

REGISTRY FILE NUMBER
ROB-P-C-1552686
REGISTRY LOCATION
Robson Square

REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

- ☒ To a Claim
☐ To a Counterclaim

16-Jul-15

REGISTRY

TO:

Copy the name, address and telephone number of the claimant from the Notice of Claim.

NAME Calum Coupland
ADDRESS 7276 209A Street

CLAIMANT(S)

CITY, TOWN, MUNICIPALITY Langley PROV. British Columbia POSTAL CODE V2Y 2E4 TEL. # 604.532.1923

FROM:

Fill in the name, address and telephone number of the defendant filing this reply.

NAME British Columbia Hydro & Power Authority
ADDRESS c/o BC Hydro Legal Services (Attn: Aniz Alani, Legal Counsel)
333 Dunsmuir Street, 16th Floor

DEFENDANT

CITY, TOWN, MUNICIPALITY Vancouver PROV. British Columbia POSTAL CODE V6B 5R3 TEL. # 604.623.4313

DISPUTE:

Using the "HOW MUCH" section of the Notice of Claim as a guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.

a Please see attached Schedule "A" to Reply.

b

c

d

e

AGREEMENT WITH THE CLAIM: I (NAME)

If you agree to pay all or part of what is claimed, make a proposal.

I could make the following payments:
(GIVE DATES AND AMOUNTS)

agree to pay \$

COUNTERCLAIM (YOU SHOULD ONLY FILL OUT THIS PART OF THE FORM IF YOU WISH TO MAKE A CLAIM AGAINST THE CLAIMANT) (THIS PART IS NOT TO BE USED WHEN REPLYING TO A COUNTERCLAIM)

WHAT HAPPENED?

Briefly tell what has led to your counterclaim.

HOW MUCH?

Tell what you are claiming. If your counterclaim has more than one part, separate each part and fill in each individual amount, then add the individual amounts to make the total.

a	\$	
b	\$	
c	\$	
TOTAL		\$
+ FILING FEES		\$
= TOTAL CLAIMED		\$

court copy

court copy

Schedule "A" to the Reply to the Notice of Claim

1. The Defendant British Columbia Hydro and Power Authority ("BC Hydro") denies each and every allegation contained in the Notice of Claim except as expressly admitted herein.
2. BC Hydro is a Crown Corporation continued under the *Hydro and Power Authority Act*, RSBC 1996, c. 212 (the "HPAA").
3. BC Hydro distributes electricity to customers in British Columbia in accordance with the terms and conditions of its *Electric Tariff* (the "Tariff") filed with and approved by the British Columbia Utilities Commission (the "Commission") pursuant to section 61 of the *Utilities Commission Act*, RSBC 1996, c. 473 (the "UCA").

Statutory Framework

4. BC Hydro distributes electricity to customers in British Columbia in accordance with a tariff (the "Tariff") as ordered by the British Columbia Utilities Commission by way of a commission order pursuant to section 119 of the *Utilities Commission Act*, RSBC 1996, c. 473 (the "UCA").
5. The Claimant was, at all material times, a Customer for the supply of electricity to 5172 Mar Street in Port Alberni, BC (the "Premises") within the meaning of the Tariff.
6. Sections 63 of the *UCA* provides as follows:

Schedules must be observed

63 A public utility must not, without the consent of the commission, directly or indirectly, in any way charge, demand, collect or receive from any person for a regulated service provided by it, or to be provided by it, compensation that is greater than, less than or other than that specified in the subsisting schedules of the utility applicable to that service and filed under this Act.

Legal Basis for the Charges Complained Of

7. Section 2.1 of the Tariff provides, in part:

2.1. Application for Service

BC Hydro serves Customers solely in accordance with the Electric Tariff, including Terms and Conditions and Rate Schedules. Individuals, persons or other entities seeking to become Customers and purchase Electricity shall apply for

service. Application for service can be made in person, by telephone, online at www.bchydro.com, or in writing. Applicants may be required by BC Hydro to complete and sign a service agreement. However, except where a theft of service has occurred, a contractual relationship shall be established by the taking of Electricity in the absence of an application for service or signed service agreement. [Emphasis added].

8. Section 2.2 of the Tariff provides, in part:

2.2. Term of Service

Unless otherwise specifically provided in these Terms and Conditions, the Rate Schedules, or any service agreement between BC Hydro and the Customer, the term of service and obligation to pay the rates under the applicable Rate Schedules and any charges pursuant to these Terms and Conditions shall commence:

(a) in the case of Premises requiring physical connection or re-connection of service, on the day when BC Hydro's service is connected to the Point of Delivery for the purpose of supplying Electricity; or

(b) in the case of already connected Premises, on the day the Customer's right to possession of the Premises commences.

and shall continue for an indefinite period thereafter until terminated by either party in accordance with these Terms and Conditions. [Emphasis added].

9. On or about March 14, 2014, the previous occupant of the Premises contacted BC Hydro to terminate their account for the Premises in accordance with Section 2.2 of the Tariff effective as of March 31, 2014.
10. On March 31, 2014, an actual meter reading was taken at the Premises indicating consumption to date of 29,753 kilowatt hours (kWh).
11. On or about September 19, 2014, BC Hydro caused the physical supply of electricity to the Premises to be disconnected.
12. At all material times, and in particular between April 1, 2014 to September 18, 2014 (the "Vacant Period"), the Claimant was in possession of the Premises.
13. On or about November 3, 2014, the Claimant contacted BC Hydro to reactivate service to the Premises. He purported to accept responsibility for the Premises during the Vacant Period and confirmed that the previous occupant left the Premises in March 2014.
14. Further, the Claimant has been the registered owner of the Premises since December 1, 2007.

15. BC Hydro says that it validly billed the Claimant and collected for consumption at the Premises during the Vacant Period in accordance with sections 2.1 and 2.2 of the Tariff and section 63 of the *UCA*.

Jurisdiction

16. Further, and in the alternative, the matters complained of in the Notice of Claim relate to the application of the appropriate rate schedule under the Tariff to the Premises for the supply of electricity. BC Hydro submits that, by virtue of sections 63, 72 and 105 of the *UCA*, this Honourable Court lacks jurisdiction over the subject matter of this claim.
17. Sections 72(1) and 105 of the *UCA* provide as follows:

Jurisdiction of commission to deal with applications

72 (1) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, complaining that a person constructing, maintaining, operating or controlling a public utility service or charged with a duty or power relating to that service, has done, is doing or has failed to do anything required by this Act or another general or special Act, or by a regulation, order, bylaw or direction made under any of them.

Jurisdiction of commission exclusive

105 (1) The commission has exclusive jurisdiction in all cases and for all matters in which jurisdiction is conferred on it by this or any other Act.

(2) Unless otherwise provided in this Act, an order, decision or proceeding of the commission must not be questioned, reviewed or restrained by or on an application for judicial review or other process or proceeding in any court.

18. BC Hydro submits that if the Claimant alleges that BC Hydro has done or has failed to do anything required by the *UCA* or the Tariff, being an Order made under the *UCA*, including but not limited to the application of the appropriate rates required to be billed and collection under section 63 of the *UCA*, then the Claimant ought to raise those allegations with the Commission whose jurisdiction to inquire into, hear and determine BC Hydro's compliance with the Tariff is exclusive in this regard.
19. Further, and in the alternative, BC Hydro submits that the Claimant has an adequate remedy available to him in that he may seek the consent of the Commission under section 63 of the *UCA* for BC Hydro to charge and collect an amount other than that required by the Tariff.
20. BC Hydro accordingly submits that the Notice of Claim discloses no triable issue and ought to be dismissed accordingly.