



ORDER NUMBER
G-292-19

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

and

Net Metering Ratepayer Group
Application for Reconsideration of BCUC Order G-276-19

BEFORE:

A. K. Fung, QC, Commissioner

on November 19, 2019

ORDER

WHEREAS:

- A. On November 12, 2019, the Net Metering Ratepayer Group (NMRG) filed an application seeking reconsideration of the length of the extension granted for filing intervenor evidence in the British Columbia Power and Authority (BC Hydro) Application to Amend Net Metering Service under Rate Schedule 1289 (Net Metering Application). Specifically, NMRG seeks amongst other relief, an extension of the deadline for filing of intervenor evidence from November 14, 2019 to November 25, 2019 for NMRG and other affected parties (Reconsideration Application);
- B. By Order G-217-19A dated September 16, 2019, the BCUC established the remainder of the regulatory timetable for the review of the Net Metering Application;
- C. During the October 25, 2019 to October 27, 2019 period, the BCUC underwent an IT systems and equipment upgrade. Notice of the IT upgrade and its potential impact were provided on the BCUC website and on social media;
- D. As a result of the IT upgrade, BCUC became aware that some parties who signed up for web notification on the Net Metering Application proceeding may not have received a web notification for BC Hydro's responses to BCUC and Intervenor Information Requests No. 2 filed as Exhibits B-7, B-8 and B-8-1 (Affected Exhibits), which were posted on October 25, 2019;
- E. By email dated November 4, 2019, the BCUC notified BC Hydro, registered intervenors, and interested parties to the Net Metering Application proceeding that some parties may not have received a web notification for the Affected Exhibits, and provided links to those exhibits;
- F. By letter dated November 6, 2019, the NMRG requested an extension to the deadline for filing intervenor evidence in the Net Metering Application from November 7, 2019 to November 22, 2019, stating that without proper web notification of the Affected Exhibits an unknown number of parties have been deprived of knowledge of or access to more than 266 pages of essential information. NMRG submitted that under the

circumstances, requiring interveners to file their evidence on November 7, 2019 would create irreparable prejudice for some or all of them;

- G. By letter dated November 7, 2019, the BCUC notified the parties to the Net Metering Application proceeding that the deadline to file intervenor evidence would be extended to November 14, 2019, and that an order with an amended regulatory timetable would be issued in due course;
- H. By Order G-276-19 dated November 7, 2019, the BCUC amended the regulatory timetable in the Net Metering Application proceeding, which included an extension to the deadline for filing intervenor evidence to November 14, 2019;
- I. Following the receipt of the Reconsideration Application and by Order G-281-19 dated November 13, 2019, the BCUC suspended the review of the Net Metering Application pending the outcome of the Reconsideration Application;
- J. By letter dated November 14, 2019, BC Hydro states that it has not considered and takes no position with regards to the merits of the Reconsideration Application. BC Hydro further states that from a resourcing perspective it has no objection to an extension of the deadline for the filing of intervenor evidence in the Net Metering Application to November 25, 2019, if the BCUC determines that an extension is warranted;
- K. Part V of the BCUC's Rules of Practice and Procedure, which are attached to Order G-15-19, sets out the Rules for the reconsideration process (Reconsideration Rules);
- L. By Order G-287-19 dated November 14, 2019, the BCUC established a public hearing process to review the Reconsideration Application which provided for further comments, if any, from BC Hydro on November 18, 2019 and reply comments from NMRG on November 22, 2019;
- M. On November 18, 2019, BC Hydro filed a letter stating that it has no further comments with regards to the merits of the Reconsideration Application by NMRG; and
- N. In light of BC Hydro's submissions confirming that it has no objections to the requested extension for the filing of intervenor evidence in the Net Metering Application to November 25, 2019 if the BCUC determines that an extension is warranted, the Panel considers that the following order on the Reconsideration Application is warranted.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, for written reasons to follow, the BCUC orders that the Reconsideration Application by the Net Metering Ratepayer Group be allowed in part and the deadline for the filing of intervenor evidence in the Net Metering Application be extended to November 25, 2019.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of November 2019.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

Net Metering Ratepayer Group
Application for Reconsideration of BCUC Order G-276-19

Reasons for Decision

December 17, 2019

Before:
A. K. Fung, QC, Commissioner

Net Metering Ratepayer Group
Application for Reconsideration of BCUC Order G-276-19

REASONS FOR DECISION

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1.0 Introduction

These Reasons for Decision are rendered pursuant to Order G-292-19 issued by the Panel on November 19, 2019 allowing in part a reconsideration application brought by an intervener, the Net Metering Ratepayer Group (NMRG). As part of that Order, the Panel stated that written Reasons for Decision would follow. The background to the current proceeding is set out below.

1.1 Background

This reconsideration request arises in the course of an ongoing and contested BCUC proceeding, specifically, the application filed on April 29, 2019 by the British Columbia Hydro and Power Authority (BC Hydro) to Amend Net Metering Service under Rate Schedule 1289 (Net Metering Application). NRMG is one of several registered interveners in that proceeding. On September 16, 2019, the BCUC issued Order G-217-19A in the Net Metering Application which, amongst other things, provides for the filing of BC Hydro response to Information Request No. 2 on October 24, 2019 and intervener evidence on November 7, 2019.

Between October 25, 2019 and October 27, 2019, the BCUC underwent an IT systems and equipment upgrade. Public notification of the IT upgrade and its potential impact was provided on the BCUC website and on social media. After completion of the IT upgrade and some time between October 27 and November 3, 2019, the BCUC became aware that some parties who had signed up for web notifications on the Net Metering Application proceeding may not have received a web notification for BC Hydro's responses to BCUC and Intervener Information Request No. 2 filed as Exhibits B-7, B-8 and B-8-1 (Affected Exhibits). The Affected Exhibits had been posted on the BCUC website on October 25, 2019. By email dated November 4, 2019, the BCUC notified BC Hydro, registered interveners, and interested parties to the Net Metering Application proceeding that some parties may not have received a web notification for the Affected Exhibits, and provided links to those exhibits.

By letter dated November 6, 2019, NMRG requested that the BCUC extend the deadline for filing intervener evidence in the Net Metering Application from November 7, 2019 to November 22, 2019, stating that without proper web notification of the Affected Exhibits an unknown number of parties have been deprived of knowledge of or access to more than 266 pages of essential information. NMRG submitted that under the circumstances, requiring interveners to file their evidence on November 7, 2019 would create irreparable prejudice for some or all of them. Although the BCUC did not seek submissions from other parties on NMRG's request, two other registered interveners in the Net Metering Application proceeding, BC Sustainable Energy Association (BCSEA) and R. Hadland (Hadland), volunteered their support of NMRG's extension request.¹ In particular, Hadland stated:²

As one of the intervenors that said I might present evidence and as one that did not receive Hydros [*sic*] responses to intervenors questions in a timely manner, and as one who is still trying to make sense of Hydros [*sic*] answers/non answers, I support the request from the Net Metering groups request for an extension of the submission deadline.

No other parties provided any comments on NMRG's extension request.

By letter dated November 7, 2019, the BCUC notified the parties to the Net Metering Application proceeding that the deadline to file intervener evidence would be extended to November 14, 2019, and that an order with an amended regulatory timetable would be issued in due course "that accommodates availability in the

¹British Columbia Hydro and Power Authority (BC Hydro) Amend Net Metering Service under Rate Schedule 1289 proceeding (Net Metering Application), Exhibits C1-6 and C9-6.

²Net Metering Application, Exhibit C9-6.

upcoming holiday season.”³ In its three paragraph letter, the BCUC provided the following response to NMRG’s request for an extension to November 22:

The BCUC provides notification as a convenience only. It is expected that participants are aware of the schedule and would access the information on the BCUC website without such notification. Notwithstanding, the Panel is prepared to make an allowance and hereby notifies parties that the deadline to file intervenor evidence has been extended to Thursday, November 14.

Later that same date (November 7, 2019), the BCUC issued Order G-276-19 amending the regulatory timetable in the Net Metering Application proceeding (Decision). The amended regulatory timetable included an extension to the deadline for filing intervenor evidence to November 14 instead of the November 22 date requested by NMRG.

1.2 Summary of Reconsideration Application and Relief Sought

On November 12, 2019, NMRG filed an application seeking reconsideration of the Decision including the length of the extension granted for filing intervenor evidence in the Net Metering Application proceeding (Reconsideration Application). Pursuant to section 99 of the *Utilities Commission Act* (UCA), the BCUC “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.” Review of the Reconsideration Application is governed by Part V of the BCUC’s amended Rules of Practice and Procedure effective February 1, 2019 (Rules). Specifically, Rule 26.05 a) of the Rules requires that applicants set out a concise statement of the grounds for reconsideration:⁴

...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....

NMRG alleges that in issuing the Decision, the BCUC has made the following seven errors of law or fact as summarized in the Reconsideration Application:⁵

- Error of law: determining that web notifications aren’t required by the Rules but are provided “for convenience only”;
- Error of law: failing to properly apply the interpretation rule as set out in Rule 2, which requires the Rules to be “liberally construed in the public interest to ensure the fairest, most expeditious and efficient determination of every matter before the BCUC consistent in all cases with the requirements of procedural fairness”;⁶
- Error of law: improperly shifting responsibility under the Rules from the BCUC to the parties;
- Error of law: effectively amending a previous BCUC order (namely Order G-15-19 approving the amended Rules) without due process;
- Error of law: improperly waiving or modifying Rules 9.09 and 11.09 which assure registered intervenors of their ability “to receive automated email notifications of all the documents posted to the [BCUC]

³Net Metering Application, Exhibit A-12.

⁴BCUC Rules of Practice and Procedure, Order G-15-19 dated December 17, 2018, Attachment, Part V, Rule 26.05.

⁵Exhibit B-1, paras. 17-68.

⁶ BCUC Rules of Practice and Procedure, Order G-15-19 dated December 17, 2018, Attachment, Part V, Rule 2.

website”⁷ along with an assurance that the “BCUC’s website will send an automated email to all parties who have registered online when a document has been posted to the evidentiary record posted on the BCUC’s website”;⁸

- Error of fact: conflating BCUC obligation and parties’ benefit; and
- Error of law: anticipated reliance on Rule 11.10 regarding service, which provides in part that the “BCUC considers a document to be served on a party once it is added to the BCUC’s evidentiary record and posted on the BCUC’s website”.⁹

As for the impact of the Decision and its materiality, NMRG submits that the length of time permitted between receipt of notification of BC Hydro’s responses to IRs and the filing of intervenor evidence is critical to intervenors’ ability to fairly review and respond to BC Hydro’s evidence in their own intervenor evidence. NMRG further points out that the materials in the Affected Exhibits total more than 266 pages. In light of that, NMRG submits:¹⁰

Arbitrarily abbreviating the time between the required web notification of the availability of BC Hydro’s Response and the deadline for filing Intervenor Evidence to anything less than the 14 days afforded to those parties who did receive the required web notification is unfair and prejudicial.

NMRG goes on to say:¹¹

Depriving some Interveners but not others of the same required web notification and abbreviating the interval period clearly will or may have a material impact on affected Interveners’ abilities to prepare their own evidence.

NMRG submits that as a result of these errors, the BCUC should grant three types of relief, which the Panel summarizes below:

Expedited relief on intervenor filing deadline:

In light of the ongoing Net Metering Application, NMRG submits that the BCUC should do the following on an expedited basis:

- a. provide the most expeditious determination of the extension period issue in order to eliminate remaining uncertainty as to when Intervenor Evidence must be filed in the Net Metering Application proceeding.
- b. reconsider the length of extension of the deadline for filing Intervenor Evidence for NMRG and any other Interveners affected by the error in web notification.
- c. grant an extension for filing Intervenor Evidence that places affected parties in the position they would be in but for BCUC’s mistake in failing to provide required web notifications. The filing deadline for NMRG and other affected parties should be November 25, 2019.¹²

⁷ Ibid, Rule 9.09.

⁸ Ibid, Rule 11.09.

⁹ Ibid, Rule 11.10

¹⁰ Net Metering Application, Exhibit C23-6, para.15.

¹¹ Ibid., para. 16.

¹² Exhibit B-1, para. 70.

NMRG further submits the following relief should be granted in due course following the granting of the expedited relief:

Relief on Rules Interpretation:

- d. The BCUC should provide an express public notification that the Rules of Practice and Procedure, and Rules 9.09 and 11.09 in particular, have not been amended without due process and don't and never did include any limitation to the effect that any obligation of the BCUC created by the Rules is relieved in any way by an erroneous concept of being provided "for convenience only."

Ancillary relief:

- e. The BCUC should post an explanation on the BCUC webpage for the Net Metering Application proceeding describing:
 - i. the problem that resulted in some parties receiving the required web notifications while others didn't;
 - ii. when and how the BCUC became aware of the problem;
 - iii. how soon after the problem was first discovered the BCUC notified parties;
 - iv. which parties were affected;
 - v. why only some parties were affected;
 - vi. what steps were taken to rectify the problem;
 - vii. reasonable assurance that the required web notification system won't fail again;
 - viii. assurance that if the problem does occur again parties that do not receive required web notifications will be placed in the position they would have been in but for the BCUC's mistake without any further process or action required by parties; and
 - ix. confirmation that the BCUC expressly acknowledges the importance of the required web notifications to some parties and considers it reasonable for all parties to rely on the web notifications as required by the Rules of Practice and Procedure.

1.3 Regulatory Process

Following the receipt of the Reconsideration Application, by Order G-281-19 dated November 13, 2019, the BCUC suspended the review of the Net Metering Application pending the outcome of the Reconsideration Application.

By Order G-287-19 dated November 14, 2019, the BCUC established a public hearing process and regulatory timetable to review the Reconsideration Application. The regulatory timetable provided for comments from BC Hydro on November 18, 2019, and reply comments from NMRG on November 22, 2019. Notice of the Reconsideration Application and Order G-287-19 were provided to all registered interveners in the Net Metering Application proceeding.

On November 14, 2019, BC Hydro provided its comments stating that it has not considered and takes no position with regards to the merits of the Reconsideration Application. BC Hydro further states that from a resourcing perspective it has no objection to an extension of the deadline for the filing of intervener evidence in

the Net Metering Application to November 25, 2019, if the BCUC determines that an extension is warranted.¹³ On November 18, 2019, in accordance with the regulatory timetable established by Order G-287-19, BC Hydro filed a letter reiterating that it has no further comments with regards to the merits of NMRG's Reconsideration Application.¹⁴ On November 19, 2019, the Panel issued Order G-276-19 allowing the Reconsideration Application in part and extending the Intervener Evidence filing deadline to November 25, 2019, with written reasons to follow.

2.0 Analysis of Merits and Panel Determination

In considering the merits of any reconsideration application, the Panel must determine in accordance with Rule 26.05 whether "the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision." However, independent of any findings of factual or legal errors that have a material bearing on the decision, the BCUC also has the discretion to reconsider a decision "where there is otherwise just cause" pursuant to paragraph e) of Rule 26.05.

The Panel does not consider it necessary to address each and every one of the alleged errors of law or fact provided by NMRG in support of the Reconsideration Application. Suffice it to say that the Panel is persuaded by the evidence and the unique circumstances of this case to find that the granting of the expedited relief sought by NMRG in respect of the extension request only to be warranted for the reasons set out below.

The Panel agrees with NMRG that nowhere in the Rules is it stated that web notification is provided by the BCUC to registered interveners as a matter of "convenience only". However, Rules 9.09 and 11.09 do not make it mandatory for the BCUC to provide registered interveners with automated email notifications of all postings. Nor do the specific Rules in question constitute a guarantee from the BCUC in all circumstances that all notifications are successfully made and actually received by the intended recipient. Rather, Rule 11.09 simply states:

The BCUC's website will send an automated email to all parties who have registered online when a document has been posted to the evidentiary record posted on the BCUC's website [*emphasis added*].

The Panel interprets this Rule as an expression of the BCUC's intent and commitment to follow a practice of providing web notifications to registered parties of relevant postings on its website. This means the BCUC must exercise reasonable efforts and diligence in doing so, and registrants are entitled to expect that such notifications will be made in the normal course. It is also reasonable to infer that the BCUC will be timely in its efforts to provide web notifications of postings.

In this case, it is clear that in the unusual circumstances of the BCUC's internal IT upgrade between October 25 and October 27, the notifications of the filing of the Affected Exhibits did not occur seamlessly, with the result that an unknown number of interveners in the Net Metering Application proceeding, including Hadland and NMRG, did not receive the web notifications of the filing until receipt of the BCUC email of November 4 notifying them of the problem and providing a direct link to the Affected Exhibits. This led to the filing on November 6 of NMRG's request for an extension for filing of intervener evidence from November 7 to November 22, on the basis that requiring intervener evidence to be filed by November 7 "would create irreparable prejudice for some or all Interveners" including NMRG.¹⁵

¹³ Exhibit C-1, p. 1.

¹⁴ Exhibit C-2, p. 1.

¹⁵ Net Metering Application, Exhibit C23-6, p.2.

As the Panel already noted, the BCUC declined NMRG's request but made "an allowance" by granting a seven day extension for the intervenor filing deadline to November 14.¹⁶ It is not entirely clear, though, the basis upon which the BCUC made that Decision, beyond the statements that web notifications are provided "for convenience only" and that "It is expected that participants are aware of the schedule and would access the information on the BCUC website without such notification."¹⁷ As already noted, the Panel does not agree with the first statement as being an accurate reflection of the applicable Rules regarding web notifications. As for the second, however, the Panel notes that the BCUC provided public notice of the IT upgrade in the period leading up to its implementation warning parties of possible interruptions and problems. In these circumstances, it may well have been prudent for a sophisticated party such as counsel for the NMRG (who has appeared regularly before the BCUC) to check the postings on the BCUC website during that period out of an abundance of caution. However, not every other affected intervenor is in the same position, nor would they necessarily have the same experience with the BCUC's processes, as witnessed by the individual intervenor Hadland, who confirmed that he did not receive the web notification in question. Nonetheless, the consequences of the failure to receive the web notifications and the resulting Decision are the same: for those intervenors who did not receive the web notifications, as a result of the Decision, they are deprived of a reasonable period of time to review the Affected Exhibits and prepare their intervenor evidence. In short, they are materially and detrimentally affected by the Decision in contrast to those intervenors who did receive the web notification of the posting of the Affected Exhibits on October 25 as intended.

The Panel further notes that BC Hydro did not oppose the granting of the extension request in this Reconsideration Application should the Panel find it appropriate to do so. As already indicated, two other intervenors in the Net Metering Application, BCSEA and Hadland, also voluntarily supported the granting of the extension request sought.

Panel Determination

Apart from any errors in law or fact made by the BCUC rendering the Decision, in the rather unique circumstances of this case and in light of the suspension in review of the Net Metering Application pending this Reconsideration Application, the Panel finds it appropriate to grant the expedited relief and allow the Reconsideration Application in part by extending the deadline for the filing of intervenor evidence in the Net Metering Application to November 25, 2019. In the Panel's view, the circumstances of this case warrant the exercise of the BCUC's discretion to reconsider the Decision "where there is otherwise just cause" in accordance with paragraph e) of Rule 26.05.

3.0 Other relief

As for the other relief sought by NMRG (namely, relief on Rules interpretation and ancillary relief) as summarized in section 1.2 of these Reasons for Decision, the Panel denies such relief for the following reasons:

1. With respect to the relief on Rules interpretation, NMRG is seeking essentially confirmation that the Rules have not been amended as a result of the Decision. In the Panel's view, that is a self-evident fact that does not need clarification or confirmation. In rendering its Decision, the BCUC did not say that it was amending the Rules. Indeed, it lacks any authority to do so in the absence of an express order to that effect. Every Panel assigned to review an application before the BCUC has the obligation and the

¹⁶ Net Metering Application, Exhibit A-12.

¹⁷ Ibid.

discretion to interpret applicable legislation, rules and regulations, including these Rules, as it sees fit, but its interpretation is not binding upon subsequent Panels nor does it have any precedential value.

2. With respect to the ancillary relief sought in terms of requiring the BCUC to post on the Net Metering Application proceeding page on its website a specific and detailed explanation relating to the problems in web notification related to the IT upgrade and the lesson learnt as a result, the Panel finds such relief inappropriate and unnecessary. The IT upgrade was an unusual and isolated incident which unfortunately resulted in some interveners not receiving relevant web notifications. However, there is no evidence before this Panel that failure of web notifications is a recurring or common problem at the BCUC which needs to be addressed and remedied on an institutional basis. Furthermore, the BCUC appropriately provided public notification and alerted parties of potential issues on its website and on social media about the IT upgrade before and during its implementation. Should the BCUC determine that further explanation or review of the circumstances surrounding the web notification failure that gave rise to the Reconsideration Application is required, the Panel is confident that the BCUC will conduct such review on its own initiative and take appropriate corrective action if needed.

Accordingly, with the exception of the extension in the intervener evidence filing date to November 25, 2019, the Panel denies the other relief sought by NMRG in the Reconsideration Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of December 2019.

Original signed by:

A. K. Fung, QC
Commissioner