



ORDER NUMBER
G-294-23

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

and

Lake Okanagan Resort
Restoration of Service

BEFORE:

B. A. Magnan, Commissioner

on October 30, 2023

ORDER

WHEREAS:

- A. By Order G-333-19 dated December 18, 2019, the British Columbia Utilities Commission (BCUC) determined that Lake Okanagan Resort (LOR) is a public utility as defined in section 1 of the *Utilities Commission Act* (UCA);
- B. In August 2023, the public utility's electrical system, as well as the residences, amenities, and other utilities at the resort, sustained significant damage due to wildfires in the Okanagan and Southern Interior region;
- C. By Order G-261-23 dated October 4, 2023, the BCUC directed LOR to provide the BCUC with a comprehensive written update regarding the public utility's current circumstances and plans. As part of this written update, LOR was required to, amongst other things, provide information and supporting documentation on:
 - i. the status of LOR's public utility electrical equipment,
 - ii. any requests made by LOR's customers to restore public utility service, and
 - iii. any steps LOR is taking to restore public utility service;
- D. Further, Order G-261-23 directed LOR to obtain a Certificate of Public Convenience and Necessity prior to the construction or operation of any public utility electrical equipment at the resort;
- E. By letter dated October 12, 2023, LOR filed a progress report with the BCUC (Progress Report). In the Progress Report, LOR provides no indication that customers have requested a restoration of service by the public utility. Further, LOR states that it is "in the process of repairing power poles" and that, ideally, it would like to "fully transfer utility service to BC Hydro";
- F. Pursuant to section 73(2) of the UCA, the BCUC "may forbid and restrain the doing or continuing of anything contrary to or which may be forbidden or restrained under any Act, general or special, to which the commission's jurisdiction extends"; and
- G. The BCUC has reviewed LOR's Progress Report and considers the following determination to be warranted.

NOW THEREFORE the BCUC orders pursuant to section 73(2) of the UCA that LOR cease and desist the construction of any public utility electrical equipment (e.g., power poles) that would be used by LOR in the transmission, sale, delivery or provision of electricity to or for the public or a corporation for compensation.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of October 2023.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Lake Okanagan Resort
Restoration of Service

REASONS FOR DECISION

1.0 Background

Lake Okanagan Resort (LOR) is a small electric utility situated in West Kelowna on a property that serves as a resort hotel and timeshare as well as supplying strata services. There are five strata corporations that operate on the grounds of the resort, four of which receive electricity service from the utility (Strata Corporations). LOR owns all of the electrical distribution system and utility assets on the property. The Strata Corporations own the electrical utility assets within their respective strata buildings.¹

By Order G-333-19 dated December 18, 2019, the British Columbia Utilities Commission (BCUC) determined that LOR is a public utility and therefore subject to regulation under the *Utilities Commission Act* (UCA). Among other things, the BCUC directed LOR to file, as soon as possible, an application for permanent rates, electric tariff, and general terms and conditions for BCUC approval. In that same order, the BCUC accepted LOR's current rate schedule on an interim and recoverable basis.

Subsequently, LOR was directed to file a Certificate of Public Convenience and Necessity (CPCN) application and its application for permanent rates by June 15, 2020.²

Having not received the required applications from LOR, the BCUC established a proceeding respecting LOR's potential contravention of the UCA. This proceeding was adjourned in anticipation of a request from LOR for exemption from BCUC regulation under the UCA.³

On January 18, 2022, LOR sought BCUC approval for exemption. This request was denied due to concerns with the safety and reliability of the utility, as well as its financial viability.⁴ LOR was directed to, among other things, apply for a CPCN and permanent rates by March 18, 2023.⁵

On March 1, 2023, the BCUC established a proceeding to examine an assessment prepared by Falcon Engineering regarding the condition of the LOR's electrical system (Electrical Distribution Assessment Report). After failing to comply with notice requirements in this proceeding, LOR was found to have contravened sections 42 and 43 of the UCA and a proceeding to determine whether the BCUC should levy administrative penalties on LOR was established.⁶

On March 15, 2023, LOR requested an extension to the deadline to file its CPCN and permanent rate applications, noting that it had engaged with British Columbia Hydro and Power Authority (BC Hydro) regarding

¹ LOR Exemption under Section 88(3) of the UCA, BCUC Decision and Order G-16-23, dated January 26, 2023, p. 2.

² LOR Status as a Public Utility – Interim/Permanent Rate Application Filing, BCUC Letter L-26-20, dated May 15, 2020.

³ Order G-201-20 dated July 30, 2023, and Order G-69-21 dated March 10, 2021.

⁴ LOR Exemption under Section 88(3) of the UCA, BCUC Decision and Order G-16-23, dated January 26, 2023, pp. 6–10.

⁵ LOR Exemption under Section 88(3) of the UCA, BCUC Decision and Order G-16-23, dated January 26, 2023; LOR Application to file Permanent Rates, BCUC Order G-35-23, dated February 16, 2023.

⁶ BCUC LOR Apparent Contravention of the UCA, Final Order with Reasons G-123-23, dated June 1, 2023; LOR Penalty for the Confirmed Violation of Sections 42 and 43 of the UCA, BCUC Order G-196-23, dated July 24, 2023.

the potential for BC Hydro to assume responsibility for electricity service at the resort. After reviewing LOR's request, the BCUC deferred the filing date of the CPCN application pending LOR's discussions with BC Hydro and established a proceeding respecting LOR's permanent rates application.⁷

As of July 2023, LOR's responses to information requests posed in the Electrical Distribution Assessment Report proceeding were outstanding due to lack of payment by LOR to Falcon Engineering.⁸ In the permanent rates proceeding, a request by LOR for an extension to the filing deadlines in the proceeding had been denied, and LOR was required to file its application by August 15, 2023, or to do so with the assistance of a BCUC-approved consultant by November 30, 2023, and subject to interim reporting deliverables.⁹

On August 21, 2023, BCUC proceedings respecting LOR were adjourned until further notice due to serious developments in wildfires in the Okanagan and Southern Interior region.¹⁰

LOR's public utility electrical system, as well as the residences, amenities, and other utilities at the resort, sustained significant damage as a result of the wildfires, and on October 4, 2023, LOR was directed to file a comprehensive update with the BCUC regarding the public utility's current circumstances and plans, including but not limited to providing information and supporting documentation on:

- the status of LOR's public utility electrical equipment;
- any requests made by LOR's customers to restore public utility service; and
- any steps LOR is taking to restore public utility service.

LOR was also directed to obtain a CPCN prior to the construction or operation of any public utility electrical equipment at the resort.¹¹

2.0 Progress Report

On October 12, 2023, LOR filed a progress report with the BCUC (Progress Report). In the Progress Report, LOR states that the resort was destroyed due to the wildfire and is currently facing issues related to power, sewage, and water supply.¹² LOR states that it is currently exploring options with BC Hydro to provide temporary power to the resort, and notes that the resort's water system requires electricity to operate.¹³ LOR states that there are no existing buildings at the resort that are currently occupied, and provides no indication that customers have requested a restoration of service by the public utility.¹⁴

In response to the BCUC's direction to provide information regarding the status of LOR's electrical equipment, including a detailed list of the public utility assets lost during the wildfire and any assets that remain, LOR states that "According to our contractor, our power poles are damaged. The contractor is working on analyzing the

⁷ LOR Application to file Permanent Rates, BCUC Order G-80-23, dated April 13, 2023.

⁸ Exhibit A2-2, p. 1

⁹ LOR Application to file Permanent Rates, BCUC Order G-202-23, dated July 27, 2023.

¹⁰ Exhibit A2-2, pp. 5-7

¹¹ BCUC Order G-261-23, dated October 4, 2023.

¹² Exhibit B-1, p. 1.

¹³ Ibid., pp. 1, 8.

¹⁴ Exhibit B-1, p. 8.

conditions of utility assets.”¹⁵ LOR informed the BCUC that it is “in the process of repairing power poles”¹⁶ and that, ideally, it would like to “fully transfer utility service to BC Hydro”.¹⁷

3.0 Panel Determination

LOR’s Progress Report fails to provide sufficient information respecting the current circumstances and conditions of the public utility. LOR has provided minimal information regarding the condition of LOR’s public utility assets and the habitability of the resort. The Panel notes that based on the information received, the buildings that remain following the wildfires are unoccupied and LOR has received no requests from customers of the public utility to restore electrical services.

The Panel further notes that LOR is the subject of several BCUC proceedings. While all of these proceedings (excluding the present proceeding requiring a CPCN application from LOR) have been adjourned in response to the August 2023 wildfires, serious concerns remain to be resolved regarding LOR’s operations, including establishment of permanent rates, consideration of the safety and reliability of LOR’s public utility electrical system, and a determination as to whether penalties are warranted for LOR’s confirmed contravention of the UCA. Of particular relevance in this instance, LOR has yet to obtain a CPCN for the construction or operation of any public utility electrical equipment. The Panel notes that despite being explicitly directed to obtain a CPCN prior to the construction or operation of any public utility electrical equipment at the onset of this current proceeding, in its Progress Report LOR has indicated that it is in the process of repairing power poles.¹⁸

Accordingly, **the Panel finds that LOR must cease and desist the construction or operation of any public utility electrical equipment (e.g., power poles) to be used by LOR in the transmission, sale, delivery or provision of electricity to or for the public or a corporation for compensation.** For clarity, nothing in this prohibition precludes the owner(s) of the resort from powering their own facilities, such as the resort’s water system, at their own expense and for their own use.

¹⁵ Exhibit B-1, p. 8.

¹⁶ Ibid.

¹⁷ Exhibit B-1, p. 10.

¹⁸ BCUC Order G-261-23, dated October 4, 2023, Directive 2.