

**In the Matter of  
British Columbia Hydro and Power Authority (BC Hydro)  
Application to Amend Net Metering Service under Rate Schedule 1289  
Project No. 1599004**

**Net Metering Ratepayers Group  
And  
British Columbia Community Solar Coalition  
Application for Reconsideration of  
BCUC June 23, 2020 Decision and Order G-168-20**

## **Introduction**

1. The Net Metering Ratepayers Group (NMRG) and British Columbia Community Solar Coalition (BCCSC) have reviewed the BCUC's Decision dated June 23, 2020 and Order G-168-20 (Decision).
2. NMRG and BCCSC submit this Application for Reconsideration of the Decision on the basis that certain determinations made by the Panel in the Decision were incorrect and based on multiple errors of law and fact. The Panel's impugned determinations go to the very heart of the concept of net metering – what component makes it “net”. Unless those erroneous determinations are acknowledged and corrected, the Decision is likely to seriously undermine public confidence in the BCUC and its ability to properly understand and fairly regulate net metering in British Columbia.

## **Background**

3. The Decision was issued by the BCUC following the conclusion of the proceeding to review BC Hydro's Application to Amend Net Metering Service under Rate Schedule 1289 - Project No. 1599004.

## **Application for Reconsideration**

4. Pursuant to the British Columbia Utilities Commission Rules of Practice and Procedure Order G-15-19 PART V – RECONSIDERATION NMRG and BCCSC bring this Application for Reconsideration of the Decision.

## **Impact and Materiality of the Decision**

5. Section 26.04(d) of the BCUC Rules of Practice and Procedure prescribes that an applicant for reconsideration must describe the impact of the decision and how it is material.
6. The Panel's errors indicate both a fundamental misunderstanding of a key element of net metering (i.e. “Net Generation Outflow”) and indicate an apparent attempt to interpret key elements of BC Hydro's evidence in a manner that is completely inconsistent with the plain and ordinary meaning of that evidence.
7. The Panel also erred in giving undue and improper weight to BC Hydro's Reply Argument submissions related to Net Generation Outflow and Figure 3 in the Decision.

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8. The Decision makes clear that the incorrect interpretation or inappropriate “correction” of the impugned elements of BC Hydro’s evidence changes a key piece of BC Hydro’s case and directly affects the outcomes reflected in the Decision. Those errors create an unfair and inappropriate advantage for BC Hydro and give rise to substantial prejudice to NMRG and BCCSC.

9. All parties to a BCUC proceeding are entitled to a fair and reasonable opportunity to discover the facts that inform the issues in dispute and understand the case they must meet both in their evidence and other filings and address in their Final Arguments. The Panel’s errors in allowing unwarranted and substantial changes to BC Hydro’s evidence *after the proceeding concluded* necessitate reconsideration of and material changes to the Decision.

### **Grounds for Reconsideration**

10. Section 26.04(e) of the BCUC Rules of Practice and Procedure prescribes that an applicant for reconsideration must set out the grounds for reconsideration in accordance with Rule 26.05.

11. Section 26.05 of the BCUC Rules of Practice and Procedure states:

“An application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which must include one or more of the following:

- a) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
- b) facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding;
- c) new fact(s) have arisen since the issuance of the decision which have material bearing on the decision;
- d) a change in circumstances material to the decision has occurred since the issuance of the decision; or
- e) where there is otherwise just cause.”

**Error of Fact: Expressly Determining That BC Hydro’s “Figure 3: Residential (RS 1101) Net Generation Outflow Pattern” Can Be Relied Upon**

12. The first ground of reconsideration pursuant to Section 26.05(a) is that the BCUC made a substantial error of fact by expressly determining that BC Hydro’s “Figure 3: Residential (RS 1101) Net Generation Outflow Pattern”<sup>1</sup> can be relied upon.

13. The only possible plain and ordinary meaning of “Net Generation Outflow Pattern” is that it reflects a measure of generation outflow after something else is accounted for. It can only be *net* generation outflow if something has been subtracted from a larger *gross* generation. Without such an adjustment use of the word “*NET*” in that phrase would be misleading and nonsensical.

14. The Panel paraphrases:

“BC Hydro also explains that Figure 3 above only shows generation outflow and not outflow after inflow has been deducted or after all 409 customer loads have been satisfied, as NMRG/BCCSC appears to be assuming.”<sup>2</sup>

15. The 409 customer loads referred to are all Net Metering customers. BC Hydro meters at only one location per Net Metering customer account so any generation outflow must necessarily be after that customer’s load has been satisfied or there would be no outflow.

16. The plain and ordinary meaning of the phrase means the NET Generation Outflow must be “net” of something. The obvious possibilities are that the Generation Outflow is NET of inflow, net of that customer’s own load being satisfied, or both. It must be NET of something or else any use of that word is misleading and incorrect.

17. Even if the Panel accepted BC Hydro’s improperly late “explanation” of the meaning of “*Net* Generation Outflow” in Figure 3, which NMRG and BCCSC submit should not have been accepted, the title of Figure 3 would then have been necessary to change the title to “*Gross* Generation Outflow” or fully and clearly explain what makes it a *net* outflow.

18. BC Hydro’s late “explanation” of the phrase offers nothing to indicate that the word “NET” should have been used at all in that figure. If the intent was to illustrate Generation Outflow that was NET of anything, there is no evidence in the record to indicate what it is NET of. BC Hydro can not now offer a further explanation, and it is improper for the Panel

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<sup>1</sup> Figure 3 is BC Hydro’s Figure 1 in BCUC 1.5.2, reproduced at PDF 28 of the Decision.

<sup>2</sup> Decision, PDF 28, last paragraph.

to offer or substitute its own interpretation of what component is subtracted from Gross Generation Outflow to render it a NET amount.

19. If BC Hydro meant EXCESS Generation Outflow, rather than NET Generation Outflow, it was required to state that in its evidence or a timely errata during the proceeding. BC Hydro did not do so. It is improper to amend, shade, or change evidence in Reply Argument. Excess Generation is BC Hydro's own term that has a very specific meaning.

20. The Panel Determination states:

“Moreover, NMRG/BCCSC in making its argument does so on the basis that Figure 3 was net outflow. BC Hydro has confirmed this is not the case as Figure 3 shows only generation outflow.”<sup>3</sup>

21. The above quoted passage conclusively demonstrates the Panel's error. NMRG and BCCSC indeed did make its Final Argument “on the basis that Figure 3 was *net* outflow. Anyone can plainly see on page 24 (PDF 28) the title “Figure 3: Residential (RS 1101) *Net* Generation *Outflow* Pattern. No reasonable person could conclude from that *evidence* (note that Figure 3 is itself reproduced from Figure 1 in BC Hydro's Response to BCUC IR 1.5.2 Exhibit B-3) that Figure 3 data represents anything other than NET Generation Outflow.

22. The Panel greatly compounds its error by stating “BC Hydro has confirmed this is not the case as Figure 3 shows only generation outflow”, which reflects at least five additional significant errors.

23. First, that so-called “confirmation” is in fact purporting to change key evidence. Suggesting that Figure 3 represents data showing something other than NET Generation Outflow is not “confirming” anything – it is completely changing the plain and ordinary meaning of the word NET in the title and the related discussion introducing the Figure in BCUC IR 1.5.2. Notably, BC Hydro in this context never used the word “confirm” or any derivative form. Rather BC Hydro tried to suggest a different meaning “for clarity”. Purporting to make a fundamental *change* to evidence in a footnote in Reply Argument does not properly add any clarity – it introduces uncertainty and confusion.

24. Second, the so-called “confirmation” referred to by the Panel was provided in Reply Argument, which is by definition not evidence.

25. Third, BC Hydro's Reply Argument made only a single mention of “generation outflow” – and that was in a footnote! It appears in footnote 13 on page 5 of BC Hydro's Reply Argument.

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<sup>3</sup> Decision, PDF 29, last paragraph, lines 6 through 8.

26. Fourth, BC Hydro's Reply Argument never made a single mention of "Net Generation Outflow" which is the key part of the title of Figure 3.

27. Fifth, the Panel clearly erred in stating "BC Hydro has confirmed this is not the case as **Figure 3 shows only generation outflow.**" (emphasis added) Fatally to the Panel's erroneous interpretation, the text portion describing Figure 1 (reproduced in the Decision as Figure 3) in BCUC IR 1.5.2 states unequivocally:

"Figure 1 below **shows the actual net generation (outflow) pattern** of 409 Residential (RS 1101) Net Metering customers in fiscal 2016." (emphasis added)

28. Accordingly, the flaw in BC Hydro's evidence is made not only in the title of the Figure, but also in the accompanying detail. Yet BC Hydro's evidence does not contain any explanation of what makes the Figure reflect **net** generation. That shortcoming is not NMRG and BCCSC's responsibility to reconcile or explain – it was up to BC Hydro to do so. In the absence of such an explanation in **evidence** (not in Reply Argument) that aspect of BC Hydro's evidence is unreliable.

29. Any explanation of "NET Generation Outflow" offered by either BC Hydro or the BCUC now, after the proceeding has ended and the evidentiary record has closed, would be improper.

**Error of Law: Permitting BC Hydro To Improperly Change Key Evidence In Its Reply Argument Thereby Preventing Interveners From Testing the New Evidence Through Information Requests or Addressing in Final Argument**

30. NMRG and BCCSC respectfully submit that the Panel made a serious error of law by permitting BC Hydro to change key evidence in Figure 3 in its Reply Argument. By doing so, the Panel effectively ensured that Interveners had no opportunity to test that new evidence (i.e. that NET Generation Outflow apparently had no "net" component whatsoever, or if it did, it remains unknown what that net component is) through Information Requests or other procedural steps.

31. Further, permitting BC Hydro to fundamentally change key evidence in Figure 3 in the final procedural step of the entire proceeding deprived Interveners of any opportunity to address the new evidence in their respective Final Arguments. Instead, NMRG and BCCSC reasonably based their Final Argument on the evidence in the record – specifically Figure 3 showing **actual NET** Generation Outflow Pattern. That resulted in a Final Argument altogether different than if NMRG and BCCSC had understood Figure 3 to be **Gross** Generation Outflow Pattern.

32. The Decision also paraphrases:

“BC Hydro submits that some of the NMRG/BCCSC arguments do not account for the stark differences that exist between the electricity service that BC Hydro provides, and the *net excess generation provided by Net Metering customers.*”<sup>4</sup>

33. The paraphrased passage introduced another phrase – Net *Excess* Generation – that is not reflected in the title, or apparently the data in the chart, in Figure 3. Nor did BC Hydro’s late “explanation” reconcile “Net Generation Outflow Pattern” with “Net Excess Generation”. There is no *evidence*<sup>5</sup> in the record that reconciles BC Hydro’s use of the two different phrases as they relate to Figure 3 or the data it contains.

34. If BC Hydro had an “explanation” to suggest that Net Generation Outflow did not actually mean Net Generation Outflow – which is precisely what it attempted to do in its Reply Argument – it was necessary to do so at some point in the proceeding that offered Interveners a fair opportunity to conduct discovery of the changed evidence and make arguments accordingly. The resulting substantial prejudice to NMRG and BCCSC, and perhaps other Interveners, can’t be undone now.

35. The Panel Determination for this section of the Decision expressly states:

“The *key issues that have been identified are whether the consumption data provided by BC Hydro can be relied upon* and whether there are demand savings with respect to Net Metering facilities.”<sup>6</sup> (emphasis added)

36. In light of the express importance the Panel itself gives to this issue, the errors in Figure 3 and the Panel’s determinations related to it, have material impacts on the outcome of this proceeding.

### **Error of Law: Improperly Placing the Onus Of Proof On NMRG and BCCSC Rather Than On the Applicant BC Hydro**

37. The Panel Determination states:

“**With respect to the consumption data, the Panel finds the data provided from BC Hydro can be relied upon.**

BC Hydro has stated that the information has been tabulated from Measurement Canada certified revenue meters which are the standard for billing purposes.

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<sup>4</sup> Decision, PDF 29, second paragraph concluding the section titled “BC Hydro Reply Argument”.

<sup>5</sup> BC Hydro’s Reply Argument obviously can’t be considered as evidence.

<sup>6</sup> Decision, PDF 29.

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NMRG/BCCSC, on the other hand, have reasoned that consumption levels for Net Metering customers should be at or lower than those of non-participants. However, they have provided no evidence of this and have based their arguments on logic they have applied. The Panel notes the NMRG/BCCSC had the opportunity to raise this in the IR phase and doing so may have provided more detailed evidence with respect to consumption patterns thereby explaining the difference. They also had the opportunity to file evidence on behalf of alternative data. However, they did not do so. The fact that the NMRG/BCCSC did not raise this issue until Final Argument makes the matter even more difficult as neither BC Hydro nor the other participants have been afforded the opportunity to test this position. **Therefore, the Panel finds that little weight can be placed on the concerns raised by NMRG/BCCSC with regard to consumption data and Energy-related costs in BC Hydro's cost shifting calculation in Table 3.**" (bold emphasis appeared in the Decision; underlined emphasis added)

38. The onus of proof in this proceeding is on the Applicant BC Hydro, not NMRG and BCCSC. It is noteworthy that the Panel has expressly noted NMRG and BCCSC's opportunity to file evidence and not raising an issue until Final Argument when BC Hydro and other parties had no opportunity to test this position. Yet the Panel was silent on BC Hydro changing the meaning of Figure 3 in its Reply Argument which deprived all other parties of any opportunity to test it or address in Final Argument, or the multiple opportunities that BC Hydro had to change its evidence regarding *NET* Generation Outflow at any point in the proceeding prior to the Argument phase.

39. Such uneven treatment of parties is inappropriate, particularly when it was done in a manner that shifts the onus away from the Applicant to select Interveners. BC Hydro failed to offer clear and timely evidence of the meaning of Figure 3 and the data it contained. Accordingly, BC Hydro failed to prove a key element of its case and the Panel erroneously made determinations based on that unreliable evidence.

All of which is respectfully submitted:

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