



May 15, 2020

Sent via email

Letter L-26-20

Ms. Jady Peng
Lake Okanagan Resort
2751 Westside Road
Kelowna, BC V1Z 3T1
jady.peng@dhiholdings.com

Re: Lake Okanagan Resort – Status as a Public Utility – Interim/Permanent Rate Application Filing

Dear Ms. Peng:

On December 18, 2019, the British Columbia Utilities Commission (BCUC) issued Order G-333-19, which determined Lake Okanagan Resort (LOR) to be a public utility as defined in section 1 of the [Utilities Commission Act](#) (UCA). Order G-333-19 further directed LOR, pursuant to section 45 of the UCA, with respect to a Certificate of Public Convenience and Necessity (CPCN) and sections 59 to 61 of the UCA, with respect to rates, to file the following:

1. As soon as possible, an application seeking required regulatory approvals for its permanent rates, electric tariff and general terms and conditions; and
2. within 15 days, interim tariff pages for endorsement.

As a public utility under the UCA, LOR is subject to regulation under Part 3 of the UCA, which includes the obligation to comply with the UCA and the duty to obey orders of the BCUC. To date, LOR has not complied with the directives contained in Order G-333-19 or the applicable provisions of the UCA.

Pursuant to section 45 of the UCA, as a public utility, LOR:

...must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

Except as otherwise provided, a public utility must have a CPCN resulting from an application approved by the BCUC before beginning operation in the province of British Columbia. Further, to continue operations, a public utility must obtain a CPCN if it has not already done so under section 45 of the UCA. To be clear, without an exemption from the UCA, LOR must obtain a CPCN to continue operating as a public utility. According to our records, LOR has not been granted a CPCN or exemption from section 45 of the UCA. As such, the BCUC requires LOR to file a CPCN application for review by June 15, 2020. For further guidance, please refer to the BCUC's [CPCN Application Guidelines](#) available on the BCUC website.

Further, sections 58 to 61 of the UCA require BCUC approval of any rate a public utility charges its customers for service.

Pursuant to section 61(1) of the UCA, as a public utility, LOR:

...must file with the commission, under rules the commission specifies and within the time and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced.

The BCUC acknowledges receipt of LOR's January 6, 2020 two-page submission made pursuant to Directive 4 of Order G-333-19. However, the submitted interim tariff pages are insufficient and do not qualify as interim tariff pages; therefore, the BCUC will not endorse them. Interim tariff pages in an application for rates should include the public utility's existing rate schedules, tariff information and the terms and conditions between the public utility and its customers. Further, LOR's submission fails to establish certain basic terms and conditions of the rates it charges its customers, including but not limited to: billing policies, payment schedules, disconnection and reconnection provisions, termination of service, access to premises, metering and meter reading conditions. Therefore, in accordance with Order G-333-19, LOR must re-file interim tariff pages for endorsement, which includes a full interim rate schedule and a comprehensive electric tariff outlining the terms of service between LOR and its customers. The BCUC requires LOR to resubmit comprehensive interim tariff pages by May 29, 2020.

Since issuing Order G-333-19 on December 18, 2019, the BCUC has yet to receive an application for review of LOR's permanent rates, electric tariff, and general terms and conditions, pursuant to sections 59 to 61 of the UCA. The BCUC notes LOR was directed to file this application as soon as possible in Directive 2 of Order G-333-19. Given that five (5) months have now passed since the issuance of Order G-333-19 and the urgency of this matter, LOR must submit its permanent rate application by no later than June 15, 2020 and provide an update to the BCUC as to the progress and the expected filing date of this application with the submission of its interim tariff pages on May 29, 2020. As BCUC staff have previously discussed with LOR, the BCUC recommends that LOR seek legal counsel to assist with these filings and the regulatory process associated with it due to the complexity and urgency of this matter.

The BCUC notes on November 8, 2012, Order in Council (OIC) No. 731 brought into force Part 8.1 of the UCA which authorizes the BCUC to impose administrative penalties against a public utility that contravenes the UCA, the Regulations, or an Order, standard or rule of the BCUC. Different penalties apply where different sections of the UCA are contravened. Further, section 109.1(2) of the UCA provides for penalties against "a director, officer or agent of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision" of the UCA. Copies of the [UCA](#) and OIC No. 731 are attached.

Further to Order G-333-19, the BCUC demands LOR comply with the order to file interim tariff pages and to file both a permanent rate application and CPCN application by June 15, 2020. The failure of LOR, its directors, officers or agents to file the requested information by the specified dates may result in the BCUC establishing a public hearing to determine whether one or more of these persons has committed an offence under the UCA, the result of which could warrant monetary penalties in accordance with the administrative penalty provisions of the UCA.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

DC/cmv
Enclosure