



ORDER NUMBER
G-230-24

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

and

Residential Consumer Intervener Association
Reconsideration of 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. The Residential Consumer Intervener Association (RCIA) was one of the registered interveners in the 2021 IRP proceeding;
- C. On February 18, 2024, RCIA submitted a Participant Assistance/Cost Award (PACA) application requesting \$235,861.86 in funding related to RCIA'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 RCIA \$176,896.86;
- E. On July 2, 2024, RCIA 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

Residential Consumer Intervener 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 (IRP Decision). The Residential Consumer Intervener Association (RCIA) was one of the registered interveners in the 2021 IRP proceeding.

On February 18, 2024, RCIA submitted a Participant Assistance/Cost Award (PACA) application requesting \$235,861.86 in funding related to RCIA'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 RCIA \$176,896.86.

On July 2, 2024, RCIA 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. 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 4.3 of the PACA Guidelines provides that, in determining the amount of a participant’s cost award, the Commission will consider the following:

- a) Has the participant contributed to a better understanding by the BCUC of the issues in the proceeding?
- b) To what degree will the participant be affected by the outcome of the proceeding?
- c) Are the costs incurred by the participant fair and reasonable?
- d) Has the participant joined with other groups with similar interests to reduce costs?
- e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?
- f) The funding day calculation for funding in accordance with Sections 4.1 and 4.2, if one is provided.
- g) Any other matters which the Commission determines appropriate in the circumstances.

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 RCIA \$176,896.86, which is 25 percent lower than the amount RCIA applied for in its PACA Application. The BCUC cited several reasons for the funding reduction,³ including:

- Disallowance of \$6,563.12 of costs incurred for a survey that were unrelated to the 2021 IRP proceeding;
- Disallowance of costs related to a Willingness To Pay survey, which the BCUC did not consider provided any value in the proceeding;
- Two of RCIA’s professionals (C. Oakley and P. Helland) sought the specialist / expert witness rate of \$2,150 per day for tasks incurred related to RCIA’s intervener evidence. The BCUC determined such tasks should be awarded at the consultant rate of \$1,850/day; and
- After making adjustments for the above, the BCUC was not persuaded that RCIA’s costs were proportionate to its overall contribution to a better understanding of issues in the proceeding.

2.0 RCIA’s Reconsideration Application

RCIA submits that Order F-27-24 should be reconsidered on the following grounds:

- The BCUC made an error of mixed fact and law by erroneously applying the definition of specialist/expert witness in determining the award; and

² Order G-178-22.

³ Order F-27-24, Decision , pp. 4 – 5.

- The BCUC made an error of mixed fact and law in its assessment of the contribution of the RCIA’s evidence to the proceeding.⁴

In the following subsections, the Panel outlines each of these grounds in further detail.

Additionally, RCIA submits the BCUC’s decision to apply a 25 percent disallowance to RCIA’s PACA application in aggregate appears arbitrary, and therefore there is just cause for the BCUC to reconsider its decision.⁵ Apart from the \$6,563.12 of survey costs incurred that were not related to the 2021 IRP proceeding, RCIA is requesting that the remaining deductions be reimbursed. Specifically, RCIA requests that the BCUC vary Order F-27-24 to reimburse RCIA with an additional \$52,401.88.⁶

2.1 Application of Specialist/Expert Rate

RCIA submits that the BCUC incorrectly interpreted and applied the definition of specialist/expert witness in the PACA Guidelines with respect to C. Oakley and P. Helland. RCIA submits that C. Oakley and P. Helland are recognized as specialized technical experts and have provided testimony and expert support in regulatory proceedings in several jurisdictions. Additionally, C. Oakley and P. Helland have been awarded the specialist/expert rate in BC Hydro’s Fiscal 2023 to Fiscal 2025 Revenue Requirements Application proceeding, notwithstanding the relationship between Midgard and RCIA.⁷

RCIA submits its expert witnesses were compliant with Section 7.7 of the PACA Guidelines regarding expert witnesses, and the BCUC’s disallowance stems from an incorrect recognition of the expert rates and their application within the PACA Guidelines.

2.2 BCUC’s Assessment of RCIA’s Evidence

RCIA is concerned that the disallowance of costs regarding RCIA’s intervener evidence is intertwined with procedural changes that occurred in the middle of the 2021 IRP proceeding. RCIA submits BC Hydro’s filing of a Signposts Update prompted a significant post facto change in the topics BCUC was willing to consider during the intervention process, for which RCIA cites Exhibit A-38 in the 2021 IRP proceeding. RCIA states the post facto change thereby nullified certain evidence that RCIA reasonably submitted under the original proceeding scope, and the topics excluded from consideration following the Signposts Update included: Customer Willingness to Pay, Planning Reserve Margin, and Step Change in Electricity Consumption. RCIA presented its intervener evidence at a time in the hearing when those topics were expected to be crucial elements in the final argument, and RCIA submits that the BCUC’s disallowance is procedurally unfair.⁸

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 RCIA’s PACA award in Order F-27-24. In particular, the Reconsideration Application fails to establish any errors of fact or law that would have a material bearing on the BCUC’s decision, 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. The Panel’s determination is based on three key points which are outlined below.

⁴ Reconsideration Application, p. 2.

⁵ *Ibid.*, p. 3.

⁶ *Ibid.*, p. 7.

⁷ *Ibid.*, pp. 3 – 4.

⁸ *Ibid.*, pp. 4 – 6.

The BCUC's Evaluation of the Value of RCIA's Evidence

Firstly, the Panel disagrees with RCIA's assertion that the BCUC's assessment of the value of RCIA's intervenor evidence was affected by changes in scope to the proceeding. RCIA's Reconsideration Application references Exhibit A-38 dated July 25, 2023, in which the BCUC limited the scope of the 2021 IRP proceeding "for the immediate future."⁹ However, the regulatory timetable and process for the 2021 IRP proceeding was subsequently amended multiple times after the issuance of Exhibit A-38. In the reasons accompanying Order G-291-23 dated October 26, 2023, the BCUC provided guidance to parties regarding matters for parties to address in final arguments (Final Argument Guidance), which stated in part that:

In addition to addressing the determinations, the BCUC must make under section 44.1 of the UCA, and the additional approval sought by BC Hydro respecting the Contingency Resource Plans and high load scenarios for the reservation of transmission capacity, the Panel requests that in final argument, parties provide submissions on the following matters... [Emphasis added]

For long term resource applications filed under section 44.1 of the UCA, the BCUC must accept the plan, if the commission determines that carrying out the plan would be in the public interest, or reject the plan. Section 44.1(8) of the UCA also outlines several factors the BCUC must consider as part of its determination. Therefore, the Panel considers the Final Argument Guidance was sufficiently broad that any topics of relevance to the BCUC's determination on whether to accept the 2021 IRP would be within scope for final arguments, in addition to several other topics the BCUC requested submissions on. In the Panel's view, the Final Argument Guidance demonstrates that the BCUC clearly did not remove topics for consideration in final argument as RCIA purports.

Additionally, the Panel observes that the IRP Decision makes several references to topics related to RCIA's evidence,¹⁰ which further supports that such topics were appropriately considered within the scope of the BCUC's determinations on the 2021 IRP. However, the Panel notes that RCIA's evidence did not contribute to the BCUC's determinations on key issues addressed in the IRP Decision, such as: whether the BCUC should accept the 2021 IRP in whole or in part, whether to grant the additional approvals sought by BC Hydro, or whether there were any deficiencies in the 2021 IRP which BC Hydro must address in its next IRP. The Panel considers that the BCUC's evaluation of the value of intervenor evidence in the context of PACA awards is generally not simply based upon the extent to which BCUC agrees with the evidence. Rather, it is judgement of the relevance, materiality, and quality of the evidence; and in turn whether the costs incurred are proportionate.

In consideration of the above, the Panel views the BCUC's original evaluation of RCIA's evidence in Order F-27-24 appropriately considered whether the evidence contributed to a better understanding of issues arising in the proceeding as a whole, and if any procedural changes that may have occurred in the proceeding did not alter what the Panel was evaluating. Therefore, the Panel determines RCIA has failed to establish, on the face of the Reconsideration Application, a reasonable basis for a finding that the BCUC made an error of mixed fact and law, or was procedurally unfair, in its assessment of the contribution of the RCIA's evidence to the 2021 IRP proceeding.

Materiality of the BCUC's Determination on the Specialist/Expert Rate

Secondly, the Panel finds that the BCUC's determination on whether P. Helland and C. Oakley should be awarded the the specialist/expert rate was not determinative for RCIA's funding award in Order F-27-24. Notably, the BCUC stated the following in relation to RCIA's costs:

Finally, after making the above-noted adjustments, the Panel is not persuaded that RCIA's costs are proportionate to its overall contribution to a better understanding of issues in the

⁹ BCH 2021 IRP proceeding, Exhibit A-38, p. 1.

¹⁰ BC Hydro IRP Decision, pp. 9 – 10; 13; 32; 42.

proceeding. For instance, the Panel found RCIA's intervener evidence of only moderate value, and not proportionate to the costs that were incurred to prepare the evidence. In consideration of the above, the Panel finds that an overall reduction in funding of 25 percent is fair and reasonable and reflects an amount that is more proportionate to RCIA's contributions to the proceeding.¹¹

In other words, the above-quoted passage outlines that after accounting for disallowance of costs related to the surveys and the adjustment for the specialist/expert rate, the BCUC found RCIA's funding award was still deemed excessive, and that further adjustment was required on a discretionary basis. The Panel views the BCUC's finding that "an overall reduction in funding of 25 percent is fair and reasonable" was the overarching conclusion in the BCUC's decision on RCIA's PACA Application.

Had the BCUC made no reference to the specialist/expert rate in its decision, this would not have changed the BCUC's findings that RCIA's intervener evidence was of only moderate value, or that the costs sought by RCIA were disproportionate to RCIA's contributions to the proceeding. For further context, the Panel notes that, based on the information in RCIA's PACA Application, the total costs sought by RCIA respecting the preparation of its evidence and associated tasks was close to \$100,000,¹² which the Panel views as unreasonably high in consideration of the value RCIA contributed to the proceeding. Accordingly, the Panel considers the BCUC's overarching conclusion to reduce RCIA's overall funding by 25 percent, or \$58,965.62, was warranted.

Under Rule 26.05 (b), the grounds for reconsideration require that: "the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision." [*Emphasis added*]. Therefore, the Panel makes no determination on whether P. Helland and C. Oakley should have been awarded the specialist/expert rate because it would not have a material bearing on the final funding award. In turn, the Panel determines RCIA has failed to establish, on the face of the Reconsideration Application, a reasonable basis for a finding that the BCUC made an error of mixed fact and law, which would have a material bearing on the decision, by erroneously applying the definition of specialist/expert witness in determining RCIA's award.

Reasonableness of the BCUC's 25 Percent Adjustment to RCIA's Award

Thirdly, the Panel disagrees with RCIA's assertion that the BCUC's 25 percent adjustment to RCIA's funding award was arbitrary. In instances where the BCUC is considering making an adjustment to a PACA award, having considered the criteria in section 4.3 of the PACA Guidelines,¹³ the precise level of any adjustments is discretionary in nature, and the PACA Guidelines do not, for instance, prescribe a precise formula to be applied to determine the amount of a reduction. The Panel notes that the BCUC's decision to adjust RCIA's overall funding award by 25 percent was based on an evaluation of RCIA's participation and contributions to the proceeding as a whole, balanced against the overall funding days and costs sought. For the reasons already discussed above, the Panel finds that the BCUC's discretionary adjustment to RCIA's PACA award in Order F-27-24 was appropriate and reasoned, and therefore concludes that RCIA has failed to establish, on the face of the Reconsideration Application, a reasonable basis for any grounds for reconsideration.

¹¹ At page 5. The "above-noted adjustments" in the passage refer to the disallowance of costs related to the survey unrelated to the 2021 IRP, the Willingness to Pay survey, and the adjustment for the specialist/expert rate.

¹² \$20,211.88 for the Willingness to Pay Survey; \$45,361.64 incurred by P. Helland at the Specialist/ Expert Rate; \$34,356.33 incurred by C. Oakley at the Specialist/Expert Rate.

¹³ Of particular relevance in Decision and Order F-27-24 are: 4.3(a) Has the participant contributed to a better understanding by the BCUC of the issues in the proceeding?; and 4.3(c) Are the costs incurred by the participant fair and reasonable?

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