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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-69-15**

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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 Sobeys West Inc.**

**BEFORE:** L. F. Kelsey, Commissioner  
H. G. Harowitz, Commissioner  
K. A. Keilty, Commissioner  
N. E. MacMurchy, Commissioner  
I. F. MacPhail, Commissioner  
B. A. Magnan, Commissioner

**April 30, 2015**

**O R D E R**

**WHEREAS:**

- A. On October 31, 2014, Sobeys West Inc. (Sobeys), a Large General Service customer of the British Columbia Hydro and Power Authority (BC Hydro), filed a complaint with the British Columbia Utilities Commission (Commission) concerning the treatment of new customers under the BC Hydro Electric Tariff (Tariff) and associated rate schedules. Sobeys submits that the Tariff and associated schedules are unjust, unreasonable and unduly discriminatory (Complaint);
- B. On December 4, 2014, BC Hydro provided a response to the Sobeys Complaint;
- C. Sobeys submitted a response to BC Hydro through the Commission's complaints process on January 9, 2015;
- D. On February 16, 2015, Commission staff submitted a request for additional information to BC Hydro and Sobeys. The responses from Sobeys and BC Hydro were received on March 27, 2015;
- E. Each party was provided with an opportunity to provide a reply submission on or before April 14, 2015. BC Hydro provided a submission on April 14, 2015 and Sobeys did not provide any further submissions; and
- F. The Commission has reviewed the Complaint and the submissions received.

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**NOW THEREFORE** pursuant to section 83 of the *Utilities Commission Act*, the British Columbia Hydro and Power Authority Electric Tariff including the Large General Service Rate Schedule and for the Reasons attached to this order as Appendix A, the relief sought by Sobeys West Inc. is denied.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 8<sup>th</sup> day of May 2015.

BY ORDER

*Original Signed by:*

L. Kelsey  
Commissioner

Attachments

British Columbia Hydro and Power Authority  
A Complaint filed by Sobeys West Inc.

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REASONS FOR DECISION

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**1.0 COMPLAINT OVERVIEW**

On October 31, 2014, the British Columbia Utilities Commission (Commission) received a complaint from Sobeys West Inc. (Sobeys), a British Columbia Hydro and Power Authority (BC Hydro) Large General Service (LGS) customer concerning the treatment of a new customer under the BC Hydro Electric Tariff (Tariff) and associated rate schedules. Sobeys submits that the Tariff and associated schedules are unjust, unreasonable and unduly discriminatory (Complaint). In the Complaint, Sobeys states the following:

“Sobeys seeks relief from the application of certain definitions within the Tariff as they apply to Sobeys operations in British Columbia as a consequence of a transaction entered into by Sobeys to acquire all of the assets of Canada Safeway Limited (“Safeway”)... Although the Safeway Stores continue to be operated in the same manner as they were when owned by Safeway, the Tariff requires Sobeys to pay an increased charge for electricity as B.C. Hydro is obliged to treat each of the Safeway Stores as a new customer.

Sobeys submits that the mandatory application of the Tariff and associated schedules to Sobeys in these circumstances is unjust, unreasonable, and unduly discriminatory.”<sup>1</sup>

Accordingly, “Sobeys seeks an order that the Tariff and General Service schedules be amended; pursuant to the Commission’s powers set out in s. 58 of the *Utilities Commission Act* [UCA]...”<sup>2</sup> in one of the following two ways:

1. “The Tariff and Rate Schedules be amended to permit the assignment of Tariff contracts governed by the General Service rate schedules in circumstances where there is no change to business operations; or
2. The General Service rate schedules may be amended so that rates are calculated to apply to the business location and type, and not the ‘Customer’.”<sup>3</sup>

The rules set out in the Tariff and the LGS Rate Schedule,<sup>4</sup> require that Sobeys be treated as a new customer at each store location, and hence Sobeys no longer has the benefit of the historical baseline of the Safeway stores. Further, Sobeys must be billed according to the “85/15” Rate. This means that for the first 12 months, Sobeys must pay the following energy charges:

- For the first 85% of energy consumption in the billing period the following rates are applied:
  - The first 14,800 kW.h of energy consumption in the billing period @ Tier 1 rate;
  - All additional kW.h of energy consumption in the billing period @ Tier 2 rate; and
- The remaining 15% of energy consumption in the billing period @ the marginal cost based energy rate.

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<sup>1</sup> Sobeys West Inc., letter dated October 31, 2014.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> BC Hydro Rate Schedule 1600,1601, 1610, 1611 – Large General Service (150 KW and Over)

As a result, Sobeys' aggregate billings are approximately \$900,000 more in the first 12 months than they would have been if each store was not treated as a new customer.<sup>5</sup>

Sobeys does not dispute that the Tariff is being applied correctly; rather Sobeys is of the position that this mandatory Tariff application is "unjust, unreasonable, and unduly discriminatory."<sup>6</sup> In Sobeys' view the only way to resolve this problem is to amend the Tariff and this is Sobeys' preferred option for relief.<sup>7</sup>

A summary of the arguments presented by Sobeys is provided below.

1. "...the mechanism contained in the Tariff to define 'new customers' is unreasonable and unfair because it requires a new owner of an existing business to pay the New Customer Rate, despite the fact that there is no change in business operations and no change in electricity consumption."<sup>8</sup>
2. "...there have been no changes to operations that would reflect a change in consumption of electricity at any Safeway Store"<sup>9</sup>
3. "Where the only change to an account is the name of the owner of the account, arbitrarily re-setting the Baselines will result in what amounts to an unjustifiable windfall to BC Hydro."<sup>10</sup>
4. "...the premium new customers pay...reflects the increased cost to BC Hydro in increasing the energy supply to meet the demand." However, where the ownership of an existing business changes, and the business operation remains the same, BC Hydro does not change the quantity of electricity provided.<sup>11</sup>
5. "...a change in the name of the owner is not a legitimate consideration for determining a fair and reasonable rate for electricity."<sup>12</sup>
6. "Using the distinction between and [sic] asset or a share sale to determine how to calculate a customer's rate is unjustifiably arbitrary. Both forms of acquisition are means to accomplish the same end, and have the same practical result: the buyer assumes control of the business. The difference in these methods for purchasing the business all pertain to matters unconnected to the business' electricity needs."<sup>13</sup>

BC Hydro responded to the Complaint on December 4, 2014, March 27, 2015 and April 14, 2015. BC Hydro provided the following:

1. The LGS rate has been applied correctly to the Safeway stores acquired by Sobeys.
2. Bill impact analysis was completed and confirmed "...that Sobeys will pay approximately \$900,000 more under the 85/15 Rate for the first 12 months than if it had continued to utilize the existing baseline."<sup>14</sup>
3. "...Sobeys has not changed consumption at these premises since it took over operations..."<sup>15</sup>

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<sup>5</sup> Sobeys West Inc., letter dated October 31, 2014.

<sup>6</sup> Ibid.

<sup>7</sup> Sobeys West Inc., letters dated October 31, 2014 and March 27, 2015.

<sup>8</sup> Sobeys West Inc., letter dated October 31, 2014.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> BC Hydro, letter dated December 4, 2014.

<sup>15</sup> Ibid.

4. "...the change in account ownership resulting from the Safeway premises acquisition does not represent 'gaming' of the LGS rate to obtain a more favorable baseline. As such, BC Hydro has sympathy for Sobeys' situation."<sup>16</sup>

While BC Hydro is sympathetic to Sobeys situation, BC Hydro does not support Sobeys request to amend the Electric Tariff at this time for the following reasons:

1. "Sobeys' request has a retroactive aspect which BC Hydro respectfully submits the Commission cannot grant."<sup>17</sup>
2. "BC Hydro questions whether an ad hoc hearing into this particular issue is warranted at this time." This is because BC Hydro intends to file a rate design application this year and rate design issues "...should be approached in a holistic way so as to avoid changing individual provisions of the Electric Tariff without appropriate stakeholder engagement or appropriate consideration of other provisions which in turn may lead to unintended consequences."<sup>18</sup>
3. "The impact of the 85/15 Rate was understood and circumstances similar to Sobeys were contemplated during the 2009 LGS Application review and ultimately approved by the Commission as part of the NSA [Negotiated Settlement Agreement]..."
4. "...the Commission decided [in Order G-110-10] that it is normal for new owners to make changes to existing businesses and thus historical baselines should not be transferred to the new owner, and that the new account rules, together with the entire LGS and MGS rate structures, were fair, just and not unduly discriminatory."<sup>19</sup>
5. "...it is not administratively feasible for BC Hydro to individually verify each new LGS or MGS account to determine whether there is a change to an existing operation to apply the 85/15 Rate."<sup>20</sup>

## **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**

#### **Customer**

Any individual, person, partnership, company or other entity receiving service from BC Hydro. If such Customer receives service at more than one Premises, or for more than one business then such Customer shall be considered as a separate Customer at each of the Premises or at each business.

BC Hydro reserves the right to determine the number of Premises or whether or not any business is separately operated for the purpose of this definition.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

### **3.0 COMMISSION DETERMINATION**

The Commission reviewed the information provided by BC Hydro and Sobeys and determines that, for the reasons set out below and in accordance with section 83 of the *Utilities Commission Act* and the Electric Tariff including the LGS Rate Schedule, the relief sought by Sobeys is denied.

BC Hydro is applying the Electric Tariff and the LGS Rate Schedule correctly to Sobeys' new accounts. By virtue of Sobeys acquiring the Safeway stores through an asset purchase, BC Hydro is required to treat Sobeys as a new customer in accordance with the approved Electric Tariff and LGS Rate Schedule. The rules set out in the Electric Tariff and LGS Rate Schedule were approved by the Commission and by way of that approval it was determined that they are just, reasonable and not unduly discriminatory. As well, the issue of how a new customer is treated after an asset versus share purchase was specifically contemplated during the LGS Negotiated Settlement Process.<sup>21</sup>

Regarding Sobeys' request that the Commission amend the applicability of the tariff, the Commission is not persuaded that the approved tariffs require review or amendment as a result of this matter being raised by Sobeys.

Accordingly, the Commission finds that the request for an amendment to the Tariff is not warranted and is therefore denied.

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<sup>21</sup> BC Hydro Large General Service Rate Application 2009, Exhibit B-5, p. 445