



**ORDER NUMBER**  
**G-103-17**

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

and

G. Barabás Application for Reconsideration and Variance of Order G-5-17  
in the matter of the British Columbia Hydro and Power Authority 2015 Rate Design Application

**BEFORE:**

D. M. Morton, Commissioner/Panel Chair  
D. A. Cote, Commissioner  
K. A. Keilty, Commissioner

on July 7, 2017

**ORDER**

**WHEREAS:**

- A. On January 20, 2017, the British Columbia Utilities Commission (Commission) issued Order G-5-17 and the accompanying Decision in the matter of the British Columbia Hydro and Power Authority (BC Hydro) 2015 Rate Design Application (RDA Decision). As part of the RDA Decision, the Commission directed BC Hydro to phase out the residential E-plus rate program over five years, commencing April 1, 2017;
- B. The Commission is in receipt of emails dated April 17, 2017 and May 11, 2017 from Dr. George Barabás, which collectively form an application to the Commission for reconsideration of Order G-5-17 as it relates to the Commission determination to phase out the residential E-plus rate program (Barabás Application for Reconsideration);
- C. By letter dated June 1, 2017, the Commission established phase one of the reconsideration process for the Barabás Application for Reconsideration and invited submissions from BC Hydro and all Registered Interveners in the BC Hydro 2015 Rate Design Application proceeding that address specific questions on whether the threshold for reconsideration has been met;
- D. The Commission received submissions from BC Hydro, British Columbia Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), E-Plus Homeowners Group (EPHG) and a reply submission from Dr. Barabás. The Commission received a submission from British Columbia Old Age Pensioners' Organization, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, Active Support Against Poverty, Together Against Poverty Society and the BC Poverty Reduction Coalition (collectively, BCOAPO) stating that it takes no position and does not intend on participating if the reconsideration proceeds to phase two; and
- E. The Commission has reviewed the Barabás Application for Reconsideration and the phase one submissions and considers that the Barabás Application for Reconsideration should be denied.

**NOW THEREFORE** pursuant to section 99 of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission denies the Barabás application for reconsideration and variance of Order G-5-17 as it relates to the determination to phase out the residential E-plus rate program.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 7<sup>th</sup> day of July 2017.

BY ORDER

*Original signed by:*

D. M. Morton  
Commissioner/Panel Chair

Attachment

G. Barabás Application for Reconsideration and Variance of Order G-5-17  
in the matter of the British Columbia Hydro and Power Authority 2015 Rate Design Application

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REASONS FOR DECISION

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## 1.0 Introduction

On January 20, 2017, the British Columbia Utilities Commission (Commission) issued Order G-5-17 and the accompanying Decision in the matter of the British Columbia Hydro and Power Authority (BC Hydro) 2015 Rate Design Application (RDA Decision). Directive 3 of Order G-5-17 states:

BC Hydro is directed to phase out the Residential E-Plus rate program over five years, commencing April 1, 2017. BC Hydro is directed to submit a compliance filing within 30 days of the date of this decision which outlines a proposal for achieving the five-year phase-out period of the E-Plus program and which results in rates being charged to E-Plus customers at the end of the five-year phase-out period that equate to other British Columbia residential customers at that time. BC Hydro is directed to waive the requirement of having an alternative heating system in working order and to eliminate the possibility of service being interrupted over the five-year transition period.

The Commission is in receipt of emails dated April 17, 2017 and May 11, 2017 from Dr. George Barabás, which collectively form an application to the Commission for reconsideration of Order G-5-17 as it relates to the Commission determination to phase out the residential E-plus rate program (Barabás Application for Reconsideration). The specific issues raised in the Barabás Application for Reconsideration are outlined in section 2.0 of these reasons.

As a separate matter, there is an ongoing Commission proceeding regarding an application from the E-plus Homeowners Group (EPHG) for reconsideration and variance of Order G-5-17 as it relates to the residential the E-plus rate. The scope of the EPHG Application for Reconsideration proceeding is limited to the duration and shape of the phase out of the residential E-plus rate, as opposed to the Commission determination to end the program.

### 1.1 Applicable Legislation and Reconsideration Criteria

Section 99 of the UCA states:

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.

The Commission has published Reconsideration Criteria<sup>1</sup> which outline the Commission's two phase process for addressing reconsideration applications. The Criteria note that "If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal."

The first phase is an initial screening phase in which the applicant must establish a prima facie case sufficient to warrant full reconsideration by the Commission. After the first phase evidence has been received, the

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<sup>1</sup> [http://www.bcuc.com/Documents/Guidelines/2009/DOC\\_22551\\_Reconsideration-Criteria.pdf](http://www.bcuc.com/Documents/Guidelines/2009/DOC_22551_Reconsideration-Criteria.pdf)

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

- 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.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

When there are alleged errors of law and fact with respect to the Commission's jurisdiction, the application must meet the following criteria:

- the claim of error is substantiated on a *prima facie* basis; and
- the error has material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application.

## 1.2 Regulatory Process

By letter dated June 1, 2017, the Commission established phase one of the reconsideration process for the Barabás Application for Reconsideration and invited submissions from BC Hydro and all Registered Intervenors in the BC Hydro 2015 Rate Design Application proceeding.

The Commission received submissions from BC Hydro, BC Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), EPHG and a reply submission from Dr. Barabás. In addition, the Commission received a submission from British Columbia Old Age Pensioners' Organization, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, Active Support Against Poverty, Together Against Poverty Society and the BC Poverty Reduction Coalition (collectively, BCOAPO) stating that it takes no position and will not participate if the reconsideration proceeds to phase two.

BC Hydro and BCSEA submit that the Barabás Application for Reconsideration does not meet any of the thresholds for reconsideration, while EPHG submits that the reconsideration is warranted.

## 2.0 Reconsideration Issues

**For the reasons outlined below, the Commission denies the Barabás application for reconsideration and variance of Order G-5-17.**

### 2.1 Legislation and Contracts

Dr. Barabás submits that Order G-5-17 was based on the statutes, and references section 64(1) of the *Utilities Commission Act* (UCA), which states:

- (1) If the commission, after a hearing, finds that under a contract entered into by a public utility a person receives a regulated service at rates that are unduly preferential or discriminatory, the commission may

- (a) declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
- (b) make any other order it considers advisable in the circumstances.

Dr. Barabás submits that “the meaning of the critical word “unduly” is misinterpreted and overextended to give way to the wrongful abrogation of long standing valid contracts between [BC] Hydro and E-Plus customers.” Further, Dr. Barabás states that he is “at a loss to understand why a power granted to the Commission to reverse corrupt or fraudulent contracts is to be applied in this case.”<sup>2</sup>

BC Hydro submit that the Commission did not refer to or rely on section 64(1) of the UCA in the RDA Decision and “[b]y implication, the Commission relied on its general rate-setting powers.”<sup>3</sup> Similarly, BCSEA submits that the Commission “treated residential E-Plus rates as a rate schedule, and made its determination regarding phase-out under the Commission’s authority in section 59 to regulate rates.”<sup>4</sup> BC Hydro and BCSEA both point to the Commission’s decision in the 2007 BC Hydro RDA proceeding (2007 RDA Decision), which addressed the argument that residential E-plus ratepayers have contracts with BC Hydro, as follows:

The Commission Panel is not persuaded by the E-Plus Group’s argument that its members have “contracts” with BC Hydro that the Commission has limited jurisdiction to abrogate, or that those contracts are everlasting in nature with a guaranteed price cap. Commission Orders No. G-24-87 and No. G-21-92 do not reference “contracts.” They do reflect the application of the Commission’s statutory jurisdiction over rates. Section 59(4) of the UCA makes it clear that it is a question of fact, of which the Commission is sole judge as to whether a rate is unjust, unreasonable or unduly discriminatory. The Commission Panel agrees with BC Hydro that section 64 of the UCA does not apply in a situation where service has been provided from the outset under rate schedules filed in accordance with the UCA. The Commission Panel will make no findings as to the nature of the commercial relationship that may exist between BC Hydro and its E-Plus customers.<sup>5</sup>

EPHG submits that the Barabás Application for Reconsideration raises issues that were not fully or adequately considered by the Commission during the 2015 RDA and “[a]ddressing the specific questions of whether contracts existed and whether the Commission acted correctly within their authority on this matter would be of benefit to BC Hydro, customers, and the public’s faith in the regulatory process.”<sup>6</sup>

In his reply submission, Dr. Barabás maintains that contracts exist between BC Hydro and residential E-plus customers and submits that the Commission erred when it did not accept these as contracts and exceeded its authority when it ordered BC Hydro to phase out the residential E-plus rate program. He submits that “these contracts between BC Hydro and the E Plus customers are not unduly preferential or discriminatory.” Further, Dr. Barabás submits that the Commission “does not have the authority to say what constitute a contract. The authority to say what is, or is not a contract rests with the Law Courts.”<sup>7</sup>

### Commission Determination

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<sup>2</sup> Exhibit B-1, pp. 1-2.

<sup>3</sup> Exhibit C-1-1, p. 2.

<sup>4</sup> Exhibit C-3-1, p. 2.

<sup>5</sup> 2007 BC Hydro RDA Decision, p. 133 [http://www.bcuc.com/Documents/Proceedings/2007/DOC\\_17004\\_10-26\\_BCHydro-Rate-Design-Phase-1-Decision.pdf](http://www.bcuc.com/Documents/Proceedings/2007/DOC_17004_10-26_BCHydro-Rate-Design-Phase-1-Decision.pdf).

<sup>6</sup> Exhibit C4-1, p. 2.

<sup>7</sup> Exhibit B-2, pp. 2-3.

The Panel is in agreement with BC Hydro and BCSEA that the Commission did not rely on section 64(1) of the UCA in Order G-5-17 as it relates to residential E-plus rates. Instead, and as noted by both BC Hydro and BCSEA, the Commission relied on its statutory jurisdiction over rates. Accordingly, the Panel denies that there was an error in law related to the application of section 64(1) of the UCA, given that this section was not relied upon in Order G-5-17 as it relates to residential E-plus rates.

With respect to whether or not contracts exist between BC Hydro and residential E-plus customers, the Panel notes that the Commission did not make any findings on this matter in the BC Hydro 2015 RDA proceeding nor was it required to do so in ordering BC Hydro to phase out the residential E-plus rate program. Instead, and as noted above, the Panel relied on its rate setting powers in making a determination regarding a rate schedule, that being Rate Schedule 1105. Accordingly, there are no errors that warrant reconsideration related to this matter. The Panel adopts the point made in the 2007 RDA Decision that “The Commission Panel will make no findings as to the nature of the commercial relationship that may exist between BC Hydro and its E-Plus customers.”

## **2.2 Procedural Fairness**

Dr. Barabás submits that “[n]either BC Hydro nor those who contracted to E-Plus contested, asked for or expected the repeal of the contracts.” BC Hydro addresses this point and submits that “Dr. Barabás indicates a possible procedural fairness issue...BC Hydro notes that Dr. Barabás was not an intervener in the 2015 RDA; conversely, [EPHG] was a registered an active intervener, with essentially the same interests and concerns as Dr. Barabás, and sought reconsideration on the basis of the phase-out period only. In the circumstances, BC Hydro denies that Dr. Barabás suffered from any procedural unfairness.”<sup>8</sup>

In his reply, Dr. Barabás submits that he did suffer procedural unfairness given that the Commission “brought down the decision to overturn these contracts without due notice to all stakeholders”.<sup>9</sup>

### Commission Determination

The Panel notes that during the BC Hydro 2015 RDA proceeding, public notice of the BC Hydro application and the related Commission proceeding was published in newspapers across the province. In addition, all exhibits, including the application, were posted to the proceeding webpage on the Commission’s website. Directive 3 of Order G-156-15 in the BC Hydro 2015 RDA proceeding states:

British Columbia Hydro and Power Authority (BC Hydro) will publish, as soon as practicable but no later than October 7, 2015, in display-ad format, a notice of the 2015 Rate Design Application attached as Appendix C to this order, in such appropriate local news publications as may properly provide adequate notice to the public in its service area.

The public notice attached as Appendix C to Order G-156-15 contains information on how to get involved in the proceeding, including the opportunity to register as an intervener, register as an interested party or submit a letter of comment. As part of that proceeding, the Commission also considered late requests to intervene that were received after the deadline established by Order G-156-15. Further, and as pointed out by BC Hydro, EPHG was a registered intervener in the BC Hydro 2015 RDA proceeding “with essentially the same interests and concerns as Dr. Barabás”.

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<sup>8</sup> Exhibit C1-1, pp. 2-3.

<sup>9</sup> Exhibit B-2, p. 2.

The Panel also notes that as part of the BC Hydro 2015 RDA proceeding EPHG, Non-Integrated Areas Ratepayers Group (NIARG), BCSEA and Commercial Energy Consumers Association of British Columbia (CEC) took a position on the residential E-plus rates. As stated by the Commission in its Decision, “NIARG has recommended and BCSEA has indicated that they would support a phasing out of the program.”<sup>10</sup>

As noted above with respect to the BC Hydro 2015 RDA proceeding, public notice was provided and interveners were allowed to actively participate, including EPHG. Accordingly, the Panel denies that Dr. Barabás suffered procedural unfairness.

Although not necessary in making a determination to deny the Barabás Application for Reconsideration given the reasons above, the Panel notes that typically applications for reconsideration to the Commission can only be made utilities and interveners that participated in the original proceeding. As noted by BC Hydro in its phase one submission, EPHG did intervene in the BC Hydro 2015 RDA proceeding and has filed a separate reconsideration application on the basis of the phase-out period only.

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<sup>10</sup> BC Hydro 2015 RDA Decision, p. 28.