



ORDER NUMBER
G-24-21

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

and

Net Metering Ratepayers Group and British Columbia Community Solar Coalition
Application for Reconsideration of BCUC Order G-250-20
and October 5, 2020 Reasons for Decision

BEFORE:

T. A. Loski, Panel Chair
D. A. Cote, Commissioner
M. Kresivo, QC, Commissioner

on January 22, 2021

WHEREAS:

- A. On October 5, 2020, the British Columbia Utilities Commission (BCUC) issued Order G-250-20 with reasons for decision with regards to the Net Metering Ratepayers Group and British Columbia Community Solar Coalition (NMRG/BCCSC) Complaint Against BC Hydro in Respect of Comments on PACA Applications received in the Application to Amend Net Metering Service under Rate Schedule 1289 Proceeding;
- B. On November 5, 2020, the NMRG/BCCSC filed an Application for Reconsideration of BCUC Order G-250-20 and reasons for decision dated October 5, 2020 (Reconsideration Application);
- C. In the Reconsideration Application, NMRG/BCCSC allege that: i) The Panel erred in confusing the sequence of events and unfairly attributing specific knowledge to NMRG/BCCSC regarding determinations made by the PACA Panel that NMRG/BCCSC could not possibly have been aware of at the time the Complaint was filed; and ii) The Panel erred in finding it had no jurisdiction to award Special Costs;
- D. Rule 28.01, Part V of the BCUC's Rules of Practice and Procedure, which are attached to Order G-15-19, states that upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the 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; and
- E. The BCUC has reviewed the Reconsideration Application and considers that a summary dismissal is warranted.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, for the reasons attached as Appendix A to this order, the BCUC dismisses the Reconsideration Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of January 2021.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

**Net Metering Ratepayers Group and
British Columbia Community Solar Coalition**

**Application for Reconsideration of BCUC Order G-250-20
and October 5, 2020 Reasons for Decision**

Reasons for Decision

January 22, 2021

Before:

T. A. Loski, Panel Chair
D. A. Cote, Commissioner
M. Kresivo, QC, Commissioner

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Executive Summary

On June 15, 2020, Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) (jointly referred to as NMRG/BCCSC) filed a complaint (Complaint) with the British Columbia Utilities Commission (BCUC) regarding an alleged abuse of process by British Columbia Hydro and Power Authority (BC Hydro) in the course of NMRG/BCCSC's application for Participant Assistance Cost Award (PACA) related to the proceeding to review BC Hydro's Application to Amend Net Metering Service under Rate Schedule 1289 (Net Metering Proceeding). In the Complaint, NMRG/BCCSC allege abuse of process as a result of BC Hydro improperly using the comment process in respect of NMRG/BCCSC's PACA Application to make a collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding. In the Complaint, NMRG/BCCSC also sought an award of additional costs and special costs.

On October 5, 2020, the BCUC dismissed the Complaint by Order G-250-20 and accompanying reasons for decision (Complaint Reasons). The BCUC found there was no substance to or basis for NMRG/BCCSC's Complaint that BC Hydro's impugned comments in its letter in the PACA process constitute an abuse of process or an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.¹ The BCUC also denied NMRG/BCCSC's request for an award of additional and special costs.²

On November 5, 2020, NMRG/BCCSC filed an Application for Reconsideration of the Complaint Reasons alleging that the BCUC made errors of fact and jurisdiction which had a direct and material impact on the Complaint Reasons (Reconsideration Application). Specifically, NMRG/BCCSC allege that:

1. The BCUC made an "error of fact by confusing the sequence of events and unfairly attributing specific knowledge to NMRG/BCCSC regarding determinations made by [the PACA Panel] that NMRG/BCCSC could not possibly have been aware of at the time the Complaint was filed"³; and
2. The BCUC made an "error in jurisdiction by finding it had no jurisdiction to award Special Costs."⁴

Upon review of the Reconsideration Application, materials filed in the Complaint, and the Complaint Reasons, the Panel does not find any error of fact was made by the BCUC in the Complaint Reasons. With regards to NMRG/BCCSC's alleged error in jurisdiction, the BCUC previously found no grounds exist for an order of special costs. Given these findings, comments on the BCUC's jurisdiction to award special costs was all obiter dictum. In other words, it is an opinion of the BCUC but it is not essential to the decision and does not establish precedent. Effectively, NMRG/BCCSC is seeking a reconsideration of obiter dicta comments, which by its nature cannot be reconsidered or appealed.

Accordingly, the Panel finds that NMRG/BCCSC have failed to establish, on its face, any reasonable grounds for reconsideration of the Complaint Reasons and therefore summarily dismisses the Reconsideration Application.

¹ Order G-250-20, Appendix A, p. 6.

² Ibid., Directive 2.

³ Exhibit B-1, p. 3.

⁴ Ibid., p. 6.

1.0 Introduction

On November 5, 2020, the Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) (jointly referred to as NMRG/BCCSC) filed an Application for Reconsideration of British Columbia Utilities Commission (BCUC) Order G-250-20 and reasons for decision dated October 5, 2020 (Reconsideration Application). In the Reconsideration Application NMRG/BCCSC allege the BCUC made errors of fact and jurisdiction which had a direct and material impact on its reasons for decision accompanying Order G-250-20.

1.1 Background

Following the BCUC proceeding to review British Columbia Hydro and Power Authority's (BC Hydro) Application to Amend Net Metering Service under Rate Schedule 1289 (Net Metering Proceeding), NMRG/BCCSC, among other registered interveners in that proceeding, filed a Participant Assistance Cost Award (PACA) application with the BCUC with respect to their participation in the Net Metering Proceeding. In accordance with the PACA Guidelines as set out in Appendix A attached to BCUC Order G-97-17 dated June 15, 2017, BC Hydro was afforded the opportunity to comment on the PACA requests by June 4, 2020, and interveners were provided the opportunity to provide reply comments by June 11, 2020 (PACA Process). In NMRG/BCCSC's reply comment dated June 11, 2020, NMRG/BCCSC requested additional PACA funding to prepare its reply comments and for special costs. BC Hydro subsequently provided sur-reply comment regarding NMRG/BCCSC's additional PACA request on July 9, 2020, and NMRG/BCCSC provided their reply to BC Hydro's sur-reply comment on July 14, 2020. On August 5, 2020, the BCUC issued Order F-25-20 and accompanying reasons, approving PACA funding related to the Net Metering Proceeding (PACA Decision) while denying an award for additional costs and special costs.

On June 15, 2020, NMRG/BCCSC filed a complaint (Complaint) with the BCUC regarding an alleged abuse of process by BC Hydro in the course of NMRG/BCCSC's application for PACA funding related to the Net Metering Proceeding. In the Complaint, NMRG/BCCSC allege abuse of process as a result of BC Hydro improperly using the comment process in respect of NMRG/BCCSC's PACA Application to make a collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding. In the Complaint, NMRG/BCCSC sought an award of additional costs and special costs.

On July 10, 2020, the BCUC, by Order G-184-20, established a separate process to review the Complaint. The Complaint was reviewed pursuant to section 4 of the *Utilities Commission Act* (UCA) and included comments from BC Hydro and reply comments from NMRG/BCCSC, which were filed on July 24, 2020 and August 13, 2020, respectively.

On October 5, 2020, the BCUC dismissed the Complaint by Order G-250-20 and accompanying reasons for decision (Complaint Reasons). The BCUC found there was no substance to or basis for NMRG/BCCSC's Complaint that BC Hydro's impugned comments in its letter dated June 4, 2020 in the PACA Process constitute an abuse of process or an improper collateral attack on NMRG/BCCSC's Final Argument in the Net Metering Proceeding.⁵ The BCUC also denied NMRG/BCCSC's request for an award of additional and special costs.⁶

⁵ Order G-250-20, Appendix A, p. 6.

⁶ Ibid., Directive 2.

2.0 Legislative and Regulatory Framework

Pursuant to section 99 of the UCA, the BCUC 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.

Part 5 of the BCUC Rules of Practice and Procedure⁷ establishes the process for requests for reconsideration of a decision, an order, a rule or regulation of the BCUC. Pursuant to Rule 26.04 of the Rules of Practice and Procedure, an application for reconsideration must be filed in accordance with the rules pertaining to document filing and must:

- a) Be in writing and, unless prior permission of the BCUC is obtained, not longer than 30 pages (excluding appendices and/or attachments);
- b) Identify the decision affected;
- c) State the applicant's name and the representative's name (if applicable);
- d) Describe the impact of the decision and how it is material;
- e) Set out the grounds for reconsideration in accordance with Rule 26.05; and
- f) Set out the remedy the applicant is seeking.

Rule 26.05 of the Rules of Practice and Procedure outlines that an application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which include: "the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision," which is the grounds outlined in the Reconsideration Application.

The BCUC may summarily dismiss an application for reconsideration without further process, as specified in Rule 28 of the Rules of Practice and Procedure.

3.0 Reconsideration Application

In the Reconsideration Application, NMRG/BCCSC allege that:

1. The BCUC made an "error of fact by confusing the sequence of events and unfairly attributing specific knowledge to NMRG/BCCSC regarding determinations made by [the PACA Panel] that NMRG/BCCSC could not possibly have been aware of at the time the Complaint was filed⁸"; and
2. The BCUC made an "error in jurisdiction by finding it had no jurisdiction to award Special Costs."⁹

4.0 Panel Determination

The Panel finds that NMRG/BCCSC have failed to establish any reasonable grounds for reconsideration of Order G-250-20 and the accompanying Reasons and therefore summarily dismisses the Reconsideration Application. These Reasons for Decision outline the reasons for the Panel's Decision to summarily dismiss the

⁷ https://www.bcuc.com/Documents/Participant-Info/G-15-19_BCUC_Rules_of_Practice_and_Procedure.pdf.

⁸ Exhibit B-1, p. 3.

⁹ Exhibit B-1, p. 6

NMRG/BCCSC Reconsideration Application. The two alleged errors included in the Reconsideration Application are addressed in the subsections below.

4.1 Did the BCUC Make an Error of Fact by Confusing the Sequence of Events?

NMRG/BCCSC submit the Complaint Reasons make clear the BCUC's apparent confusion regarding the chronology of events and timing of the availability of information to NMRG/BCCSC related to the PACA Process and the review of the Complaint. Further, NMRG/BCCSC state this apparent confusion by the BCUC "had direct and material impacts on its decision to dismiss the Complaint."¹⁰

NMRG/BCCSC also submit the BCUC made a "fundamental mistake" in the Complaint Reasons, because it applied a "hindsight view of the determinations made" by the BCUC in its PACA Decision dated August 5, 2020. NMRG/BCCSC note the PACA Decision was delivered almost two months after the Complaint was filed on June 15, 2020.¹¹

In the Reconsideration Application, NMRG/BCCSC state the Complaint Reasons repeatedly make the point that the Complaint was "duplicative" of the PACA Application and was "unnecessary, unwarranted, inefficient, and a misuse of BCUC's resources and regulatory process."¹² NMRG/BCCSC submit that it is unfair and improper to apply the determinations in the Complaint Reasons issued on August 5, 2020 to support the Panel's finding that the Complaint was "duplicative." NMRG/BCCSC further submit that the hindsight now available should have no bearing whatsoever on the state of NMRG/BCCSC's foreknowledge at the time they filed the Complaint on June 15, 2020.¹³

NMRG/BCCSC state the Complaint was filed just four days after the filing of NMRG/BCCSC's reply comment dated June 11, 2020.¹⁴ NMRG/BCCSC affirm that "timing is critical because in laying out the sequence of events on page 2 of 9 in the Reasons for Decision, the Panel deviated from a chronological presentation and made reference to the filing of the Complaint as the last item mentioned."¹⁵

NMRG/BCCSC explain that their June 15, 2020 Complaint was supplementary to its June 11, 2020 Reply to BC Hydro's comments regarding NMRG/BCCSC's PACA Application, and submit that the Complaint was clear in identifying unusual circumstances that are not typically the subject of PACA Applications (i.e. alleged abuse of process) and sought a type of cost award that is generally not considered in the PACA context.¹⁶ NMRG/BCCSC submit that NMRG/BCCSC could not have foreseen what process the BCUC would follow, nor do they have control over the choice or timing of the process ordered by the BCUC.¹⁷

In NMRG/BCCSC's Complaint, the NMRG/BCCSC acknowledged their Complaint (followed four days after their June 11, 2020 submissions in the PACA Process), was "not expressly provided for in the PACA Guidelines."¹⁸

¹⁰ Exhibit B-1, pdf p. 2.

¹¹ Ibid., pdf. 2.

¹² Ibid., pdf pp. 3-4.

¹³ Ibid., pdf p. 5.

¹⁴ Ibid., pdf p. 4.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., pdf p. 5.

¹⁸ NMRG/BCCSC Complaint Regarding BC Hydro's Abuse of Power in Improper Comments on PACA Applications dated June 15, 2020, p. 7.

NMRG/BCCSC also stated in their Complaint that, while it is not their preference, they “would be well within their rights to request that this complaint be addressed in a new and separate proceeding.”¹⁹

Panel Determination

For the reasons set out below, the Panel finds that the Reconsideration Application has failed to establish, on its face, any reasonable grounds for reconsideration of Order G-250-20 and the accompanying Reasons regarding the alleged error of fact.

The Panel notes that the Reconsideration Application focusses on an alleged error of fact related to the remedy sought by NMRG/BCCSC in the Complaint, as opposed to the alleged error regarding the dismissal of the Complaint.

In the Complaint Reasons the BCUC dismissed the Complaint:

For the foregoing reasons, the Panel finds that there is no substance to or basis for NMRG/BCCSC’s Complaint that BC Hydro’s impugned comments in its letter dated June 4, 2020 in the PACA Process constitute an abuse of process or an improper collateral attack on NMRG/BCCSC’s Final Argument in the Net Metering Proceeding. The Complaint is therefore dismissed.²⁰

The Panel notes in the foregoing reasons for dismissing the Complaint, the BCUC did not reference the PACA Decision, nor did the determination mention it was duplicative, unnecessary, unwarranted, inefficient, or a misuse of BCUC’s resources and regulatory process.

The Panel accepts that the sequence of events that were set out by the BCUC in the Complaint Reasons did include a reference to the Complaint as the last item on the list, which was a deviation from the chronological presentation of the rest of the list. However, the Panel does not consider the ordering of items in a list to be determinative in the BCUC’s decision to dismiss the Complaint. This ordering of events simply recognized the reality that the BCUC established a separate review process for the Complaint when it appointed a panel on July 9, 2020 to review the Complaint pursuant to section 4 of the UCA. It is without question that the BCUC has the authority to establish its processes for the review of applications and complaints it receives. The Panel further notes no objections were raised by participants regarding the BCUC’s review process for the Complaint.

The Panel accepts that the Complaint Reasons referenced the PACA Decision dated August 5, 2020, which was issued after the Complaint was filed by NMRG/BCCSC on June 15, 2020. The Panel also notes that in the Complaint, among other things, NMRG/BCCSC were seeking additional costs and special costs, which they had previously requested in their June 11, 2020 PACA Request. Regardless of the nature of the review process established to deal with the Complaint, it is clear to this Panel that the requested relief for additional and special costs was duplicated in the Complaint.

As the PACA Decision predated the Complaint Reasons, which had already addressed the issues of additional costs and special costs that were also raised in the Complaint, the Panel finds it reasonable and appropriate for the BCUC to refer to its findings from the PACA Decision in the Complaint Reasons. As a consequence, the Panel does not consider the BCUC referring to a previous decision to be unfair or improper as alleged by NMRG/BCCSC

¹⁹Ibid., p. 7

²⁰ Order G-250-20, Appendix A, p. 6.

in the Reconsideration Application. Therefore, the Panel does not find any error of fact was made by the BCUC in the Complaint Reasons.

4.2 Did the BCUC Make an Error of Jurisdiction by Finding it had No Jurisdiction to Award Special Costs?

In the reasons accompanying Order G-250-20, the BCUC states:²¹

NMRG/BCCSC made the same request for Special Costs to the Panel in the PACA Process arising from the Net Metering Proceeding. In its Order F-25-20 with reasons for decision, that Panel rejected NMRG/BCCSC's claim for Special Costs and stated:

Concerning the NMRG's request for special costs the Panel finds that the BCUC does not have jurisdiction to make an award of special costs. As a statutory tribunal, the BCUC does not possess inherent jurisdiction to make an award of special costs. Further, there is nothing in the BCUC Rules and Practice or Procedure or the PACA Guidelines which could provide any basis for suggesting the BCUC has such jurisdiction.

This Panel agrees and also finds it has no jurisdiction to grant Special Costs as claimed in the Complaint and further finds the claim for Special Costs to be duplicative, unnecessary, inefficient and a misuse of the BCUC's resources and regulatory process. [Emphasis included in original text]

NMRG/BCCSC submit in its Reconsideration Application that the BCUC made a substantial error of jurisdiction by finding it had no jurisdiction to award special costs.²² With reference to section 118(1) of the UCA, which states "The commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding," NMRG/BCCSC submit the BCUC is expressly granted jurisdiction by the UCA to order a participant to pay all or part of the costs of another participant in a proceeding before it, so it is both unnecessary and improper for either Panel to raise the issue of inherent jurisdiction in these circumstances.²³

Further, NMRG/BCCSC submit that the PACA Guidelines expressly contemplate the authority to award costs other than the types or categories of costs specifically discussed in the PACA Guidelines under section 13.1, which states "The Commission may award any other costs that the Commission deems as reasonable and justified."²⁴

NMRG/BCCSC further reference Rule 2 of the Rules, which states "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." NMRG/BCCSC submit that liberally construing the Rules, applying the broad discretion to award costs expressly noted in the PACA Guidelines and reflecting the express jurisdiction to award costs granted by the UCA, clearly establishes that the BCUC possesses the necessary jurisdiction to award special costs or any other costs sought in the Complaint.²⁵

²¹ Order G-250-20, Appendix A, p. 9.

²² Exhibit B-1, pdf p. 6.

²³ Ibid., pdf p. 7.

²⁴ Ibid.

²⁵ Ibid., pdf p. 8.

Panel Determination

For the reasons set out below, the Panel finds that the Reconsideration Application has failed to establish any reasonable grounds for reconsideration of Order G-250-20 and the accompanying Reasons regarding its jurisdiction to award special costs.

By Order G-250-20 and Reasons for Decision, the BCUC dismissed the Complaint providing the following reasoning ²⁶:

In the Panel's view, there is nothing in the impugned comments in BC Hydro's June 4, 2020 letter that could be said to amount to an abuse of the BCUC's process. Rather, the Panel finds BC Hydro's comments were made in good faith at the request of the BCUC and in accordance with the established process in its PACA Guidelines to assist the Panel in making its decision on the PACA applications...

BC Hydro's impugned comments in its June 4, 2020 letter in the PACA proceeding did not object to or oppose NMRG/BCCSC receiving a PACA award; but rather, focussed on the reasonableness and fairness of the amount of such an award. There is nothing improper in BC Hydro making such submissions given that it is afforded the opportunity to do so under the PACA Guidelines and, more particularly, it is BC Hydro's responsibility to do so, given that the PACA awards are borne by BC Hydro's ratepayers. In the circumstances, BC Hydro's impugned comments that the comparatively large amount of NMRG/BCCSC's PACA claim could have, in part, been as a result of their spending time in the Net Metering proceeding on matters that were extraneous or out of scope are relevant submissions in the PACA proceeding. BC Hydro's submissions addressed the reasonableness and fairness of the awards being sought and NMRG/BCCSC were also afforded the opportunity to and did reply to BC Hydro's comments.

Further, from this Panel's review of the Order and Reasons in the Net Metering Proceeding there is nothing to suggest that BC Hydro's comments on NMRG/BCCSC spending time on out of scope matters was in any way a factor in or bolstered BC Hydro's position in that proceeding.

In addition, BC Hydro's impugned comments bear none of the hallmarks of collateral attack. BC Hydro was not bound by an order of the BCUC, nor was it trying to avoid the effect of an order by challenging its validity in the wrong forum. Rather, BC Hydro, as stated above, was simply making good faith submissions, at the request of the BCUC, in response to the NMRG/BCCSC PACA Application in accordance with BCUC established process.

The issue of whether the BCUC has the jurisdiction to award special costs is moot because the BCUC found in the Complaint Reasons that BC Hydro's comments were made in good faith in the Net Metering Proceeding at the request of the BCUC, and that the impugned comments in BC Hydro's June 4, 2020 letter do not amount to an abuse of the BCUC's process nor was it a collateral attack. In other words, no grounds exist for an order of special costs. Given these findings, comments on the BCUC's jurisdiction in the Complaint Reasons to award special costs was all obiter dictum. In other words, it is an opinion of the previous panel, but it is not essential to the decision and does not establish precedent. Effectively, NMRG/BCCSC is seeking a reconsideration of obiter dicta comments, which by their nature cannot be reconsidered or appealed.

²⁶ Order G-250-20, Appendix A, pp. 5-6.