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February 14, 2014

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
Attn: Erica Hamilton, Commission Secretary
By Web Posting

Dear Madam:

Re: BC Hydro Application Approval of Charges Related to Meter Choices Program
Project No. 3698760; Request for Reconsideration in relation to Orders G-167-13 and G-186-13;
Letter L-9-14; Reconsideration Phase One; BCSEA-SCBC Submission

This is the submission of the intervenors B.C. Sustainable Energy Association and Sierra Club of British Columbia in response to the Commission's February 5, 2014 Letter L-9-14 [Exhibit A-15] inviting comments on the first phase of the Commission's assessment of a February 1, 2014 application for reconsideration in relation to Orders G-167-13 and G-186-13 under s.99 of the *Utilities Commission Act* (Reconsideration Application) filed by the intervenor Mr. John Hurd. In Order G-15-14 [Exhibit A-15], the Commission extended the deadline for participants' comments on phase one of the reconsideration proceeding to February 14, 2014.

Order sought to be reconsidered

For the reasons that follow, this submission is based on the assumption that the order sought to be reconsidered is Order G-167-13, the Commission's approval of interim and refundable BC Hydro fees for legacy and radio-off meter service.

There appears to be some ambiguity about the precise order regarding which reconsideration is sought. In Exhibit A-15, page 1, paragraph 1, the Commission refers to the matter as "a reconsideration of a Commission decision approving BC Hydro's fees for Legacy and Radio-off Meters." However, on page 2, paragraph 1, the Commission states:

"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." [underline added]

Mr. Hurd's reference to "Order G-168-13" must be incorrect, as "Order G-168-13" is unrelated to the BC Hydro Meter Choices Program. However, "Order G-186-13," referred to by the Commission, does not establish "BC Hydro's fees for Legacy and Radio-off Meters." Rather, Order G-186-13 makes certain revisions to the Regulatory Timetable in this proceeding.

Presumably, Mr. Hurd intended to request reconsideration of Order G-167-13; and presumably the Commission intended to confirm that this phase one reconsideration application relates to

Order G-167-13. In Order G-167-13, the Commission approved BC Hydro fees under the Meter Choice Program for eligible customers (a) choosing, or deemed to have chosen, a “legacy meter,” and (b) choosing a “radio-off” smart meter, on an interim and refundable basis.¹ On this assumption, the reconsideration application can be described as focusing on the Commission’s approval of ‘BC Hydro’s fees for Legacy and Radio-off Meters on an interim and refundable basis.’²

1. Should there be a reconsideration by the Commission?

BCSEA-SCBC’s view is that there should not be a reconsideration, because the application does not meet the criteria that the claim of error is substantiated on a *prima facie* basis, or that the (alleged) error has significant material implications.

First, there is no *prima facie* legal error in the Commission having approved interim and refundable rates pending determination of permanent and final rates. That is a normal practice of the Commission.

Second, there is no *prima facie* legal error in the Commission approving interim and refundable rates that were supported by the evidence on the record at that time, i.e., the BC Hydro Application [Exhibit B-1]. The Application contains financial information, assumptions and estimates which, if accepted, would support Meter Choice fees in the amounts adopted by the Commission on an interim and refundable basis. At the same time as approving the Meter Choice fees on an interim and refundable basis, the Commission in Order G-167-13 also established a proceeding for BC Hydro’s evidence to be challenged and further evidence to be elicited from BC Hydro by intervenors and Commission staff, by way of two rounds of information requests, and for written argument by BC Hydro and intervenors. The purpose of the further proceeding was (and remains) to allow the Commission to determine BC Hydro’s costs of providing the Meter Choice services for fee-setting purposes and to set the Meter Choice fees on a permanent and final basis. In addition, it was (and is) understood that in its decision regarding permanent and final fees the Commission will also address whether there would be refunds or retrospective charges in the event that the final fees are different than the interim fees.

Third, even if it is assumed for the sake of argument that the Commission’s approval of interim and refundable Meter Choice fees on October 11, 2013 was or may have been the result of a legal error, the putative error would have no significant material implications. Direction No. 4, s.4(2)(b), expressly prohibits the Commission from requiring BC Hydro to install a legacy meter or radio-off meter “if a smart meter is installed at the applicable premises of the applicable customer on or after the date this direction comes into force.” The approval of the interim and refundable fees on October 11, 2013 is ‘water under the bridge.’ Even if it is assumed for the sake of argument that some eligible customers (i.e., residential customers with a legacy meter on October 11, 2013) chose to and did obtain a radio-on smart meter based on the approved interim and refundable fees and would not have done so had there been no (hypothetical) legal error in the Commission’s approval of the interim and refundable fees, the Commission has no legal

¹ Order G-167-13 also addresses the format and timetable for the Commission’s review of BC Hydro’s application for permanent and final fees for legacy and radio-off service.

² Notably, the Commission has not at this time made any order concerning permanent and final BC Hydro fees for legacy and radio-off service. February 14, 2014 is the deadline for BC Hydro’s reply submission on that topic.

authority to order BC Hydro to replace the installed smart meters with legacy or radio-off meters. Section 4(2)(b) of Direction No. 4 is a 'ratchet clause.' Once a customer has a smart meter there is no legal opportunity for the customer to have a legacy or radio-off meter. This is one of a number of provisions of Direction No. 4 that implement a 'phase-out' approach to legacy meters that expressly limits the scope of the Commission's legal authority.

Fourth, and related to the previous point, the timing of the reconsideration application is too late. The appropriate time to have challenged the Commission's approval of interim and refundable Meter Choice fees was immediately after the decision had been made on October 11, 2013, i.e., before BC Hydro communicated the interim and refundable rates to eligible customers, and certainly before December 1, 2013 when the interim and refundable fee for legacy meter service came into effect.

2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

It is difficult to respond to this question without knowing exactly what Commission decision would be reconsidered and why. If the decision being reconsidered (hypothetically) was the Commission's October 11, 2013 approval of interim and refundable Meter Choice fees due to an alleged error in the size of the interim and refundable fees, then in BCSEA-SCBC's view the reconsideration should be based on, and limited to, the evidentiary record established in the further proceeding concerning permanent and final fees.

3. If there is to be a reconsideration, should it focus on the items from the Reconsideration Application, a subset of these items or additional items?

BCSEA-SCBC's view is that if there is to be a reconsideration then the Commission should define the scope to address matters regarding which the Commission has jurisdiction.

4. If there is to be a reconsideration, what process should be established for the reconsideration?

If there is to be a reconsideration, BCSEA-SCBC's view is that it should be a written proceeding.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



Barrister & Solicitor

cc. Meter Choices proceeding email list