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September 28, 2018

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: British Columbia Utilities Commission (BCUC or Commission)  
Proposed New Rules of Practice and Procedure for Reconsideration  
Application – Consultation Request  
British Columbia Hydro and Power Authority (BC Hydro)**

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BC Hydro writes in response to the Commission's request for comments on the draft rules of practice and procedure for filing and hearing reconsideration applications, which are proposed to be added as Part V of the Commission's Rules of Practice and Procedure (**Draft Rules**).

BC Hydro appreciates the opportunity to submit comments for the Commission's consideration and wishes to express its support for the efforts of the Commission to improve the reconsideration process with these Draft Rules so that review by the Commission can proceed as efficiently as possible. BC Hydro makes this submission, which is comprised of comments in this letter and one attachment (**Attachment 1**), which provides a blacklined version of the Draft Rules (Part V only) setting out BC Hydro's specific wording change suggestions where appropriate. Below are general comments of BC Hydro on certain provisions of the Draft Rules.

**Comments on the Draft Rules****Draft Rule 26.01**

This Draft Rule establishes being "directly affected by a BCUC decision" as a criterion for applying for reconsideration; however, Draft Rules 26.02 and 26.05 refer to the applicant being materially affected or materially impacted. BC Hydro believes that the same standard should be applied throughout the Draft Rules, and has thus suggested wording changes in various rules to be consistent. Please refer to Attachment 1 for the relevant suggested changes.

## **Draft Rule 26.02**

This Draft Rule introduces the concept of a person requiring leave of the BCUC prior to filing a reconsideration application under certain circumstances (**Leave Application**), which is new to the BCUC practice and procedure. BC Hydro agrees that the Leave Application, as suggested by the wording of this provision, should not be the same as the application for reconsideration itself; however, the Draft Rules do not set forth the procedure under which the Leave Application will be considered and determined. For instance, is the applicant to Leave required to serve the Leave Application on all parties of the original proceedings? Would any other parties of the original proceedings be allowed to provide comment on the Leave Application? Would a hearing be required for the determination of the Leave Application? Would the Leave Application be considered by a single Commissioner of the BCUC?

BC Hydro believes that the Rules should provide greater clarity respecting:

- the matters that must be addressed and those that should not be addressed in a Leave Application;
- requirements to provide notice of the Leave Application to others; and
- the procedure that the BCUC will use to determine whether leave should be granted.

In the absence of such clarity, a person applying for leave would likely submit their full application for reconsideration at the leave stage out of an abundance of caution (as is often done under the current two-step process) even though this would appear to be inconsistent with the rule.

BC Hydro also suggests that it would be appropriate to require Leave Applications to be filed with the BCUC by a specified deadline as provided for in Draft Rule 26.03.

## **Draft Rule 26.03**

BC Hydro supports the principle of a deadline for filing a reconsideration application. However, a few clarifications may be necessary to make the process workable and clear.

First, there are circumstances where the 60-day deadline may not be appropriate. For example, if the reconsideration is sought on the basis of changed circumstances, the new circumstance giving rise to the reconsideration may not arise until months and possibly years after the decision. Thus, BC Hydro has suggested some specific wording to address this concern (see Attachment 1).

Second, there are several circumstances where the “date of the decision” will be potentially unclear: the date when a decision was made and the date when the decision

is issued can be different,<sup>1</sup> and the BCUC may issue an Order with reasons to follow at a later date. BC Hydro believes that it would be reasonable for the 60-day period to run from the date when the Reasons for Decision is issued and if no Reasons for Decision issued, from the date the order is issued.

BC Hydro acknowledges that the wording “unless otherwise authorized by the BCUC” provides the BCUC with the flexibility to address specific situations. The Draft Rules, however, do not specify what this authorization procedure entails. If the BCUC intends that this procedure will be similar to the procedure for Leave Applications per Draft Rule 26.02, the Draft Rules, as commented above, should set out more clearly the Leave Application process.

BC Hydro notes that the concept of “unless otherwise authorized by the BCUC” is used elsewhere in the Draft Rules, and we have suggested wording changes to be consistent with the Leave Application concept introduced in Draft Rule 26.02. Please refer to Attachment 1 for these suggested changes.

#### **Draft Rule 26.06**

Under the existing process for reconsideration outlined in the Participants’ Guide to the B.C. Utilities Commission, a reconsideration application can be on the basis of “a new principle has arisen as a result of the [d]ecision”. One of the circumstances where this basis for reconsideration could be applied is where the BCUC issues a decision in one utility’s proceeding that would be applicable to or affect other utilities that had not participated in the proceeding. The Draft Rules removed this specific basis for reconsideration. BC Hydro recognizes that the Leave Application concept introduced in Draft Rule 26.02 may allow a reconsideration application to proceed on the “new principle” basis, and submits that the Draft Rules for the Leave Application process should be broad and clear enough to capture this.

Draft Rule 26.06(b) reads “facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding”. BC Hydro is unclear as to the purpose of the underlined wording, and it is not clear how an applicant for reconsideration could demonstrate this point. Accordingly, BC Hydro is of the view that the underlined language should be deleted.

BC Hydro suggests that Draft Rules 26.06(c) and (d) could be consolidated as these are essentially the same point.

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<sup>1</sup> BC Hydro notes that under Draft Rule 26.04, the timeline for the reconsideration application commences to run from the issuance of the decision being challenged.

### **Draft Rule 27.02**

BC Hydro supports Draft Rule 27 (Stay of Decision) as it adds clarification to the reconsideration process, but suggests the following wording addition to allow the parties in the original proceeding an opportunity to respond to the stay request: The BCUC may request submissions from the parties registered in accordance with Rule 29.03 on whether or not a stay should be granted.

### **Draft Rule 28.01**

BC Hydro believes that the summary dismissal process proposed in Draft Rule 28 will enable more efficient regulatory reviews, and is consistent with past practice. BC Hydro suggests that it would also be beneficial to add a rule enabling summary grant of an application for reconsideration, which would be appropriate if the application for reconsideration seeks to correct an obvious factual error or address a purely technical matter. Please refer to Attachment 1 for the suggested addition (Draft Rule 28.02).

### **Draft Rule 29.01**

To avoid confusion that this Draft Rule introduces another process additional to, or different from, the summary disposition processed proposed in Draft Rule 28, BC Hydro has suggested some wording changes to this rule. Please refer to Attachment 1 for the suggested wording deletion and addition.

### **Comments on Other Parts of the Rules of Practice and Procedure**

Rule 4.01 cites to sections 2(4) and 4(1) of the *Utilities Commission Act*. BC Hydro notes that section 2(4) and part of section 4(1)(b) have been repealed.

For further information, please contact Fred James at 604-623-3545 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Fred James  
Chief Regulatory Officer

ac/rh

Enclosure

**BRITISH COLUMBIA UTILITIES COMMISSION  
RULES OF PRACTICE AND PROCEDURE**

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**1.0 PART I – GENERAL**

**1 Application of the rules**

Any person engaged in any matter before the ~~BCUC Commission~~ must follow all rules, guidelines and practice directives that are issued by the ~~BCUC Commission~~.

**2 Interpretation of the rules**

These rules must be liberally construed in the public interest to ensure the fairest, most expeditious and efficient determination of every matter before the ~~BCUC Commission~~ consistent in all cases with the requirements of procedural fairness.

**3 Definitions**

In these rules:

- (a) “applicant” means a person who makes an application;
- (b) “application” means an application to the ~~BCUC Commission~~ for an approval, licence, order or other relief under the *Utilities Commission Act* (UCA) or any other enactment;
- (c) ~~“BCUC” “Commission”~~ means the British Columbia Utilities Commission;
- (d) ~~“Commission’s BCUC’s website”~~ means the website maintained by the ~~BCUC Commission~~ at [www.bcuc.com](http://www.bcuc.com);
- (e) “document” includes written documentation, films, photographs, charts, maps, plans, graphs, surveys, books of account, transcripts, emails, information stored by means of an electronic storage and retrieval system, electronic files and video and audio recordings, whether filed as evidence, submissions to, applications or correspondence with the ~~BCUC Commission~~;
- (f) “eFiling system” means the ~~Commission’s BCUC’s~~ regulatory electronic filing system that is accessible on the ~~Commission’s BCUC’s~~ website;
- (g) “evidentiary record” means all documents, including evidence and submissions, filed in connection with a proceeding whether filed prior to, or during, the proceeding. The public evidentiary record, found on the ~~Commission’s BCUC’s~~ website, does not include documents that are subject to a confidentiality order of the ~~Commission BCUC~~;
- (h) “file” means to submit documents to the Commission Secretary either electronically via the eFiling system, or, if participating non-electronically, by mail, courier or personal delivery;
- (i) “hearing” means a hearing before the ~~Commission BCUC~~ and includes an oral hearing and a written hearing as well as a streamlined review process and a hearing regarding a negotiated settlement process;

- (j) “information request,” also referred to as an “interrogatory,” means a request that an applicant, intervener, ~~Commission-BCUC~~ staff or panel may make of a party to elicit information on the evidentiary record that is relevant to the issues to be considered by the ~~Commission-BCUC~~ in the proceeding;
- (k) “interested party” means a person who has registered online to receive immediate automated electronic notification of all documents filed as part of a proceeding’s public evidentiary record but who does not have the participation rights of an intervener in the proceeding;
- (l) “intervener” means a person who has been granted intervener status in a proceeding by the ~~Commission-BCUC~~.
- (m) “party” means an applicant, intervener, interested party or other person who has been permitted according to these rules to participate in a proceeding. Party does not include panel members or ~~Commission-BCUC~~ staff independent of the proceeding team except where staff participation has been allowed by the ~~BCUC-Commission~~, such as is outlined in the Negotiated Settlement Guidelines;
- (n) “person” includes an individual, as well as an incorporated or unincorporated organization such as a corporation, partnership or duly constituted public group;
- (o) “proceeding” means a process to decide a matter either initiated by or brought before the Commission, including a matter commenced by application, transfer and direction, or inquiry and may result in adjudication or a report;
- (p) “register online” means submitting a completed online registration form with the ~~Commission-BCUC~~ in order to log into the eFiling system and/or to receive electronic notification of all non-confidential evidence filed by parties for the ~~Commission’s-BCUC’s~~ consideration in a particular proceeding;
- (q) “regulatory timetable” means the timetable that is established for the proceeding by the ~~BCUC-Commission~~;
- (r) “representative” means the agent of or solicitor for a party;
- (s) “rules” means these Rules of Practice and Procedure.

#### **4 Rules of Practice and Procedure**

- 4.01 In accordance with sections 2(4) and 4(1) of the UCA, and sections 11(1) and (2) of the *Administrative Tribunals Act* (ATA), the ~~Commission-BCUC~~ adopts these rules and will decide the most appropriate and effective management of its resources and the ordering of its proceedings.
- 4.02 Notwithstanding the procedures provided for in the rules, the ~~Commission-BCUC~~ may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.
- 4.03 In accordance with the *Administrative Tribunals Act*, the ~~Commission-BCUC~~ may waive or modify one or more of its rules in exceptional circumstances.

- 4.04 The rules are available for examination on the ~~Commission's BCUC's~~ website, or upon request from the Commission Secretary.

## **5 Personal information collection and/or distribution**

- 5.01 The ~~BCUC Commission~~ is authorized by sections 26(c), 33 and 33.1(r)(ii) and (iii) of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) to collect and publish a person's personal information in a matter before the ~~Commission BCUC~~ if necessary.
- 5.02 Subject to FOIPPA and the rules in Part IV – Confidential Documents, all documents filed in respect to a proceeding must be placed on the public evidentiary record. If a party wishes to keep any information in a document confidential, the party must submit a request for confidentiality to the ~~BCUC Commission~~ at the time of filing, in a manner consistent with Part IV of these rules.
- 5.03 Any questions regarding the ~~BCUC's Commission's~~ collection of personal information can be directed to the Commission Secretary at [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com), or ~~Box 250 Suite 410~~, 900 Howe Street, ~~6<sup>th</sup>~~ Floor, Vancouver, BC V6Z 2N3.

## **6 Failure to comply**

- 6.01 If a party fails to comply with the ~~BCUC's Commission's~~ rules, guidelines or practice directives, the ~~BCUC Commission~~ may take steps it considers reasonable including, but not limited to, withdrawing the status of the party.
- 6.02 If a party fails to comply with a time limit or filing protocol specified in the rules or by the ~~BCUC Commission~~, the ~~BCUC Commission~~ may disregard the party's document.
- 6.03 No proceeding is invalid by reason alone of an irregularity in form.

## **2.0 PART II – PARTICIPATION IN A PROCEEDING**

## **7 Interested parties**

- 7.01 A person who wishes to ~~receive automated email notifications of all documents posted by the BCUC to the proceeding's webpage participate as an interested party~~ must register online via the ~~BCUC's Commission's~~ website using the "Interested Party" online registration form.
- 7.02 An interested party's name is included on the evidentiary record and made public on the ~~BCUC's Commission's~~ website.
- 7.03 ~~An interested party may file a letter of comment in the proceeding, in accordance with these rules, but cannot otherwise participate in the hearing.~~

~~7.04 A letter of comment filed by an interested party will not be automatically accorded more weight by the BCUC Commission than letters of comment submitted by persons who are not parties to the hearing.~~

~~7.057.03 By registering online, interested parties will receive automated email notifications of all documents posted by the BCUC Commission to the proceeding's webpage.~~

~~7.067.04 To unsubscribe from the email notifications or to change status, an interested party must submit a Request to Change Party's Preferences Form via [the BCUC's website](#), or by email to [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com), or via by mail, courier or personal delivery to Commission Secretary, [Box 250 Suite 410](#), 900 Howe Street, [6<sup>th</sup> Floor](#), Vancouver, BC, V6Z 2N3.~~

## 8 Letters of comment

8.01 Letters of comment are intended to provide for any member of the public to contribute views, opinions, and impact or potential impact, with respect to a matter before the [BCUC Commission](#), to a public record.

8.01.1 Due to their active participation in a proceeding and adherence to an established regulatory timetable, interveners are not permitted to file letters of comment, unless requested or otherwise permitted by the [BCUC Commission](#). If an intervener files a letter of comment, the [BCUC Commission](#) may disallow the letter of comment unless the intervener requests to change standing.

8.02 Letters of comment must be in the Letter of Comment Form and be submitted [via the BCUC's website](#), or by email to [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com), or, by mail, courier or personal delivery to Commission Secretary, [Box 250 Suite 410](#), 900 Howe Street, [6<sup>th</sup> Floor](#), Vancouver, BC, V6Z 2N3.

8.03 A letter of comment must:

- (a) describe the nature of the person's interest in the proceeding;
- (b) state the person's views regarding the proceeding; including any relevant information that is useful in supporting or explaining the views; and
- (c) not contain confidential information.

8.04 The [BCUC Commission](#) will include the author's name and contact information on the proceeding's evidentiary record but will remove all personal contact information, except for the author's name, before publication on the [BCUC's Commission's](#) website.

8.05 Letters of comment are not automatically accorded the same weight as evidence that has been either adopted under oath, subject to information requests or otherwise tested.

- 8.06 In the interests of fairness and/or efficiency, the ~~BCUC Commission~~ may limit persons to one letter of comment.
- 8.07 The ~~BCUC Commission~~ may disallow any letters of comment that contain vulgar language, personal attacks or offensive terms or that do not follow the rules.
- 8.08 Letters of comment must be received by the ~~BCUC Commission~~ by the last date included in the proceeding's regulatory timetable before final arguments, unless the ~~BCUC Commission~~ directs otherwise. Letters of comment that are received late will not be considered by the ~~BCUC Commission~~ in the proceeding.
- 8.09 Submitting a letter of comment does not enable persons to otherwise participate in a hearing or reconsideration proceeding.

## 9 Requests for intervener status in a proceeding

- 9.01 To request intervener status, a person must complete and submit a Request to Intervene Form via the BCUC's website, or by email to [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com), or via mail, courier or personal delivery to Commission Secretary, Box 250, Suite 410, 900 Howe Street, 6<sup>th</sup> Floor, Vancouver, BC, V6Z 2N3.
- 9.02 Requests for intervener status must be received by the ~~BCUC Commission~~ by the filing registration deadline established in the regulatory timetable for the proceeding.
- 9.03 The ~~BCUC Commission~~, in its discretion, may allow late requests for intervener status. Unless otherwise specified by the ~~BCUC Commission~~, once a late request for intervener status is accepted, the late intervener may only participate from that point onward in the proceeding.
- 9.04 Persons requesting intervener status must demonstrate to the satisfaction of the ~~BCUC Commission~~ that they are directly or sufficiently affected by the BCUC's Commission's decision, or that they have experience, information, or expertise relevant to a matter before the ~~BCUC Commission~~ that would contribute to the BCUC's Commission's decision-making.
- 9.05 Persons requesting intervener status who are not individuals or ~~BCUC Commission~~ regulated entities must submit both:
- (a) a completed Request to Intervene Form, and
  - (b) an informational document (as a single PDF) that includes:
    - (i) a description of the organization's mandate and objectives;
    - (ii) a description of its membership, including the membership processes if any, and the constituency it represents;
    - (iii) the types of programs and/or activities it carries out;

- (iv) the identities of any authorized representatives and addresses; and
  - (v) any other information the BCUC Commission may request.
- 9.05.1 The information provided in the informational document must be current, accurate and filed in accordance with the rules respecting document filing. Any material changes to the information contained in the informational document must be filed with the BCUC Commission as soon as possible.
- 9.05.2 If the request to intervene is accepted, the BCUC Commission will retain the informational document for a period of twelve (12) months from the date it is filed and may refer to it during that time, when appropriate.
- 9.05.3 If an informational document has been filed with the BCUC Commission within the past twelve (12) months, a person who is not an individual or a BCUC Commission regulated entity must only submit a Request to Intervene Form for each proceeding in which it intends to participate as an intervener and indicate on the form that it has already submitted an informational document.
- 9.05.4 Twelve (12) months after the date an informational document was filed, a person who is not an individual or a BCUC Commission regulated entity is required to submit an updated informational document with its next request to intervene.
- 9.06 The BCUC Commission may refuse a request for intervener status for reasons, including but not limited to, that the request:
- (a) is frivolous, or vexatious;
  - (b) does not meet the requirements in section 9.04;
  - (c) is irrelevant or is not in response to issues addressed in the particular proceeding; or
  - (d) is not filed in accordance with the rules.
- 9.07 The BCUC Commission may grant intervener status subject to conditions it considers appropriate.
- 9.08 The BCUC Commission may determine the scope of an intervener's participation considering, for example, the person's interest, and the nature, importance and breadth of issues the person plans to address.
- 9.09 When a request to intervene is accepted, the BCUC Commission will send the intervener a link to register online. Online registration enables an intervener to submit documents via the eFiling system, and to receive automated email notifications of all the documents posted to the website in regard to the proceeding.

- 9.10 If accepted and if the intervener has participated in a proceeding in the past twelve (12) months and already has a username, the BCUC Commission will send the intervener an email stating that the BCUC Commission has added the user to the proceeding.

## **10 Participation of interveners**

- 10.01 Intervenors are expected to participate actively, responsibly and respectfully for the duration of the proceeding.
- 10.02 Intervenors are expected to take reasonable efforts to avoid the duplication of evidence.
- 10.03 The BCUC Commission encourages and may require an intervener to coordinate with other intervenors who represent substantially similar interests.
- 10.04 ~~If the Commission holds a reconsideration, the intervenors in the original proceeding will be notified and permitted to be intervenors in the reconsideration. Any person who was not an intervener in the original proceeding but who wishes to intervene in the reconsideration can make such request in accordance with rules pertaining to requests for intervener status in a proceeding. [replaced by part V]~~

## **3.0 PART III – DOCUMENT FILING**

### **11 Filing and service of documents**

- 11.01 Documents, including applications and notices of appeal, should be filed in such quantity and in such manner as may be specified by the BCUC Commission. ~~Correspondence must be addressed to the Commission Secretary.~~ Unless otherwise specified by the BCUC Commission, all correspondence including evidence and submissions must be filed under cover letters addressed to the Commission Secretary.
- 11.02 Filings must be submitted on or before a specified filing date, if applicable.
- 11.03 All documents filed in a proceeding, with the exception of documents the BCUC Commission deems confidential, may be accessed through the BCUC's Commission's website.
- 11.04 Any person wishing to access an evidentiary record of any proceeding not published online, or wishing to access an evidentiary record in hard copy, may make arrangements to do so with the Commission Secretary in accordance with access and privacy rules and legislation.
- 11.05 Parties must file all documents electronically via the eFiling system as a file attachment in unprotected .pdf, .doc, .xls, or Rich Text Format (RTF) and, if applicable, must clearly display the name of the proceeding in the file name and in the document.

- 11.05.1 Documents must not contain symbols or quotation marks (e.g., "\$#&!@) in the file name otherwise the document will open as a blank file and the BCUC Commission will consider the document not received.
- 11.05.2 Parties who do not have reasonable access to internet or email, or who have no reasonable means to convert an unsupported electronic document into a supported format may file the document in paper copy via mail, courier, personal delivery or any other means directed by the BCUC Commission (Box 250 Suite 410, 900 Howe Street, 6<sup>th</sup> Floor, Vancouver, BC, V6Z 2N3).
- 11.06 Whether filed electronically or non-electronically, documents must be received by the BCUC Commission by the specified filing date, if applicable, unless otherwise directed by the BCUC Commission.
- 11.06.1 Arrangements may be made with the Commission Secretary for evidence that cannot reasonably be filed in paper, such as video or recorded evidence.
- 11.07 Documents filed non-electronically must be complete and identical to the electronic copy.
- 11.08 The assignment of an exhibit number to a document does not prevent other parties from challenging its admissibility. If the BCUC Commission rules a document inadmissible, the document and its exhibit letter and number will be expunged from the record.
- 11.09 The BCUC's Commission's website will send an automated email to all parties who have registered online when a document has been posted to the evidentiary record posted on the BCUC's Commission's website.
- 11.10 The BCUC Commission considers a document to be served on a party once it is added to the BCUC's Commission's evidentiary record and posted on the BCUC's Commission's website. For parties that participate by mail, the BCUC Commission considers documents to be served after two (2) business days of being sent if couriered or five (5) business days if regular mail was used.
- 11.11 If a party files a document during an oral phase of a hearing, the document must be filed with the hearing officer who will assign it an exhibit number, ensure sufficient paper copies are distributed to the other parties, and upload an electronic copy to the BCUC's Commission's website. Once the oral phase of a hearing is completed, parties must resume filing documentation in accordance with the rules. The list of exhibits for each proceeding can be located on the BCUC's Commission's website.

## **12 Documents filed by applicants**

- 12.01 All documents with respect to a current proceeding are to contain the Project Number assigned to the proceeding by the BCUC Commission, as the first item in the Subject Line, if applicable.

- 12.02 Documents must be filed in an unprotected PDF searchable format. Where possible, each exhibit document (e.g. applications, information requests, information request responses) must be submitted as one (1) PDF document, including cover letter and attachments. Documents must clearly display the name of the proceeding in the file name.
- 12.03 Applicants are required to register online. The applicant's registered User ID and password must be used to log on to the eFiling system in order to upload and submit documents.
- 12.04 If a document exceeds 50 MB, the document must be posted to the applicant's website before filing, and a link to download the document from the applicant's website is required with the applicant's filing. If applicable, and the applicant does not maintain a website, it must contact the Commission Secretary to make alternate arrangements.
- 12.05 If an applicant's document is over one hundred (100) pages, five (5) paper copies must be couriered to the ~~BCUC Commission~~ within three (3) business days following the date of the electronic filing, unless the ~~BCUC Commission~~ advises otherwise.
- 12.06 The ~~BCUC Commission~~ may require the applicant to mail or courier paper copies of documents it issues to interveners who do not have reasonable access to internet or email.

### **13 Information requests**

- 13.01 In an information request, the ~~BCUC Commission~~, applicant or intervener may request another party within the time limit set by the Commission, to provide information necessary
- (a) to clarify any documentary evidence filed by the other party;
  - (b) to facilitate a better understanding of the issues relevant to the proceeding; or
  - (c) to assist with the resolution of the proceeding.
- 13.02 An information request must:
- (a) be issued by the ~~BCUC Commission~~, applicant or intervener in accordance with a Commission order;
  - (b) be directed to the party from whom a response is sought, unless the ~~BCUC Commission~~ otherwise orders;
  - (c) contain specific questions seeking information or documents that are relevant to the proceeding and in the possession of the responding party;
  - (d) be filed in accordance with rules pertaining to document filing, unless otherwise directed by the ~~BCUC Commission~~;
  - (e) group questions together according to the issue to which they relate;
  - (f) be numbered using a continuous numbering system; and

(g) set out the date on which the information request is filed.

13.03 To the extent practicable, information requests should cite the volume, tab and page number of the evidence to which it refers.

13.04 To the extent practicable, parties should not knowingly duplicate other parties' information requests.

## **14 Responses to information requests**

14.01 Subject to these rules, a party who is served with an information request must provide a full and adequate response to each question.

14.02 A response to an information request must:

- (a) be filed in accordance with rules pertaining to document filing, as applicable, unless directed otherwise by the [BCUC Commission](#);
- (b) repeat each substantive question at the beginning of each response but not include the full set of questions at the front of the response;
- (c) number the responses using the same numbering system as in the information request;
- (d) identify the appropriate individual(s) in the cover letter who can be contacted for information related to the information request responses; and
- (e) where a response to an individual question is responded to by persons other than the party to whom the information request is directed (i.e. a consultant, expert or other third party, etc.) as part of the response, identify, where appropriate, the person(s) responding to that question.

14.03 A response to an information request should:

- (a) for PDF form documents or Word documents, utilize the bookmark functionality of those formats to bookmark each group of issues as identified in the original information request;
- (b) set out the date on which the response is filed.

14.04 If a party who is served with an information request is not able or not willing to prepare a full and adequate response, the party must do one of the following:

- (a) If the party considers an information request unclear:
  - (i) it is incumbent upon that party to make reasonable efforts to contact the requestor to clarify the question and respond in accordance with the deadline for information request responses; and

- (ii) where clarification cannot be obtained in a timely manner, the party responding to the information request must state any assumptions made respecting the interpretation of the question.
  - (b) If the party contends that the information required to answer the information request is not relevant, the party must:
    - (i) file a response that sets out specific reasons in support of that contention; and
    - (ii) file any portion of the response that the party does consider relevant.
  - (c) if the party contends the information necessary to provide an answer is privileged, not available or cannot be provided with reasonable effort, file a response that:
    - (i) sets out the specific reasons in support of that contention, and
    - (ii) contains such other information that the party considers would be of assistance to the party making the information request that is available and can be provided with reasonable effort;
  - (d) if the party contends that the information requested is confidential:
    - (i) file a request for confidentiality for all or any part of the response in accordance with the rules pertaining to confidential filings; and
    - (ii) where practicable, file other non-confidential information that the party considers would be of assistance to the party making the information request.
- 14.05 If a party fails to respond, or if a party, including ~~BCUC Commission~~ staff, is not satisfied with an information request response, a party may file a request that the matter be settled by the ~~BCUC Commission~~.

**15 ~~BCUC Commission~~ procedures for documents filed in a proceeding**

- 15.01 ~~BCUC Commission~~ staff will assign an exhibit number to the document prior to posting. The following exhibit letters have been assigned to each participant grouping:
- “A” for ~~BCUC Commission~~ers and ~~Commission~~ staff,
  - “B” for the applicant,
  - “C” for interveners, numbered sequentially in terms of order of receipt of the Notice of Intervention by the Commission with a sub-number assigned to each document filed by that intervener,
  - “D” for interested parties, and
  - “E” for letters of comment.
- 15.02 The ~~BCUC Commission~~ will scan and upload submissions to the proceeding’s exhibit list for parties who submit documents non-electronically due to not having reasonable access to the internet or email.

- 15.03 If an intervener reasonably requires paper copies of documents, the ~~BCUC Commission~~ may provide the intervener's mailing information to the proceeding's participants with a request that the intervener be served by mail. The ~~BCUC Commission~~ will mail paper copies of its documents to parties who demonstrate an inability to access the electronic public evidentiary record.
- 15.04 The ~~BCUC Commission~~ may require the applicant to make copies of the application available in local utility facilities, libraries or other locations.
- 15.05 Documents issued or received by the ~~BCUC Commission~~ will normally be posted to the proceeding's webpage within four (4) business hours of being received unless the document requires further review.

#### 4.0 PART IV – CONFIDENTIAL DOCUMENTS

#### 16 Application and availability of the ~~R~~rules

These rules apply to all requests for confidentiality and confidential documents filed with the ~~BCUC Commission~~ in regard to any and all matters.

#### 17 Information collection and/or distribution

- 17.01 Subject to the following, and to other related statutory provisions and exceptions or exclusions by law, including the *Freedom of Information and Protection of Privacy Act*, the *Utilities Commission Act* and the *Administrative Tribunals Act*, information filed by parties in a matter before the ~~BCUC Commission~~ will be placed on the evidentiary record and may be made publicly available.
- 17.02 For greater certainty, nothing in these rules is intended to limit the operation of any statutory provision that protects the confidentiality of information of documents.

#### 18 Requests for confidentiality

- 18.01 If a party wishes to keep confidential any information in a document filed in any matter before the ~~BCUC Commission~~, in addition to the document, at the time of filing, the party must file:
- (a) a request that all or any part of the document be held in confidence which must:
    - (i) briefly describe the nature of the information in the document and the reasons for the request for confidentiality, including the specific harm that could reasonably be expected to result if the document was made publicly available; and
    - (ii) indicate whether all or only a part of the document is the subject of the request; and

- (b) a proposed redacted version of the document that the ~~BCUC Commission~~ may make publicly available, where possible.

18.02 The party requesting confidentiality bears the onus of establishing why the information should be treated as confidential by the ~~BCUC Commission~~.

18.03 The request for confidentiality will be a matter of public record, unless the ~~BCUC Commission~~ directs otherwise.

## **19 Hearings to consider confidentiality of documents**

19.01 The ~~BCUC Commission~~ may, with or without a hearing or further process, grant a request for confidentiality on any terms it considers appropriate.

19.02 Where the ~~BCUC Commission~~ holds a hearing to consider the request for confidentiality, the ~~BCUC Commission~~ may direct that the hearing be held in the absence of the public.

## **20 Decisions made by the ~~BCUC Commission~~ regarding confidentiality**

20.01 In determining whether the nature of the information or documents require a confidentiality direction, the ~~BCUC Commission~~ will have regard to matters that it considers relevant, including:

- (a) whether the disclosure of the information could reasonably be expected to result in:

- (i) undue material financial loss or gain to a person, or
- (ii) significant harm or prejudice to that person's competitive or negotiating position, or
- (iii) harm to individual or public safety or to the environment;

(b) whether the information is personal, financial, commercial, scientific, labour relations or technical information that is confidential and consistently treated as confidential by the person;

(c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing;

(d) whether the person submitting the document has any legal obligation to maintain confidentiality; and

(e) whether it is practicable to hold the hearing in a manner that is open to the public.

## **21 Documents accepted as confidential**

21.01 If accepted by the ~~BCUC Commission~~ as confidential, the documents or the portions thereof will not be made publicly available.

21.02 If the document is accepted as confidential, the ~~BCUC Commission~~ may make the proposed redacted version of the confidential document publicly available, or may adjust or require the filing party to change the redaction in accordance with what it deems necessary for transparency and public interest.

21.03 A party may object to a request for confidentiality by filing an objection with reasons in a timely manner. The ~~BCUC Commission~~ will give the party claiming confidentiality, together with a person who may be affected by disclosure, an opportunity to reply to an objection.

## **22 Documents not accepted as confidential**

22.01 If a document is filed confidentially and the request for confidentiality is denied, the ~~BCUC Commission~~ may allow the person that submitted the documents an opportunity to make submissions as to what should be done with the document, such as withdrawing the document.

## **23 Filing confidential documents**

23.01 Rules respecting confidential documents are to be considered also in accordance with Rules pertaining to Document Filing.

23.02 Confidential material must be filed separately from non-confidential material. When necessary, within non-confidential filings, reference the confidential filing.

23.03 Documents filed with the ~~BCUC Commission~~ that a party requests to be confidential or that claim to contain confidential material must clearly designate it in the document, the document's file name and on the cover letter, as well as be watermarked, if possible ("Confidential" or "Contains Confidential Material").

23.04 Paper copies of confidential documents filed in binder form must have the word "Confidential" included on the binder cover.

23.05 If a party files a document that is marked "Confidential" but is no longer confidential, the party must notify the ~~BCUC Commission~~ in writing that the document may be made public.

## **24 Requests for access to confidential documents in a proceeding**

24.01 If the ~~BCUC Commission~~ grants a request for confidentiality, the ~~BCUC Commission~~, with comments from the party submitting the document, and/or any party affected by disclosure of the confidential document, may consider whether access to the confidential information may be provided to certain parties upon request.

24.02 Parties requesting access to confidential information must submit a request electronically to the ~~BCUC Commission~~, with a copy to the party who filed the document confidentially, that explains

the reason(s) for the request and a statement describing how access to the information pertains to their participation in the proceeding.

- 24.03 If a request for access to confidential information is accepted, the requestor must sign and file with the party and the ~~BCUC Commission~~ a Declaration and Undertaking form in respect of the use of the confidential information before receiving a copy of the confidential information from the party. The Declaration and Undertaking form is a binding commitment by the requestor: (i) to use the confidential information disclosed exclusively for purposes related to the proceeding; (ii) to hold the information in confidence; (iii) to not reproduce the document(s) disclosed; and (iv) to return to the party the confidential document(s) or to destroy the confidential document(s) within fourteen (14) days of the ~~BCUC's Commission's~~ final decision in the proceeding. The ~~BCUC Commission~~ may impose any other additional conditions or safeguards as it considers appropriate in the circumstances.
- 24.04 Any party may object to a request for access to confidential information by filing an objection with reasons in a timely manner. The ~~BCUC Commission~~ will give the party claiming confidentiality and the requestor an opportunity to reply to an objection.
- 24.05 The ~~BCUC Commission~~ will render the final determination as to whether access will be granted to the confidential information and the conditions on a party's access.

**[NEW DRAFT SECTION BELOW:]**

**5.0 PART V – RECONSIDERATION**

**25 Requests for reconsideration of a BCUC decision, order, rule or regulation**

- 25.01 For the purposes of Part V of these rules, any reference to a decision means a decision, an order, a rule or regulation of the BCUC.
- 25.02 The BCUC, on application or on its own motion, may reconsider a decision and may confirm, vary or rescind the decision.

**26 Filing an application for reconsideration**

- 26.01 Subject to Rule 26.02, a person who is directly affected by a BCUC decision, may apply for a reconsideration of that decision.
- 26.02 A person, other than the applicant in the original proceeding, who was not an intervener in the original proceeding that gave rise to the decision may not file an application for reconsideration without obtaining prior leave of the BCUC. In applying to the BCUC for leave to file an application for reconsideration, the person seeking leave must explain:

- a) why the person did not participate in the original proceeding; and
- b) how the person is ~~materially~~ directly affected by the decision.

- 26.03 Subject to Rule 26.02 and 26.04, an application for reconsideration, alleging that the BCUC has made an error of fact, law, or jurisdiction, must be filed with the BCUC and provided to registered parties to the original proceeding within 60 days of the date of the decision, ~~unless otherwise authorized by the BCUC~~ without obtaining prior leave of the BCUC.
- 26.04 An application for reconsideration of a decision issued in relation to a participant assistance/cost award must be filed within 30 business days of the decision being issued, ~~unless otherwise authorized by the BCUC~~ without obtaining prior leave of the BCUC.
- 26.05 An application for reconsideration must be filed in accordance with the rules pertaining to document filing and must:
- a) be in writing and not longer than 30 pages ~~unless otherwise authorized by the BCUC~~ without obtaining prior leave of the BCUC;
  - b) identify the decision affected;
  - c) state the applicant's name and the representative's name (if applicable);
  - d) describe the impact of the decision and how ~~it is material~~ the applicant is directly affected by the decision;
  - e) set out the grounds for reconsideration in accordance with Rule 26.06; and
  - f) set out the remedy the applicant is seeking.
- 26.06 An application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which must include one or more of the following:
- a) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
  - b) facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding;
  - c) new fact(s) have arisen since the issuance of the decision which have material bearing on the decision;
  - d) a change in circumstances material to the decision has occurred since the issuance of the decision.

## **27 Stay of decision**

- 27.01 An application for reconsideration of a decision does not automatically stay or suspend the operation of the decision.

- 27.02 The BCUC may, in its discretion or on application of a party, stay the operation of the decision in the original proceeding, or part thereof, pending the outcome of the reconsideration on terms the BCUC considers appropriate. The BCUC may request submissions from the parties registered in accordance with Rule 29.03 on whether or not a stay should be granted.

**28 Summary dismissal or grant of a reconsideration application**

- 28.01 Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish, on its face, any reasonable grounds for reconsideration of the decision.
- 28.02 Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily grant the application.

**29 Reconsideration hearing**

- 29.01 In the event the BCUC does not grant or dismiss the application for reconsideration ~~on a preliminary review~~ or only dismisses a part of the application pursuant to Rule 28.01 and 28.02, the application for reconsideration or the portion of the application that is not dismissed will proceed to a hearing.
- 29.02 Interveners in the original proceeding will be notified that the BCUC is conducting a hearing on the application for reconsideration.
- 29.03 Any person who wishes to intervene in the reconsideration hearing must make such request in accordance with the rules pertaining to requests for intervener status in a proceeding.
- 29.04 The BCUC will determine the regulatory process for the reconsideration hearing, which may include, but is not limited to:
- a) whether the hearing will be wholly, or in part, written, oral, or a combination thereof;
  - b) a determination as to whether any new evidence or evidence of a change of circumstances will be permitted on the reconsideration hearing and the timing of submissions on these issues;
  - c) the scheduling of oral hearings, if any;
  - d) the scheduling of arguments, if any; and
  - e) any other procedural directions the BCUC considers appropriate.