



ORDER NUMBER
G-195-18

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

and

Charles and Michael Burns Application for Reconsideration and Variance of Order G-166-17
in the matter of the British Columbia Hydro and Power Authority Customer Emergency Fund Pilot Program
Application

BEFORE:

W. M. Everett, QC, Commissioner/Panel Chair
D. A. Cote, Commissioner

on October 11, 2018

ORDER

WHEREAS:

- A. On November 17, 2017, the British Columbia Utilities Commission (BCUC) issued order G-166-17 (Order) and accompanying reasons for decision regarding the British Columbia Hydro and Power Authority's (BC Hydro) Customer Emergency Fund (CEF) Pilot Program Application, which approved, among other things, Rate Schedule 1903, which establishes a CEF Rate Rider, effective June 1, 2018;
- B. By letter dated June 22, 2018, Charles and Michael Burns (collectively, Burns) filed an application for reconsideration of the Order on the basis that the BCUC does not have the legal authority or jurisdiction to allow BC Hydro to collect insurance premiums as it relates to the CEF Pilot Program (Reconsideration Application);
- C. By letter dated August 2, 2018, the BCUC provided the Burns with its Reconsideration Guidelines which outline the criteria that an applicant must demonstrate in order to establish a *prima facie* case sufficient to warrant full consideration by the BCUC. In this phase of the reconsideration review process, the Panel generally applies certain criteria to determine whether or not a reasonable basis exists for allowing the reconsideration. This includes whether:
 - the BCUC had made an error in fact or law;
 - there has been a fundamental change in circumstances of facts since the decision;
 - a basic principle has not been raised in the original proceedings; or
 - a new principle has arisen as a result of the decision.

The BCUC also provided the Burns with the opportunity to file further specific details regarding its application for reconsideration;

- D. The Burns responded to the BCUC by letter dated August 13, 2018 submitting that the BCUC erred in fact or law on the basis that it does not have the legal authority or jurisdiction to allow BC Hydro to collect insurance premiums. The Burns also submit that a basic principle had not been raised in the original proceeding, namely that the CEF Pilot Program is a forced insurance program charging rate payers a CEF Rate Rider of \$0.0082 per day in circumstances where there has been no form of consent from the rate payers and there is no contractual agreement or policy for the insurance program; and
- E. The Panel has reviewed the Reconsideration Application and the supplementary letter dated August 13, 2018 and considers that it has not established a *prima facie* case sufficient to warrant a full reconsideration hearing by the BCUC.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the BCUC orders that the Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of October 2018.

BY ORDER

Original signed by:

W. M. Everett, QC
Commissioner

Attachment

Charles and Michael Burns Application for Reconsideration and Variance of Order G-166-17
in the matter of the British Columbia Hydro and Power Authority Customer Emergency Fund Pilot
Program Application

REASONS FOR DECISION

1.0 Introduction

On November 17, 2017 the British Columbia Utilities Commission (BCUC) issued Order G-166-17 (Order) and the accompanying reasons for decision (Decision) in the matter of the British Columbia Hydro and Power Authority's (BC Hydro) Customer Emergency Fund (CEF) Pilot Program (CEF Pilot) application which approved, among other things, Rate Schedule 1903, establishing a CEF Rate Rider, effective June 1, 2018.

By letter dated June 22, 2018, Charles Burns and Michael Burns (collectively, Burns) made an application seeking a reconsideration of the Order, on the basis that the BCUC does not have the legal authority or jurisdiction to allow BC Hydro to collect insurance premiums as it relates to the CEF Pilot Program (Reconsideration Application).

By letter dated August 2, 2018, the BCUC provided the Burns with its Reconsideration Guidelines which outline the criteria an applicant must demonstrate in order to establish a *prima facie* case sufficient to warrant a full reconsideration hearing by the BCUC. The BCUC also provided the Burns the opportunity to file further specific particulars that they allege demonstrate a *prima facie* case for reconsideration of the Order.

By letter dated August 13, 2018, the Burns responded (Supplementary Filing), stating, in part, that they had established a *prima facie* case for a full reconsideration hearing on the basis that:

- the BCUC erred in fact or law, and
- a basic principle had not been raised in the original proceedings.

The particulars of each of the above grounds which the Burns allege establish a *prima facie* case for a full reconsideration hearing are addressed below in this decision.

1.1 Applicable law and BCUC guidelines

Section 99 of the *Utilities Commissions 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 BCUC Reconsideration Guidelines provide:

An application for reconsideration by the BCUC proceeds in two phases:

Phase One: In the interests of both efficiency and fairness, and before the BCUC 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 BCUC. In the first phase, the Panel generally applies certain criteria to determine whether or not a reasonable basis exists for allowing the reconsideration. This includes whether:

- the BCUC had made an error in fact or law;
- there has been a fundamental change in circumstances of facts since the decision;
- a basic principle has not been raised in the original proceedings; or
- a new principle has arisen as a result of the decision.

Phase Two: If necessary, the reconsideration proceeds to the second phase where the BCUC hears full arguments on the merits of the application.

2.0 Burns Reconsideration Application

In the Supplementary Filing, the Burns state that the BCUC in its Decision made an error in fact or law on the basis that it does not have the legal authority or jurisdiction to allow BC Hydro to collect insurance premiums in the form of the CEF Rate Rider, given that BC Hydro is not an insurance company. Further, the Burns state that a basic principle had not been raised in the original proceeding, namely, that the CEF Pilot is a forced insurance program charging rate payers a CEF Rate Rider of \$0.0082 per day in circumstances where there has been no form of consent from the rate payers and there is no contractual agreement or policy for the insurance program.

The Burns submit the foregoing establishes a *prima facie* case for a full reconsideration hearing on the basis that the CEF Pilot “is a cleverly disguised insurance program that offloads, in part, outstanding delinquent residential rate payer accounts to paying residential BC Hydro rate payers who are forced by Order to contribute to an annual pool of \$5,300,000 that BC Hydro solely collects, manages and distributes to successful claimants, who fill out an application and qualify for a \$500 or \$600 electrical credit”.¹

3.0 Panel discussion and determination

In the first phase of this reconsideration review process, the Panel must determine whether the Reconsideration Application has established a *prima facie* case that the BCUC committed an error of law and/or that a basic principle was not raised in the original proceeding.

Under the UCA the BCUC has the jurisdiction, pursuant to sections 59 to 61, to approve rates, sought by a utility to enable it to recover the costs of carrying out its activities and an opportunity to earn a reasonable return. In this case, the CEF Rate Rider is a rate sought by BC Hydro to enable it to implement the CEF Pilot on the terms described in its CEF Pilot Application. The BCUC has found the CEF Rate Rider was neither discriminatory nor unjust or unreasonable and approved it pursuant to the foregoing provisions of the UCA. Specifically, in the BC Hydro 2015 Rate Design Application decision, the BCUC’s view was that the CEF is not discriminatory “...since all customers in the class are paying the same rate and could potentially rely on the fund in a time of need.”² In this

¹ Supplementary Filing, p. 2.

² BC Hydro 2015 Rate Design Application Decision, p. 97.

Panel's view, the BCUC clearly had the legal authority and jurisdiction under sections 59 to 61 of the UCA to approve the CEF Pilot and the CEF Rate Rider. In particular, the Panel refers to the broad discretion provided by section 60(1)(b.1), which states "the commission may use any mechanism, formula or other method of setting the rate that it considers advisable...." Accordingly, the Panel finds the Burns have failed to establish a *prima facie* case that the BCUC has made an error in fact or law as it has the legal authority and jurisdiction under the UCA to issue the Order approving, among other things, the CEF Rate Rider.

With respect to the Burns' submission that a basic principle was not raised in the original proceeding, they assert that the CEF Pilot is an insurance program and that the CEF Rate Rider is an insurance premium.

In addition, the Burns provide a definition of "insurer" as "an insurance company which agrees to pay someone who pays them for insurance for losses suffered pursuant to the terms of the insurance policy. For this benefit the customer pays the company a fee, called a premium."³

The Panel notes that the *Insurance Act* of BC defines insurance as "the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event."⁴

Further, the Panel notes that in the text, *Insurance Law of Canada*, it states that "[m]ore generally, a key distinguishing feature of activities caught by the definition [of insurance] is that they involve the right of the 'insured' to demand payment or the provision of a service on the happening of some uncertain misfortune."⁵

The Panel acknowledges that there are elements of the CEF Pilot as described by the Burns that in a very broad sense are not dissimilar to some insurance elements. However, those elements of similarity do not make BC Hydro an insurer and the CEF Rate Rider an insurance premium. Rather, the BCUC has approved the CEF Pilot and the CEF Rate Rider in its statutory capacity as a regulator of utilities and pursuant to its authority under the provisions of sections 59 to 61 of the UCA to approve rates. BC Hydro is carrying out the CEF Pilot and collecting the CEF Rate Rider pursuant to the Order. BC Hydro has not, as argued by the Burns, acted in a "cleverly disguised" manner as an Insurer, nor has it entered into a contract of insurance or charged a premium.

The Panel is not persuaded by the Burns' submissions that the CEF Pilot is an insurance program and that the CEF Rate Rider is an insurance premium. **The Panel finds that the Burns have failed to establish a *prima facie* case that a basic principle was not raised in the original proceeding.**

Accordingly, the Panel finds that the Reconsideration Application and the Supplementary Filing fail to establish a *prima facie* case that the BCUC has made an error in fact or law or that a basic principle was not raised in the original proceeding, and therefore dismisses the Reconsideration Application.

³ Supplementary Filing, p. 2.

⁴ The *Insurance Act*, RSBC 2012, Chapter 1, Part 1

⁵ Insurance Law in Canada by Brown and Donnelly, p. 2-1.