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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-54-15A**

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

and

**British Columbia Hydro and Power Authority
A Complaint filed by T.M. (Residential Customer)**

BEFORE: L. F. Kelsey, Commissioner
C. A. Brown, Commissioner
H. G. Harowitz, Commissioner
N. E. MacMurchy, Commissioner
I. F. MacPhail, Commissioner April 9, 2015
B. A. Magnan, Commissioner
D. M. Morton, Commissioner
R. D. Revel, Commissioner

O R D E R

WHEREAS:

- A. On December 22, 2014, a customer (T.M.) of British Columbia Hydro and Power Authority (BC Hydro) filed a complaint with the British Columbia Utilities Commission (Commission) concerning the application of the commercial rate instead of the residential rate to his BC Hydro account. In the complaint, T.M. claimed that BC Hydro incorrectly changed the rate (established in 1990) from residential to commercial in 1997 (Complaint);
- B. On January 9, 2015, BC Hydro provided a response to the T.M. Complaint;
- C. T.M. submitted a response to BC Hydro through the Commission complaints process on January 14, 2015;
- D. On February 16, 2015, Commission staff submitted a request for additional information to BC Hydro and T.M. The response from T.M. was received on February 18, 2015, and the response from BC Hydro was received on March 16, 2015; and
- E. The Commission reviewed the Complaint with the submissions received.

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NOW THEREFORE pursuant to section 83 of the *Utilities Commission Act*, and section 5.8 of the British Columbia Hydro and Power Authority Electric Tariff and for the Reasons attached to this order as Appendix A, British Columbia Hydro and Power Authority is required to apply section 5.8(1) (i) of the Electric Tariff to T.M.'s account and credit the account for the difference between the commercial and residential rate for the period beginning November 24, 2008 and ending the date the error was discovered (March 17, 2014) pursuant to section 5.8 (6).

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2015.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

British Columbia Hydro and Power Authority
A Complaint filed by T.M.

REASONS FOR DECISION

1.0 COMPLAINT OVERVIEW

On December 22, 2014, the British Columbia Utilities Commission (Commission) received a complaint from T.M., a British Columbia Hydro and Power Authority (BC Hydro) residential customer (the Complaint). In the Complaint, T.M. stated that he filed a lawsuit against BC Hydro and was advised to pursue the complaint through the Commission before proceeding in court.¹

T.M. submits that he established an account under the residential rate for a metered well house on his residential property in the summer of 1989 and that the account was changed to a commercial rate in 1997 without him knowing.² T.M. requests a refund for overpayment on the account since 1997 when he believes the account was changed from the residential to the commercial rate.³

T.M. did not provide evidence of the account being established in 1989 on the residential rate or being changed in 1997 other than a call he states he recently had with BC Hydro where the representative advised him that the rate change occurred in 1997.⁴

BC Hydro responded to the Complaint on January 9, 2015 and March 16, 2015. BC Hydro confirmed that the account was opened on June 21, 1990; however, BC Hydro did not provide documentary evidence to demonstrate that the account was established on the commercial rate.⁵ BC Hydro explained that the billing system retains all move in dates for all accounts and was therefore able to confirm the date the account was established. However, only move in dates are retained, and confirmation of the customer's rate selection is not available.⁶

BC Hydro also indicated that the billing records prior to 1994 no longer exist; however, BC Hydro did provide the Electric Billing History Report dating back to February 1994. This report shows that BC Hydro was billing T.M. under the commercial rate since 1994 and no changes were made until March 17, 2014, when T.M. contacted BC Hydro requesting a rate change from commercial to residential.⁷

BC Hydro also stated that a letter was issued to T.M. on November 24, 2008 advising that the account may be eligible to be billed on the residential rate.⁸ As T.M. did not respond to this letter, BC Hydro continued to bill T.M. under the commercial rate. T.M. states that he did not receive this letter.⁹

¹ T.M., email dated December 22, 2014.

² Ibid.

³ Ibid.

⁴ T.M., email dated February 18, 2015.

⁵ Ibid.

⁶ BC Hydro, email dated March 16, 2015.

⁷ BC Hydro, email dated January 9, 2015.

⁸ Ibid.

⁹ T.M., email dated January 14, 2015.

In response to BC Hydro, T.M. states that “BC Hydro cannot provide the initial request for service form with my signature and acknowledgement ... BC Hydro cannot produce my first bill or any bill for that matter prior to 1994 where the bill shows [commercial] rate 1220. So for 4 years the rate schedule might have been correct and then some how [sic] changed, again BC Hydro cannot validate.”¹⁰ Given the lack of evidence presented by BC Hydro, T.M. is of the view that the overpayment should be refunded.

2.0 LEGAL FRAMEWORK

2.1 Utilities Commission Act

Section 83: If a complaint is made to the Commission, the Commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.

2.2 BC Hydro Electric Tariff

Section 6.1. Rates

The rates to be charged by and paid to BC Hydro for electric service shall be the rates set out in the rate schedules from time to time in effect and contained in the Electric Tariff or BC Hydro, which is available at www.bchydro.com or upon request.

BC Hydro will endeavour to provide the Customer with information and advice with respect to all rates available to the Customer from time to time, but in every case the selection of the rate used shall be the sole responsibility of the Customer.

Section 5.8. Back-Billing (in part):

Pursuant to the *Utilities Commission Act*, this Tariff constitutes the consent of the Commission to allow BC Hydro, in the circumstances specified herein, to charge, demand, collect or receive from its Customers in respect of a regulated service rendered a greater or lesser compensation than that specified in the subsisting schedules of BC Hydro applicable to that service.

In the case of a minor adjustment to a Customer's bill, such as an estimated bill or a Monthly Equal Payment billing, such adjustments do not require back-billing treatment to be applied.

1. Back-billing means the re-billing by BC Hydro for services rendered to a Customer because the original billings were discovered to be either too high (over-billed) or too low (under-billed). The discovery may be made by either the Customer or BC Hydro, and may result from the conduct of an inspection under provisions of the federal statute, the *Electricity and Gas Inspection Act* ("EGI Act"). The cause of the billing error may include any of the following non-exhaustive reasons or combination thereof:
 - (a) stopped meter
 - (b) metering equipment failure
 - (c) missing meter now found

¹⁰ T.M., email dated March 17, 2015.

- (d) switched meters
- (e) double metering
- (f) incorrect meter connections
- (g) incorrect use of any prescribed apparatus respecting the registration of a meter
- (h) incorrect meter multiplier
- (i) the application of an incorrect rate
- (j) incorrect reading of meters or data processing
- (k) tampering, fraud, theft or any other criminal act.

[...]

6. In every case of over-billing, BC Hydro will refund to the Customer all money incorrectly collected for the duration of the error, except that, if the date the error first occurred cannot be determined with reasonable certainty, the maximum refund period will be 6 years back from the date the error was discovered. Interest will be paid to the Customer at a rate equal to BC Hydro's weighted average cost of debt, calculated for BC Hydro's most recent fiscal year.

3.0 COMMISSION DETERMINATION

The Commission has reviewed the information provided by BC Hydro and T.M. and determines that, for **the reasons set out below, and in accordance with section 5.8 of the BC Hydro Electric Tariff, BC Hydro is required to apply section 5.8 (1) (i) of the Electric Tariff to T.M.'s account and credit the account for the difference between the commercial and residential rate for the period beginning November 24, 2008 and ending the date the error was discovered (March 17, 2014 – the date T.M. contacted BC Hydro) pursuant to section 5.8 (6).**

Given the lack of evidence presented by BC Hydro and T.M. there is no way for the Commission to determine whether or not BC Hydro incorrectly applied the commercial rate to T.M.'s account when he requested service in 1990. According to T.M. the application made in 1990 was for the residential rate, however, BC Hydro is unable to confirm whether an application was made for the commercial or residential rate. The only evidence provided by BC Hydro in this matter is that an application for service was made on June 21, 1990.

BC Hydro states that on November 24, 2008, it advised T.M. that the account may be eligible to be billed on a residential rate. Although T.M. states that he did not receive this notice, the Commission considers that it is not unreasonable to apply the residential rate from that date.