



ORDER NUMBER
G-148-25

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

and

Heiltsuk Nation
Reconsideration of Order G-266-24

BEFORE:

M. Jaccard, Panel Chair
B. A. Magnan, Commissioner

on June 16, 2025

ORDER

WHEREAS:

- A. On December 21, 2024, the Hai'zaqv Nation (the Heiltsuk Nation) filed an application with the British Columbia Utilities Commission (BCUC) for the Reconsideration of BCUC Order G-266-24 (Reconsideration Application). In its Reconsideration Application, the Heiltsuk Nation seeks:
 - i. The rescission of Order G-266-24;
 - ii. The reinstatement of Directive 85 in BCUC Decision and Order G-91-23; and
 - iii. A variance of Directive 85 to provide British Columbia Hydro and Power Authority (BC Hydro) a reasonable amount of time to file long-term resource plans for non-integrated areas (NIAs);
- B. Directive 85 of BCUC Decision and Order G-91-23 dated April 21, 2023, in BC Hydro's Fiscal 2023 to Fiscal 2025 Revenue Requirements proceeding required BC Hydro to file its long-term resource plan (LTRP) for the NIAs by March 31, 2024, and to include as part of that plan details of its NIA Diesel Reduction Strategy including proposed performance metrics for review and approval by the BCUC;
- C. On December 15, 2023, BC Hydro filed an application for reconsideration of Directive 85 of BCUC Decision and Order G-91-23, and proposed a modified regulatory framework for reviewing long-term resource planning in NIAs;
- D. On October 22, 2024, the BCUC issued Order G-266-24, in which it:
 - i. Rescinded Directive 85 in BCUC Decision and Order G-91-23 in its entirety;
 - ii. Directed BC Hydro to file Community Context Reports (CCRs) when filing applications for Certificates of Public Convenience and Necessity (CPCN) for projects in the NIAs, pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA); and

- iii. Directed BC Hydro to file an annual report documenting BC Hydro's progress in the development of CCRs in NIAs, including the status of its consultation and public engagement;
- E. By Order G-12-25 dated January 24, 2025, the BCUC established a public hearing process for the review of the Reconsideration Application and set out a regulatory timetable, which included intervener registration, letters of comments, intervener final submissions, and the Heiltsuk Nation reply argument and reply to letters of comment;
- F. Gitga'at First Nation, Tli Yahda Energy and BC Hydro registered as interveners in this proceeding; and
- G. The BCUC has considered the Reconsideration Application and the submissions in this proceeding and finds that the following determination 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 Heiltsuk Nation's Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of June 2025.

BY ORDER

Electronically signed by Mark Jaccard

M. Jaccard
Commissioner

Heiltsuk Nation
Reconsideration of Order G-266-24

DECISION

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Executive Summary

In December 2021, British Columbia Hydro and Power Authority (BC Hydro) filed its 2021 Integrated Resource Plan (2021 IRP) with the British Columbia Utilities Commission (BCUC) for review pursuant to section 44.1 of the *Utilities Commission Act* (UCA). In the context of the 2021 IRP, the BCUC determined that non-integrated areas (NIAs) were not within the scope of the 2021 IRP proceeding and recommended a separate regulatory process to address resource planning for BC Hydro's NIAs.¹

In April 2023, the BCUC issued its decision on the BC Hydro Fiscal 2023 to Fiscal 2025 Revenue Requirements Application (RRA Decision).² Directive 85 of the RRA Decision required BC Hydro to file its long-term resource plan (LTRP) for the NIAs by March 31, 2024, and to include details of its NIA Diesel Reduction Strategy, including proposed performance metrics for review and approval by the BCUC.

On December 15, 2023, BC Hydro filed an application for reconsideration of Directive 85 of the RRA Decision (BC Hydro's Reconsideration Application). BC Hydro's Reconsideration Application included a request for reconsideration of Directive 85 of the RRA Decision and a proposal for a modified regulatory framework for reviewing long-term resource planning in NIAs. On October 22, 2024, the BCUC issued Order G-266-24 on BC Hydro's Reconsideration Application, in which it:

1. Rescinded Directive 85 of the RRA Decision in its entirety;
2. Directed BC Hydro to file Community Context Reports (CCRs) when filing applications for Certificates of Public Convenience and Necessity (CPCN) for projects in the NIAs, pursuant to sections 45 and 46 of the UCA; and
3. Directed BC Hydro to file an annual report documenting BC Hydro's progress in the development of CCRs in NIAs, including the status of its consultation and public engagement.

On December 21, 2024, the Hai'zraqv Nation (the Heiltsuk Nation) filed an application with the BCUC for reconsideration of BCUC Order G-266-24 (Heiltsuk Nation's Reconsideration Application), seeking:

1. The rescission of Order G-266-24;
2. The reinstatement of Directive 85 in the RRA Decision; and
3. A variance of Directive 85 to provide BC Hydro a reasonable amount of time to file LTRPs for NIAs.

After reviewing Heiltsuk Nation's Reconsideration Application and submissions in this proceeding, the Panel finds that the Heiltsuk Nation's Reconsideration Application has failed to establish, on its face, any reasonable grounds for reconsideration of Order G-266-24, and therefore dismisses the Heiltsuk Nation's Reconsideration Application. In particular, in the Panel's view, the Heiltsuk Nation's Reconsideration Application fails to establish on its face that the BCUC made an error of law or jurisdiction, and fails to establish that there is otherwise just cause for reconsideration.

¹ BCUC Order G-227-22 with Reasons dated August 12, 2022.

² BCUC Decision and Order G-91-23 dated April 21, 2023.

1.0 Introduction

In December 2021, British Columbia Hydro and Power Authority (BC Hydro) filed its 2021 Integrated Resource Plan (2021 IRP) with the British Columbia Utilities Commission (BCUC) for review pursuant to section 44.1 of the *Utilities Commission Act* (UCA). In that proceeding, BC Hydro stated that non-integrated areas (NIAs) were not within the scope of the 2021 IRP and explained that while the construct of section 44.1 is well-suited to large vertically integrated electric systems, it is ill-suited to small, isolated energy systems like the NIAs. BC Hydro suggested it could propose instead a modified regulatory framework for the review of long-term resource planning in the NIAs. As part of that proceeding, the BCUC determined that NIAs were not within the scope of the 2021 IRP proceeding and recommended a separate regulatory process to address resource planning for BC Hydro's NIAs.³

In April 2023, the BCUC issued its decision on the BC Hydro Fiscal 2023 to Fiscal 2025 Revenue Requirements Application (RRA Decision).⁴ Directive 85 of the RRA Decision required BC Hydro to file its long-term resource plan (LTRP) for the NIAs by March 31, 2024, and to include details of its NIA Diesel Reduction Strategy, including proposed performance metrics for review and approval by the BCUC. The NIA Diesel Reduction Strategy was an initiative intended to pursue new renewable generation opportunities to reduce diesel use in remote areas, in alignment with the Government of BC's CleanBC policies and objectives.⁵ The NIA Diesel Reduction Strategy was subsequently expanded and referred to as the NIA Strategy.⁶

On December 15, 2023, BC Hydro filed an application for reconsideration of Directive 85 of the RRA Decision (BC Hydro's Reconsideration Application). BC Hydro's Reconsideration Application included a request for reconsideration of Directive 85 of the RRA Decision and a proposal for a modified regulatory framework for reviewing long-term resource planning in NIAs. On October 22, 2024, the BCUC issued Order G-266-24 on BC Hydro's Reconsideration Application, in which it:

1. Rescinded Directive 85 of the RRA Decision in its entirety;
2. Directed BC Hydro to file Community Context Reports (CCRs) when filing applications for Certificates of Public Convenience and Necessity (CPCN) for projects in the NIAs, pursuant to sections 45 and 46 of the UCA; and
3. Directed BC Hydro to file an annual report documenting BC Hydro's progress in the development of CCRs in NIAs, including the status of its consultation and public engagement.

On December 21, 2024, the Hai'zqv Nation (Heiltsuk Nation) filed an application with the BCUC for the Reconsideration of BCUC Order G-266-24 (Heiltsuk Nation's Reconsideration Application), seeking:

1. The rescission of Order G-266-24;
2. The reinstatement of Directive 85 in the RRA Decision; and
3. A variance of Directive 85 to provide BC Hydro a reasonable amount of time to file long-term resource plans for NIAs.

³ BCUC Order G-227-22 with Reasons dated August 12, 2022.

⁴ BCUC Decision and Order G-91-23 dated April 21, 2023.

⁵ BC Hydro's Fiscal 2023 to Fiscal 2025 Revenue Requirements proceeding, Exhibit B-2, pp. 5-31 to 5-32.

⁶ BC Hydro's NIA Planning Regulatory Framework proceeding, Exhibit B-1, p. 2.

1.1 Legislative and Regulatory Framework

Section 99(1) of the UCA provides that the BCUC, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the BCUC and may confirm, vary or rescind the decision, order, rule or regulation.

Rules 2 and 4.01 to 4.03 of the BCUC's Rules of Practice and Procedure⁷ (Rules) set out the following:

2 Interpretation of the rules

These rules must be liberally construed in the public interest to ensure the fairest, most expeditious and efficient determination of every matter before the BCUC consistent in all cases with the requirements of procedural fairness.

...

4 Rules of Practice and Procedure

4.01 In accordance with sections 2.1 and 4(1) of the *Utilities Commission Act*, and sections 11(1) and (2) of the *Administrative Tribunals Act*, the BCUC adopts these rules and will decide the most appropriate and effective management of its resources and the ordering of its proceedings.

4.02 Notwithstanding the procedures provided for in the rules, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.

4.03 In accordance with the *Administrative Tribunals Act*, the BCUC may waive or modify one or more of its rules in exceptional circumstances.

Rule 25.02 provides that the BCUC, on application or on its own motion, may reconsider a decision and may confirm, vary or rescind the decision.

Rule 26.04 sets out certain requirements for applications for reconsideration, including that such applications must set out the grounds for reconsideration in accordance with Rule 26.05. Rule 26.05, in turn, states that an application for reconsideration must contain a concise statement of the grounds for the reconsideration, which must include one or more of the following:

- a) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
- b) 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;
- c) new fact(s) have arisen since the issuance of the decision which have material bearing on the decision;
- d) a change in circumstances material to the decision has occurred since the issuance of the decision; or
- e) where there is otherwise just cause.

⁷ BCUC Order G-296-24 dated November 14, 2024.

Rule 29.04 of the Rules establishes that the BCUC will determine the regulatory process for the reconsideration hearing.

1.2 Regulatory Process

The BCUC determined that the Heiltsuk Nation's Reconsideration Application should proceed to a hearing. As such, the BCUC established a regulatory timetable for this proceeding, which included intervenor registration, letters of comment, intervenor final submissions, and Heiltsuk Nation's reply argument and reply to letters of comment. The BCUC also limited the scope of this proceeding to the grounds for reconsideration set out in the Reconsideration Application.⁸

Gitga'at First Nation, Tli Yahda Energy and BC Hydro registered as intervenors. Of these intervenors, only BC Hydro made a final submission on March 6, 2025, and the Heiltsuk Nation provided its reply on March 27, 2025. The BCUC did not receive any letters of comment.

2.0 Heiltsuk Nation's Reconsideration Request and Grounds for Reconsideration

2.1 Heiltsuk Nation's Reconsideration Request

The Heiltsuk Nation's Reconsideration Application seeks the following relief:⁹

- The rescission of Order G-266-24;
- The reinstatement of Directive 85 in the RRA Decision; and
- A variance of Directive 85 to provide BC Hydro a reasonable amount of time to file long-term resource plans for NIAs.

2.2 Grounds for Reconsideration

The Heiltsuk Nation's Reconsideration Application identifies three grounds for reconsideration, as follows:

1. The BCUC has made an error of law which has a material bearing on the decision;
2. The BCUC has made an error of jurisdiction; and
3. There is otherwise just cause.

Each of these grounds is discussed in greater detail, in turn, below.

2.2.1 The BCUC has made an error of law

The Heiltsuk Nation states that the BCUC made an error of law in its interpretation and application of the Rules.¹⁰ In particular, the Heiltsuk Nation submits that Rules 26.04 and 26.05 state that applications for reconsideration must contain one or more of the grounds for reconsideration listed as subsections of Rule 26.05, and a concise statement of the grounds for reconsideration.

⁸ BCUC Order G-12-25 dated January 24, 2025.

⁹ Exhibit B-1, pdf p. 10.

¹⁰ The Heiltsuk Nation's Reconsideration Application refers to an earlier version of the Rules, but the relevant sections of the Rules were substantially similar in this earlier version.

The Heiltsuk Nation notes that, in Order G-266-24, the BCUC acknowledged that BC Hydro's Reconsideration Application failed to include the grounds for reconsideration, and that the BCUC provided the following rationale for why it was appropriate for the BCUC to consider BC Hydro's Reconsideration Application:

- a) The BCUC's ability to parse out grounds for reconsideration from BC Hydro's application;
- b) The lack of concern raised by other parties about BC Hydro's failure to comply with the requisite thresholds in the BCUC Rules; and
- c) The need to proceed in the interest of regulatory efficiency.¹¹

The Heiltsuk Nation submits that the Rules are worded strictly and require applications for reconsideration to be submitted in accordance with Part V of the Rules, which includes Rules 26.04 and 26.05 referenced above. The Heiltsuk Nation submits that it was procedurally unfair to allow BC Hydro to submit a reconsideration that was not compliant with the Rules. Heiltsuk Nation adds that the BCUC further erred in law by failing to request submissions of the parties with respect to the grounds for reconsideration of Directive 85, which the Heiltsuk Nation submits resulted in procedural unfairness.¹²

In addition, the Heiltsuk Nation submits that regulatory efficiency cannot outweigh the potential infringement of Heiltsuk Nation's Aboriginal rights affirmed by section 35 of the *Constitution Act, 1982*, and Indigenous rights affirmed by *Declaration on the Rights of Indigenous Peoples Act* (DRIPA).¹³

2.2.2 The BCUC has made an error of jurisdiction

As mentioned in Section 1.0 above, BC Hydro's Reconsideration Application included both a request for reconsideration of Directive 85 of the RRA Decision and a proposal for a modified regulatory framework for reviewing long-term resource planning in NIAs. In Order G-266-24 on BC Hydro's Reconsideration Application, Directives 2 and 3 related to the proposal for the modified regulatory framework, and provided as follows:

- Directive 2: BC Hydro is directed to file CCRs when filing applications for CPCNs for projects in the NIAs, pursuant to sections 45 and 46 of the UCA.
- Directive 3: BC Hydro is directed to file an annual compliance report documenting BC Hydro's progress in the development of CCRs, including the status of its consultation and public engagement in NIAs.

The Heiltsuk Nation submits that in the conduct of the proceeding to review BC Hydro's Reconsideration Application and the issuance of the decision accompanying Order G-266-24, the BCUC:¹⁴

- 1) exceeded its statutory authority under section 99(1) of the UCA by issuing Directives 2 and 3; and
- 2) undermined procedural fairness by allowing an expansion of the scope of BC Hydro's Reconsideration Application and introducing a new regulatory framework without initiating a stand-alone proceeding or conducting a public hearing.

On the first point, the Heiltsuk Nation submits that the purpose of the reconsideration powers under section 99 of the UCA is to allow the BCUC to correct errors or review changed circumstances in its prior decisions, and not

¹¹ Exhibit B-1, pdf p. 6.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid., pp. 5-6.

to allow the BCUC to approve new matters outside the scope of a previous order. The Heiltsuk Nation adds that the UCA confines the BCUC's remedies in a reconsideration application to confirming, varying, or rescinding the order which is the subject of the reconsideration application, and does not extend to ordering the approval of a new regulatory framework.¹⁵

On the second point, the Heiltsuk Nation submits that BC Hydro's proposals in BC Hydro's Reconsideration Application proceeding lacked clarity and were not subject to a comprehensive public hearing to determine whether they were in the public interest. The Heiltsuk Nation states that by permitting BC Hydro to broaden the scope of the reconsideration proceeding, the BCUC altered the nature of BC Hydro's Reconsideration Application.¹⁶

The Heiltsuk Nation submits that these errors materially affected the decision and prejudiced the Heiltsuk Nation's ability to meaningfully participate in the regulatory process.¹⁷

2.2.3 There is otherwise just cause

The Heiltsuk Nation submits that there is also just cause for reconsideration, because Order G-266-24 prioritizes clean energy initiatives over Aboriginal rights and title affirmed by section 35 of the *Constitution Act, 1982*, and Indigenous rights affirmed by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and DRIPA.¹⁸ The Heiltsuk Nation states that there is just cause for the BCUC to reconsider Order G-266-24 in light of a lack of firm commitments to reconciliation with First Nations, or at the very least, parity between the advancement of clean energy initiatives and reconciliation.¹⁹

The Heiltsuk Nation notes that the BCUC accepted BC Hydro's position that the BCUC should not approve performance metrics for the NIA Strategy, given the specific contents of the strategy were not yet developed. The Heiltsuk Nation states that it does not take issue with the BCUC's decision to not initially approve performance metrics for NIA strategies generally, but it takes issue with the BCUC's decision to not approve performance metrics for consultation and accommodation in the NIA Strategy. The Heiltsuk Nation considers that as a result, NIA strategies will be developed without due consideration of First Nation concerns.²⁰

Positions of the Parties

In its final submission, BC Hydro responded to each of the grounds for reconsideration identified by the Heiltsuk Nation, as follows:²¹

- a) the BCUC did not make an error of law by allowing BC Hydro's Reconsideration Application to advance to a hearing on the merits;
- b) the BCUC did not make an error of jurisdiction in issuing Directives 2 and 3 of Order G-266-24; and

¹⁵ Exhibit B-1, pdf p. 7.

¹⁶ Ibid.

¹⁷ Ibid., pdf p. 9.

¹⁸ Ibid.

¹⁹ Ibid., pdf p. 10.

²⁰ Ibid., pdf p. 9.

²¹ BC Hydro Final Submission, p. 7.

- c) there is not otherwise just cause to rescind Order G-266-24.

Therefore, BC Hydro submits that the Heiltsuk Nation's Reconsideration Application must be dismissed.²² Further details regarding BC Hydro's position on each of the grounds for reconsideration, and the Heiltsuk Nation's corresponding reply to BC Hydro, are included below.

Whether the BCUC made an error of law

BC Hydro submits that the BCUC did not commit an error of law in allowing BC Hydro's Reconsideration Application to proceed to a hearing because 1) the BCUC has broad power to control its own process; 2) the BCUC properly exercised that broad power to allow BC Hydro's Reconsideration Application to proceed to a hearing on the merits; and 3) the BCUC's exercise of that broad power did not result in any procedural unfairness to Heiltsuk Nation.²³

With respect to the BCUC's power to control its own process, BC Hydro submits that the BCUC's reconsideration jurisdiction stems from section 99 of the UCA, and is further entrenched in Part V of the Rules, including Rule 25.02, which provides that the "BCUC, on application or on its own motion, may reconsider a decision and may confirm, vary or rescind the decision."²⁴

BC Hydro further argues that the BCUC's substantive power of reconsideration is completed by broad procedural powers set out in the Rules, including for instance Rules 2, 4.02, 4.03, and 29.04. Collectively, BC Hydro submits that these provisions demonstrate the BCUC's broad procedural power to conduct each reconsideration in a way that is procedurally fair and allows the effective and substantive adjudication of the reconsideration²⁵

With respect to the BCUC's exercise of its procedural powers in the present case, BC Hydro submits that while Rule 26.05 provides that an application must "contain a concise statement of the grounds for reconsideration," the BCUC also has the express power, pursuant to Rule 4.03, to waive one or more of its Rules, including the requirements of Rule 26.05. BC Hydro submits that this is what the BCUC did in the decision accompanying Order G-266-24.

BC Hydro argues that the BCUC expressly considered the requirement to concisely set out the grounds for reconsideration and necessarily assessed the appropriateness of using its procedural power to allow the matter to proceed in any event, as evidenced by the following reasons:

... The Panel considers, however, that the record in this proceeding is sufficient for it to determine whether any of the grounds for reconsideration set out in Rule 26.05 have been met. Specifically, the Panel notes that BC Hydro and other parties made extensive submissions regarding whether there is justification for BC Hydro's proposed deviation from Directive 85. ...

Notwithstanding the omission referenced above, and in the interest of regulatory efficiency, we consider it appropriate to examine whether, on the basis of the evidence in this proceeding, BC Hydro has established sufficient grounds for reconsideration pursuant to Rule 26.05 as part of

²² BC Hydro Final Submission, pp. 2-3.

²³ Ibid., p. 7.

²⁴ Ibid., p. 8.

²⁵ Ibid., pp. 8-9.

our determinations in this decision. In any event, we note that all parties appeared to have proceeded on the basis that BC Hydro has met the requisite threshold for a review of its reconsideration Application on its merits. On this basis, it would be churlish for us to decline to review the Application in its entirety. [Emphasis by BC Hydro]²⁶

In BC Hydro's view, the BCUC engaged in a proper and reasoned exercise of its powers to permit BC Hydro's Reconsideration Application to proceed to reconsideration on the merits.²⁷

Finally, BC Hydro states that BC Hydro's Reconsideration Application proceeding did not breach Heiltsuk Nation's right to procedural fairness because the BCUC's decision to proceed with the reconsideration did not compromise the Heiltsuk Nation's ability to present its views and evidence fully and have them considered by the BCUC. BC Hydro also highlights that the BCUC expressly invited parties (including the Heiltsuk Nation) to address any matter pertaining to BC Hydro's Reconsideration Application in their letters of comment, which, in BC Hydro's view, provided more than sufficient notice to and opportunity for parties to provide submissions on the grounds for reconsideration.²⁸ Therefore, BC Hydro submits, the allegation that the BCUC failed to request submissions with respect to the grounds for reconsideration is without merit.²⁹

Additionally, BC Hydro states that it understands the BCUC's reference to the "interest of regulatory efficiency," as quoted above, to be in the context of the BCUC deciding whether to exercise its power under Rule 4.03 to waive the requirement for an applicant to concisely set out the grounds for reconsideration, and not to be related to the substantive relief that was being sought in BC Hydro's Reconsideration Application.³⁰

In its reply argument, the Heiltsuk Nation submits that it does not assert that the BCUC erred in law simply by referring BC Hydro's Reconsideration Application to a hearing. Rather, the Heiltsuk Nation asserts that the BCUC's error was its failure to structure a procedurally fair, transparent, and balanced process, noting there was procedural asymmetry because BC Hydro was permitted to file extensive submissions and materials, while Indigenous interveners were denied a reciprocal opportunity to provide written argument.³¹

The Heiltsuk Nation does not dispute BCUC's "broad power to control its own process," but submits that such discretion must be exercised within the bounds of administrative law, which requires that all parties are treated fairly and given a real opportunity to participate meaningfully. The Heiltsuk Nation also submits that it was not clear to them that BC Hydro's Reconsideration Application constituted a true reconsideration of Directive 85, given the volume of new facts and the fundamental change in the regulatory approach, and argues that the BCUC should have clearly identified the issues under review.³² In the Heiltsuk Nation's view, the BCUC's "open-ended invitation for comment" by interveners was insufficient, as "parties cannot meaningfully participate in a process if they do not know which prior findings are being challenged, on what basis, and how they are being reconsidered."³³

²⁶ BC Hydro Final Submission, p. 9, citing Order G-266-24, p. 4.

²⁷ Ibid., p. 10.

²⁸ Ibid., pp. 10-11.

²⁹ Ibid., p. 11.

³⁰ Ibid., p. 12.

³¹ Heiltsuk Nation Reply Argument, p. 1.

³² Ibid., p. 3.

³³ Ibid.

Whether the BCUC has made an error of jurisdiction in issuing Directives 2 and 3

BC Hydro submits that the BCUC did not make a jurisdictional error in issuing Directives 2 and 3 of Order G-266-24, because it:

- (1) has broad powers on reconsideration to vary decisions and orders;
- (2) properly exercised its power of variation on reconsideration when issuing Directives 2 and 3; and
- (3) did not breach Heiltsuk Nation's right to procedural fairness in so doing.³⁴

BC Hydro reiterates the BCUC's broad powers on reconsideration, including the ability to "confirm, vary or rescind" a decision, referencing various judicial decisions to support the broad scope of the power of an administrative tribunal, such as the BCUC, to vary a decision on reconsideration.³⁵ BC Hydro states that in issuing Directives 2 and 3, the BCUC was varying an existing BCUC directive to BC Hydro to implement one form of resource planning in NIAs, LTRPs, and replacing it with a directive to implement another form of resource planning in NIAs, namely CCRs. While not identical, BC Hydro notes that LTRPs and CCRs are both intended to address similar issues, including demand forecasts and planned actions to serve demand. BC Hydro submits that the BCUC's decision in Order G-266-24 was fully within the BCUC's jurisdiction on reconsideration.³⁶

Regarding procedural fairness, BC Hydro submits that the evidence shows that the Heiltsuk Nation had a fulsome and meaningful opportunity to put forward its views and evidence fully and have them considered by the BCUC.³⁷ BC Hydro states that the regulatory process in the BC Hydro reconsideration proceeding included a public hearing which was comprehensive and highly participatory, and that the Heiltsuk Nation actively participated.³⁸

BC Hydro describes the following steps in the proceeding to review BC Hydro's Reconsideration Application, by way of example:

1. BC Hydro's Reconsideration Application clearly identified that the relief sought was a modification of the planning regulatory framework in NIAs,³⁹
2. BC Hydro provided notice of the proceeding as directed by the BCUC, including to the Heiltsuk Nation;⁴⁰
3. As directed by the BCUC, BC Hydro filed an early evidentiary update that detailed how BC Hydro shared information with First Nation communities in NIAs about the NIA regulatory framework. These engagement activities included the Heiltsuk Nation;⁴¹
4. Interveners were permitted to register and participate in the proceeding, and the Heiltsuk Nation was an intervener;⁴²

³⁴ BC Hydro Final Submission, p. 12.

³⁵ Ibid., pp. 13-15.

³⁶ Ibid., pp. 15-16.

³⁷ Ibid., p. 16.

³⁸ Ibid., p. 21.

³⁹ Ibid., p. 17.

⁴⁰ Ibid., p. 17.

⁴¹ BC Hydro Final Submission, p. 17.

⁴² Ibid.

5. The BCUC and interveners submitted information requests (IRs) to BC Hydro. The Heiltsuk Nation, specifically, asked 37 IRs, several of which referenced the characteristics of and differences between LTRPs and CCRs;⁴³
6. BC Hydro provided substantive responses to the 199 IRs received;⁴⁴
7. Intervenors, including the Heiltsuk Nation, filed letters of comment. The Heiltsuk Nation's letter included its position that "an LTRP for the NIAs must be submitted to the Commission pursuant to Directive 85 and section 44.1 of the [UCA]" with supporting reasons;⁴⁵ and
8. The BCUC decision accompanying Order G-266-24, expressly acknowledged and weighed the position of the parties. This included a summary of concerns raised by the Heiltsuk Nation, such as its opposition to BC Hydro's proposals.⁴⁶

BC Hydro submits that the express recognition in the BCUC's written reasons, combined with the record of the Heiltsuk Nation's active participation in the proceeding, demonstrates that Heiltsuk Nation not only had the opportunity to meaningfully participate in the proceeding but did wholly and actively participate. BC Hydro adds that this also demonstrates that the Heiltsuk Nation's views were heard and expressly considered by the BCUC.⁴⁷ BC Hydro further notes that the Heiltsuk Nation's letter of comment did not raise any concerns about: (1) the nature or conduct of the proceeding, (2) the Heiltsuk Nation's ability to have its views meaningfully heard, or (3) the relief being sought by BC Hydro.⁴⁸

In addition, BC Hydro argues that the Heiltsuk Nation's argument that the BCUC should have conducted a stand-alone, public hearing is without merit because a) the proceeding that led to the decision accompanying Order G-266-24 was a public hearing; and b) the hearing process was comprehensive and highly participatory, as previously described, and a stand-alone proceeding would have followed the same process as the one used in BC Hydro's reconsideration proceeding. BC Hydro notes that the BCUC regularly combines procedural steps when considering applications before it and is not required to hold separate stand-alone proceedings to ensure a fair process.⁴⁹

In its reply argument, the Heiltsuk Nation submits that Directives 2 and 3 of Order G-266-24 introduced substantive changes to energy regulation within the NIAs without the benefit of evidence testing or an opportunity to be heard commensurate with their significance.⁵⁰

The Heiltsuk Nation submits that the limited scope of the proceeding, consisting of one round of IRs and two letters of comment, was problematic due to BC Hydro's introduction of new facts and a regulatory structure that deviated from legislative requirements. The Heiltsuk Nation also disagrees that the BCUC invitation to submit letters of comment constituted sufficient notice and opportunity for submission. The Heiltsuk Nation's position is that the use of broad, vague language does not discharge the BCUC's duty of procedural fairness, particularly in a reconsideration proceeding with significant implications to constitutional and Indigenous rights, and the

⁴³ BC Hydro Final Submission, pp. 18-19.

⁴⁴ *Ibid.*, p. 19.

⁴⁵ *Ibid.*, pp. 19-20.

⁴⁶ *Ibid.*, pp. 20-21.

⁴⁷ *Ibid.*, p. 21.

⁴⁸ *Ibid.*, p. 20.

⁴⁹ *Ibid.*, p. 21.

⁵⁰ Heiltsuk Nation Reply Argument, pdf p. 1.

integrity of the regulatory process.⁵¹ The Heiltsuk Nation submits that case law is clear that a procedurally fair hearing must include a real opportunity to address the arguments made by opposing parties, particularly where those arguments are ultimately relied upon by the BCUC in its determination.⁵²

Whether there is otherwise just cause

BC Hydro submits that there is not otherwise just cause for the BCUC to reconsider Order G-266-24 because (1) the BCUC appropriately considered reconciliation, Aboriginal rights and title, and Indigenous rights affirmed by UNDRIP and DRIPA within the context of its statutory mandate; and (2) any concerns the Heiltsuk Nation has about BC Hydro's future conduct in consultation and accommodation are premature.⁵³

On the first point, BC Hydro submits that the BCUC's mandate as an independent regulator of public utilities is established by the UCA. In addition, the *Clean Energy Act* includes various energy objectives that the BCUC must consider when assessing certain matters, including the objective "to foster the development of first nation and rural communities through the use and development of clean or renewable resources."⁵⁴

BC Hydro submits that the BCUC's written reasons accompanying Order G-266-24 acknowledge BC Hydro's submission that the relief being sought aimed "to balance climate goals, reconciliation, and economic opportunities for First Nations while ensuring their energy autonomy and decision-making are respected." BC Hydro adds that the BCUC also considered the concerns raised by the various Indigenous communities and in response issued Directive 3 requiring that BC Hydro file an annual compliance report documenting its progress in the development of CCRs, including the status of its consultation and public engagement in NIAs.⁵⁵

In its reply argument, the Heiltsuk Nation submits that BC Hydro's submission that the BCUC reached an appropriate balance between reconciliation and its statutory mandate under the UCA disregards the fact that Indigenous rights cannot simply be "balanced" against regulatory objectives. Rather, the Heiltsuk Nation argues that reconciliation requires a shift in regulatory decision-making that centers Indigenous rights and title as fundamental considerations, not as secondary interests to be weighed against commercial or administrative concerns.⁵⁶

Further, the Heiltsuk Nation considers that the BCUC's failure to meaningfully integrate the principles of UNDRIP and DRIPA into its decision-making reflects that the BCUC has not met the evolving legal and policy requirements for regulatory bodies in the province. The Heiltsuk Nation references the *Clean Energy Act* objective "to foster the development of First Nation and rural communities through the use and development of clean or renewable resources," and argues that, by failing to impose measures to ensure First Nations' concerns are reflected in BC Hydro's NIA Strategy, the BCUC has neglected to an essential aspect of its regulatory mandate that should directly support Indigenous self-determination and economic development.⁵⁷

⁵¹ Heiltsuk Nation Reply Argument, pdf p. 2.

⁵² Ibid., pp. 2-3.

⁵³ BC Hydro Final Submission, p. 22.

⁵⁴ Ibid., pp. 22-23.

⁵⁵ Ibid., p. 23.

⁵⁶ Heiltsuk Nation Reply Argument, pdf p. 4.

⁵⁷ Ibid., pdf pp. 4-5.

Finally, with respect to the Heiltsuk Nation's concerns about BC Hydro's future conduct with respect to consultation and accommodation, BC Hydro submits that the concern itself does not constitute just cause for reconsideration. Instead, BC Hydro submits that the proper time for those concerns to be raised and adjudicated is after any such consultation and accommodation have occurred and once concerns, if any, arise from that consultation and accommodation.⁵⁸

In its reply argument, the Heiltsuk Nation disagrees with BC Hydro's position and submits that consultation must occur at the earliest possible stage where an Indigenous Nation's rights may be affected. In the current scenario, the Heiltsuk Nation argues that the failure to adequately consider the Heiltsuk Nation's rights and interests at this juncture undermines the legitimacy of the regulatory process and the credibility of BC Hydro's commitments to reconciliation.⁵⁹

Panel Determination

The Panel finds that the Heiltsuk Nation's Reconsideration Application has failed to establish, on its face, any reasonable grounds for reconsideration of Order G-266-24, and therefore dismisses the Heiltsuk Nation's Reconsideration Application. In particular, in the Panel's view, the Heiltsuk Nation's Reconsideration Application fails to establish on its face that the BCUC made an error of law or jurisdiction, and fails to establish that there is otherwise just cause for reconsideration.

Notwithstanding, the Panel will analyze the substantive merits of the grounds for reconsideration in the order raised by Heiltsuk Nation: (1) that the BCUC made an error of law; (2) that the BCUC made an error of jurisdiction; and (3) that there is otherwise just cause.

1. The BCUC did not make an error of law, and the process to review BC Hydro's Reconsideration Application was procedurally fair

For the reasons that follow, the Panel finds that the BCUC did not make an error of law in the issuance of Order G-266-24, and that the process to review BC Hydro's Reconsideration Application was procedurally fair.

The Heiltsuk Nation asserts that the BCUC made an error of law by allowing BC Hydro's Reconsideration Application to proceed to a hearing even though the application failed to identify and describe the grounds for reconsideration, and by not requesting the parties to that proceeding to make submissions on the grounds for reconsideration.

The Panel notes that the BCUC has broad powers to control its own processes for a reconsideration hearing,⁶⁰ and more broadly has the express power under the Rules to "waive or modify one or more of its rules in exceptional circumstances."⁶¹ The Rules also provide that, "[n]otwithstanding the procedures provided for in the rules, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it."⁶²

⁵⁸ BC Hydro Final Submission, p. 24.

⁵⁹ Heiltsuk Nation Reply Argument, pdf p. 5.

⁶⁰ See, for instance, Rule 29.04.

⁶¹ Rule 4.03.

⁶² Rule 4.02.

In the decision accompanying Order G-266-24, the BCUC identified BC Hydro's omission of the grounds for reconsideration, assessed the circumstances of the proceeding and determined that, based on the record in the proceeding and in the interest of regulatory efficiency, BC Hydro's Reconsideration Application could and should be reviewed on the merits. This Panel finds that the decision accompanying Order G-266-24 makes it clear that the BCUC decided to exercise its discretion under the Rules and by proceeding with the substantive review of BC Hydro's Reconsideration Application, in effect waived the requirement for BC Hydro to set out the grounds for reconsideration in its application. Further, the Panel finds that the BCUC provided a sufficient justification for this waiver in its decision.

The Heiltsuk Nation also submitted that it was not clear that BC Hydro was seeking a "true reconsideration" of the RRA Decision, given the volume of new facts, and that the process established by the BCUC to review BC Hydro's Reconsideration Application was procedurally unfair because Indigenous interveners were denied the opportunity to provide written argument, while BC Hydro was allowed to make extensive submissions, resulting in procedural asymmetry.

The Panel finds that there was no procedural unfairness in this case. The BCUC provided interveners several opportunities to participate and express their views, which opportunities the Heiltsuk Nation seized, and the Panel finds that the process overall was fair. Procedural fairness does not guarantee procedural or information symmetry.

This Panel notes that BC Hydro's Reconsideration Application explicitly stated that the relief sought by BC Hydro was a) the rescission of Directive 85 of the RRA Decision, i.e. the requirement to file LTRPs for NIAs by March 31, 2024 and to include details of its NIA Diesel Reduction Strategy; and b) approval of BC Hydro's proposal for an alternative resource planning regulatory framework in NIAs. The proceeding to review BC Hydro's Reconsideration Application included the opportunity for interveners, including the Heiltsuk Nation, to issue IRs to BC Hydro, which allowed further testing and understanding of BC Hydro's proposals by all parties. Parties, including the Heiltsuk Nation, also had the opportunity to submit letters of comment regarding BC Hydro's proposals. Contrary to Heiltsuk Nation's submission that it was denied an opportunity to provide written argument, the Panel notes that letters of comment have been a long-standing way to participate in BCUC proceedings, and BCUC panels consider all submissions on the record when making their determinations.

The evidentiary record demonstrates that the Heiltsuk Nation was an active participant in the proceeding to review BC Hydro's Reconsideration Application. Further, the Heiltsuk Nation's submissions in that proceeding demonstrate an understanding that BC Hydro's Reconsideration Application included a proposal to modify the process for resource planning in NIAs. Taken together, the factors described above make it clear that the parties to the proceeding to review BC Hydro's Reconsideration Application, including the Heiltsuk Nation, had a fair opportunity to meaningfully participate and have their views, including those relating to BC Hydro's modified proposal, considered by the BCUC.

2. The BCUC did not make an error of jurisdiction

For the reasons that follow, the Panel finds that the BCUC did not make an error of jurisdiction in the issuance of Order G-266-24.

The Heiltsuk Nation argues that the BCUC committed an error of jurisdiction by issuing remedies beyond the scope of section 99 of the UCA which, the Heiltsuk Nation submits, does not allow the BCUC to approve new matters outside the scope of a previous order. The Heiltsuk Nation further submits that the BCUC undermined procedural fairness by allowing an expansion of the scope of BC Hydro's Reconsideration Application and the introduction of a new regulatory framework without initiating a stand-alone proceeding or conducting a public hearing.

Regarding the remedies that the BCUC may issue pursuant to section 99 of the UCA, the Panel notes that section 99 expressly provides the BCUC with the jurisdiction to confirm, vary, or rescind a decision, order, rule or regulation as part of a reconsideration [emphasis added]. This broad jurisdiction is also reflected in Rule 25.02, which provides that the BCUC may reconsider a decision and may confirm, vary or rescind the decision [emphasis added]. These provisions make it clear that, as part of a reconsideration, the BCUC may vary a prior order, and is not restricted to either confirming or rescinding it. The Panel finds that section 99 of the UCA provides the BCUC with broad scope in a reconsideration hearing. For instance, in the past the BCUC has relied on section 99 to vary a formula regarding cost allocations previously approved by the BCUC and approve a different formula.⁶³

Given the above, the BCUC has the power pursuant to section 99 of the UCA and Rule 25.02 to vary the RRA Decision as it did in Order G-266-24, including by rescinding the directive requiring BC Hydro to file an LTRP, and directing BC Hydro to instead file CCRs for the NIAs.

Regarding the Heiltsuk Nation's submission that the BCUC was procedurally unfair by failing to initiate a stand-alone proceeding or conduct a public hearing to consider BC Hydro's new resource planning proposal, the Panel observes that the proceeding to review BC Hydro's Reconsideration Application was a public hearing. Nothing in the UCA prescribes the form and content of a public hearing. Further, as already noted, it was clear from BC Hydro's Reconsideration Application that BC Hydro was seeking approval for a new regulatory framework for resource planning in the NIAs. In addition, during the course of the proceeding, interveners, including the Heiltsuk Nation, had several opportunities to present their views and have their perspectives on the issues raised in BC Hydro's Reconsideration Application considered by the BCUC. As such, the Panel finds that the process the BCUC followed prior to varying the RRA Decision was procedurally fair.

3. There is not otherwise just cause for reconsideration

For the reasons that follow, the Panel finds that there is not otherwise just cause for reconsideration of Order G-266-24.

The Heiltsuk Nation argues that there is otherwise just cause because Order G-266-24 prioritized clean energy initiatives over Aboriginal rights and title, and due to a corresponding lack of firm commitments to reconciliation

⁶³ BCUC Decision and Order G-114-21 dated April 16, 2021, pp. 5, 22.

with First Nations, or at the very least, parity between the advancement of clean energy initiatives and reconciliation. Further, the Heiltsuk Nation submits that it takes issue with the BCUC's decision to not approve performance metrics for consultation and accommodation in the NIA strategies, since it considers that, as a result, NIA strategies will be developed without due consideration of First Nation concerns.

In its reply, the Heiltsuk Nation further argues that Indigenous rights cannot simply be "balanced" against regulatory objectives. In addition, the Heiltsuk Nation references the *Clean Energy Act* objective "to foster the development of First Nation and rural communities through the use and development of clean or renewable resources," and submits that the BCUC's failure to impose measures to ensure First Nations' concerns are reflected in BC Hydro's NIA strategies constitutes neglect of an essential aspect of its regulatory mandate.

The Panel notes that, as an independent regulator with a mandate to regulate public utilities in British Columbia, the BCUC often must assess a broad range of interests and considerations in reaching its decisions. In the decision accompanying Order G-266-24, the BCUC identified some of the factors that it considered must be balanced as part of the evaluation of an appropriate resource planning regulatory framework for NIAs, as follows:⁶⁴

The Panel considers that the evaluation of an appropriate planning regulatory framework for NIAs must balance factors such as the need for oversight of public utilities, whether the regulatory process supports or may slow down relevant policy goals, such as diesel reduction in NIAs, and the regulatory cost and burden of filing LTRPs.

The Panel agrees with previous BCUC determinations that the purpose of resource planning is to enable a longer-term view, facilitate the efficient and effective review of subsequent applications that seek to implement actions that flow out of that plan, such as CPCNs and EPAs, and the consideration of strategic and public policy issues.

In addition to the broad list of factors noted above, the decision accompanying Order G-266-24 shows that the BCUC seriously considered and addressed concerns expressed by First Nations. For instance, the BCUC noted the commitment from BC Hydro to collaborate with all 14 NIA First Nations to create tailored CCRs that meet each community's specific needs.⁶⁵ Also, in finding that CCRs were better suited than LTRPs for planning in the NIAs, the BCUC expressly noted that CCRs provide flexibility that accommodates the characteristics of each of the NIAs, as well as opportunities for close collaboration between BC Hydro and the NIA communities.⁶⁶

The BCUC further directed BC Hydro to file an annual compliance report detailing its progress in developing CCRs in the NIAs for review by the BCUC, in recognition of the concerns expressed by First Nations regarding the content of CCRs, dispute resolution mechanisms, and lack of BCUC oversight.⁶⁷

Regarding the NIA Strategy, the Panel observes that BC Hydro had not yet finalized this strategy and the associated performance metrics by the time the decision accompanying Order G-266-24 was issued. However,

⁶⁴ BCUC Order G-266-24, p. 11.

⁶⁵ Ibid.

⁶⁶ Ibid., p. 12.

⁶⁷ Ibid.

the BCUC expressly encouraged BC Hydro to ensure that the NIA Strategy include key information that reflects the outcomes of its engagement with First Nations.⁶⁸

Finally, the Panel notes that in the decision accompanying Order G-266-24, the BCUC expressly outlined limitations with respect to the BCUC's jurisdiction which affected its decision-making regarding certain matters raised by First Nations. The BCUC acknowledged the desire on the part of some First Nations for co-development of BC Hydro's NIA resource planning proposal. However, the BCUC noted that its jurisdiction involves the review of specific utility applications. Further, the BCUC found that its "purview does not and should not extend to directing public utilities how to manage their organizations or carry out their business."⁶⁹

Overall, the Panel is satisfied that in its review and conduct of BC Hydro's Reconsideration Application, the BCUC adequately considered, and took steps to address, the interests of First Nations, while also being careful not to overstep its limited statutory jurisdiction in respect of Indigenous reconciliation.

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of June 2025.

Electronically signed by Mark Jaccard

M. Jaccard
Panel Chair/Commissioner

Electronically signed by Bernard Magnan

B. A. Magnan
Commissioner

⁶⁸ BCUC Order G-266-24, p. 14.

⁶⁹ Ibid., p. 16.

Heiltsuk Nation
Reconsideration of Order G-266-24

LIST OF ACRONYMS

Acronym	Description
2021 IRP	2021 Integrated Resource Plan
BC Hydro	British Columbia Hydro and Power Authority
BC Hydro's Reconsideration Application	BC Hydro's application for reconsideration of Directive 85 of the RRA Decision
BCUC	British Columbia Utilities Commission
CCRs	Community Context Reports
CPCN	Certificates of Public Convenience and Necessity
DRIPA	<i>Declaration on the Rights of Indigenous Peoples Act</i>
Heiltsuk Nation	Hai'z̓aq̓ Nation
IRs	Information Requests
LTRP	Long-Term Resource Plan
NIAs	Non-Integrated Areas
Reconsideration Application	Reconsideration of BCUC Order G-266-24
RRA Decision	Decision on the BC Hydro Fiscal 2023 to Fiscal 2025 Revenue Requirements Application
Rules	BCUC's Rules of Practice and Procedure
UCA	<i>Utilities Commission Act</i>
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Heiltsuk Nation
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EXHIBIT LIST

Exhibit No. **Description**

COMMISSION DOCUMENTS

A-1	January 8, 2025 – Panel Appointment
A-2	January 24, 2025 – BCUC Order G-12-25 establishing a regulatory timetable
A-3	February 18, 2025 – Guidance to Interveners

APPLICANT DOCUMENTS

B-1	December 21, 2024 – Hai'zraq Nation (Heiltsuk Nation) - Reconsideration of Order G-266-24
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INTERVENER DOCUMENTS

C1-1	January 30, 2025 – BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO) – Request to intervene by Alicia Henderson
C2-1	February 12, 2025 – GITGA'AT FIRST NATION (GITGA'AT FIRST NATION) – Request to intervene by David Benton
C3-1	February 13, 2025 – TLL YAHDA ENERGY (TLL YAHDA ENERGY) – Request to intervene by Sean Brennan