



ORDER NUMBER
G-229-24

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

and

BC Sustainable Energy Association and Vancouver Electric Vehicle Association
Reconsideration Order F-27-24

BEFORE:

T. A. Loski, Panel Chair
C. M. Brewer, Commissioner

on August 22, 2024

ORDER

WHEREAS:

- A. On March 6, 2024, the British Columbia Utilities Commission (BCUC) issued Decision and Order G-58-24 in the matter of the British Columbia Hydro and Power Authority (BC Hydro) 2021 Integrated Resource Plan (IRP) Application;
- B. BC Sustainable Energy Association and Vancouver Electric Vehicle Association (BCSEA-VEVA) was one of the registered interveners in the 2021 IRP proceeding;
- C. On February 9, 2024, BCSEA-VEVA submitted a Participant Assistance/Cost Award (PACA) application requesting \$160,524 in funding related to BCSEA-VEVA's participation in the 2021 IRP proceeding;
- D. By Order F-27-24 dated May 23, 2024, the BCUC issued its decision on the PACA applications in the 2021 IRP proceeding, and awarded BCSEA-VEVA \$150,524;
- E. On July 5, 2024, BCSEA-VEVA filed an application for reconsideration of Order F-27-24 (Reconsideration Application);
- F. The BCUC has reviewed the Reconsideration Application in accordance with sections 118 and 99 of the *Utilities Commission Act* (UCA) 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.

NOW THEREFORE pursuant to section 99 of the UCA, and for the reasons outlined in the decision accompanying this order, the BCUC orders that the Reconsideration Application is summarily dismissed without the need for further process.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of August 2024.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

BC Sustainable Energy Association and Vancouver Electric Vehicle Association
Reconsideration of Order F-27-24

DECISION

1.0 Introduction

On March 6, 2024, the British Columbia Utilities Commission (BCUC) issued Decision and Order G-58-24 in the matter of the British Columbia Hydro and Power Authority (BC Hydro) 2021 Integrated Resource Plan (IRP) Application. BC Sustainable Energy Association and Vancouver Electric Vehicle Association (BCSEA-VEVA) was one of the registered interveners in the 2021 IRP proceeding.

On February 9, 2024, BCSEA-VEVA submitted a Participant Assistance/Cost Award (PACA) application requesting \$160,524 in funding related to BCSEA-VEVA's participation in the 2021 IRP proceeding (PACA Application). By Order F-27-24 dated May 23, 2024, the BCUC issued its decision on the PACA applications in the 2021 IRP proceeding, and awarded BCSEA-VEVA \$150,524.

On July 5, 2024, BCSEA-VEVA filed an application for reconsideration of Order F-27-24 (Reconsideration Application). The Reconsideration Application is summarized further in Section 2 of this Decision.

1.1 Regulatory Framework

Section 99 of the *Utilities Commission Act* (UCA) states:

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's Rules of Practice and Procedure attached to Order G-72-23 (Rules)¹ outline the rules for reconsideration applications. Rule 26.05 provides that 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:

- (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.

Rule 28.01 provides that the BCUC may, without further process, summarily dismiss a reconsideration 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.

¹ [Order G-72-23 BCUC's Rules of Practice and Procedure](#)

Pursuant to section 118(1) of the UCA, 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 approved the BCUC’s Participant Assistance/Cost Award Guidelines attached to Order G-97-17 (PACA Guidelines) pursuant to section 118 of the UCA. The PACA Guidelines apply to proceedings commenced prior to June 30, 2022,² and set out the BCUC’s procedure for considering PACA applications. Since the 2021 IRP proceeding commenced prior to June 30, 2022, the BCUC reviewed interveners’ PACA applications in the proceeding under the PACA Guidelines.

Section 7.4 of the PACA Guidelines states:

Legal counsel are expected to perform legal services and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task. Participants are expected to use legal services in a cost-effective manner, giving regard to the years of experience required to perform tasks.

1.2 Order F-27-24

By Order F-27-24, the BCUC outlined its determinations on PACA awards for interveners in the 2021 IRP proceeding. The BCUC awarded BCSEA-VEVA \$150,524, which is a \$10,000 reduction from the amount BCSEA-VEVA applied for in its PACA Application, for the following reasons:

While the Panel considers the overall funding days incurred by BCSEA-VEVA are reasonable and proportionate to its participation in this proceeding, the Panel observes that the time is skewed heavily towards BCSEA-VEVA’s counsel. Upon a review of the detailed invoices included with the PACA application, the Panel observes that W. Andrews was the primary resource in terms of time incurred for tasks such as reviewing evidence and preparing IRs, which would typically be led by a consultant. Section 7.4 of the PACA Guidelines states legal counsel are expected to perform legal services. We acknowledge that some degree of involvement from counsel may be required for all tasks in a proceeding, however we do not consider it is a cost-effective use of resources to have higher cost counsel acting as the primary technical resource where a consultant is also being utilized. **Accordingly, the Panel finds that a \$10,000 reduction in BCSEA-VEVA’s cost award is fair and reasonable.**³ *[Emphasis in original]*

2.0 BCSEA-VEVA’s Reconsideration Application

BCSEA-VEVA submits the BCUC made an error of fact, noting that BCSEA-VEVA’s counsel exclusively performed and billed for legal services. As evidence for this, BCSEA-VEVA references Mr. Andrews’s January 21, 2024 signed statement of account for legal services submitted to the BCUC along with the BCSEA-VEVA application for a cost award.⁴

BCSEA-VEVA states that its intervention team optimized its resources, including its division of labour between the lawyer and the consultant. According to BCSEA-VEVA, its division of legal and consultant resources in this proceeding is unique to the team and cannot be meaningfully compared with the approaches taken by other interveners. BCSEA-VEVA submits the BCUC’s decision rests on the premise that had BCSEA-VEVA allocated less lawyer time and more consultant time in this proceeding they necessarily would have produced equal value to the BCUC at a lower total cost, which BCSEA-VEVA states is baseless and counterintuitive. BCSEA-VEVA adds the

² Order G-178-22.

³ Order F-27-24, Decision, p. 8.

⁴ Reconsideration Application, p. 3.

BCUC should not attempt to retrospectively micromanage BCSEA-VEVA's intervention. BCSEA-VEVA accordingly requests a direction that BC Hydro reimburse BCSEA-VEVA \$10,000 in a timely manner.⁵

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 BCSEA-VEVA's PACA award in Order F-27-24.

The Panel views the BCUC's decision on BCSEA-VEVA's PACA award was not solely a question of whether W. Andrews performed legal services. As noted above, the BCUC's decision stated, in part, that "we do not consider it is a cost-effective use of resources to have higher cost counsel acting as the primary technical resource where a consultant is also being utilized."⁶ Section 7.4 of the PACA Guidelines provides, in part, that "[p]articipants are expected to use legal services in a cost-effective manner." Therefore, the Panel considers that the BCUC's consideration of the cost-effectiveness of BCSEA-VEVA's use of legal services was clearly consistent with Section 7.4 of the PACA Guidelines.

The Panel also finds that the BCUC's determination on the cost-effectiveness of BCSEA-VEVA's use of legal counsel further was reasonable and supported by the facts. The Panel notes the maximum daily fee for legal counsel of \$2,800/day⁷ is significantly higher than the maximum daily fee for consultants of \$1,850/day, and that BCSEA-VEVA utilized a highly experienced consultant in the 2021 IRP proceeding. While BCSEA-VEVA claims to have "optimized its resources" in this proceeding,⁸ BCSEA-VEVA has provided no compelling reason in its PACA Application or Reconsideration Application to justify why its consultant could not have undertaken a more significant role in the technical aspects of the 2021 IRP proceeding. Further, the Panel does not consider that the issues investigated by BCSEA-VEVA in the proceeding were primarily of a legal nature. The Panel accordingly finds it was reasonable for the BCUC to identify that BCSEA-VEVA did not cost-effectively utilize its legal counsel and consultant based on the facts available, and in turn it was reasonable for the BCUC to reduce BCSEA-VEVA's PACA award. Further, the Panel finds that there are no additional facts raised in BCSEA-VEVA's Reconsideration Application that would have a material impact on this decision.

The Panel also notes that, while BCSEA-VEVA asserts that the BCUC has attempted to "retrospectively micromanage BCSEA-VEVA's intervention," in fact the BCUC notified BCSEA-VEVA of the potential concern regarding its use of legal counsel, and provided BCSEA-VEVA an opportunity to provide additional explanation in its PACA Application to address this concern in a timely fashion. On May 7, 2023, BCSEA-VEVA filed an interim PACA Application in the 2021 IRP proceeding. By Order F-31-23, the BCUC issued its determination on BCSEA-VEVA's interim PACA Application, which included comments identifying a potential concern with respect to BCSEA-VEVA's use of legal counsel in the 2021 IRP proceeding at that point in time:

With respect to BCSEA's interim PACA application, the Panel observes BCSEA has incurred more than twice as many funding days for its legal counsel compared to its consultant. Section 7.1 [sic] of the PACA Guidelines states: "Legal counsel are expected to perform legal services and may be paid in accordance with the fees listed in Attachment A including the maximum daily fees, or the fees commensurate with the level of experience the Commission deems necessary for a specific task." [emphasis added] In its final PACA Application at the end of the proceeding,

⁵ Reconsideration Application, pp. 3 – 4.

⁶ Order F-27-24, Decision, p. 8.

⁷ As outlined in Attachment A of the PACA Guidelines.

⁸ Reconsideration Application, p. 3.

BCSEA may wish to provide justification for the funding days incurred by its legal counsel in consideration of section 7.1 of the Guidelines.⁹

The BCUC clearly provided BCSEA-VEVA with a fair notice of its potential concern regarding BCSEA-VEVA's use of legal counsel. However, in its PACA Application BCSEA-VEVA did not provide any further justification regarding its use of legal counsel to address the issues raised in Order F-31-23.

Based on the foregoing, the Panel concludes that BCSEA-VEVA has failed to establish, on the face of the Reconsideration Application, a reasonable basis for any of the grounds for reconsideration set out in Rule 26.05, including that the BCUC made an error of fact.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of August 2024.

Original signed by:

T. A. Loski
Panel Chair/Commissioner

Original signed by:

C. M. Brewer
Commissioner

⁹ Decision and Order F-31-23.