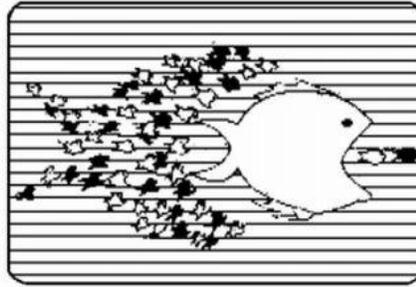


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February 14, 2014

Our File: 7555

VIA E-MAIL

Erica Hamilton
Commission Secretary
BC Utilities Commission
Sixth Floor - 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Hamilton:

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

1. We continue to represent the British Columbia Pensioners' and Seniors' Organization, Active Support Against Poverty, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, and Together Against Poverty Society, known collectively in regulatory processes as "BCPSO *et al.*" The constituent groups of BCPSO *et al.* represent the interests of low and fixed income energy consumers within British Columbia and more specifically in this process, the interests of BC Hydro's low and fixed income residential ratepayers.

Background

2. BC Hydro filed its Application for Approval of Charges Related to the Meter Choices Program on October 7, 2013 (the "Meter Choices Application").
3. On October 11, 2013, the Commission issued Order G-167-13, which approved charges for the Meter Choices Program on an interim and refundable basis. The interim charges are a \$35 monthly fee for customers retaining a legacy meter, and a \$100/\$155 one-time setup fee and \$20 monthly fee for those choosing a radio-off meter (the "Interim Charges").
4. On November 18, 2013, the Commission issued Order G-186-13 which granted BC Hydro's request for an extension to the deadline to respond the first round of information requests from BCUC and Ms. Skogstad (the "Extension Request"). In the Reasons for Decision for Order G-186-13, the Commission notes that in Mr. Hurd's submission on BC Hydro's Extension Request,

"Mr. Hurd requests an extension in the date for the commencement of the interim charges on legacy and radio-off meters. Essentially he suggests that such an

extension would allow for a fair and unbiased hearing on the appropriate charges if any.”¹

5. On February 1, 2014, Mr. Hurd applied under section 99 of the *Utilities Commission Act* for reconsideration of the Commission’s interim approval of charges for legacy meters and radio-off meters (the “Reconsideration Application”).²
6. On February 5, 2014, the Commission requested submissions from BC Hydro and other participants on a number of questions pertaining to Mr. Hurd’s Reconsideration Application. BCPSO’s comments on the Commission’s questions are outlined in the sections below.

Reconsideration Application

A. Should there be reconsideration by the Commission?

7. BCPSO first seeks clarification on the subject matter of Mr. Hurd’s Reconsideration Application. Mr. Hurd’s Reconsideration Application refers to a Commission Order that is not relevant to this proceeding (i.e., G-168-13). The Commission states that it “interprets Mr. Hurd as seeking reconsideration of Order G-186-13, in line with his earlier correspondence.”³
8. The issues raised in the Reconsideration Application do not appear to include the actual orders made in Order G-186-13; rather, Mr. Hurd’s correspondence prior to the Reconsideration Application notes that the Order and Reasons for Decision minimized his request for a review of the Interim Charges.⁴
9. Further, Mr. Hurd’s Reconsideration Application states 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 acceptance and/or rejection of the Legacy and Radio off meters and consequently what a higher rejection rate would have meant to the monthly fee charges to each individual.”⁵
10. It appears the focus of the Reconsideration Application should not be on the substance of Order G-186-13 (i.e., BC Hydro’s Extension Request); rather, it pertains to paragraphs 6 & 7 of Order G-167-13, which approved the proposed charges for radio-off and legacy meters on an interim and refundable basis.
11. This understanding is supported by Mr. Hurd’s comments on BC Hydro’s Extension Request, in which Mr. Hurd requests that the application of the Interim Charges be delayed for a number of reasons, including,

¹ Order G-186-13, Appendix A, p. 3.

² Exhibit C13-5.

³ Exhibit A-15, Letter L-9-14, p.2.

⁴ Exhibit C13-4.

⁵ Exhibit C13-5.

- “allow[ing] the public to have a fair and proper hearing of what the charges should be if any BEFORE they have to make a financial decision as to whether they can afford the additional costs if any”⁶ (emphasis in original); and
 - “correct[ing] the decision by BCUC to rubber stamp the BC Hydro request for these excessive interim charges and to recognize this situation is different from the normal process of rubber stamping BC Hydro's requests for interim rate increases which in comparison are relatively small when compared to an average apartment owners/renters monthly bill of \$20/month.”⁷
12. Mr. Hurd later refers to those comments as a “request for an extension to or elimination of the interim fees”⁸ (emphasis added).
 13. Mr. Hurd’s concern in his comments prior to the issuing of Order G-186-13 was the premature application of the Meter Choices Program charges, not whether or not BC Hydro’s Extension Request was granted. With that in mind, BCPSO submits that if there is to be reconsideration by the Commission to address the issue Mr. Hurd raises, the reconsideration should be of paragraphs 6 & 7 of Order G-167-13, not of G-186-13.
 14. If BCPSO has misinterpreted the intent of Mr. Hurd’s Reconsideration Application, we ask that he clarify this in his Reply.
 15. If we are correct in our interpretation of Mr. Hurd’s Reconsideration Application, BCPSO would support reconsideration of the approval of Interim Charges by the Commission.
 16. In order to proceed to the second stage of the reconsideration, the Reconsideration Application is required to meet the following criteria: (1) the claim of error would need to be substantiated on a *prima facie* basis; and (2) the error would need to have significant material implications. For the reasons below, BCPSO submits that Mr. Hurd’s Reconsideration Application meets these two criteria.
 - (a) *Prima facie* case
 17. Mr. Hurd’s submissions throughout this process advocate for meaningful access to the Meter Choices Program for all residential BC Hydro customers—a position which BCPSO strongly supports.
 18. Mr. Hurd raises s.75 of the *UCA* as the basis for his Reconsideration Application; that is, that the Commission must make its decision on the merits and justice of the case, and is not bound to follow its own decisions.
 19. While it does not appear that the Commission has unduly bound itself to precedent in this case, the content of Mr. Hurd’s Reconsideration Application contains sufficient information to establish a *prima facie* case on other grounds. Specifically, it appears as though Mr. Hurd is arguing that the Commission’s approval of the Interim Charges was an error of law, because it was contrary to principles of procedural fairness and other fundamental

⁶ Exhibit C13-3, Hurd Submitting Comments regarding BC Hydro Extension Request, p.1.

⁷ Exhibit C13-3, Hurd Submitting Comments regarding BC Hydro Extension Request, p.1.

⁸ Exhibit C13-4,

principles of administrative law. Alternatively, it should be reconsidered on the basis of the Commission's residual category of "just cause".

20. In terms of procedural fairness, the Commission has previously confirmed that the common law procedural principles of natural justice and fairness apply to the Commission as an administrative tribunal.⁹
21. In this case, a fairness issue arises in that participants had no opportunity to make a case against the Interim Charges, and provide evidence on the long term impact the Interim Charges' approval would have on ratepayers' ability to participate in the Meter Choices Program. Further, the Commission provided no reasons for how it reached the decision to approve Interim Charges.¹⁰
22. While approval of interim rates may be a routine occurrence in BCUC proceedings, BCPSO submits this is a unique situation with respect to fairness, given Direction No. 4's prescriptions concerning eligibility for the Meter Choices Program. Although approving rates on an "interim and refundable basis" while a proceeding is underway often provides a reasonable remedy if final approved amounts vary from those initially proposed, that is not the case here. If a smart meter has been installed at the customer's premise following the approval of interim charges, the customer will no longer be "eligible" to choose a radio-off meter or legacy meter.¹¹ Further, this approval concerns interim *charges* rather than interim *rates*; approval of interim charges is far less routine. The Interim Charges are significant, and will be applied on top of any BC Hydro rate increases.
23. The fact that the Commission saw the refundable nature of the Interim Charges as mitigating their negative impact if the final approved charges were lower is evident in the Reasons for Decision for Order G-186-13:

"The interim opt-out fee remains refundable, either wholly or in part, depending on the view that the Panel ultimately takes of all the evidence relating to the imposition of such a fee."¹²
24. While the Interim Charges are refundable, those choosing to participate in the Meter Choices Program are required to pay them upfront. The Interim Charges are prohibitively high for a number of BC Hydro residential customers who feel strongly about retaining a legacy meter or choosing a radio-off meter.
25. Those who "accept" a smart meter because of the amount of the Interim Charges while the Commission considers the Meter Choices Application will no longer be "eligible" to keep their legacy meter or choose a radio-off meter according to Direction No. 4, even if the final approved charges are significantly lower than the Interim Charges (and therefore affordable).

⁹ Order G-184-12.

¹⁰ Order G-167-13.

¹¹ Direction No. 4, s. 4(2)(b).

¹² Order G-186-13, Appendix A, p.5.

26. Based on the above, BCPSO is of the view that Mr. Hurd's Reconsideration Application substantiates his claim of error a *prima facie* basis.

(a) *Material implications*

27. BCPSO submits that the error, if established, may have material implications—the extent of which will depend on the amount of the Meter Choices Program charges approved in the final result.

28. As outlined above, approval of the Interim Charges may have caused many customers who are strongly opposed to smart meters to “accept” one due to their inability to afford the opt-out charges. Had the charges not been applied until the final Meter Choices Program charges were approved, those customers could have made a decision regarding affordability at that time, and would not have lost their irrevocable status as “eligible” program participants.

29. Further, the fewer customers that retain a legacy meter or choose a radio-off meter, the higher the estimated actual opt-out costs per customer.¹³ If customers “accepted” a smart meter based on the Interim Charges, but would have been able to afford the final Meter Choices Program charges, the error has materially impacted future program costs for the remaining Meter Choices Program participants.

30. It is difficult to see the benefit a reconsideration would have for individual ratepayers, given that Direction No. 4 ostensibly precludes those who have since “accepted” smart meters due to the Interim Charges from now participating in the Meter Choices Program; however, BCPSO submits that the Reconsideration Application raises an important issue that could impact how the Commission considers interim approval of proposed rates.

31. Alternatively, should the Commission decide that Mr. Hurd's Reconsideration Application is allowed to proceed to the second stage, one of the issues that participants could address is how the Commission should deal with individual ratepayers who may have “accepted” smart meters due to the unaffordable Interim Charges should those charges be overturned on reconsideration.

B. Should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

32. If there is to be reconsideration, BCPSO submits that the Commission should hear new evidence on the issues raised in the Reconsideration Application (i.e. Commission approval of the Interim Charges), as parties were not given the opportunity to submit evidence on the issue of Interim Charges prior to the issuing of Order G-167-13.

33. BCPSO takes no position on whether new parties should be given the opportunity to present evidence.

¹³ Exhibit B-1, p. 3-26.

C. Should the Reconsideration focus on the items from the application for reconsideration, a subset of these items, or additional items?

34. If the Commission determines the Reconsideration Application applies solely to Order G-186-13, BCPSO is of the view the reconsideration should also apply to paragraphs 6 & 7 of Order G-167-13 to appropriately address Mr. Hurd's evident concern, which is the fairness of the Interim Charges, and the potential for those Interim Charges to coerce ratepayers into premature "acceptance" of smart meters.

All of which is respectfully submitted.

Sincerely,

BC PUBLIC INTEREST ADVOCACY CENTRE

Original on file signed by:

Erin Pritchard
Barrister & Solicitor