



ORDER NUMBER
F-7-24

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

and

Nelson Hydro
2023 Revenue Requirement Application
Participant Cost Award Application

BEFORE:

E.B. Lockhart, Panel Chair
A.C. Dennier, Commissioner
T.A. Loski, Commissioner

on January 30, 2024

ORDER

WHEREAS:

- A. On October 28, 2022, Nelson Hydro filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of a general annual rate increase of 9.87 percent for the service area outside its municipal boundaries (Rural Service Area), effective on January 1, 2023, pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA) (Application);
- B. Nelson Hydro is owned and operated by the City of Nelson and is excluded from regulation under the UCA to the extent it is serving customers within its municipal boundaries (Urban Service Area). Accordingly, the BCUC's review of the Application pertains solely to Nelson Hydro's ratepayers in the Rural Service Area (Rural Ratepayers);
- C. By Orders G-332-22A, G-25-23, G-61-23, G-185-23 and G-190-23, the BCUC established the regulatory timetable for the review of the Application, which provided for intervener registration, two rounds of BCUC and intervener information requests (IR), one round of Panel IRs, submissions on intervener collaboration, letters of comment with Nelson Hydro's reply, and final and reply arguments;
- D. The following interveners registered in the proceeding:
 - Randy Evanchuk (Evanchuk);
 - Residential Consumer Intervener Association (RCIA); and
 - British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and Tenant Resource and Advisory Centre (BCOAPO);

- E. On December 5, 2023, by Decision and Order G-330-23, the BCUC approved, among other things, Nelson Hydro’s applied for rate increase of 9.87 percent for Rural Ratepayers on a permanent basis, effective January 1, 2023;
- F. The following interveners filed Participant Cost Award (PCA) applications with the BCUC with respect to their participation in the proceeding:

Date (2023)	Participant	Application
December 11	RCIA	\$15,181.69
December 13	BCOAPO	\$42,983.08

- G. By letter dated January 3, 2024, Nelson Hydro provided its comments on the PCA applications, stating that the BCUC should award only a portion of the applied for amounts for both RCIA and BCOAPO;
- H. RCIA and BCOAPO provided responses to Nelson Hydro’s comments by letters dated January 10, 2024; and
- I. The BCUC has reviewed the PCA applications in accordance with the criteria and rates set out in the Rules of Practice and Procedure for Participant Cost Awards, attached to BCUC Order G-72-23, and makes the following determinations.

NOW THEREFORE pursuant to section 118(1) of the UCA, and for the reasons set out in Appendix A to this order, the BCUC orders as follows:

- 1. Funding is awarded to the following interveners in the listed amounts, inclusive of applicable taxes, for their participation in the Nelson Hydro 2023 Revenue Requirement Application proceeding:

Participant	Award
RCIA	\$13,441.44
BCOAPO	\$32,237.31

- 2. Nelson Hydro is directed to reimburse the above-noted interveners for the awarded amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of January 2024.

BY ORDER

Original signed by:

E.B. Lockhart
Commissioner

Attachment

Nelson Hydro
2023 Revenue Requirement Application
Participant Cost Award Application

REASONS FOR DECISION

1.0 Background

On October 28, 2022, Nelson Hydro filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of a general annual rate increase of 9.87 percent for the service area outside its municipal boundaries (Rural Service Area), effective on January 1, 2023, pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA) (Application).

Nelson Hydro is owned and operated by the City of Nelson and is excluded from regulation under the UCA to the extent it is serving customers within its municipal boundaries (Urban Service Area). Accordingly, the BCUC's review of the Application pertains solely to Nelson Hydro's ratepayers in the Rural Service Area (Rural Ratepayers).

By Orders G-332-22A, G-25-23, G-61-23, G-185-23 and G-190-23, the BCUC established the regulatory timetable for the review of the Application, which provided for intervener registration, two rounds of BCUC and intervener information requests (IR), one round of Panel IRs, submissions on intervener collaboration, letters of comment with Nelson Hydro's reply, and final and reply arguments.

The following interveners registered in the proceeding:

- Randy Evanchuk (Evanchuk);
- Residential Consumer Intervener Association (RCIA); and
- British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and Tenants Resource and Advisory Centre (BCOAPO).

On December 5, 2023, by Decision and Order G-330-23, the BCUC approved, among other things, Nelson Hydro's applied for rate increase of 9.87 percent for Rural Ratepayers on a permanent basis, effective January 1, 2023.

The BCUC received applications for participant cost awards (PCA) from two interveners with respect to their participation in the proceeding.

2.0 Legislative Framework

Section 118(1) of the UCA provides that "the BCUC may order a participant in a proceeding before the BCUC to pay all or part of the costs of another participant in the proceeding."

The BCUC PCA rules,¹ applicable to proceedings initiated since June 30, 2022, are set out in Part VI of the BCUC Rules of Practice and Procedure. The PCA rules stipulate the eligibility requirements and criteria used in

¹ Established by Order G-178-22 dated June 30, 2022 and amended by Order G-72-23 dated April 3, 2023.

assessing cost awards, including the process for applying for a cost award, eligible costs, and rates in BCUC proceedings.

Rule 36.01 provides that the BCUC will determine the amount of a cost award, if any, in accordance with the purpose of the PCA rules and that it will consider the following criteria, as applicable:

- a) Whether such costs were necessarily and properly incurred in the conduct of the proceeding;
- b) Whether such costs are reasonable;
- c) Whether the participant has demonstrated through its participation that it has:
 - i. Contributed to a better understanding by the BCUC of one or more of the issues in the proceeding;
 - ii. Made reasonable efforts to combine or coordinate its participation with that of one or more participants with similar interests, in order to avoid duplication and reduce costs;
 - iii. Engaged in conduct or activity that resulted in a more efficient and/or shorter proceeding;
 - iv. Refrained from conduct or activity that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
 - v. Refrained from conduct or activities which the BCUC considers inappropriate or irresponsible;
 - vi. Made reasonable efforts to ensure participation in the proceeding, including information requests, issues raised, evidence, cross-examination, and arguments, was within the scope of the proceeding or not unduly repetitive;
 - vii. Engaged in conduct consistent with the participant’s approved scope of participation in the proceeding;
 - viii. Incurred time participating in the proceeding that was proportionate to the scope of the proceeding and/or the complexity or novelty of the proceeding;
 - ix. Complied with the BCUC’s orders, directions, and rules; and
- d) Any other matter the BCUC determines appropriate in the circumstances.

3.0 PCA Applications

The following table summarizes the PCA funding sought by each intervener in its PCA application:

Date (2023)	Participant	Application
December 11	RCIA	\$15,181.69
December 13	BCOAPO	\$42,983.08

The following table summarizes the funding hours sought by each intervener in its PCA application:

Participant	Legal Counsel	Consultant	Total
RCIA	-	62.75	62.75
BCOAPO	60.80	84.50	145.30

Positions of Parties

On January 3, 2024, Nelson Hydro provided its comments with respect to the PCA applications. Nelson Hydro states that RCIA and BCOAPO both held “similar interests” in this proceeding pursuant to Rule 36.01(c)(ii) and could have found efficiencies in the process by combining their efforts on behalf of residential ratepayers as Nelson Hydro suggested during the proceeding. Nelson Hydro submits that these “similar interests” were further evidenced by the focus of both interveners on the same planned capital project spending in their final arguments. Nelson Hydro submits that the BCUC should review the PCA applications with “heightened scrutiny” and assess whether the participation from these interveners is consistent with Rule 36.01.²

Regarding RCIA, Nelson Hydro states that RCIA’s final argument included submissions on Nelson Hydro as a single utility which was previously determined on and is out of scope of this proceeding. Nelson Hydro recommends that the BCUC not award RCIA the full amount sought in its PCA application.³

Regarding BCOAPO, Nelson Hydro states that BCOAPO’s costs of \$42,983.08 for this nine-month long proceeding are hard to reconcile with its \$50,838 in costs sought in the Nelson Hydro Cost of Service Analysis & Rate Design proceeding (COSA proceeding) which took two years to complete and involved more process than this proceeding. Nelson Hydro further notes that while the level of participation from RCIA and BCOAPO in this proceeding was similar, BCOAPO is seeking nearly three times the amount of PCA funding. Nelson Hydro finds BCOAPO’s cost request excessive and recommends that the BCUC not award BCOAPO the full amount sought in its PCA application.⁴

On January 10, 2024, RCIA replied to Nelson Hydro’s comments noting that the matter of intervener collaboration and coordination was already addressed in this proceeding with the BCUC determining that intervener collaboration and coordination was not warranted. RCIA states that there is no evidence of duplicative efforts or inefficiencies. RCIA notes that interveners asking IRs or submitting final arguments on the same topics is common in BCUC proceedings and indicative of important issues arising in a proceeding and the interests of the various parties on those issues. RCIA submits that its applied-for amount is reasonable and commensurate with the level of scrutiny and effort required for the revenue requirement application of a small utility and should be awarded in full.⁵

On January 10, 2024, BCOAPO replied to Nelson Hydro’s comments with an analysis of its PCA costs against the criteria of Rule 36.01.⁶

² Nelson Hydro Comments dated January 3, 2024 (Nelson Hydro Comments), p. 2.

³ Nelson Hydro Comments, pp. 2–3.

⁴ Nelson Hydro Comments, pp. 2–3.

⁵ RCIA Reply Comments dated January 10, 2024 (RCIA Reply Comments), pp. 1–3.

⁶ BCOAPO Reply Comments dated January 10, 2024 (BCOAPO Reply Comments), pp. 1–11.

BCOAPO states that seeking to reduce its PCA based on an unfavorable comparison to BCOAPO's PCA from the previous COSA proceeding would be "unfair" and would compromise intervener participation. BCOAPO cites specific matters arising in this proceeding that were not present in the COSA proceeding as reasons why the two PCA amounts would not be comparable, including Nelson Hydro's request for intervener collaboration, the magnitude of the requested general rate increase, deferral accounts, and capital projects. BCOAPO notes that its PCA would have been 11.5 hours, or \$3,998.40, less had Nelson Hydro not requested interveners to collaborate after IR No. 1. BCOAPO also states that comparing the length (number of months) of proceedings does not appropriately reflect the complexity of the work required.⁷

In addition, BCOAPO submits that comparing BCOAPO's and RCIA's PCA applications is not appropriate given the different interests of the two parties and the more comprehensive intervention by BCOAPO. In its reply comments, BCOAPO submits that it did not exceed the scope of this proceeding, nor did it pursue issues with minimal value. BCOAPO asks the Panel to dismiss Nelson Hydro's concerns or objections and approve its full cost award.⁸

Panel Determination

Having considered the criteria in the PCA rules, the Panel finds that both of the interveners that filed PCA applications are eligible for PCA funding and contributed to a better understanding of the issues in the proceeding.

In response to Nelson Hydro's submissions on intervener collaboration and coordination, the Panel notes that this matter was addressed during the proceeding and the Panel determined that intervener collaboration and coordination was not warranted.⁹ The Panel is not persuaded that the PCA amounts should be reduced due to a lack of potential collaboration or coordination pursuant to Rule 36.01(c)(ii). Further, the Panel was not presented with any evidence that potential cost reductions would occur if intervener collaboration and coordination had been implemented.

The Panel notes that RCIA included time spent reviewing the BCUC's Decision and Order G-330-23 in its PCA application.¹⁰ The Panel finds that this activity does not contribute to a better understanding of the issues in the proceeding pursuant to Rule 36.01(c)(i). RCIA pursued five broad topics¹¹ in its final argument, one of which was "Nelson Hydro is a single utility". As Nelson Hydro points out, this matter has already been determined by the BCUC in Decision and Order G-196-22. The Panel finds that RCIA's pursuit of this topic did not contribute to a greater understanding of the issues nor was it within the scope of the proceeding pursuant to Rules 36.01(c)(i) and 36.01(c)(vi). **Accordingly, the Panel reduces RCIA's cost award first to exclude the time spent reviewing the BCUC's Decision and Order G-330-23, and second, reduces the adjusted total PCA amount by 10 percent to reflect the out of scope work. The BCUC awards \$13,441.44 to RCIA, inclusive of applicable taxes.**

The Panel finds the time and funding amounts claimed by BCOAPO in its PCA application to be disproportionate to the scope, complexity, and novelty of the proceeding pursuant to Rule 36.01(c)(viii). When comparing the

⁷ BCOAPO Reply Comments, pp. 3–4, 10–11.

⁸ BCOAPO Reply Comments, pp. 7, 11.

⁹ Nelson Hydro 2023 Revenue Requirements proceeding, Exhibit A-8, p. 1.

¹⁰ RCIA PCA Application, p. 5 includes 1.0 hours on December 5, 2023 for "Decision Review" by Mr. Mason. Using an hourly rate of \$235, plus applicable taxes, results in a total of \$246.75 cost of this time.

¹¹ RCIA addressed the following topics in its Final Argument: Nelson Hydro is a single utility, the deemed debt rate and financial structure, the Battery Energy Storage System project, the Advanced Metering Infrastructure project, and deferral accounts.

funding hours and costs of RCIA and BCOAPO to the contributions of each party, the Panel finds the disparity between the funding hours and costs to be far greater than the disparity between the contributions. The Panel acknowledges that BCOAPO contributed to a better understanding of the issues and that it may have pursued more topics and in greater depth than RCIA. However, the Panel finds BCOAPO's total funding hours and costs to significantly exceed its contribution to the proceeding. **Accordingly, the BCUC reduces BCOAPO's cost award by 25 percent and awards \$32,237.31 to BCOAPO, inclusive of applicable taxes.**