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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-97-14**

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

**and**

**An Application by R. Spogliarich and S. Spogliarich for Reconsideration of  
Commission Decision on An application for Approval of Charges Related to the Meter Choices Program  
from the British Columbia Hydro and Power Authority  
and the Accompanying Order G-59-14 dated April 25, 2014**

**BEFORE:** L.F. Kelsey, Panel Chair / Commissioner  
D. M. Morton, Commissioner  
N. E. MacMurchy, Commissioner  
July 17, 2014

**O R D E R**

**WHEREAS:**

- A. The Lieutenant Governor in Council issued BC Regulation 203/2013 (Direction No. 4) on September 25, 2013, and provides direction to the British Columbia Utilities Commission (Commission) with respect to implementing the Government of British Columbia policy that the British Columbia Hydro and Power Authority (BC Hydro) will offer new meter options and related services 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;
- B. On October 7, 2013, BC Hydro filed, pursuant to sections 58-61 of the *Utilities Commission Act* (Act) and Direction No. 4 an application for approval of new standard charges, new Electric Tariff Terms and Conditions, and regulatory accounting treatment (BC Hydro Application);
- C. Pursuant to Direction No. 4, the Commission issued Order G-166-13 dated October 9, 2014, to, among other things, amend BC Hydro's Electric Tariff to incorporate prescriptive conditions as set out in the Appendix of Direction No. 4 that would be applied to eligible customers who choose or are deemed to choose alternative meters;
- 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;

- E. Direction No. 4 states that the Commission must, among other things, allow BC Hydro to collect sufficient revenue in each fiscal year to enable it to recover program costs, investigation costs and infrastructure costs related to meter choices from applicable customers, and to the extent that any of those costs are not recovered from applicable customers, allow BC Hydro to collect the costs from all customers;
- F. A written public hearing took place between October 11, 2013, the date G-167-13 was issued to establish a proceeding and April 25, 2014, the date the Decision was rendered. The Commission issued its Decision on the BC Hydro Application and Order G-59-14 concurrently;
- G. On May 30, 2014, the Commission received from R. Spogliarich and S. Spogliarich (Applicants) a request that the Commission reconsider its Decision (Reconsideration Application). The major error claimed by the Applicants in the Reconsideration Application is that the Commission essentially accepted as true and accurate the figures and arguments provided by BC Hydro in its application;
- H. By letter dated June 17, 2014, the Commission established Phase 1 of the two-phase reconsideration process and invited submissions from all parties to address whether the Reconsideration Application met the threshold for reconsideration. A regulatory schedule for Phase 1 was established: Interveners' written submission deadline was set for June 25, 2014 and the Applicants' written reply submission date was set for July 3, 2014;
- I. Nine parties filed submissions on or before June 25, 2014. Two parties filed late submissions without seeking leave. Interveners who made submissions on the Reconsideration Application are:
- 1) J. Mansell
  - 2) M. de Bruijn
  - 3) K. Darwin
  - 4) British Columbia Sustainable Energy Association and Sierra Club of British Columbia
  - 5) Commercial Energy Consumers of B.C.
  - 6) R. Middleton
  - 7) BC Hydro
  - 8) Mr. B McKechnie
  - 9) Regional District of Central Kootenay Electoral Area 'D'
  - 10) District of Metchosin (late filing)
  - 11) D Wong (late filing);
- J. By letter dated June 25, 2014, the Applicants submitted to the Commission that they found a paragraph in the BC Hydro's submission to be offensive and requested that the offending paragraph be removed from the official document on the subject. The Applicants filed their reply on July 3, 2014; and
- K. The Commission has considered the Reconsideration Application, the Interveners' submissions and the Applicants' reply.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-97-14

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**NOW THEREFORE**, pursuant to section 99 of the *Utilities Commission Act*, for the Reasons as set out in Appendix A attached to this Order, the Commission disallows the Reconsideration Application to proceed to Phase 2.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 17<sup>th</sup> day of July 2014.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Panel Chair / Commissioner

Attachments



## **IN THE MATTER OF**

**An Application by R. Spogliarich and S. Spogliarich  
for Reconsideration of Commission Decision  
on an application for Approval of Charges Related to the Meter Choices Program  
from the British Columbia Hydro and Power Authority  
and its Accompanying Order G-59-14 dated April 25, 2014**

## **REASONS FOR DECISION**

**JULY 17, 2014**

### **BEFORE:**

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

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## **1.0 INTRODUCTION**

### **1.1 The Reconsideration Application**

On April 25, 2014, the British Columbia Utilities Commission (Commission) issued its Decision on an Application for Approval of Charges Related to the Meter Choices Program by the British Columbia Hydro and Power Authority (BC Hydro) accompanied by Order G-59-14 (Commission Decision).

By email dated May 30, 2014, R. Spogliarich and S. Spogliarich (Applicants) made an application to the Commission for reconsideration of the Commission Decision (Reconsideration Application). In their email, the Applicants claimed the following four grounds as the basis of their reconsideration request:

- 1) The Commission made an error in essentially accepting as true and accurate the figures and arguments provided by BC Hydro.
- 2) BC Hydro's figures and proposed charges are obviously inflated.
- 3) The detailed table that is attached to the Reconsideration Application clearly shows that BC Hydro's opt-out fees are the highest in North America.
- 4) Any decision made without taking into any consideration existing data from other jurisdictions with similar systems in North America is one-sided and hence unacceptable.

In the third paragraph of the Reconsideration Application, the Applicants state that they "understand, but do not agree," that the issue they are raising, i.e., information from other jurisdictions, was determined by the Commission to be out-of-scope. In the same paragraph, the Applicants also state that they understand that the Commission is only allowed to discuss and approve fees that are appropriate in order to enable BC Hydro to recover the costs of the Meter Choices Program (Program).

By letter dated June 17, 2014, the Commission established Phase 1 of the two-phase reconsideration process by inviting parties to submit written comments on the following questions to enable the Commission to consider whether the Reconsideration Application has established a *prima facie* case to warrant allowing it to proceed 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 letter dated June 17, 2014, also describes the criteria which the Commission generally applies to determine whether or not a reasonable basis exists for allowing reconsideration. The criteria are:

- 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 had not been raised in the original proceedings; or
- A new principle has arisen as a result of the Decision.

The deadline for written submissions from Interveners for Phase 1 was scheduled for June 25, 2014. The reply by Applicants was scheduled for July 3, 2014.

## **1.2 Background to the Application**

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

### **1.2.1 Jurisdiction of the Commission and Legislative Framework**

The Commission's jurisdiction is defined by the *Utilities Commission Act* (UCA, the Act). 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 Reconsideration 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.

The rate-setting powers of the Commission are prescribed in sections 58-61 of the Act. 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.

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

- (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

The Lieutenant Governor in Council issued BC Regulation 203/2013 (Direction No. 4) on September 25, 2013. Direction No. 4 is issued pursuant to section 3 of the Act. Therefore, the provisions of Direction No. 4 takes precedence over all provisions of the Act relating to the matters to which Direction No. 4 applies, including sections 58 to 61.

Section 3 of Direction No 4 reads as follows:

- 3** (1) In setting rates under the Act for the authority, the commission must ensure that the rates allow the authority to collect sufficient revenue in each fiscal year to enable it to recover the following costs from the following customers:
- (a) program costs, investigation costs and infrastructure costs from
    - (i) applicable customers at applicable premises where a legacy meter or radio-off meter is installed, to the extent that the authority requests recovery of any of those costs from these customers, and
    - (ii) all customers, to the extent that any of those costs are not recovered under subparagraph (i);
  - (b) from all customers, costs incurred with respect to the installation and operation of, and services related to, smart meters;
  - (c) failed installation costs from customers at a premises where a failed installation occurred.

A detail description of the legislative framework is contained in the Commission Decision on pages 9 to 12 and appended to these Reasons as Attachment 1. For ease of reference, Direction No. 4 is attached as Attachment 2 to these Reasons.

#### 1.2.2 BC Hydro Application

On October 7, 2013, BC Hydro filed, pursuant to sections 58-61 of the Act and Direction No. 4, an application for approval of Charges related to the Meter Choices Program (BC Hydro Application). The BC Hydro Application contains BC Hydro's forecast of costs for the Program and proposed charges for customers in the Program to recover the costs.

The BC Hydro Application was reviewed by the Commission within the narrow scope prescribed by Direction No. 4.

### **1.3 Issues for Reconsideration**

This Phase 1 proceeding addresses the grounds for reconsideration raised by the Applicants, namely:

- 1) The Commission made an error in essentially accepting as true and accurate the figures and arguments provided by BC Hydro.
- 2) BC Hydro's figures and proposed charges are obviously inflated.
- 3) The detailed table that is attached to the Reconsideration Application clearly shows that BC Hydro's opt-out fees are the highest in North America.
- 4) Any decision made without taking into any consideration existing data from other jurisdictions with similar systems in North America is one-sided and hence unacceptable.

The Applicants attached to the Reconsideration Application a table describing for three utilities in Canada and 26 utilities in the US their respective: (i) one-time charge, (ii) monthly charge, (iii) opt-out option, and (iv) notes and comments. The Applicants elaborate on how the Commission erred in its Decision under each ground:

- Under Item (1), the source of error was due to making conclusions based solely on data from BC Hydro which is taken for granted without review or audit; no independent evaluation of BC Hydro's figures by completely ignoring the decisions taken by other jurisdictions in North America and failing to make an appropriate comparison.
- Under Item (2), the Commission erred by basing its conclusions on the figures of BC Hydro which are obviously inflated with the clear intent of persuading more and more people to accept a smart meter, which is a result of the conditions under which eligible customers may retain legacy meters.
- Under Item (3), the Applicants make reference to the tables presenting the fees in other jurisdictions in North America. According to the Applicants, BC Hydro's fees are the highest in North America and therefore are largely unjustified and not reflecting the real costs.
- Under Item (4) the Applicants opine that any decision made without taking into consideration existing data from other jurisdiction with similar systems in North America is one-sided and unacceptable.

The Commission Panel notes that Item (1) consists of two parts: (A) the Commission erred by basing its conclusions on data from BC Hydro without review or audit, and (B) the Commission erred by completely ignoring the decisions taken by other jurisdictions to make an appropriate comparison.

Items No. 3 and No. 4 are included to draw attention to the fees in other jurisdictions in North America and therefore are substantially similar in nature to Part (B) in Item No. 1.

In order to address all parts of the alleged errors equally and in a proficient manner, the Panel will address Items (3) and (4) at the same time it addresses Item 1 (B); and will address Item (2) together with Item (1) A. The combination of the various parts in the Applicants' four major grounds for reconsideration results in two distinct headings as follows:

- (1) That the Commission erred in accepting BC Hydro's proposed charges as true and accurate without review or audit; and that the Commission erred in basing its conclusions on BC Hydro's figures and proposed charges that are obviously inflated.
- (2) That the Commission erred in failing to make appropriate comparison with the decisions, opt-out rules and fee amounts in other jurisdictions in North America; that the Commission failed to note BC Hydro's opt-out fees are the highest in North America; and that any decision made with taking into consideration of existing data from other jurisdictions with similar systems in North America is one-sided and hence unacceptable.

Where an issue overlaps the two headings, the Commission Panel addresses the issue under either one or both headings.

#### **1.4 Other Issues Raised by Interveners**

A number of issues were raised by some Interveners who express support for the Reconsideration Application but made submissions on issues that are unrelated to the Applicants' grounds for reconsideration, for example, topics related to costs splitting in the non-Wide Area Network, exemptions for medical reasons, safety issues, meter reading contracts with BC Hydro, and other alleged issues not mentioned in the Reconsideration Application.

The Commission Panel will only address the issues raised by the Applicants in these Reasons.

#### **1.5 Request to Alter the Official Record of this Proceeding**

By letter dated June 25, 2014, to the Commission, R. Spogliarch expresses that he was being misquoted in the BC Hydro submission in relation to the June 18, 2014 email the Applicants circulated. R. Spogliarch provides the correct and complete quote that BC Hydro omitted and submits that BC Hydro put in doubt his integrity as a citizen and his responsible participation in the proceeding according to the existing laws. He advises the Commission that he finds it offensive and unjustified and asks that the offending paragraph and footnote 6 in the BC Hydro submission be removed from the official document on the subject. R. Spogliarch also asks for confirmation that the removal has been done and that the document has been amended accordingly.

The Commission Panel was not aware of an email dated June 18, 2014, circulated by the Applicants to the Interveners registered in the BC Hydro Application proceeding. This email gave rise to BC Hydro's submission that the Applicants were using the reconsideration process as a platform for other motives.

The Commission finds that BC Hydro's submission was filed in accordance with the Regulatory Timetable and forms a part of the formal record of the proceeding. With the exceptions of records that are removed from public view following established Confidential Filings Practice, it is not the Commission's normal practice to alter the public record of a proceeding.

**The Commission Panel will not alter the official record of this proceeding. In any event, the Commission Panel has given no weight to the comments in question contained in BC Hydro's submission.**

## **2.0 THE RECONSIDERATION PROCESS**

A total of nine parties filed Intervener submissions in Phase 1 before the deadline date. Two Interveners, the District of Metchosin and D. Wong, filed after the deadline date without applying to the Commission for leave for an extension. The Commission normally does not accept late filings without leave as late filings tend to create unfairness by taking away the time needed for affected parties to adequately respond. In this Reconsideration Application, the Commission Panel is prepared to accept the late filings as part of the record in recognition of the fact that: (a) the Interveners who submitted late filings are not experienced in the procedures before the Commission, and (b) because of the lack of objection to the late filing registered with the Commission.

The late filings therefore form part of the record for the reconsideration and the submissions, to the extent that they are related to the issues in the Reconsideration Application, are considered by the Commission Panel.

The 11 parties who filed submissions in response to the Reconsideration Application are:

- J. Mansell
- M. de Bruijn
- K. Darwin
- British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA)
- Commercial Energy Consumers of B.C. (CEC)
- R. Middleton
- BC Hydro
- B. McKechnie
- Regional District of Central Kootenay Electoral Area 'D' (RDCK)
- District of Metchosin
- D. Wong

The Applicants filed their reply on July 3, 2014.

## **3.0 ISSUES AND DETERMINATIONS**

In this section, the Commission Panel considers the parties' positions regarding whether the Reconsideration Application should proceed to Phase 2 to warrant full consideration. As explained in section 1.3, the Applicants' grounds for reconsideration are categorized under two main headings.

### **3.1 Did the Commission err in accepting BC Hydro's proposed charges as true and accurate without review or audit? Did the Commission err in basing its conclusions on BC Hydro's figures and proposed charges that are obviously inflated?**

The Applicants are of the view that the Commission did not provide an independent evaluation of the BC Hydro figures and the conclusions are based solely on data from BC Hydro, which is taken for granted without review or audit. According to the Applicants, BC Hydro's fees are obviously inflated with the clear intent of persuading more and more people to accept a smart meter and the Commission based its conclusions on these inflated figures and costs claimed by BC Hydro.

### 3.1.1 Support for the Reconsideration Application

The Applicants' position is supported by Mr. Mansell, Mr. de Bruijn, Ms. Darwin and RDCK.

Mr. Mansell submits that there is a readily apparent failure of due diligence in overlooking the obvious conflict in accepting "any information unchallenged or unsupported from any party, such as BC Hydro, with clear self-interests."

Mr. de Bruijn submits that the most important shortcoming in the Commission's considerations was the lack of an independent audit of BC Hydro's cost accounting for having to maintain a program allowing customers to retain their analogue meters. He further submits that the Commission failed to investigate the high fees and erred in approving a fee structure that appears to have been largely designed to force people to accept smart meters against their wishes.

Ms. Darwin submits that the Commission did not demand an independent audit of BC Hydro's figures as one of her most concerning issues.

RDCK submits that the Applicants' research work demonstrates that meter choice charges are disproportionately high when compared to similar charges in other North America jurisdictions and that it suggests BC Hydro's figures, on which those charges are based, were erroneously inflated. RDCK characterizes that the Reconsideration is based on the Commission having made an error of fact.

### 3.1.2 Opposition to the Reconsideration Application

The Applicants' position is opposed by the BCSEA, CEC and BC Hydro.

BCSEA submits that the claim of error is not substantiated on a *prima facie* basis. BCSEA asserts that the Commission made findings of fact in the Decision based on evidence provided by BC Hydro and the evidence was tested through information requests by Interveners and Commission staff. The Applicants had the opportunity to make final submissions to the Commission as to what findings of fact the Commission should make and it is the Commission's duty to make findings of fact based on the evidence and submissions before it.

CEC submits that the Commission did not make any error in fact or law nor has there been a fundamental change in circumstances or facts since the decision. CEC believes the Commission properly exercised its jurisdiction within the scope of the issue identified for the proceeding as narrowly prescribed by Direction No. 4.

BC Hydro submits that the Applicants allegation of error does not meet the threshold to advance to Phase 2 of the Reconsideration process. According to BC Hydro, the Applicants fail to: (i) point to any shortcomings in the Commission's process during which BC Hydro responded to more than 1,000 information requests designed to test BC Hydro's assumptions and forecasts, and (ii) explain how the Commission can have accepted BC Hydro's information and arguments as "true and accurate" when the Commission actually disagreed with some of BC Hydro's estimated costs and approved costs that are lower than what was sought in the BC Hydro Application.

### 3.1.3 Reply Submission

In its Reply, the Applicants reiterated their opinions that the opt-out charges proposed by BC Hydro were inflated with the clear intent of persuading more and more people to accept a smart meter.

The Applicants argued that the opt-out fees, in order to be fair, should have taken into account the human and civil rights of a significant portion of the population who are heavily hit by the decision, such as low income customers, the elderly, the disabled and the electro-sensitive (sufferers from EHS).

#### **Commission Determination**

The normal regulatory review process of the Commission consists of public hearing, either through an oral or a written process. The public hearing process makes use of interrogatories known as information requests to the applicants and includes an argument phase where parties make submissions based on evidence gathered during the evidentiary stage. The Regulatory Timetable that is attached to Order G-167-13 allowed for two rounds of Information Requests (IRs) to BC Hydro and 10 Registered Interveners participated in both rounds of IRs while another five Registered Interveners participated in only one round of IRs

BCUC staff participated in two rounds of IRs and the Commission Panel issued a supplementary round of IRs to BC Hydro to test BC Hydro's evidence. In the first round of staff IRs, cost related questions were asked about assumptions of the BC Hydro's cost model (Exhibit A-5, BCUC IR 1. 4.1, IR 1. 5.1, 1.5.2, 1.5.5, IR 1.6.1 to 1.6.5, IR 1.14.1 to 1.14.3, IR 1.16.1), capital and operating cost proposals (Exhibit A-5, BCUC IR 1. 7.1, 1.7.2, IR 1.8.1 to 1.8.3, IR 1.9.1 to 1.9.7, IR 1.10.1 to 1.10.3, IR 1.11.1 to 1.11.5, IR 1.12.1, IR 1.15.1, IR 1.17.1 to 1.17.2, IR 1.18.1 to 1.18.3), meter reading costs (Exhibit A-5, BCUC IR 1.19.1 to 1.19.5) and scenario analyses (Exhibit A-5, BCUC IR 1.20.1 to 1.20.3). In the second round, further questions were asked about assumptions (Exhibit A-11, BCUC IR 2.24.1, 2.24.2, IR 2.25.1, 2.25.2, IR 2.27.1, IR 2.34.1, 2.39.1), scenario analysis (Exhibit A-11, BCUC IR 2.25.3, IR 2.36.1, IR 2.37.1, 2.38.1), meter reading charges (Exhibit A-11, BCUC IR 2.29.1 to 2.29.3, IR 2. 33.1 to 2. 33.2).

The Commission Panel therefore does not accept that there was a lack of review in the process or that a lack of independent audit results in error of fact or law.

In the Commission Decision, the Commission Panel did not accept BC Hydro's information and arguments as "true and accurate." The Commission carried out in-depth analyses of BC Hydro's costs in reaching the Decision and actually disagreed with some of BC Hydro's estimated costs (Commission Decision, pp. 23, 28, 32).

The Applicants registered as Interveners in the BC Hydro Application proceeding under Exhibit C23-1 and the Commission Panel notes that they did not participate in either one of the two rounds of interrogatories to BC Hydro and did not submit Intervener Final Submission to present their arguments based on evidence adduced during the public hearing process.

The Commission Panel agrees with BCSEA's submission that: "Like all Interveners, the Applicants had the opportunity to make final submission to the Commission as to what finding of fact the Commission should make." The Applicants did not do so in the BC Hydro Application proceeding.

In the Commission Decision, Interveners Final Submissions were carefully considered by the Panel and quoted where appropriate. The Panel also made downward adjustments to BC Hydro's proposed charges, based on the evidence adduced, the arguments submitted and within the jurisdictional powers prescribed by Direct No. 4.

Based on the evidence in this proceeding, the Commission Panel finds that all parties were provided with the opportunity to test the evidence and make submissions in the public process to review the BC Hydro Application and that the Commission properly exercised its jurisdiction. Therefore, the Applicants' allegation of error of fact or law is not substantiated on a *prima facie* basis.

**3.2 Did the Commission err in failing to make comparison with the decisions, opt-out rules and fee amounts in other jurisdictions in North America? Did the Commission err in failing to note BC Hydro's opt-out fees are the highest in North America? Is it an error if a decision is made with taking into consideration of existing data from other jurisdictions with similar systems in North America?**

**3.2.1 Support for the Reconsideration Application**

The Applicants takes the view that an independent evaluation should take into consideration that BC Hydro has the highest opt-out fees in North America and any decision without taking into account the existing data from other jurisdictions is one-sided and unacceptable.

The Applicants are supported by Mr. Mansell, Mr. de Bruijn, Ms. Darwin, and RDCK.

Mr. Mansell submits that the large gap between fees for FortisBC Inc. and BC Hydro raises the question whether these are not the result of poor BC Hydro management decisions. Mr. Maunsell submits that BC Hydro should not be allowed to escape the costs of poor management decisions by using an error in the Commission Decision to pass the costs onto a targeted minority of customers.

Mr. de Bruijn references the Applicants' summary of fees levied by electric utilities across North America. According to Mr. de Bruijn, the summary reveals that nowhere are fees so onerous as those of BC Hydro and that there has been no explanation for this discrepancy, which surely calls into question the means used by BC Hydro to determine its fee structure.

Ms. Darwin supports the Reconsideration Application and submits that the Applicants have clearly demonstrates significant and relevant factors that were overlooked by the Commission in its decision to approve BC Hydro's fee structure with only minor adjustments.

RDCK submits that the otherwise inexplicably disproportionate charges in British Columbia when compared to other jurisdictions' demonstrates an error of fact in the Commission Decision.

**3.2.2 Opposition to the Reconsideration Application**

BCSEA submits that the claim of error is not substantiated on a *prima facie* basis. BCSEA asserts that the Applicants are entitled to their opinion that their detailed table as attached to the Reconsideration Application shows BC Hydro's opt-out fees as the highest in North America; however, the time for the Applicants to submit their opinions was prior to the Decision being made. BCSEA submits that the relevance of smart meter opt-out fees in other jurisdictions was marginal at most because one of the key determinations in the Decision is that the size of the meter choice fees is governed legally by Direction No. 4 and this Direction provides that the size of the fees is to be determined by BC Hydro's costs.

CEC submits that no basis for reconsideration has been made by the Applicants. CEC is of the view that the Applicants are seeking to reargue the case heard by the Commission as they are unhappy with the decision and

that the Commission properly exercised their jurisdiction within the scope of the issue identified for the proceeding as narrowly prescribed by Direction No. 4.

According to BC Hydro, the Applicants' allegation of error is unsubstantiated and does not meet the Commission's threshold to advance to Phase 2 of the reconsideration process. BC Hydro submits that the Applicants do not demonstrate why the opt-out fees in other jurisdictions are relevant comparators and fail to state (i) whether the smart meter programs in the other jurisdictions are comparable to BC Hydro's Smart Metering and Infrastructure Program, and (ii) whether the fees in other jurisdictions were determined by using criteria similar to those required by Direction No. 4 to the Commission and the UCA.

### 3.2.3 Reply Submission

In Reply, the Applicants submit that the data in the table attached to the Reconsideration Application is substantiated by references to the sources. Furthermore, the Applicants argue that it is not up to the Applicants to demonstrate why the opt-out fees in other jurisdictions are relevant comparators but up to BC Hydro to demonstrate why its fees are so much higher than any other jurisdiction in North America, which it failed to do in its original application to the BCUC.

### Commission Determination

In the discovery stage of the BC Hydro Application proceeding, the Commission accepted evidence from all parties on information from other jurisdictions including participation rate comparison with other utilities (Exhibit B-1, Application Chapter 3; Exhibit A-5, BCUC IR 5.0, IR 6.0). Invariably in most proceedings before the Commission, applicants and intervener parties often choose to utilize information and related decisions from other Canadian jurisdictions and at times North American jurisdictions as support for the position they have taken on an issue.

During the BC Hydro Application proceeding, as a result of a motion from an Intervener, the Citizens for Safe Technology and Nomi Davies (CSTS), the Commission Panel made a ruling on CSTS' motion to compel BC Hydro to the following Information Request (IR) question (Exhibit C4-7):

#### ***CSTS IR 1.78***

*BCH answered CSTS IR 1.78 as follows:*

#### ***Other utilities***

*1.78 Do any jurisdictions and/or utilities worldwide provide their customers with an option to opt out without having to pay a fee in relation to the opt-out?*

#### ***RESPONSE:***

*Direction No. 4 to the BCUC requires charges for eligible customers that elect or are deemed to elect the legacy or radio-off meter option. Accordingly, BC Hydro declines to provide the requested information on the basis that is not relevant to the scope of this proceeding.*

*We stand by our request that the Commission compel BC Hydro to answer the question posed in CSTS IR 1.78. The existence of a no-fee opt-out regime in other jurisdictions is relevant to the level at which the BC Hydro opt-out fee should be approved.*

The Commission issued a ruling to the CSTS motion that the question is out of scope (Exhibit A-14). The ruling is contained in a letter dated February 3, 2014 which states as follows:

*“Direction No. 4 provides for BC Hydro to recover the cost of the opt-out program from those customers who choose a legacy meter or a radio-off smart meter, without reference to fees charged in other jurisdictions. Accordingly, the Commission considers this IR to be out-of-scope. BC Hydro is not required to answer the question.”*

In this Reconsideration Application proceeding, the onus is on the Applicants to demonstrate the data from other jurisdictions are relevant to BC Hydro’s recovery of costs in the Program. Therefore, the Panel disagrees with the Applicants’ assertion that “it is not up to the Applicants to demonstrate why the opt-out fees in other jurisdiction are ‘relevant comparators’.”

The Commission Panel finds that the Applicants have not, in this Reconsideration proceeding, demonstrated that the opt-out fees in other jurisdictions, ruled out-of-scope in the BC Hydro Application, are relevant comparators despite Direction No. 4. Therefore, the Applicants’ claim that the Commission has erred in fact or law is not substantiated on a *prima facie* basis.

#### **Commission Decision**

Having found that the Applicants have not raised valid grounds for reconsidering the Commission Decision, and having concluded that the Applicants’ claim that the Commission has made an error of law or fact is unsubstantiated, the Commission Panel disallows the Reconsideration Application from R. Spogliarich and S. Spogliarich to proceed to Phase 2.