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August 13, 2020

E-filed

British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, BC V6Z 2N3
Attention: Ms. Marija Tresoglavic
Commission Secretary and Manager, Regulatory Services

Dear Ms. Tresoglavic:

**Re: British Columbia Hydro and Power Authority
Application to Amend Net Metering Service under Rate Schedule 1289 ~
Project No. 1599004
Net Metering Ratepayers Group
And
British Columbia Community Solar Coalition
Complaint Regarding BC Hydro's Abuse of Process in
Improper Comments on PACA Applications
Reply to BC Hydro July 24, 2020 Submission**

We are writing on behalf of our clients the Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) to reply to regarding BC Hydro's letter to the BCUC dated July 24, 2020 (Exhibit C1-1).

Collateral Attack

Although BC Hydro suggests that its previous submissions were not a collateral attack upon the NMRG and BCCSC Final Argument in the sense of that phrase discussed in the quoted cases, there is no question that BC Hydro improperly used the PACA process to attack elements of the NMRG and BCCSC Final Argument. The only proper means to make such comments was in BC Hydro's Reply to Intervener Final Arguments. BC Hydro did not do so. The attack is "collateral" in the sense that BC Hydro used an improper procedural step (i.e. PACA process right of reply) to criticize the NMRG and BCCSC Final Argument. A collateral attack may be a very specific legal concept, but the plain and ordinary meaning of that phrase applies to these circumstances.

NMRG and BCCSC Letter to BCUC
Complaint Regarding BC Hydro's Improper
Comments on PACA Applications
Amend Net Metering Service Proceeding
Reply to BC hydro C1-1 Submissions
August 13, 2020

A direct attack on the NMRG and BCCSC Final Argument was permissible in the Reply stage of the Final Argument phase of the proceeding. An indirect – or collateral – attack under the guise of PACA comments is inappropriate and improper and is an abuse of process.

Alleged “Out of Scope” Issues

Nothing in BC Hydro's C1-1 submission addresses the fact that its previous allegations of portions of NMRG and BCCSC Final Argument being out of scope were false. NMRG and BCCSC's complaint provides detailed specifics of why those issues were clearly in scope yet BC Hydro has not acknowledged or addressed those facts.

Potential and Actual Prejudice

BC Hydro in C1-1

“...acknowledges that the impugned comments, quoted above, refer to the NMRG/BCCSC's final argument and also to BC Hydro's reply argument in the proceeding. The references related to arguments in the Net Metering proceeding were not intended to bolster BC Hydro's position on the Net Metering application, nor did they do so.”

It is not for BC Hydro to decide or declare that its PACA comments specifically attacking the NMRG and BCCSC Final Argument did not “...bolster BC Hydro's position on the Net Metering application.” It is reasonable to infer that was the intent of those comments. Such attacks have no place in the PACA process.

The critical issue is that BC Hydro's improper allegations of portions of NMRG and BCCSC Final Argument being out of scope had the clear potential to assist BC Hydro's case and undermine NMRG and BCCSC's case. The Panel can't now unsee or unhear the false allegations made by BC Hydro in that respect. That in itself is sufficient evidence of prejudice to NMRG and BCCSC.

Prejudice Is Prejudice

BC Hydro's submissions suggest that its improper comments apply only to PACA determinations, and have no bearing on the proceeding. The error in that thinking is that by challenging PACA funding on the basis of false or incorrect allegations harms NMRG and BCCSC and undermines or prevents its participation in future BCUC proceedings. It is irrelevant whether such prejudice takes place in the proceeding, the PACA process, or both.

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PACA Criteria Are Not Optional

BC Hydro also stated:

“BCCSC have also alleged impropriety because BC Hydro’s comments on the PACA requested were not presented according to each of the considerations set forth in section 4.3 of the PACA Guidelines (referenced for convenience below) and employed criteria not specifically identified in section 4.3.³ *BC Hydro responds that there is no obligation on the utility to submit comments on participant PACA requests in any particular form, nor to address every one of the considerations set forth in section 4.3 of the PACA Guidelines, or any one of them.* The utility is at liberty to present its comments in any form and to address whichever of the section 4.3 considerations it considers appropriate.” (emphasis added)

The PACA Guidelines are very clear in specifying the specific criteria that the BCUC will, not may, apply. That necessitates that a utility focus its reply comments on those specific criteria – not invent new criteria of its own.

Ignoring any comment on mandatory criteria while purporting to introduce inappropriate alternative “criteria” is not proper process. Doing so introduces great uncertainty and undermines the very purpose of the PACA Guidelines.

Special Costs

In light of BC Hydro’s objectionable conduct, previously detailed in NMRG and BCCSC’s Complaint and previous PACA submissions, it is clear that some punitive action is necessary to deter BC Hydro from taking a similar approach in future BCUC proceedings. Special costs is supported in the case law already cited by NMRG and BCCSC and the PACA Guidelines, Rules of Practice and Procedure and *Utilities Commission Act* confirm the BCUC’s jurisdiction to make orders the BCUC considers appropriate or necessary.

If the Commission is persuaded that an award of special costs is outside of the BCUC’s jurisdiction or that special costs are not appropriate, which NMRG and BCCSC assert is not the case, a provision could be made by adding to the PACA award to NMRG and BCCSC.

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BC Hydro's reliance on BCUC Order No. F-10-19 Decision regarding the Commercial Energy Consumers Association of British Columbia (CEC) PACA application with respect to the Creative Energy Vancouver Platforms Inc.'s Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization is not appropriate.

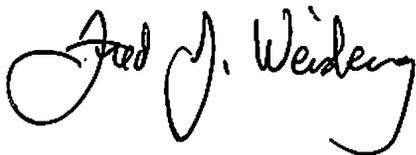
BC Hydro submits:

“In that case, the Commission denied PACA funding for the efforts of the participant to defend its PACA application, finding that the utility has the right to question PACA applications and it is the responsibility of the PACA applicant to address any concerns that have been raised in a fulsome manner. Also, viewing defense of a PACA application as a “billing matter” the Commission found that there is no justification to claim costs for doing so. The Commission also denied any relief associated with alleged impropriety of the utility's comments, noting that the utility has the right to question PACA applications and that the Commission, not the utility, is the arbiter on PACA awards.”

The difference in the present case is the specific circumstances of BC Hydro prominently including demonstrably false or misleading statements that force NMRG and BCCSC to defend against improper and untrue challenges that have no place in the PACA process. In the facts of this case, BC Hydro's comments went far beyond what was reasonable or appropriate and certainly have nothing to do with billing matters. The veracity of many of BC Hydro's PACA comments is the issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

A handwritten signature in black ink that reads "Fred J. Weisberg". The signature is written in a cursive, flowing style.

Fred J. Weisberg
Weisberg Law Corporation
Counsel to
Net Metering Ratepayers Group (NMRG)
And
British Columbia Community Solar Coalition (BCCSC)