



LETTER NO. L-1-08

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log. No. 23143

ERICA M. HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

VIA EMAIL

support@bcpiac.com

January 22, 2008

Ms. Leigha Worth / Mr. Jim Quail
Barrister and Solicitor
BC Public Interest Advocacy Centre
British Columbia Old Age Pensioners' Organization *et al.*
208-1090 West Pender Street
Vancouver, B.C. V6E 2N7

Dear Ms. Worth and Mr. Quail:

Re: British Columbia Power and Hydro Authority ("BC Hydro")
2007 Rate Design Application – Phase 1
Request for Reconsideration of Commission Decisions

The Commission has reviewed the British Columbia Old Age Pensioners' Organization *et al.*'s ("BCOAPO") application of December 6, 2007 requesting a reconsideration of certain orders in the October 26, 2007 Decision regarding the 2007 Rate Design Application filed by BC Hydro and has concluded that a *prima facie* case has not been established for the application to proceed to the second phase of the reconsideration process. Therefore, the Commission denies the BCOAPO application for reconsideration.

Attached as Appendix A to this letter are the Reasons for Decision.

Yours truly,

Original signed by:

Erica M. Hamilton

EC/rt

Attachment

cc: British Columbia Hydro and Power Authority (*bchydroregulatorygroup@bchydro.com*)
Joint Industries Electrical Steering Committee (*danpotts@shaw.ca*)
Commercial Energy Consumers (*dwcraig@allstream.net*)
Terasen Utilities (*regulatory.affairs@terasengas.com*)
Corix Multi-Utility Service Inc. (*ron@highcliff.ca*)
FortisBC Inc. (*regulatory@fortisbc.com*)

British Columbia Hydro and Power Authority
2007 Rate Design Application Phase I
Request for Reconsideration of Commission Decision

REASONS FOR DECISION

1.0 BACKGROUND

On March 15, 2007 British Columbia Hydro and Power Authority ("BC Hydro") filed its 2007 Rate Design Application ("2007 RDA") with the British Columbia Utilities Commission (the "Commission"). Following an Oral Public Hearing, the Commission issued interim Order No. G-111-07 dated September 19, 2007 and a decision issued concurrently with Order No. G-130-07 dated October 26, 2007.

By letter dated December 6, 2007 ("Application"), the British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO") applied for a reconsideration of two orders made in the October 26, 2007 Decision ("Decision"). The two orders that the BCOAPO letter asks the Commission to reconsider and reverse are found respectively at pages 71 and 110 of the Decision:

1. BC Hydro is directed to adjust its rates in equal percentage amounts over the next three years so as to achieve R/C [Revenue-to-Cost] ratios of unity for each class after adjustments to the FACOS [Fully Allocated Cost of Service] Study as described elsewhere in this Section and to file Rate Schedules for all classes for the first phase of the three year phase-in with rates effective April 1, 2008 with the Commission, together with supporting documentation, within 60 days of the date of Order No. G-111-07.
2. BC Hydro is directed to file Rate Schedules for its residential class to be effective April 1, 2008, which will reflect the first phase of a three-year equal percentage phase-in to achieve the revenue cost ("R/C") ratios of 1.0 based on the revised FACOS.

Pursuant to the Commission's publication "Understanding Utility Regulation: A Participants' Guide to the B.C. Utilities Commission" ("Commission's Guide"), an application for reconsideration undergoes an initial screening phase where the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The criteria which the Commission generally applies as a guide in determining whether or not a reasonable basis exists for allowing a reconsideration are the following:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle has not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

Where an error has been alleged to have been made, in order to advance to the second phase of the reconsideration process, the Application must meet the following criteria:

- the claim of error has been substantiated on a *prima facie* basis; and

- the error has significant material implications.

By Commission Letter No. L-101-07 dated December 14, 2007 (“Commission Letter”) which was sent to all registered parties to the proceeding, BC Hydro and other Participants were invited to provide comments to the Commission on the following specific questions:

- Should there be a reconsideration by the Commission?
- If there is to be a 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 BCOAPO’s Application that the Commission reconsider the Decision and vary it accordingly?

All Parties were invited to comment by December 21, 2007 and BCOAPO was invited to respond by January 7, 2008. The first three questions are taken from the Commission’s Guide. The Commission Letter attached a copy of the Reconsideration and Appeals section from the Commission’s Guide.

2.0 BCOAPO’s APPLICATION

BCOAPO submits that the two orders at issue should be subject to reconsideration on three grounds. First, that the Commission’s decision to order BC Hydro to amend its rate schedules to move all customer classes to an R/C ratio of 1.0 according to the revised FACOS was not supported by evidence and as a result the Commission Panel committed an error of law.

Second, BCOAPO submits that this determination was inconsistent with the Commission’s own reasoning in the Decision.

Third, BCOAPO submits that BC Hydro’s subsequent filing of the calculated rate impacts resulting from the two orders provides new evidence which was not available at the time the Decision was made.

BCOAPO submits that it is a well-established Commission policy that the appropriate target for the R/C ratio of any customer class is not unity but a range of reasonableness. It cites as an example the Commission decision on Centra Gas British Columbia Inc. (“Centra”) dated June 5, 2003 (“2003 Centra Decision”) which stated that,

“For a financially healthy and mature utility, the Commission would expect the range of revenue to cost ratios across customer classes to tend toward 0.9 to 1.1, all other objectives being satisfied. The Commission finds that in the circumstances of an immature utility it would be unreasonable to limit revenue to cost ratios within a narrow range and thereby limit the consideration of other circumstances in the design of rates, which meet the public interest.”

BCOAPO argues that the evidence adduced during the hearing showed that R/C ratio is the product of numerous judgment calls and its precision is illusory and that the Commission erred in law by ignoring this evidence and proceeding in the absence of evidence to the contrary.

BCOAPO submits that the reasoning in the Decision was the Commission Panel's acceptance that an R/C ratio should be tempered by a range of reasonableness. BCOAPO believes that the Commission has committed a logical inconsistency or an error of law by ordering BC Hydro to adjust its rate schedules so that the R/C of all rate classes would be unity.

BCOAPO submits that the Commission must be cognizant of the impact of its decisions on the public. It submits that the information contained in the compliance filing ("RDA Compliance Filing") constitutes new evidence which provides a Phase I basis for reconsideration to proceed. In addition, BCOAPO cites a number of other factors such as upcoming Calls for Tender and applications by BC Hydro and British Columbia Transmission Corporation ("BCTC") for "substantial" increased revenue requirements that it submits will put "upward pressure on rates". It also submits that "The result of the arbitrary decision that all rate classes RCRs should be pegged at unity will not only contribute to the impacts of all of these foreseeable ratepayer costs, but will compound them because a larger share of every increment in BC Hydro's revenues will come from residential consumers. There is no way of knowing what other shocks may be in the offing, except that we know that none of these foreseeable items address the unquantified but inevitably very large impact of pending climate change policy on rates."

3.0 SUBMISSIONS FROM INTERVENORS AND BC HYDRO

Six parties responded to the Commission Letter. One party, FortisBC Inc. ("FortisBC"), responded without making submissions. FortisBC reserved its right to raise issues or submit evidence if the Application is allowed to proceed to the next phase. In that event, FortisBC intends to participate.

BC Hydro is the only party that supports BCOAPO's submission that the claim of error is established on a *prima facie* basis. BC Hydro takes the position that the Commission's directions to BC Hydro to: (a) bring BC Hydro's rates to R/C ratios of 1.0 within three years and (b) that R/C ratios should be maintained within a range of 95 percent to 105 percent are logically inconsistent and therefore could only have come about by an error in analysis. BC Hydro supports its submission by using the resultant residential rates from its RDA Compliance Filing to demonstrate that if the Commission had only directed BC Hydro to bring its rates within the approved 95 percent to 105 percent range of reasonableness, the third year rate changes would largely disappear, all else being equal. However, although BC Hydro submits that the claim of error can be established on a *prima facie* basis, it also submits that it does not support the reconsideration application as brought by the BCOAPO because "BC Hydro and its intervenors are in the midst of preparing for what is shaping up to be one of the fullest regulatory agendas they have ever faced" and such a proceeding would disrupt BC Hydro's other filings with the Commission. BC Hydro submits that in the event the Application is allowed to proceed to the second phase, the only additional evidence should be the 2007 Compliance Filing and the reconsideration should be limited in focus to the third year of the three year phase-in.

Four parties: the Terasen Utilities, the Commercial Energy Consumers Association ("CEC"), the Joint Industry Electricity Steering Committee ("JIESC"), and Corix Multi-Utility Services Inc. ("Corix") submit that BCOAPO's claim of error is not substantiated on a *prima facie* basis.

Terasen Utilities submit that the R/C ratio is a matter for the Commission to determine and that the Decision itself dispels any notion that the Commission acted "arbitrarily" and failed to consider factors other than cost recovery in establishing R/C ratios. Terasen Utilities submit that the Commission had expressly considered rate impacts and stability and implemented a phase-in period to address the issue. Terasen Utilities disagree with BCOAPO's assertion that it is well-established policy that the appropriate target for the R/C ratio of any customer class is not unity but a range of reasonableness, and cites as an example the Commission approval of a specific R/C ratio of 1.25 for one of Centra's customer classes in the 2003 Centra Decision. Terasen Utilities also submit that BCOAPO has not established that there is new evidence in the form of the magnitude of the rate

recalculation on residential customers. Terasen Utilities' position is that there was information in evidence in the hearing that allowed all Intervenors to foresee that the increase would be "somewhat over 10 percent".

The CEC submits that the Decision does not represent a change in policy as argued by BCOAPO, since the Commission has no policy with regard to setting R/C ratios. The CEC submits that the Decision provided detailed consideration of the voluminous evidence which was before the Commission. The CEC further submits that BCOAPO is rearguing positions it took in the Hearing which had not been accepted by the Commission. The CEC believes that BCOAPO misunderstands the concept of establishing the R/C ratios at a point in time and the existence of a range of reasonableness being established within which R/C ratios may shift over time. Therefore in the CEC's submission, BCOAPO's conclusion that the R/C ratios decision was inconsistent with the Commission's own reasoning in the Decision is incorrect. With respect to BCOAPO's submission that there is now new evidence, the CEC submits that there was evidence before the Commission of the rate impact of moving R/C ratios to 1.0 and that the Commission was aware of, and was concerned with, the impact of the rate rebalancing. The CEC further submits that even if BCOAPO's position that there is new evidence on rate impacts is correct, the evidence of the effect of a decision cannot justify reopening of the decision. To conclude otherwise, according to the CEC, would subject every decision of the Commission to reopening once the decision's effects became apparent.

The JIESC disagrees with BCOAPO that the Decision was not supported by evidence. The JIESC submits that there was ample evidence presented during the course of the proceeding for the Commission to determine the appropriate target for the R/C ratios of the various customer classes and to determine how a zone of reasonableness should be applied. The JIESC submits that the appropriate R/C ratio is not a matter of law nor is it a matter of fact, but a matter of judgment. On the issue related to BCOAPO's assertion that the Decision is not supported by the Commission's own reasoning, the JIESC submits that the Commission clearly recognized that allocations are not precise, but also recognized that there is no evidence of systemic bias one way or another in the allocation process. On the new evidence issue, the JIESC submits that nothing in the Application remotely approaches new evidence.

Corix submits that the magnitude of the rate shift is clearly on the record. It submits that there was no new information that could not have reasonably been known or deduced at the end of the evidentiary phase of the Hearing.

4.0 BCOAPO REPLY

In reply to the CEC submission, BCOAPO submits that if CEC was addressing cross-subsidy among rate classes outside the range of reasonableness, then BCOAPO agrees, but if the CEC's point was to address the deviations of R/C ratios within the range of reasonableness, then BCOAPO believes that CEC's assertion of cross-subsidy is a fallacy.

In reply to the JIESC submission, the BCOAPO disagrees with the JIESC's submission that the appropriate R/C ratio is neither a matter of law nor a matter of fact, but a matter of judgment. BCOAPO submits that the JIESC is wrong in law and that range of reasonableness is a tool used to set just and reasonable rates and the *Utilities Commission Act* provides that whether a rate is unjust or unreasonable is a question of fact. It submits that the Commission must apply its policy and expertise to the evidence to set just and reasonable rates. In doing so, it says the Commission must consider the broad totality of factors which address the public interest.

BCOAPO agrees with Terasen Utilities' assertion that it would not be proper for the Commission to blindly follow the principle that R/C ratios should always be 1.0. It submits, however, that the Commission has done exactly the improper thing described by Terasen Utilities in decreeing that R/C ratios should always be 1:1.

In reply to the BC Hydro submission, BCOAPO submits that BC Hydro takes the easy position by not supporting the reconsideration despite its position that there is *prima facie* case of an error in law in the Decision because it will not be the one bearing the financial burden of that error. BCOAPO submits that there is no legal principle which recognizes convenience as an excuse for allowing unfairness and error to continue despite a valid challenge.

5.0 COMMISSION DETERMINATIONS

The Commission Panel will address the grounds for reconsideration in the order in which they are set forth in the Application.

5.1 Moving All Customer Classes to a R/C Ratio of 1.0 is Not Supported by the Evidence

None of the parties who commented support BCOAPO's submission on this ground.

The Commission Panel is of the view that the Decision documents the Commission's review of the quality of the data on energy and capacity use for each of the customer classes, the symmetry of any uncertainty in the assumptions, the range of reasonableness used in other jurisdictions, and the Arguments submitted by Intervenor on whether each class of customer bears its fair share of costs (Decision, pp. 65-67). Also, the Decision documents the Commission's consideration of the methods of mitigation put forward by BC Hydro to lessen the impact on customers adversely affected (Decision, pp. 69-70).

The Commission Panel concludes that BCOAPO has not established a claim of error on a *prima facie* basis on the ground that the two orders are not supported by the evidence.

5.2 The Determination was Inconsistent with the Commission's Own Reasoning in the Decision

Only BC Hydro supports this ground for reconsideration. BC Hydro believes that it is logically inconsistent to be ordered bring BC Hydro's rates to R/C ratios of 1.0 within three years and also be directed to maintain a range of 95 percent to 105 percent.

The Commission Panel considers that the CEC correctly describes in its submission that the Commission's determinations hold two separate concepts: (1) the R/C ratios are established at a point in time; and (2) R/C ratios may shift over time and therefore a range of reasonableness is established within which the R/C ratios may shift. The Commission agrees with CEC that the decision to move R/C ratios for all customer classes to unity is logically consistent with narrowing the band of reasonableness to 95 to 105 percent.

The Commission's determination of the 95 percent to 105 percent range of reasonableness can be found at page 71 of the Decision. In the last paragraph on the page, BC Hydro was directed to undertake FACOS studies on an annual basis within 90 days of its fiscal year-end in order to calculate actual R/C ratios and determine the need for future rate rebalancing applications in regard to the 95 percent to 105 percent range of reasonableness and to submit the findings to the Commission. The Commission Panel views the direction to BC Hydro on the 95 percent to 105 percent range as a "trigger mechanism" for future rate rebalancing application and rejects BC Hydro's submission that the directions could only come about by an error in analysis by the Commission.

The Commission Panel concludes that BCOAPO has not established a claim of error on a *prima facie* basis on the ground that the determination was inconsistent with the Commission's own reasoning in the Decision.

5.3 The Compliance Filing by BC Hydro Based on the Two Orders Constitutes New Evidence

Only BC Hydro supports BCOAPO's submission that the impact of the rate design decision of 11.1 percent is new. BC Hydro submits that the cost shift to residential customers caused by third-year rate changes is in the order of \$40 million and is thus significant.

During the proceeding, evidence was adduced with respect to the appropriateness of the 12 CP methodology versus 3 CP or 4 CP for the allocation of demand-related generation and transmission costs; and the rate impacts under different allocation methodologies on different customer classes were analyzed (Decision, pp. 72-82). The Commission Panel accepts the JIESC submission that the evidence showed that the R/C ratios for the residential class are approximately 5 percent below unity using the 12 CP methodology, and significantly below unity using 1 CP methodology. The Commission Panel agrees with the JIESC and Terasen Utilities that there was information in evidence in the hearing suggesting that the R/C ratio for the residential class would be in the range of 90 percent or less based upon a 4 CP generation and transmission demand allocator and that BCOAPO should have foreseen that the increase would be somewhat over 10 percent.

Again, the Commission Panel was cognizant of the impact of the rate rebalancing and therefore in the Decision directed a phase-in period.

The Commission Panel notes BCOAPO's submissions that there would be upward pressures on rates aside from future costs in power purchases. The Commission Panel does not find that the references by BCOAPO to the 2006 Call for Tender, the Standing Offer Program and future calls, or that BC Hydro and BCTC may apply for increased revenue increases can be considered to constitute new evidence or information because they were not evidence before the RDA proceeding and could be not considered to be within scope of an RDA proceeding. Similarly, the Commission finds BCOAPO's reference to "other rate shocks in the offing", the "unquantified but inevitably very large impact" and "pending climate change policy on rates" to be topics beyond the scope of the RDA proceeding rather than new evidence. The Commission therefore finds that BCOAPO has not met the *prima facie* case threshold for the Commission to hear the Application and that, as a result, the issue of materiality need not be addressed.

In conclusion, the Application does not substantiate a claim of error on a *prima facie* basis and the Application is therefore denied. As a result, the Commission Panel will not address the matter of 3BCOAPO's concern that BC Hydro does not support proceeding to the second phase of the reconsideration as a "matter of convenience".