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September 28, 2018

British Columbia Utilities Commission  
Suite 410  
900 Howe Street  
Vancouver, BC V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Services

**Re: ICBC Comments on British Columbia Utilities Commission (BCUC) –  
Proposed New Rules of Practice and Procedure for Reconsideration  
Applications – Consultation Request**

Dear Mr. Wruck:

Thank you for the opportunity to comment on the draft Rules of Practice and Procedure (Rules) for filing and hearing reconsideration applications, as set out in BCUC's August 8, 2018 letter. ICBC is generally supportive of the draft Rules and offers some comments here for BCUC's consideration.

First, as a general comment, ICBC welcomes the changes and the elimination of the two-step process. The proposed changes greatly clarify the reconsideration application rules and makes it a more efficient process.

**Filing an Application for Reconsideration**

ICBC understands Rules 26.01 and 26.02 as setting out a person's standing to file an application for reconsideration. ICBC supports these rules as they provide clear criteria for assessing a person's standing for bringing forward a reconsideration application.

However, ICBC believes that Rule 26.02 could be further clarified. The rule currently reads:

26.02 A person, other than the applicant in the original proceeding, who was not an intervener in the original proceeding that gave rise to the decision may not file an application for reconsideration without obtaining prior leave of the BCUC. ...

ICBC interprets Rule 26.02 as applying to reconsideration applications from persons who did not participate in the original proceeding. ICBC respectfully suggests that the following underlined revisions would make that point clear:

26.02 A person, other than the applicant or an intervener in the original proceeding, may not file an application for reconsideration of a decision arising from the original proceeding without obtaining prior leave of the BCUC. ...

ICBC also notes that Rules 26.01 and 26.02 use slightly different wording when determining whether a person has standing. Under Rule 26.01, a person has to be "directly affected"

while a person under Rule 26.02 has to be “materially affected” to be allowed to apply for a reconsideration. ICBC suggests that the terms in both Rules should be the same. This difference in wording may lead to different interpretations and consequently, different standards for reconsideration applications assessed under Rule 26.01 as opposed to those assessed under Rule 26.02.

### **Limitation Periods**

ICBC supports the inclusion of limitation periods for filing reconsideration applications under Rules 26.03 and 26.04.

However, ICBC respectfully suggests that the limitation period set out in Rule 26.03 be lengthened from within 60 days to within 120 or 180 days of the date of the decision as the impacts or implications of an order may not be readily evident within the 60 day period.

ICBC also notes that Rule 26.04 is inconsistent with the wording in Rule 14.2.9 of the New Participant Assistance/Cost Award (PACA) Guidelines (Order G-97-17). ICBC prefers the clear wording of Rule 26.04 and respectfully suggests that the wording in Rule 14.2.9 be changed to match the wording here.

Lastly, ICBC notes that under Rule 26.03, the limitation period for general reconsideration applications is set out in calendar days; under Rule 26.04, however, the limitation period for PACA reconsiderations is set out in business days. ICBC suggests that both limitation periods should use calendar days.

### **Formal Requirements of an Application for Reconsideration**

ICBC seeks clarification on the wordings in Rules 26.05(b) and (d). They currently read:

Rule 26.05 An application for reconsideration must be filed in accordance with the rules pertaining to document filing and must:

...

b) identify the decision affected

ICBC understands “decision affected” to mean the decision under reconsideration and respectfully suggests that the wording be changed to make that point clear.

### **Grounds for Reconsideration**

ICBC supports the update to the grounds for reconsideration and supports the requirement that an application for reconsideration must show one or more of the listed grounds in order to proceed. ICBC also supports the grounds that are set out as they cover the most likely scenarios in which a reconsideration may be sought. However, ICBC respectfully suggests that the BCUC retain “just cause” as a ground for reconsideration. ICBC believes this ground provides the BCUC the flexibility to address any fairness issues that may arise from any reconsideration applications that do not fit into the other four grounds.

## **Reconsideration Hearing - Interveners**

ICBC wishes to reiterate the comment from its September 25, 2015 Comment regarding the Review of Framework Governing the Participation of Interveners in Commission Proceedings – August Draft:

In the interest of procedural fairness and efficiency, ICBC believes that new intervener applications for participation in a reconsideration should not be permitted unless an explanation is provided for why the party did not intervene in the original proceeding.

ICBC therefore respectfully suggests that the following underlined portion be added to Rule 29.03:

29.03 Any person who wishes to intervene in the reconsideration hearing must make such request in accordance with the rules pertaining to request for intervener status in a proceeding and where the person was not an intervener in the original proceeding, the person must explain why the person did not intervene in the original proceeding.

## **Commission's Discretionary Powers**

ICBC understands that the Commission has retained discretion regarding certain aspects of the reconsideration process:

25.02 The BCUC, on application or on its own motion, may reconsider a decision and may confirm, vary or rescind the decision.

26.03 Subject to Rule 26.04, an application for reconsideration must be filed with the BCUC and provided to registered parties to the original proceeding within 60 days of the date of the decision, unless otherwise authorized by the BCUC.

26.04 An application for reconsideration of a decision issued in relation to a participant assistance/cost award must be filed within 30 business days of the decision being issued, unless otherwise authorized by the BCUC.

27.02 The BCUC may, in its discretion or on application of a party, stay the operation of the decision in the original proceeding, or part of the decision in the original proceeding, or part thereof, pending the outcome of the reconsideration on terms the BCUC considers appropriate.

28.01 Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish, on its face, any reasonable grounds for reconsideration of the decision. [Emphasis added]

ICBC appreciates that the BCUC has retained discretion in these areas in the interest of fairness and efficiency to deal with unusual circumstances that may arise. There are, however, two points that ICBC wishes to make.

First, parties would benefit from a rule stating that the BCUC will notify other parties prior to exercising its discretionary powers and making a decision under Part V. Absent such a rule, the BCUC's exercise of its discretionary powers may be procedurally unfair in some circumstances. For example, Rule 26.03 requires an applicant for reconsideration to file and provide the other registered parties its application for reconsideration within 60 days of the date of the decision, unless otherwise authorized by the BCUC. The rule, however, is silent on if or when the other registered parties would be notified in the event of a request for an extension. This could lead to a situation where the BCUC decides to extend the limitation period which may harm another party's interest. However, the affected party will not be able to address the issue if that party is not made aware of the request for an extension.

Second, ICBC respectfully suggests that there should be a separate section setting out what rules and requirements the BCUC will follow in any reconsiderations initiated by the BCUC's own motion. ICBC suggests that reconsiderations initiated by the BCUC's own motion should follow similar rules and requirements to those set out in Part V, such as timeline and notification to the other parties, but with the discretion to depart from them if circumstances warrant.

ICBC appreciates the opportunity to comment on the BCUC's draft Rules and believes they are a step towards increased efficiency, fairness, and effectiveness.

Yours truly,

A handwritten signature in black ink, appearing to read "June Elder". The signature is fluid and cursive, with a large initial "J" and "E".

June Elder  
Manager, Corporate Regulatory Affairs

Cc: Nicolas Jimenez, President and CEO, ICBC