



ORDER NUMBER
G-26-19

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

and

V. Ruskin Application for Reconsideration and Variance of Order F-6-18
in the matter of British Columbia Utilities Commission Inquiry Respecting Site C
Application for Participant Assistance/Cost Awards

BEFORE:

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

on February 7, 2019

ORDER

WHEREAS:

- A. On October 10, 2018, Dr. Vern Ruskin filed a request with the British Columbia Utilities Commission (BCUC) for re-assessment of the BCUC's decision to deny a portion of Dr. Ruskin's application for a Participant Assistance/Cost Award (PACA) for his participation in the Site C Inquiry (Reconsideration Application);
- B. Between October 10, 2018 and December 23, 2018, Dr. Ruskin contacted the BCUC, through multiple emails, regarding his Reconsideration Application;
- C. On August 2, 2017, pursuant to section 5(1) of the *Utilities Commission Act* (UCA), the Lieutenant Governor in Council (LGIC), by Order in Council (OIC) No. 244, requested the BCUC to advise the LGIC respecting British Columbia Hydro and Power Authority's (BC Hydro) Site C project, in accordance with the terms of reference set out in section 3 of OIC No. 244 (Site C Inquiry);
- D. On November 1, 2017, in accordance with section 3(g) of the terms of reference of OIC No. 244, the BCUC submitted to the minister charged with the administration of the *Hydro and Power Authority Act* its final report on the Site C Inquiry;
- E. On January 19, 2018, the BCUC issued Order F-6-18 and the accompanying reasons for decision regarding the PACA applications submitted by various parties for their participation in the Site C Inquiry. The BCUC, among other things, rejected Dr. Ruskin's PACA request of \$70,900.00 and instead approved funding for Dr. Ruskin in the amount of \$17,725.00; and
- F. The BCUC has reviewed the Reconsideration Application and does not consider it to have established a *prima facie* case sufficient to warrant further consideration.

NOW THEREFORE pursuant to section 99 of the UCA, and for the reasons attached as Appendix A to this order, the BCUC orders that the Reconsideration Application fails to establish a *prima facie* case that an error has occurred, and is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of February 2019.

BY ORDER

Original Signed by:

D.M. Morton
Commissioner

Attachment

V. Ruskin Application for Reconsideration of Order F-6-18
in the matter of British Columbia Utilities Commission Inquiry Respecting Site C
Application for Participant Assistance/Cost Awards

REASONS FOR DECISION

1.0 Background

On August 2, 2017, pursuant to section 5(1) of the *Utilities Commission Act* (UCA), the Lieutenant Governor in Council (LGIC), by Order in Council (OIC) No. 244, requested the British Columbia Utilities Commission (BCUC) to advise the LGIC respecting British Columbia Hydro and Power Authority's (BC Hydro) Site C project in accordance with the terms of reference set out in section 3 of OIC No. 244 (Site C Inquiry).

By Order G-120-17 dated August 9, 2017, the BCUC established the regulatory timetable for the Site C Inquiry. The BCUC directed that the Site C Inquiry would not include registered interveners, but members of the public were invited to make submissions of data and analysis and to provide comments, either in writing or orally during the BCUC's public consultation process. The BCUC further stated that Participant Assistance/Cost Awards (PACA) would be available to support parties for their participation in the Site C Inquiry, subject to the participant's eligibility under the current PACA guidelines set out in Order G-97-17.

On August 11, 2017, the BCUC issued a letter establishing the process for PACA funding in the Site C Inquiry. Attached to the BCUC letter were PACA guidelines for the Site C Inquiry which were a modification of the BCUC's existing PACA guidelines established by Order G-97-17 (Site C PACA Guidelines).

The BCUC, in accordance with section 3(g) of the terms of reference of OIC No. 244, submitted to the minister charged with the administration of the *Hydro and Power Authority Act* its Final Report on November 1, 2017.

On January 19, 2018, the BCUC issued Order F-6-18 and the accompanying reasons for decision regarding the PACA applications submitted by various parties for their participation in the Site C Inquiry. The BCUC made the following determination regarding Dr. Ruskin's PACA request:

The Panel acknowledges Dr. Ruskin's experience and knowledge of hydro-electric dams, particularly with regard to the Columbia River Treaty. Of Dr. Ruskin's eight written submissions, the Panel was able to extract some information which contributed to a better understanding of certain issues. However, overall the submissions were disorganized and difficult to comprehend and at times lacking in relevancy and supporting evidence/data. The Panel also found substantial duplication in Dr. Ruskin's submissions. Given these deficiencies and in consideration of the overall contribution to the Panel's understanding of the issues and the lack of supportable data contained in the submissions, **the Panel approves a cost award of \$17,725.00 for Dr. Ruskin, which equates to 25 percent of his requested funding amount.**

2.0 Request for reconsideration

On October 10, 2018, Dr. Ruskin filed a reconsideration request with the BCUC stating that the BCUC's decision to deny Dr. Ruskin's PACA application for his participation in the Site C Inquiry should be re-assessed.

Between October 10, 2018 and December 23, 2018 Dr. Ruskin contacted the BCUC, through multiple emails, regarding his Reconsideration Application. These additional emails included an email from another party on October 19, 2018 which clarified Dr. Ruskin's Reconsideration Application as follows:

This submission is a PACA review request even though it presents a range of ideas and concerns about the question of dam safety and the need for an independent review. I believe Vern is trying to show why the questions of safety that he brought in his F26 submissions should have been recompensed...

...Given the question of safety was not considered by the Inquiry nor the TOR [Terms of Reference] directly it nevertheless had and has the potential to impact cost which was a focus of the Inquiry and TOR. Whether or not these considerations formed part of the final report, they do in Vern's opinion and application speak directly to the TOR...

3.0 Applicable law and BCUC guidelines

Section 99 of the UCA provides:

The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

The BCUC guidelines for reconsideration include the following:

If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

An application for reconsideration by the BCUC proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase, the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing a reconsideration:

- The Commission has made an error in fact or law;
- There has been a fundamental change in circumstances or facts since the Decision;
- A basic principle had not been raised in the original proceedings; or

- A new principle has arisen as a result of the Decision.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- The claim of error is substantiated on a *prima facie* basis; and
- The error has significant material implications.

4.0 Panel determination

The Panel finds that Dr. Ruskin has not presented any evidence or argument that establishes a *prima facie* case that the BCUC erred in fact or law in its determination on Dr. Ruskin's PACA application. Accordingly, there is no basis to proceed to phase two of the reconsideration process. **Dr. Ruskin's request for reconsideration is therefore denied.**

The Panel notes that Dr. Ruskin provided no evidence or additional information to support the Reconsideration Application. Instead, the Reconsideration Application primarily focused on safety concerns regarding Site C. In the October 19, 2018 letter from a party associated with Dr. Ruskin, an attempt was made to clarify the basis of the reconsideration request, though the Panel notes that even in this submission the party acknowledges that the question of safety was not considered by the Site C Inquiry or in the terms of reference of OIC No. 244.

The Panel points to Section 4.2 of the Site C PACA Guidelines which states that if a participant is eligible for a cost award, the amount of the participant's cost award is determined by a number of criteria, including (a) "Has the participant contributed to a better understanding by the Commission of the issues in the Site C Inquiry?"

In Order F-6-18 and the accompanying reasons for decision, the BCUC determined that, while Dr. Ruskin did provide some information which contributed to the BCUC's better understanding of the issues, the extent to which the information aided the BCUC in the Site C Inquiry was limited due to a variety of factors, including understandability of the submissions and relevancy of the submissions to the Site C Inquiry's Terms of Reference. This limited contribution was reflected in the BCUC's approval of partial PACA funding to Dr. Ruskin, and there has been no change in circumstances or additional information provided which persuades the Panel that further PACA funding should be awarded beyond what was already approved in Order F-6-18.

The Panel recognizes Dr. Ruskin's concerns to be important matters. While the information regarding safety will not be further considered in relation to PACA for the reasons stated above, the BCUC is currently reviewing these matters through its complaint process. The BCUC Complaints department have made several failed attempts to contact Dr. Ruskin for additional information on this matter.

In the absence of any evidence to substantiate on a *prima facie* basis a claim of error in fact or in law in the BCUC's determination on Dr. Ruskin's PACA application, the Panel finds Dr. Ruskin's application is not sufficient to warrant further consideration and the Panel therefore dismisses the application.