



**LETTER L-9-14**

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Log No. 45601

**VIA EMAIL**

February 5, 2014

**BC HYDRO SMART METER**

**CHOICES PROGRAM**

**EXHIBIT A-15**

**TO:** All Registered Interveners (BCH- Meter Choices)  
British Columbia Hydro and Power Authority  
Mr. John Hurd

Re: British Columbia Hydro and Power Authorities  
Approval for Approval of Changes Related to Meter Choices Program  
Application for Reconsideration from Mr. John Hurd

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Introduction

By letter to the Commission dated February 1, 2014, Mr. John Hurd requests, pursuant to Section 99 of the *Utilities Commission Act*, a reconsideration of a Commission decision approving BC Hydro's fees for Legacy and Radio-off Meters. Mr. Hurd's application is premised on the assertion that "the BCUC did not avail itself of sufficient background information with respect to what alternative fee structures would have had on the public's [sic] acceptance and/or rejection of the Legacy and Radio off meters and consequently what a higher rejection rate would have meant to the monthly fees charged to each individual."

Relevant Background Documents

1. By letter dated November 14, 2013 BC Hydro requested an extension to its filing dates established in the Regulatory Timetable that is Appendix B to Order G-167-13. (Exhibit B-4)
2. By letter dated November 15, 2013, Mr. Hurd wrote to respond to BC Hydro's request by making a similar request to extend the commencement of interim charges for Legacy and Radio off meters. (Exhibit C13-3)
3. On November 18, 2013, the Commission issued Order G-186-13, with Reasons, granting BC Hydro's request in part and amended the Regulatory Timetable. (Exhibit A-7)
4. By letter dated November 19, 2013, Mr. Hurd objected to the "minimization of my request for a review of the interim charges" in the Reasons and requested the Commission review his request for an extension to the interim fees and delay all fees until a full and proper determination can be made as to their legitimacy and necessity. (Exhibit C13-4)
5. On November 22, 2013, the Commission responded with the information on the process for reconsideration of Order G-186-13. A copy of "understanding Utility Regulation: A Participant's Guide to the B.C. Utilities Commission" was attached to the letter from the Commission. The document identifies the criteria the Commission applies to determine whether a reasonable basis exists to allow a reconsideration. (Exhibit A-8)
6. By emailed letter dated February 1, 2014, Mr. Hurd formally applied for reconsideration.

### Next Steps

Mr. Hurd's February 1, 2014 letter refers to Reconsideration of Order G-168-13. Since Order G-168-13 is not relevant to this proceeding, the Commission interprets Mr. Hurd as seeking reconsideration of Order G-186-13, in line with his earlier correspondence.

As described in the Commission's Participant Guidelines, an application for reconsideration proceeds in two phases. At this time, the Commission initiates a Phase 1 process to consider whether the reconsideration application has established a *prima facie* case sufficient to warrant full consideration. BC Hydro and other participants are invited to provide comments to the Commission that address the following specific questions:

- Should there be reconsideration by the Commission?
- If there is to be 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?
- Are there any other pertinent facts or issues regarding Mr. Hurd's application that the Commission reconsiders the Order and vary it accordingly?

Participants' comments should address whether the threshold for reconsideration has been met, rather than the substance of the request. For a reconsideration hearing to proceed, the application for reconsideration is required to meet the following criteria:

1. The claim of error appears to be substantiated on a prima facie basis; and
2. The error has significant material implications.

If the Commission agrees to reconsider its decision, the parties will be allowed to address the substance of the request.

A copy of the Reconsideration and Appeals section of the Commission's Participant's Guide, which identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists for allowing a reconsideration, is attached.

Participants' comments are to be provided to the Commission and copied to BC Hydro and all Interveners by Tuesday, February 11, 2014. Mr. Hurd may respond to Participants' comments by Friday, February 14, 2014.

Yours truly,

Erica Hamilton

EC/cms  
Attachments

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**From:** John Hurd <ajhurd@telus.net>  
**Sent:** February-01-14 1:20 PM  
**To:** Commission Secretary BCUC:EX  
**Cc:** david@legalmind.ca; wjandrews@shaw.ca; Dennis\_barbisan@hotmail.com; barkerbrenton@gmail.com; tbraithwaite@bcpiac.com; support@bcpiac.com; kim-mortgages@eastlink.ca; debruijn@shaw.ca; d\_sculpts@shaw.ca; bchydroregulatorygroup@bchydro.com; thackney@shaw.ca; bharper@econalysis.ca; c6934@telus.net; PHL222@telus.net; jbwonderful@shaw.ca; marchantp@shaw.ca; bobmck@shaw.ca; roger.middleton@telus.net; penrod@saltspring.com; jaynepriest@gmail.com; epritchard@bcpiac.com; john@vaseguy.com; tvanswieten@metchosin.ca; norm.r@sios.ca; tps.x@telus.net; ashadra@telus.net; jskogsta@telus.net; vasana@camelot-connection.com; camelot@islandnet.com; info@blueharvestfarm.com; tystanley777@yahoo.com; eliteservice@shaw.ca; rwarder@telus.net; cweafer@owenbird.com; fredweislaw@gmail.com; steven.wishart@gmail.com; david.jae.wong@gmail.com  
**Subject:** Re: BC Hydro Charges Related to Meter Choices Program  
**Attachments:** 11-22-2013\_Hurd J-Reconsider G-168-13 Reasons Resp.pdf; ATT00001.htm

Ms Hamilton,

Further to your email and attachment below I would like to make formal application to BCUC as follows;

1.) In accordance with Section 14 of the BC Utilities Act I hereby apply to the Commission for a copy of its reasons to allow BC Hydro's fee's for Legacy and Radio off Smart Meters.

2.) In accordance with Section 75 of the BC Utilities Act I would like to file a Formal Complaint that the BCUC did not make its decision with respect to the approval of BC Hydros recommended fees for Legacy meters and radio off smart meters in accordance with Section 75 in that they did not perform due diligence in its assessment of the proposed and/or alternative fee structures such that the BCUC would be in a position to "make its decision on the merits and justice of the case" as is prescribed by the Act. I contend that, in this case, by not properly considering or requesting additional information from BC Hydro on the merits and justification of alternate fee structures and the impact lower fees would have on the general publics level of acceptance or rejection of Legacy and Radio off meters the Commission was in violation of Section 75 of the Act which consequently resulted in tens of thousands of individuals to involuntarily accept the smart meters due to their inability to afford the exorbitant monthly fees proposed by BC Hydro which had the effect of increasing the cost to those individuals who were not coerced by the high fees and ultimately did not accept the smart meters.

3.) I request the Commission enact Section 99 of the Act to reconsider its decision with respect to the above fees approved by BCUC on the basis that BCUC did not avail itself of sufficient background information with respect to what alternative fee structures would have had on the publics acceptance and/or rejection of the Legacy and Radio off meters and consequently what a higher rejection rate would have meant to the monthly fees charged to each individual.

Sincerely,

John Hurd

## **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**

