



**ORDER NUMBER
G-110-17**

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

and

A. Shadrack Application for Reconsideration and Variance of Order G-76-17
in the matter of the FortisBC Inc. Application for Reconsideration and Variance of Order G-199-16

BEFORE:

D. M. Morton, Panel Chair

on July 18, 2017

ORDER

WHEREAS:

- A. On May 26, 2017, Mr. Andy Shadrack filed an Application for Reconsideration and Variance of Order G-76-17 (Shadrack Reconsideration Application) on the basis that the British Columbia Utilities Commission (Commission) erred in matters of 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 FortisBC Inc.'s (FBC) Net Metering Program Tariff Update Application (Net Metering Decision);
- C. On March 17, 2017, FBC filed an Application for Reconsideration and Variance of Order G-199-16 (FBC Reconsideration Application) on the basis that the Commission erred in matters of fact and law that justify variation of Order G 199-16;
- D. On April 3, 2017, the Commission issued a letter establishing the Phase One process to review the FBC Reconsideration Application and to assess whether the process should proceed to Phase Two. The process provided an opportunity for interveners to provide submissions on the matter and for FBC to have the right of reply;
- E. On May 17, 2017, the Commission issued Order G-76-17 and accompanying reasons for decision, establishing Phase Two for the FBC Reconsideration Application (Phase Two Decision);
- F. The Shadrack Reconsideration Application applies for a reconsideration of the Phase Two Decision, arguing that the decision to proceed to phase two should be overturned; and
- G. The Panel has reviewed the Shadrack Reconsideration Application and considers it to have not established a *prima facie* case sufficient to warrant full consideration by the Commission.

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 that the May 26, 2017 Application for Reconsideration and Variance of Order G-76-17 filed by Mr. Andy Shadrack fails to establish a *prima facie* case that an error has occurred and is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of July 2017.

BY ORDER

Original Signed By:

D. M. Morton
Commissioner

Attachment

A. Shadrack Application for Reconsideration and Variance of Order G-76-17
in the matter of the FortisBC Inc. Application for Reconsideration and Variance of Order G-199-16

REASONS FOR DECISION

1.0 Introduction

1.1 Background

On April 15, 2016, FortisBC Inc. (FBC) filed its Net Metering Program Tariff Update Application (Net Metering Application) with the British Columbia Utilities Commission (Commission).

On December 29, 2016, the Commission issued Order G-199-16 and accompanying reasons for decision (Net Metering Decision).

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

On April 3, 2017, the Commission issued a letter establishing the Phase One process to review the FBC Reconsideration Application and to assess whether the application should proceed to Phase Two. The process provided an opportunity for interveners to provide submissions on the matter and for FBC to have the right of reply.

Responses were received from: FBC; the BC Sustainable Energy Association and Sierra Club BC; the BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations, Tenants Resource and Advisory Centre and Disability Alliance BC; the Commercial Energy Consumers Association of British Columbia; Mr. Andy Shadrack; and Mr. Donald Scarlett.

Having reviewed the initial application and the submissions of the parties, the Commission issued Order G-76-17 and accompanying reasons for decision on May 17, 2017, establishing Phase Two of the FBC Reconsideration Application (Phase Two Decision).

On May 26, 2017, Mr. Andy Shadrack (Shadrack) filed an Application for Reconsideration and Variance of Order G-76-17, the Phase Two Decision (Shadrack Reconsideration Application), on the basis that the Commission erred in matters of law that justify overturning the decision to establish Phase Two.

1.2 Applicable law and Commission guidelines

Section 99 of the *Utilities Commission Act* (UCA) 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.

The Commission guidelines for reconsideration include the following:

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. It is important to

realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase, the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

2.0 Shadrack Reconsideration Application

Mr. Shadrack states “Upon reading section 64 of the Utilities Commission Act, I simply believe that the Commission has made an error in law in granting FBC a reconsideration hearing.”

Mr. Shadrack then puts forward various positions in relation to the merits of FBC’s reconsideration request itself. However, he makes no submission on the nature of the alleged errors in law, or on the process which unfolded pursuant to that order.

3.0 Panel discussion and determination

In arriving at a decision as to whether the Shadrack Reconsideration Application should move to Phase Two, the Commission addressed two fundamental issues:

- Setting parameters around the specific matters of law that could give rise to a reconsideration; and
- determining if the application has established a *prima facie* case that such an error has been committed.

3.1 The matter(s) open to challenge in this reconsideration

Before determining whether the Shadrack Reconsideration Application adequately establishes a *prima facie* case that the Commission committed an error of law, the Panel must first address the question of what law(s) and or error(s) are the subject of the case.

Shadrack references section 64 of the UCA as the basis for the reconsideration request. Section 64 is in a section entitled “Orders respecting contracts,” and while section headings aren’t determinative, the Panel finds that section 64 does relate to contracts and not to reconsiderations. It is section 99 of the UCA which provides the Commission the powers to reconsider its own decisions.

Furthermore, the Commission has published reconsideration guidelines, which provide additional information as to the process for adjudicating reconsideration applications under section 99 of the UCA. In applying these guidelines, the relevant question does not relate to the merits of the FBC Reconsideration Application itself. Rather, the Panel finds that the relevant criteria for assessing whether the Commission erred is centred on how

the Commission carried out the Phase One review of the FBC Reconsideration Application, leading to the Phase Two Decision (i.e. the decision which is the subject of the Shadrack Reconsideration Application). Thus, the question of error might be framed in terms of whether the Commission in some way contravened section 99 or its own related guidelines, in arriving at its decision to proceed to Phase Two.

3.2 Whether a *prima facie* case been established

The Panel finds that the Shadrack Reconsideration Application fails to establish a *prima facie* case that an error has been committed, and therefore dismisses this application.

First and foremost, given the context set out in Section 3.1 above, the Panel notes that Mr. Shadrack provides no comments whatsoever pertaining to specifically what error of law has been committed. Even if the Panel looks past Mr. Shadrack's error in citing the incorrect section of the UCA, the Panel considers the arguments brought forward to be singularly focussed on the merits of the FBC Reconsideration Application and not on the Commission's process for arriving at the Phase Two Decision. In short, he has not presented any evidence or argument that establishes even a *prima facie* case regarding an error of law.

Related to this point, the Panel places considerable importance on the fact that the Phase One review process for the FBC Reconsideration Application included an opportunity for parties to comment on the application, and that Mr. Shadrack fully participated in that process. He did not then, or in his application for reconsideration, argue that he was not afforded adequate opportunity to present his position. In other words, going beyond a narrow interpretation of what might constitute an error in law, the Panel also finds no evidence or argument put forward by Mr. Shadrack in favour of a claim of procedural (un)fairness.

Finally, the Panel is mindful of the statement in the reconsiderations guidelines that "an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision." The Panel is of the view that Mr. Shadrack's application is essentially a precis of the same reasons he put forward in the Phase One process, and that he is attempting to re-argue the case. The Panel notes that Mr. Shadrack will have ample opportunity to argue his position on the merits of the FBC application within the review of the FBC Reconsideration Application.