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**Sent:** February-28-14 9:07 AM  
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**Subject:** Re: Meter Choices Program - reconsideration of interim fees

Ms. Hamilton,

RE; Response to Participants comments to my request for reconsideration and justification for reconsideration

Firstly to be clear my application for reconsideration is of order G-167-13 concerning the approval of interim fees. However, there has been some confusion with order G-186-13 as it too refers to the approval of the interim fees approved in order G-167-13. I hereby request that all those respondents that referred to either order be acknowledged and accepted as applicable to my reconsideration request regardless of which order they have referred to in their email correspondence.

There are two questions to be answered with respect to my application for reconsideration.

1.) The first question is; Was there an error made in approving the interim fees?

Normally the BCUC does approve applications by BC Hydro for interim and refundable rate increases prior to evaluating all the evidence to establish and rule upon what the actual increase may be. This is not a problem within the normal operation of the utility as the interim fees do not bias or influence the actual outcome of the final rate increase. However, in the case of interim fees for opting out of the smart meter program the fees have had a very significant influence upon individuals decision to opt in or out. This is substantiated by the many email testimonials received by the Commission. In addition, the decision to allow the interim fees was not in accordance with s75 of the Utilities Act which requires decisions to be made in accordance with the merits and justice of the case. I submit to the Commission that neither of these criteria were met as the commission a) failed to consider all the merits of the case since they only considered the case made by BC Hydro which in itself was not only biased but by their own submission was based upon unsubstantiated, untested and unreliable assumptions and estimates. At no time did the Commission consider any other opposing merits to their application for interim fees. In addition, the commission b) did not do justice with the case given their decision resulted in creating ( albeit unintentionally) an undue influence upon the customers of BC Hydro which effectively forced many customers to accept the smart meters contrary to their true wishes. I submit there is clear evidence an error was made in approving the interim fees in the manner they were approved.

2.) The second question at hand is ; Is there a Prima facie case for reconsideration and were there material implications?

What is Prima facie? Prima facie is defined as follows;

**Prima facie** (/ˈpraɪmə ˈfeɪfiː/, /ˈfeɪfə/, or /ˈfeɪfiː/<sup>[1]</sup> from Latin: *p̄rīmā faciē*) is a Latin expression meaning *on its first encounter, first blush, or at first sight*. The literal translation would be "at first face" or "at first appearance", from the feminine form of *primus* ("first") and *facies* ("face"), both in the **ablative case**. It is used in modern **legal English** to signify that on first examination, a matter appears to be **evident** from the facts. **common law** jurisdictions, *prima facie* denotes evidence that – unless **rebutted** – would be sufficient to prove a particular proposition or fact. The term is used similarly in academic **philosophy**. Most legal proceedings require a *prima facie* case to exist, following which proceedings may then commence to test it, and create a ruling.

So the question here is to establish whether there is sufficient evidence to support the suggestion the interim fees resulted in altering the normal process of allowing individuals to choose between a smart meter, radio off meter or a legacy meter. If the test is, as defined above, "a first blush" or "upon first appearance" then I submit the facts are quite clear.

Based upon the many consumer comments and messages received by BCUC supporting the fact they felt forced, coerced, bullied or economically blackmailed into accepting a smart meter, simply due to the cost of the interim fees approved, it would seem clear that BCUC's hasty approval of the interim fees had unintended consequences which have significantly biased the number of individuals who would have chosen to opt out of the smart meter program and retain legacy or radio off smart meters and has unjustly affected the potential ongoing costs of administering these meters.

The submissions of Mr. Andrew J. Williams on behalf of the BCSEA-SCBC which was supported by Mr Ian Webb on behalf of BC Hydro provides no evidence to support a refusal of my reconsideration application. Mr. Williams merely states there is no prima facie case for reconsideration without providing any supporting evidence. Simply making a statement does not make a case. His supposition there were no material implications to the commissions decision is equally without merit. Undue Influence, duress, coercion, bullying, blackmail etc are all terms used by the individuals who have chosen to make comment submissions to the Commission. If these are not evidence of the material implications caused by the interim fees I am not sure what does. In fact, BC Hydro describes the economic coercive influence of their interim fees in section 34 of their final submissions dated January 24, 2014 as follows:

*"A considerable number of eligible customers who as of yet have not responded will choose a smart meter once they receive a bill with the charge and realize that they are deemed to have chosen the legacy meter.... (they) will be faced with an "economic decision" when the charges appear on their bills.."*  
*I have added emphasis to their term economic decision.*

As you can see BC Hydro willingly acknowledges the cost of the interim fees directly affect the number of individuals who would opt out of the smart meter program. This admission demonstrates they were aware of the coercive nature of their interim fees and hence would not only materially affect the outcome but the final cost/fees structure as well.

If we are to believe the submission of William J Andrews on behalf of the BCSEA-SCBC which was supported by Mr Ian Webb on behalf of BC Hydro it is irrelevant whether the BCUC has erred or not in approving the interim fees and even if the harsh fees have caused undue economic influence upon individuals to agree to a smart meter it is "water under the bridge" !!

It is Mr. Williams expert and professional legal opinion that in spite of the fact an injustice may have been done there is no need for reconsideration or right of appeal or justice. It is true that direction No. 4 prevents the

BCUC from allowing customers to have their now installed smart meters removed and replaced with a legacy meter but that does not negate the fact that an error has occurred and a reconsideration is justified nor does Mr Andrews consider there may be other options open to the BCUC to correct the error and the unintended consequences which have transpired. In fact, his position goes against the entire rule of law and justice with respect to the rights of individuals to have a fair and unbiased hearing and the right to appeal (reconsideration) if an error has occurred. With respect to Mr. Andrews rationale he simply does not present a compelling case against reconsideration and his justification of “water under the bridge” is simply judicially wrong. It is my contention that Mr. Williams case for no reconsideration fails.

### The Prima Facie case for reconsideration

Based upon the many consumer comments and messages received by BCUC supporting the fact they felt forced, coerced, bullied or economically blackmailed into accepting a smart meter, simply due to the cost of the interim fees approved, it would seem clear that BCUC's hasty approval of the interim fees had unintended and material consequences which placed undue influence and in some cases duress on individuals which has significantly biased the number of individuals who would have chosen to opt out of the smart meter program and retain legacy or radio off smart meters and has unjustly affected the potential ongoing costs of administering these meters.

In addition, the fees were approved based solely upon evidence provided by the applicant (BC Hydro) which by its nature (and admission of BC Hydro itself included within its application) were based upon assumptions and estimates not actual facts. So the evidence provided to the BCUC was questionable from the outset with potential errors, omissions or inherent biases but it also provided only a single perspective for the BCUC to consider which brings into question as to whether the decision was based upon the true merits of the case as required by s75 of the Utilities Act. The subsequent approval of the interim fees not only tainted the outcome and process of allowing a free and democratic choice by consumers to decide if they wished to retain a legacy or radio off meter but it has biased the entire regulatory and oversight process intended for the BCUC. If my application for reconsideration is not approved the BCUC is essentially ignoring its responsibility according to s75 of the Utilities Act and setting a precedent suggesting a regulatory body does not have to avail itself of the true facts of a case nor hear evidence by both parties to a decision and can ignore the potential consequences of its decisions even if they cause a biased and manipulated result. Fortunately, I do not believe we have devolved into this type of legal framework just yet and I have faith in the integrity of BCUC in spite of their inappropriate and unfortunate approval of the interim fees and look forward to their approval and acceptance of my application for reconsideration.

As additional and supplementary rationale for reconsideration I would like to refer to submissions by Mr. Jim Stachow, Andy Shadrack (RDCK) and the BCPSO.

Furthermore, I do not believe the question is whether the order should be rescinded or reconsidered, I think all the evidence firmly and clearly supports reconsideration. In fact, in accordance with s99 of the Utilities Act I believe there is sufficient evidence for the commission to rescind their order and I hereby request they do so in order to avoid the time and cost of conducting a reconsideration proceeding.

Going forward the compelling question is how do we right the injustice that has occurred and provide the opportunity for individuals to make a choice free of the influence of interim fees. I suggest the Commission allow all consumers with existing smart meters ( with appropriate time and information to make an informed decision ) a one time opportunity to opt out of their smart meters and into a radio off meter free of the threat of interim fees to influence their decision. This will not only compensate for the undue influence imposed by the interim fees, it will demonstrate just how many people chose the smart meters purely for economic reasons as described by BC Hydro plus it will not contravene direction No.4 from the Lieutenant Governor.

I thank the Commission for their time and consideration.

Sincerely,

John Hurd