



ORDER NUMBER
G-104-23

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

and

Powell River Energy Inc.
Application for Reconsideration and Variance of Order G-43-23

BEFORE:

T. A. Loski, Panel Chair
C. M. Brewer, Commissioner
A. Pape-Salmon, Commissioner

on May 3, 2023

ORDER

WHEREAS:

- A. Powell River Energy Inc. (PREI), a wholly owned subsidiary of Brookfield Renewable Partners L.P., own and operate two hydroelectric generating stations constructed in the early 1900's, with an aggregate nameplate capacity of approximately 85 megawatts, and transmission and distribution facilities (Power Facilities) located on Powell Lake and Lois Lake in Powell River;
- B. By Orders G-38-23 and G-43-23 dated February 24, 2023 and March 7, 2023, respectively, the British Columbia Utilities Commission (BCUC) established a public hearing process to review PREI's current status as a public utility and established a regulatory timetable directing PREI to, among other things, provide public notice of the proceeding to potentially affected parties;
- C. By letter dated March 20, 2023, PREI filed a request to reconsider and amend Order G-43-23 to (i) reduce the list of parties that PREI must notify, and (ii) adjourn the regulatory timetable until the BCUC responds to PREI's request (Reconsideration Application);
- D. By Order G-58-23 dated March 20, 2023, the BCUC adjourned the proceeding to review PREI's Reconsideration Application; and
- E. The BCUC has reviewed PREI's Reconsideration Application and determines that a summary dismissal is warranted.

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

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

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

Powell River Energy Inc.
Application for Reconsideration and Variance of Order G-43-23

REASONS FOR DECISION

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1.0 Introduction and Background

By letter dated March 20, 2023, Powell River Energy Inc. (PREI) filed a request to reconsider and amend British Columbia Utilities Commission (BCUC) Order G-43-23 (Reconsideration Application) with respect to public notice of the hearing.

PREI is a wholly owned subsidiary of Brookfield Renewable Partners L.P., that own and operate two hydroelectric generating stations constructed in the early 1900's, with an aggregate nameplate capacity of approximately 85 megawatts, as well as transmission and distribution facilities (Power Facilities), located on Powell Lake and Lois Lake in Powell River.

By Ministerial Order M-22-0101, deposited January 30, 2001, the Minister of Employment and Investment granted PREI an exemption, pursuant to section 22 of the *Utilities Commission Act* (UCA), from regulation as a public utility under Part 3 and section 71 of the UCA (Exemption) with respect to electricity generated at the Power Facilities and sold to Catalyst Paper Corporation (Catalyst), under a Power Purchase Agreement (PPA), for use at its Powell River pulp and paper mill. Ministerial Order M-22-0101 also allowed PREI to sell any surplus electricity not purchased by Catalyst to participants in the wholesale electricity market.

The Exemption was continued by Ministerial Order M039 (BC Reg. 26/2017) (M039), deposited on February 7, 2017, by the Minister of Energy, Mines, and Low Carbon Innovation (Minister).

By Order G-17-17, dated February 7, 2017, pursuant to section 88(3) of the UCA, the BCUC, having been granted advance approval by the Minister, exempted PREI from section 71 and Part 3 of the UCA, except for sections 25, 38, 42, and 43, for the duration of M039.

PREI and Catalyst agreed to terminate the PPA effective May 31, 2021. Following termination of the PPA, M039 was repealed¹, thereby rescinding PREI's partial exemption from the UCA.

In anticipation of M039 being repealed, PREI filed an application with the BCUC for an exemption from Part 3 of the UCA, except for sections 25, 38, 42, and 43, and section 71 of the UCA (2021 Exemption Application). This application was subsequently withdrawn on February 22, 2022.²

By letter dated December 28, 2022 (Letter), in response to a BCUC request for an update on PREI's operations, PREI stated that since the termination of the PPA, it has been exporting all its power production to the United States, with the assistance of PREI's affiliated companies, and that such operation falls within the exclusion set out in section 1(d) of the definition of public utility in the UCA³ (Exclusion).

By Order G-38-23 dated February 24, 2023, the BCUC established a public hearing process to review PREI's status as a public utility (PREI Public Utility Status Proceeding).

¹ Ministerial Order M5 (BC Reg. 3/2022), deposited on January 12, 2022.

² 2021 Exemption Application, Exhibit B-7, p. 1.

³ a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others, *Utilities Commission Act*, RSBC 1996, c 473, section 1(d).

By Order G-43-23 dated March 7, 2023, PREI was directed to, among other things:

2. [...] as soon as reasonably possible, but no later than Monday, March 20, 2023, to provide the amended public notice of the proceeding, attached as Appendix B, and a copy of this order, electronically where possible, to:

- a) All affected or potentially affected parties, including the Ministry of Energy, Mines and Low Carbon Innovation, the Ministry of Environment and Climate Change Strategy, British Columbia Hydro and Power Authority, Catalyst, the qathet Regional District, the City of Powell River, the Tla'amin, shishalh, Klahoose and K'ómoks First Nations and all band offices for First Nations communities located fully or partially within the Powell and Lois Dam reservoir areas and downstream watersheds; and
- b) All registered parties, including interested parties and individuals that submitted letters of comments, participating in the 2021 Exemption Application.

2.0 The UCA and the BCUC's Rules of Practice and Procedure Regarding Reconsideration Applications

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.

The BCUC Rules of Practice and Procedure (Rules) 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.⁴

The Rules 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.⁵

⁴ Attachment to Order G-72-23 dated April 3, 2023, Part V, Rule 26.05.

⁵ Ibid., Rule 28.01.

3.0 PREI Reconsideration Application

In the Reconsideration Application, PREI submits that the BCUC erred in fact and law by requiring PREI to notify parties that have no standing to participate in the PREI Public Utility Status Proceeding. PREI requests that the BCUC reconsider and amend Directive 2 of Order G-43-23 to: (i) reduce the list of parties that PREI must notify, and (ii) suspend the time to notify parties until the BCUC responds to the Reconsideration Application.⁶

By Order G-58-23 dated March 20, 2023, the BCUC adjourned the PREI Public Utility Status Proceeding until a determination was made on the Reconsideration Application.

PREI requests that the BCUC include in Directive 2 only those parties with facilities that interconnect with PREI's facilities or have relevant jurisdiction (i.e., Ministry of Energy, Mines and Low Carbon Innovation (Ministry), Catalyst, and British Columbia Hydro and Power Authority [BC Hydro]). PREI submits that no other party has a proper basis for legal standing to comment on the interpretation of whether PREI falls within the exclusion (d) of the definition of a public utility under the UCA.⁷

Regarding the Ministry, Catalyst and BC Hydro, PREI submits the following:

- i. That the only Ministry that has standing to comment on the interpretation of whether PREI falls within the exclusion (d) of the definition of a public utility under the UCA is the [Ministry] since it is the only Ministry with jurisdiction related to the UCA and the exclusion.
- ii. That Catalyst and BC Hydro facilities interconnect with PREI facilities, but PREI does not sell electricity to either entity. The interconnection is the only basis for standing to comment on the interpretation of the Self-Supply Exclusion [Exclusion], and that limited basis is weak at best. Nonetheless, PREI will not dispute their standing to comment.⁸

Further, PREI submits that the BCUC improperly conflates the withdrawn 2021 Exemption Application with its Letter regarding its current power sales and why it is not a public utility under the UCA.⁹ Specifically, PREI states:

Based on the text in the Order [Order G-43-23], it appears that the Commission views the current Letter as a continuation of the withdrawn [2021] Exemption Application and is including the lengthy notification list as a matter of continuity from the Withdrawn [2021] Exemption Application. That view is incorrect in fact and law.

PREI argues that the 2021 Exemption Application and Letter raise unrelated issues that are distinct in fact and in law and that the interpretation of the related sections and the issues raised in the 2021 Exemption Application are not relevant to the interpretation of whether PREI falls within exclusion (d) of the definition of a public utility under the UCA.¹⁰

Finally, PREI submits that the BCUC's interpretation of the Exclusion is not a Crown decision or action that affects any Aboriginal rights. PREI submits that the interpretation of the Exclusion does not consider or affect

⁶ Exhibit B-1, p. 1.

⁷ Ibid.

⁸ Ibid, p. 4.

⁹ Exhibit A2-2.

¹⁰ Exhibit B-1, p. 1.

Aboriginal rights in any way, nor will the BCUC's interpretation of the Exclusion alter the operation of PREI's facilities.¹¹

4.0 Panel Determination

The Panel is not persuaded that an error of fact and law has been made as claimed by PREI. The UCA provides the Panel with the authority to determine its own process under section 11(1) of the *Administrative Tribunals Act*¹², which includes the requirement for and means of notice as directed in Directive 2 of Order G-43-23. This includes providing notice to the participants in the 2021 Exemption Application and the Indigenous communities proximate to PREI's facilities, which Order G-43-23 makes clear was a separate and distinct BCUC process from the current PREI Public Utility Status Proceeding. The BCUC is an independent administrative tribunal with public processes and routinely directs notice of its hearings be provided to the members of the public in an area that may be impacted by the subject decision. Such notice of a hearing is not prejudicial to PREI and is entirely consistent with the BCUC's standard practice and is permissible under section 11(1)(g) of the *Administrative Tribunals Act*.

In its Reconsideration Application, PREI itself conflates notice with legal standing. Order G-43-23 makes no determinations on legal standing in this proceeding. Rather, it directed PREI to inform affected or potentially affected parties that a proceeding regarding PREI's status as a public utility is being held. Such notice improves regulatory efficiency, as further notice is less likely to be required at a later date and reduces the likelihood that parties will enter the proceeding at a later date, thereby avoiding potential delays. The regulatory timetable established by Order G-43-23 allows the opportunity for parties to submit letters of comment and is intended to provide any member of the public the means to contribute views, opinions, impacts and/or potential impacts with respect to a matter before the BCUC to the public record.¹³

The BCUC sees value in hearing from parties who may have an interest in or could be affected by the interpretation of the definition of a public utility and any determinations made with respect to PREI's status. As such, the Panel is satisfied that the broad public notice in Directive 2 of Order G-43-23 is appropriate for transparency, awareness and allow for participation in the PREI Public Utility Status Proceeding.

Accordingly, the Panel finds that PREI's Reconsideration Application has failed to establish, on its face, any reasonable grounds for the BCUC to reconsider Directive 2 of Order G-43-23, and therefore summarily dismisses PREI's Reconsideration Application.

¹¹ Ibid, p. 4.

¹² *Utilities Commission Act*, RSBC 1996, c 473, section 2.1(d).

¹³ BCUC Rules of Practice and Procedure, Section 8.01, p. 4.