



ORDER NUMBER
G-152-19

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

and

Kaslo Senior Citizens Association, Branch 81
Application for Reconsideration and Variance of Order G-40-19
in the matter of the FortisBC Inc. 2017 Cost of Service Analysis and Rate Design Application

BEFORE:

R. I. Mason, Panel Chair
C. M. Brewer, Commissioner
D. A. Cote, Commissioner

on July 11, 2019

ORDER

WHEREAS:

- A. On February 25, 2019, the British Columbia Utilities Commission (BCUC) issued Order G-40-19 and the accompanying Decision in the matter of the FortisBC Inc. (FBC) 2017 Cost of Service Analysis and Rate Design Application (RDA Decision);
- B. On April 25, 2019, the Kaslo Senior Citizens Association, Branch 81 (KSCA) filed an application for reconsideration and variance of the BCUC's determinations in the RDA Decision regarding the rate schedule (RS) 01 residential customer class basic customer charge, on the grounds that the BCUC made an error in law (KSCA Reconsideration Application);
- C. Section 28.01, Part V of the BCUC's Rules of Practice and Procedure, which are attached to Order G-15-19, states that upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish, on its face, any reasonable grounds for reconsideration of the decision; and
- D. The BCUC has reviewed the KSCA Reconsideration Application and considers that a summary dismissal is warranted.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, for the reasons attached as Appendix A to this order, the BCUC dismisses the KSCA Reconsideration Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of July 2019.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

Kaslo Senior Citizens Association, Branch 81
Application for Reconsideration and Variance of Order G-40-19
in the matter of the FortisBC Inc. 2017 Cost of Service Analysis and Rate Design Application

REASONS FOR DECISION

1.0 Introduction

On December 22, 2017, FortisBC Inc. (FBC) filed its 2017 Cost of Service Analysis (COSA) and Rate Design Application (RDA) with the British Columbia Utilities Commission (BCUC) seeking approval of, among other things, rate design changes for its various customer classes, including the residential customer class (2017 RDA).

The 2017 RDA was reviewed through a written hearing process and included the participation of 13 interveners, including the Kaslo Senior Citizens Association, Branch 81 (KSCA).

The BCUC issued its Decision and Order G-40-19 regarding the 2017 RDA on February 25, 2019 (RDA Decision).

With regard to the default residential customer class – rate schedule (RS) 01, the BCUC approved the following rate design proposals:

- To decrease the differential between the Residential Conservation Rate (RCR) Tier 1 and Tier 2 price over the course of five years such that at the beginning of year five the differential between the Tier 1 and Tier 2 price will be zero, resulting in a flat rate.
- To adjust the Customer Charge over the course of five years such that at the beginning of year five the Customer Charge under RS 01 will be equal to the Customer Charge under RS 03A (Residential Exempt Rate for Farm Customers).¹

On April 25, 2019, KSCA filed an application seeking reconsideration and variance of the BCUC's determination regarding the residential Basic Customer Charge (BCC)² in the RDA Decision, stating that the BCUC made an error in law (KSCA Reconsideration Application).

2.0 Background on the RDA Decision

At the time of FBC's filing of the 2017 RDA, the rate design for the default residential customer class (RS 01) consisted of a two-tier inclining block rate variable charge and a fixed customer charge (Customer Charge) of \$16.05 per month.³ This Customer Charge was designed to recover 45 percent of FBC's fixed costs allocated to the residential customer class, with the remaining fixed costs being recovered through the variable two-tier rate or Residential Conservation Rate (RCR).⁴

In the 2017 RDA, FBC proposed to increase the Customer Charge to \$18.70 per month, allowing for a minimum of approximately 55 percent of customer-related fixed costs to be recovered through the Customer Charge. This

¹ FortisBC Inc. 2017 Cost of Service Analysis and Rate Design Application Decision and Order G-40-19 dated February 25, 2019 (RDA Decision), Directive 1.

² The terms "customer charge" and "basic customer charge" are used interchangeably in these reasons for decision.

³ RDA Decision, p. 37, Table 13.

⁴ Ibid., p. 31, Table 11.

increase was proposed to be phased in over five years, with the full impact of the increase to the Customer Charge to be in place at the beginning of year five.⁵

The basis for FBC's proposals in the 2017 RDA was the 2017 COSA Study, which was conducted by EES Consulting Inc. (EES). EES is a third-party expert in public utility rate design matters. Using FBC's 2017 approved costs as the starting point, the 2017 COSA Study allocated these costs amongst FBC's customer classes. As part of the RDA Decision, the BCUC found the 2017 COSA Study results reasonable and accepted the 2017 COSA Study as the basis for FBC's rate design proposals.⁶

With regard to the residential rate class, the BCUC approved FBC's Customer Charge proposal in the RDA Decision, noting that this approach better matches the fixed costs of the utility with the recovery of these costs from customers, thus aligning with Dr. Bonbright's principle of cost causation.⁷ The BCUC also approved FBC's proposal to transition the two-tier variable energy rate to a flat rate and found that the flat rate more closely aligns with cost causation principles than the RCR.⁸

3.0 Applicable Law and BCUC Rules of Practice and Procedure Regarding Reconsideration Applications

Sections 59 (1) through (4) of the *Utilities Commission Act* (UCA) state the following:

- (1) A public utility must not make, demand or receive
 - (a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or
 - (b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.
- (2) A public utility must not
 - (a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice or disadvantage, or
 - (b) extend to any person a form of agreement, a rule or a facility or privilege, unless the agreement, rule, facility or privilege is regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description.
- (3) The commission may, by regulation, declare the circumstances and conditions that are substantially similar for the purpose of subsection (2) (b).
- (4) It is a question of fact, of which the commission is the sole judge,

⁵ Ibid., pp. 31, 37.

⁶ Ibid., pp. 1, 7, 21.

⁷ Ibid., pp. 5, 35.

⁸ Ibid., p. 49.

- (a) whether a rate is unjust or unreasonable,
- (b) whether, in any case, there is undue discrimination, preference, prejudice or disadvantage in respect of a rate or service, or
- (c) whether a service is offered or provided under substantially similar circumstances and conditions.⁹

Section 99 of the 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.¹⁰

The BCUC Rules of Practice and Procedure provide the following:

An application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which must include one or more of the following:

- a) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
- b) facts material to the decision that existed prior to the issuance of the decision were not placed into evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding;
- c) new fact(s) have arisen since the issuance of the decision which have a material bearing on the decision;
- d) a change in circumstances material to the decision has occurred since the issuance of the decision; or
- e) where there is otherwise just cause.¹¹

The BCUC Rules of Practice and Procedure also provide the following:

Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish on its face, any reasonable grounds for reconsideration of the decision.¹²

4.0 KSCA Reconsideration Application

KSCA raises concerns with the effect of the FBC residential rate changes on low-use residential customers. KSCA submits that the fixed Customer Charge results in a rate which is unjust, unreasonable and unduly discriminatory

⁹ *Utilities Commission Act*, RSBC 1996, c. 473, ss. 59(1) – 59(4).

¹⁰ *Utilities Commission Act*, RSBC 1996, c. 473, s. 99.

¹¹ British Columbia Utilities Commission (BCUC) Rules of Practice and Procedure, Order G-15-19 dated December 17, 2018, Attachment, Part V, Section 26.05.

¹² *Ibid.*, Section 28.01.

for a customer using 5,000 kilowatt-hours (kWh) per year or less, and unduly preferential for a customer using 35,000 kWh per year or more, contrary to section 59 of the UCA.¹³

KSCA claims that the rate for a customer using 5,000 kWh per year is 16.24 cents per kWh, and the rate for a customer using 35,000 kWh is 12.39 cents per kWh, which KSCA submits is a “discriminatory declining rate differential of 3.85 cents per kWh.”¹⁴ KSCA further observes that the Customer Charge comprises 27.6 percent of the bill of a residential customer using 5,000 kWh per year, but only 5.1 percent of the bill of a residential customer who uses 35,000 kWh per year.¹⁵

KSCA submits that the rate design “will specifically target higher rate increases for low usage customers” and “those on fixed income, because they are...most likely to use the least amount of electricity, [and] are therefore the most likely to face the steepest rate increases in their bills.”¹⁶

KSCA asserts that the BCUC “in its deliberations...simply finds as fact, without requiring any evidence from the Company” that the classification of distribution system costs within the 2017 COSA Study is reasonable.¹⁷ To support this assertion, KSCA cites the BCUC’s use on page 14 of the RDA Decision of a quotation from FBC relating to FBC’s approach to distribution cost allocation in the 2017 COSA Study. KSCA alleges that the BCUC accepted FBC’s statement “as fact, without requiring any evidence.” KSCA continues by citing examples from the 2017 RDA proceeding that purportedly show that FBC allocates more of its distribution costs to residential customers than are allocated to residential customers in other jurisdictions.¹⁸

Of particular issue to KSCA is the BCUC’s acceptance of FBC’s use of the Minimum System Study (MSS) and Peak Load Carrying Capability (PLCC) adjustment to classify distribution system costs.¹⁹ KSCA asserts that the BCUC “erroneously prefers to let FBC misallocate costs to residential customers through continued use of the outdated Minimum System theory and its PLCC variant.”²⁰ The KSCA Reconsideration Application re-argues KSCA’s opposition to the Minimum System Study and PLCC adjustment, citing sources such as Garfield and Lovejoy, Dr. Bonbright and the Washington Utilities and Transportation Commission, all of which were presented by KSCA in the 2017 RDA proceeding.²¹

KSCA further submits that the BCUC exhibited bias in the RDA Decision. To support this, KSCA submits that the hearing process was not conducive to KSCA’s participation, that KSCA was denied funding for its participation whereas other interveners received funding, and that the BCUC should not have taken BCOAPO’s interventions into account in its decision “simply because they support the FBC application,” with no regard to whether BCOAPO represents organizations based in FBC’s service area.²²

¹³ Exhibit B-1, p. 1.

¹⁴ Ibid.

¹⁵ Ibid., p. 2.

¹⁶ Ibid., pp. 10–11.

¹⁷ Ibid., p. 3.

¹⁸ Ibid.

¹⁹ RDA Decision, pp. 14–15.

²⁰ Exhibit B-1, p. 8.

²¹ Exhibit B-1, pp. 7–9.

²² Ibid., p. 11.

5.0 Panel Determination

For the reasons set out below, the Panel finds that the KSCA Reconsideration Application has failed to establish, on its face, any reasonable grounds for the BCUC's determinations in the RDA Decision to be reconsidered, and therefore dismisses the KSCA Reconsideration Application. KSCA's submission has not persuaded the Panel that an error of fact, law or jurisdiction has been made. Nor has KSCA's submission provided new facts that have a material bearing on the RDA Decision or suggested that circumstances have changed since the issuance of the RDA Decision. The Panel understands that KSCA disagrees with the RDA Decision, but disagreement alone is not adequate grounds for reconsideration. In its request for reconsideration, KSCA has not identified any error of fact, law, or jurisdiction which has a material bearing on the RDA Decision so as to justify its reconsideration, but rather has merely restated its original position put forth during the 2017 RDA proceeding.

There were three themes which emerged from the KSCA Reconsideration Application. The first, and most central, is that the FBC rate design approved by the BCUC was discriminatory to low-volume residential users. Second, KSCA claims the BCUC failed to question evidence presented by FBC or require evidence that was lacking in the proceeding that would have supported KSCA's position. Finally, KSCA claims the BCUC demonstrated bias in its decision-making. The Panel addresses and presents its findings on each of these as follows.

Claim of discrimination

The Panel finds KSCA's claim that the rate for FBC's residential customers is discriminatory mischaracterizes the BCUC-approved residential rates. To support its allegation of discrimination, KSCA presents the average rate per kWh paid by residential customers, citing the example of a customer using 5,000 kWh per year paying 16.24 cents per kWh as compared to the 12.39 cents per kWh paid by a higher use customer using 35,000 kWh per year. However, KSCA's characterization is inaccurate, as average rates have not been approved in the RDA Decision. Rather, when the approved changes fully come into effect, every FBC residential customer taking service under RS 01 will pay the same fixed Customer Charge of \$18.70 per month and the same variable charge of \$0.11749 per kWh.²³

The Panel does not disagree with KSCA that the average rate per kWh declines as usage increases, or that the fixed cost as a percentage of the total bill declines as usage increases. However, this is not because of discrimination against a particular person or persons, but is merely the arithmetic outcome of any rate design with fixed and variable rate components.

The test set out in section 59(1) of the UCA is that rates must not be unduly discriminatory or unduly preferential. The Panel finds that the incidental differentiation between the average rate per kWh paid by different customers is an erroneous characterization of the approved rate, and that all FBC's residential customers pay the same rates and are subject to the same terms and conditions of service, regardless of their usage or their financial status. Thus, the Panel finds that FBC's residential rates are not unduly discriminatory or unduly preferential.

²³ RDA Decision, pp. 37, 49.

Claim of findings not being supported by evidence

KSCA submits the BCUC suffered from a “general failure” of making findings without evidence in the RDA Decision.²⁴ As an example, KSCA cites quotations from the RDA Decision made by FBC, which KSCA states the BCUC “simply finds as fact, without requiring any evidence from the Company.”²⁵ This quotation from FBC was not a finding of fact by the BCUC as claimed by KSCA, but was included in the RDA Decision in a section labelled “positions of the parties” to articulate FBC’s position.

Notwithstanding that FBC’s position on distribution cost allocation cited by KSCA was not a finding of fact by the BCUC, KSCA alleges that the BCUC has failed to explain why, for instance, FBC charges residential customers 81 percent of the cost of poles, which is 60 percent more than that charged by Hydro Quebec.²⁶ The BCUC explained its decision on distribution cost allocation as follows:

The [BCUC] is satisfied that the MSS, when combined with the PLCC adjustment to avoid double-counting of demand, is a reasonable approach for classifying distribution costs. There is no evidence that this approach does not provide reasonable results based on FBC’s specific circumstances. Further, while the UCA does not require consistency with past BCUC decisions, the [BCUC] finds in this instance that consistency with the method approved by the BCUC in the 2009 RDA Decision is appropriate, particularly as there have been no circumstances identified by FBC or interveners which support a deviation from the current method.²⁷

The Panel finds that the BCUC’s explanation of FBC’s distribution cost allocation is clear and that KSCA provides no persuasive argument to the contrary. While the BCUC did not specifically reference the relative cost of poles in BC and Quebec in its determination, the BCUC did explain the reasoning by which the distribution cost allocation decision was made. The BCUC is not obligated to identify and explain every implication that may arise as a result of its decisions, which in any case, would not be possible or practical. The Panel further notes that FBC retained a third-party expert in public utility rate design to prepare the 2017 COSA Study and that the expert responded to questions posed by the BCUC and by interveners on topics such as distribution cost allocation and jurisdictional comparisons as part of the 2017 RDA proceeding.

While the BCUC may not have referenced all of the evidence collected on the topics of the Minimum System Study and allocation of distribution costs in the RDA Decision, the Panel rejects the notion that the absence of cited evidence indicates that the evidence was not considered by the BCUC. The BCUC does not reproduce in its decisions all of the evidence submitted in a proceeding, nor does it reproduce all of the arguments submitted by participants. Rather, BCUC decisions are written to explain, as concisely as possible, the reasoning by which the decision was made. The absence of a specific piece of evidence from a written decision does not indicate that the evidence was not considered but may merely indicate that the BCUC did not find that evidence determinative, compelling or relevant to its decision-making or that the evidence was not sufficiently compelling or had little application to the issues at hand.

The Panel also observes that distribution cost allocation decisions are made in each jurisdiction on the basis of the local circumstances prevailing at the time and the methodology employed. The BCUC approved FBC’s cost allocations based on the evidence in the 2017 RDA proceeding, and specifically stated that there was “no

²⁴ Exhibit B-1, p. 2.

²⁵ Ibid., p. 3.

²⁶ Ibid.

²⁷ RDA Decision, p. 14.

evidence that this approach does not provide reasonable results based on FBC's specific circumstances."²⁸ The Panel does not find KSCA's presentation of selective cost allocations from other jurisdictions to be persuasive evidence that the BCUC made an error of fact in its reasoning.

Moreover, with respect to its request for reconsideration, KSCA provides no persuasive examples of errors of fact by the BCUC in the RDA Decision. Neither does KSCA provide examples of facts material to the decision that were not placed in evidence, or new facts that have arisen since the decision was issued.

For these reasons, the Panel finds that KSCA has not established any reasonable grounds for reconsideration on the basis that the BCUC did not consider the evidence in the 2017 RDA proceeding.

Claim of bias

The Supreme Court of Canada (SCC) has ruled that in questions of bias by decision makers, the standard to consider is whether there was "reasonable apprehension of bias."²⁹ Using the test set out in this SCC decision, the Panel considers whether "an informed person, viewing the matter realistically and practically – and having thought the matter through"³⁰ would consider there was a reasonable apprehension of bias on the part of the BCUC when reaching the RDA Decision.

KSCA submits that the hearing process was not conducive to its participation. The Panel recognizes that some participants are not represented by legal counsel and that participation for those residing outside of Vancouver may be challenging. However, where possible, the BCUC tries to take measures to address possible inequities that may arise from these circumstances, and to ensure proceedings are conducted openly and transparently. In particular:

- The 2017 RDA proceeding was conducted in writing so all documents were posted online and written submissions were sought to avoid the necessity to attend hearings in person.
- For the procedural conference, the BCUC held the hearing in Kelowna to be closer to the affected parties, and although in-person attendance was not required, in the event interveners elected to attend in person, funding for travel expenses under the BCUC Participant Assistance/Cost Award (PACA) guidelines was available.³¹ KSCA participated at the procedural conference though did not attend in person.
- The BCUC PACA guidelines also allow for the funding of the cost of interveners' legal counsel and consultants. Intervenors have the opportunity to formally apply for funding, including interim funding, if they can demonstrate a need for financial assistance. KSCA submitted no PACA budget for this proceeding, nor did it apply for interim funding. Other intervenors in this proceeding used the availability of PACA funding to hire legal representation and consulting assistance. This opportunity was available to KSCA as well, but KSCA made no apparent effort in this regard.

The Panel finds that KSCA has not provided a substantive and persuasive submission that the BCUC demonstrated bias against it with regards to KSCA's ability to participate meaningfully in the 2017 RDA proceeding. Despite having a history of intervention in various BCUC proceedings and having been made aware of the PACA funding mechanisms, KSCA did not take advantage of the funding opportunities that existed.

²⁸ Ibid.

²⁹ *Wewaykum Indian Band v. Canada*, [2003] 2 SCR 259, 2003 SCC 45.

³⁰ Ibid., at para 74.

³¹ BCUC Participant Assistance/Cost Award Guidelines, Order G-97-17.

In future proceedings, KSCA may wish to seek PACA funding to hire legal counsel and consulting expertise to assist with its intervention.

KSCA also claims the BCUC took into account BCOAPO's interventions "simply because they support the FBC application," with no regard to whether BCOAPO represents organizations based in FBC's service area.³² The Panel does not find this claim demonstrates a reasonable apprehension of bias on the part of the BCUC. The BCOAPO has a long history of intervening in BCUC proceedings to represent the interests of old-age pensioners and low-income residents of BC. The Panel finds it was reasonable for the BCUC to give weight in the RDA Decision to the submission of BCOAPO with regard to low-income customers because of the BCOAPO's province-wide mandate.

For the foregoing reasons, the Panel does not find that an informed person would conclude there was a reasonable apprehension of bias on the part of the BCUC.

Based on the foregoing analysis of the issues raised, the Panel finds that the KSCA Reconsideration Application fails to establish on its face any reasonable grounds for reconsideration of the RDA Decision, and therefore dismisses the application.

³² Exhibit B-1, p. 11.