



ORDER NUMBER
G-75-24

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

and

Brent Lipson
Reconsideration of BC Hydro Optional Residential Time-of-Use Rate Participant Cost Award Order F-9-24

BEFORE:
C. M. Brewer, Commissioner

on March 19, 2024

ORDER

WHEREAS:

- A. On February 27, 2023, British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) its Optional Residential Time-of-Use Rate Application seeking, among other things, approval of Rate Schedule 2101 – Residential Service – Time-of-Use Rate (Optional Residential TOU Rate), effective the later of April 1, 2024 or the first day of the fourth calendar month following the BCUC order approving the rate schedule;
- B. On April 14, 2023, Brent Lipson (Lipson) filed with the BCUC a request for intervener status in the proceeding to review BC Hydro's Optional Residential TOU Rate Application (Optional Residential TOU Rate Proceeding). On April 26, 2023, the BCUC accepted Lipson as an intervener in the proceeding;
- C. On May 26, 2023, Riverside Energy Systems (Riverside) filed with the BCUC a request for intervener status in the Optional Residential TOU Rate Proceeding. On June 2, 2023, the BCUC requested that Lipson and Riverside jointly intervene in the proceeding due to their similar key interests, and on June 3, 2023, Lipson and Riverside agreed and registered as joint interveners in the proceeding;
- D. On December 12, 2023, by Decision and Order G-342-23, the BCUC approved, among other things, Rate Schedule 2101 – Residential Service – Time-of-Use Rate, effective April 1, 2024 or the earliest date that BC Hydro can launch the Optional Residential TOU Rate;
- E. On December 16, 2023, Lipson filed a participant cost award (PCA) application with the BCUC for \$39,973.50, based on the maximum consultant hourly rate, with respect to his participation in the Optional Residential TOU Rate Proceeding;
- F. On February 5, 2024, by Order F-9-24, the BCUC awarded Lipson a PCA of \$5,315.63, based on the maximum rate for forgone earnings for an individual, with respect to his participation in the Optional Residential TOU Rate Proceeding;

- G. On February 12, 2024, Lipson filed with the BCUC an application for reconsideration of Order F-9-24 on the grounds of errors of fact which have material bearing on the decision in accordance with Rule 26.05(b) of the BCUC's Rules of Practice and Procedure attached to Order G-72-23 (Reconsideration Application); and
- H. The BCUC has reviewed the Reconsideration Application and determines that the following order is warranted.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act* and the BCUC's Rules of Practice and Procedure attached to Order G-72-23, and for the reasons set out in Appendix A to this order, the BCUC orders that the Reconsideration Application is summarily dismissed without the need for further process.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of March 2024.

BY ORDER

Original signed by:

C. M. Brewer
Commissioner

Attachment

Brent Lipson
Reconsideration of BC Hydro Optional Residential Time-of-Use Rate Participant Cost Award Order F-9-24

REASONS FOR DECISION

1.0 Background

On February 12, 2024, Brent Lipson (Lipson) filed with the British Columbia Utilities Commission (BCUC) an application for reconsideration of Order F-9-24 (Reconsideration Application) related to his participation in the proceeding to review BC Hydro's application for the Optional Residential Time-of-Use Rate (Optional Residential TOU Rate Proceeding).

On April 26, 2023, the BCUC accepted Lipson's request¹ for intervener status in the Optional Residential TOU Rate Proceeding. In his request, Lipson stated that the BCUC's decision directly affects him as a residential net metering customer and that it would also somewhat affect his business as a professional electrical engineering consultant for buildings, which include distributed energy resources (DER)/solar systems design. Further, he considers it a professional obligation to advocate on matters related to BC Hydro's application. Subsequently, Riverside Energy Systems (Riverside), a company involved in solar photovoltaic consulting, design, and installation in B.C., filed a request for intervener status in the proceeding. The BCUC then requested that Lipson and Riverside jointly intervene in the proceeding due to their similar key interests, and on June 3, 2023, Lipson and Riverside agreed to participate as joint interveners in the proceeding.

On December 16, 2023, following the issuance of the BCUC's final decision² in the Optional Residential TOU Rate Proceeding, Lipson filed a participant cost award (PCA) application with the BCUC for the amount of \$39,973.50, based on the maximum consultant hourly rate, with respect to his participation in the proceeding. By Order F-9-24, the BCUC awarded costs to interveners in the Optional Residential TOU Rate Proceeding for their participation, which included an award of \$5,315.63 to Lipson based on the maximum rate for forgone earnings for an individual. In the determination of Lipson's award, the BCUC acknowledged that: (i) Lipson and Riverside participated as joint interveners in the proceeding; (ii) Lipson is an individual representing his own interests as a residential net metering customer; (iii) he has qualifications as an electrical engineering consultant; and (iv) he pursued complex and important issues.³

Riverside did not apply for and was not awarded a PCA.

2.0 Legislative Framework

Section 118(1) of the *Utilities Commission Act* (UCA) provides that "the commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding."

Part VI of the BCUC's Rules of Practice and Procedure attached to Order G-72-23 (BCUC Rules)⁴ set out the rules related to PCA, which stipulate the eligibility requirements and criteria used in assessing cost awards, including

¹ BC Hydro Optional Residential Time-of-Use Rate, Exhibit C3-1.

² Decision and Order G-342-23 dated December 12, 2023.

³ Order F-9-24, Appendix A, pp. 4–5.

⁴ Established by Order G-178-22 dated June 30, 2022 and amended by Order G-72-23 dated April 3, 2023. With respect to PCA, applicable to proceedings initiated since June 30, 2022.

the process for applying for a cost award, eligible costs, and rates in BCUC proceedings. Rules 33.02 and 34.04 to 34.09 within Part VI of the BCUC Rules set out certain limitations applied to participants with respect to their eligibility for costs.

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.

Part V of the BCUC Rules sets out the rules regarding a reconsideration application, including Rules 26.05 and 28.01, which state as follows:

- 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.
- 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.

3.0 Reconsideration Application

The Reconsideration Application seeks a reconsideration of Order F-9-24, such that Lipson be awarded costs for his participation in the Optional Residential TOU Rate Proceeding at the maximum consultant hourly rate. Lipson submits that the grounds for reconsideration are that the BCUC made errors of fact, which have material bearing on the decision in accordance with Rule 26.05(b) of the BCUC's Rules. Lipson raises two specific considerations in relation to his reconsideration request, as discussed below.⁵

Joint Intervention

⁵ Reconsideration Application, p. 4.

Lipson states that the BCUC's assertion that he intervened primarily as an individual representing his own interests as a residential net metering customer is incorrect.⁶ Lipson also asserts that his participation in the Optional Residential TOU Rate Proceeding "was as a joint intervener primarily representing broad public and ratepayer interests, rather than as an individual intervener primarily representing narrow self-interests."⁷

Lipson explains that he participated as a joint intervener with Riverside and that they collaborated to jointly file submissions. Further, their joint participation required additional work, comparable to an established organization representing a group of common interests.⁸ In addition, most of their time was spent on issues that would also benefit society or ratepayers as a whole.⁹

Professional Services Provided by Interveners

Lipson states that Rule 34.05.4 of the BCUC Rules allows participant costs for professional services to be awarded to any intervener, including participants who are individuals, and that the BCUC Rules "do not include any criteria requiring professional services to be performed by an independent third party in order for their costs to be awarded."¹⁰ He notes that the original draft rules submitted for public comment refer to "professional services provided by or on behalf of a participant".¹¹ He states that since it appears that there was no specific public comment or submission that justified the removal of the words "provided by or on behalf of a participant" in the final version of Rule 34.05.1, it is reasonable to conclude that there was no significant change in intent from the original wording.¹²

Panel Determination

The Panel summarily dismisses the Reconsideration Application, pursuant to Section 99 of the UCA and Rule 28.01 of the BCUC Rules, on the basis that it fails to establish, on its face, any reasonable ground for reconsideration of Lipson's PCA awarded by Order F-9-24. The Panel finds that Lipson has not established, on its face, that the BCUC made an error of fact which has a material bearing on the BCUC's decision pursuant to Rule 26.05(b) of the BCUC Rules.

In making its determination on Lipson's PCA, the BCUC acknowledged that Lipson and Riverside participated in the Optional Residential TOU Rate Proceeding as joint interveners. However, Lipson's joint intervention with Riverside does not mean that Lipson is not an individual representing his own interests, nor does it indicate that Lipson represented other ratepayers, irrespective of the level of coordination and the issues pursued with Riverside. The Panel notes that Lipson's request for intervener status form indicates that he is affected by the decision as a residential net metering customer, and that it would somewhat affect his business as a professional electrical engineering consultant for buildings, including DER/solar systems design. Further, Rule 9.05 of the BCUC Rules outlines the requirements for persons requesting intervener status who are not individuals or BCUC regulated entities, and these requirements were not met by Lipson. The Panel is not persuaded that the pursuit of issues that are of a broader interest, which may also benefit society or other ratepayers, means that Lipson represents any other ratepayers. For these reasons, the Panel finds that Lipson participated in the proceeding as an individual representing his own interests.

⁶ Reconsideration Application, p. 4.

⁷ Reconsideration Application, p. 7.

⁸ Reconsideration Application, pp. 4–5.

⁹ Reconsideration Application, p. 6.

¹⁰ Reconsideration Application, p. 8.

¹¹ Reconsideration Application, p. 7.

¹² Reconsideration Application, pp. 8–9.

With respect to Lipson's statement that the BCUC Rules allow for the awarding of participant costs for professional services performed by the intervener themselves, the Panel finds that the BCUC did not make an error of fact when applying Rules 34.04.2 and 34.05.4.

Having found above that Lipson participated in the proceeding as an individual representing his own interests, the Panel finds that the BCUC was correct to apply Rules 34.04.2 and 34.05.4 when determining Lipson's PCA. These rules state:

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.

34.05.4 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. [Emphasis added]

The Panel notes that Rule 34.04.2 generally limits an individual to a cost award for forgone earnings, dependant care costs and disbursements, but under certain circumstances an individual may be awarded costs for the use of professional services pursuant to Rule 34.05.4.

The Panel is not persuaded by Lipson's argument that the draft version of Rule 34.05.1 should be interpreted to indicate that Rule 34.05.4 allows for the awarding of participant costs for professional services performed by an individual themselves. Rule 34.05.4 states that costs for the use of professional services may be awarded if, among other things, such services are reasonably necessary and appropriate for the individual to participate effectively in a proceeding. In the Panel's view, this requirement that such services be "reasonably necessary and appropriate for the individual to participate effectively in a proceeding" is a clear indication that the services must be something the individual is not able to provide for themselves. In this case, Lipson did not need to use an electrical engineering consultant to effectively participate as he already had that qualification. In other words, his knowledge and skills allowed him to effectively participate without incurring costs for professional services.

Though not clearly argued, the Panel also considered whether Lipson would have been eligible if he was acting in a professional capacity for Riverside. Rule 33.02 (d) states that participants that represent solely their own business interests are not eligible to claim cost awards. Pursuant to this rule, the Panel notes that Riverside may not be eligible to claim a cost award, and any application on its behalf may also be denied.

For these reasons, the Panel finds that Lipson did not meet the criterion in Rule 34.05.4 and therefore is limited to a cost award for forgone earnings pursuant to Rule 34.04.2.