



ORDER NUMBER
G-280-23

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

and

Commercial Energy Consumers of British Columbia
Reconsideration of Order F-24-23

BEFORE:

W. M. Everett, KC, Panel Chair
E. B. Lockhart, Commissioner
E. A. Brown, Commissioner

on October 19, 2023

ORDER

WHEREAS:

- A. On May 5, 2023, the British Columbia Utilities Commission (BCUC) issued Decision and Order G-107-23 following a proceeding in the matter of the British Columbia Hydro and Power Authority's Application for approval of an Expenditure Schedule regarding the John Hart Dam Seismic Upgrade Project (John Hart Proceeding);
- B. The Commercial Energy Consumers Association of British Columbia (the CEC) was one of the registered interveners in the John Hart Proceeding;
- C. The CEC submitted a Participant Assistance/Cost Award (PACA) application on February 17, 2023 (PACA Application) pursuant to the BCUC's Participant Assistance/Cost Award Guidelines (PACA Guidelines),¹ seeking \$62,557.61 in relation to the CEC's participation in the John Hart Proceeding;
- D. On June 15, 2023, the BCUC issued Order F-24-23 (PACA Award), awarding the CEC, for the reasons attached to the PACA Award, \$49,317.32 in participant costs;
- E. On July 13, 2023, the CEC filed an Application for Reconsideration of the PACA Award (Reconsideration Application); and
- F. The BCUC has reviewed the PACA Application, the PACA Award and the Reconsideration Application in accordance with sections 118 and 99 of the *Utilities Commission Act* and the criteria set out in the BCUC's Rules of Practice and Procedure attached to Order G-72-23, and determines the following order is warranted.

¹ Appendix A to Order G-97-17.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, the BCUC orders as follows:

1. The Reconsideration Application is summarily dismissed without the need for further process, for the reasons attached as Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of October 2023.

BY ORDER

Original signed by:

W. M. Everett, KC
Commissioner

Attachment

Commercial Energy Consumers of British Columbia
Reconsideration of Order F-24-23

REASONS FOR DECISION

1.0 Introduction

This reconsideration application (Reconsideration Application) is brought by the Commercial Energy Consumers Association of British Columbia (the CEC) in the context of the application by British Columbia Hydro and Power Authority (BC Hydro) to the British Columbia Utilities Commission (BCUC) for approval of an Expenditure Schedule for the John Hart Dam Seismic Upgrade Project (John Hart Proceeding). The CEC was a registered intervener in the John Hart Proceeding. On May 5, 2023, the BCUC issued Decision and Order G-107-23 in that proceeding approving the Expenditure Schedule.² On February 17, 2023, the CEC applied to the BCUC seeking participant costs of \$62,557.61 in respect of its participation as an intervener. On June 15, 2023, the BCUC issued Order F-24-23 with reasons attached (PACA Award), awarding the CEC \$49,317.61 in participant costs.³ The CEC filed its Reconsideration Application on July 13, 2023, seeking a reconsideration of the BCUC's PACA Award.⁴

Three other parties were registered as interveners in the John Hart Proceeding: the British Columbia Old Age Pensioners' Organization et al. (BCOAPO), the Residential Consumer Intervener Association (RCIA) and the Wei Wai Kum & We Wai Kai First Nations (WWK/WWK). They each participated actively and made applications seeking participant costs.

1.1 Regulatory Framework Regarding PACA Awards

Section 118(1) of the *Utilities Commission Act* (UCA) provides:

The commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding.

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.

Part V of the BCUC's Rules of Practice and Procedure⁵ sets out the Rules regarding a reconsideration application, which, in part, include:

Rule 26.05:

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:

² BCUC Decision and Order G-107-23.

³ PACA Award, Direction 1. A subsequent amendment, denoted as F-24-23A, was issued on June 30, 2023. This change had no bearing on the PACA funding awarded to the CEC.

⁴ Exhibit B-1.

⁵ BCUC Order G-72-23.

- (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; and

Rule 28.01:

Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish, on its face, any reasonable grounds for reconsideration of the decision.

The BCUC Participant Assistance/Cost Award Guidelines⁶ (PACA Guidelines) provide, in part:

7.0 Professional fees

7.1 The Commission expects participants to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, expert witnesses and case managers. The Commission may adjust cost awards where any duplication appears to have occurred.

...

14.0 Making an application for Participant Assistance/Cost Awards

14.1 Submitting a budget estimate

14.1.1 Participants that intend to apply for a cost award exceeding \$10,000 must file a completed Participant Assistance/Cost Award Budget Estimate form by email to commission.secretary@bcuc.com, or via mail, courier, or personal delivery to the Commission Secretary, Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3.

14.1.2 Commission staff will disclose to the regulated entity, or the party who will be asked to pay, the budget estimate amount submitted.

14.1.3 Commission staff will reply to all submitted participant budget estimates with a review letter. The staff review letter will typically include an estimate of funding days. The participant will be informed of staff's concerns, if any, and be advised whether, in staff's opinion, all or a portion of the participant's budget estimate may be at risk of not being funded.

⁶ BCUC Order G-97-17, Appendix A. For proceedings commenced following June 30, 2022, Part VI of the Rules of Practice and Procedure apply to PACA funding applications. However, since the John Hart Proceeding commenced prior to June 30, 2022, the PACA Guidelines apply in the current case.

14.1.4 Commission staff advice is not binding on the participant or the Commission and is provided only to forewarn participants of some potential issues that may affect funding. The issuance of a staff letter will neither guarantee nor disqualify a participant from receiving funding.

1.2 Intervener PACA Applications

In its PACA application in the John Hart Proceeding, the CEC submitted a PACA budget pursuant to section 14.1.1 of the PACA Guidelines, in which it estimated 29 funding days for consultant services and 14 days for legal counsel services, with a total PACA cost estimate, including taxes, of \$93,286.96. By letter dated April 19, 2022, BCUC staff informed the CEC that, in its opinion, the number of budgeted days by the CEC exceeded staff's estimate for the proceeding and that a portion of CEC's budget estimate may be at risk of not being funded.⁷

The CEC asserts that it respected the advice it received from BCUC staff by reducing its original estimate of funding days for consultants from 29 to 23.38 days, which was 19.4 percent lower than the amount estimated originally.⁸ That reduction lowered the CEC's original estimated PACA budget from \$93,286.96 to \$62,557.61.

Pursuant to section 14.2.4 of the PACA Guidelines, BC Hydro, as the entity, in this case, being asked to pay the PACA funding awarded to interveners, had an opportunity to comment on all of the interveners' applications for funding with respect to their participation in the John Hart Proceeding.

By letter dated May 23, 2023, BC Hydro, provided its comments on the interveners' PACA applications, stating:⁹

BC Hydro recognizes the complexity of the John Hart Dam Seismic Upgrade Project and that the amount of information provided by BC Hydro regarding the John Hart Facility, as well as the Campbell River System as a whole, was substantial; including, for example, the Economic Valuation of the System, issues related to Dam Safety, seismic withstand deficiencies, and targets of the John Hart Dam and other facilities on the Campbell River System.

BC Hydro therefore does not oppose the intervener PACA submissions for the Project. BC Hydro notes that the John Hart Dam Seismic Upgrade Project is the first of three planned projects for the Campbell River System and will be followed by the Ladore Spillway Seismic Upgrade Project and the Strathcona Discharge Upgrade Project, and intervener PACA for those projects should be determined independently of any PACA awarded for the John Hart Dam Seismic Upgrade project.

1.3 The BCUC PACA Award Decision

The other interveners (aside from the CEC) were each awarded the PACA funding amounts they sought.¹⁰ For the sake of comparison, Table 1 (reproduced from the PACA Award) provides the PACA funding amounts sought by each intervener (shown as "Participants" in Table 1) who filed applications with the BCUC for PACA funding with respect to their participation in the John Hart Proceeding:¹¹

⁷ BCUC Order F-24-23A, Appendix A, p. 4.

⁸ Exhibit B-1, p. 3.

⁹ BCUC Order F-24-23A, Appendix A, p. 3.

¹⁰ Ibid.

¹¹ Ibid., p. 2.

Table 1: Participant Assistance / Cost Award (PACA) Applications

Participant	Legal	Consulting	Other	Total Application
BCOAPO	\$29,052.59	\$10,936.28	\$21.00	\$40,009.87
CEC	\$24,728.20	\$37,829.41	-	\$62,557.61
RCIA	\$2,719.50	\$30,604.22	-	\$33,323.72
WWK/WWK	\$30,920.00	\$8,960.00	-	\$39,880.00

Table 2, in turn, summarizes the number of funding days submitted by each intervener for both legal counsel and consultant services:¹²

Table 2: Participant Assistance / Cost Award (PACA) Funding Days

Participant	Legal Counsel	Consultant	Total
BCOAPO	9.11	5.63	14.74
CEC	8.73	23.38	32.11
RCIA	0.93	20.44	21.37
WWK/WWK	11.25	8.00	19.25

In the reasons accompanying the PACA Award, the BCUC also summarized the PACA funding sought by the CEC for its legal counsel and consultant time as shown in Table 3.¹³

Table 3: Participant Assistance / Cost Award (PACA) Funding Sought by the CEC

The CEC-Professional Fees	Funding Days	Daily Rate	Amount
Legal Counsel – Owen Bird Law Corporation			
Christopher P. Weafer	6.1125	\$2,800	\$19,168.80
Patrick J. Weafer	2.6125	\$1,900	\$5,559.40
Consultant - The CEC			
David Craig	6.625	\$1,850	\$12,873.40
Janet Rhodes	8.250	\$1,850	\$16,031.00
Edlira Gjoshe	8.500	\$1,000	\$8,925.00

¹² Ibid.

¹³ Ibid., p. 3.

The BCUC determined in its PACA Award that the PACA funding sought by the CEC in relation to its consultants should be reduced by 35 percent.¹⁴ In doing so, the panel gave the following reasons for its decision:¹⁵

The Panel acknowledges that the CEC contributed to a better understanding by the BCUC of the issues in this proceeding. Having considered the PACA Guidelines, the Panel finds that the CEC is eligible for a PACA award. However, the Panel notes that the CEC's requested PACA funding for consultants is much greater than that requested by other Interveners, who also contributed to a better understanding of the issues in the proceeding. As a point of comparison, the CEC PACA request of \$37,829.41 for consultants is 24 percent higher than that of RCIA. The Panel finds the PACA funding sought relative to the CEC contribution to the proceeding is not consistent with other interveners in the Proceeding and therefore is not reasonable.

The CEC claims a total of 32.11 funding days for consultants and legal counsel services, which is 50 percent higher than that of RCIA.

Based on the invoices provided by the CEC, the Panel notes that there may not be an efficient use of CEC's consultants. For example, one consultant appears to have been primarily involved in preparing IRs and attending the Workshop but was not involved in writing final argument. Further, having different persons involved in different phases of the proceeding necessarily means that more overall time is needed to review materials. In the Panel's view, these efforts appear to be an inefficient management of the consultants' time or unnecessary duplication.

2.0 Reconsideration Application

In its Reconsideration Application, the CEC submits that the BCUC should "reconsider the factual grounds used in its [PACA Award] and find that the Commission erred in its factual analysis and understanding of the facts."¹⁶ Further, the CEC "respectfully requests that the CEC consultants should be paid at the Commission approved rates for the work done by people qualified for the Commission rates and for the contributions made" and "contends that the PACA billing for the CEC consultants of \$37,829.41 is justified by the facts."¹⁷

Panel Determination

The Panel summarily dismisses the Reconsideration Application, pursuant to Rule 28.01, on the basis that it fails to establish, on its face, any reasonable ground for reconsideration of the PACA Award, for the following reasons.

In the Panel's view, the Reconsideration Application fails to establish any errors of fact, and further fails to establish any other eligible ground for reconsideration as provided in Rule 26.05 of the BCUC Rules of Practice and Procedure. Instead, the Reconsideration Application challenges the BCUC's exercise of its discretion, on the facts properly before it, when it determined CEC's PACA funding amount pursuant to section 118 of the UCA and the PACA Guidelines.

¹⁴ Ibid., p. 4.

¹⁵ Ibid.

¹⁶ Exhibit B-1, p. 3.

¹⁷ Ibid., p. 9.

In particular, the Panel notes that section 7.1 of the PACA Guidelines explicitly requires proceeding participants to “use professional services in a cost-effective manner” and sets out the BCUC’s ability to adjust cost awards where it appears that duplication of professional services has occurred.

In the PACA Award, the BCUC exercised its discretion by reducing the PACA funding of \$37,828.41, being sought by the CEC for consulting services, by 35 percent, thereby reducing the CEC’s total PACA funding amount from \$62,577.61 to \$49,317.32.

The Panel finds that the BCUC reasonably exercised its discretion in the PACA Award, and provided sufficient reasons regarding its decision on the CEC’s PACA funding amount. Below, the Panel addresses specific errors of fact and other grounds for reconsideration raised by the CEC in its Reconsideration Application:

1. The CEC alleges that its higher PACA costs in comparison to RCIA are explained by the fact that RCIA used far fewer legal hours,¹⁸ and that RCIA used consultants with a lower hourly rate.¹⁹ As noted above, the Panel finds that this ground does not disclose any error of fact, nor any other ground for reconsideration. The BCUC was aware of these facts at the time of its PACA Award. Rather, the CEC is again taking issue with the manner in which the BCUC exercised its discretion in light of the facts before it. The Panel finds that the BCUC exercised its discretion reasonably, and summarily dismisses this ground for reconsideration.

With respect to the CEC’s request that the Panel clarify whether the BCUC’s expectation is that parties “not bring significant legal time and costs into their intervention,”²⁰ the Panel notes that the BCUC assesses each application for PACA funding based on its own facts and circumstances, applying the BCUC’s discretion and guided by the PACA Guidelines.²¹

2. The CEC alleges that there were two interveners (RCIA and BCOAPO) that represented “residential interests” in the John Hart Proceeding, but only one (the CEC) that represented “commercial interests.” The CEC submits comparing its costs to the sum of RCIA and BCOAPO’s costs discloses that the CEC’s costs are lower than the combined costs of these two other “residential” interveners.²²

There is no requirement that the BCUC award funding by grouping together interveners’ PACA applications based on interveners sharing similar interests. Whether or not the CEC’s funding request was lower than the combined requests of other interveners does not disclose an error of fact or establish another ground of reconsideration. The Panel accordingly summarily dismisses this ground for reconsideration.

3. The CEC in this Reconsideration Application introduced, for the first time, material facts as grounds to justify any potential duplication and inefficiencies in the CEC’s consultants’ activities, as found in the PACA Award. In particular, the CEC introduced evidence of the CEC’s “collaborative review processes”; the need to comply with the Commission schedule for regulatory proceedings; the accommodation of health issues; and the addition of resources to plan for future succession of roles within the CEC,²³ in support of the amount the CEC was seeking in PACA costs. The Panel find that these new material facts do not disclose any error of fact, nor any other ground for reconsideration, and accordingly summarily dismisses this ground for reconsideration.

¹⁸ Exhibit B-1, p. 4.

¹⁹ Ibid., pp. 5-6.

²⁰ Ibid., p. 4.

²¹ For proceedings commenced following June 30, 2022, Part VI of the Rules apply to PACA funding applications.

²² Exhibit B-1, pp. 4-5.

²³ Ibid., pp. 6-8.

In this regard, the Panel notes that Rule 26.05(c) of the BCUC Rules of Practice and Procedure provides that one potential ground for reconsideration is that “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” [underlining added]. However, the Panel finds that the CEC has failed to establish this ground for reconsideration.

Specifically, the Panel notes that the CEC, after filing of all evidence and arguments in the John Hart Proceeding and while awaiting the decision, received BCUC staff’s April 19, 2022 letter, that pointed out that a portion of CEC’s budget estimate may be at risk of not being funded. While the CEC reduced the amount of its requested PACA funding from its original estimate when it filed its PACA application, it did not include any of the material facts it now seeks to rely upon to justify the amount it was seeking. The Panel finds the CEC must have been aware, at the time it filed its PACA Application of its collaborative review process, staffing and health issues and the need to add resources to plan for future succession, that it references in the Reconsideration Application. The CEC therefore had an opportunity to include in its PACA application those facts on which it now seeks to rely in support of the reasonableness of its consultants’ costs. However, the CEC did not do so.

The Panel is also not persuaded that the CEC has established that there is “otherwise just cause” to vary the PACA Award, pursuant to Rule 26.05(f). Even taking the new facts submitted by the CEC as part of the Reconsideration Application into account, the Panel is not persuaded that such facts would warrant any change to the PACA Award. Although the Panel does not suggest that there is anything inherently improper about an organization using additional resources to accommodate health issues, scheduling constraints, or other matters, interveners should not assume that such costs will be recoverable through PACA funding as a matter of course.

In the present case, the BCUC has directed BC Hydro to reimburse interveners for their awarded PACA funding. BC Hydro, in turn, generally seeks to pass these costs on to BC Hydro’s ratepayers as part of the cost of regulation. As such, although the Panel acknowledges the CEC’s comments regarding its staffing and workload management, in the current circumstances the Panel considers it appropriate that the CEC should bear the cost of any resulting duplication or inefficiency rather than having BC Hydro’s ratepayers bear these costs.

4. Finally, the Panel refers to the CEC’s submission that the result of the PACA Award was that the CEC’s consultant needed “unjustly, to inject additional capital to protect its staff and consultants on top of the costs for carrying the receivable at risk for months.”²⁴

The Panel notes that an application for PACA funding does not constitute a “receivable” – or, put another way, an application for PACA funding does not guarantee an award amount equal to the amount applied for. While the BCUC very much values the contributions that interveners bring to its proceedings, interveners do not have a legal entitlement (in the nature of an account receivable) to such funding unless it is granted by the BCUC. The Panel accordingly summarily dismisses this ground for reconsideration.

²⁴ Ibid., p. 3.