Andy Shadrack
Box 454
Kaslo, British Columbia, V0G 1M0

Monday, April 17, 2017

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, B.C., V6Z 2N3

Attention: Patrick Wruck, Commission Secretary
By Electronic Filing

Dear Sir:

Re: FortisBC Application for Reconsideration and Variance of Order G-199-16,
Project No. 3698875, FortisBC Net Metering Tariff Update Application
Intervenor Phase One Submission

Background

1. On April 17, 2009, FortisBC applied to the British Columbia Utilities Commission (the Commission) for approval of its Net Metering Program, which consisted of revisions to Rate Schedule 80, Net Metering Rate Schedule 95, and the Net Metering Interconnection Agreement.

2. On April 15, 2016, FortisBC filed an application to update the 2009 Net Metering Tariff.

3. On December 29, 2016, the Commission issued Order G-199-16 concerning that Update Application.

4. On March 17, 2017, FortisBC filed an application for reconsideration and variance of Order G-199-16.

5. On April 3, 2017, the Commission established phase one of a review process for FortisBC's application.

Introduction

6. As described in your letter of April 3, 2017, the Commission, in a reconsideration application, invites registered intervenors to comment by way of written submissions on:

a. whether the applicant has established a prima facie case that the Commission made an error of fact or law, and, if so, whether the error has significant material implications;
b. if there is to be a reconsideration, whether the Commission hears new evidence and whether new parties be given the opportunity to present evidence; and
c. if there is to be a reconsideration, whether it encompass all the items raised in the reconsideration application, a subset of those items, or include additional items.

7. You have also pointed out that written submissions in phase one should address whether the threshold for reconsideration has been met, rather than a full discussion of the substance of the issues, which, if warranted, is the purpose of phase two.

Issues

8. As scattered throughout its twenty-nine page Application (and I am far from certain that the following list is complete), FortisBC submits that:

a. the Commission erred at law:

i. *"in its interpretation of RS 95 regarding the legal consequences of an NM customer producing consistent annual net excess generation"* (para. 12, p. 4);

(1) in *"suggesting that the Commission panel that originally approved RS95 in 2009...did not share the same intent as FBC regarding customer eligibility criteria for the NM Program"* (para. 13(a) at p. 5);
(2) in *"failing to give proper consideration to the true intent and purpose of the NM program, as reflected in the 2009 Net Metering Decision, in determining that production of consistent annual NEG does not make customers ineligible for the Net Metering program and subject to removal from Rate Schedule 95"* (para.13(b), p. 5);
(3) in *"failing to give proper consideration to the whole of FortisBC's Electric Tariff and Rate Schedules in its interpretation of the legal content of the terms of RS 95, which, had they been considered, supported the conclusion that consistent producers of annual NEG are ineligible for the Net Metering program and subject to discontinuance of service under Rate Schedule 95"* (para. 13 (c), p. 5); and
(4) in concluding, on the basis of the aforementioned, that FortisBC *"does not have this right [i.e. to remove a customer from the Net Metering program if the customer becomes a consistent producer of Annual net excess generation] under the current Rate Schedule 95, nor should they going forward"* (para.14, p. 5);

ii. in failing to consider *"the benefits of the kWh bank in connection with FBC's proposed change to the compensation rate it pays for net excess generation"* (para. 51, p. 18);
iii. in excluding *" 'from consideration any class or category of interests which form part of the totality of the general public interest'. By not considering the benefits of a kWh bank as part of the public interest determination regarding the proposed NEG pricing change, the majority did just that."* (para. 53, pp. 18-19);

b. the Commission erred at law and in fact:

i. in *"treating the kWh bank solely as a 'mechanism to implement FBC's proposed pricing method' and failing to consider the benefits of the kWh bank proposal on their own merits or for the purposes of determining whether a change to the NEG compensation rate was warranted"* (para. 18 (a), p. 6);
or alternatively:
the Commission, in so doing, erred in fact (para. 48, p. 17));
ii. in *"relying on the 2009 NM Decision as a precedent regarding compensation for NEG and applying a standard of whether the circumstances have changed sufficiently to warrant a departure from the prior decision, rather than giving full and independent consideration to the merits of FBC's proposed treatment of NEG"* contrary to s. 75 of the Utilities Commission Act

(para. 18(b), p. 6);
or alternatively:
erred at law in *"treating the 2009 NM Decision as a binding form of precedent on a rate issue and required FBC to, in effect, justify overturning the prior Commission decision"* (para. 63, p. 21);
or, in the further alternative:
erred in fact in *"concluding that the circumstances had not changed sufficiently to warrant a new price for the compensation of NEG. The implementation of the two tiered RCR does represent a rate design change that effects a majority of customers in the NM program"* (para. 68, p. 23);
iii. in *"requiring FBC to continue to compensate residential NM customers for NEG at the equivalent of tiered residential conservation rates (RCR), but on the basis of a policy justification that is only valid in the circumstances of flat retail rates that no longer apply. Maintaining the principle that NEG compensation rates must match retail rates even under RCR also results in FBC overcompensating NM customers who produce NEG at a Tier 2 level, but are only charged for consumption at the Tier 1 level (or not at all) in certain billing periods. This devalues the rates FBC receives from these NM customers, which in turn means that FBC is receiving less than fair and reasonable compensation for the services provided contrary to s. 59(5) of the UCA."* (para. 18(c), pp. 6-7); and

c. the Commission erred in ways unspecified:

i. in *"failing to consider the implementation of a kWh bank, and its associated benefits, as an additional reason in support of a change from existing NEG pricing based on retail rates. By compartmentalizing the two issues and addressing the kWh bank proposal only after it had already decided against a change in pricing, the majority foreclosed from its consideration factors that were relevant and material to the pricing issue"* (para. 53, p. 18);

9. With all due respect, I submit that the manner in which FortisBC has stated these grounds is inappropriate for a reconsideration application. I submit that the grounds, as presented, are unwieldy, nebulous, duplicative, and tend to run into each other. Certainly, for me, this makes FortisBC's Application a very difficult document to respond to because their arguments are almost unintelligible.

10. That said, FBC, in their submissions, have not proven their case of any *"significant material implications"* since the NM program was initiated in 2009.

Currently FBC has 115,080 residential customers, of whom 64 were enrolled in the NM program at the time of the 2016 net metering application, and of whom FBC, in its reconsideration application, has identified just 8 who received a NEG payout that the Commission identifies as totalling $34,402 in 2016 (Summary of NEG sold to FBC, Appendix A, Order G-199-16, p 16).

Thus FBC has not made a prima facie case that the Company, which generates approximately $183 million in revenue from its residential customers annually, has been materially impacted by writing cheques to eight customers for $34,402. Further, this cost amounts to a mere 29.9 cents per customer per year for 2016 - 56.1 cents for the four years that NEG payouts have been made since inception of the program in 2009.

Consequently FBC has failed to make a prima facie case for reconsideration of either adoption of the KW bank or a requirement to change from the NEG retail rate at this time. In fact, as a low income senior who receives the GIS, and whose partner is on a Canada Pension Plan disability pension, the proposed KW bank would force our household to wait up to a year for a NEG credits payout, which in the current circumstances allows us to offset the Basic Charge and GST in the billing period for which NEG credits occur. This in effect would cause considerable financial hardship, and has significant material implications for low income customers and fixed income seniors on tight monthly budgets.

In fact the cost of the original 2016 hearing and this reconsideration application has likely had more material impact on FBC customers than the payout of NEG to eight customers. The payout of intervenor costs for the original application was in fact larger than the $34,402 made in NEG payouts.

11. FBC then submits that the Commission erred in law in the manner in which it interpreted tarriff RS 95 when in fact what the Commission did was identify:
"*...that adjustments to the RS 95 tariff are needed to remove existing ambiguities...It is clear from the evidence before us that the RS 95 tariff as currently worded leaves room for significantly different interpretations, and that clarification is necessary and in the public interest*".

The panel then broke the issue down into three distinct questions:

- Limits on installed generation capacity at the time of initial investment and/or initial application to participate in the NM Program;
- Limits on additions to installed generation capacity by a participant already in the NM Program; and
- Limits on continued participation in the NM Program if/when a participant subsequently becomes a consistent producer of Annual NEG.

In sections 1 and 2 of the Order, the Commission then approved FBC's proposed changes to the tariff (contrary to my own belief of what the purpose and intent of the *Clean Energy Act* actually is) in terms of initial acceptance into the NM program, and then directed FBC to draft precise wording to ensure that no NM customer could increase their generating capacity without first seeking approval from FBC.

12. FBC then argues that the Commission erred in law by not considering "...*the whole of FortisBC's Electric Tariff and Rate Schedules in its interpretation of the legal content of the terms of RS 95*" and that thus FBC, either implicitly or explicitly, has the right to remove a customer from a tariff or program, that it, FBC, no longer believes the customer is eligible to belong to.

To the contrary, FBC fails in making its case that even if the Commission has previously recognized the inherent right of FBC to remove a customer from a program that the Company no longer believes that the customer is eligible to belong to, it is in fact the Commission and not FBC that decides under the *Utilities Commission Act* what FBC as a public utility may or may not do as specified at section 75:

"*The commission must make its decision on the merits and justice of the case, and is not bound to follow its own decisions*".

13. Consequently, even if the Commission has agreed by decision and/or by accepting FBC's proposition without making a decision, the Commission still retains the legal right to vary any rights that FBC may have, based on the merits and justice of the case that is found in tariff RS 95. Nothing in the text and Authorities provided by FBC attached to the application suggests that the Commission has to do anything other than look at the merits and justice of the case before it.

14. The facts are that the Commission in G-199-16 explicitly approves:

"...*FBC's proposed changes to the RS 95 tariff that clarify that new customers will not be accepted into the NM Program if their proposed generating capacity exceeds their anticipated annual consumption (i.e. in addition to being limited by the 50kW maximum)*".

The Commission then goes on to direct FBC to:

"...*submit to this Panel, proposed changes to the RS 95 tariff that clarify that customers who are already participants in the NM Program and wish to remain in the NM Program, must not increase their generating capacity without prior approval of FBC, which shall be granted on the same basis as a new customer will be evaluated for entry into the NM Program*."

The Commission then explicitly directs FBC to:

"...submit to this Panel, proposed changes to the RS 95 tariff to clarify that RS 95 customers cannot be removed from the NM Program solely on the basis of producing Annual NEG."

In accordance with s.75 of the UCA, the Commission states:

"*The Panel finds to the contrary, that FBC does not have this right under the current RS 95 tariff, nor should they going forward. In looking to the underlying intent of the NM Program, there are two fundamental reasons why the right to remove a participant is not in the public interest."*

15. Having granted FBC the exclusive right to determine who can enroll in the NM program and at what generating capacity, and who amongst the enrolled program participants can expand their capacity, the Commission then balances off the rights of FBC by acknowledging that the:

"...risk of being excluded from the NM Program after initial qualification would likely pose an unacceptable risk to some customers who might otherwise wish to participate in the NM Program. Investment in self-generation capacity has a long-term payback, and hence any uncertainty in the duration of eligibility would be a deterrent to participation (i.e. in making their initial investment)".

"*...there are many circumstances in which a customer might in good faith generate Annual NEG after having their initial investment approved for the program.*"

16. The legal notion that FBC has some inherent right to remove customers from the NM program (after a customer has been approved by FBC at a specific generation size or after FBC has approved expansion of generation to a larger size) after that customer has expended time and capital in installing that generation capacity, is absolutely abhorrent to me as an NM customer who has yet to pay off the capital invested in participating in this program and tariff RS 95.

Who in their right mind would enter into a contract whereby the company they contracted to supply a certain product to at a certain price had the right to cancel the contract altogether and/or change the price after they had invested the capital to produce the product at the price originally offered?

I certainly would not have enrolled in this program had I known that FBC had the right to expel me from the program for producing NEG above my annual energy consumption, before paying off Basic Charges and GST, and that they could also lower the dollar value of the tariff, having previously made representation to me that I would be credited at the retail rate that I paid for electrical power.

17. Further, at time of writing, only two other submissions appear to have been filed. Despite representation by experienced counsel, BCSEA fails to state whether or not it agrees with FBC as to whether the Commission erred in law or in fact, but instead states wholly different reasons as to why reconsideration should occur.

If BCSEA wants reconsideration on different grounds than those applied for by FBC, it should make a separate application for reconsideration, and therefore the BCSEA submission fails to address the issues it was asked to consider.

BCPIAC, while agreeing with FBC's application in part, completely fails to address whether the Commission's error in fact or in law has significant material implications that reaches the threshold for reconsideration.

Both instead go directly to the secondary question: If there is to be a reconsideration, of what would it consist?

18. In this context I am concerned that other lay intervenors who may have an interest in this reconsideration application may be completely flummoxed at the outset by the manner in which FBC laid out a 195 page reconsideration document that was longer than the original 2016 application of only 45 pages in length, and will therefore decline to even attempt to participate.

19. With all due respect, I feel that FBC has not provided a coherent prima facie case for reconsideration of Order G-199-16, and that the Commission has not made any inherent error in law or in fact in considering FBC's 2016 application, and that the material implications are so miniscule and insignificant at this time that the threshold for reconsideration simply has not been met under any circumstances.

20. I therefore strongly object to phase two being undertaken, and I do not believe that the issue of a KW bank or different price for NEG should be reconsidered again until after the Long Term Energy Resource Plan and Long Term Demand Side Management Plan application has been considered and the Commission has given FBC directions on how to proceed with regards integrating small scale Distributed Generation into overall FBC operations.

21. Only after FBC has outlined a proper role for small scale DG and the NM program should they be allowed to present new evidence as to how the current program should be framed and the tariff rewritten.

22. To date, and sadly the only conclusion that can be drawn, is that FBC is completely exorcized by the fact that one or two NM customers are producing an amount of NEG that the Company did not anticipate could arise under the program.

23. Instead of trying to kill the NM program outright, FBC should take a leaf out of BC Hydro's playbook and talk to NM customers directly when it has concerns, and ask us how to improve the program, as opposed to treating us as irritants to be tolerated, and not as potential partners.

All of which is respectfully submitted,
Andy Shadrack