



**ORDER NUMBER
F-20-24**

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

and

British Columbia Hydro and Power Authority
Application for Approval to Set the Fiscal 2025 Deferral Account Rate Rider and Trade Income Rate Rider and
Reconsideration Related to the Trade Income Rate Rider
Participant Cost Award Application

BEFORE:

M. Jaccard, Commissioner

on March 28, 2024

ORDER

WHEREAS:

- A. On October 30, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) pursuant to Directives 77 and 79 of the Fiscal 2023 to Fiscal 2025 Revenue Requirements Application Decision and Order G-91-23 (Application). In the Application, BC Hydro sought the following:
- i. Approval to recover the balances in the Cost of Energy Variances Accounts through the Deferral Account Rate Rider (DARR) using the DARR table mechanism and set the DARR at (2.5) percent for fiscal 2025;
 - ii. Leave to apply to reconsider Directive 77, and an order varying Directive 77 to set the Trade Income Rate Rider (TIRR) at (2.3) percent on customer bills for fiscal 2025 with the remainder of the TIRR balance that would otherwise have been refunded on customer bills in fiscal 2025 pursuant to Directive 77 being deferred to a new Rate Smoothing Regulatory Account; and
 - iii. Approval to establish a new Rate Smoothing Regulatory Account to:
 - Capture the remainder of the TIRR balance that would otherwise have been refunded on customer bills in fiscal 2025 pursuant to Directive 77; and
 - Apply interest to the balance of the account based on BC Hydro's current weighted average cost of debt;
- B. By Order G-300-23, the BCUC approved BC Hydro's request for permission to apply for reconsideration of Directive 77 of Order G-91-23 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 public notice requirements, one round of BCUC information requests to BC Hydro, letters of comment, and BC Hydro's reply submission;

- C. On November 9, 2023, the Association of Major Power Customers of British Columbia (AMPC) filed a letter with the BCUC in relation to the regulatory timetable and process established by Order G-300-23. In its letter, AMPC requested an amendment to the regulatory timetable to allow for intervener registration, intervener information requests, and intervener argument;
- D. On November 21, 2023, the BCUC issued a letter denying AMPC's request to amend the regulatory timetable established by Order G-300-23 and, among other things, clarified that letters of comment would not be automatically given less weight than BC Hydro's submissions in the proceeding;
- E. The BCUC received letters of comment from six parties during the proceeding;
- F. On February 20, 2024, by Decision and Order G-43-24, the BCUC approved BC Hydro's request to set the DARR at (2.5) percent and to vary Directive 77 of Order G-91-23 to set the TIRR at (2.3) percent for fiscal 2025 and to establish the Rate Smoothing Regulatory Account;
- G. The following parties filed Participant Cost Award (PCA) applications with the BCUC with respect to their letters of comment filed in the proceeding:

Date (2024)	Participant	Application
March 4	AMPC	\$35,239.75
March 11	Commercial Energy Consumers Association of British Columbia (the CEC)	\$1,698.80

- H. The BCUC has reviewed the PCA applications in accordance with the criteria 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 *Utilities Commission Act*, and for the reasons outlined in the decision accompanying this order, the BCUC denies AMPC's and the CEC's PCA applications.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of March 2024.

BY ORDER

Original signed by:

M. Jaccard
Commissioner

British Columbia Hydro and Power Authority
Application for Approval to Set the Fiscal 2025 Deferral Account Rate Rider and Trade Income Rate Rider and
Reconsideration Related to the Trade Income Rate Rider
Participant Cost Award Application

DECISION

1.0 Background

On October 30, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) for approval of the Deferral Account Rate Rider (DARR) and the Trade Income Rate Rider (TIRR) for fiscal 2025 (Application). BC Hydro also requested leave to apply for reconsideration of Directive 77 of the Fiscal 2023 to Fiscal 2025 Revenue Requirements Application (RRA) Decision¹ related to the TIRR, an order varying Directive 77, and the establishment of a new Rate Smoothing Regulatory Account. The Application was filed pursuant to sections 59 to 60 and 99 of the *Utilities Commission Act* (UCA), which relate to setting utility rates and reconsiderations, respectively.

On November 3, 2023, by Order G-300-23, the BCUC approved BC Hydro's request for permission to apply for reconsideration of Directive 77 and established a regulatory timetable for the review of the Application. The regulatory timetable included public notice of the Application, one round of BCUC information requests, letters of comment and BC Hydro's reply.

During the proceeding, the Association of Major Power Customers of British Columbia (AMPC) filed a letter with the BCUC in relation to the regulatory timetable and process established by Order G-300-23. In its letter, AMPC requested an amendment to the regulatory timetable to allow for intervener registration, intervener information requests, and intervener argument.² The BCUC denied this request stating that it considered the established regulatory process fair given the narrow scope of the proceeding and the discrete issues raised in the Application. The BCUC also clarified that letters of comment received in the proceeding would not be automatically given less weight than BC Hydro's submissions and that all submissions filed would be considered by the BCUC in making its final decision.³

The BCUC received letters of comment from six parties during the proceeding.⁴

On February 20, 2024, by Decision and Order G-43-24, the BCUC approved BC Hydro's request to set the DARR at -2.5 percent and to vary Directive 77 of Order G-91-23 to set the TIRR at -2.3 percent for fiscal 2025 and to establish the Rate Smoothing Regulatory Account.

The BCUC received applications for participant cost awards (PCA) from AMPC and the Commercial Energy Consumers Association of British Columbia (the CEC) with respect to their letters of comment submitted in the proceeding to review the Application.

¹ BC Hydro F2023 to F2025 RRA, BCUC Decision and Order G-91-23 dated April 21, 2023.

² BC Hydro Application for Approval to Set the F2025 Deferral Account Rate Rider and Trade Income Rate Rider and Reconsideration Related to the TIRR proceeding (BC Hydro F2025 DARR and TIRR Proceeding), Exhibit D-1, dated November 9, 2023.

³ BC Hydro F2025 DARR and TIRR Proceeding, Exhibit A-5, dated November 21, 2023.

⁴ BC Hydro F2025 DARR and TIRR Proceeding, Exhibits D-1 to D-6.

2.0 Legislative Framework

Section 118(1) of the Utilities Commission Act 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,⁵ applicable to proceedings initiated since June 30, 2022, are set out in Part VI of the BCUC Rules of Practice and Procedure (Rules). The PCA rules stipulate the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs, and rates in BCUC proceedings.

Rule 30.01 provides the purpose of the PCA rules, as follows:

The purpose of the rules in Part VI is to encourage effective participation in BCUC proceedings that contributes to a fair, cost effective and timely determination or completion of every proceeding on its merits.

Rule 31.01 defines participant as:

- (a) an applicant in a proceeding; or
- (b) a party that has been granted intervener status in a proceeding.

Rule 32.01 states:

The BCUC may, in a proceeding, award costs to a participant or participants, determine the amount of such award, if any, and order a participant or participants to pay all or part of the costs of another participant or participants.

Rule 33.01 states that a participant is eligible for a cost award in a proceeding.

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 applicable criteria set out under this rule.

3.0 PCA Applications

The following table summarizes the costs sought by each party in its PCA application with respect to their letters of comment submitted in the proceeding:

Date (2024)	Participant	Application
March 4	AMPC	\$35,239.75 ⁶
March 11	The CEC	\$1,698.80

AMPC and the CEC submit that their PCA applications satisfy the assessment criteria under Rule 36.01 of the Rules.⁷

⁵ Established by Order G-178-22 dated June 30, 2022 and amended by Order G-72-23 dated April 3, 2023.

⁶ AMPC's PCA application does not claim any of the activity it undertook for its November 9, 2023 letter regarding the regulatory timetable and process established by Order G-300-23.

⁷ AMPC PCA application, p. 1; CEC PCA Application, Attachment, Summary of Total Costs tab.

In addition, AMPC states that its submission in the proceeding was significant, in line with the level of importance its members assigned to the proceeding, and contained legal arguments and potential impacts of BC Hydro's requests to customers and stakeholders. AMPC also states:⁸

If the Commission is going to treat Letter of Comment status as equivalent to interventions in critical filings, it must ensure that parties that are limited in their involvement are not prejudiced by this choice. Ensuring the availability of participant funding in appropriate circumstances is necessary to achieve this, so that the BCUC continues to receive submissions with the benefit of legal and expert assistance. When a contentious, extensively litigated BCUC decision is at risk of being reversed, the perspectives of potentially impacted parties are more important than ever.

Panel Determination

The participant cost awards claimed by AMPC and the CEC are denied. The Panel finds that AMPC and the CEC are not eligible for cost awards pursuant to Rules 31.01, 32.01, and 33.01.

By Order G-300-23, the BCUC determined that a regulatory process, which included a written comment process using letters of comment, was warranted for this proceeding.

The Panel does not consider letters of comment as equivalent to interventions. The Rules set out distinct provisions regarding letters of comment and intervention, including with respect to PCA. The Panel notes that the BCUC's letter dated November 21, 2023 stated that letters of comment received in this proceeding would not be automatically given less weight than BC Hydro's submissions and that all submissions filed would be considered by the BCUC in making its final decision. Although submissions of letters of comment allowed AMPC and the CEC to contribute their views in the proceeding, which the BCUC considered when making its final decision, submitting letters of comment was not equivalent to having intervener status for the purpose of costs.

Rule 31.01 defines the term participant to mean either an applicant or an intervener. In this proceeding, AMPC and the CEC were neither. Rule 32.01 provides that the BCUC may award costs to a participant and Rule 33.01 states that a participant is eligible for a cost award in a proceeding. Although neither of these rules expressly state that entities which are not participants are ineligible for PCA, in the Panel's view this is the only reasonable interpretation of the Rules. In particular, there would be no need to specify that a participant is eligible for a cost award in Rule 33.01 if non-participants were also eligible.

Considering the above, the Panel does not accept AMPC's suggestion that cost awards should be available for letters of comment treated as equivalent to intervention in relation to "critical filings". The Panel established a process for this proceeding that included letters of comment and not intervention, and the consequence of this was that PCA was not available for the proceeding for parties filing letters of comment. Lastly, the Panel is not persuaded that there are any circumstances present that would justify deviating from the eligibility criteria set out in the Rules.

⁸ AMPC PCA application, p. 1.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of March 2024.

Original signed by:

M. Jaccard
Commissioner