

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-136-15**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

**Sobeys West Inc.
Application for Reconsideration of Order G-69-15**

BEFORE: R. D. Revel, Panel Chair/Commissioner
C. A. Brown, Commissioner August 14, 2015
N. E. MacMurphy, Commissioner

O R D E R

WHEREAS:

- A. On October 31, 2014, Sobeys West Inc. (Sobeys), a Large General Service (LGS) 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 LGS rate;
- B. On April 30, 2015, the Commission issued Order G-69-15 and attached reasons for decision denying the relief sought by Sobeys;
- C. On June 5, 2015, Sobeys filed an application for reconsideration of Order G-69-15;
- D. On June 29, 2015, the Commission established phase 1 of the reconsideration process and requested submissions from both parties;
- E. On July 23, 2015, BC Hydro submitted that Sobeys has not met the criteria to proceed to the second phase of the reconsideration process because Sobeys has not substantiated an error of law on a *prima facie* basis. In its submission BC Hydro provides an alternative option to offer relief to Sobeys under section 63 of the *Utilities Commission Act* (UCA), waiving the approximately \$900,000, which is the difference in the amount Sobeys is to be billed under the LGS 85/15 Rate for the first 12 months following Sobeys acquisition of Safeway as compared to the billing under the LGS rate using the Safeway LGS baselines;

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- F. Sobeys provided its submission on July 30, 2015 and states that if the Commission issues an order pursuant to section 63 of the UCA as BC Hydro has submitted, Sobeys would be satisfied and made whole and would withdraw its application for reconsideration; and
- G. The Commission has considered the submissions by BC Hydro and Sobeys and finds that based on the facts in this case, it is warranted to waive the approximately \$900,000 at issue in this matter.

NOW THEREFORE pursuant to section 63 of the *Utilities Commission Act* and for the Reasons attached to this order as Appendix A, the British Columbia Hydro and Power Authority must waive the difference in the amount Sobeys West Inc. is to be billed under the Large General Service 85/15 Rate for the first 12 months following Sobeys West Inc.'s acquisition of Safeway, as compared to the billing under the Large General Service rate using the Safeway Large General Service baselines (approximately \$900,000).

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of August 2015.

BY ORDER

Original signed by:

R. D. Revel
Panel Chair/Commissioner

Attachment

Sobeys West Inc.
Application for Reconsideration of Order G-69-15

REASONS FOR DECISION

1.0 BACKGROUND

On October 31, 2014, Sobeys West Inc. (Sobeys), a Large General Service (LGS) 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 LGS rate.¹ The complaint was based on the facts that after acquiring several Safeway stores through an asset purchase, Sobeys was treated as a new customer under the LGS rate. Specifically, as a new customer, Sobeys is to be billed under the “85/15 LGS Rate” which causes Sobeys to be billed approximately \$900,000 more than if they were not treated as a new customer and were billed using Safeway’s LGS baselines. Since Sobeys acquired the Safeway stores, they did not change the operations of the Safeway stores and thus the electricity consumption did not change. In the complaint Sobeys requested an amendment to the Tariff and associated rate schedules pursuant to section 58 of the *Utilities Commission Act* (UCA) such that the 85/15 LGS Rate would not apply and they would not be treated as a new customer.

As part of the original complaint process, BC Hydro submitted that the 85/15 LGS Rate for new customers was put in place to prevent existing customers from attempting to “game” the LGS rate by opening new accounts to reset their baselines.² BC Hydro also confirmed that the change in account ownership resulting from Sobeys’ acquisition of the Safeway stores does not represent “gaming” of the LGS rate to obtain a more favourable baseline.³

On April 30, 2015, the Commission issued Order G-69-15 and attached reasons for decision denying the relief sought by Sobeys. The relief was denied on the basis that the rules set out in the Electric Tariff and LGS Rate Schedule were approved by the Commission and by virtue of Sobeys acquiring the Safeway stores through an asset purchase as opposed to a share purchase they must be treated as a new customer.

2.0 RECONSIDERATION APPLICATION

On June 5, 2015, Sobeys filed an application for reconsideration of Order G-69-15 on the basis that the Commission has not addressed the complaint made by Sobeys and has erred by failing to grant the relief sought.⁴

On June 29, 2015, the Commission established phase 1 of the reconsideration process and requested submissions from both parties.⁵

¹ Sobeys West Inc. letter dated October 31, 2014.

² BC Hydro letter dated December 4, 2014.

³ Ibid.

⁴ Exhibit B-1.

⁵ Exhibit A-2.

BC Hydro provided its submission on July 23, 2015, and submits that Sobeys has not met the criteria to proceed to the second phase of the reconsideration process because Sobeys has not substantiated an error of law on a *prima facie* basis.⁶ However, BC Hydro provides an alternative option to offer relief to Sobeys. BC Hydro states that the Commission may issue an order pursuant to section 63 of the UCA waiving the approximately \$900,000, which is the difference in the amount Sobeys is to be billed under the LGS 85/15 Rate for the first 12 months following Sobeys acquisition of Safeway as compared to the billing under the LGS rate using the Safeway LGS baselines.⁷ BC Hydro confirms that in this situation, because this waiver would be an unplanned cost that has not been included as a forecast cost in any revenue requirements application by BC Hydro, waiving these charges does not affect forecasted net income and does not impact BC Hydro ratepayers.⁸

Sobeys provided its submission on July 30, 2015, and states that if the Commission issues an order pursuant to section 63 of the UCA as BC Hydro has submitted, Sobeys would be satisfied and made whole and would withdraw its application for reconsideration.⁹

3.0 COMMISSION DETERMINATION

The Commission has considered the submissions by BC Hydro and Sobeys and finds that based on the facts in this case, it is warranted to waive the approximately \$900,000 at issue in this matter because this billing is an unintended consequence of the 85/15 LGS Rate for new customers, BC Hydro suggested this relief, Sobeys is amendable to it, and BC Hydro ratepayers will not be impacted. **Accordingly, BC Hydro must waive the difference in the amount Sobeys West Inc. is to be billed under the Large General Service 85/15 Rate for the first 12 months following Sobeys West Inc.'s acquisition of Safeway as compared to the billing under the Large General Service rate using the Safeway Large General Service baselines (approximately \$900,000).**

Given that Sobeys will withdraw its reconsideration application upon issuance of this order, there is no need for the Commission to address the reconsideration application.

⁶ Exhibit C1-2, p. 1.

⁷ Ibid, p. 5.

⁸ Ibid.

⁹ Exhibit B-3, pp. 2-3.