

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-184-12



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

and

**Hemlock Customer Complaints Concerning
the Review Process and Rates Established by Order G-66-12
and
Compliance with Order G-66-12**

BEFORE: A.A. Rhodes, Commissioner

November 30, 2012

O R D E R

WHEREAS:

- A. On November 30, 2010, Hemlock Utility Services Ltd. (Hemlock, the Utility) and 0762608 B.C. Ltd. filed an Application with the British Columbia Utilities Commission (Commission) pursuant to sections 59 to 61 of the *Utilities Commission Act* (Act) requesting, among other things, approval of a rate increase for the electricity charges to the ratepayers of the Utility and an automatic mechanism for rate increases (the Original Application);
- B. The Original Application sought a rate increase for customers who use between 0 and 124 kilowatt hours from \$20 per month to \$24 per month and a rate increase for customers who use in excess of 124 kilowatt hours per month from \$0.1605 per kilowatt hour to \$0.18 per kilowatt hour, increased to \$0.2644 per kilowatt hour in August 2011;
- C. The Original Application was heard by the Commission through a written hearing process which included one round of Information Requests. The Commission did not provide, nor did it direct Hemlock to provide, public notice of the Original Application; therefore, Hemlock's customers did not receive notice of Hemlock's request for a rate increase;
- D. By Order G-66-12 dated May 24, 2012, the Commission approved, among other things, a rate increase from \$20 per month to \$24 for customers using between 0 and 124 kilowatt hours per month, and a rate increase from \$0.1605 per kilowatt hour to \$0.23 for customers using in excess of 124 kilowatt hours per month. The Order did not specify an effective date for the rate increase;
- E. Order G-66-12 also required Hemlock to file its next annual report within four months of its fiscal year end;

- F. Following the approvals granted in Order G-66-12, the Commission received approximately 30 letters from Hemlock customers complaining about the rate increase and the process the Commission followed in hearing the Original Application. Many of the letters requested that a new public hearing be held on the basis that no public notice had been provided to the Original Application and also requested that the approved rate increase be deferred until such time;
- G. On September 24, 2012, the Commission issued Letter L-54-12 seeking submissions from Hemlock and any interested customer or party on the following four issues:
- 1) Is there a sufficient prima facie case to order a Reconsideration?
 - 2) If the Commission decides to order a Reconsideration, should the Reconsideration be on the entire Application, including the sale of the utility assets, or is it sufficient to limit the Reconsideration to the issue of the rate increase?
 - 3) If the Commission decides to order a Reconsideration what further process is desirable?
 - 4) If the Commission decides to order a Reconsideration, what new evidence would you be able to present that could have a possible impact on the decision respecting the rate increase?
- H. On September 25, 2012, the Commission issued Order G-128-12 which set rates approved under Order G-66-12 as interim, effective September 1, 2012, pending determination of the potential Reconsideration;
- I. The Commission received submissions from Hemlock and fifty-one of its ratepayers;
- J. On October 30, 2012, Hemlock filed a letter with the Commission requesting an extension of the time to file its annual report as directed in Order G-66-12 until four months after the decision on the Reconsideration is issued.

NOW THEREFORE for the Reasons for Decision attached as Appendix A to this Order, the Commission Orders:

1. A Reconsideration of the rate increase portion of the Original Application will be held pursuant to section 99 of the *Utilities Commission Act*. The Reconsideration will proceed by way of a new written hearing.
2. Hemlock is to file a complete Revenue Requirements Application (RRA) with the Commission no later than February 18, 2013 for rates effective September 1, 2012. Upon receipt of the RRA the Commission will issue an Order establishing further process, and a regulatory timetable for the review.
3. Hemlock is to file its Annual Report as directed in Order G-66-12 at the same time as it files its RRA.

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4. Interim Rates as established under Order G-128-12 are to remain in effect pending a determination on the RRA. Should lower permanent rates be established, the difference will be subject to refund with interest at the short term debt rate of Hemlock's principal bank.
5. Hemlock is to provide notice of this Order by sending a copy to each ratepayer in its service area within ten business days of the date of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November 2012.

BY ORDER

Original signed by:

A.A. Rhodes
Commissioner

Attachment

Hemlock Customer Complaints Concerning
the Review Process and Rates Established by Order G-66-12
and
Compliance with Order G-66-12

REASONS FOR DECISION

1.0 BACKGROUND

On November 30, 2010, Hemlock Utility Services Ltd. (Hemlock, the Utility) and 0762608 B.C. Ltd. filed an Application with the British Columbia Utilities Commission (Commission) requesting, among other things, approvals for the disposition and purchase of certain utility assets and a rate increase (the Original Application). The Original Application was heard by the Commission through a written hearing process and was approved, with some modifications, by Order G-66-12 dated May 24, 2012.

Following the approvals granted in Order G-66-12, the Commission received approximately 30 letters from Hemlock customers complaining about the rate increase, and the process the Commission followed in hearing the Original Application. Many of the letters requested that a public hearing be held on the basis that no public notice had been provided.

On September 24, 2012 the Commission issued Letter L-54-12 seeking submissions from Hemlock and any interested customer or party on the following four issues:

- 1) *Is there is a sufficient prima facie case to order a Reconsideration?*
- 2) *If the Commission decides to order a Reconsideration, should the Reconsideration be on the entire Application, including the sale of the utility assets, or is it sufficient to limit the Reconsideration to the issue of the rate increase?*
- 3) *If the Commission decides to order a Reconsideration, what further process is desirable?*
- 4) *If the Commission decides to order a Reconsideration, what new evidence would you be able to present that could have a possible impact on the decision respecting the rate increase?*

2.0 SUBMISSIONS

The Commission received submissions from Hemlock and fifty-one ratepayers.

- 2.1** 1) *Is there is a sufficient prima facie case to order a Reconsideration?*

2.1.1 Hemlock

Hemlock submits that sufficient prima facie evidence does not exist to warrant a Reconsideration. Hemlock states that the *Utilities Commission Act* does not require a public consultation process before granting a rate increase and public hearings are not normally held for these types of applications.

2.1.2 Ratepayers

All of the ratepayers submit that the Commission made an error when it did not provide, nor did it direct Hemlock to provide, public notice of the Original Application. The ratepayers further submit that as a result of not being provided notice they did not have an opportunity to participate in a public process and present information which could have had a possible impact on the decision respecting the rate increase.

2.1.3 Commission Determination

The common law procedural principles of natural justice and procedural fairness apply to the British Columbia Utilities Commission as an Administrative Tribunal. The Commission Panel is of the view that in this case, the Commission ought to have ensured that notice was provided to Hemlock's ratepayers so they had an opportunity to be heard.

Therefore the Commission determines that there is a sufficient prima facie case to warrant a Reconsideration on the basis that the Commission erred in law by not ensuring adequate public notice was provided to the affected parties. The Reconsideration will be reheard by way of a new hearing.

- 2.2** 2) *If the Commission decides to order a Reconsideration, should the Reconsideration be on the entire Application, including the sale of the utility assets, or is it sufficient to limit the Reconsideration to the issue of the rate increase?*

2.2.1 Hemlock

Hemlock submits that if the Commission decides to proceed with a Reconsideration it should only apply to the rate increase issue and not to the additional issue related to the sale of the utility assets.

2.2.2 Ratepayers

All ratepayers, other than one, agreed that a Reconsideration should only apply to the rate increase issue; however, seven ratepayers also sought a Reconsideration of Directive 1(b) of Order G-66-12. Directive 1(b) states:

To protect the public's interest and subject to satisfactory proof as described below, Hemlock Utility Services Ltd. will honour the commitments for customer deposits collected prior to August 24, 2006, without interest. Should customers seek collection of funds, the customer shall first notify Hemlock. If both parties agree that sufficient evidence of the deposit is available, Hemlock shall refund the amount. If both parties are not in agreement on the refund of the deposit, Hemlock is directed to notify the customer to contact the Commission regarding the claim and will notify the Commission of all such requests within 30 days of their receipt. Further, if both parties are not in agreement, the customer shall have the onus of proving to the Commission that the customer made such deposit.

2.2.3 Commission Determination

In December 2005, Hemlock Valley Electrical Services Ltd. (Predecessor Utility) entered into insolvency proceedings (bankruptcy) in the Supreme Court of British Columbia and a receiver manager was appointed to manage its affairs going forward. In August 2006, the receiver manager secured a buyer (the Berezan Group) for certain assets of the Predecessor Utility which included the electrical distribution system. The asset sale was approved by the Supreme Court of British Columbia on October 3, 2006. On October 19, 2006 these same assets, including the electric distribution system were sold to Hemlock Utility Services Ltd. (the current utility, Hemlock) a company also controlled by the Berezan Group.

The Berezan Group did not purchase the liabilities of the Predecessor Utility; however, it did agree to recognize customer deposits collected prior to August 24, 2006 (date of purchases) with some restrictions, as identified in Order G-66-12 Directive 1(b).

The Commission is of the view that Hemlock is not otherwise bound by the debts of the Predecessor Utility; therefore, the Commission determines that the treatment of Customer Deposits as described in Directive 1(b) of Order G-66-12 does not warrant Reconsideration.

The Reconsideration of Order G-66-12 is limited to the rate increase portion of the Original Application. Hemlock is to file a new Revenue Requirements Application (RRA) with the Commission no later than February 18, 2013, for a rate increase effective September 1, 2012.

2.3 3) *If the Commission decides to order a Reconsideration, what further process is desirable?*

2.3.1 Hemlock

Hemlock submits that should a Reconsideration take place it should be conducted by way of a written hearing.

2.3.2 Ratepayers

All of the ratepayers submit that the Commission should follow a written hearing process should it reconsider the Original Application.

2.3.3 Commission Determination

The Commission agrees that a written process is acceptable. **The Reconsideration will proceed by way of a new written hearing.** Any additional rulings on process will follow the Commission receipt of Hemlock's RRA.

2.4 4) *If the Commission decides to order a Reconsideration, what new evidence would you be able to present that could have a possible impact on the decision respecting the rate increase?*

2.4.1 Hemlock

Hemlock submits that it does not believe that any new information will be submitted if there is a Reconsideration of the Original Application and a new hearing will not have a different outcome. Hemlock states that the rates approved by Order G-66-12 are fair and reasonable taking into account the effect on both the consumer and the utility and provided a fair and reasonable rate of return to the utility.

2.4.2 Ratepayers

None of the ratepayers indicated an intention to file additional evidence; however, two ratepayers identified concerns regarding Hemlock's allocation of costs as among the three services it provides: sanitation, electrical, and water.

2.4.3 Commission Determination

The Commission notes Hemlock's position that a new hearing will not have a different outcome on the decision and notes that none of the ratepayers indicated an intention to file further evidence. **Therefore, the interim rates as established under Order G-128-12 will remain in effect pending the determination on the RRA.**