



bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

British Columbia Hydro and Power Authority

Reconsideration of the Performance Based Regulation Report Order G-388-21

Decision and Order G-73-24

March 15, 2024

Before:

M. Jaccard, Panel Chair
A. K. Fung, KC, Commissioner
E. B. Lockhart, Commissioner

TABLE OF CONTENTS

Page no.

Executive summary	i
1.0 Introduction	1
2.0 Grounds for Reconsideration	1
3.0 BC Hydro's Request to Vary the Directive in the PBR Report Decision	4
4.0 Other Matters Arising	7
4.1 Future Rate Applications	8
4.2 BC Hydro's Recent Reconsideration Applications	8
COMMISSION ORDER G-73-24	
APPENDIX A Exhibit List	

Executive summary

On December 21, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) for reconsideration of the Performance Based Regulation (PBR) Report Decision¹ issued on December 21, 2021 (Application). In the Application, BC Hydro requests a variance to the PBR Report Decision to, among other things, permit BC Hydro to file its revenue requirements applications (RRAs) based on a forecast cost of service approach until further order of the BCUC.

BC Hydro states that its request for reconsideration of the PBR Report Decision is on the grounds of new facts and changes in circumstances since the PBR Report Decision was issued, and just cause pursuant to Rule 26.05 (d) to (f) of the BCUC's Rules of Practice and Procedure.² BC Hydro makes two arguments in support of its grounds for reconsideration: (i) BC Hydro's operating environment is too uncertain to reasonably expect costs to be manageable within a PBR formula due to the energy transition and drive towards electrification in the province and (ii) the regulatory processes required to implement and operate under PBR would result in regulatory inefficiency.

With the exception of the Association of Major Power Customers of British Columbia and Residential Consumer Intervener Association, interveners submit that there are sufficient grounds for reconsideration.

After reviewing the Application, evidence, and arguments filed in this proceeding, the Panel:

- finds that the Application has established, on its face, reasonable grounds that support reconsideration of the PBR Report Decision pursuant to Rule 26.05 (d) to (f);
- rescinds the directive in Order G-388-21 requiring BC Hydro to file, no later than December 31, 2023, a proposal for its next RRA; and
- directs BC Hydro to file a report with the BCUC by December 31, 2028, assessing whether its operating environment has changed such that PBR has become feasible.

The Panel is persuaded that new facts and a change in circumstances have arisen as a result of the energy transition since the evidentiary record closed in the PBR Report proceeding, which may have had a material bearing on the PBR Report Decision. The Panel is persuaded by the evidence provided by BC Hydro in this proceeding of legislative and mandate changes since December 2021 that increase cost uncertainty and cast doubt on whether PBR would be an effective regulatory regime for BC Hydro at this time. Therefore, the Panel is not convinced that the adoption of what would be a new and untested regulatory regime for a utility like BC Hydro is warranted at this time.

In addition, the Panel recognizes that it may be efficient for BC Hydro to consider rate-setting reform measures and the concerns expressed by interveners in this proceeding prior to filing its next RRA. The Panel also addresses concerns raised by interveners regarding BC Hydro's recent practice of seeking reconsideration of previous BCUC decisions and directives after the 60-day deadline set out in Rule 26.02.

¹ BCUC Review of British Columbia Hydro and Power Authority's Performance Based Regulation Report, Decision and Order G-388-21 dated December 21, 2021 (PBR Report Decision).

² BCUC Rules of Practice and Procedure attached to the BCUC Order G-72-23 dated April 3, 2023.

1.0 Introduction

On December 21, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) for reconsideration of the Performance Based Regulation (PBR) Report Decision¹ issued on December 21, 2021 (Application). The Application is filed pursuant to section 99 of the *Utilities Commission Act*, which relates to reconsiderations of BCUC decisions and orders. In the Application, BC Hydro requests a variance to the PBR Report Decision to, among other things, permit BC Hydro to file its revenue requirements applications (RRAs) based on a forecast cost of service approach until further order of the BCUC.² BC Hydro also concurrently filed its PBR plan application in compliance with the PBR Report Decision (PBR Plan Application).

By Order G-14-24 dated January 17, 2024, the BCUC granted BC Hydro's request for permission to apply for reconsideration of the PBR Report Decision after the expiry of the 60-day filing deadline specified in Rule 26.02 of the BCUC's Rules of Practice and Procedure³ (Rules). By the same order, the BCUC established the regulatory timetable for the review of the Application which included public notice of the Application, intervener registration, the filing of supplementary information by BC Hydro, and final and reply arguments.

The following nine interveners registered in this proceeding:

- i. Movement of United Professionals (MoveUP);
- ii. Richard McCandless (McCandless);
- iii. FortisBC Energy Inc. and FortisBC Inc. (FortisBC);⁴
- iv. Association of Major Power Customers of British Columbia (AMPC);
- v. Residential Consumer Intervener Association (RCIA);
- vi. the Commercial Energy Consumers Association of British Columbia (the CEC);
- vii. BC Sustainable Energy Association (BCSEA);
- viii. Nu-Chah-Nulth Tribal Council (NTC); and
- ix. British Columbia Old Age Pensioners' Organization et al. (BCOAPO).

This Decision addresses the Panel's final determinations on the Application. The Panel first addresses whether there are sufficient grounds for reconsideration in Section 2.0, followed by a discussion on the merits of the reconsideration request in Section 3.0. Then, the Panel addresses other matters arising, including concerns raised by interveners, in Section 4.0.

2.0 Grounds for Reconsideration

BC Hydro states that its request for reconsideration of the PBR Report Decision is on the grounds of new facts and changes in circumstances since the PBR Report Decision was issued, and just cause pursuant to Rule 26.05 (d) to (f).⁵

¹ BCUC Review of British Columbia Hydro and Power Authority's Performance Based Regulation Report, Decision and Order G-388-21 dated December 21, 2021 (PBR Report Decision).

² Exhibit B-1, p. 3.

³ BCUC Rules of Practice and Procedure attached to the BCUC Order G-72-23 dated April 3, 2023.

⁴ While FortisBC registered as an intervener in this proceeding, it did not submit a final argument.

⁵ Exhibit B-1, p. 4.

Rule 26.05 states that an application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which must include one or more of the following:

- (b) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
- (c) facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding;
- (d) new fact(s) have arisen since the issuance of the decision which have material bearing on the decision;
- (e) a change in circumstances material to the decision has occurred since the issuance of the decision; or
- (f) where there is otherwise just cause.

BC Hydro makes two arguments in support of its grounds for reconsideration: (i) due to the impact of the energy transition on BC Hydro's operations, there is now too much uncertainty to reasonably manage its costs within a PBR formula; and (ii) the regulatory processes required to implement and operate under PBR would result in regulatory inefficiency compared to the status quo under cost of service regulation, which will draw away resources needed to support the energy transition.⁶

Positions of the Parties

MoveUP, the CEC, BCSEA, and BCOAPO submit that there are sufficient grounds for reconsideration,⁷ while AMPC and RCIA raise concerns with the validity of the grounds for reconsideration.⁸ McCandless and NTC did not provide submissions on the grounds for reconsideration.

AMPC submits that reconsiderations should only be granted in exceptional circumstances and that BC Hydro's "case for changed facts is thin".⁹

RCIA submits that there are no grounds for reconsideration as required under the Rules.¹⁰ Specifically, RCIA argues that there are no new facts or a change in circumstances that are material because the energy transition and electrification were well underway when the BCUC issued the PBR Report Decision in December 2021. This is demonstrated by the BC government's CleanBC plan and the CleanBC Roadmap to 2030 (CleanBC Roadmap), which were released in 2018 and October 2021, respectively.¹¹ RCIA submits that uncertainty and complexity under PBR were already considered by the BCUC in the PBR Report Decision¹² and that BC Hydro's objections to PBR related to regulatory efficiency do not constitute just cause to grant the reconsideration.¹³ In RCIA's view, BC Hydro's Application is an "unwarranted and unjust 'second kick at the can.'"¹⁴

In reply, BC Hydro submits that significant developments in electrification policy and customer demand have emerged since the PBR Report Decision was issued. In BC Hydro's view, these significant developments have changed the circumstances in which BC Hydro operates and have correspondingly impacted cost certainty. BC Hydro submits that the scale and scope of the energy transition and the impacts of electrification on its costs were not known at the time the PBR Report Decision was issued and therefore constitute new facts and changes

⁶ Exhibit B-1, p. 4.

⁷ MoveUP Final Argument, p. 1, CEC Final Argument, p. 2, BCSEA Final Argument, p. 3, BCOAPO Final Argument, p. 2.

⁸ AMPC Final Argument, p. 1, RCIA Final Argument, pp. 18–19.

⁹ AMPC Final Argument, p. 1.

¹⁰ RCIA Final Argument, pp. 5, 18.

¹¹ RCIA Final Argument, pp. 5–6.

¹² RCIA Final Argument, p. 8.

¹³ RCIA Final Argument, pp. 6, 13.

¹⁴ RCIA Final Argument, p. 7.

in circumstances.¹⁵ Specifically, BC Hydro notes the significant changes to its mandate set by the provincial government (Province), the pace of change set by policies released since the close of the evidentiary record in the PBR Report proceeding, and recent amendments to the *Clean Energy Act*.¹⁶

BC Hydro submits that the BCUC could not have considered the CleanBC Roadmap in its PBR Report Decision because, although the CleanBC Roadmap was published prior to the issuance of the PBR Report Decision, it was published after the close of the evidentiary record in that proceeding. Further, the BCUC's consideration of electrification in the PBR Report proceeding was limited to incentives for low-carbon electrification initiatives as prescribed undertakings. BC Hydro also notes that the Province has since implemented many of the initiatives proposed in the CleanBC Roadmap, including carbon tax increases, zero-emission vehicle targets, carbon pollution standards in the BC Building Code, enabling investments in green hydrogen production, and 100 percent efficiency space and water heating equipment standards.¹⁷ BC Hydro submits that these new facts and changes in circumstances are material as they fundamentally affect the cost-benefit analysis undertaken by the BCUC in the PBR Report Decision.¹⁸

Panel Determination

The Panel finds that the Application has established, on its face, reasonable grounds that support reconsideration of the PBR Report Decision pursuant to Rule 26.05 (d) to (f).

The Panel is persuaded that new facts and a change in circumstances have arisen since the evidentiary record closed in the PBR Report proceeding, which may have had a material bearing on the PBR Report Decision. The Panel acknowledges that there have been significant changes to BC Hydro's operating environment as a result of the energy transition since the close of the evidentiary record in the PBR Report proceeding. BC Hydro has provided clear evidence to this effect in this Application including that the Province has since implemented many of the initiatives proposed in the CleanBC Roadmap such as carbon tax increases, zero-emission vehicle targets, carbon pollution standards in the BC Building Code, enabling investments in green hydrogen production, and 100 percent efficiency space and water heating equipment standards.¹⁹

The Panel also acknowledges that BC Hydro's analysis indicates that regulation under PBR in the face of the energy transition is likely to be less efficient than regulation under the status quo cost of service framework. Further, it is reasonable that the proposed regulatory process under PBR could not be known until BC Hydro went through the exercise of preparing a PBR plan. Therefore, the Panel is persuaded that due to the energy transition, there are sufficient new facts and changes in circumstances or just cause to support reconsideration.

The Panel does not agree that the case for a change in facts is "thin" as AMPC submits, nor that the Application has failed to meet the standard for reconsiderations required under the Rules as RCIA submits. As discussed above, BC Hydro has provided a comprehensive list of legislative and mandate changes to support its reconsideration request under the Rules. While we will assess the merits of BC Hydro's reconsideration request in Section 3.0 below, at this point we find that BC Hydro has sufficiently demonstrated that the impact of the energy transition on a PBR plan and the associated regulatory processes provide a reasonable basis to support the Panel proceeding to reviewing this reconsideration Application.

¹⁵ BC Hydro Reply Argument, pp. 4–5.

¹⁶ BC Hydro Reply Argument, pp. 4–6.

¹⁷ BC Hydro Reply Argument, pp. 5–7.

¹⁸ BC Hydro Reply Argument, p. 9.

¹⁹ BC Hydro Reply Argument, pp. 5–7.

3.0 BC Hydro's Request to Vary the Directive in the PBR Report Decision

As already noted, BC Hydro requests a variance to the PBR Report Decision to:²⁰

- (a) permit BC Hydro to file its RRAs based on a forecast cost of service approach until further order of the BCUC; and
- (b) require BC Hydro to file a report by the end of December 2028 assessing whether its operating environment has changed such that PBR has become feasible.

BC Hydro cites two main reasons for the requested variance to the PBR Report Decision: (i) BC Hydro's operating environment is too uncertain to reasonably expect costs to be manageable within a PBR formula due to the energy transition and drive towards electrification in the province and (ii) the regulatory processes required to implement and operate under PBR would result in regulatory inefficiency.²¹

BC Hydro states that the key driver of cost uncertainty in the near future is the energy transition and, specifically, electrification in British Columbia (B.C.). This is driven primarily by customer demand and government policy, both of which are outside BC Hydro's control and therefore lead to cost uncertainty.²² According to BC Hydro, the policy and legislative landscape in B.C. related to climate change and electrification is changing quickly and is "unprecedented."²³ BC Hydro states that this is exemplified by the pace of provincial policy changes, as seen in the CleanBC Roadmap, the increases in the carbon tax, increasingly higher targets for the adoption of zero-emission vehicles, and the introduction of the Zero Carbon Step Code.²⁴ Given the cost uncertainty caused by electrification, BC Hydro states that certain costs will no longer be controllable and indexable. BC Hydro states that any formulae under a PBR plan would be based on historical information from periods of time that are more stable than the current and future years, which are and will be subject to the energy transition. Therefore, BC Hydro states that implementing PBR at this time would not provide BC Hydro with a reasonable opportunity to earn its fair return.²⁵

BC Hydro states that it is not able to provide an estimated quantitative impact of the energy transition on the split of formula and non-formula operating costs under PBR. This is because electrification impacts a wide scope of its operations and does not drive a single line item of costs but rather it increases the general scope and depth of BC Hydro's operations.²⁶ However, BC Hydro estimates the impact of the energy transition on its ten-year capital plan to be an increase of 50 percent or \$12 billion, which decreases the proportion of indexed capital expenditures from 17 percent to 12 percent.²⁷ Figure 1 below illustrates BC Hydro's proposed split of formula and non-formula costs under PBR for fiscal 2025. The portion of indexed costs is indicated in yellow, and the non-indexed costs are shown in blue.²⁸

²⁰ Exhibit B-1, p. 3.

²¹ Exhibit B-1, p. 4.

²² Exhibit B-1, pp. 4–6.

²³ Exhibit B-1, p. 6.

²⁴ Exhibit B-1, p. 6.

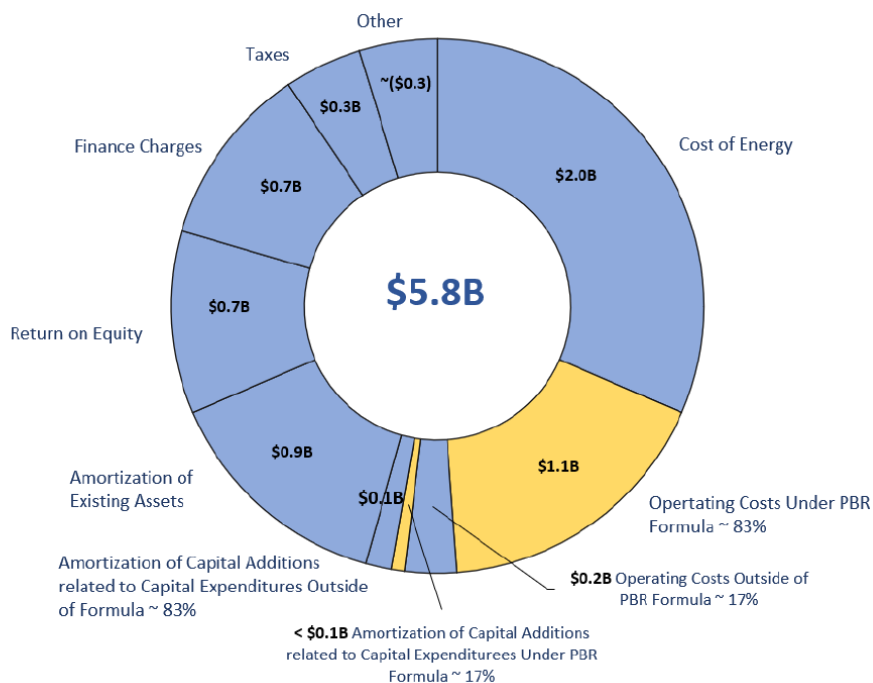
²⁵ Exhibit B-1, pp. 7, 9.

²⁶ BC Hydro Supplemental Information and Final Argument, pp. 10–11.

²⁷ BC Hydro Supplemental Information and Final Argument, pp. 10–11.

²⁸ BC Hydro Supplemental Information and Final Argument, pp. 4–5.

Figure 1: BC Hydro's Proposed Split of the Fiscal 2025 Revenue Requirement under PBR²⁹



BC Hydro also proposes a regulatory process under a six-year PBR term that would include: (i) a one-year proceeding to review BC Hydro's PBR Plan Application, (ii) two 18-month RRAs to review non-formula costs, including a full cost of service review for fiscal 2026, and (iii) five four-month Annual Reviews to update the index-based formula costs and review service quality indicators, among other things.³⁰ Figure 2 below illustrates BC Hydro's proposed regulatory processes under PBR.

Figure 2: BC Hydro's Proposed Regulatory Processes under PBR³¹

2023					2024					2025					2026					2027					2028					2029					2030					2031					2032																																							
O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D	J-M	A-J	J-S	O-D																																																
F24					F25					F26					F27					F28					F29					F30					F31					F32					F33																																							
										Six-Year PBR Term																									Next PBR Term																																																	
PBR Proceeding																									Next PBR Proceeding																																																											
					F26-F28 RRA Application for approval of F26 Base Year rates and F27-F28 Forecast Costs																				F29-F31 RRA Application for approval of F29-F31 Forecast Costs																				F32-F34 RRA Application for approval of F29-F31 Forecast Costs																																							
															Annual Review to set F27 Rates										Annual Review to set F28 Rates										Annual Review to set F29 Rates										Annual Review to set F30 Rates										Annual Review to set F31 Rates										Annual Review to set F32 Rates										Annual Review to set F33 Rates									

BC Hydro states that its proposed regulatory process is the most appropriate for its size and operations and the level of intervener participation in its RRAs, and it reflects the split of formula and non-formula costs under PBR as seen in Figure 1 above.³² In BC Hydro's view, the regulatory process under PBR would be inefficient compared

²⁹ BC Hydro Supplemental Information and Final Argument, p. 5.

³⁰ Exhibit B-1, Figure 1, pp. 10–12.

³¹ Exhibit B-1, Figure 1, p. 12.

³² BC Hydro Supplemental Information and Final Argument, pp. 2–7.

to the status quo cost of service regulation, and would therefore draw resources away from various operational initiatives and regulatory activities needed to support the energy transition.³³

BC Hydro proposes to re-visit the feasibility of PBR at the end of December 2028 as it expects that there would be more information available regarding how the energy transition will impact BC Hydro's costs and therefore more certainty in the operating environment at that time. Further, BC Hydro notes the proposed December 2028 date would coincide with the completion of the Fiscal 2026 to Fiscal 2028 RRA.³⁴

Positions of the Parties

Except for AMPC and RCIA, all interveners who submitted final arguments support BC Hydro's proposed variance of the directive in the PBR Report Decision to implement PBR along with the continued use of cost of service regulation for BC Hydro.³⁵

As discussed in sections 2.0 and 4.2 of this Decision, AMPC in its final argument expresses concerns regarding the timeliness and propriety of BC Hydro's reconsideration Application. Nonetheless, AMPC does support the continued use of cost of service regulation for BC Hydro given that PBR mechanisms are difficult to establish, especially when trying to incent cost efficiencies for a utility like BC Hydro.³⁶

In relation to BC Hydro's statements regarding the uncertainty of costs under PBR, RCIA submits that there is no evidence to suggest increased electrification cannot be adequately addressed through PBR formulae and mechanisms.³⁷ RCIA notes there are mechanisms that BC Hydro could employ to transfer the risk of forecast uncertainty related to electrification to its ratepayers under PBR including flow through and deferral items (i.e. Y factors), exogenous adjustments (i.e. Z factors), or off-ramps to abandon PBR entirely during the test period if circumstances demonstrate it is no longer appropriate.³⁸ RCIA submits that utilities will always have costs that are outside of their control and finding appropriate indices to track costs is inherently challenging and controversial but is not a sufficient reason to overturn the PBR Report Decision.³⁹ Further, RCIA states that the degree to which BC Hydro's costs may or may not be captured within a PBR formula is a matter which can only be properly assessed and tested within a proceeding that reviews the PBR Plan Application itself.⁴⁰

With respect to BC Hydro's assertion that PBR would lead to regulatory inefficiency, RCIA submits that the PBR Report Decision did not conclude that PBR would necessarily require less effort than cost of service regulation, merely that PBR would provide greater opportunity for regulatory efficiency. In RCIA's view, the regulatory effectiveness of PBR is more important than the regulatory efficiency of PBR.⁴¹ RCIA also submits that there may be alternative regulatory processes to that proposed by BC Hydro that would make PBR more efficient.⁴² RCIA raises concerns with the "inherent limitations" on BC Hydro's evidence regarding the possible limitations or downsides of PBR as presented in the Application.⁴³ RCIA states that the BCUC should not rely on BC Hydro's "one-sided and untested evidence" to make a decision of this magnitude.⁴⁴ With regards to BC Hydro's view that PBR would take resources away from supporting the energy transition, RCIA submits that BC Hydro has had

³³ Exhibit B-1, pp. 2–3.

³⁴ BC Hydro Supplemental Information and Final Argument, p. 12.

³⁵ MoveUP Final Argument, p. 1, BCSEA Final Argument, pp. 3–4, McCandless Final Argument, p. 1, CEC Final Argument, pp. 1, 3, NTC Final Argument, pp. 1–2, BCOAPO Final Argument, pp. 1–2, AMPC Final Argument, p. 1, RCIA Final Argument, pp. 4–5.

³⁶ AMPC Final Argument, p. 1.

³⁷ RCIA Final Argument, p. 9.

³⁸ RCIA Final Argument, pp. 9–10.

³⁹ RCIA Final Argument, p. 12.

⁴⁰ RCIA Final Argument, p. 12.

⁴¹ RCIA Final Argument, pp. 13–14.

⁴² RCIA Final Argument, p. 14.

⁴³ RCIA Final Argument, p. 7.

⁴⁴ RCIA Final Argument, p. 7.

ample time (i.e. two years since the PBR Report Decision was issued) to prepare for any additional resources required to adopt PBR.⁴⁵

In reply, BC Hydro submits that due to the new facts and changes in circumstance outlined in the Application, the benefits of PBR are no longer realistically achievable and therefore the effort to change BC Hydro's regulatory regime is not warranted at this time.⁴⁶

With regards to BC Hydro's proposal to report in December 2028 on the feasibility of implementing PBR, no intervener opposed. However, MoveUP and McCandless made submissions on the contents of the report with respect to potential changes in ratemaking regulatory mechanisms, as discussed in Section 4.1 of this Decision.⁴⁷

Panel Determination

The Panel rescinds the directive in Order G-388-21 requiring BC Hydro to file, no later than December 31, 2023, a proposal for its next RRA. Further, BC Hydro is directed to file a report with the BCUC by December 31, 2028 assessing whether its operating environment has changed such that PBR has become feasible.

The Panel acknowledges the increasing cost uncertainty that BC Hydro is facing as a result of the energy transition that was not present to the same extent at the time the PBR Report Decision was issued in December 2021. The Panel is persuaded by the evidence provided by BC Hydro in this proceeding of legislative and mandate changes since December 2021 that increase cost uncertainty and cast doubt on whether PBR would be an effective regulatory regime for BC Hydro at this time. This is because the increased cost uncertainty will likely result in more costs that would need to be forecast outside of the PBR formula, as those costs are driven by external factors that are outside of BC Hydro's control. Therefore, given the increased uncertainty that BC Hydro is facing and changes in circumstances since 2021, the Panel is not convinced that the adoption of what would be a new and untested regulatory regime for BC Hydro is warranted at this time.

The Panel cautions that this determination should not be construed as a commentary on or rejection of PBR as a regulatory incentive mechanism, nor as criticism of the BCUC's PBR Report Decision which was based on facts and circumstances that existed more than two years ago. As parties are aware, PBR has been successfully implemented and endorsed by the FortisBC utilities for decades in British Columbia, to the mutual benefit of both their ratepayers and shareholders. There may well come a time when BC Hydro will want or be driven to embrace a similar incentive regime, whether due to the need for greater cost containment or other reasons.

Accordingly, the Panel finds BC Hydro's proposal to file a report at the end of December 2028 regarding the feasibility of implementing PBR to be a reasonable compromise. We consider this timing to be appropriate as it will allow more information to become available regarding the actual impact of the energy transition on BC Hydro's costs.

4.0 Other Matters Arising

This section addresses other concerns raised by interveners, including issues related to BC Hydro's next rate application and the recent trend of reconsideration applications filed by BC Hydro.

⁴⁵ RCIA Final Argument, pp. 14–15.

⁴⁶ BC Hydro Reply Argument, p. 9.

⁴⁷ MoveUP Final Argument, p. 1, McCandless Final Argument, p. 1.

4.1 Future Rate Applications

BC Hydro plans to file a three-year RRA for fiscal 2026 to fiscal 2028 by February 2025 at the earliest to incorporate the latest available information on the energy transition and related electrification impacts.⁴⁸

Positions of the Parties

AMPC submits that if the reconsideration request is granted, the BCUC should direct BC Hydro to address several concerns, including changes to its filing requirements for applications relevant to cost of service regulation, and information asymmetry and the use of deferral accounts in its next rate application. AMPC states that it should not be ratepayers who bear the risk of uncertainty during an energy transition without adequate transparent oversight or consideration for the financial consequences. Therefore, AMPC submits that BC Hydro needs to improve its cost-of-service approach to address the concerns identified.⁴⁹

As noted in Section 3.0 above, MoveUP, with support from McCandless, submits that BC Hydro should consider further rate-setting reform measures designed to meet its changing operating context as part of BC Hydro's proposed December 2028 report.⁵⁰

In reply, BC Hydro agrees that it is important to consider new regulatory tools in response to the energy transition, but submits that novel rate design or other regulatory approaches to rate-setting are outside the scope of this proceeding. Further, BC Hydro notes that there is no evidence in this proceeding to support the need for or feasibility of introducing rate-setting alternatives beyond the cost of service and PBR approaches.⁵¹ BC Hydro submits that the BCUC routinely addresses topics related to the form and content of BC Hydro's RRAs in its RRA decisions, and as a result, BC Hydro's RRAs have been naturally evolving.⁵²

Panel Discussion

The Panel appreciates the suggestions from interveners for BC Hydro's next RRA, and future RRAs as part of the proposed December 2028 report. However, we agree with BC Hydro that these issues are outside the scope of this proceeding. It may be efficient nonetheless for BC Hydro to consider the rate-setting reform measures and the concerns expressed by interveners in this proceeding prior to filing its next RRA and we encourage BC Hydro to work with them in its preparation as well as in preparation of the December 2028 report.

4.2 BC Hydro's Recent Reconsideration Applications

We now address the concerns raised by AMPC and RCIA regarding BC Hydro's late filing for reconsideration of the PBR Report Decision along with several other reconsideration applications recently filed by BC Hydro and how this may reflect on the perceived integrity and independence of the BCUC.

Positions of the Parties

AMPC notes that BC Hydro brings this application two years after the date of the PBR Report Decision while providing no explanation for the delay.⁵³ Similarly, RCIA submits that BC Hydro has not provided compelling reasons why the BCUC should reconsider its decision from two years ago.⁵⁴ In AMPC's view, the fact that the

⁴⁸ BC Hydro Supplemental Information and Final Argument, p. 9.

⁴⁹ AMPC Final Argument, pp. 3–4.

⁵⁰ MoveUP Final Argument, p. 1, McCandless Final Argument, p. 1.

⁵¹ BC Hydro Reply Argument, p. 13.

⁵² BC Hydro Reply Argument, pp. 13–14.

⁵³ AMPC Final Argument, p. 1.

⁵⁴ RCIA Final Argument, p. 7.

BCUC can reconsider the PBR Report Decision “at this late stage” does not mean it should.⁵⁵ AMPC and RCIA argue that finality of decision-making and regulatory certainty flowing from that finality are critical to maintaining the BCUC’s legitimacy as a quasi-judicial, public interest regulator.⁵⁶ Further, AMPC notes that the Application reflects a “concerning trend”, one in which BC Hydro continues to regularly seek “second kicks at the can” when it does not get a result that it likes from the BCUC, as also noted by RCIA in its final argument. In particular, AMPC observes that there are now five ongoing proceedings in which BC Hydro seeks reconsideration or to amend existing BCUC decisions and orders, and another proceeding (one relating to planning for non-integrated areas) that flows directly out of a recent reconsideration application. AMPC submits that the optics of BC Hydro, asking the BCUC to continually change its mind after a decision is made, are poor, let alone the prospect of having the BCUC actually do so.⁵⁷

In reply, BC Hydro submits that it is not asking the BCUC to come to a different conclusion on the same facts and circumstances, nor does it argue that the PBR Decision was wrongly decided. Rather, the factual circumstances before the Panel on this Application are different than those considered by the BCUC in the PBR Report proceeding. BC Hydro’s position is that the impacts of the energy transition on its operating environment are such that now is not the time to implement PBR.⁵⁸

In response to BC Hydro’s perceived delay in bringing this Application, BC Hydro submits that the Application is timely. BC Hydro explains that the process of attempting to design a PBR plan to work in its changing environment has been instrumental in informing its conclusion that PBR is no longer feasible in the context of the energy transition. BC Hydro considers it appropriate to bring its Application for reconsideration after the changes in circumstances and their impact on regulation under PBR began to crystallize.⁵⁹

Panel Discussion

While we have determined that the new facts and changed circumstances as put forward by BC Hydro support a reconsideration of the BCUC’s earlier directive for BC Hydro to file a PBR plan, we are troubled by what appears to be a recent BC Hydro practice, characterized by AMPC as a concerning trend, of seeking reconsideration of previous BCUC decisions and directives after the expiry of the 60-day deadline for filing of reconsideration requests, contrary to Rule 26.02.

Our Rules were promulgated to facilitate the effective and efficient conduct of our proceedings including reconsideration applications. Accordingly, it behooves the BCUC to carefully scrutinize reconsideration requests that are filed out of time to ensure they are consistent with the spirit and intent of the 60-day filing deadline as enshrined in our Rules, which is to dissuade disgruntled applicants from seeking to overturn BCUC decisions and orders long after their issuance in the hopes of persuading a subsequent panel to come to a different decision.

The Panel sympathizes with RCIA and AMPC’s concerns about the apparent recent trend of BC Hydro seeking a “second kick at the can” when it does not like the outcome of a BCUC decision. However, we do not attribute any ill motive to BC Hydro’s reconsideration Application, nor do we believe that it is trying to undermine the BCUC’s legitimacy as a quasi-judicial, public interest regulator in bringing forward this Application. Having said that, we do believe that the frequency with which applicants seek such exceptional relief can erode public confidence in the BCUC’s independence and adjudication process to the detriment of all of our regulated entities. We further note that BC Hydro does not in reply purport to rebut AMPC’s observation that reconsideration requests have recently become a regular practice on the part of BC Hydro. We urge BC Hydro to keep these considerations in mind going forward. It is in the interests of all participants in our BCUC regulatory

⁵⁵ AMPC Final Argument, p. 1.

⁵⁶ AMPC Final Argument, p. 1, RCIA Final Argument, pp. 15–16.

⁵⁷ AMPC Final Argument, p. 1.

⁵⁸ BC Hydro Reply Argument, p. 10.

⁵⁹ BC Hydro Reply Argument, p. 11.

process to continue to maintain the trust and integrity of the BCUC for the protection of British Columbians and the preservation of the public interest.

DATED at the City of Vancouver, in the Province of British Columbia, this

15th

day of March 2024.

Original signed by:

M. Jaccard
Panel Chair / Commissioner

Original signed by:

A. K. Fung, KC
Commissioner

Original signed by:

E. B. Lockhart
Commissioner



**ORDER NUMBER
G-73-24**

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

and

British Columbia Hydro and Power Authority
Reconsideration of the Performance Based Regulation Report Order G-388-21

BEFORE:

M. Jaccard, Panel Chair
A. K. Fung, KC, Commissioner
E. B. Lockhart, Commissioner

on March 15, 2024

ORDER

WHEREAS:

- A. On December 21, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) for reconsideration of BCUC Decision and Order G-388-21 related to the BC Hydro Performance Based Regulation (PBR) Report (PBR Report Decision) (Application), requesting the BCUC to vary the directive in Order G-388-21 to:
- (a) permit BC Hydro to file its revenue requirements applications (RRAs) based on a forecast cost of service approach until further order of the BCUC; and
 - (b) require BC Hydro to file a report by the end of December 2028 assessing whether its operating environment has changed such that PBR has become feasible;
- B. On December 21, 2021, the BCUC issued the PBR Report Decision and directed BC Hydro to file, no later than December 31, 2023, a proposal for its next RRA that includes the following:
- i. A test period of at least five years;
 - ii. A proposed formula for as much as possible of the utility's controllable operations and maintenance and capital expenditures, incorporating cost inflation and productivity indices;
 - iii. A proposal for which, if any, of the years Fiscal 2022 to Fiscal 2025 should be used as the base year;
 - iv. Proposals for specific exclusions from the formula or index approach, if appropriate (including "Y factors" and "Z factors");

- v. Consideration of whether a different approach is required for growth capital as compared to sustainment capital;
 - vi. A proposal for the criteria and reasons, if any, to abandon the PBR approach during the test period (“Off-Ramps”); and
 - vii. An assessment of whether annual reviews of BC Hydro’s performance and rates during the test period are appropriate and what they should encompass and exclude;
- C. BC Hydro states that its request for reconsideration of the PBR Report Decision is on the grounds of new facts and changes in circumstances since the PBR Report Decision was issued, and just cause;
- D. By Order G-14-24, the BCUC granted BC Hydro’s request for permission to apply for reconsideration of the PBR Report Decision and determined that the request for reconsideration should proceed to a hearing. The order also established a regulatory timetable for the review of the Application, which included intervenor registration, the filing of supplementary information by BC Hydro, and final and reply arguments; and
- E. The BCUC has reviewed the Application, evidence, and arguments filed in this proceeding and determines that the following orders are warranted.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, and for the reasons stated in the decision issued concurrently with this order, the BCUC orders as follows:

1. The BCUC directive in Order G-388-21 requiring BC Hydro to file, no later than December 31, 2023, a proposal for its next RRA including the elements specified in Recital B of this order, is rescinded.
2. BC Hydro is directed to file a report with the BCUC by December 31, 2028 assessing whether its operating environment has changed such that PBR has become feasible.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of March 2024.

BY ORDER

Original signed by:

M. Jaccard
Commissioner

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

and

British Columbia Hydro and Power Authority
Reconsideration of the Performance Based Regulation Report Order G-388-21

EXHIBIT LIST

Exhibit No.	Description
-------------	-------------

COMMISSION DOCUMENTS

- | | |
|-----|--|
| A-1 | Letter dated January 17, 2024 – Appointing the Panel for the review of BC Hydro Reconsideration of the PBR Report Order G-388-21 Application |
| A-2 | Letter dated January 17, 2024 – BCUC Order G-14-24 establishing a regulatory timetable with Supplemental Information List |

APPLICANT DOCUMENTS

- | | |
|-----|--|
| B-1 | BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO) - Reconsideration of the Performance Based Regulation (PBR) Report Order G-388-21 Application dated December 21, 2023 |
| B-2 | Letter dated January 23, 2024 – BC Hydro submitting confirmation of Public Notice in compliance with Order G-14-24 |

INTERVENER DOCUMENTS

- C1-1 **MOVEMENT OF UNITED PROFESSIONALS (MOVEUP)** – Letter dated January 18, 2024 request to intervene by Jim Quail
- C2-1 **McCANDLESS, RICHARD (McCANDLESS)** – Letter dated January 19, 2024 request to intervene
- C3-1 **FORTISBC ENERGY INC. AND FORTISBC INC. (COLLECTIVELY, FORTISBC OR THE COMPANIES)** – Letter dated January 26, 2024 request to intervene by Sarah Walsh
- C4-1 **ASSOCIATION OF MAJOR POWER CUSTOMERS (AMPC)** – Letter dated January 26, 2024 request to intervene by Melissa Davies and Matthew Keen
- C5-1 **RESIDENTIAL CONSUMER INTERVENER ASSOCIATION (RCIA)** – Letter dated January 29, 2024 request to intervene by Matthew Matusiak and Michael Walsh
- C6-1 **COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BC (CEC)** – Letter dated January 30, 2024 request to intervene by David Craig
- C7-1 **BC SUSTAINABLE ENERGY ASSOCIATION (BCSEA)** – Letter dated January 31, 2024 request to intervene by Thomas Hackney
- C8-1 **NU-CHAH-NULTH TRIBAL COUNCIL (NTC)** – Letter dated January 31, 2024 request to intervene by Judith Sayers
- C9-1 **BC OLD AGE PENSIONERS' ORGANIZATION, COUNCIL OF SENIOR CITIZENS' ORGANIZATIONS OF BC, ACTIVE SUPPORT AGAINST POVERTY, DISABILITY ALLIANCE BC, TENANTS RESOURCE AND ADVISORY CENTRE, AND TOGETHER AGAINST POVERTY SOCIETY (BCOAPO)** – Letter dated January 31, 2024 request to intervene by Irina Mis