



**ORDER NUMBER
F-28-21**

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

and

Nelson Hydro
2021 General Rate Increase Application
Participant Assistance/Cost Award Application

BEFORE:

R. I. Mason, Panel Chair
A. K. Fung, QC, Commissioner
T. A. Loski, Commissioner

on September 17, 2021

ORDER

WHEREAS:

- A. On November 30, 2020, Nelson Hydro filed an application with the British Columbia Utilities Commission (BCUC) for approval of a general annual rate increase of 2.3 percent for the Rural service area for the 2021 calendar year, pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA) (Application). Nelson Hydro proposes the general annual rate increase to become effective on April 1, 2021, which results in a compounded rate increase of 3.32 percent;
- B. Nelson Hydro is owned and operated by the City of Nelson and is excepted from regulation under the UCA to the extent it is serving customers within its municipal boundaries. Accordingly, the BCUC's review of the Application pertains solely to Nelson Hydro's non-municipal, or rural, ratepayers;
- C. By Orders G-347-20, G-75-21 and G-125-21 dated December 22, 2020, March 15, 2021 and April 28, 2021 respectively, the BCUC established a regulatory timetable for the review of the Application, which included two rounds of BCUC information requests and Nelson Hydro's final argument;
- D. The public was invited to participate in the proceeding by submitting a letter of comment or by registering as an interested party. The BCUC received 88 letters of comments from the public and 25 individuals and organizations registered as interested parties;
- E. On July 27, 2021, by Order G-225-21 with decision issued concurrently, the BCUC granted the annual rate increase of 3.32 percent for rural customer classes on a permanent basis, effective April 1, 2021 to Nelson Hydro;

- F. The following participant filed a Participant Assistance/Cost Award (PACA) application with the BCUC with respect to its participation in the proceeding:

Date	Participant	Application
June 18, 2021	Residential Consumer Intervener Association (RCIA)	\$6,252.75

- G. On August 12, 2021, in accordance with Section 14 of the BCUC's PACA Guidelines approved by Order G-97-17, the BCUC sought comment from Nelson Hydro on the PACA application;
- H. On August 18, 2021, Nelson Hydro provided comments on RCIA's PACA application, indicating that the utility opposes the granting of a cost award to RCIA on the basis that RCIA's application did not meet the criteria within Section 4.3 of the PACA Guidelines;
- I. On August 26, 2021, RCIA submitted its reply comments to Nelson Hydro's August 18, 2021 comments on RCIA's PACA application; and
- J. The BCUC has reviewed the PACA application in accordance with the criteria set out in the PACA Guidelines, and finds the following determination is warranted;

NOW THEREFORE pursuant to section 118(1) of the UCA, and for reasons outlined in Appendix A to this order, the BCUC denies RCIA's PACA application.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of September 2021.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

Nelson Hydro
2021 General Rate Increase Application

REASONS FOR DECISION

1.0 Background

On November 30, 2020, Nelson Hydro filed an application with the British Columbia Utilities Commission (BCUC) for approval of a general annual rate increase of 2.3 percent for the Rural service area for the 2021 calendar year, pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA) (Application).

By Orders G-347-20, G-75-21 and G-125-21 dated December 22, 2020, March 15, 2021 and April 28, 2021 respectively, the BCUC established a regulatory timetable for the review of the Application, which included two rounds of BCUC information requests (IR) and Nelson Hydro's final argument (GRI Proceeding).

The public was invited to participate in the proceeding by submitting a letter of comment or by registering as an interested party. The BCUC received 88 letters of comments from the public and 25 individuals and organizations registered as interested parties.

On July 27, 2021, by Order G-225-21 with decision issued concurrently (Decision), the BCUC granted the annual rate increase of 3.32 percent for rural customer classes on a permanent basis, effective April 1, 2021 as applied for by Nelson Hydro.

The BCUC received one Participant Assistance/Cost Award (PACA) application from the Residential Consumer Intervener Association (RCIA) in respect of its participation in this proceeding, as summarized below:

Date	Participant	PACA Application
June 18, 2021	Residential Consumer Intervener Association	\$6,252.75

In accordance with Section 14 of the BCUC's PACA Guidelines approved by Order G-97-17, Nelson Hydro filed its comments on RCIA's PACA application on August 18, 2021 and RCIA filed its reply to Nelson Hydro's comments on August 26, 2021.

2.0 Criteria for Cost Awards

Section 118(1) of the UCA provides that "[t]he 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."

The PACA Guidelines set out the eligibility requirements and criteria used in assessing cost awards, including the process for applying for a cost award, eligible costs and rates.

Section 3.1 of the PACA Guidelines outlines the considerations to determine participant eligibility for a cost award. The BCUC will consider whether the participant:

- (a) is directly or sufficiently affected by the BCUC's decision; or

- (b) has experience, information, or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making.

Section 3.2 of the PACA Guidelines describes the general characteristics of a participant in a proceeding that would meet the eligibility criterion. Included among examples of these is a participant representing the direct interests of ratepayer groups or affected groups in relation to matters that are regulated by the BCUC. If the participant is eligible for a cost award, the Panel then considers the following in determining the amount of a participant's cost award in accordance with Section 4.3 of the PACA Guidelines:

- (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 BCUC determines appropriate in the circumstances.

Sections 7.0 through 13.0 of the PACA Guidelines outline the types of eligible costs that can be awarded to participants including, among other things, professional fees, foregone earnings, childcare expenses, disbursements, tax costs and other costs.

With respect to disbursements and other costs, Section 10.1 states, "[d]isbursements directly related to the participant's participation in the proceeding may be allowed." Section 13.1 of the PACA Guidelines provides an overarching inclusion of "other costs the Commission deems reasonable and justified."

3.0 Review of the PACA Request

RCIA represents the interests of Nelson Hydro's rural ratepayers, a group of customers that is distinct from Nelson Hydro's urban customers, who as rural ratepayers do not have the same natural influence on the Nelson Hydro utility due to their location outside of the city limits of the City of Nelson.¹ RCIA registered as an interested party in the proceeding (Exhibit D-5) on January 25, 2021 and submitted a letter of comment (D-5-1) on March 4, 2021 (Letter of Comment).

In its PACA application, RCIA submits it contributed to a better understanding by the BCUC of the issues in the proceeding by applying its industry knowledge to review, evaluate, explore and challenge Nelson Hydro's positions regarding rural ratepayers. RCIA's activities include the following: Application Documents review, reviewing IR responses, and reviewing Nelson Hydro's Final Argument. Additionally, to support balanced decision making by the BCUC, in areas where RCIA did not have concerns with specific Nelson Hydro's positions, RCIA indicated its support for those positions on behalf of all residential ratepayers (i.e. rural and urban), to better focus deliberation upon the areas of primary concern.²

¹ RCIA PACA Application dated June 18, 2021, p. 1.

² RCIA PACA application dated June 18, 2021, p. 3.

RCIA filed a PACA application for the Nelson Hydro GRI Proceeding requesting the funding amount of \$6,252.75 inclusive of GST. This amount consists of RCIA's professional fees as follows:

- 1.3 days at a daily rate of \$1,850 for Mr. Oakley (consultant);
- 2.2 days at a daily rate of \$1,300 for Mr. Mason (consultant); and
- 0.3 days at a daily rate of \$2,300 for Mr. Cass (legal counsel).

RCIA's PACA application did not apply for any disbursements or other costs.

In its letter dated August 18, 2021, Nelson Hydro opposes RCIA's PACA application. First, Nelson Hydro notes that RCIA did not indicate it would be seeking PACA funding for its limited participation as an interested party. Second, Nelson Hydro submits RCIA has not contributed to a better understanding by the BCUC of the issues in the proceeding as it only submitted a 3-page letter of comment, and issues raised in RCIA's letter were not relevant to the proceeding as they related to the utility's debt/equity structure and the postage stamp principle/rate differential issues which are being explored in the Nelson Hydro Cost of Service Analysis (COSA) and Rate Design Application (RDA) where RCIA is a registered intervener.³ Nelson Hydro considers that raising these issues in the GRI proceeding is out of scope and inefficient. Nelson Hydro does acknowledge RCIA provided some commentary on reliability and service quality but does not believe RCIA added any value as the matter was not addressed in detail nor required any legal analysis. Third, Nelson Hydro states it is a small utility with limited resources and \$6,252 is not an insignificant sum given the utility's small ratepayer base. Therefore, Nelson Hydro does not believe that RCIA's PACA application should be approved.⁴

In its reply dated August 26, 2021, RCIA submits that it got involved in both the GRI and COSA hearings largely by the passionate response of parties who felt they were being unfairly discriminated against.⁵ In addition to raising objections, one way RCIA states it added value was to provide input into areas about which it is not concerned, such as Nelson Hydro's operational and capital expenditures, hence providing BCUC with useful comments to facilitate efficient and comprehensive order making.⁶ RCIA comments informed understanding of the issues, and subsequent commentary, were only possible because RCIA was closely and carefully engaged with this proceeding and all of the materials submitted as a part of it. RCIA notes in its Letter of Comment that Nelson Hydro should pursue "close coordination and cooperation with FortisBC at all levels of management to ensure appropriate levels of reliability and service quality for all of its customers" which is reflected in the BCUC Decision.⁷ The BCUC directed Nelson Hydro to escalate its reliability concerns to FortisBC's senior management suggesting that RCIA's input did add value in this proceeding.

Panel Determination

The cost award claimed by the RCIA is denied.

The Panel acknowledges that section 118 of the UCA allows the BCUC to order that a party submitting a letter of comment is eligible to apply to receive all or part of its costs. Further, the Panel is satisfied that although participant funding is typically only provided to interveners, the RCIA is eligible for a cost award because by representing the direct interests of Nelson Hydro's Rural ratepayers it satisfies the eligibility criterion set out in

³ Nelson Hydro Letter dated August 18, 2021, pp. 1–2.

⁴ Nelson Hydro Letter dated August 18, 2021, p. 2.

⁵ RCIA Letter dated August 26, 2021, p.1.

⁶ RCIA Letter dated August 26, 2021, p. 1.

⁷ RCIA Letter dated August 26, 2021, p. 2.

Section 3.2(a) of the PACA Guidelines. Notwithstanding this, for the following reasons the Panel does not consider that reimbursement of RCIA's costs is warranted in these circumstances.

In determining the amount of a PACA award, the Panel considers the factors set out in Section 4.3 of the PACA Guidelines. The Panel finds that the considerations in Sections 4.3(a), (c) and (e) of the PACA Guidelines are determinative in this instance.

With respect to Section 4.3(a), the Panel finds that the RCIA has not contributed to a better understanding by the BCUC of the issues in the Nelson Hydro GRI proceeding. The RCIA raised the issue of reliability and service quality but did not provide insights beyond what was already on or obvious from the evidentiary record. While the BCUC did in the Decision direct Nelson Hydro to escalate its reliability concerns to FortisBC's senior management, the BCUC did not take note of the Letter of Comment. There is no suggestion to this Panel that the Letter of Comment played any part in informing the BCUC in making this directive. The Letter of Comment also raised the issue of costs and expenses generally but provided no insights to the BCUC in this matter. The statement that Nelson Hydro's ratepayers "likely have an intrinsic interest in the pursuit of environmental and climate action policies espoused by the City of Nelson"⁸ is speculative, and the position that Nelson Hydro "should ensure that its expenses in this regard provide value to its ratepayers"⁹ is too generic to have been useful to the BCUC in its determinations.

With respect to Section 4.3(c), the Panel finds that the costs incurred by the RCIA are not fair and reasonable. Even if the Letter of Comment had contributed to a better understanding by the BCUC of the issues in the proceeding, which it did not, the Panel considers that the RCIA's claim of 3.8 days to produce its three-page letter is excessive.

With respect to Section 4.3(e), the Letter of Comment includes submissions on two matters beyond the scope of the proceeding. As RCIA should well be aware as an intervener in that proceeding, Nelson Hydro's capital structure and its rate differential between Urban and Rural customers are being explored in the utility's COSA and RDA proceeding and are not relevant to the determinations in the GRI proceeding. Accordingly, RCIA's inclusion of submissions on these issues in the GRI proceeding in effect rendered the GRI proceeding less rather than more efficient, albeit not materially so.

⁸ Nelson Hydro GRI Proceeding, Exhibit -D-5-1, RCIA Letter of Comment, p. 3.

⁹ Nelson Hydro GRI Proceeding, Exhibit -D-5-1, RCIA Letter of Comment, p. 3.