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VIA EMAIL
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March 28, 2014

BC HYDRO SMART METER CHOICES PROGRAM **EXHIBIT A-19**

Mr. John Hurd
3707 West 35th Avenue
Vancouver, BC V6N 2N6
Dear Mr. Hurd:

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

Further to your February 1, 2014 application for Reconsideration of Commission Orders G-167-13 and G-186-13, enclosed please find Order G-50-14 with Reasons for Decision.

Yours truly,

Erica Hamilton

cms
Enclosure
cc: Registered Interveners

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-50-14

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Mr. John Hurd for Reconsideration of
Commission Orders G-167-13 dated October 11, 2013 and G-186-13 dated November 18, 2013

BEFORE: L.F. Kelsey, Panel Chair
D.M. Morton, Commissioner
N.E. MacMurchy, Commissioner

March 28, 2014

O R D E R

WHEREAS:

A. On September 25, 2013, by B.C. Regulation 203/2013, the Government of British Columbia enacted Direction No. 4 to the British Columbia Utilities Commission (Commission). Direction No. 4 provides direction to the Commission with respect to implementation of the Government of British Columbia's policy that British Columbia Hydro and Power Authority (BC Hydro) offer alternative meter choices to eligible customers who choose not to have a smart meter at their premises, and that eligible customers choosing an alternative meter option will have to pay additional charges designed to recover the costs attributable to their chosen option. Direction No. 4 also provides for the recovery of failed installation costs from customers at premises where a failed installation of a legacy meter, radio-off meter or smart meter occurs;

B. Direction No. 4 also states, in part, that a customer who fails to provide notice of election to BC Hydro by December 1, 2013, is deemed to have elected to retain the existing legacy meter at the customer's premises;

C. On October 7, 2013, BC Hydro filed an application for approval of new standard charges, new Electric Tariff terms and conditions, and regulatory accounting treatment pursuant to sections 58-61 of the *Utilities Commission Act* (Act) and Direction No. 4 (BC Hydro Application);

D. On October 11, 2013, the Commission issued Order G-167-13, which established a Regulatory Timetable for a Written Hearing process to review the BC Hydro Application. Order G-167-13 also established, among other things, the approval of charges on an interim and refundable basis to customers who choose to retain a legacy meter or elect to have a radio-off meter installed at their premises, to be effective December 2, 2013 and April 1, 2013, respectively;

E. On November 18, 2013, the Commission issued Order G-186-13, with Reasons, amending the Regulatory Timetable established by Order G-167-13 following an extension request by BC Hydro and a round of submissions from Interveners;

F. On February 1, 2014, Mr. John Hurd filed a request that the Commission reconsider Order G-168-13 pursuant to section 99 of the Act (Reconsideration Application). The Reconsideration Application alleges that the Commission did not avail itself of sufficient background information with respect to the effect alternative fee structures would have had on the choices of eligible customers and the implications to the monthly fees proposed by BC Hydro;

G. Order G-168-13 does not relate to the BC Hydro Application;

H. By letter L-9-14 dated February 4, 2014, the Commission advised that it interpreted the Reconsideration Application to relate to Order G-186-13 and established Phase 1 of the two-phase reconsideration process. The letter also lists the relevant background documents leading to the Reconsideration Application. The letter further invites submissions from all parties to address whether the threshold for a reconsideration has been met and establishes a schedule for those submissions;

I. By Orders G-15-14 and G-16-14 respectively, the Commission extended the deadline dates set in Letter L-9-14 to February 20, 2014 for submissions in response to the Reconsideration Application and to February 28, 2014 for Mr. Hurd's Reply;

J. Twelve parties filed submissions in response to the Reconsideration Application:

- BC Hydro (Exhibit B-13)
- British Columbia Pensioners' and Seniors' Organization *et al*. (Exhibit C1-5)
- British Columbia Sustainable Energy Association and Sierra Club of British Columbia (Exhibit C2-5)
- Regional District of Central Kootenay Electoral Area 'D' (Exhibit C7-7)
- Mr. K. Darwin (Exhibit C8-3)
- Mr. D. Barbisan (Exhibit C16-4)
- Mr. B McKechnie (Exhibit C18-2)
- Mr. R. Middleton (Exhibit C19-4)
- Mr. J Stachow (Exhibit C26-5)
- Mr. J Mansell (Exhibit C29-5)
- Mr. P Marchant (Exhibit C30-3)
- Mr. R Polden (Exhibit C31-7);

K. Several Interveners expressed the opinion that the Reconsideration Application applies to Order G-167-13 and not Order G-186-13 and made their submissions on that basis;

L. In his Reply dated February 28, 2014, Mr. Hurd stated that the Reconsideration Application is from Order G-167-13, but asked that the submissions of the respondents that referred to either Order G-167-13 or G-186-13 be considered by the Commission as applicable to the Reconsideration Application; and

M. The Commission has considered the Reconsideration Application, the parties' submissions, and Mr. Hurd's Reply in the context of both Orders G-167-13 and Order G-186-13.

NOW THEREFORE for the reasons set out in the Reasons for Decision attached as Appendix A to this Order**,** the Commission orders that the Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of March 2014.

BY ORDER

Original signed by:

L.F. Kelsey
Panel Chair

Attachment

IN THE MATTER OF

APPLICATION BY MR. JOHN HURD FOR RECONSIDERATION OF COMMISSION ORDER G-167-13 DATED OCTOBER 11, 2013 AND ORDER G-186-13 DATED NOVEMBER 18, 2013

REASONS FOR DECISION

March 28, 2014

BEFORE:

L.F. Kelsey, Panel Chair
D.M. Morton, Commissioner
N.E. MacMurchy, Commissioner

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1.0 INTRODUCTION

By email dated February 1, 2014, Mr. John Hurd made applications to the British Columbia Utilities Commission (Commission) with respect to three matters related to the British Columbia Hydro and Power Authority (BC Hydro) Application for approval of new standard charges, new Electric Tariff terms and conditions, and regulatory accounting treatment pursuant to sections 58-61 of the *Utilities Commission Act* (Act)[1] and Direction No. 4 for its Meter Choices Program (BC Hydro Application).

The email describes the three matters 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 exhorbitant 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."*

The Commission dealt with the first matter separately.

No separate process has been established for the second matter. Nor does the Commission decide complaints against itself. Applicants or interveners who do not agree with a decision of the Commission may seek a reconsideration of that decision and if still dissatisfied, seek leave to appeal to the Court of Appeal.

In his Reply, Mr. Hurd refers to section 75, so it appears to the Commission Panel that he may have intended the second matter to form part of his reconsideration request, which is the subject of the third matter.

For the purposes of these Reasons, the Commission Panel will use "Reconsideration Application" to refer to Mr. Hurd's third matter and will consider his section 75 submissions in the course of determining the Reconsideration Application.

[1] RSBC 1996, c. 473.

Mr. Hurd's email referenced Order G-168-13, but that Order has no relevance to the BC Hydro Application. Consequently, in its Letter L-9-14, dated February 5, 2014, which establishes the Phase 1 proceeding for the Reconsideration Application, the Commission advised all parties in that it interpreted Mr. Hurd's request to relate to Order G-186-13. In the Commission's view such an interpretation was in line with Mr. Hurd's earlier correspondence to the Commission.

Several of the Interveners responding to the Reconsideration Application expressed the opinion that the Reconsideration Application applies to Order G-167-13 and not Order G-186-13. Accordingly, they made their submissions on that basis.

In his Reply dated February 28, 2014, Mr. Hurd stated that the Reconsideration Application is from Order G-167-13, but asked that the submissions of the respondents that referred to either Order G-167-13 or G-186-13 be considered by the Commission as applicable to the application.

As a result of the apparent confusion relating to the order from which Mr. Hurd is seeking a reconsideration, the Commission Panel will consider both orders in these Reasons.

2.0 THE RECONSIDERATION PROCESS

Letter L-9-14 lists the background documents leading to the Reconsideration Application. The letter sets out the Phase 1 process for submissions on the Reconsideration Application and for reply by Mr. Hurd. BC Hydro and other participants were asked to comment on the following matters to enable the Commission to consider whether a *prima facie* case has been established to warrant proceeding to Phase 2:

- Should there be a 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 the Reconsideration Application that the Commission reconsiders the Order and vary it accordingly?

The original Phase 1 timetable provided for the filing of written submissions by BC Hydro and other participants by February 11, 2014. Mr. Hurd was to file his Reply, if any, by February 14, 2014. Orders G-15-14 and G-16-14, respectively, extended the filing date for BC Hydro and other participants to February 14, 2014 and the filing date for Reply to February 28, 2014.

Twelve parties filed submissions in response to the Reconsideration Application:

- BC Hydro (Exhibit B-13)
- British Columbia Pensioner's and Seniors' Organization (BCPSO) (Exhibit C1-5)
- B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC) (Exhibit C2-5)
- Regional District of Central Kootenay, Electoral Area "D"(RDCK) (Exhibit C7-7)
- Mr. K. Darwin (Exhibit C8-3)
- Mr. D. Barbisan (Exhibit C16-4)

- Mr. B. McKechnie (Exhibit C18-2)
- Mr. R Middleton (Exhibit C19-4)
- Mr. J Stachow (Exhibit C26-5)
- Mr. J. Mansell (Exhibit C29-5)
- Mr. P. Marchant (Exhibit C30-3)
- Mr. R. Polden (Exhibit C31-7)

Mr. Hurd filed a Reply**.**

3.0 BACKGROUND

In considering the Reconsideration Application, it is appropriate to briefly review the background to the Application.

On October 7, 2013, BC Hydro filed an application with the Commission for approval of new standard charges, new Electric Tariff Terms and Conditions, and regulatory accounting treatment relating to its Meter Choices Program pursuant to sections 58 to 61 of the Act and Direction No. 4.

Direction No. 4 provides direction to the Commission with respect to implementation of the Government of British Columbia's policy that BC Hydro offer alternative meter choices to eligible customers who choose not to have a smart meter at their premises and that eligible customers choosing an alternative meter option will have to pay additional charges designed to recover the costs attributable to their chosen option. Direction No. 4 also provides for the recovery of failed installation costs from customers at premises where a failed installation of a legacy meter, radio-off meter or smart meter occurs.

On October 9, 2013, the Commission issued Order G-166-13, which approved the failed installation charge on an interim and refundable basis. The Order also approved, effective October 25, 2013, the new terms and conditions in sections 4 and 6 of the Electric Tariff as set out in the Appendix to Direction No. 4.

On October 11, 2013, the Commission issued Order G-167-13. Recital H of that order references the BC Hydro Application and states that BC Hydro had begun contacting eligible customers to notify them of the meter choices the week of September 2, 2013, and that the enrolment period would end on December 1, 2013. Recital I of the order indicates that BC Hydro proposed a Commission decision on the final charges by November 29, 2013. Directives 6 and 7 of Order G-167-13 provide as follows:

> 6. The proposed charges to be applied to customers that have a legacy meter installed at their premises are set on an interim and refundable basis, effective December 2, 2013.
>
> 7. The proposed charges to be applied to customers that have a radio-off meter installed at their premises are set on an interim and refundable basis, effective April 1, 2014.

On November 18, 2013, BC Hydro applied to extend the dates for the filing of its Responses to Information Request (IR) No. 1 on the grounds that it did not believe it would be able to meet the filing dates to comprehensively respond to the over 800 IRs it had received given the short period of time allotted. Certain Interveners made submissions in response to the BC Hydro extension request addressed the issue of interim approval of opt-out fees. Among them was Mr. Hurd who requested an extension in the date for the commencement of interim charges on legacy and radio-off meters.

On November 18, 2013, the Commission issued Order G-186-13 in response to BC Hydro's request, granting the request in part. In its Reasons, the Commission Panel cited section 3 of the Act and stated that it must comply with Direction No. 4, unless the exceptions under section 3(3) of the Act apply. The Commission Panel further stated that it was not prepared to vary the amount of the interim opt-out fee at that time and expressed the view that:

> "…fulsome and comprehensive responses from BC Hydro to relevant IRs will provide the best evidence to the Panel for the purposes of making its final decision on the BC Hydro Application. 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." (Decision, page 5 of 5)

Mr. Hurd filed the Reconsideration Application on February 1, 2014.

4.0 LEGISLATIVE FRAMEWORK

4.1 Direction No. 4

On September 25, 2013, by B.C. Regulation 203/2013, the Government of British Columbia enacted Direction No. 4 to the Commission pursuant to section 3 of the Act. Direction No. 4 contains provisions on a number of actions that the Commission must carry out as well as powers that the Commission must refrain from exercising when setting rates for BC Hydro. All the provisions regarding rate-setting are included in section 3 of Direction No. 4.

Section 3(3) of Direction No. 4 requires the Commission, within 30 days of the date that the direction comes into force, to issue an order amending BC Hydro's Electric Tariff by adding the provisions set out in the Appendix to the direction. The Appendix contains the Electric Tariff terms and conditions related to conditions for retention or installation of legacy meters and radio-off meters, and the respective periods during which the legacy meters and radio-off meters may remain in place.

Section 4(1) of Direction No. 4 prohibits the Commission from exercising "a power under the Act that would <u>directly or indirectly</u> prevent [BC Hydro] from installing, operating or providing services in respect of legacy meters, smart meters and radio-off meters." [Emphasis added.]

Section 4(2) of Direction No. 4 prohibits the Commission from requiring BC Hydro to install a legacy meter or radio-off meter for non-residential customers and for "applicable customers" where a smart meter has been installed at "applicable premises" on or after the date the direction comes into force.

4.2 Utilities Commission Act, section 3 and sections 58-61

Section 3 of the Act requires the Commission to comply with directions issued to it by the Lieutenant Governor in Council by regulation, subject to certain exceptions in section 3(3), which are not relevant to this application.

Sections 3(1) and (2) read as follows:

> **3** (1) Subject to subsection (3), the Lieutenant Governor in Council, by regulation, may issue a direction to the commission with respect to the exercise of the powers and

the performance of the duties of the commission, including, without limitation, a direction requiring the commission to exercise a power or perform a duty, or to refrain from doing either, as specified in the regulation.

(2) The commission must comply with a direction issued under subsection (1), despite

(a) any other provision of

(i) this Act, except subsection (3) of this section, or

(ii) the regulations,

(a.1) any provision of the *Clean Energy Act* or the regulations under that Act, or

(b) any previous decision of the commission.

Sections 58-61 of the Act contain provisions with respect to the Commission's rate setting powers and the filing of rate schedules. Whereas the Commission is given discretionary power in determining just and reasonable rates, that discretion is not without limits. For example, section 59(5) defines a rate as "unjust" or "unreasonable" if the rate is:

(a) more than a fair and reasonable charge for service of the nature and quality provided by the utility,

(b) insufficient to yield a fair and reasonable compensation for the service provided by the utility, or a fair and reasonable return on the appraised value of its property, or

(c) unjust and unreasonable for any other reason.

<u>In addition, pursuant to section 60(1)(b), in setting a rate under the Act:</u>

(b) the commission must have due regard to the setting of a rate that

(i) is not unjust or unreasonable within the meaning of section 59,

(ii) provides to the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands, and

(iii) encourages public utilities to increase efficiency, reduce costs and enhance performance,

As noted above, Direction No. 4 was issued under section 3 of the Act. Therefore, the provisions of Direction No. 4 take precedence over all provisions of the Act relating to the matters to which Direction No. 4 applies, including sections 58 to 61.

5.0 POSITIONS OF THE PARTIES

5.1 Mr. Hurd

The Reconsideration Application is relatively brief. The grounds for reconsideration are stated in the Introduction section of these Reasons and for convenience are repeated here:

> *"…that BCUC did not avail itself of sufficient background information with respect to what alternative fee structures would have had on the publics [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."*

As noted in the Introduction, the Commission Panel will also consider, as a ground for reconsideration, whether there has been a breach of section 75 of the Act.

5.2 British Columba Pensioners' and Seniors' Organization *et al.* (BCPSO)

The BCPSO notes that Mr. Hurd's issues do not appear to include the actual orders made in Order G-186-13 and submits that Mr. Hurd's comments relate to the premature application of the Meter Choices Program charges. BCPSO concludes that the Reconsideration Application is specifically related to paragraphs 6 and 7 of Order G-167-13, not Order G-186-13.

BCPSO is of the view that the approval of Interim Charges in Order G-167-13 is an error of law because it was contrary to principles of procedural fairness and other fundamental principles of administrative law. The fairness issue arises in that participants had no opportunity to make a case against the Interim Charges. This is because of Direction No. 4's prescription on eligibility, i.e., if a smart meter has been installed at the customer's premise following approval of interim charges, the customer will no longer be "eligible" to choose a radio-off meter or legacy meter.

BCPSO concludes that 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 irretrievable status as 'eligible' program participants. BCPSO submits that while approval of interim rates is routine, this approval concerns interim *charges* rather than interim *rates* and such approvals are less routine. (Emphasis in original) (Exhibit C1-5, p, 4)

BCPSO submits that the Reconsideration Application raises an important issue that could impact how the Commission considers interim approval of proposed rates. The BCPSO is of the view that Mr. Hurd's Reconsideration Application substantiates his claim of error on a *prima facie* basis and that the error, if established, may have material implications.

5.3 Regional District of Central Kootenay Electoral Area 'D' (RDCK)

RDCK agrees with and adopts BCPSO's submission that the relevant order for reconsideration is Order G-167-13 and not Order G-186-13.

RDCK questions the constitutionality of sections 3 (3), 3 (4) and 4 (2) of Direction No. 4, an issue it notes it has raised in its Final Submission in the proceeding. RDCK further submits that the *prima facie* criterion for an error of law is a low threshold and that it exists for the Commission to reconsider Order G-167-13; and "any potential unrolling of Order G-167-13 would have substantial material implications for all BC Hydro customers who objected to smart meters."

RDCK further submits that the Commission erred in acceding to BC Hydro's request, that the interim order was premature, and that customers were not provided with the opportunity to submit evidence and make submissions. It submits that the Commission violates the rules of procedural fairness and natural justice in the Commission's failure to provide affected BC Hydro customers with an opportunity to be heard prior to making its determination. (Exhibit C7-7, p. 2)

RDCK also raises a *Charter* argument seeking to incorporate the argument from its Final Submission in the proceeding.

5.4 Mr. J. Mansell

Mr. Mansell supports the Reconsideration Application. He agrees with Mr. Hurd that the Commission's order is an error because it did not properly consider or request additional information from BC Hydro on the merits and justice of alternate fee structures and did not consider the impact the lower fees would have on the general public's level of acceptance or rejection of legacy and radio-off meters. He asserts that the Commission violated section 75 of the Act by so doing.

Mr. Mansell believes that the threshold for reconsideration has been met and the error has significant material implications.

5.5 Mr. R. Polden

Mr. Polden generally references the communications to the Commission which state that the fees are excessive or that program is unaffordable under a number of circumstances. He also generally references communications where people have stated that they were forced to accept smart meters, because otherwise they would not be able to cover normal living expenses. Further, he generally references communications where the authors question whether government or a government utility can legally require payment from citizens for the utility not taking action that science has shown may cause harm.

Mr. Polden describes the error in that the Commission may "apparently not have previously considered the full extent of unreasonable influence upon the numbers that was occasioned by the utility's actions, in which event such an error merits correction through reconsideration now, so that truly appropriate fees if any can be assessed." (Exhibit C31-7, p. 2)

Mr. Polden submits that a serious reconsideration is necessary as a first step in re-balancing the interests of all the various parties in the Application.

5.6 Mr. K. Darwin, Mr. D. Barbisan, Mr. B. McKechnie, Mr. R. Middleton, Mr. J. Stachow and Mr. P. Marchant

These Interveners all support the Reconsideration Application. Their submissions relate to:

1) the nature of interactions between BC Hydro, Corix and BC Hydro's customers (Mr. Darwin);
2) the impact of the interim fee on customer choice (Mr. Barbisan);
3) safety; potential rate differentials between customers using electronic meters and those using analogue meters (Mr. McKechnie);
4) financial impacts and inflationary charges (Mr. Middleton);
5) harmful and unintended consequences (Mr. Stachow).

5.7 British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC)

BCSEA-SCBC opposes the Reconsideration Application. It bases its submission on the assumption that Order G-167-13 is the subject of the Reconsideration Application. Its submissions, therefore, is related to the Commission's approval of BC Hydro's fees for legacy and radio-off meters on an interim and refundable basis.

BCSEA-SCBC submits that there should not be a reconsideration because:

1) There is no *prima facie* error in the Commission in approving interim and refundable rates pending determination of permanent and final rates; such orders are normal Commission practice.
2) The approval was supported by the evidence on the record at that time, namely the [BC Hydro] Application. Order G-167-13 also established a process for the BC Hydro evidence to be challenged and further evidence elicited through two rounds of IRs. The process further allowed for the filing of written argument by BC Hydro and Interveners. In its Decision regarding permanent and final fees, the Commission will address whether there would be refunds or retrospective charges if the final fees are different from interim fees.
3) Even if there had been a legal error, the putative error would have no significant material implications as section 4(2)(b) of Direction No. 4 expressly limits the scope of the Commission's legal authority by prohibiting the Commission from requiring BC Hydro to install a legacy meter or radio-off meter after a smart meter has been installed or after the date Direction No. 4 comes into force. The approval of interim and refundable fees is 'water under the bridge.'
4) The appropriate time to have challenged the Commission's approval of interim and refundable meter choices charges was immediately after the decision had been made on October 11, 2013 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.

5.8 British Columbia Hydro and Power Authority (BC Hydro)

BC Hydro also opposes the Reconsideration Application. It supports the submission of BCSEA-SCBC, although it concludes that Mr. Hurd is seeking a reconsideration from Order G-186-13. BC Hydro submits that Exhibit C13-4 suggests that Mr. Hurd's concerns were focused on Order G-186-13. BC Hydro refers to Mr. Hurd's November 2014 request in response to BC Hydro's request for an extension in time to file its IRs. At that time, Mr. Hurd requested that the Commission grant BC Hydro's extension request on the condition that the commencement of the interim charges also be extended. Notwithstanding its interpretation, BC Hydro submits that it is not materially important whether the reconsideration request is from Order G-186-13 or Order G-167-13 because the situation is, as characterized by BCSEA, 'water under the bridge'.

Moreover, BC Hydro points out that the interim charge for legacy meter customers has been applied to their bills effective December 2, 2013, and the Meter Choices Program enrolment ended eleven weeks prior to the date of the filing of its Submission [which took place on February 14, 2014]. BC Hydro points out that a successful reconsideration could result in prospective billing adjustment and to the extent that the Commission determines in its final decision on the BC Hydro Application that the charges should be varied from those approved on an interim basis, the result would be the same prospective billing adjustment, subject to an order from the Commission. (Exhibit B-13, p. 2)

BC Hydro concludes that there is no *prima facie* error in Order G-167-13 or Order G-186-13 and that a reconsideration process would not be an efficient use of resources.

5.9 Mr. Hurd's Reply

In his Reply, Mr. Hurd clarifies that his Reconsideration Application is from Order G-167-13 relating to the Commission's approval of interim fees. However, he observes that there has been some confusion with Order G-186-13 since that order also refers to the approval of the interim fees approved in Order G-167-13. Accordingly, he requests that the submissions of the respondents that referred to either Order G-167-13 or G-186-13 be considered by the Commission as applicable to the application.

Mr. Hurd's view is that there is a *prima facie* case that the Commission has erred because:

- Whereas normal interim fees do not bias or influence the actual outcome of the final rate increase, the interim opt-out fees have had a very significant influence upon an individual's decision to opt in or out.
- The influence can be substantiated by the numerous email testimonials received by the Commission.
- The interim fees was were not in accordance with section 75 of the Act which requires decisions to be made in accordance with the merits and justice of the case and the Commission had only considered the case made by BC Hydro which was biased and based on unsubstantiated, untested and unreliable assumptions and estimates.
- The submission of BCSEA-SCBC that there is no *prima facie* case for reconsideration is without merit and not supported by evidence. BCSEA had not considered the options open to the Commission to correct the error and the unintended consequences which have transpired. Further, BCSEA-SCBC's assertion that there are no material implications is also without merit. In this respect he reference the Letters of Comment that allege "Undue Influence, duress, coercion, bullying and blackmail…".

- BC Hydro has willingly acknowledged that the cost of the interim fees directly affects the number of individuals who would opt-out of the meter choices program and that this admission shows BC Hydro was aware of the coercive nature of the interim fees.

Mr. Hurd believes that the Commission'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 the meter choice program. (Exhibit C13-7, p. 3)

Mr. Hurd does not believe that the question is whether the Order should be rescinded or reconsidered but the compelling question is how to right the injustice that has occurred. He submits that there is sufficient evidence for the Commission to rescind Order G-167-13 and requests that the Commission rescind the order "to avoid the time and cost of conducting a reconsideration proceeding." He suggests that the Commission allow all consumers with existing smart meters be given an 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. (Exhibit C13-7, p. 3)

6.0 COMMISSION DETERMINATION

6.1 Which Order Forms the Basis of the Reconsideration Application?

As indicated in Section 2.0 of these Reasons, Letter L-9-14 lists the documents that form the background to the Reconsideration Application. One of the documents is a letter from the Commission Secretary to Mr. Hurd dated November 22, 2013 (Exhibit A-8). The letter informs Mr. Hurd that the Commission is treating his email request of November 19, 2013 as a request to reconsider Orders G-186-13 and Order G-167-13 pursuant to section 99 of the Act. Enclosed with the letter was an excerpt from the Commission's publication, "Understanding Utility Regulation: A Participant's Guide to the B.C. Utilities Commission." The excerpt relates to the Commission's reconsideration procedures. The letter asked Mr. Hurd to review the enclosure and to advise the Commission whether he wished to proceed with a new reconsideration application by supplementing his email with details on the errors and a discussion of material implications.

It was not until February 1, 2014, almost two and a half months after the date of the Commission Secretary's letter that Mr. Hurd filed his formal reconsideration application, which referenced Order G-168-13 rather than either of Orders G-167-13 or G-186-13. The Commission interpreted the reconsideration request to relate to Order G-186-13 since that was in line with his earlier correspondence. Letter L-9-14, which contains the Commission's interpretation is dated February 5, 2014. Mr. Hurd did not advise the Commission that it was in error in its interpretation of the basis for the Reconsideration Application until he filed his Reply on February 28, 2014, when he clarified that the application is related to Order G-167-13. At the same time, he asked that all of the respondents who referred to either order be acknowledged and accepted as applicable to his reconsideration request.

The Commission Panel agrees with BC Hydro that it is probably not important whether Mr. Hurd's concern focuses on the Commission's approval of the legacy meter charge on an interim basis effective December 1, 2013 pursuant to Order G-167-13 or the Commission's denial of the request to extend the commencement of the interim charge pursuant to Order G-186-13. Therefore, the Commission is prepared to consider all the submissions whether they relate to either Order G-167-13 or Order G-186-13.

6.2 Relief Sought in the Reconsideration Application

Mr. Hurd submits that there is sufficient evidence now for the Commission to rescind Order G-167-13 to avoid the time and cost of conducting a reconsideration proceeding (which the Commission Panel understands to be a Phase 2 proceeding). Furthermore, he suggests that the Commission allow all consumers with existing smart meters (after being provided with the 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.

6.3 Commission Findings

The Commission Panel finds that there is no error of law or fact on a *prima facie* basis.

RDCK submits that the Commission erred in acceding to BC Hydro's request that the interim order was premature and that customers were not provided with the opportunity to submit evidence and make submissions. Mr. Mansell submits that the Commission's order was in error because "it did not properly consider or request additional information from BC Hydro on the merits and justice of alternate fee structures and did not consider the impact of lower fees would have on the general public's level of acceptance or rejection of legacy and radio-off meters." Mr. Polden submits that the Commission may "apparently not have previously considered the full extent of unreasonable influence upon the numbers that was occasioned by the utility's actions."

With respect to the RDCK's submission that the interim order was premature and without evidentiary basis, the Commission Panel disagrees. Further, the Commission Panel declines Mr. Hurd's request to rescind the interim charges. The Panel will now review the events leading up to the setting of interim and refundable charges.

Section 3 (3) of Direction No. 4 required the Commission, within 30 days from the date the direction came into force, to issue an order amending BC Hydro's Electric Tariff by adding the provisions set out in the Appendix to the Direction. The Commission issued Order G-166-13 on October 9, 2013, which approved the amendments. Section 4.2.2(d) of the tariff provisions, which the Commission approved, provides as follows:

> 4.2.2
> The conditions that must be satisfied in order for BC Hydro to permit to remain in operation, install, replace, maintain and service Legacy Meters or Radio-off Meters at a Residential Customer's Premises are:
> …
> (d) the Customer, despite satisfaction of the conditions set out in clauses (a) and (b) has failed to provide notice of election to BC Hydro in accordance with clause (c), in which case the Customer shall be deemed to have elected, effective December 1, 2013, to retain the existing Legacy Meter at the Customer's Premises <u>and the Customer shall thereafter pay the charges for having a Legacy Meter installed at the Customer's Premises as set out in the Schedule of Standard Charges</u>. [Emphasis added.]

Thus, the Commission Panel was required to set the charges for Legacy Meters effective December 2, 2013.

The Commission received the BC Hydro Application, which outlined the proposed charges, on October 7, 2014. The Commission's review process typically consists of a number of steps, including: Intervener Registration, one or more rounds of Information Requests to test the evidence and argument by all parties once they have had the opportunity to review the evidence. The Commission Panel considered that a fulsome review of the BC Hydro Application required two rounds of Information Requests, followed by a written hearing with arguments provided by all parties and a reply argument from the Applicant. In the Commission Panel's view, the nine weeks between October 7 and December 1 did not provide sufficient time for this process.

Thus the options available to the Commission Panel were:

1. Approve the charges as applied for by BC Hydro with no review process;
2. Compress the time of the review process so that it was completed and a decision was issued by December 1; or
3. Provide all parties with sufficient time to conduct a fulsome review of the BC Hydro Application, but also provide for interim and refundable charges to allow BC Hydro to begin to recover its costs, as required by Direction No. 4.

In the Commission Panel's view, a fulsome review of the proposed charges was required. Accordingly, it chose to proceed with such a review and, to comply with the provisions of Direction No. 4, set the interim and refundable charges pending the completion of the review. The BC Hydro Application constituted the only available evidence for the quantum of the interim and refundable charges. Since the interim charges are potentially refundable, ratepayers in the Meter Choice Program will be entitled to a refund of the amount paid in excess of the approved charges in the event that the approved charges are less than the charges applied for in the BC Hydro Application. The evidence supporting BC Hydro's proposed charges has been tested through the IR process. Final Submissions have been received on the BC Hydro Application and the proceeding is at the decision-making stage. Once the Commission Panel has completed its review of all the evidence, it will be in a position to best determine what the final charges should be.

BCPSO submits that "while approval of interim rates is routine, this approval concerns interim *charges* rather than interim *rates*; approval of interim charges is less routine." The Commission Panel observes that "rate", as defined in section 1 of the Act, includes "(a) a general, individual or joint rate, fare, toll, <u>charge</u>, rental or other compensation of a public utility." [Emphasis added] In the Commission Panel's view, approval of the proposed charges on an interim and refundable basis was appropriate in this case for the same reasons it provides in response to the RDCK submission.

With regard to Mr. Hurd's suggestion that the Commission allow all consumers with existing smart meters to make an informed decision to opt-out of their smart meters and into a radio-off meter free of the threat of interim fees to influence their decision, the Commission Panel notes that it is prohibited from doing so. Section 4(2)(b) of Direction No. 4 provides:

> (2) The commission must not require the authority to install a legacy meter or radio-off meter for
> …
> (b) an applicable customer, if a smart meter is installed at the applicable premises of the applicable customer on or after the date this direction comes into force.

Accordingly, the Commission has no authority to grant Mr. Hurd's request.

Mr. Hurd submits that interim opt-out fees have had a very significant influence upon an individual's decision to opt in or out. Mr. Mansell and Mr. Polden argue, in part,: (i) that the Commission did not properly consider or request additional information from BC Hydro on the merits and justification of the impact that lower fees would have on the general public's level of acceptance or rejection of legacy and radio-off meters *per se*, and (ii) that the prior actions of the utility have skewed the number of eligible customers. These issues are not within the scope for the review of charges in the Meter Choices Program under Direction No. 4. The only consideration in setting the interim charges is the ability of BC Hydro to recover the costs of the Meter Choice Program from the customers participating in the program.

Mr. Hurd invokes section 75 of the Act to question whether the interim charges decision was based on the true merits of the case. Mr. Mansell also references section 75 in support of his submissions.

Section 75 of the Act provides as follows:

> 75 The commission must make its decision on the merits and justice of the case, and is not bound to follow its own decisions.

The Commission was required to set the charges for Legacy Meters effective December 2, 2013. It did so on an interim basis by Order G-167-13. The Commission has not made its final decision on those charges. The interim decision is just that. It has afforded the Commission and the Interveners the opportunity to test the evidence in such a way as to allow the parties to make submissions on what the final charges should be. Further, and in any event, the Commission is required to comply with Direction No. 4 despite any other provision of the Act. Therefore, to the extent section 75 conflicts with Direction No. 4, the Direction governs.

RDCK raises constitutional and Charter issues in its submissions. It references its Final Submissions on these issues in the current proceeding. These are not matters that Mr. Hurd raised in the Reconsideration Application and therefore they have not been addressed by other parties except for Mr. Hurd who states he would like to refer to them as an additional and supplementary rationale for reconsideration. (Hurd Reply, p. 3) RDCK could have brought its own Reconsideration Application. Had it done so, BC Hydro and other parties would at least have had the opportunity to provide their comments on these issues. The Panel is not, therefore, prepared to consider RDCK's constitutional and Charter arguments for the purposes of the Reconsideration Application.

The Commission Panel finds the Reconsideration would have no significant material implications.

With regard to altering the interim charges, the Panel notes BC Hydro's submission that a successful reconsideration and variance could only result in prospective billing adjustment and to the extent that the Commission determines in its final decision on the BC Hydro Application that the charges should be varied from those approved on an interim basis, the result would be the same prospective billing adjustment, subject to an order from the Commission. The Commission Panel concurs. Further, as noted above, the only consideration in setting interim charges is the ability of BC Hydro to recover the costs of the Meter Choices Program from the customers participating in the program. Therefore, the Panel finds that even if there is an error in setting the interim charges, the error has no significant material implications.

For all the above reasons, the Reconsideration Application is dismissed.