



**ORDER NUMBER
G-243-21**

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

and

Ogden, J.
Application for Reconsideration of Order G-213-21
In the matter of Kyuquot Power Ltd. Revenue Requirements Application

BEFORE:

A. K. Fung, QC, Panel Chair
C. M. Brewer, Commissioner
B. A. Magnan, Commissioner

on August 13, 2021

ORDER

WHEREAS:

- A. On November 30, 2020, Kyuquot Power Ltd. (KPL) filed an application with the British Columbia Utilities Commission (BCUC) for approval of amendments to its revenue requirements along with certain rate matters (Application);
- B. On January 5, 2021, by Order G-2-21, the BCUC commenced review of the Application and directed KPL to provide notice of the Application to all customers directly, either electronically or by mail, by Friday, January 29, 2021;
- C. On July 21, 2021, by Order G-213-21, the BCUC approved amongst other items, an increase to KPL's Energy Charges;
- D. In a letter dated July 20, 2021, a KPL customer, Ogden, J. (J.O.), filed an application with the BCUC, requesting a reconsideration of Order G-213-21 and its accompanying Decision (Reconsideration Application);
- E. In the Reconsideration Application, J.O. states that during its Application, KPL had failed to notify J.O. of the proceeding and therefore failed to comply with the public hearing process and the regulatory timetable included in directive 2 of Order G-2-21;
- F. The BCUC has reviewed the Reconsideration Application and finds that a summary dismissal is warranted.

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

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of August 2021.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

Ogden, J.
Application for Reconsideration of Order G-213-21
In the matter of Kyuquot Power Ltd. Revenue Requirements Application

REASONS FOR DECISION

1. Introduction

Ogden, J. (J.O.), a Kyuquot Power Ltd. (KPL) customer, is seeking a reconsideration of the BCUC's Order G-213-21 and its accompanying Decision (Reconsideration Application). J.O. states that KPL failed to provide notice of its Revenue Requirements Application and as such he was unable to participate in the proceeding. J.O. further states that "I'm affected by this Decision and Order because it increases my energy charge"; that the grounds for reconsideration is that KPL "seems not to have properly complied with the public hearing process and regulatory timetables established by the BCUC."¹

2. Background

On November 30, 2020, KPL filed an application with the BCUC for approval of amendments to its revenue requirements and certain rate matters (Application). The public hearing process to review the Application included a direction to KPL to provide notice of both the Application and the BCUC order to all its customers, BCUC information requests, letters of comment and KPL's final argument. As part of the hearing, KPL confirmed that it complied with the BCUC order to provide notice to all its customers.²

By Order G-213-21 and its accompanying Decision, the BCUC approved, among other things, an increase to KPL's Basic and Energy Charges.

3. Applicable Law and BCUC Rules of Practice and Procedure Governing Reconsideration Applications

The framework that guides our process to determine whether to reconsider a BCUC decision includes both the *Utilities Commission Act* (UCA) and the BCUC Rules of Practice and Procedure (Rules).³

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."

Rule 26.04 of the Rules provides, in part, that an application for reconsideration must be filed in accordance with the Rules.

Rule 26.05 of the Rules provides that an application for reconsideration must contain a concise statement of the grounds for reconsideration and include one or more of the following grounds:

¹ J.O. letter dated July 20, 2021.

² Exhibit B-2, Kyuquot Power Ltd. Revenue Requirements Application Proceeding.

³ BCUC Rules of Practice and Procedure, Order G-15-19, dated January 22, 2019, Appendix A.

- 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 in 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 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

Rule 28.01 of the Rules provides that “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. Grounds for Reconsideration

The Reconsideration Application does not establish any of the enumerated grounds for reconsideration in Rule 26.05. However, it may conceivably fall under Rule 26.05 (c) “new facts have arisen since the issuance of the decision which have material bearing on the decision” or (e) “where there is otherwise just cause”. J.O. states he was denied an opportunity to participate in a proceeding that impacted him due to lack of notification from KPL. In other words, J.O. asserts a breach of natural justice based on the failure to provide proper notice which ought to invalidate the Application proceeding.

When the BCUC issues directives requiring notice provisions in its orders, it expects regulated utilities to adhere to them. However, the failure to give notice will not invalidate an otherwise proper proceeding if the BCUC is otherwise satisfied that such failure does not prejudice anyone; particularly where, as is the case here, there is a broad class of people entitled to receive the notice.

J.O. asserts that because KPL did not comply with directive 2 of Order G-2-21 by failing to provide the public hearing notice to J.O., as one of the ratepayers of KPL, the Decision must be reconsidered. With regard to the loss of opportunity to participate in the proceeding, J.O. has not provided evidence or submissions on what his participation would have entailed, namely, the specific information or submissions that he would have provided that could result in a different Decision. Furthermore, J.O. has not identified what specific prejudice or harm has occurred because of the failure to have been provided proper notice of the proceeding. Prejudice or harm to the affected party is relevant in determining whether a breach of natural justice has occurred which would warrant overturning the Decision. However, in the present case where the applicant has not identified what specific prejudice or harm he, as a ratepayer of KPL, may have suffered because he was not provided notice, this Panel would likely have arrived at the same decision as that of the earlier Panel. Even assuming that J.O., who is one amongst 42 ratepayers, did not receive proper notice of the proceeding, there is no evidence that the other ratepayers were not given notice of the proceeding. In light of the above, the Panel considers that reconsideration of the original Decision would serve no useful purpose.

⁴ Ibid., pp. 15–16.

⁵ Ibid., p. 16.

The Panel finds that on its face, the Reconsideration Application does not provide sufficient grounds for reconsidering the Decision and accordingly summarily dismisses the Reconsideration Application.

Further, the Panel recommends that the BCUC open a complaint and investigate the reason provided by J.O. as the basis for reconsideration, that he did not receive proper notice of the proceeding through the BCUC Complaints process, as explained below.

BCUC Complaints Process

The BCUC investigates complaints it receives regarding regulated utilities.

As part of the [complaints process](#), the regulated entity is required to review the concerns raised by the complainant and respond to any allegations made. The complainant has the opportunity to review the utility's response and send in any additional comments or questions they may have.

BCUC staff review the regulated entity's response(s) and any information submitted to ensure the response(s) addressed the concerns outlined in the complaint.

If the matter remains unresolved or if staff are concerned that the regulated entity may not have acted in accordance with its approved tariffs, BCUC directives or rules, or the UCA, staff may escalate the file for adjudication by a Commissioner or a BCUC panel to make a decision on the complaint

As an administrative tribunal, the BCUC must uphold the principles of natural justice, including procedural fairness, in all its actions.