

APR 11 2023

S 232803

No. _____
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Conifex Timber Inc.

PLAINTIFF

AND:

British Columbia Hydro and Power Authority

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this Action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

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- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by Order of the Court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: Statement of Facts

The Parties

1. The Plaintiff, Conifex Timber Inc. (“Conifex”), is a company incorporated under the laws of Canada with an address for service in this proceeding at 900 – 980 Howe Street, Vancouver, BC V6Z 0C8.
2. The British Columbia Hydro and Power Authority (“BC Hydro”) is a Crown corporation incorporated pursuant to the laws of British Columbia and the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212 (the “HPAA”). Its corporate head office is located at 333 Dunsmuir St, Vancouver, BC V6B 5R3.

Background

BC Hydro and Electricity Service

3. BC Hydro owns and operates facilities for, *inter alia*, the production, generation, storage, transmission, sale, delivery, and provision of electricity. The bulk of electricity used in British Columbia is provided to its residents through BC Hydro.
4. BC Hydro offers service to commercial customers through its distribution system or its transmission system. The distribution system services loads exceeding 5 megawatts in a 25 kilovolt service area or loads exceeding 2.5 megawatts in a 12 kilovolt service area. The transmission system services loads exceeding 35 kilovolts.
5. BC Hydro has implemented a *Business Practice of Load Interconnection Queue Management* governing new requests for connections at transmission voltage. The business practice requires that new requests for transmission voltage be placed into the interconnection queue, which determines the order in which requests are processed. The load interconnection process consists of three mandatory steps: (1) a system impact study; (2) a facilities study; and (3) implementation. In addition, in certain situations, further studies may be undertaken, including preliminary conceptual reviews or

feasibility studies, or a system impact study Conceptual Design at the conclusion of the system impact study.

6. As a public utility, BC Hydro is subject to regulation by the British Columbia Utilities Commission (“BCUC”). The BCUC has general supervision over public utilities, including their facilities, rates, and statutory obligations to provide service.

Conifex’s Cryptocurrency Operations

7. As set out below, Conifex is in the process of developing develop high-performance computing (“HPC”) data centres in Northern British Columbia initially for the purpose of mining cryptocurrency.
8. On or about April 20, 2021, Conifex submitted a three-stage application for electricity service from BC Hydro to power an HPC centre located in the Mackenzie region (the “Mackenzie Site”). On September 7, 2022, Conifex and BC Hydro concluded a facilities agreement for the second stage of the Mackenzie Site. BC Hydro and Conifex are currently negotiating a rate for power in respect of the second stage of the Mackenzie Site.
9. Further system impact study agreements were concluded on June 15, 2022, for an HPC centre requiring 150 megawatts of power near Salmon Valley (the “Salmon Valley Site”), and on June 20, 2022, for another HPC centre requiring 150 megawatts of power near Ashton Creek (the “Ashton Creek Site”).
10. The Salmon Valley Site is to be located directly adjacent to BC Hydro’s facilities in the area. Conifex is currently pursuing negotiations to purchase property to establish the site. The Ashton Creek Site is to be located within a few kilometres of BC Hydro’s facilities in the area. Both sites were chosen in collaboration with BC Hydro.
11. Conifex was advised by BC Hydro that access would be allocated pursuant to BC Hydro’s Queue Management Business Practice, with service ultimately provided pursuant to the terms of Tariff Supplements 5 and 6, and Rate Schedule 1823. In the latter regard, that advice was consistent with the Availability provision of Rate Schedule 1823, which provides that the rate is for “all purposes” where service is sought at 60kV or higher.
12. Material investments in time and expense were made to pursue electric service following this precise guidance from BC Hydro.

OIC 692 and the Cryptocurrency Moratorium

13. On December 21, 2022, the Lieutenant Governor in Council (“LGIC”) made Order in Council 692/2022 (“OIC 692”).
14. OIC 692 effectively instituted a moratorium on new cryptocurrency projects gaining access to electricity in British Columbia. The OIC directed the BCUC to make certain final orders pertaining to cryptocurrency projects within 10 days of an application for those orders by BC Hydro:
 - a. First, OIC 692 directed the BCUC to make a final order relieving BC Hydro of the obligation to supply service to low-voltage cryptocurrency projects for 18 months. Low-voltage projects are those requesting a connection to BC Hydro’s distribution system for which BC Hydro had not accepted a design deposit at the date of the OIC.
 - b. Second, OIC 692 directed the BCUC to make a final order relieving BC Hydro of the obligation to supply service to high-voltage cryptocurrency projects for 18 months. High-voltage projects are those that would receive an electricity supply of 60 kV or higher, in relation to which BC Hydro had not entered into a facilities study agreement at the date of the OIC.
15. The direction relating to high-voltage projects specified that BC Hydro was relieved from the obligation to enter into system impact study agreements with any new applications for power. It also specifically identified four high-voltage projects, including the Salmon Valley Site and Ashton Creek Site, as paused projects. The direction provided that BC Hydro would be relieved of the obligation to enter into a facilities study agreement in relation to a paused project.
16. On the same date, BC Hydro applied to the BCUC to obtain the final orders prescribed by OIC 692. BC Hydro also wrote a letter to Conifex on that date, informing it of the upcoming moratorium on cryptocurrency projects, including the Ashton Creek Site and Salmon Valley Site.
17. On December 28, 2022, the BCUC issued Final Order No. G-390-22A, granting the relief sought by BC Hydro and instituting the moratorium on access to power for new cryptocurrency projects (“BCUC Decision”).
18. On January 23, 2023, BC Hydro wrote to Conifex informing it that the Ashton Creek Site and Salmon Valley Site were paused projects pursuant to OIC 692 and Final Order No. G-390-22A, and that interconnection activities regarding those projects would not be advanced.

BC Hydro's Refusal to Supply Service

19. Between December 21, 2022 and March 17, 2023, Conifex repeatedly attempted to obtain re-entry into the interconnection queue in accordance with the Queue Management Business Practice.
20. Further, on March 17, 2023, Conifex wrote to BC Hydro President Chris O'Riley outlining the issues with OIC 692 and expressly demanding reinstatement to the interconnection queue with service to follow promptly. In that letter, Conifex also made a demand for service to be supplied pursuant to BC Hydro's common law obligation to provide service. Conifex received no substantive response to its letter from BC Hydro.
21. At all material times following December 21, 2022, BC Hydro failed or refused to supply service to Conifex in connection with the Ashton Creek Site and Salmon Valley Site, either in accordance with its own Queue Management Business Practice and Rate Schedule 1823, or otherwise.
22. BC Hydro's refusal to provide service and the corresponding delay to Conifex's HPC projects have caused and will continue to cause losses and damages to Conifex.

Part 2: Relief Sought

23. The Plaintiff(s) seek the following relief against the Defendant(s)
 - a. an order requiring BC Hydro to supply service to Conifex's HPC projects at the Ashton Creek Site and the Salmon River Site;
 - b. general damages;
 - c. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79;
 - d. costs; and
 - e. such further and other relief as this Honourable Court deems just.

Part 3: Legal Basis


24. Public utilities, including BC Hydro, have a common law obligation to supply service to consumers, and to do so in a manner that it not unduly discriminatory.

Chastain v. British Columbia Hydro and Power Authority, 1972 CanLII 985 (B.C. S.C.).
St. Lawrence Rendering Company Ltd. v. The City of Cornwall, 1951 CanLII 81 (O.N. S.C.)

25. Rate Schedule 1823 applies for “all purposes” where service is sought at 60 kV or higher.
26. BC Hydro’s failure or refusal to supply service to Conifex’s HPC projects at the Ashton Creek Site and the Salmon River Site is in breach of:
 - a. its common law obligation; and
 - b. Rate Schedule 1823.
27. Further, BC Hydro’s Decision, and failure or refusal to supply service unfairly discriminate against Conifex *vis a vis* all other customers to whom service is provided in accordance with Rate Schedule 1823, including those cryptocurrency projects that were further along in the interconnection process but had not yet obtained power.
28. Such other legal basis as is required and this Court will permit.

Plaintiff’s address for service:	McEwan Cooper Dennis LLP 900-980 Howe Street Vancouver, BC V6Z 0C8
Fax number address for service:	778-300-9393
E-mail address for service:	kmcewan@mcewanpartners.com
Place of trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: April 11, 2023



 Lawyer for the Plaintiff
 J. Kenneth McEwan, K.C.
 McEwan Cooper Dennis LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]