



ORDER NUMBER
G-69-19

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

and

M. Steiner Application for Reconsideration
in the matter of the British Columbia Hydro and Power Authority
Customer Emergency Fund Pilot Program Application

BEFORE:

K. A. Keilty, Panel Chair
W. M. Everett, QC, Commissioner

on March 26, 2019

ORDER

WHEREAS:

- A. Following the British Columbia Hydro and Power Authority's (BC Hydro) 2015 Rate Design Application proceeding, the British Columbia Utilities Commission (BCUC) issued Order G-5-17 and its decision on January 20, 2017 (2015 RDA Decision). In the 2015 RDA Decision, the BCUC approved the establishment of a pilot crisis intervention fund and directed BC Hydro to file a proposal for a pilot program within six months of the date of the 2015 RDA Decision.
- B. On July 24, 2017, BC Hydro filed with the BCUC, pursuant to sections 58 to 61 and 49(a) of the *Utilities Commission Act*, the Customer Emergency Fund (CEF) Pilot Program Application (Application).
- C. On November 17, 2017, the BCUC issued Order G-166-17 and accompanying reasons for decision regarding BC Hydro's Application, which approved, among other things, Rate Schedule 1903, establishing the CEF Rate Rider effective June 1, 2018 (CEF Pilot Program Decision);
- D. On November 27, 2018, M. Steiner (Steiner) filed an application for reconsideration of the CEF Pilot Program Decision submitting, among other things, that the BCUC had made an error in fact or law on the basis that the BCUC and BC Hydro do not have the legal authority to: (i) provide and sell any type of insurance; (ii) create and mandate BC Hydro's customers to pay a new tax; or (iii) mandate BC Hydro's customers to donate to any charity, and that hardship assistance programs should only be implemented by the provincial government (Reconsideration Application);
- E. On January 11, 2019, the BCUC provided Steiner with a copy of its Reconsideration Guidelines which outline the criteria that an applicant must establish a *prima facie* case sufficient to warrant a full reconsideration hearing by the BCUC. The BCUC also responded to Steiner's assertion that the CEF is an insurance product by providing a copy of BCUC Order G-195-18 and the accompanying reasons for decision (Burns Reconsideration Decision). The email also provided Steiner the opportunity to file further particulars to

demonstrate a *prima facie* case for reconsideration of the CEF Pilot Program Decision with respect to the allegation that the BCUC made an error in fact or law on the basis of Steiner's assertion that the CEF is a tax or charity;

- F. On January 23, 2019, Steiner responded to the BCUC and submitted that a *prima facie* case has been established on the basis that a basic principle had not been raised in the original proceeding; namely, that the CEF is by definition an insurance product, tax and/or charity, and as a result there has been a broad overreach of discretion by the BCUC when it approved Rate Schedule 1903 establishing the CEF Rate Rider (Supplementary Filing); and
- G. The Panel has reviewed the Reconsideration Application and the Supplementary Filing and determines that Steiner has failed to establish a *prima facie* case that the BCUC has made an error in fact or law or that a basic principle was not raised in the original proceeding. Therefore, the Panel finds dismissal of the Reconsideration Application 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 orders that the Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of March 2019.

BY ORDER

Original Signed By:

K. A. Keilty
Commissioner

Attachment

M. Steiner Application for Reconsideration
in the matter of the British Columbia Hydro and Power Authority
Customer Emergency Fund Pilot Program Application

REASONS FOR DECISION

Table of Contents

	Page no.
1.0 Background	2
2.0 Introduction	2
3.0 Applicable Law and BCUC Guidelines	3
4.0 Steiner Reconsideration Application	4
5.0 Panel Discussion and Determination.....	5
5.1 Has the BCUC made an error in fact or law?	5
5.2 Has a basic principle not been raised in the original proceedings?	6
6.0 Evaluation Process for the CEF Pilot Program	7

1.0 Background

As part of the British Columbia Hydro and Power Authority's (BC Hydro) 2015 Rate Design Application proceeding (2015 RDA), British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, BC Poverty Reduction Coalition, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, Together Against Poverty Society, and the Tenant Resource and Advisory Centre (BCOAPO et al.) requested that the British Columbia Utilities Commission (BCUC) direct BC Hydro to implement several programs to assist low-income residential ratepayers, including a crisis intervention fund to assist customers in arrears with BC Hydro and are unable to pay their electricity bills. The review process of the 2015 RDA included information requests, expert evidence and oral hearings which were held in Vancouver, BC. The proceeding involved BC Hydro, 36 interveners and 6 interested parties. The BCUC also received various letters of comment from the public during the course of this proceeding.¹

On January 20, 2017, the BCUC issued Order G-5-17 and its decision on the 2015 RDA (RDA Decision) approving, among other things, the establishment of a pilot crisis intervention fund and directing BC Hydro to file a proposal for a pilot program within six months of the date of the 2015 RDA Decision. In the 2015 RDA Decision, the BCUC approved the fund on a pilot basis to assess whether there is an economic or cost of service justification for the establishment of a crisis intervention fund on a permanent basis.²

On July 24, 2017, BC Hydro filed an application for the establishment of the crisis intervention fund pilot program referring to it as the Customer Emergency Fund (CEF) Pilot Program (CEF Application).³ The review of the CEF Application included a Streamlined Review Process which was held in Vancouver, BC, with BC Hydro and registered interveners in attendance.

On November 17, 2017, the BCUC approved the CEF Pilot Program for a period of three years through Order G-166-17. BC Hydro was directed to file an evaluation report with the BCUC within 90 days of the completion of the second year of the CEF Pilot Program. The CEF first appeared on BC Hydro customers' electricity bills as the CEF Rate Rider on June 1, 2018.

2.0 Introduction

On November 27, 2018, M. Steiner (Steiner) filed an application seeking a reconsideration of the CEF Pilot Program Decision on the basis that the BCUC had made an error in fact or law (Reconsideration Application). In relation to the CEF Pilot Program, Steiner submits the BCUC and BC Hydro do not have the legal authority to:

- (i) provide and sell any type of insurance;
- (ii) create and mandate BC Hydro's customers to pay a new tax; or
- (iii) mandate BC Hydro's customers to donate to any charity.

Steiner also submits that the Province of British Columbia already offers a Hardship Assistance program, and that these types of programs should only be implemented by the provincial government.⁴

¹ British Columbia Hydro and Power Authority (BC Hydro), 2015 Rate Design Application, Decision dated January 20, 2017, pp. (iv)-(v), 3-4.

² Ibid., pp. 97-98.

³ BC Hydro later renamed the CEF Pilot Program to the Customer Crisis Fund Pilot Program.

⁴ Steiner, M., emailed dated November 27, 2018 (Reconsideration Application), p. 1.

On January 11, 2019, the BCUC responded to Steiner's assertion that the CEF is an insurance product by providing a copy of BCUC Order G-195-18 and the accompanying reasons for decision (Burns Reconsideration Decision).⁵ In the Burns Reconsideration Decision, the BCUC found that the Burns failed to establish a *prima facie* case that the BCUC has made an error in fact or law or that a basic principle had not been raised, and that the BCUC had approved the CEF Pilot Program and Rate Rider pursuant to its authority under the provisions of sections 59 to 61 of the *Utilities Commission Act* (UCA) to approve rates.

The BCUC also provided Steiner with a copy of its Reconsideration Guidelines, which outline the criteria an applicant must demonstrate in order to establish a *prima facie* case sufficient to warrant a full reconsideration hearing by the BCUC. Steiner was provided an opportunity to file further particulars demonstrating a *prima facie* case for reconsideration of the CEF Pilot Program Decision with respect to his allegations that the BCUC made an error in fact or law on the basis that the CEF is a tax or charity.

On January 23, 2019, Steiner responded to the BCUC (Supplementary Filing) submitting that he has established a *prima facie* case for a full reconsideration hearing on the basis that a basic principle had not been raised in the original proceeding. Steiner elaborates that the CEF is by definition an insurance product, tax and/or charity and as a result there has been a broad overreach of discretion by the BCUC when it approved the rate schedule which established the CEF Rate Rider.⁶

The particulars on each of the above grounds that Steiner alleges to establish a *prima facie* case for a full reconsideration hearing are addressed in Sections 4 and 5 of this decision.

3.0 Applicable Law and BCUC Guidelines

Section 99 of the *Utilities Commissions Act* (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.⁷

The BCUC Reconsideration Guidelines in force when Steiner filed the Reconsideration Application provides that an application for reconsideration proceeds in two phases:

Phase One: In the interests of both efficiency and fairness, and before the BCUC proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the BCUC. In the first phase, the Panel generally applies certain criteria to determine whether or not a reasonable basis exists for allowing the reconsideration. This includes whether:

- the BCUC had made an error in fact or law;
- there has been a fundamental change in circumstances of facts since the decision;

⁵ Charles and Michael Burns Application for Reconsideration and Variance of Order G-166-17 in the matter of the British Columbia Hydro and Power Authority Customer Emergency Fund Pilot Program Application, Order G-195-18 dated October 11, 2018, Appendix A, p. 3. The Burns Reconsideration Decision was issued in response to an application by Charles and Michael Burns for reconsideration and variance of the CEF Pilot Program Decision.

⁶ Steiner, M., email dated January 23, 2019 (Supplementary Filing), pp. 1-2.

⁷ *Utilities Commission Act*, RSBC 1996, c. 473, s. 99.

- a basic principle has not been raised in the original proceedings; or
- a new principle has arisen as a result of the decision.

Phase Two: If necessary, the reconsideration proceeds to the second phase where the BCUC hears full arguments on the merits of the application.

4.0 Steiner Reconsideration Application

In the Reconsideration Application and Supplementary Filing, Steiner submits that the BCUC erred in fact or law in exercising its discretion on approving the CEF Pilot Program on the basis that the BCUC and BC Hydro do not have the legal authority to provide and sell any type of insurance, create and mandate BC Hydro's customers to pay a new tax, or mandate BC Hydro's customers to donate to any charity, and that hardship assistance programs should only be implemented by the provincial government. Steiner further submits that a basic principle had not been raised in the original proceeding; namely, that the CEF is by definition an insurance product, tax and/or charity, and as a result there has been a broad overreach of discretion by the BCUC when it approved the rate schedule which established the CEF Rate Rider.⁸

Steiner supports his assertion that the CEF is an insurance product by submitting that the insured party is BC Hydro, and that "BC Hydro has effectively insured their accounts receivables under the guise" of a CEF which is similar to accounts receivable insurance that provides protection against customers' failure to pay their debts.⁹ Steiner makes reference to the Burns Reconsideration Decision in which the BCUC referred to the definition of insurance in the *Insurance Act* of BC¹⁰ and submits that:

...BC Hydro has forced upon its customers "the undertaking by one person (its customers) to indemnify another person (BC Hydro) against loss or liability in respect of certain risk or peril to which the object of the insurance (accounts receivable) may be at risk (risk of the inability to collect the accounts receivable).["]¹¹

With respect to Steiner's assertion that the CEF is a charity, he submits that the CEF clearly falls within the following portions of the definition of charity:¹²

1a : generosity and helpfulness especially toward the needy or suffering also : aid given to those in need received charity from the neighbors

[...]

3a : a gift for public benevolent purposes

⁸ Reconsideration Application, p. 1; Supplementary Filing, pp. 1-2.

⁹ Supplementary Filing, p. 1.

¹⁰ *Insurance Act*, RSBC 2012, c. 1, Part 1.

¹¹ Supplementary Filing, p. 1.

¹² *Ibid.*, p. 1.

With respect to Steiner's allegation that the CEF is a tax, he refers to the following definition of tax:¹³

- 1a : a charge usually of money imposed by authority on persons or property for public purposes
- b : a sum levied on members of an organization to defray expenses

2: a heavy demand

Steiner also refers to sections 53 and 54 of the *Constitution Act* (1867) and submits there was no bill that originated in the House of Commons to impose this [CEF] tax.¹⁴

5.0 Panel Discussion and Determination

In phase one of this reconsideration, the Panel first determines whether the Reconsideration Application and Supplementary Filing have established a *prima facie* case that the BCUC made an error in fact or law, and secondly, whether a basic principle was not raised in the original proceeding as alleged by Steiner.

5.1 Has the BCUC made an error in fact or law?

To determine whether Steiner establishes a *prima facie* case for reconsideration with respect to his submission that the BCUC erred in fact or law on the basis that the BCUC and BC Hydro do not have the legal authority to provide and sell any type of insurance, create and mandate BC Hydro's customers to pay a new tax, mandate BC Hydro's customers to donate to any charity, and that hardship assistance programs should only be implemented by the provincial government, the Panel considers the following:

- The definition of a rate under the UCA;
- The BCUC's mandate and jurisdiction to set a rate under the rate setting provisions of the UCA; and
- The CEF Rate Rider and whether the BCUC exceeded its jurisdiction under the rate setting provisions of the UCA by approving the CEF Rate Rider and Pilot Program.

Section 1 of the UCA defines a "rate" to include:

- (a) a general, individual or joint rate, fare, toll, charge, rental or other compensation of a public utility,
- (b) a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate, and
- (c) a schedule or tariff respecting a rate;

The BCUC's mandate and jurisdiction to set rates for public utilities is set out in sections 59 to 61 of the UCA. In particular, section 59(4) provides that the BCUC has the sole authority to determine whether a rate applied for is unjust, unreasonable and unduly discriminatory or unduly preferential. Section 60(1)(b.1) also provides the BCUC broad discretion to "use any mechanism, formula or other method of setting the rate that it considers advisable..."

The CEF Rate Rider is a rate sought by BC Hydro to enable it to implement the CEF Pilot Program on the terms described in its CEF Pilot Program Application. Pursuant to the aforementioned provisions of the UCA and the

¹³ Ibid., p. 2.

¹⁴ Ibid., p. 2.

determinations in the RDA Decision, the BCUC found that the requirement for all residential customers, including low-income customers, to pay a \$0.25 per month charge to fund the CEF is not unduly discriminatory since all customers in the class are paying the same rate and could potentially rely on the fund in a time of need.¹⁵ Further, the BCUC outlined that the purpose of the CEF Pilot Program is to assess whether the CEF will result in improved efficiency, a reduction of bad debts or other cost savings or benefits that could potentially offset the rate charged to ratepayers and thereby justify the CEF Rate Rider on an economic or cost of service basis.¹⁶ The BCUC found that, if as a result of the pilot the CEF Rate Rider could be justified on an economic or cost of service basis, it would not be unjust and unreasonable.¹⁷

The Panel finds Steiner has failed to establish a *prima facie* case that the BCUC made an error in fact or law. The Panel finds BCUC has the legal authority and jurisdiction to approve the CEF Rate Rider and Pilot Program as a rate under sections 59 to 61 of the UCA.

5.2 Has a basic principle not been raised in the original proceedings?

To determine whether Steiner establishes a *prima facie* case for reconsideration regarding his submissions that a basic principle had not been raised in the original proceeding; namely, that the CEF is by definition an insurance product, tax and/or charity and as a result there has been a broad overreach of discretion by the BCUC when it approved the rate schedule which established the CEF Rate Rider, the Panel considers the following:

- The principles reviewed in the 2015 RDA and CEF Pilot Program proceedings; and
- The relevance of these principles to BCUC's jurisdiction under the rate setting provisions of the UCA as discussed in Section 5.1 above.

During the 2015 RDA proceeding, the BCUC considered the argument that the CEF amounted to setting social policy and is duplicative of government programs. The BCUC found the CEF program would not amount to a social assistance program if it generates a utility benefit sufficiently justifiable on an economic or cost of service basis.¹⁸ In the CEF Pilot Program Application proceeding, FortisBC Inc. argued that "the fund has the hallmarks of a social assistance program, rather than one oriented to the utility business." In rejecting this argument, the BCUC noted that "many of the issues raised by FortisBC have already been addressed in the Decision on BC Hydro's 2015 Rate Design Application and it is not the purpose of this proceeding to reconsider the Commission's decision to direct BC Hydro to establish a pilot program."¹⁹

Since the BCUC previously determined in both the 2015 RDA and the CEF Pilot Decisions that the CEF would not constitute setting social policy and or duplicate government programs if the CEF generates a utility benefit on an economic or cost of service basis, the Panel does not agree these principles were unexplored in the original proceedings. In the Panel's view, the consideration of whether the CEF amounted to social policy and/or government programs encompasses elements of Steiner's assertions that the CEF is a tax or charity.

With respect to Steiner's assertion that the basic principle of the CEF being an insurance product was not raised in the original proceeding, the Panel notes that the BCUC previously acknowledged there were elements of the CEF that in a very broad sense were not dissimilar to some aspects of insurance.²⁰ However, whether the CEF is or is not an insurance product is not relevant to the Panel's jurisdictional powers granted under the UCA.

¹⁵ BC Hydro, 2015 Rate Design Application, Decision dated January 20, 2017, p. 97.

¹⁶ Ibid., pp. 96-97.

¹⁷ Ibid., pp. 50 & 96.

¹⁸ Ibid., p. 96.

¹⁹ BC Hydro, Customer Emergency Fund Pilot Program Application, Decision dated November 17, 2017, pp. 2-3.

²⁰ BC Hydro 2015 Rate Design Application, Decision dated January 20, 2017, p. 97.

Accordingly, the Panel finds Steiner has failed to establish a *prima facie* case that a basic principle was not raised in the original proceeding; namely, that the CEF is an insurance product, tax, and/or charity.

In response to Steiner's submission that BC Hydro has effectively insured its accounts receivable under the guise of a CEF, the Panel refers to the evidence filed in the BC Hydro CEF Pilot Program proceeding, which includes the following:²¹

- BC Hydro has almost 1.8 million residential accounts and at any one time about 7 percent of residential accounts are in arrears 30 days or greater;
- Accounts that remain in arrears proceed through BC Hydro's collection process and could ultimately be disconnected if payment is not received;
- BC Hydro's ratepayers bear the costs of the collection process and of bad debt due to uncollectible revenues; and
- If customers terminate their accounts without paying their bills in full, BC Hydro is then left with uncollectible revenue that must be expensed as bad debt.

The Panel notes that collection costs and bad debt expenses are included in BC Hydro's revenue requirements and are recovered through rates charged to ratepayers. Further, since the purpose of the CEF Pilot Program (as outlined in Section 5.1) is to assess whether the CEF will result in a level of improved efficiency and reduction in bad debts sufficient to justify the CEF Rate Rider on an economic or cost of service basis, the Panel does not agree with Steiner that the CEF is in effect an indemnification of BC Hydro's bad debt risk.

Further, the Panel finds Steiner's submissions that the CEF may fit within dictionary definitions of insurance, charity and tax are not relevant considerations and do not change the fact the CEF Rate Rider and Pilot Program is a rate that has been approved by the BCUC pursuant to its jurisdiction to do so under the rate-setting provisions of the UCA, as set out in Section 5.1 above. As such, the Panel is not persuaded by Steiner's submissions that the CEF is a product which the BCUC does not have the authority to approve.

For the above reasons, the Panel finds Steiner's Reconsideration Application and the Supplementary Filing fail to establish a *prima facie* case that the BCUC has made an error in fact or law, or that a basic principle was not raised in the original proceeding; and accordingly, dismisses the Reconsideration Application.

The Panel further notes that the BCUC approved the CEF as a pilot program and its effectiveness will be reviewed by the BCUC as discussed in Section 6 below.

6.0 Evaluation Process for the CEF Pilot Program

On November 17, 2017, the BCUC approved the CEF as a pilot program running until the earlier of: a) three years from the CEF Pilot Program implementation date of June 1, 2018; b) BCUC's approval of an application from BC Hydro to end the CEF Pilot Program prior to the end of the three year period; or c) issuance of a BCUC order to end the CEF Pilot Program.²² The CEF Pilot Program is designed to allow BC Hydro to gather sufficient data in evaluating the effectiveness of the program and to determine whether the CEF has some reasonable basis of benefiting residential customers as a whole. The BCUC approved a three-year period as it provides sufficient flexibility to evaluate the results of the CEF Pilot Program. BC Hydro's evaluation is expected to include a review

²¹ BC Hydro, Customer Emergency Fund Pilot Program Application, Exhibit B-1, p. 30.

²² Ibid., Order G-166-17 dated November 17, 2017, Appendix A, p. 4.

of the estimated costs and benefits of the CEF Pilot Program to its residential ratepayers and to assess whether the CEF should continue.²³

Pursuant to Order G-211-18 dated November 8, 2018, the BCUC found that an earlier review of the CEF Pilot Program is warranted in order to allow for an earlier understanding of the CEF's actual results, and directed BC Hydro to file an evaluation report within 90 days of the completion of the first year of the CEF Pilot Program.²⁴

The Panel notes that Steiner will have an opportunity to present his views regarding the CEF Pilot Program if he participates in the BCUC's review/evaluation process following the completion of the first year of the CEF Pilot Program. Information on how to participate in a BCUC proceeding and all necessary forms can be accessed through the BCUC's website at: <https://www.bcuc.com/get-involved/get-involved-proceeding.html>.

²³ Ibid., Exhibit B-1, pp. 5 & 32.

²⁴ BC Hydro, Customer Crisis Fund Pilot Program, Order G-211-18 dated November 8, 2018, Appendix A, p. 1.