



LETTER NO. L-54-12

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

ERICA M. HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

Log. No. 35187

VIA EMAIL

charcourt@waterstonelaw.com

September 25, 2012

**HEMLOCK CUSTOMER COMPLAINTS
REGARDING ORDER G-66-12 EXHIBIT A-1**

Hemlock Utility Services Ltd. and
0762608 B.C. Ltd.
c/o Clint Harcourt, Legal Counsel
Waterstone Law Group LPP
#304 – 20338 – 65th Avenue
Langley, BC V2Y 2X3

Dear Mr. Harcourt:

Re: Hemlock Customer Complaints with regards to the Review
Process and Rates Established by Order G-66-12

On November 30, 2010, Hemlock Utility Services Ltd. (Hemlock, the Utility) and 0762608 B.C. Ltd. filed an application with the British Columbia Utilities Commission (Commission, the BCUC) requesting, among other things, approval of a rate increase for the electricity charges to the customers of the Utility (Application).

The Application sought the following rate increases:

- an increase from \$20 to \$24 per month for electricity use between 0 and 124 kilowatt hours; and
- an increase from \$0.1605 to \$0.18 per kilowatt hour, updated to \$0.2644 per kilowatt hour in August 2011, for electricity use greater than 124 kilowatt hours per month.

The Application was heard by the Commission through a written hearing process, which included one round of Information Requests. The Commission did not provide, nor did it direct Hemlock to provide, public notice of the Application; therefore, the Utility's customers did not receive notice of the request by Hemlock for a rate increase.

On May 24, 2012, the Commission issued Order G-66-12 (the Order), approving, among other things, the following changes to electricity rates:

- an increase from \$20 to \$24 per month for electricity use between 0 and 124 kilowatt hours per month; and
- an increase from \$0.1605 to \$0.23 per kilowatt hour for use in excess of 124 kilowatt hours per month.

The Order also determined the Utility's rate base to be \$189,939 as of April 30, 2011, for rate setting purposes.

Hemlock provided the following notice regarding the rate changes to ratepayers with the July 2012 invoice: "With approval of the BC Utilities Commission minimum usage of 0-124 KW will go to \$24.00 above that, the cost per KW will go to .23 as of Sept. 1, 2012."

Following the approval granted in Order G-66-12, the Commission received approximately 30 letters from Hemlock customers complaining about the rate increase and the process the Commission followed in hearing the Application. Many of the letters requested that a public hearing be held on the basis that no public notice was provided and also requested that the approved rate increase be deferred until such time.

In reviewing a complaint, section 83 of the *Utilities Commission Act* (Act) provides the Commission with the power to determine whether any action on its part is or is not to be taken.

Pursuant to section 83 of the Act, the Commission has the ability, among other things, to order a Reconsideration¹ and rehear all or part of an Application under section 99 of the Act. Reconsideration by the Commission proceeds in two phases:

- Phase One:* The Commission determines if there is a sufficient prima facie² case to warrant Reconsideration. If the Commission determines that there is sufficient prima facie evidence, it will order a Reconsideration of all or part of the Application and move to Phase Two.
- Phase Two:* If the Phase One threshold is met, the Commission will order a Reconsideration of the Application and will reconsider, vary or rescind the Order or parts of the Order and may choose to rehear the Application before deciding on it.

The Commission is considering moving to Phase Two and ordering a Reconsideration of the rate increase portion of the Application, under section 99 of the Act, on the basis that the Commission erred in law by not ensuring adequate public notice was provided to affected parties. Before the Commission makes a decision as to whether or not there is a sufficient prima facie case to order a Reconsideration, it wishes to hear from the affected parties and, is therefore, **seeking written submissions from Hemlock and any interested customer or party on the following:**

1. Should the Commission order a Reconsideration of the Application? Please base your argument on one or more of the following rationales:
 - i. The Commission made an error in fact or law. If using this rationale, please provide support that the claim of error is substantiated on a prima facie basis and the error has significant material implications;
 - ii. There has been a fundamental change in circumstances or facts since the Decision;
 - iii. A basic principle was not raised in the original proceedings; or
 - iv. A new principle has arisen as a result of the Decision.

¹ A copy of the Reconsideration Criteria can be found on the BCUC web site at www.bcuc.com. This document provides more information on the criteria the Commission uses to determine whether a reasonable basis exists to allow Reconsideration. To access this document, go to the BCUC web site and, from the menu on the left of the Home page, select 'Guidelines and Resources', then 'Guidelines', and finally 'Reconsideration Criteria'.

² **Prima facie:* The literal translation would be "at first sight" or "at first appearance". In common law jurisdictions, *prima facie* denotes evidence that would be sufficient to prove a particular proposition or fact, unless rebutted.

2. If the Commission decides to order a Reconsideration, should the Reconsideration be on the entire Application, including the sale of the utility assets, or is it sufficient to limit the Reconsideration to the rate increase portion?
3. If the Commission decides to order a Reconsideration, what further process is desirable? (see Appendix A for alternatives)
4. If the Commission decides to order a Reconsideration, what new evidence would you be able to present that could have a possible impact on the decision respecting the rate increase?

Those wishing to make a submission on Phase One (the four questions above) must do so on or before Wednesday, October 31, 2012 (see Appendix B on how to make a submission to the Commission). Written submissions should be limited to the questions set out above, and not the substance of the rate increase. Following the completion of the Phase One written submission process, the Commission will determine whether or not it should order a Reconsideration. If it does the parties will have an opportunity to address the substance of the issues that the Commission approves for Reconsideration.

Hemlock is to provide notice of the Phase One Reconsideration process by sending a copy of this letter to each ratepayer in its service area within 5 business days of the date of this letter. Customers who have already filed complaint letters with the Commission by email will receive an email copy of this letter. These customers are also invited to file submissions on Phase One.

For further information on the review process, the Commission has established a proceeding link on the Commission's website. To access the proceeding link, go to the Commission's website at www.bcuc.com. Under 'Current Applications' on the Home page and select 'Hemlock Customer Complaints Regarding Order G-66-12'. Customer complaint letters already received by the Commission are currently posted as Exhibit A2-1, with personal information removed. All further submissions and correspondence received relating to Phase One will be placed on the public record and posted to the Commission's website.

Further participation in this matter will be addressed once the Commission establishes whether or not the Reconsideration will proceed.

An Order from the Commission will follow in due course.

Yours truly,

Erica Hamilton

CMcM/yl
Attachment

PUBLIC HEARING

If the Commission orders a Reconsideration, Notice of the Application will be provided to all affected parties and anyone wishing to participate in the review process will be provided with an opportunity to apply to the Commission to be considered an Intervener or an Interested Party. Interveners receive a copy of all correspondence and hearing documents and can participate in the hearing process. Interested Parties receive a copy of the Application and the Commission's decision when it is issued and do not participate in the hearing.

ALTERNATIVES

Written Hearing: This type of hearing is conducted through a written process and in summary typically proceeds as follows:

- The Utility files a written Application;
- the Participants (Utility, Interveners, and Commission Staff) get together for a half or full day workshop. At a workshop, the Utility provides a presentation of its Application following which Interveners and Commission Staff can ask questions. There is no Commission Panel present and the workshop is not transcribed. The workshop does not form part of the public record but is intended to help the Participants understand the substance of the Application in an informal environment;
- Commission staff and interveners submit written requests for information;
- Interveners may file written evidence followed by information requests on the evidence;
- the Utility files a written final submission followed by Intervener final submissions;
- the Utility files a written reply submission.

After the Written Hearing, the Commission Panel issues its decision.

Oral Hearings: This type of hearing is usually conducted partially in writing with an oral component. The Utility files a written Application with the Commission. Typically, this is followed by one or two rounds of written requests for information from Interveners and Commission Staff on the materials in the Application. After the written portion is complete, participants are offered an opportunity to appear in person before the Commission to present oral evidence and ask questions of the utility's and other parties' witnesses. This is followed by either oral or written arguments and replies.

After the oral hearing, the Commission Panel issues a decision. Parties are usually represented by legal counsel; however, it is not a requirement. Verbatim transcripts of oral hearings are produced for the public record.

For more details on the Public Hearing Process go to the BCUC website at www.bcuc.com. From the menu on the left of the Home page select 'Guidelines and Resources', then 'Guidelines', and finally 'Public Hearing Process'.

Streamlined Review Hearing Process: The Streamlined Review Process is intended to expedite the flow of information among Participants by incorporating the benefits of a workshop, information requests and an oral hearing into one process. The Streamlined Review Process provides for the development of an adequate record of evidence for decision makers in a more efficient and effective manner than the traditional oral or written hearing process.

After a written Application has been filed with the Commission and a limited number of information requests may have been filed, the Streamlined Review Process involves a half or full day transcribed proceeding with the Utility, Interveners, Commission Staff and a Panel of one or more Commissioners. The Panel Chair will generally act as the moderator for the proceeding.

In summary, the Streamlined Review Proceeding works as follows:

- Utility makes an initial presentation;
- question and response period where the Utility responds to written and/or oral questions from Interveners and/or Commission Staff;
- Utility makes a final verbal submission;
- Interveners have an opportunity to make final verbal submissions;
- Utility has an opportunity for a verbal reply submission.

After the Proceeding, the Commission Panel may provide a decision verbally but will most likely issue a written decision shortly after the Proceeding. Parties are usually represented by legal counsel; however, it is not a requirement. Verbatim transcripts are produced for the public record.

For full details on the Streamlined Review Process, go to the BCUC website at www.bcuc.com. From the menu on the left of the Home page select 'Guidelines and Resources', then 'Guidelines', and finally 'Streamlined Review Process'.

Direct costs for hearings are passed on to the Utility and recovered from ratepayers through rates. An Oral Hearing is usually the most expensive, followed by a Streamlined Process. A Written Hearing tends to be the least costly type of hearing.

HOW TO MAKE A SUBMISSION TO THE COMMISSION

Submissions on Reconsideration can be filed by email to the Commission Secretary at: Commission.Secretary@bcuc.com –subject line: ‘Hemlock Submission’ or by electronic submission on the Commission’s website at: www.bcuc.com –subject line: ‘Hemlock Submission’. Submissions may also be filed by fax at: 604-660-1102, or by mail using the Commission’s contact information provided below. If submitting by fax or mail, please ensure you include the date, your full name, address and signature.

<p>British Columbia Utilities Commission Sixth Floor, 900 Howe Street Vancouver, BC V6Z 2N3 Phone: 604-660-4700 Fax: 604-660-1102 Toll Free: 1-800-663-1385</p>
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For more information, please visit www.bcuc.com or contact the Commission Secretary at Commission.Secretary@bcuc.com.