

BRITISH COLUMBIA UTILITIES COMMISSION

BC HYDRO RATE APPLICATION

FINAL ARGUMENT, SHARON NOBLE

OCTOBER 8, 2016

Overview:

1. This is my final argument on behalf of myself and on behalf of the public who depend upon the Tariff to inform and protect them.
2. This is written in response to BC Hydro's final argument, Sept. 26, 2016.
3. This is written in response to BC Hydro's Undertaking No. 29.
4. As a private citizen and an individual intervener, since Dec. 2015 I have asked BC Hydro (BCH) questions about the Tariff and the changes being proposed. BCH has responded but has not answered them.
5. The Electric Tariff is, according to BC Hydro, the service agreement between BC Hydro and its customers. There is just one problem: few customers ever see it, fewer yet read it, and none have the opportunity to negotiate its terms. This is a "take it or leave it" unilateral agreement.

BC Hydro writes the Tariff, determines the terms and conditions, and interprets how they are applied. Even though, technically, the customer can intervene when reviews are done, few know about the process and far fewer participate. And as I've experienced, the process is frustrating because not only is it cumbersome, there is no recourse when BC Hydro refuses to answer the questions asked.

6. BC Hydro refuses to clarify or document in the Tariff or on its website some terms and conditions because they are "business practices." Many of these business practices directly impact on customers, who may not be aware

that they even exist. As a customer of BC Hydro, it seems to be good business practice to have an informed customer, one who know his rights and his obligations, and who believes he is being treated fairly and transparently. How are customers supposed to know what to expect if practices are hidden – not in the Tariff (the service agreement) or on BC Hydro's website? How can customers know that they are being treated in the same manner as other customers rather than arbitrarily?

7. BC Utilities Commission is the arbiter, acting on behalf of BC Hydro's customers. Therefore, I appeal to the Commission to consider the requests below for clarification, documentation, and consideration.

Relief sought: Format

- Initial question asked
- BC Hydro's response in its Final Argument: Part V: Comments on other Issues that have arisen
- My response as the intervener's argument.

8. 256. Question 1

Would BC Hydro be willing to amend the definition of "radio off meter" to include a sentence that says it is a smart meter adjusted so that the meter's components that transmit and receive data by radio are deactivated. And if not, why not?

So in other words, to include the word -- not only the words "transmit" but also "receive data"³¹¹.

257. BCH Response

257. BC Hydro assumes that Mr. and Mrs. Noble seek assurance that Radio-Off Meters do not receive data through wireless means. With respect, the definition should reflect the allowed functionality of the Radio-off Meter and should not be an indirect means to limit their use. Regardless, and as a matter of fact, Radiooff Meters do not receive data wirelessly.³¹² Finally, BC Hydro notes that under common dictionary definitions the word "transmit" has a broad meaning that encompasses both sending and receiving.

In an earlier response Noble IR 2.4.1, BCH said: “As part of the proposed revisions to the Terms and Conditions included in Exhibit B-1-1, BC Hydro proposed adding “and/or receive data” to the definition of Smart Meter. In Exhibit B-7, and in response to Ms. Noble’s email of January 6, 2016 attached to Exhibit A-9, BC Hydro noted that the proposed change to the definition of Smart Meter is of a minor nature and not necessary.”

Intervener’s Argument:

I disagree that the proposed change to the definition is minor and unnecessary. Customers who are paying \$20 a month for a radio-off meter have been told that the transmitter is entirely disabled and it will neither send nor receive data. I believe it is reasonable to amend the definition of the radio-off meter to stipulate this, and it is unreasonable not to do so. By not including this definition in the Tariff BCH has the flexibility to amend the usage without notification or permission from the customer. Under a services agreement, as stated by BCH, terms are agreed to by both BCH and the customer.

BC Hydro assures that the "radio-off" meter does not receive or send data wirelessly yet says that by amending the definition in the Tariff to clarify this for customers would affect the allowed functionality of the radio-off meter, limiting its use. This is a contradiction. If the radio off meter does not send or receive data, there is no functionality to the meter's transmitter with which to interfere.

BCH asserts that the Dictionary definition of "transmit" encompasses sending and receiving. The common definition under standard dictionaries and Roget's Thesaurus include no references to receiving, only to sending.

E.g. <http://www.dictionary.com/browse/transmit>

The customer is asking for a clarification of the functions of the radio off meter, and in my humble opinion the appropriate place for this is in the definitions. I ask that BC Hydro reconsider its stance regarding this simple request to clarify in the Tariff what the “radio off” meter actually is.

The initial question in the IR 2.5 was:

Does the amended Electric Tariff that BC Hydro is proposing state clearly anywhere that BC Hydro must operate within the terms of the Electric Tariff?

BCH Response:

BC Hydro states in response to Noble IR 2.5.1 that the electric tariff is not technically in the nature of a contract between BC Hydro and its customers, but BC Hydro holds customers to the terms and conditions of service contained in the electric tariff as if the tariff is a contract. Ms. Noble also understands that in addition to the term "service agreement" the electric tariff also uses the term "contract" to describe BC Hydro's relationship with its customers.

Question: How does the service agreement differ from the contract between BC Hydro and its customers?314

BCH Response:

The references to "service agreement", "contract" 261. and similar expressions in the Electric Tariff and various tariff supplements have any no bearing on the nature of the legal relationship between BC Hydro and its customers. That relationship lacks some of the essential features of contractual relationships recognized at law including, for example, *consensus ad idem*, a mutual intention to enter into a legally binding relationship, and so on. Generally, the terms and conditions of service as set by the Commission are better thought of as an enactment or set of enactments more akin to regulations or other subordinate legislation issued by entities empowered by statute to do so.

Intervener's Argument:

The initial question was never answered. It pertained to the removal of section 2.1 of the Tariff which states:

“BC Hydro serves Customers solely in accordance with the Electric Tariff, including Terms and Conditions and Rate Schedules...”

Specifically the question asked by Ms. Khan on my behalf reiterated my initial question, which has yet to be answered.

BC Hydro took this as an undertaking and responded as follows:

BCH's RESPONSE in the Undertaking 29 - Revised

Yes, section 2.1 of Terms and Conditions, page 2-1, Appendix G-1A, Exhibit B-1-1 states:

“The Service Agreement between a Customer and BC Hydro will comprise, to the extent applicable, the application for Service, as accepted by BC Hydro, the provisions of the Terms and Conditions and Rate Schedules, and any additional terms and conditions of Service agreed by BC Hydro and the Customer in an Electric Tariff Supplement or otherwise.”

The definition of Service Agreement is also included in section 1 of the proposed Terms and Conditions:

“The agreement setting out the rights and responsibilities of BC Hydro and a Customer for Service, including the application for Service accepted by BC Hydro (if any), all applicable provisions of the Terms and Conditions and applicable Rate Schedule(s), and any additional terms and conditions of Service as agreed by BC Hydro and the Customer in an Electric Tariff Supplement or otherwise.”

Intervener's Argument:

With all due respect, this revision is in no way comparable to the statement which limits BCH's actions to those included in the Tariff. Instead, phrases such as “to the extent applicable”, means that BCH can do whatever it wishes to in any individual situation, with no accountability or explanation.

Another major concern with this revised statement is that it implies that the customer has an opportunity to participate in negotiating the service agreement, which is not accurate. It is clear to all that when a new customer applies for electrical service, they must pay their bills as presented, and accept whatever

conditions BC Hydro applies. The customer has no recourse because there is no competition and no alternative other than going off grid.

FOLLOWUP QUESTION: Why is the current statement which is clear and succinct being removed from the Tariff? It reads:

“BC Hydro serves Customers solely in accordance with the Electric Tariff, including Terms and Conditions and Rate Schedules.”

The customer deserves to be assured that BC Hydro is acting and will act according to the terms agreed to by BCUC and installed in the Tariff. In the past it was necessary for customers to refer to the Tariff to ensure that they were treated as required. As examples: Over the last year or so, several people who still have analog meters have been told that they must take a smart meter because they had not paid the legacy fee of \$32.40 a month. But when they referred to the Tariff, it says clearly that Hydro will bill customers for the legacy fee. In these instances BCH had erred in not billing this fee. These people had paid everything they were billed. When the smart meter department was referred to the Tariff, they agreed that the analog could be kept BUT that the people would have to pay the fee back to Dec. 2013. The Tariff clearly says that if BCH makes a billing error the customer is responsible for paying at most 6 months back payments. It was only when the billing and/or the smart meter departments were referred to the Tariff that the corrections were made.

Without the stipulation that BCH is held to the terms and conditions of the Tariff, the customer would be left with little to ensure that the Tariff is being followed. BC Hydro assertion that they do not put “business practices” in the Tariff means that their customers, in many regards, are left uninformed about their service, their obligations and their rights.

10. 262. Question 4

“In Ms. Noble's view, the exemption of liability acts to protect BC Hydro at the potential expense of the customer. Ms. Noble believes that the exemption disincentivizes BC Hydro and its employees and agents from acting in a safe, reliable and responsible manner, as is required by the tariff

and encourages irresponsible, unsafe conduct on the part of BC Hydro's employees and agents as there is an exemption from liability.

So to clarify, does the exemption from liability extend to wilful misconduct of BC Hydro employees and agents?

263. As set out in the Electric Tariff and in BC Hydro's response to Sharon Noble IR 2.8.1316 BC Hydro "shall not be responsible or liable for any loss, injury, damage or expense... unless the loss, injury, damage or expense is directly resulting from the willful misconduct of [BC Hydro]... provided, however, that [BC Hydro is] ... not responsible for ... economic loss even if the loss is directly resulting from the willful misconduct of [BC Hydro]."

264. Question 5

If BC Hydro's employees are not subject to penalties or liability for negligence, how can customers be assured that BC Hydro will not cause harm to customers and the public while providing electricity service?317

265. This question is fully answered by BC Hydro's response to Sharon Noble IR 2.8.1.318

Intervener's Argument:

Response:

In section 2.8.1 BCH says that there is a policy to impose some liability risk ... for the most egregious conduct.

The narrower exemption from liability for wilful misconduct in section 9.5 of BC Hydro's Electric Tariff and section 8.1 of FortisBC Inc.'s tariff reflects a policy choice to impose some liability risk on electric utilities for the most egregious conduct, while still ensuring that a successful lawsuit or claim is unlikely to undermine the utility's financial well-being and ability to provide service.

BCH should explain where this risk is accepted and explained. There is nothing in the current wording that takes responsibility for any damage, or liability.

The term “economic loss” is not defined and this lack of clarity serves to confuse the statement.

This exemption from liability has allowed BCH to make decisions or to allow decisions to be made on their behalf which has resulted in property loss or damage for which they deny liability. One example pertains to the hiring of unqualified persons to install smart meters. Normally this job is done by a linesman or some other electrical expert with significant experience and training. BC Hydro contracted with Corix to hire people with no relevant training or experience. Corix gave these new hires a few hours training and allowed them to exchange meters in a manner that is counter to all electrical safety standards. In many cases electrical equipment and appliances were damaged or ruined, and BC Hydro refused to compensate the victim. I believe that if BCH were held liable, only qualified personnel would have been allowed to install these devices and would have done so according to protocol set by the Canadian Standards Association, e.g. CSA C22.2 No. 115-141.5 which stipulates that the exchange not be made with the meter being live, and customers would not have suffered economic loss.

I understand that BCH has this ‘no risk statement’, as do other utilities, to limit losses and to prevent lawsuits. BCH is putting itself in a position that is highly advantageous compared to that of its customers. Not only can BCH cause damage and walk away from liability, but it has the financial resources to fight anyone attempting to obtain reimbursement for damage done. The only recourse for most people is to apply to their insurer to make repairs, which can be limited and results in higher premiums.

11.266. Question 6

So one of the justifications posed by BC Hydro for the exemption from liability is that the exemption has been in place since 1980. And I believe this is contained in one of the IR responses. How does length of time in the tariff make the exemption right or fair?319

BCH Response:

267. The observation in BC Hydro's response to Sharon Noble's IR 2.8.1 that the current limitation of liability provisions in the Electric Tariff have been in place since at least 1980 was made to indicate that the provision has been long accepted and not controversial despite being subject to complaint processes and/or the Commission's authority for about 36 years.

Intervener's Argument:

The response that this no liability statement has been in the Tariff since 1980 does not mean it is right or fair. The vast majority of BCH's customers do not know there is a Tariff and few have ever read it. Those to whom I have shown this statement are outraged, as am I, that customers have few rights or protections, and no guarantee that BCH would be held accountable in any regard for defective equipment or poorly trained personnel which leads to loss of property or life. This is hard to justify and equally hard to understand.

BC Hydro has failed to explain why a customer should not be protected against errors, unsafe conduct or willful negligence by its employees, without using the claim that this is for the sake of the long-term financial well-being of the corporation and the stability of the rates.

12. 268. Question 7

Is BC Hydro responsible for damage sustained by customers that result from power surges caused by BC Hydro?320

BCH Response:

269. As noted above BC Hydro is generally exempt from liability (sic) for losses arising from, among other things, "defect in the supply of Electricity", except where caused by "wilful misconduct", in which case BC Hydro is still exempt from liability for economic losses. Accordingly BC Hydro expects that in most if not all cases it would not be liable for losses caused by a power surge.

Intervener's Argument:

Power surges can be caused by removal of meters from homes without shutting the power off. As stated above, this is counter to CSA standards. Due to the fact that electricity is dangerous, BCH must be held to a standard that ensures public safety. If there are no ramifications for non-compliance with laws and regulations, the public cannot be assured of the safe delivery of this essential service.

Further, if the Tariff is weakened so that BCH is not held to the terms of the Tariff, BCUC will have no grounds for oversight.

If BC Hydro operates outside the terms of the Tariff and safety standards/regulations, and damage is caused by BC Hydro and/or its employees, other than engaging a lawyer and, at great expense, suing BC Hydro, how can a customer be compensated?

Submitted with respect,

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