



ORDER NUMBER
F-15-23

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

and

Nelson Hydro
Cost of Service Analysis and Rate Design Application
Participant Assistance/Cost Award Application

BEFORE:

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

on April 24, 2023

ORDER

WHEREAS:

- A. On November 27, 2020, Nelson Hydro filed a Cost of Service Analysis (COSA) and Rate Design Application with the British Columbia Utilities Commission (BCUC) requesting, among other matters, approval of the COSA (2019 COSA) and proposed rate changes to Rural residential rates, effective September 1, 2021 (Application);
- B. Nelson Hydro is owned and operated by the City of Nelson and is excluded from regulation under the *Utilities Commission Act* 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-346-20, G-117-21, G-224-21, G-278-21, G-332-21, and G-387-21 the BCUC established and amended a regulatory timetable for review of the Application, which included intervenor registration, three rounds of BCUC and intervenor information requests, and written process for final arguments and sur-replies;
- D. The following interveners registered in the proceeding:
 - British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and Tenants Resource and Advisory Centre (BCOAPO);
 - Residential Consumer Intervenor Association (RCIA);
 - FortisBC Inc. (FBC);
 - Nelson and District Chamber of Commerce (Nelson-District);

- David Okros (Okros);
 - Ramona Faust (Faust); and
 - Thomas Newell (Newell);
- E. On July 19, 2022, by Decision and Order G-196-22, the BCUC issued its decision approving the 2019 COSA subject to the directives and determinations set out in the decision issued concurrently with the order;
- F. By letter dated December 22, 2022, the BCUC requested submissions on Nelson Hydro's rate design proposal as set out in the Application;
- G. On March 2, 2023, by Order G-40-23, the BCUC issued its final decision on the Application, dismissing Nelson Hydro's proposed rate changes to Rural residential rates;
- H. The following interveners filed Participant Assistance/Cost Award (PACA) applications with the BCUC with respect to their participation in the proceeding:

Date	Participant	Application
March 4, 2022 and Revised on March 9, 2023	BCOAPO	\$50,838.73
August 18, 2022 and Revised on March 14, 2023 and March 16, 2023	RCIA	\$35,039.81

- I. By letter dated March 21, 2023, Nelson Hydro provided its comments on the PACA applications, stating BCOAPO and RCIA should be awarded no more than 50 percent of their claimed costs to reflect the cost savings that could have been achieved had BCOAPO and RCIA combined or coordinated their participation as discussed in Section 4.3 of the BCUC's PACA Guidelines;
- J. RCIA and BCOAPO provided responses to Nelson Hydro's comments by letters dated April 11, 2023 and April 12, 2023, respectively; and
- K. The BCUC has reviewed the PACA applications in accordance with the criteria and rates set out in the PACA Guidelines, attached to BCUC Order G-97-17, and determines that the requested cost awards should be approved.

NOW THEREFORE pursuant to section 118(1) of the *Utilities Commission Act* and for the reasons set out in Appendix A to this order, the BCUC orders as follows:

1. Funding is awarded to the following interveners in the listed amounts for their participation in the Nelson Hydro COSA and Rate Design proceeding:

Participant	Award
BCOAPO	\$50,838.73
RCIA	\$35,039.81

2. Nelson Hydro is directed to reimburse the above-noted interveners for the awarded amounts in a timely manner.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of April 2023.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

Nelson Hydro
Cost of Service Analysis and Rate Design Application

REASONS FOR DECISION

1.0 Background

On November 27, 2020, Nelson Hydro filed a Cost of Service Analysis (COSA) and Rate Design Application with the British Columbia Utilities Commission (BCUC) (Application). Nelson Hydro is owned and operated by the City of Nelson and is excluded from regulation under the *Utilities Commission Act* 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. In the Application, Nelson Hydro requests, among other matters, approval of the COSA (2019 COSA) and proposed rate changes to Rural residential rates, effective September 1, 2021 (to be phased in over a three-year period with follow-up adjustments, effective September 1, 2022 and September 1, 2023).

By Orders G-346-20, G-117-21, G-224-21, G-278-21, G-332-21, and G-387-21 the BCUC established and amended a regulatory timetable for review of the Application, which included intervenor registration, three rounds of BCUC and intervenor information requests, and written process for final arguments and sur-replies.

By Decision and Order G-196-22 dated July 19, 2022, the BCUC approved Nelson Hydro's 2019 COSA, subject to the directives and determinations set out in the decision issued concurrently with the order (Modified 2019 COSA). Nelson Hydro was directed to recalculate and submit the Modified 2019 COSA to the BCUC. The Panel made no determination to approve the rate design component of the Application, as the Panel did not know whether changes to the rates for Nelson Hydro's Rural customers were justified until the results of the Modified 2019 COSA were reviewed.

On October 3, 2022, Nelson Hydro filed the Modified 2019 COSA as directed by Decision and Order G-196-22. As part of the compliance filing, Nelson Hydro recommended that no rate design changes be implemented as a part of the proceeding.¹ By letter dated December 22, 2022, the Panel requested submissions from Nelson Hydro and intervenors regarding whether Nelson Hydro should be allowed to withdraw its rate design proposal as set out in the Application.²

By Order G-40-23 issued on March 2, 2023, the BCUC dismissed Nelson Hydro's application for a rate design for Rural residential rates.

The BCUC received applications for Participant Assistance/Cost Award (PACA) funding from two intervenors with respect to their participation in the proceeding.

2.0 Legislative Framework

Section 118 of the *Utilities Commission Act* states that the BCUC may order a participant in a proceeding before the BCUC to pay all or part of the costs of another participant in the proceeding.

¹ Exhibit A2-2, p. 4.

² Exhibit A-22.

Order G-97-17 dated June 15, 2017, outlines the BCUC’s PACA Guidelines, attached to BCUC Order G-97-17 (PACA Guidelines), which 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 BCUC 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.

3.0 PACA Applications

The following interveners filed PACA applications with the BCUC with respect to their participation in the proceeding:

Date	Participant	Application
March 4, 2022 and Revised on March 9, 2023	BCOAPO	\$50,838.73
August 18, 2022 and Revised on March 14, 2023 and March 16, 2023	RCIA	\$35,039.81

Pursuant to Section 14 of the PACA Guidelines, on March 21, 2023, Nelson Hydro provided its comments on the PACA applications. Nelson Hydro stated that it has reviewed the PACA applications and notes that the total funding amount of \$85,878.54 is a significant sum for the utility which will be absorbed by approximately 4,400

Rural ratepayers in the form of rates.³ Nelson Hydro notes that a budget expenditure of \$84,400 in 2023 is equivalent to a 1 percent rate increase for its Rural ratepayers.⁴ Nelson Hydro stresses the importance of ensuring that participation in its proceedings is cost effective. Nelson Hydro does not dispute that both BCOAPO and RCIA actively participated in the proceeding. However, Nelson Hydro submits that the BCUC should assess whether the participation from these interveners is consistent with Section 4 of the Guidelines based on the following reasons:⁵

- Nelson Hydro submits that BCOAPO's and RCIA's stated interests (seeking to represent the Rural ratepayers) are identical, and no evidence indicates that any efforts were made by either to combine or coordinate participation.
- Nelson Hydro also submits that while the positions of both BCOAPO and RCIA were reviewed in detail in Decision G-196-22, it does not appear that their positions were significant in influencing the BCUC's Decision.
- Nelson Hydro questions to what extent, if any, BCOAPO and RCIA engaged Nelson Hydro's Rural residential ratepayers. Nelson Hydro believes that some level of engagement is necessary in order for these organizations to understand the region and its ratepayers. Nelson Hydro submits, not all residential ratepayers are the same across British Columbia, and ratepayers and the regions in which they live are vastly different based on the geography, weather patterns, history, culture, and demographics.

For the reasons set out above, Nelson Hydro recommends that the BCUC award BCOAPO and RCIA no more than 50 percent of their claimed costs.⁶ Nelson Hydro submits that a reduced award would reflect the cost savings that could likely have been achieved had BCOAPO and RCIA combined or coordinated their participation as contemplated by the Guidelines. Nelson Hydro states that its Rural ratepayers should not have to absorb the costs of intervener participation that could have easily been conducted in a more cost-effective manner. Further, a reduced award would encourage participants in other and future proceedings to ensure they seriously contemplate collaboration where they represent identical interests. Nelson Hydro notes that depending on the amount of costs that are awarded, it may file an application seeking to establish a regulatory deferral account that would help moderate the impact of these costs on its Rural ratepayers.⁷

RCIA Response

RCIA responded on April 11, 2023 and states that BCOAPO and RCIA do not represent substantially similar interests. RCIA refers to submissions made in the recent Nelson Hydro 2023 Revenue Requirement Application (RRA) and that the Panel in the RRA proceeding concluded that it "is not persuaded that the interveners in the Proceeding represent substantially similar interests."⁸ RCIA notes that Nelson Hydro had over two years to raise concerns about interveners' similar interests and did not; therefore this reduces the weight of Nelson Hydro's argument now.⁹ RCIA submits that its full and thorough participation in this proceeding has demonstrated that it has contributed to a better understanding of the proceeding, and for that reason it should be awarded its full

³ Nelson Hydro's Response Letter to PACA Applications, p. 2.

⁴ Nelson Hydro's Response Letter to PACA Applications, p. 2, Footnote 2.

⁵ Nelson Hydro's Response Letter to PACA Applications, pp. 2–3.

⁶ Nelson Hydro's Response Letter to PACA Applications, p. 3.

⁷ Nelson Hydro's Response Letter to PACA Applications, p. 3.

⁸ RCIA's Reply Letter, p. 1.

⁹ RCIA's Reply Letter, p. 2.

claimed costs.¹⁰ RCIA also provides examples of how it engaged with Nelson Hydro's Rural residential ratepayers and submits that the Panel should give no weight to Nelson Hydro's implications to the contrary.¹¹

BC Public Interest Advocacy Centre (BCPIAC) Response for BCOAPO

BCPIAC responded on April 12, 2023, and explains that it is a not-for-profit society that provides legal representation at no cost to its client organizations, relying solely on cost awards to fund its activities, so as a representative of BCPIAC, it makes the following submissions regarding the representation of BCOAPO and the appropriateness of its PACA application in this proceeding.¹²

BCPIAC also provides submissions made in the recent Nelson Hydro 2023 RRA, which included a reference to a BCUC letter that explains the request for proposal that formed RCIA was conceived to create an intervener group with interests distinct from those represented by BCOAPO. BCPIAC submits that the participation of more than one group representing residential ratepayers' interests from different perspectives is not unreasonable considering the materiality of the impact of the application on different residential ratepayer interests. BCPIAC also notes that collaboration does not come without cost and submits that BCOAPO's participation in this process was targeted, efficient, and effective.¹³

BCPIAC also strongly objects to Nelson Hydro's stated intention to recover the entirety of its regulatory costs from just its Rural ratepayers, as the COSA and rate design were brought forward to deal with both its Urban and Rural operations.¹⁴ BCPIAC is requesting as part of this PACA decision that the Panel expressly consider the extent to which Nelson Hydro's Application dealt with not only its Rural but also its Urban operations, so that this informed apportionment can then be available to the Panel and interveners to consider as Nelson Hydro seeks to recover these regulatory costs from its Rural ratepayers in its RRAs. While BCPIAC acknowledges that the BCUC lacks the jurisdiction to set rates for Nelson's Urban ratepayers, the BCUC can disallow the recovery of certain costs from the Rural ratepayers, leaving it to the affected utility to determine how best to deal with the impact of that decision.¹⁵

4.0 Panel Determinations

The Panel, in its review of the PACA applications, is guided by the PACA Guidelines. The Panel is satisfied that BCOAPO and RCIA meet the eligibility criteria outlined in Section 3 of the BCUC's PACA Guidelines for a cost award in this proceeding because they represent the direct interests of ratepayer groups who are directly or sufficiently affected by the BCUC's decision. Specifically, BCOAPO represents a group of community organizations that work for and represent the interests of low- and fixed-income residents of BC,¹⁶ and RCIA represents residential ratepayers by minimizing overall costs and avoiding stranded costs, while maintaining safe performance and technological innovation.¹⁷ BCOAPO and RCIA both intervene regularly in BCUC proceedings, including Nelson Hydro proceedings, and each brought experience, information and expertise relevant to the Panel's decision.

¹⁰ RCIA's Reply Letter, p. 4.

¹¹ RCIA's Reply Letter, pp. 5–6.

¹² BCPIAC Reply Letter, p. 1.

¹³ BCPIAC Reply Letter, pp. 4–6.

¹⁴ BCPIAC Reply Letter, pp. 1–2.

¹⁵ BCPIAC Reply Letter, p. 2.

¹⁶ Exhibit C6-1, p. 2.

¹⁷ Exhibit C1-1, p. 2.

Having concluded that both participants are eligible for PACA funding, the Panel needs to establish, in accordance with Section 4 of the Guidelines, the cost award each participant is entitled to receive. This proceeding has spanned several years and covered a variety of technical topics in cost-of-service analysis and rate design. Given the complexity and length of the proceeding, the Panel finds that the total number of days that BCOAPO and RCIA have claimed for both legal and consulting fees is reasonable. Further, the Panel finds that both BCOAPO and RCIA actively participated in the proceeding and contributed to a better understanding of the issues raised in the proceeding.

Regarding whether BCOAPO and RCIA represent similar interests and should have combined or coordinated their participation to achieve cost savings, the Panel agrees with BCOAPO and RCIA that they do not represent similar interests. Each organization was granted its own intervenor status on the basis that the subsets of residential ratepayers they represent were substantially different. Even Nelson Hydro acknowledged, “not all residential ratepayers are the same”¹⁸ across all regions and this is the same within Nelson Hydro’s Rural service area. In addition, Nelson Hydro made no requests to require specific intervenors to collaborate during the Nelson Hydro COSA and Rate Design proceeding. Therefore, the Panel finds no justification to adjust their PACA amounts due to a lack of potential coordination or collaboration. Further, the Panel was not presented with any evidence that potential cost reductions would occur if BCOAPO and RCIA were to join together.

For the foregoing reasons, the Panel finds that the amounts in the PACA applications for BCOAPO and RCIA are fair and reasonable.

Nelson Hydro is directed to reimburse BCOAPO and RCIA for the awarded amounts in a timely manner as follows:

Participant	Award
BCOAPO	\$50,838.73
RCIA	\$35,039.81

The Panel makes no determination in this decision on the recoverability of the PACA costs amongst Nelson Hydro’s ratepayers, as this matter is more appropriately addressed in a revenue requirement proceeding. In the meantime, the Panel encourages Nelson Hydro to file any applications related to the recovery of the PACA costs from its ratepayers or otherwise, including requests for approvals for the establishment of any deferral accounts to facilitate cost recovery, in a timely manner.

¹⁸ Nelson Hydro’s Response Letter to PACA Applications, p. 3.