



ORDER NUMBER
G-72-23

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

and

British Columbia Utilities Commission
Amendments to the Rules of Practice and Procedure

BEFORE:

D. M. Morton, Commissioner

on April 3, 2023

ORDER

WHEREAS:

- A. The British Columbia Utilities Commission (BCUC) has undertaken a review of its Rules of Practice and Procedure (Rules) and considers that several amendments are required;
- B. The BCUC's jurisdiction to make rules respecting its practice and procedure is set out in section 11 of the *Administrative Tribunals Act*, which provides:
 - (1) Subject to an enactment applicable to the tribunal, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it;
- C. By Order G-178-22 dated June 30, 2022, the BCUC's Rules were adopted effective June 30, 2022;
- D. The BCUC finds that adopting the proposed amendments to the Rules is warranted.

NOW THEREFORE in accordance with sections 2.1 of the *Utilities Commission Act* and section 11 of the *Administrative Tribunals Act*, the BCUC orders as follows:

- 1. The BCUC adopts the amended Rules, attached to this order, effective immediately for all BCUC proceedings.
- 2. The BCUC's Participant Assistance/Cost Award Guidelines continue to apply to all BCUC proceedings commenced prior to June 30, 2022, as set out in the directives of Order G-178-22.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of April 2023.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

BRITISH COLUMBIA UTILITIES COMMISSION
RULES OF PRACTICE AND PROCEDURE

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1.0 PART I – GENERAL

1 Application of the rules

Any person engaged in any matter before the BCUC must follow all rules, guidelines and practice directives that are issued by the BCUC.

2 Interpretation of the rules

These rules must 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.

3 Definitions

In these rules:

- (a) “applicant” means a person who makes an application;
- (b) “application” means an application to the BCUC for an approval, licence, order or other relief under the *Utilities Commission Act* or any other enactment;
- (c) “BCUC” means the British Columbia Utilities Commission;
- (d) “BCUC’s website” means the website maintained by the BCUC at www.bcuc.com;
- (e) “document” includes written documentation, films, photographs, charts, maps, plans, graphs, surveys, books of account, transcripts, emails, information stored by means of an electronic storage and retrieval system, electronic files and video and audio recordings, whether filed as evidence, submissions to, applications or correspondence with the BCUC;
- (f) “e-Filing system” means the BCUC’s regulatory electronic filing system that is accessible on the BCUC’s website;
- (g) “evidentiary record” means all documents, including evidence and submissions, filed in connection with a proceeding whether filed prior to, or during, the proceeding. The public evidentiary record, found on the BCUC’s website, does not include documents that are subject to a confidentiality order of the BCUC;
- (h) “file” means to submit documents to the Commission Secretary either electronically via the e-Filing system, or, if participating non-electronically, by mail, courier or personal delivery;
- (i) “hearing” means a hearing before the BCUC and includes an oral hearing and a written hearing as well as a streamlined review process and a hearing regarding a negotiated settlement process;
- (j) “information request,” also referred to as an “interrogatory,” means a request that an applicant, intervener, BCUC staff or panel may make of a party to elicit information on the evidentiary record that is relevant to the issues to be considered by the BCUC in the proceeding;
- (k) “intervener” means a person who has been granted intervener status in a proceeding by the BCUC.

- (l) “party” means an applicant, intervener or other person who has been permitted according to these rules to participate in a proceeding. Party does not include panel members or BCUC staff independent of the proceeding team except where staff participation has been allowed by the BCUC, such as is outlined in the Negotiated Settlement Guidelines;
- (m) “person” includes an individual, as well as an incorporated or unincorporated organization such as a corporation, partnership or duly constituted public group;
- (n) “proceeding” means a process to decide a matter either initiated by or brought before the BCUC, including a matter commenced by application, transfer and direction, review or inquiry and may result in adjudication or a report;
- (o) “register online” means submitting a completed online registration form with the BCUC in order to log into the e-Filing system and/or to receive electronic notification of all non-confidential evidence filed by parties for the BCUC’s consideration in a particular proceeding;
- (p) “regulatory timetable” means the timetable that is established for the proceeding by the BCUC;
- (q) “representative” means the agent of or solicitor for a party;
- (r) “rules” means these Rules of Practice and Procedure.
- (s) “subscriber” means a person who has registered to receive automated email notifications of all documents posted by the BCUC to a proceeding’s webpage. A subscriber’s information will not be made public on the proceeding webpage.

4 Rules of Practice and Procedure

- 4.01 In accordance with sections 2.1 and 4(1) of the *Utilities Commission Act*, and sections 11(1) and (2) of the *Administrative Tribunals Act*, the BCUC adopts these rules and will decide the most appropriate and effective management of its resources and the ordering of its proceedings.
- 4.02 Notwithstanding the procedures provided for in the rules, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.
- 4.03 In accordance with the *Administrative Tribunals Act*, the BCUC may waive or modify one or more of its rules in exceptional circumstances.
- 4.04 The rules are available for examination on the BCUC’s website, or upon request from the Commission Secretary.

5 Personal information collection and/or distribution

- 5.01 The BCUC is authorized by sections 26(c) and 33 of the *Freedom of Information and Protection of Privacy Act* to collect and publish a person's personal information in a matter before the BCUC if necessary.
- 5.02 Subject to the *Freedom of Information and Protection of Privacy Act* and the rules in Part IV – Confidential Documents, all documents filed in respect to a proceeding must be placed on the public evidentiary record. If a party wishes to keep any information in a document confidential, the party must submit a request for confidentiality to the BCUC at the time of filing, in a manner consistent with Part IV of these rules.
- 5.03 Any questions regarding the BCUC's collection of personal information can be directed to the Commission Secretary at commission.secretary@bcuc.com, or Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3.

6 Failure to comply

- 6.01 If a party fails to comply with the BCUC's rules, guidelines or practice directives, the BCUC may take steps it considers reasonable including, but not limited to, withdrawing the status of the party.
- 6.02 If a party fails to comply with a time limit or filing protocol specified in the rules or by the BCUC, the BCUC may disregard the party's document.
- 6.03 No proceeding is invalid by reason alone of an irregularity in form.

2.0 PART II – PARTICIPATION IN A PROCEEDING

7 Subscribe

- 7.01 A person who wishes to receive automated email notifications of all documents posted by the BCUC to the proceeding's webpage must register online via the BCUC's website using the Subscription form.
- 7.02 To unsubscribe from automated email notifications a person must submit a request by email to commission.secretary@bcuc.com.
- 7.03 Subscribing for automated email notifications does not enable a person to otherwise participate in a proceeding.

8 Letters of comment

- 8.01 Letters of comment are intended to provide for any member of the public to contribute views, opinions, and impact or potential impact, with respect to a matter before the BCUC, to a public record.
- 8.01.1 Due to their active participation in a proceeding and adherence to an established regulatory timetable, interveners are not permitted to file letters of comment, unless requested or otherwise permitted by the BCUC. If an intervener files a letter of comment, the BCUC may disallow the letter of comment unless the intervener requests to change standing.
- 8.02 Letters of comment must be in the Letter of Comment Form and be submitted via the BCUC's website; by email to commission.secretary@bcuc.com; or by mail, courier or personal delivery to Commission Secretary, Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3.
- 8.03 A letter of comment must:
- (a) describe the nature of the person's interest in the proceeding;
 - (b) state the person's views regarding the proceeding; including any relevant information that is useful in supporting or explaining the views; and
 - (c) not contain confidential information.
- 8.04 The BCUC will include the author's name and contact information on the proceeding's evidentiary record but will remove all personal contact information, except for the author's name, before publication on the BCUC's website.
- 8.05 Letters of comment are not automatically accorded the same weight as evidence that has been either adopted under oath, subject to information requests or otherwise tested.
- 8.06 In the interests of fairness and/or efficiency, the BCUC may limit persons to one letter of comment.
- 8.07 The BCUC may disallow any letters of comment that contain vulgar language, personal attacks or offensive terms or that do not follow the rules.
- 8.08 Letters of comment must be received by the BCUC by the last date included in the proceeding's regulatory timetable before final arguments, unless the BCUC directs otherwise. Letters of comment that are received late will not be considered by the BCUC in the proceeding.
- 8.09 Submitting a letter of comment does not enable persons to otherwise participate in a hearing or reconsideration proceeding.

9 Requests for intervener status in a proceeding

- 9.01 To request intervener status, a person must complete and submit a Request to Intervene Form via the BCUC's website; by email to commission.secretary@bcuc.com; or by mail, courier or personal delivery to Commission Secretary, Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3.
- 9.02 Requests for intervener status must be received by the BCUC by the registration deadline established in the regulatory timetable for the proceeding.
- 9.03 The BCUC, in its discretion, may allow late requests for intervener status. Unless otherwise specified by the BCUC, once a late request for intervener status is accepted, the late intervener may only participate from that point onward in the proceeding.
- 9.04 Persons requesting intervener status must demonstrate to the satisfaction of the BCUC that they are directly or sufficiently affected by the BCUC's decision, or that they have experience, information or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making.
- 9.05 Persons requesting intervener status who are not individuals or BCUC regulated entities must submit both:
- (a) a completed Request to Intervene Form; and
 - (b) an informational document (as a single PDF) that includes:
 - (i) a description of the organization's mandate and objectives;
 - (ii) a description of its membership, including the membership processes if any, and the constituency it represents;
 - (iii) the types of programs and/or activities it carries out;
 - (iv) the identities of any authorized representatives and addresses; and
 - (v) any other information the BCUC may request.
- 9.05.1 The information provided in the informational document must be current, accurate and filed in accordance with the rules respecting document filing. Any material changes to the information contained in the informational document must be filed with the BCUC as soon as possible.
- 9.05.2 If the request to intervene is accepted, the BCUC will retain the informational document for a period of twelve (12) months from the date it is filed and may refer to it during that time, when appropriate.
- 9.05.3 If an informational document has been filed with the BCUC within the past twelve (12) months, a person who is not an individual or a BCUC regulated entity must only submit a Request to Intervene Form for each proceeding in which it intends to participate as an

intervener and indicate on the form that it has already submitted an informational document.

- 9.05.4 Twelve (12) months after the date an informational document was filed, a person who is not an individual or a BCUC regulated entity is required to submit an updated informational document with its next request to intervene.
- 9.06 The BCUC may refuse a request for intervener status for reasons, including but not limited to, that the request:
- (a) is frivolous, or vexatious;
 - (b) does not meet the requirements in Rule 9.04;
 - (c) is irrelevant or is not in response to issues addressed in the particular proceeding; or
 - (d) is not filed in accordance with the rules.
- 9.07 The BCUC may grant intervener status subject to conditions it considers appropriate.
- 9.08 The BCUC may determine the scope of an intervener's participation considering, for example, the person's interest, and the nature, importance and breadth of issues the person plans to address.
- 9.09 When a request to intervene is accepted, the BCUC will send the intervener a link to register online. Online registration enables an intervener to submit documents via the e-Filing system, and to receive automated email notifications of all the documents posted to the website in regard to the proceeding.
- 9.10 If accepted and if the intervener has participated in a proceeding in the past twelve (12) months and already has a username, the BCUC will send the intervener an email stating that the BCUC has added the user to the proceeding.

10 Participation of interveners

- 10.01 Intervenors are expected to participate actively, responsibly and respectfully for the duration of the proceeding.
- 10.02 Intervenors are expected to take reasonable efforts to avoid the duplication of evidence.
- 10.03 The BCUC encourages and may require an intervener to coordinate with other intervenors who represent substantially similar interests.

3.0 PART III – DOCUMENT FILING

11 Filing and service of documents

- 11.01 Documents, including applications and notices of appeal, should be filed in such quantity and in such manner as may be specified by the BCUC. Unless otherwise specified by the BCUC, all correspondence including evidence and submissions must be filed under cover letters addressed to the Commission Secretary.
- 11.02 Parties are required to register online. A party's registered User ID and password must be used to log on to the e-Filing system in order to upload and submit documents.
- 11.03 Filings must be submitted on or before a specified filing date, if applicable.
- 11.04 All documents filed in a proceeding, with the exception of documents the BCUC deems confidential, may be accessed through the BCUC's website.
- 11.05 Any person wishing to access an evidentiary record of any proceeding not published online, or wishing to access an evidentiary record in hard copy, may make arrangements to do so with the Commission Secretary in accordance with access and privacy rules and legislation.
- 11.06 Parties must file all documents electronically via the e-Filing system as a file attachment in unprotected PDF searchable format and, if applicable, must clearly display the name of the proceeding in the document.
- 11.06.1 Documents must not contain symbols or quotation marks (e.g., "\$#&!@) in the file name otherwise the document will open as a blank file and the BCUC will consider the document not received.
- 11.06.2 Parties who do not have reasonable access to internet or email, or who have no reasonable means to convert an unsupported electronic document into a supported format may file the document in paper copy via mail, courier, personal delivery or any other means directed by the BCUC (Suite 410, 900 Howe Street, Vancouver, BC, V6Z 2N3).
- 11.06.3 Where possible, each document must be submitted as one (1) PDF document, including cover letter and attachments, such as .doc or .xls files. Documents must clearly display the name of the proceeding in the file name.
- 11.07 Whether filed electronically or non-electronically, documents must be received by the BCUC by the specified filing date, if applicable, unless otherwise directed by the BCUC.
- 11.07.1 Arrangements may be made with the Commission Secretary for evidence that cannot reasonably be filed in paper, such as video or recorded evidence.

- 11.08 Documents filed non-electronically must be complete and identical to the electronic copy.
- 11.09 The BCUC may request hard copies of filings which must be couriered to the BCUC office within three (3) business days of the BCUC's request.
- 11.10 The assignment of an exhibit number to a document does not prevent other parties from challenging its admissibility. If the BCUC rules a document inadmissible, the document and its exhibit letter and number will be expunged from the record.
- 11.11 The BCUC's website will send an automated email to all parties and subscribers who have registered online when a document has been posted to the evidentiary record posted on the BCUC's website.
- 11.12 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. For parties that participate by mail, the BCUC considers documents to be served after two (2) business days of being sent if couriered or five (5) business days if regular mail was used.
- 11.13 The BCUC may require a party to mail or courier paper copies of documents it files to other parties who do not have reasonable access to internet or email.
- 11.14 If a party files a document during an oral phase of a hearing, the document must be filed with the hearing officer who will assign it an exhibit number, ensure sufficient paper copies are distributed to the other parties and upload an electronic copy to the BCUC's website. Once the oral phase of a hearing is completed, parties must resume filing documentation in accordance with the rules. The list of exhibits for each proceeding can be located on the BCUC's website.

12 Information requests

- 12.01 In an information request, the BCUC, applicant or intervener may request another party within the time limit set by the BCUC, to provide information necessary:
- (a) to clarify any documentary evidence filed by the other party;
 - (b) to facilitate a better understanding of the issues relevant to the proceeding; or
 - (c) to assist with the resolution of the proceeding.
- 12.02 An information request must:
- (a) be issued by the BCUC, applicant or intervener in accordance with a Commission order;
 - (b) be addressed to Commission Secretary and include in the subject line the party from whom a response is sought and the proceeding name, unless the BCUC otherwise orders;

- (c) contain specific questions seeking information or documents that are relevant to the proceeding and in the possession of the responding party;
- (d) be filed in accordance with rules pertaining to document filing, unless otherwise directed by the BCUC;
- (e) group questions together according to the issue to which they relate;
- (f) be numbered using a continuous numbering system; and
- (g) set out the date on which the information request is filed.

12.03 To the extent practicable, information requests should cite the volume, tab and page number of the evidence to which it refers.

12.04 To the extent practicable, parties should not knowingly duplicate other parties' information requests.

13 Responses to information requests

13.01 Subject to these rules, a party who is served with an information request must provide a full and adequate response to each question.

13.02 A response to an information request must:

- (a) be filed in accordance with rules pertaining to document filing, as applicable, unless directed otherwise by the BCUC;
- (b) repeat each substantive question at the beginning of each response but not include the full set of questions at the front of the response;
- (c) number the responses using the same numbering system as in the information request;
- (d) identify the appropriate individual(s) in the cover letter who can be contacted for information related to the information request responses; and
- (e) where a response to an individual question is responded to by persons other than the party to whom the information request is directed (i.e. a consultant, expert or other third party, etc.) as part of the response, identify, where appropriate, the person(s) responding to that question.

13.03 A response to an information request should:

- (a) utilize the bookmark functionality of PDF form documents or Word documents to bookmark each group of issues as identified in the original information request; and
- (b) set out the date on which the response is filed.

13.04 If a party who is served with an information request is not able or not willing to prepare a full and adequate response, the party must do one of the following:

- (a) If the party considers an information request unclear:

- (i) it is incumbent upon that party to make reasonable efforts to contact the requestor to clarify the question and respond in accordance with the deadline for information request responses; and
 - (ii) where clarification cannot be obtained in a timely manner, the party responding to the information request must state any assumptions made respecting the interpretation of the question;
- (b) If the party contends that the information required to answer the information request is not relevant, the party must:
 - (i) file a response that sets out specific reasons in support of that contention; and
 - (ii) file any portion of the response that the party does consider relevant;
- (c) if the party contends the information necessary to provide an answer is privileged, not available or cannot be provided with reasonable effort, file a response that:
 - (i) sets out the specific reasons in support of that contention; and
 - (ii) contains such other information that the party considers would be of assistance to the party making the information request that is available and can be provided with reasonable effort;
- (d) if the party contends that the information requested is confidential:
 - (i) file a request for confidentiality for all or any part of the response in accordance with the rules pertaining to confidential filings; and
 - (ii) where practicable, file other non-confidential information that the party considers would be of assistance to the party making the information request.

13.05 If a party fails to respond, or if a party, including BCUC staff, is not satisfied with an information request response, a party may file a request that the matter be settled by the BCUC.

14 BCUC procedures for documents filed in a proceeding

14.01 BCUC staff will assign an exhibit number to the document prior to posting. The following exhibit letters have been assigned to each participant grouping:

“A” for BCUC Commissioners and staff;

“B” for the applicant;

“C” for interveners, numbered sequentially in terms of order of receipt of the Notice of Intervention by the BCUC with a sub-number assigned to each document filed by that intervener; and

“D” for letters of comment.

14.02 The BCUC will scan and upload submissions to the proceeding’s exhibit list for parties who submit documents non-electronically due to not having reasonable access to the internet or email.

14.03 If an intervener reasonably requires paper copies of documents, the BCUC may provide the intervener's mailing information to the proceeding's participants with a request that the intervener be served by mail. The BCUC will mail paper copies of its documents to parties who demonstrate an inability to access the electronic public evidentiary record.

14.04 The BCUC may require the applicant to make copies of the application available in local utility facilities, libraries or other locations.

15 Transcripts

15.01 In a proceeding or any other transcribed process where evidence, argument, submissions, or any other oral statements are transcribed by an official reporter of the BCUC, the transcript will form part of the record of the proceeding.

15.02 The transcript will be placed on the BCUC's website unless the BCUC determines the transcript is confidential.

15.03 Transcripts of the official reporter of the BCUC are the property of the BCUC, and no party shall make any amendment, correction, or other change to the transcript unless the party has filed a request and received approval from the BCUC.

15.04 In the case of a potential transcription error or correction of statements made in the transcript, the following shall apply:

- (a) A party to the proceeding must request a change to the transcript by making a request in writing to the Commission Secretary as soon as practicable.
- (b) The BCUC will notify all parties to the proceeding of this request.
- (c) The BCUC may initiate a review of the recording and, if so, will determine whether a change to the transcript will be made.
- (d) If any change to the transcript is made by the BCUC, all parties to the proceeding will be notified of the change made to the transcript.
- (e) The BCUC will include an errata sheet at the beginning of the transcript to indicate any changes made.

4.0 PART IV – CONFIDENTIAL DOCUMENTS

16 Application and availability of the rules

These rules apply to all requests for confidentiality and confidential documents filed with the BCUC in regard to any and all matters.

17 Information collection and/or distribution

- 17.01 Subject to the following, and to other related statutory provisions and exceptions or exclusions by law, including the *Freedom of Information and Protection of Privacy Act*, the *Utilities Commission Act* and the *Administrative Tribunals Act*, information filed by parties in a matter before the BCUC will be placed on the evidentiary record and may be made publicly available.
- 17.02 For greater certainty, nothing in these rules is intended to limit the operation of any statutory provision that protects the confidentiality of information of documents.

18 Requests for confidentiality

- 18.01 If a party wishes to keep confidential any information in a document filed in any matter before the BCUC, in addition to the document, at the time of filing, the party must file:
- (a) a request that all or any part of the document be held in confidence which must:
 - (i) briefly describe the nature of the information in the document and the reasons for the request for confidentiality, including the specific harm that could reasonably be expected to result if the document was made publicly available;
 - (ii) indicate whether all or only a part of the document is the subject of the request; and
 - (iii) provide, with explanation, a period of time for which the document should remain confidential.
 - (b) a proposed redacted version of the document that the BCUC may make publicly available, where possible.
- 18.02 The party requesting confidentiality bears the onus of establishing why the information should be treated as confidential by the BCUC.
- 18.03 The request for confidentiality will be a matter of public record, unless the BCUC directs otherwise.
- 18.04 If a party wishes for the BCUC to continue holding the document in confidence beyond the period of time it specified under Rule 18.01(a)(iii), the party must once again file the information required in Rule 18.01.

19 Hearings to consider confidentiality of documents

- 19.01 The BCUC may, with or without a hearing or further process, grant a request for confidentiality on any terms it considers appropriate.
- 19.02 Where the BCUC holds a hearing to consider the request for confidentiality, the BCUC may direct that the hearing be held in the absence of the public.

20 Decisions made by the BCUC regarding confidentiality

20.01 In determining whether the nature of the information or documents require a confidentiality direction, the BCUC will have regard to matters that it considers relevant, including:

- (a) whether the disclosure of the information could reasonably be expected to result in:
 - (i) undue material financial loss or gain to a person;
 - (ii) significant harm or prejudice to that person's competitive or negotiating position; or
 - (iii) harm to individual or public safety or to the environment;
- (b) whether the information is personal, financial, commercial, scientific, labour relations or technical information that is confidential and consistently treated as confidential by the person;
- (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing;
- (d) whether the person submitting the document has any legal obligation to maintain confidentiality; and
- (e) whether it is practicable to hold the hearing in a manner that is open to the public.

21 Documents accepted as confidential

21.01 If accepted by the BCUC as confidential, the documents or the portions thereof will not be made publicly available.

21.02 If the document is accepted as confidential, the BCUC may make the proposed redacted version of the confidential document publicly available, or may adjust or require the filing party to change the redaction in accordance with what it deems necessary for transparency and public interest.

21.03 A party may object to a request for confidentiality by filing an objection with reasons in a timely manner. The BCUC will give the party claiming confidentiality, together with a person who may be affected by disclosure, an opportunity to reply to an objection.

22 Documents not accepted as confidential

22.01 If a document is filed confidentially and the request for confidentiality is denied, the BCUC may allow the person that submitted the documents an opportunity to make submissions as to what should be done with the document, such as withdrawing the document.

23 Filing confidential documents

- 23.01 Rules respecting confidential documents are to be considered also in accordance with rules pertaining to document filing.
- 23.02 Confidential material must be filed separately from non-confidential material. When necessary, within non-confidential filings, reference the confidential filing.
- 23.03 Documents filed with the BCUC that a party requests to be confidential or that claim to contain confidential material must clearly designate it in the document, the document's file name and on the cover letter, as well as be watermarked, if possible ("Confidential" or "Contains Confidential Material").
- 23.04 Paper copies of confidential documents filed in binder form must have the word "Confidential" included on the binder cover.
- 23.05 If a party files a document that is marked "Confidential" but is no longer confidential, the party must notify the BCUC in writing that the document may be made public.

24 Requests for access to confidential documents in a proceeding

- 24.01 If the BCUC grants a request for confidentiality, the BCUC, with comments from the party submitting the document, and/or any party affected by disclosure of the confidential document, may consider whether access to the confidential information may be provided to certain parties upon request.
- 24.02 Parties requesting access to confidential information must submit a request electronically to the BCUC, with a copy to the party who filed the document confidentially, that explains the reason(s) for the request and a statement describing how access to the information pertains to their participation in the proceeding.
- 24.03 If a request for access to confidential information is accepted, the requestor must sign and file with the party and the BCUC a Declaration and Undertaking form in respect of the use of the confidential information before receiving a copy of the confidential information from the party. The Declaration and Undertaking form is a binding commitment by the requestor: (i) to use the confidential information disclosed exclusively for purposes related to the proceeding; (ii) to hold the information in confidence; (iii) to not reproduce the document(s) disclosed; and (iv) to return to the party the confidential document(s) or to destroy the confidential document(s) within fourteen (14) days of the BCUC's final decision in the proceeding. The BCUC may impose any other additional conditions or safeguards as it considers appropriate in the circumstances.

24.04 Any party may object to a request for access to confidential information by filing an objection with reasons in a timely manner. The BCUC will give the party claiming confidentiality and the requestor an opportunity to reply to an objection.

24.05 The BCUC will render the final determination as to whether access will be granted to the confidential information and the conditions on a party's access.

5.0 PART V – RECONSIDERATION

25 Requests for reconsideration of a BCUC decision, order, rule or regulation

25.01 For the purposes of Part V of these rules, any reference to a decision means a decision, an order, a rule or regulation of the BCUC.

25.02 The BCUC, on application or on its own motion, may reconsider a decision and may confirm, vary or rescind the decision.

26 Filing an application for reconsideration

26.01 A person, other than the applicant or an intervener in the original proceeding that gave rise to the decision, may not file an application for reconsideration without obtaining prior permission of the BCUC. In applying to the BCUC for permission to file an application for reconsideration, the person seeking permission must explain:

- a) why the person did not participate in the original proceeding; and
- b) how the person is directly or sufficiently affected by the decision or how the person has experience, information, or expertise relevant to a matter arising from the decision.

26.02 Subject to Rule 26.03, unless prior permission of the BCUC is obtained, an application for reconsideration must be filed with the BCUC within 60 days of the issuance of the order or the reasons for decision, whichever is later.

26.03 Unless prior permission of the BCUC is obtained, an application for reconsideration of a decision issued in relation to a participant cost award must be filed within 30 business days of the decision being issued.

26.04 An application for reconsideration must be filed in accordance with the rules pertaining to document filing and must:

- (a) be in writing and, unless prior permission of the BCUC is obtained, not longer than 30 pages (excluding appendices and/or attachments);
- (a) identify the decision affected;
- (b) state the applicant's name and the representative's name (if applicable);
- (c) describe the impact of the decision and how it is material;

- (d) set out the grounds for reconsideration in accordance with Rule 26.05; and
- (e) set out the remedy the applicant is seeking.

26.05 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:

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

27 Stay of decision

27.01 An application for reconsideration of a decision does not automatically stay or suspend the operation of the decision.

27.02 The BCUC may, in its discretion or on application, stay the operation of the decision in the original proceeding, or part thereof, pending the outcome of the reconsideration on terms the BCUC considers appropriate.

28 Summary dismissal of a reconsideration application

28.01 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.

28.02 In the event the BCUC summarily dismisses an application for reconsideration of a decision in whole, the BCUC will make publicly available both the application and the final order with reasons.

29 Reconsideration hearing

29.01 In the event the BCUC does not dismiss the whole application for reconsideration pursuant to Rule 28.01, the application for reconsideration or the portion of the application that is not dismissed will proceed to a hearing.

29.02 Parties to the original proceeding will be notified that the BCUC is conducting a hearing on the application for reconsideration.

- 29.03 Any person who wishes to intervene in the reconsideration hearing must make such request in accordance with the rules pertaining to requests for intervener status in a proceeding.
- 29.04 The BCUC will determine the regulatory process for the reconsideration hearing, which may include, but is not limited to:
- (a) whether the hearing will be wholly, or in part, written, oral, or a combination thereof;
 - (b) a determination as to whether any new evidence or evidence of a change of circumstances will be permitted on the reconsideration hearing and the timing of submissions on these issues;
 - (c) the scheduling of oral hearings, if any;
 - (d) the scheduling of arguments, if any; and
 - (e) any other procedural directions the BCUC considers appropriate.

6.0 PART VI – PARTICIPANT COST AWARDS

30 Purpose

- 30.01 The purpose of the rules in Part VI is to encourage effective participation in BCUC proceedings that contributes to a fair, cost effective and timely determination or completion of every proceeding on its merits.

31 Definition of a participant

- 31.01 The term “participant” means:
- (a) an applicant in a proceeding; or
 - (b) a party that has been granted intervener status in a proceeding.

32 General

- 32.01 The BCUC may, in a proceeding, award costs to a participant or participants, determine the amount of such award, if any, and order a participant or participants to pay all or part of the costs of another participant or participants.
- 32.02 The BCUC may establish a cap on all, or on part of, a cost award available in a proceeding to any or all participants.
- 32.03 A participant may only claim costs for participation in a proceeding from the date the proceeding is initiated until the date of the final decision or report.
- 32.04 Interim cost awards in respect of a proceeding may be available pursuant to Rule 37.

33 Eligibility for a cost award

- 33.01 A participant is eligible, subject to Rule 33.02, for a cost award in a proceeding.
- 33.02 The following participants are not eligible for a cost award in a proceeding unless otherwise ordered by the BCUC:
- (a) public utilities and other BCUC regulated entities;
 - (b) municipalities and associations of municipalities;
 - (c) provincial, territorial and federal government agencies;
 - (d) participants that represent solely their own business interests; and
 - (e) participants in a proceeding arising out of a complaint.
- 33.03 A participant who, pursuant to Rule 33.02 is not eligible for a cost award, may apply for an order granting eligibility. Such application must be made as soon as practicable following commencement of the proceeding.

34 Costs that may be awarded

- 34.01 Participants may be eligible to receive cost awards for forgone earnings, dependant care, professional services, disbursements, taxes, and other costs as applicable under this Rule.
- 34.02 As outlined in Rules 34.04 through 34.09, there are differences or limitations applied to participants with respect to their eligibility for costs.
- 34.03 Participants are not eligible for costs for making an application for either interim or final cost awards.
- 34.04 **Costs for forgone earnings and dependant care**
- 34.04.1 Only participants who are individuals are eligible for forgone earnings and dependant care costs.
- 34.04.2 A participant that is an individual, subject to Rule 34.05.4, is limited to a cost award for forgone earnings, dependant care costs and disbursements.
- 34.04.3 The maximum rates for forgone earnings and dependant care are set out in Attachment A.
- 34.05 **Costs for professional services**
- 34.05.1 Professional services include:
- (a) legal counsel;

- (b) consultants, who are specialists in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences, providing services related to their speciality;
- (c) expert witnesses qualified to provide evidence related to their area of expertise; and
- (d) case managers providing coordination and management services including, but not limited to, coordinating the cost effective and timely use of services from legal counsel, consultants and/or expert witnesses and performing tasks that enable a coalition of participants with similar positions in a proceeding.

34.05.2 The maximum hourly rates for professional services are set out in Attachment A.

34.05.3 The BCUC may, on application by a participant, award costs for consultants or expert witnesses at a rate that exceeds the maximum hourly rates as set out in Attachment A where the participant demonstrates that such a rate is reasonably necessary for the services required to address the issues in a proceeding.

34.05.4 The BCUC may, on application by a participant who is an individual, award costs for the use of professional services up to the maximum professional rates as set out in Attachment A where it deems that the individual's position is unique and not otherwise represented by another participant, and such services are reasonably necessary and appropriate for the individual to participate effectively in a proceeding. Such application must be made as soon as practicable, in the event the individual is granted intervener status in a proceeding.

34.06 **Costs for disbursements**

34.06.1 The BCUC may award reimbursement of what it determines to be reasonable disbursements that were necessarily and properly incurred by a participant in the conduct of a proceeding.

34.06.2 Disbursements including travel, accommodation, and meals, will be determined in accordance with the British Columbia Government Employees' Union (BCGEU) Rate Schedule as set out in Attachment B, and as updated from time to time.

34.07 **Tax costs**

34.07.1 Participants may include any applicable GST/PST in respect of costs claimed and must confirm that the applied-for taxes cannot be recovered through an Input Tax Credit or otherwise.

34.08 **Other costs**

34.08.1 The BCUC may award any other costs that it determines are reasonable and justified.

34.09 **Costs for Indigenous groups**

34.09.1 In addition to other costs that may be available under Rule 34, a participant that is an Indigenous group may make a claim for a cost award in a proceeding for relevant matters regarding section 35 of the *Constitution Act, 1982*, which may include costs for community consultations and for participation of traditional knowledge experts and elders.

34.09.2 In determining a cost award, the BCUC may, in addition to the purpose as set out in Rule 30.01 and the assessment criteria in Rule 36, take into consideration any capacity funding received by the Indigenous group with respect to the proceeding for which the award is sought.

35 **Applying for a cost award**

35.01 Any application by a participant for a cost award must be filed with the BCUC no later than 5 business days following the issuance of the final decision or report in a proceeding, unless the BCUC permits otherwise.

35.02 An application for a cost award pursuant to Rule 35.01 must be filed with the BCUC in accordance with the rules pertaining to document filing and must include:

- (a) a completed Cost Award Application Form;
- (b) copies of documentation in support of the Cost Award Application Form; and
- (c) any further evidence or supporting documentation that the BCUC may direct the participant to provide.

35.03 Upon receipt of an application for a cost award:

- (a) the BCUC will, following issuance of the final decision or report in the proceeding, provide the participant(s) responsible for paying the cost in the proceeding with a copy of the application, and where the BCUC determines it necessary, will provide any other participant in the proceeding with a copy of the application;
- (b) the participant(s) responsible for paying the cost award and any other participants provided a copy of the application may, within 10 business days of receipt of the application provided in subsection (a), provide submissions in response to the application to the BCUC and the participant applying for the cost award; and
- (c) the participant applying for a cost award may, within 5 business days of receipt of any response provided in subsection (b), provide submissions in reply to the BCUC and the participant(s) responsible for paying the costs.

35.04 The BCUC will, so far as is practicable, issue its decision on final participant cost awards within 60 calendar days after the final decision or report in the proceeding has been issued.

36 Assessment criteria for a cost award

36.01 The BCUC will determine the amount of a cost award, if any, in accordance with the purpose as set out in Rule 30.01, and will, so far as is applicable, consider the following criteria:

- (a) whether such costs were necessarily and properly incurred in the conduct of the proceeding;
- (b) whether such costs are reasonable;
- (c) whether the participant has demonstrated through its participation that it has:
 - i. Contributed to a better understanding by the BCUC of one or more of the issues in the proceeding;
 - ii. Made reasonable efforts to combine or coordinate its participation with that of one or more participants with similar interests, in order to avoid duplication and reduce costs;
 - iii. Engaged in conduct or activity that resulted in a more efficient and/or shorter proceeding;
 - iv. Refrained from conduct or activity that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
 - v. Refrained from conduct or activities which the BCUC considers inappropriate or irresponsible;
 - vi. Made reasonable efforts to ensure participation in the proceeding, including information requests, issues raised, evidence, cross-examination, and arguments, was within the scope of the proceeding or not unduly repetitive;
 - vii. Engaged in conduct consistent with the participant's approved scope of participation in the proceeding;
 - viii. Incurred time participating in the proceeding that was proportionate to the scope of the proceeding and/or the complexity or novelty of the proceeding;
 - ix. Complied with the BCUC's orders, directions, and rules; and
- (d) any other matter the BCUC determines appropriate in the circumstances.

37 Interim cost awards

37.01 Participants eligible for a cost award may make written application for an interim cost award in respect of costs already incurred in a proceeding and/or an estimate of costs anticipated to be incurred in a proceeding.

37.02 An application for an interim cost award must be filed in accordance with the rules pertaining to document filing and must include:

- (a) a completed Interim Cost Award Application Form in respect of costs already incurred and/or estimated to be incurred in a proceeding;
- (b) evidence in respect of any costs already incurred and/or estimated to be incurred in a proceeding;

- (c) evidence of exceptional circumstances, including, but not limited to financial need, in support of the participant's application for an interim cost award; and
- (d) any further evidence or supporting documentation that the BCUC may direct the participant to provide.

37.03 Upon receipt of an application for an interim cost award:

- (a) the BCUC will provide the participant(s) responsible for paying the interim cost award in a proceeding with a copy of the application, and where the BCUC determines it necessary, will provide any other participant in the proceeding with a copy of the application;
- (b) the participant(s) responsible for paying the interim cost award and any other participants provided a copy of the application may, within 10 business days of receipt of the application provided in subsection (a), provide submissions in response to the application to the BCUC and the participant applying for the cost award; and
- (c) the participant applying for an interim cost award may, within 5 business days of receipt of any response provided in subsection (b), provide submissions in reply to the BCUC and the participant(s) responsible for paying the costs.

37.04 The BCUC in determining whether to grant an interim cost award, in whole or in part, must be satisfied that the participant has established exceptional circumstances, and will determine the amount of an interim cost award, if any, in accordance with the purpose as set out in Rule 30.01 and may consider, so far as applicable, the assessment criteria in Rule 36.

37.05 An order granting an interim cost award must include whether the amount awarded constitutes:

- (a) a final cost award for costs already incurred; and/or
- (b) an advance against the BCUC's final cost award determination after the conclusion of the proceeding.

37.06 For interim cost awards granted under Section 37.05 (b), a participant must file a final cost award application under Rule 35.

38 Process for updating the rate schedule

38.01 The BCUC may update the rate schedules in Attachments A and B, as needed and appropriate.

ATTACHMENT A
Rate Schedule I effective June 30, 2022

1. PROFESSIONAL SERVICES

All applications for professional service costs shall be limited to a maximum of 8 hours per day, unless otherwise approved by the BCUC.

a. Legal counsel

Years Since Call	Maximum Hourly Rate
Articling student	\$ 110
0–4	\$ 240
5–7	\$ 285
8–12	\$ 320
12+	\$ 350

b. Consultants

Years of Related Experience	Maximum Hourly Rate
Consultant 0–4	\$ 120
Consultant 5–7	\$ 165
Consultant 7+	\$ 235

c. Expert witnesses

	Maximum Hourly Rate
Expert Witness	\$ 270

d. Case managers:

	Maximum Hourly Rate
Case Manager	\$ 75

Pursuant to Rule 35.04:

2. FORGONE EARNINGS: maximum \$250 per proceeding day¹ per person.

3. DEPENDANT CARE:² maximum \$75 per proceeding day¹ per person.

¹ Proceeding days include workshop days, negotiation days, procedural conference days, oral hearing days, streamlined review process days, oral argument days, and other processes in a proceeding provided they are attended in person or by registered on-line attendance or as otherwise allowed by the BCUC.

² A dependant is a person who resides with the participant on a full-time basis and relies on the participant for care (e.g., a child or parent).

ATTACHMENT B
Pursuant to Rules 34.06.2 and 38.01
Rate Schedule II effective June 30, 2022³

MEAL EXPENSES AND TRAVEL RATES

1. **Meal expenses/travel rates for in-town participants:** In-town participants that attend a hearing may apply for meal expenses and travel rates. Meal expenses, such as lunch, and travel rates are intended for individual participants who do not apply for professional rates.
2. **Meal expenses for out-of-town participants:** Participants that have applied to attend a hearing not in their immediate area may apply for meal expenses.
3. **Travel rates for out-of-town participants:** Participants that have applied for funding to attend a hearing not in their immediate area may apply for travel rates.

MEAL EXPENSES		TRAVEL RATES	
Breakfast only	\$14.58	Vehicle Mileage:	\$.63/km
Lunch only	\$16.87	Airfare:	Full Fare Economy
Dinner only	\$29.16		
Breakfast & Lunch	\$31.45		
Breakfast & Dinner	\$43.74		
Lunch & Dinner	\$46.03		
Breakfast, Lunch & Dinner	\$60.61		

ACCOMMODATION RATES

Single Room Rate Only For a full list of hotels and rates please see:

<http://csa.pss.gov.bc.ca/businesstravel/>

Private accommodation: \$38.41/night

To determine what the current Government rate is in the area in which the hearing is being conducted, please visit the above noted site, and review the Accommodation rate for the hotel the BCUC has booked for the hearing.

For hotels with blacked-out periods, the seasonal rate charged in the month prior to the month in which costs are incurred, shall apply.

Rates charged by hotels not on the Government Accommodation Listing will be subject to review and adjustment by the BCUC.

In order for the participants to receive the Provincial Government Rate, please contact Commission Secretary at the BCUC and request an approval letter: <https://www.bcuc.com/AboutUs/ContactUs>

³ Rates updated April 1, 2024