>
<td>$37,643</td>
<td>$125,636</td>
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<tr>
<td><strong>Case Manager</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td># Days</td>
<td>17.9</td>
<td>17.9</td>
<td>2.3</td>
<td>7.8</td>
<td>46.0</td>
</tr>
<tr>
<td>Cost (based on a daily rate of $500)</td>
<td>$8,963</td>
<td>$8,963</td>
<td>$1,150</td>
<td>$3,900</td>
<td>$22,975</td>
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<tr>
<td>Disbursements</td>
<td>$564</td>
<td>$549</td>
<td></td>
<td>$1,191</td>
<td>$2,303</td>
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<tr>
<td>Tax</td>
<td>$448</td>
<td>$448</td>
<td>$58</td>
<td>$195</td>
<td>$1,149</td>
</tr>
<tr>
<td><strong>Total Case Mgr</strong></td>
<td>$9,975</td>
<td>$9,959</td>
<td>$1,208</td>
<td>$5,286</td>
<td>$26,427</td>
</tr>
<tr>
<td><strong>Experts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Green Energy Economics Group (GEEG)</td>
<td>$38,110</td>
<td>$34,846</td>
<td></td>
<td></td>
<td>$72,956</td>
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<tr>
<td>Resource Insight Inc. (RI)</td>
<td></td>
<td>$34,933</td>
<td></td>
<td></td>
<td>$34,933</td>
</tr>
<tr>
<td><strong>Total Experts</strong></td>
<td>$38,110</td>
<td>$69,779</td>
<td></td>
<td></td>
<td>$107,889</td>
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<tr>
<td><strong>Grand Total</strong></td>
<td>$89,917</td>
<td>$122,472</td>
<td>$4,635</td>
<td>$42,928</td>
<td>$259,952</td>
</tr>
</tbody>
</table>
COMMISSION DETERMINATION

The Panel has re-examined the evidence its Decision with respect to the BCSEA-SCBC PACA funding request for the FEI/FBC PBR proceedings. For the reasons laid out below, the Panel finds that the $100,000 reduction as outlined in Orders F-28-14 and F-29-14 and the accompanying Reasons for Decision was not arbitrary and therefore the reconsideration is denied.

Our Decision on this reconsideration is focused on whether BCSEA-SCBC’s contribution satisfies the PACA entitlement criteria of contributing to a “better understanding of the issues by the Commission” in the following areas:

1. PBR Methodology issues;
2. The level of FEI’s expenditures related to Energy Efficiency & Conservation (EEC) and FBC’s expenditures related to Demand Site Management (DSM).

These areas are where most of BCSEA-SCBC’s expenditures were made - approximately $43,000 for PBR Methodology, $90,000 for EEC expenditures and $123,000 for DSM expenditures.

**PBR Methodology**

For PBR Methodology issues BCSEA-SCBC have claimed legal counsel and case management costs $42,928, split equally between the FEI and the FBC proceedings. BCSEA-SCBC filed evidence in both proceedings but none of this was concerned with the proposed PBR Methodology. BCSEA-SCBC did provide its position relative to going forward with a PBR Methodology as part of its final Argument, but this position was supported by only cursory commentary and no significant analysis as to how it arrived at its conclusions. For example, BCSEA-SCBC stated that if the Commission was to move forward with a PBR plan there were issues that arise, and that first among these “are issues to do with the components of the PBR plan: the I-factor, the X-factor, the Efficiency Carryover Mechanism, the exclusions, the off-ramp, service quality indicators, the mid-term review, and so on. BCSEA-SCBC will leave these topics to other parties at this time.”

All of these are important components of the PBR Methodology.

BCSEA-SCBC’s submissions on PBR Methodology were of no assistance to the Panel in its decision on these fundamental issues. However, the Panel is prepared to accept 2 days to review the material in order for BCSEA-SCBC to determine that it will not put forward an argument. **Accordingly, the Panel denies the recoverability of $39,148 of these expenditures.** In calculating this reduction in recoverability, the Panel deducted $3,780, which represents two legal days at $1,800 per day plus five percent GST, from the original amount of $42,928.

**EEC/DSM expenditures**

The Panel previously found that the submissions of BCSEA-SCBC, in the PBR proceeding, regarding EEC and DSM expenditures represent a substantial interest in a substantial issue and contributed to the Commission’s understanding of EEC/DSM issues. However, we are not persuaded that all of the amounts requested are reasonable and should be recovered from ratepayers.

In the FBC PBR proceeding, BCSEA-SCBC provided evidence from GEEC, which was prepared by John Plunkett and RI, which was prepared by Paul Chernick. Counsel for BCSEA-SCBC billed more than 6 days (over $12,000 including tax) for what is described as “evidence.” The Case Manager billed for 2 days ($1,050) for work described as “assist with evidence research & editing.” In the Panel’s view, this is an excessive amount of time for counsel.

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5 FEI-FBC-PBR proceedings, BCSEA-SCBC Final Argument, p. 58.
and the case manager to spend on evidence that was claimed to be prepared by the experts. In particular, the Panel questions what “editing” of the evidence was required by the Case Manager considering that the evidence is entitled “Direct Testimony” of the experts John Plunkett and Paul Chernick.\(^6\)

The Panel has similar concerns about the responses to Applicant and Intervener IRs on BCSEA-SCBC’s evidence. Counsel recorded over 8 days ($16,128) and the Case Manager over 1 day ($525). Again, this appears to the Panel to be excessive, considering that the task of responding to IRs on the evidence should substantially fall to the Experts.\(^7\)

We acknowledge that to reject the total amount of approximately $29,700 claimed by legal counsel and case management for work on expert evidence would be unreasonable given there is justification for some review. However, the work for which amounts claimed was largely unnecessary and therefore excessive. **The Panel rejects 80 percent of the amount claimed ($23,700) for the preparation of evidence and related IRs and considers an amount of $6,000 to be more reasonable for a review of the experts’ work.**

For the FEI PBR proceeding BCSEA-SCBC claimed a total of $38,110 for expert witness expenses. BCSEA-SCBC’s submissions indicate that overall they are very supportive for FEI’s EEC Plan and recommend no major changes. Given this overall support and the lack of concern BCSEA-SCBC have expressed in its submissions, the Panel is not persuaded that spending $38,100 for expert witnesses in that proceeding was reasonable. **Accordingly, the Panel considers that a reduction in the award is appropriate and denies the recovery of one third of the amount claimed, or $12,700.**

In the FBC PBR proceeding, the BCSEA-SCBC claimed $69,779 for experts. In that proceeding, however, FBC requested that the approval of its 2015-2018 DSM expenditures be removed from the scope of the proceeding. The Panel granted this request and therefore consideration of and determinations on the 2015-2018 DSM program were made by a different panel in a separate Commission proceeding. Accordingly, we only utilized the DSM evidence in our approved of $3 million of DSM expenditure in 2014 in the FBC PBR proceeding.

This re-scoping occurred after BCSEA-SCBC’s evidence had been filed and after BCSEA-SCBC had responded to two rounds of IRs, on that evidence, from FBC and interveners. The Panel is of the view that, although not all of the evidence was used in our determinations in the PBR proceeding, the evidence was submitted and tested in the PBR proceeding and therefore it is appropriate that the associated expenditures be considered for PACA funding. However, the Panel is not prepared to allow the entire amount requested for this evidence, without any consideration of what its usefulness would have been to the Panel had it been required to make a determination on FBC’s DSM expenditures. Accordingly, the Panel has reviewed the evidence and the information requests on that evidence in making its PACA determination.

The Panel makes the following observations regarding the DSM evidence submitted:

1. In BC, the Demand Side Measures Regulation (DSM Regulation) prescribes rules for the application of cost-effectiveness tests. There is a passing acknowledgement of this important requirement in the section “DSM Resource Acquisition Planning, Least-cost Efficiency Resource Acquisition,” but no attempt is made to otherwise address this requirement in the BCSEA-SCBC evidence. Accordingly, the Panel found this lack of a BC focus significantly reduced the usefulness of the BCSEA-SCBC evidence.

\(^6\) Calculated by the Panel from Exhibit B-2, Attachment_BCUC IR1.1.

\(^7\) Ibid.
2. A report was prepared by GEEG for BCSEA-SCBC dated December 20, 2013, titled “Expanding Energy Efficiency Resource Acquisition for FBC” and attached as an Appendix to the evidence. This report included results of a multivariate regression model developed by GEEG, the results of which were not useful to the Panel in evaluating the Application. Therefore, the Panel does not consider that costs related to this report and the development of the model are appropriate for inclusion in the PACA award.

3. BCSEA-SCBC also included analysis on expansion of the heating equipment early replacement program to include end-of life retirement. The existing program was already cost-effectively challenged, and the Panel considers detailed analysis on expansion of this program to end-of life retirement to be unnecessary and excessive.

4. Although the FBC Long Run Marginal Cost evidence dealt with a key issue in the FBC PBR Application, the Panel considers the level of evidence included to be excessive. For example, the report included seven pages of evidence that the short-run marginal cost based approach used by FBC was not an appropriate methodology to use, and then an additional 14 pages of evidence going into the details of the short-run methodology used by FBC. The Panel found that this level of detail was unnecessary to argue BCSEA-SCBC’s position.

5. Approximately a quarter of the evidence filed was a duplication of material previously submitted in the FBC 2012-2013 Revenue Requirements Application. In particular, the Panel notes the following:
   - In the section titled “Best Practices in Energy-Efficiency Resource Acquisition,” only evidence on discretionary DSM, which is substantially less than half the section, appears to be new.
   - Approximately half of the section titled “Integration of Gas and Electric Efficiency Programs” is a duplication of previously submitted material.
   - Some of the material in the subsection titled “Increasing FBC DSM savings,” repeats previous evidence. Most of the new evidence in this section deals with a model GEEG has developed to predict acquisition cost. However, it is not as accurate as a Conservation Potential Review and further, the approach is not consistent with the DSM Regulation.

The Panel considers that given such issues as the lack of a BC focus, the unnecessary GEEG report, the excessive level of LRMC analysis and duplication of previous evidence, a reduction of the award in the amount of one third of the amount claimed is appropriate. Accordingly, the recoverability of $23,333 is denied.

Other issues
BCSEA-SCBC charged 7.8 hours for legal and 8.8 hours for case management prior to either of the PBR applications being filed. Of these, it appears that 3 hours were for the EEC Workshop held in Kelowna, with much of the balance described as planning, email and phone calls. The Panel is not prepared to accept any preceeding expenditures in excess of the 3 hours for the EEC Workshop and accordingly denies $1,580.

Regarding IRs to Fortis on DSM/EEC, BCSEA-SCBC, for its legal counsel, invoiced over 3 days for preparation of IR No. 1 and again over 3 days for preparation of IR No. 2. For the Case Manager BCSEA-SCBC invoiced over 12 days for the Case Manager’s work related to IRs. The Panel is of the view that the more than 6 days preparation time for Legal Counsel, which represents a cost expenditure of over $12,000, is excessive. While some review of the IR material may be required by Legal Counsel, the preparation should fall to the experts or a consultant, and the coordination of the preparation to the Case Manager. If the BCSEA-SCBC legal counsel is performing the duties of a case manager or consultant, the Panel expects that he or she would invoice at the daily rate approved for a
case manager or consultant. Although the Panel has not reduced the award on account of this issue, it may be an issue for other panels in other proceedings.

Although it does not constitute a substantial amount relative to the total PACA requested, the Panel is concerned that while the PACA Guidelines provide that the maximum daily rate to be allowed for legal counsel is $1,800, BCSEA submitted the following legal charges: for March 11, 2014, $2,466; for March 12, 2014, $2,358; for March 13, 2014, also $2,358; and for March 14, 2014, $2,034. The Panel is not prepared to exceed the maximum daily award allowed under the PACA Guidelines. However, the charges on March 11, 12 and 13, 2014 are related to the PBR portion of the proceeding, and we have already disallowed the recovery of these charges relating to the PBR portion of the proceeding.

Summary of disallowed amounts
The disallowed amounts are summarized as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PBR Methodology</td>
<td>$39,140</td>
</tr>
<tr>
<td>Preparation of evidence and related IRs</td>
<td>$23,700</td>
</tr>
<tr>
<td>FEI Expert Evidence</td>
<td>$12,700</td>
</tr>
<tr>
<td>FBC Expert Evidence</td>
<td>$23,333</td>
</tr>
<tr>
<td>Pre-proceeding expenditures</td>
<td>$1,580</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$100,453</strong></td>
</tr>
</tbody>
</table>

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8 Calculated by the Panel from Exhibit B-2, Attachment_BCUC IR1.1.
9 Ibid.