



**ORDER NUMBER  
G-76-17**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Inc.  
Application for Reconsideration and Variance of Order G-199-16

**BEFORE:**

H. G. Harowitz, Panel Chair/Commissioner  
K. A. Keilty, Commissioner  
R. D. Revel, Commissioner

on May 17, 2017

**ORDER**

**WHEREAS:**

- A. On March 17, 2017, FortisBC Inc. (FBC) filed an Application for Reconsideration and Variance of Order G-199-16 (Reconsideration Application) on the basis that the British Columbia Utilities Commission (Commission) erred in matters of fact and law that justify variation of Order G 199-16;
- B. On December 29, 2016, the Commission issued Order G-199-16 and accompanying reasons for decision regarding FBC's Net Metering Program Tariff Update Application (Application);
- C. The Reconsideration Application requests that:
  - FBC not be directed to submit to the Commission changes to the Net Metering Tariff, Rate Schedule (RS) 95, which require that RS 95 customers not be removed from the Net Metering Program solely on the basis of producing Net Excess Generation (NEG) on an annual basis;
  - The kilowatt hour (kWh) bank described in Section 5 of the Application to carry forward NEG accumulated in a Net Metering customer's billing period to offset consumption in a future billing period, with an annual settlement for remaining unused NEG, be approved for implementation and the terms of RS 95 be amended accordingly; and
  - The terms of RS 95 be further amended such that Net Metering customers are compensated for any positive kWh balance remaining in the kWh bank at the end of the annual period using the British Columbia Hydro and Power Authority RS 3808 Tranche 1 rate;
- D. In FBC's Reconsideration Application, FBC also requests a stay of paragraph 2 of Order G-199-16, directing that proposed changes to RS 95 be submitted to the Commission, pending the resolution of this Reconsideration Application;
- E. On March 31, 2017, FBC filed a letter expressing its understanding that the filing deadline for the changes to RS 95 contemplated by paragraph 2 of Order G-199-16 would be suspended pending Commission review of

the Reconsideration Application or, alternatively, if the request for a stay has not been determined, that the Commission does not have an expectation that the proposed changes would be submitted pending its review of FBC's request for a stay;

- F. By letter dated April 3, 2017, the Commission established the first phase of the reconsideration process wherein the Commission requested written submissions from registered interveners in the FBC Net Metering Program Tariff Update Application proceeding addressing specific questions on whether the threshold for reconsideration has been met. FBC was given the opportunity to respond to intervener submissions (Phase One process). The Commission also confirmed that the requirements of Order G-199-16 are postponed pending the resolution of the Reconsideration Application;
- G. By April 17, 2017, the BC Sustainable Energy Association and Sierra Club BC, the British Columbia Old Age Pensioners' Organization *et al.*, Commercial Energy Consumers Association of British Columbia, Mr. Donald Scarlett and Mr. Andy Shadrack filed submissions in response to the Commission's Phase One process;
- H. On May 1, 2017, FBC filed its reply submission; and
- I. The Commission has reviewed the Reconsideration Application and the Phase One submissions and considers that the reconsideration process should proceed to the second phase of the Commission's reconsideration process.

**NOW THEREFORE** pursuant to section 99 of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the Commission orders as follows:

1. The second phase of the reconsideration process is established for FBC's Reconsideration Application. The scope of the second phase is limited to the issues raised in FBC's Reconsideration Application.
2. The Regulatory Timetable is established for the second phase of the reconsideration process, as set out and attached as Appendix B to this order.
3. FBC is granted leave to introduce new evidence on the items filed for reconsideration in accordance with the Regulatory Timetable.

**DATED** at the City of Vancouver, in the Province of British Columbia, this            17th            day of May 2017.

BY ORDER

*Original Signed By:*

H. G. Harowitz  
Commissioner

Attachment

FortisBC Inc.  
Application for Reconsideration and Variance of Order G-199-16

**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

**1.1 Background**

On April 15, 2016, FortisBC Inc. (FBC) filed its Net Metering Program Tariff Update Application (Application) with the British Columbia Utilities Commission (Commission). In the Application, FBC requests approval for changes to the Rate Schedule (RS) 95 tariff to:

- Clarify the intent of the Net Metering Program as described in Section 4 of the Application and reflected in the revised RS 95 tariff contained in Appendix C to the Application;
- Use a kilowatt hour (kWh) bank as described in Section 5 of the Application to carry forward Net Excess Generation (NEG) accumulated in a billing period forward to offset consumption in a future billing period, with an annual settlement for any annual remaining unused NEG; and
- Compensate customers for any positive kWh balance remaining in the kWh bank at the end of the annual period using the British Columbia Hydro and Power Authority RS 3808 Tranche 1 rate.

FBC also requests Commission acceptance of FBC's approach to the billing calculation method to remove the potential for misunderstanding about the application of the RS 95 tariff.

By Order G-199-16 and accompanying reasons for decision (Net Metering Decision), the Commission approved FBC's proposed changes to the RS 95 tariff which clarify that new customers will not be accepted into the Net Metering Program if their proposed generating capacity exceeds their anticipated annual consumption. However, the Commission ruled that FBC's proposed revisions alone do not provide the appropriate remedy and directed FBC to submit proposed changes to RS 95 within 90 days of the date of that order to clarify that: i) customers who are already participants in the Net Metering Program and wish to remain in the Net Metering Program, must not increase their generating capacity without prior approval of FBC, which shall be granted on the same basis as a new customer will be evaluated for entry into the Net Metering Program; and ii) RS 95 customers cannot be removed from the Net Metering Program solely on the basis of producing annual NEG. The Commission rejected the proposed change in the purchase price of NEG and FBC's application to create a kWh bank to carry forward NEG. The Commission accepted FBC's proposed interpretation of the billing method.

On March 17, 2017, FBC filed an Application for Reconsideration and Variance of Order G-199-16 (Reconsideration Application) on the basis that the Commission erred in matters of fact and law that justify a variance of Order G-199-16. The Reconsideration Application requests that:

- a) FBC not be directed to submit to the Commission changes to the Net Metering Tariff, RS 95, which require that RS 95 customers not be removed from the Net Metering Program solely on the basis of producing NEG on an annual basis;
- b) The kWh bank described in Section 5 of the Application to carry forward NEG accumulated in a Net Metering customer's billing period to offset consumption in a future billing period, with an annual settlement for remaining unused NEG, be approved for implementation and the terms of RS 95 be amended accordingly; and

- c) The terms of RS 95 be further amended such that Net Metering customers are compensated for any positive kWh balance remaining in the kWh bank at the end of the annual period using the British Columbia Hydro and Power Authority RS 3808 Tranche 1 rate.

## **1.2 Applicable law and Commission Guidelines**

Section 99 of the *Utilities Commission Act* provides:

The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

An application for reconsideration by the Commission proceeds in two phases. In the first phase, an application undergoes an initial screening to determine if an applicant has established a *prima facie* case sufficient to warrant full consideration by the Commission. In order for an application to advance to the second stage of the reconsideration process, an application must substantiate on a *prima facie* basis that the Commission has made an error of fact or law and that the alleged error has significant material implications.

The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for the reconsideration:

- the Commission made an error of fact or law;
- there has been a fundamental change in circumstances in facts since the decision;
- a basic principle had not been raised in the original proceeding; or
- a new principle has arisen as a result of the decision.<sup>1</sup>

In addition, the Commission will consider other criteria if it deems there to be just cause.

In the event the applicant establishes a *prima facie* case, the Commission will then proceed to the second phase, in which it hears full arguments on the merits of the reconsideration application.

## **2.0 PHASE ONE RECONSIDERATION PROCESS**

By letter dated April 3, 2017, the Commission established the first phase of the reconsideration process and requested written submissions from registered interveners in the FBC Net Metering Program Tariff Update Application proceeding. The Commission received submissions from the BC Sustainable Energy Association and Sierra Club BC (BCSEA-SCBC), the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), Commercial Energy Consumers Association of British Columbia (CEC), Mr. Donald Scarlett (Scarlett), Mr. Andy Shadrack (Shadrack) and a reply submission from FBC.

The submissions filed by the parties relating to the three questions outlined in the Commission's April 3, 2017 Phase One procedural letter are summarized below.

1. Whether FBC's Application for Reconsideration and Variance of Order G-199-16 establishes a *prima facie* case that the Commission made an error in fact or law.

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<sup>1</sup> British Columbia Utilities Commission, Guidelines, Reconsideration Criteria (July 2002), pp. 36–37.

FBC seeks reconsideration and variance of Order G-199-16 on the grounds that the Commission made material errors of law and fact in its decision. FBC states these errors relate to the following two broad issues:

- The interpretation of the rights and obligations set out in RS 95 and the Commission's direction that changes be made to the terms of the Net Metering tariff in respect of customers that consistently produce annual NEG; and
- The treatment of and compensation rate for NEG.<sup>2</sup>

FBC also submits that it was an error of fact for the majority of the Panel to conclude that the proposed kWh bank was solely a "mechanism to implement FBC's proposed pricing," and that the Panel majority committed an error of law in failing to address the benefits of the kWh bank in connection with its consideration of FBC's proposed change to the compensation rate it pays for NEG.<sup>3</sup>

CEC submits FBC's "expansive arguments" do establish a *prima facie* case on the areas of reconsideration identified by FBC.<sup>4</sup> BCSEA-SCBC and BCOAPO also submit that there should be a reconsideration of Order G-199-16.<sup>5</sup>

Mr. Shadrack submits that FBC has failed to make a *prima facie* case for reconsideration of either adoption of the KW bank or a requirement to change from the NEG retail rate at this time.<sup>6</sup> Mr. Shadrack further submits that FBC has not provided a coherent *prima facie* case for reconsideration of Order G-199-16, and that the Commission has not made any inherent error in law or in fact in considering FBC's 2016 Net Metering Program Tariff Update Application.<sup>7</sup> Mr. Scarlett does not agree that FBC's application for reconsideration establishes a *prima facie* case that the Commission made an error in fact or law.<sup>8</sup>

2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

FBC seeks leave to file new evidence, should it determine that doing so is appropriate, at the second phase of the reconsideration process. FBC states that any new evidence would likely be in respect of the NEG compensation issues, including the generation and consumption data described above at paragraphs 82–83 of the Reconsideration Application.<sup>9</sup>

BCSEA-SCBC submits that it does not see a need for new evidence nor does it see a need for new parties to be given an opportunity to present evidence.<sup>10</sup> BCOAPO does not intend to file evidence on reconsideration, but does support the ability of FBC and other participants (including new parties, if permitted) to file new evidence they believe necessary to address the issues.<sup>11</sup> CEC does not see the need for new evidence but does not oppose FBC filing new evidence which may assist in clarifying any misunderstanding which may have resulted in any error of fact.<sup>12</sup> FBC reiterates in its reply submission, "its request for leave to submit new evidence on the NEG compensation issues."<sup>13</sup>

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<sup>2</sup> Exhibit B-1, p. 4.

<sup>3</sup> Exhibit B-1, pp. 17–18.

<sup>4</sup> Exhibit C3-1, p. 1; Exhibit C1-1, p. 1; Exhibit C2-1, p. 1.

<sup>5</sup> Exhibit C1-1, p. 1; Exhibit C2-1, p. 1.

<sup>6</sup> Exhibit C4-1, p. 4.

<sup>7</sup> Exhibit C4-1, p. 6.

<sup>8</sup> Exhibit C5-1, p. 1.

<sup>9</sup> Exhibit B-1, p. 29.

<sup>10</sup> Exhibit C1-1, p. 1.

<sup>11</sup> Exhibit C2-1, p. 2.

<sup>12</sup> Exhibit C3-1, p. 2.

<sup>13</sup> Exhibit B-3, p. 11.

Mr. Scarlett submits that he “[does] not believe the Commission should hear new evidence, nor should new parties be given an opportunity to present evidence.”<sup>14</sup> Mr. Shadrack submits that, “Only after FBC has outlined a proper role for small scale DG [Distributed Generation] and the NM [Net Metering] program should they be allowed to present new evidence as to how the current program should be framed and the tariff rewritten.”<sup>15</sup>

3. If there is to be a reconsideration, should it encompass all the items raised in the Reconsideration Application, a subset of these items, or include additional items?

In BCSEA-SCBC’s view, if there is a reconsideration, it should focus on the “kWh Bank” mechanism, the price for annual NEG, and the conditions for participation in the Net Metering Program by customers with regular positive annual NEG.<sup>16</sup> BCOAPO submits that the reconsideration should focus on the first and third of the issues raised by FBC, being FBC’s ability to remove a customer’s consistent excess generation from RS 95 and the appropriate price for the compensation of NEG.<sup>17</sup> CEC submits that the reconsideration should focus on the issues identified by FBC in their Phase 1 filing as summarized above.<sup>18</sup> Mr. Scarlett submits that if there is to be a reconsideration, it should be restricted only to items that are established to have resulted from an error in fact or law in the decision of the Commission in the Net Metering Program Tariff Update hearing.<sup>19</sup>

## **2.1 Other issues raised in submissions**

### Materiality

Mr. Shadrack submits that “the material implications are so miniscule and insignificant at this time that the threshold for reconsideration simply has not been met under any circumstances.”<sup>20</sup> Mr. Shadrack further submits that, “In fact the cost of the original 2016 hearing and this reconsideration application has likely had more material impact on FBC customers than the payout of NEG to eight customers. The payout of intervenor costs for the original application was in fact larger than the \$34,402 made in NEG payouts.”<sup>21</sup> Similarly, Mr. Scarlett submits that, “In my opinion, the Net Metering Update hearing and this Reconsideration Application are already disproportionate in cost and intervenor effort to the magnitude of the issue that FBC finds so objectionable. I believe it verges on abuse of the Utilities Commission process.”

FBC disagrees that the materiality of the financial impact should be considered from the context of FBC’s entire residential customer base. FBC submits:

- The impact is more appropriately judged in the context of the Net Metering Program itself and should take into account that the model being proposed will apply to the Net Metering Program as it grows over time;
- The material implications of the Net Metering Decision are not limited to financial considerations and raise a question regarding FBC’s legal rights in relation to customers on other rate schedules who cease to satisfy the relevant eligibility criteria; and
- The Net Metering Decision entrenched a rate preference in favour of a small subset of Net Metering customers while simultaneously preventing FBC from receiving just and reasonable rates.

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<sup>14</sup> Exhibit C5-1, p. 1.

<sup>15</sup> Exhibit C4-1, p. 7.

<sup>16</sup> Exhibit C1-1, p. 2.

<sup>17</sup> Exhibit C2-1, p. 2.

<sup>18</sup> Exhibit C3-1, p. 2.

<sup>19</sup> Exhibit C5-1, p. 1.

<sup>20</sup> Exhibit C4-1, p. 6.

<sup>21</sup> Exhibit C4-1, p. 4.

FBC considers that fundamental principles of the Commission's rate setting jurisdiction are therefore in issue, and these are not immaterial or insignificant issues that can be reasonably ignored without further process.<sup>22</sup>

FBC 2016 Long Term Energy Resource Plan and Long Term Demand Side Management Plan (LTERP/LT DSM Plan) Application

Mr. Shadrack objects to the reconsideration proceeding to Phase Two and submits, "the issue of a KW bank or different price for NEG should be reconsidered again until after the Long Term Energy Resource Plan and Long Term Demand Side Management Plan application has been considered and the Commission has given FBC directions on how to proceed with regards integrating small scale Distributed Generation into overall FBC operations."<sup>23</sup>

FBC submits that the LTERP/LT DSM Plan proceeding does not preclude reconsideration of Order G-199-16 and that the specific issues it seeks to have addressed in the Reconsideration Application will not be impacted by any determinations that could be made in other extant Commission proceedings. FBC notes that the Panel majority's comment regarding these processes was that the LTERP, as well as the FBC Self-Generation Policy Stage II proceeding, would be potentially relevant to "broader issues" than those determined in the original application.<sup>24</sup>

**Commission determination**

**The Commission hereby establishes Phase Two of the reconsideration process for the FBC Application for Reconsideration and Variance of Order G-199-16. The scope of the second phase is limited to the issues raised in FBC's Reconsideration Application.**

**The Regulatory Timetable for the second phase of the reconsideration process is established and is attached as Appendix B to Order G-76-17. FBC is granted leave to introduce new evidence on the items filed for reconsideration and is directed to provide the required supplemental information in accordance with the Regulatory Timetable.**

The Panel is persuaded that a *prima facie* case has been made and that the Commission may have erred in its interpretation of the rights and obligations set out in RS 95 in respect of customers that consistently produce annual NEG. The Panel is also persuaded that a *prima facie* case has been made and that the Commission may have erred in the treatment of, and compensation rate for, NEG.

With regards to whether the issues for reconsideration have significant material implication, the Panel agrees with FBC that consideration of whether there are the material implications encompasses, but also goes beyond, financial considerations. In the Panel's view, the financial and non-financial issues raised by FBC satisfy the materiality threshold that justify progressing to Phase Two.

The Panel, therefore, finds it appropriate to proceed to Phase Two of the reconsideration process on all issues raised by FBC in its Reconsideration Application.

The Panel considers that the proposed topics of FBC's new evidence is within scope of phase two of the reconsideration process, and therefore finds it appropriate to allow FBC to file new evidence to supplement the evidence contained in its Reconsideration Application. After FBC has filed new evidence, the Panel will determine further process for this proceeding.

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<sup>22</sup> Exhibit B-3, p. 10.

<sup>23</sup> Exhibit C4-1, p. 7.

<sup>24</sup> Exhibit B-3, p. 9.

FortisBC Inc.  
Application for Reconsideration and Variance of Order G-199-16

**REGULATORY TIMETABLE**

ACTION	DATE (2017)
FBC Filing of Evidence	Wednesday, May 31
Further Process to be Determined	TBD