



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 45632, 45061

ERICA M. HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

VIA EMAIL

ajhurd@telus.net

November 22, 2013

BC HYDRO SMART METER

CHOICES PROGRAM

EXHIBIT A-8

Dear Mr. Hurd:

Re: British Columbia Hydro and Power Authority
Application for Approval of Changes Related to Meter Choices Program
Application for Reconsideration

The British Columbia Utilities Commission (Commission, BCUC) is in receipt of your email dated November 19, 2013.

Your email states that the Reasons attached as Appendix A to Order G-186-13 are “completely and utterly unacceptable” and that you also strongly object to the minimization of your request for a review of the interim charges. Additionally, you state that your request for a review of the interim charges had not been correctly represented and that the Commission denied your request for an extension to, or elimination of, the interim fees without full reasons.

The Commission is treating your email as a request for the Commission to reconsider Order G-186-13 and Order G-167-13 (Reconsideration Application), pursuant to section 99 of the *Utilities Commission Act*.

Enclosed is a copy of the Reconsideration and Appeals section of “Understanding Utility Regulation: A Participant’s Guide to the B.C. Utilities Commission”, which identifies the criteria the Commission applies to determine whether a reasonable basis exists to allow a reconsideration.

An application for reconsideration with the Commission proceeds in two phases. In the interest of regulatory efficiency and fairness, the application undergoes an initial screening phase. In the first phase, the applicant must establish a *prima facie* case sufficient to warrant full reconsideration by the Commission. The Commission may invite submissions from the other participants in the original proceeding or may consider that comments from the parties are not necessary. The Commission generally follows a number of criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- The Commission has made an error in fact or law;
- There has been a fundamental change in circumstances or facts since the Decision;
- A basic principle had not been raised in the original proceedings; or
- A new principle has arisen as a result of the Decision.

In the case of your Reconsideration Application, if you wish to rely on “minimization of your request” and “inadequate reasons” or if you are claiming that the Commission made any other error, you must either supplement your letter with details and discuss material implications or identify for the Commission a specific

error which the Commission made in arriving at its decision. In other words, you must establish a *prima facie* case sufficient to warrant full reconsideration.

Where an error is alleged to have been made the application must meet the following criteria to advance to the second phase of reconsideration:

- The claim of error is substantiated on a *prima facie* basis; and
- The error has significant material implications.

If the Commission determines that a full reconsideration is warranted, the second phase begins wherein the Commission hears arguments on the merits of the application.

Please review the attached document and let us know your decision on whether you wish to proceed with a new reconsideration application by supplementing your email with details on the errors and discuss material implications.

Yours truly,

Erica Hamilton

EC/cms
Enclosure

Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the

applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

Figure 4-2
OPPORTUNITIES AND MECHANISMS
FOR PARTICIPATING IN COMMISSION ACTIVITIES

