



October 6, 2020

Sent via email

Letter L-60-20

Re: Nelson Hydro – Complaint filed by B.L. – British Columbia Utilities Commission Review

On January 18, 2020, the British Columbia Utilities Commission (BCUC) received your complaint concerning an alleged abuse of power by Nelson Hydro. In the complaint, you expressed concerns regarding an alleged abuse of power by Nelson Hydro regarding the Statutory Right of Way (SRW) bylaw interpretation and Nelson Hydro becoming a co-petitioner in a case lodged by a neighboring lot requesting access to the Hydro pole located on your premises. The BCUC received additional correspondence from you between January 23, 2020 and February 28, 2020. Following requests by the BCUC, Nelson Hydro provided its response to your complaint on February 7 and February 26, 2020.

When the BCUC reviews complaints, it uses the criteria of whether the utility reasonably responded to the customer's concern(s) and whether the utility followed its approved Bylaws and the *Utilities Commission Act* (UCA). As an administrative tribunal, the BCUC follows its own process for a number of procedures, including complaints. The BCUC is not a mediator of disputes rather it is an independent regulatory agency of the Provincial government that operates under and administers the UCA.

Based on our review of your complaint and related correspondence provided in this matter, the BCUC sees no indication that Nelson Hydro was in contravention of its Bylaw or the UCA.

Review Process

In reviewing Nelson Hydro's response, under the BCUC Complaints Guidelines, the BCUC has, amongst other things, referred to Nelson Hydro's approved Bylaw,¹ which contains the terms and conditions of service between Nelson Hydro and its customers to ensure Nelson Hydro's actions were in accordance with the approved Bylaw.

The current version of the Bylaw was approved by BCUC Order G-6-13 and came into effect January 21, 2013. The Bylaws are set through a formal BCUC proceeding. In the Bylaw, rates for each class or type of customer (residential, commercial, industrial) and terms and conditions are designed through a public consultation process to cover the cost of supplying customers in that class with electricity. As a public utility, Nelson Hydro is required to strictly adhere to the Bylaw in its service provisions to Rural customers and are unable to change the Bylaw without BCUC approval.

¹ Nelson Hydro Bylaw 3196, 2012.

Complaint

With regard to the allegation of abuse of power by Nelson Hydro in its interpretation of the SRW in place, the BCUC notes that the interpretation of an SRW between yourself and Nelson Hydro is a contract and property law issue that is outside the jurisdiction of the BCUC.

Within your complaint you also questioned whether Nelson Hydro has the authority to accept an application and payment for electrical service when “the property owner did not have legal power access to their lot.” After a review, the BCUC notes that as a SRW is in place at your property, the requirement for access in Bylaw 3196 was fulfilled for this purpose.

Further, you requested the BCUC review whether Nelson Hydro is relieved from the obligation to serve as set out in section 28(3) of the UCA in the circumstances. As noted above, the BCUC does not find Nelson Hydro to be in breach of the application of its Bylaw regarding access issues for your neighbour, nor does it find any proper cause to relieve Nelson Hydro from the obligation to provide power to your neighbour’s property.

With regard to your complaint that Nelson Hydro is abusing its power by becoming a co-petitioner in a case commenced by your neighbour against you seeking access to the Hydro pole located on the SRW on your premises, the BCUC notes that the issue of access to your SRW is a property and contract law issue and is not within the jurisdiction of the BCUC to determine. As a party to the SRW there is no abuse of power by joining a lawsuit that has, as its subject matter, the very SRW you complain about. Further, the BCUC has limited jurisdiction over Nelson Hydro’s business practices, including how it conducts communications, so long as its actions comply with the approved Bylaw and the UCA.

The BCUC finds that Nelson Hydro’s actions have been consistent with its duties and responsibilities set out in its Bylaw and the UCA, and the remaining matters concerning the interpretation of the SRW are outside of the BCUC’s jurisdiction. Accordingly, your file is now closed.

Office of the Ombudsperson

If you have concerns about how the BCUC handled your complaint, you may wish to contact the Office of the Ombudsperson. The Office of the Ombudsperson receives enquiries and complaints about the practices and services of public agencies within its jurisdiction. Their role is to impartially investigate complaints to determine whether public agencies have acted fairly and reasonably, and whether their actions and decisions were consistent with relevant legislation, policies and procedures.

If you decide to file a complaint with the Ombudsperson, they will review the BCUC’s process to ensure it was fair. Though this may not result in a different outcome for you, the office could request that the BCUC reopen its investigation.

Provided is a link to the Office of the Ombudsperson’s website: <https://www.bcombudsperson.ca/>. You can also call their office toll-free at: 1-800-567-3247. An employee at the office will be able to assist you and inform you of your options.

Thank you again for contacting the BCUC.

Sincerely,

Original Signed By:

Marija Tresoglavic
Acting Commission Secretary

DD/mp