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

ORDER NUMBER
G-250-20

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

and

Net Metering Ratepayers Group and British Columbia Community Solar Coalition
Complaint Against BC Hydro in Respect of Comments on PACA Applications received in the Application to Amend Net Metering Service under Rate Schedule 1289 Proceeding

BEFORE:
W. M. Everett, QC, Panel Chair
D. A. Cote, Commissioner
R. I. Mason, Commissioner

October 5, 2020

ORDER

WHEREAS:

A. On June 15, 2020, Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) filed a complaint with the British Columbia Utilities Commission (BCUC) (Complaint). NMRG/BCCSC requested that the BCUC inquire into an alleged abuse of process by British Columbia Hydro and Power Authority (BC Hydro) in its comments dated June 4, 2020 regarding Participant Assistance Cost Award (PACA) applications received in the Application to Amend Net Metering Service under Rate Schedule 1289 proceeding (Net Metering Proceeding);

B. In the Complaint, NMRG/BCCSC alleges, among other things, that BC Hydro improperly used the comment process in PACA to make a collateral attack on NMRG and BCCSC's joint final argument in the Net Metering Proceeding. NMRG/BCCSC submit that BC Hydro's reply argument within the Net Metering Proceeding was the only proper procedural opportunity to address specifics of NMRG/BCCSC's joint final argument in that proceeding;

C. In the Complaint, NMRG/BCCSC further seek an award of Additional Cost and Special Costs;

D. By Order G-184-20 dated July 10, 2020, the BCUC requested BC Hydro to provide comments on the Complaint. BC Hydro provided its comments on July 24, 2020;

E. On July 31, 2020, the BCUC requested NMRG/BCCSC to provide any reply comments. NMRG/BCCSC provided its reply comment on August 13, 2020; and

F. The BCUC has reviewed the Complaint and submissions made in this proceeding, and considers the following determination is warranted.

NOW THEREFORE pursuant to section 83 of the *Utilities Commission Act* and for the reasons attached to Appendix A of this Order, the BCUC orders as follows:

1. NMRG/BCCSC's Complaint is dismissed and its request for an award of additional and special costs is denied.

2. The Complaint is therefore closed.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of October 2020.

BY ORDER

Original signed by:

William M. Everett, QC
Commissioner

Attachment

Net Metering Ratepayers Group and British Columbia Community Solar Coalition
Complaint Against BC Hydro in Respect of its Comments on PACA Applications received in the
Application to Amend Net Metering Service under Rate Schedule 1289 Proceeding

REASONS FOR DECISION

1.0 Introduction

On June 15, 2020, Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) filed a complaint (Complaint) with the British Columbia Utilities Commission (BCUC) regarding an alleged abuse of process by British Columbia Hydro and Power Authority (BC Hydro) in the course of NMRG/BCCSC's application for a Participant Assistance Cost Award (PACA Process) in the Application to Amend Net Metering Service under Rate Schedule 1289 proceeding (Net Metering Proceeding). NMRG/BCCSC allege the abuse of process arose from comments made in BC Hydro's letter dated June 4, 2020 in response to a request from the BCUC dated May 21, 2020, seeking BC Hydro's comments on NMRG/BCCSC's PACA requests in the PACA Process (NMRG/BCCSC PACA Application).

In the Complaint, NMRG/BCCSC allege abuse of process as a result of BC Hydro improperly using the comment process in respect of NMRG/BCCSC's PACA Application to make a collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.[1] NMRG/BCCSC submit that BC Hydro's Reply Argument filed in the Net Metering Proceeding was the only proper procedural opportunity for BC Hydro to address specifics of NMRG/BCCSC's Final Argument.[2]

1.1 Legislative Framework

Section 83 of the *Utilities Commission Act* provides: "If a complaint is made to the commission, the commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken."

1.2 Complaint Review Process

Subsequent to the receipt of the Complaint filed on June 15, 2020, the BCUC appointed a Panel on July 9, 2020 to review the Complaint pursuant to section 4 of the *Utilities Commission Act*. The Panel sought comments from BC Hydro and reply comments from NMRG/BCCSC, which were filed on July 24, 2020 and August 13, 2020, respectively.

1.3 Background

In the Net Metering Proceeding:

- BC Hydro filed its final argument on February 27, 2020

[1] Exhibit B-1, pp. 4–5.
[2] Exhibit B-1, p. 3.

- interveners, including the complainants NMRG/BCCSC, filed their respective Final Arguments by March 13, 2020;
- BC Hydro filed its reply argument on March 26, 2020; and
- The BCUC final Decision and Order G-168-20 was issued on June 23, 2020.

The interveners in the Net Metering Proceeding, including NMRG/BCCSC, submitted the following requests for PACA awards, pursuant to section 118 of the *Utilities Commission Act* and the PACA Guidelines.[3]

Date (2020)	Participant	Application
April 24	British Columbia Old Age Pensioner's Organization et al.	$29,981.53
March 30	BC Sustainable Energy Association	$39,995.90
April 14	Commercial Energy Consumers Association of British Columbia	$29,621.00
May 4	Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) (collectively, NMRG/BCCSC)	$179,115.65
June 11	NMRG/BCCSC Additional Cost	$10,976.00
April 24 (revised June 9)	Pentti O. Sjoman	$21,000.00

By letter dated May 21, 2020, the BCUC sought BC Hydro's comments on the PACA applications submitted by the interveners, including NMRG/BCCSC.

By letter dated June 4, 2020, BC Hydro provided its comments on the interveners' PACA applications, including NMRG/BCCSC.

By letter dated June 11, 2020, NMRG/BCCSC provided their reply to BC Hydro's comment. In their reply comment, NMRG/BCCSC requested additional costs of $10,976 for their legal counsel costs for preparing the reply comment and also requested special costs.

BC Hydro provided sur-reply comments on NMRG/BCCSC's additional cost and special cost requests by letters dated July 6, 2020 and July 9, 2020, respectively.

By letter dated July 13, 2020, NMRG/BCCSC provided a further reply comment to BC Hydro's sur-reply comments.

By Order F-25-20 with Reasons for Decision dated August 5, 2020, the BCUC awarded PACA funding to NMRG/BCCSC in the amount of $104,014.00.[4]

By letter dated June 15, 2020, NMRG/BCCSC filed their Complaint in this proceeding, requesting the BCUC to inquire into an alleged abuse of process by BC Hydro arising as a result of the comments it made in its letter

[3] PACA Guidelines, Order G-97-17, dated June 15, 2017.
[4] Order F-25-20 with Reasons for Decision, dated August 5, 2020.

dated June 4, 2020 in respect of NMRG/BCCSC's PACA Application. BC Hydro's comments were made pursuant to a request from the BCUC dated May 21, 2020, in accordance with the PACA Guidelines.

2.0 NMRG/BCCSC Complaint

In their Complaint, NMRG/BCCSC allege that while BC Hydro's letter to the BCUC dated June 4, 2020 purported to provide comments on PACA applications by interveners, including NMRG/BCCSC, pursuant to Section 14.2.4 of the PACA Guidelines, it constituted an abuse of process because BC Hydro instead used its right of comment to make an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.

Position of NMRG/BCCSC

NMRG/BCCSC submit that BC Hydro's only and exclusive procedural opportunity to reply to NMRG/BCCSC's Final Argument in the Net Metering Proceeding expired on March 26, 2020 when BC Hydro filed its reply argument in accordance with the regulatory timetable set out in BCUC Order G-293-19.[5]

Further, NMRG/BCCSC submit BC Hydro did so while the BCUC was still presumably actively considering all the filings in the Net Metering Proceeding – including NMRG/BCCSC's Final Argument.[6]

NMRG/BCCSC specifically allege the following comments by BC Hydro in its June 4, 2020 letter are an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding and a clear abuse of process:

> An Intervener's Final Argument is also helpful in summarizing the issues identified by a respective Intervener in evidence, and the positions they may take on those issues. Regarding the ***Final Argument submitted by NMRG/BCCSC***, BC Hydro ***notes that a portion of their final argument dealt with issues outside the scope of the Application***. ***Examples include potential future government policy with regards to the role, benefits and cost recovery of renewable energy supply, the potential role of the net metering program in BC Hydro's long term resource supply options, and system operational issues such as the concept of "islanding" to achieve system reliability.*** In addition, as stated in BC Hydro's Reply Argument, the NMRG/BCCSC Final Argument included a number of assertions of fact that were not supported by the evidence on record for the proceeding. [emphasis added by NMRG/BCCSC][7]

With respect to the issues BC Hydro stated were out of scope, NMRG/BCCSC submit such allegations are false based on its review of BC Hydro's Reply Argument in the Net Metering Proceeding in which they submit BC Hydro makes no mention of "out of scope" issues in NMRG/BCCSC's Final Argument.[8]

NMRG/BCCSC submit it was indefensible for BC Hydro to suggest in its comments on the PACA applications that five or more distinct issues addressed in NMRG/BCCSC Final Argument were out of scope and that such comments, thinly disguised as comments on the PACA amounts sought by NMRG/BCCSC, constitute an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.[9]

[5] Exhibit B-1, p. 4.
[6] Exhibit B-1, p. 3.
[7] Exhibit B-1, p. 2.
[8] Exhibit B-1, p. 3.
[9] Exhibit B-1, p. 2.

NMRG/BCCSC further submit that by raising unsupported out of scope allegations after the argument phase of the Net Metering Proceeding was closed and while the Panel was still actively deliberating, BC Hydro has created the following irreparable prejudice to NMRG/BCCSC:

a) by using the out of scope allegations to support its express request for an unspecified downward adjustment of NMRG's PACA Application; and

b) by creating potential prejudice in the Net Metering Proceeding, in which the BCUC had not issued its final decision, at the time, on the basis the comments cannot be separated from the BCUC's deliberations in that proceeding. In this regard, the Panel notes that counsel for NMRG/BCCSC submits that the "BCUC presumably won't act on the basis of BC Hydro's demonstrably false allegations…".[10]

Further, NMRG/BCCSC submit that BC Hydro's out of scope allegations in its June 4, 2020 letter (more than two and a half months after BC Hydro filed its reply argument in the Net Metering Proceeding) constitute an improper attempt to make a major amendment to its reply argument contrary to the dates set in the regulatory timetable for filing reply argument.[11]

NMRG/BCCSC rely upon the Supreme Court of Canada decision in *Behn v. Moulton Contracting Ltd*., 2013 SCC 26 for the premise that a collateral attack is an abuse of process. Specifically, they submit BC Hydro's conduct offends the BCUC's Rules of Practice and Procedure and PACA Guidelines and that permitting such a collateral attack to stand would not only be manifestly unfair to NMRG and BCCSC, but also to interveners in future BCUC proceedings. [12]

NMRG/BCCSC finally submit that "Unless BC Hydro's impugned conduct is denounced and subject to a very significant financial deterrent (i.e. Additional and Special Costs), Interveners will have little reason to believe that this or future PACA processes will be conducted fairly. That outcome would directly affect Interveners, particularly new ad hoc groups, by creating unacceptable and unquantifiable risks to the already uncertain PACA funding required to make their participation possible. Those circumstances would very likely result in bringing the administration of justice into disrepute."[13]

Position of BC Hydro

BC Hydro acknowledges the impugned comments in its June 4, 2020 letter to the BCUC, in respect to NMRG/BCCSC's PACA Application, refer to NMRG/BCCSC's Final Argument and also to BC Hydro's Reply Argument in the Net Metering Proceeding, but submit that the comments are consistent with normal BCUC practice and do not in any way constitute an abuse of process or a collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.[14]

BC Hydro reiterates that it has not objected to NMRG/BCCSC receiving PACA awards. BC Hydro further submits that its comment that a large amount of NMRG/BCCSC's PACA Application could have resulted, in part, from

[10] Exhibit B-1, p. 5.
[11] Exhibit B-1, pp. 5–6.
[12] Exhibit B-1, p. 6.
[13] Exhibit B-1, p. 7.
[14] Exhibit C1-1, p. 2.

NMRG/BCCSC spending time in the Net Metering Proceeding on extraneous matters were made in accordance with the established PACA Process and in good faith. [15]

Further, BC Hydro submits the allegation that its comments constitute an abuse of process and collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding is not legally correct and referred, in support, to examples of the legal meaning of abuse of process and collateral attack in Appendix A of its response of July 24, 2020 to this Complaint.[16]

Position of NMRG/BCCSC in Reply

NMRG/BCCSC submit that BC Hydro improperly made a collateral attack because the only proper time for BC Hydro to make such an attack was in its reply argument in the Net Metering Proceeding and, therefore, was inappropriate, improper and an abuse of process.[17]

NMRG/BCCSC submit it suffered prejudice because BC Hydro's out of scope comments were made while the Panel was still deliberating its decision in the Net Metering Proceeding. It submits the Panel was not able to unsee or unhear the impugned comments, which is enough evidence of prejudiced suffered.[18]

Panel Determination

NMRG/BCCSC take the position that BC Hydro used its opportunity to comment on their PACA Applications in BC Hydro's letter dated June 4, 2020 to improperly argue that NMRG/BCCSC's Final Argument in the Net Metering Proceeding dealt with issues outside the scope of that proceeding.

The PACA applications were submitted by interveners, including NMRG/BCCSC, and BC Hydro was requested to comment on the applications before the Panel in the Net Metering Proceeding had issued its final decision. Thus, the comments were requested by the BCUC while the Panel was still deliberating on its decision in the Net Metering Proceeding. BC Hydro provided its comments in its letter dated June 4, 2020 in accordance with the practice set out in the PACA Guidelines.

In the Panel's view, there is nothing in the impugned comments in BC Hydro's June 4, 2020 letter that could be said to amount to an abuse of the BCUC's process. Rather, the Panel finds BC Hydro's comments were made in good faith at the request of the BCUC and in accordance with the established process in its PACA Guidelines to assist the Panel in making its decision on the PACA applications.

NMRG/BCCSC further argue that BC Hydro's impugned comments in its June 4, 2020 letter constitute a collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding. In Appendix A of its letter dated July 24, 2020 in response to NMRG/BCCSC's Complaint, BC Hydro cites *Garland v. Consumers' Gas Co*., 2004 SCC 25 at paragraph 72 as identifying the following hallmarks of a collateral attack case:

[15] Exhibit C1-1, p. 3.
[16] Exhibit C1-1, Appendix A.
[17] Exhibit B-2, p. 2.
[18] Exhibit B-2, p. 2.

> ...the collateral attack cases all involve a party, bound by an order, seeking to avoid the effect of that order by challenging its validity in the wrong forum.[19]

BC Hydro's impugned comments in its June 4, 2020 letter in the PACA Process did not object to or oppose NMRG/BCCSC receiving a PACA award; but rather, focussed on the reasonableness and fairness of the amount of such an award. There is nothing improper in BC Hydro making such submissions given that it is afforded the opportunity to do so under the PACA Guidelines and, more particularly, it is BC Hydro's responsibility to do so, given that the PACA awards are borne by BC Hydro's ratepayers. In the circumstances, BC Hydro's impugned comments that the comparatively large amount of NMRG/BCCSC's PACA claim could have, in part, been as a result of their spending time in the Net Metering Proceeding on matters that were extraneous or out of scope are relevant submissions in the PACA Process. BC Hydro's submissions addressed the reasonableness and fairness of the awards being sought and NMRG/BCCSC were also afforded the opportunity to and did reply to BC Hydro's comments.

Further, from this Panel's review of the Order and Reasons in the Net Metering Proceeding there is nothing to suggest that BC Hydro's comments on NMRG/BCCSC spending time on out of scope matters was in any way a factor in or bolstered BC Hydro's position in that proceeding.

In addition, BC Hydro's impugned comments bear none of the hallmarks of collateral attack. BC Hydro was not bound by an order of the BCUC, nor was it trying to avoid the effect of an order by challenging its validity in the wrong forum. Rather, BC Hydro, as stated above, was simply making good faith submissions, at the request of the BCUC, in response to the NMRG/BCCSC PACA Application in accordance with BCUC established process.

For the foregoing reasons, the Panel finds that there is no substance to or basis for NMRG/BCCSC's Complaint that BC Hydro's impugned comments in its letter dated June 4, 2020 in the PACA Process constitute an abuse of process or an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding. The Complaint is therefore dismissed.

3.0 Relief Sought by NMRG/BCCSC in the Complaint

In this Complaint, NMRG/BCCSC are seeking the following relief:

a) the BCUC specifically address the additional errors, omissions, misrepresentations and falsehoods related to the scope allegations contained in BC Hydro's June 4, 2020 letter, <u>in the pending PACA Order</u>; [Underlining Added]

b) The BCUC approve the full amounts of NMRG/BCCSC's PACA claims recognizing that almost all of BC Hydro's comments regarding NMRG/BCCSC's PACA claims were false, misleading, inaccurate inappropriate or improper and, in light of the impropriety, an abuse of process created by BC Hydro's false scope allegations resulting in significant lasting prejudice to both NMRG, BCCSC, their joint Legal Counsel and respective Case Managers;

[19] Exhibit C1-1, Appendix A, p. 1.

c) Additional Costs (for legal work reflected in this Complaint in the amount of $2,195.20 made necessary by BC Hydro's false scope allegations as they relate to its Reply Argument, requiring both NMRG and BCCSC to rebut, disprove and establish the impropriety of such comments); and

d) Special Costs (as requested in NMRG and BCCSC's submissions in its June 11, 2020 letter, recognizing the additional discussion in the Complaint regarding the impropriety of BC Hydro's false scope allegations, which if acted upon by the BCUC would be likely to reduce NMRG's and BCCSC's PACA claims resulting in significant financial harm to NMRG, BCCSC, their joint Legal Counsel and respective Case Managers) [20]

In light of the Panel's determination above that NMRG/BCCSC have failed in their Complaint to establish any conduct on the part of BC Hydro that could constitute an abuse of process or collateral attack, the Panel finds, for that reason alone, NMRG/BCCSC are not entitled to any of the relief claimed.

However, the Panel addresses below each of NMRG/BCCSC's requests for relief arising in this Complaint.

a) That the BCUC specifically address the additional errors, omissions, misrepresentations and falsehoods related to the scope allegations contained in BC Hydro's June 4, 2020 letter, in the pending PACA Order.

[Underlining Added]

NMRG/BCCSC raised their concerns regarding the impugned comments contained in BC Hydro's June 4, 2020 letter with the BCUC panel that considered NMRG/BCCSC's PACA Application in the Net Metering Proceeding. More particularly, NMRG/BCCSC submitted its June 11, 2020 letter (32 pages) in response to BC Hydro's letter of June 4, 2020 in the PACA Process in which NMRG/BCCSC requested that Panel, among other things, "specifically address the errors, omissions, misrepresentations and falsehoods contained in BC Hydro's June 4, 2020 letter in the pending PACA Order." [Underlining Added]. In its Complaint, NMRG/BCCSC are requesting the same relief from this Panel. It is clear from reading Order F-25-20 with Reasons for Decision dated August 5, 2020 in the PACA Process that the BCUC did, in Section 3.3, address and take into account the alleged issues related to the out of scope allegations contained in BC Hydro's letter, dated June 4, 2020.

In addition, NMRG/BCCSC in its June 11, 2020 letter stated that "the PACA process is the most appropriate forum to resolve this issue. All of BC Hydro's objectionable conduct took place in the limited parameters of the PACA process – and that is where it should be addressed and resolved."[21]

In the circumstances, this Panel finds there is no substance to or basis for NMRG/BCCSC to request in this Complaint that this Panel specifically address the alleged issues related to the scope allegations contained in BC Hydro's June 4, 2020 letter as those issues have already been raised by NMRG/BCCSC in its June 11, 2020 letter and decided by Order F-25-20 with Reasons for Decision. Further, this Panel finds that the PACA Process was the most appropriate forum to address the issues arising from the alleged impropriety of BC Hydro's impugned comments. NMRG/BCCSC's attempt to raise the issues again in this Complaint is a duplicative and unnecessary procedure which, in this Panel's view is inefficient and a misuse of the BCUC's resources and regulatory process.

b) That the BCUC approve the full amounts of NMRG/BCCSC's PACA claims recognizing that almost all of BC Hydro's comments regarding NMRG/BCCSC's PACA claims were false, misleading, inaccurate

[20] Exhibit B-1, p. 8.
[21] PACA Process, NMRG/BCCSC reply comment to BC Hydro's comment dated June 11, 2020, p. 29.

> inappropriate or improper and, in light of the impropriety, an abuse of process created by BC Hydro's false scope allegations resulting in significant lasting prejudice to both NMRG, BCCSC, their joint Legal Counsel and respective Case Managers,

NMRG/BCCSC also sought approval of the full amount of their PACA requests based on very similar submissions in their June 11, 2020 letter concerning the Net Metering Proceeding. In particular, NMRG/BCCSC argued in the PACA Process they should be granted the full amount of their PACA claims given that BC Hydro's impugned comments in its June 4, 2020 letter raised no legitimate basis to reduce the PACA amounts claimed.[22] They submitted that this was justifiable because the comments contained errors, omissions and misrepresentations and the comments created lasting prejudice to an objective assessment of NMRG/BCCSC's claims. Those submissions in the PACA Process are substantially the same as the submissions being made by NMRG/BCCSC in this Complaint and were considered by the BCUC in its review of PACA claims in the PACA Process. This Panel notes that NMRG/BCCSC's PACA claims were reduced for the reasons set out in the PACA Decision.

The Panel finds there is no substance to or basis for NMRG/BCCSC to request in this Complaint that they be awarded the full amount of their PACA costs. The issues of the impugned comments in BC Hydro's letter of June 4, 2020 and the alleged prejudice suffered by NMRG/BCCSC have already been raised by NMRG/BCCSC in the PACA Process and dealt with by Order F-25-20 with Reasons where it was determined that NMRG/BCCSC were not entitled to the full amount claimed. Further, the Panel finds that the PACA Process was the most appropriate forum to address the issues regarding the amount of PACA to be awarded to NMRG/BCCSC. NMRG/BCCSC's attempt in this Complaint to try again to seek the full amount of their PACA claims is a duplicative and unnecessary procedure which is inefficient and a misuse of the BCUC's resources and regulatory process.

c) Additional Costs for legal work reflected in this Complaint made necessary by BC Hydro's false scope allegations as they relate to its Reply Argument in the Net Metering Proceeding, requiring both NMRG and BCCSC to rebut, disprove and establish the impropriety of such comments, calculated in the amount of $2,195.20 (Legal fees for 0.7 days X $2,800 = $1,960.00 plus applicable taxes).

In respect to NMRG/BCCSC's claim for Additional Costs, in these circumstances, the Panel notes that such costs have been determined to be unwarranted and refers to Order F-10-19 with reasons dated April 12, 2019, in which it stated:

> As noted, the CEC has also requested they be granted an additional day of PACA funding for its consultant and its legal counsel in recognition of the time it claims was spent on the costs of its defense of its PACA Application. The Panel notes that Section 2.3 of the PACA Guidelines explicitly states that "the Commission may award costs for work completed after a proceeding is initiated and until the Commission issues a final order." Thus, the CEC's request is outside of the PACA Guidelines. While these are guidelines and exceptions could be made, the Panel is not persuaded they are warranted in this instance. In our view the utility has the right to question PACA applications and the relevance of the work done. In the rare circumstances where this occurs, it is the responsibility of the intervener to address the concerns that have been raised in a fulsome manner and because this is a billing matter, there is no justification to claim costs for doing so.[23]

[22] PACA Process, NMRG/BCCSC reply comment to BC Hydro comment dated June 11, 2020, p. 32.
[23] Order F-10-19 dated April 12, 2019, Appendix A, p. 6.

NMRG/BCCSC argue that Order F-10-19 simply confirms that Additional Costs are situation-specific and that they are warranted in this proceeding by BC Hydro's conduct in taking the matter well beyond appropriate comments in respect of a PACA application and thereby making it much more than simply a billing matter.[24]

However, Order F-25-20 also rejected NMRG's request for additional costs of 3.5 days to respond to BC Hydro's June 4, 2020 comment letter. In that PACA decision, the Panel accepted that in certain circumstances the BCUC:

> … has the jurisdiction to award such additional costs where warranted. While not bound by precedent we believe that BC Hydro has a right to raise concerns with PACA applications and the work done. In these relatively rare circumstances, the intervener is responsible to address the concerns raised and, because this ultimately is a billing matter, allowing a claim for costs is unwarranted.[25]

The Panel finds that NMRG/BCCSC had an opportunity to address the concerns raised by BC Hydro with regards to their PACA claims and further finds that their claim for Additional Costs, in the circumstances, is unwarranted, unnecessary, inefficient and a misuse of the BCUC's resources and regulatory process.

d) Special Costs as requested in NMRG and BCCSC's June 11, 2020 submissions ($10,796.00), recognizing the additional discussion in the Complaint regarding the impropriety of BC Hydro's false scope allegations, which if acted upon by the BCUC would be likely to reduce NMRG's and BCCSC's PACA claims resulting in significant financial harm to NMRG, BCCSC, their joint Legal Counsel and respective Case Managers.

NMRG/BCCSC made the same request for Special Costs to the Panel in the PACA Process arising from the Net Metering Proceeding. In its Order F-25-20 with reasons for decision, that Panel rejected NMRG/BCCSC's claim for Special Costs and stated:

> Concerning the NMRG's request for special costs the Panel finds that the BCUC does not have jurisdiction to make an award of special costs. As a statutory tribunal, the BCUC does not possess inherent jurisdiction to make an award of special costs. Further, there is nothing in the BCUC Rules and Practice or Procedure or the PACA Guidelines which could provide any basis for suggesting the BCUC has such jurisdiction.[26]

This Panel agrees and also finds it has no jurisdiction to grant Special Costs as claimed in the Complaint and further finds the claim for Special Costs to be duplicative, unnecessary, inefficient and a misuse of the BCUC's resources and regulatory process.

[24] PACA Process, NMRG/BCCSC comment on BC Hydro sur-reply comment dated July 14, 2020, pp. 3–4.
[25] Order F-25-20, Appendix A, p. 14.
[26] Order F-25-20, Appendix A, p. 14.