

Undertaking 167

Undertake to provide a copy of the BCUC decision # BC-UC-G9604 and the heritage directive #3 in relation to BC Hydro.

Please see Undertaking 167, Attachment 1, *BC Hydro Public Power Legacy and Heritage Special Direction No. HC2*, and Attachment 2, decision of the British Columbia Utilities Commission, G-96-04.

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B.C. Reg. 158/2005
O.C. 1123/2003

Deposited March 22, 2005
effective November 27, 2003¹

BC Hydro Public Power Legacy and Heritage Contract Act

**HERITAGE SPECIAL DIRECTION NO. HC2 TO THE
BRITISH COLUMBIA UTILITIES COMMISSION**

Note: Check the Cumulative Regulation Bulletin 2012 and 2013
for any non-consolidated amendments to this regulation that may be in effect.

[Includes amendments up to B.C. Reg. 104/2012, May 22, 2012]

Definitions

1 In this Special Direction:

"Act" means the *BC Hydro Public Power Legacy and Heritage Contract Act*;

"debt" means, in relation to a fiscal year of the authority, the amount obtained by

(a) adding the outstanding amounts of the following at the end of the fiscal year:

- (i) borrowings;
- (ii) bonds;
- (iii) notes;
- (iv) debentures, and

(b) deducting from the amount determined under paragraph (a) the sum of the of the following amounts at the end of the fiscal year:

- (i) sinking funds;
- (ii) temporary investments;
- (iii) repurchased debt;

"deemed equity" means, for any fiscal year, the product obtained by multiplying the rate base relating to that year by 30%;

"government policy directive" means a directive in writing to the authority from the minister charged with the administration of the *Hydro and Power Authority Act*;

"heritage contract" means the document attached as Appendix A to this Special Direction;

"heritage deferral account" means an account established under section 7 (a) of this Special Direction;

"heritage energy" has the same meaning as in the heritage contract;

"heritage payment obligation" has the same meaning as in the heritage contract;

"heritage resources" has the same meaning as in the heritage contract;

"rate base" means, in relation to a fiscal year of the authority, the amount determined in accordance with the following equation and notes:

$$RB = WCA + (A+B+C)/2 - (D+E+F)/2$$

where:

RB = rate base;

WCA = working capital amount of \$250 million;

A, B, D, E and F = the sum of an amount the authority forecasts will be listed as follows in the authority's audited financial statements at the end of the previous fiscal year and the amount the authority forecasts will be similarly listed at the end of the applicable fiscal year:

A is the amount listed as property, plant and equipment in service, less accumulated amortization;

B is the amount listed as intangible assets in service, less accumulated amortization;

D is the amount listed as contributions in aid of construction;

E is the amount listed as contributions arising from the Columbia River Treaty;

F is the amount listed as leased assets included in A, less accumulated amortization;

C = the sum of the balance the authority forecasts for the deferral account established under commission order G-55-95 at the beginning of the fiscal year and the balance the authority forecasts for the same account at the end of the fiscal year;

notes:

1. In determining rate base for a fiscal year, the amounts A, B and F must have subtracted from them any amount included in them that is
 - (a) an expenditure for export, as defined in the *Clean Energy Act*, or
 - (b) an expenditure incurred by the authority on or after April 1, 2011, that the commission determines under the *Utilities Commission Act* must not be recovered by the authority in rates.
2. In determining rate base for a fiscal year, the amount D must have subtracted from it any amount included in it that is related to the expenditures referred to in paragraphs (a) and (b) of note 1;

"trade income" means the greater of the following:

- (a) the amount that is equal to the authority's consolidated net income, less the authority's net income, less the net income of the authority's subsidiaries except Powerex Corp., less the amount that the authority's consolidated net income changes due to foreign currency translation gains and losses on intercompany balances between the authority and Powerex Corp;
- (b) zero

"transmission rate customers" means industrial or commercial customers of the authority who are eligible for service under rates designed by the commission under section 3.

[am. B.C. Regs. 11/2008, ss. (a) and (b); 15/2011, s. 1; 104/2012, s. (a).]

Application

- 2 This Special Direction is issued to the commission under sections 3 and 4 of the Act.

Consideration in designing rates for transmission rate customers

- 3 (1) In designing rates for the authority's transmission rate customers, the commission must ensure that those rates are consistent with recommendations #8 to #15 inclusive in the commission's report and recommendations to the Lieutenant Governor in Council dated October 17, 2003.
- (2) Without limiting subsection (1), the commission must ensure the following:
 - (a) the rates for the authority's transmission rate customers are subject to
 - (i) the terms and conditions found in Supplements 5 and 6 to the authority's tariff, and
 - (ii) any other terms and conditions the commission considers appropriate for those rates;
 - (b) customers who own multiple plants under common ownership may engage in load aggregation for energy, if each plant
 - (i) is in operation, and
 - (ii) meets the requirements to be a transmission rate customer that are set out in the authority's tariff, or is otherwise authorized by the commission to be treated as a transmission rate customer;
 - (c) the authority publishes the Tier 2 rate in the manner and with the frequency required by the commission.

Basis for establishing authority revenue requirements

- 4 Subject to section 7 and directions issued to the commission under section 3 of the *Utilities Commission Act*, in regulating and setting rates for the authority, the commission must ensure that those rates allow the authority to collect sufficient revenue in each fiscal year to enable the authority to

- (a) provide reliable electricity service,
- (b) meet all of its debt service, tax and other financial obligations,
- (c) comply with government policy directives, including, without limitation, government policy directives requiring the authority to construct, operate or extend a plant or system, and
- (d) achieve an annual rate of return on deemed equity
 - (i) for the authority's fiscal years 2009-2010, 2010-2011 and 2011-2012, that is equal to the sum of the following two percentages:
 - (A) pre-income tax annual rate of return allowed by the commission to the most comparable investor-owned energy utility regulated under the *Utilities Commission Act*;
 - (B) 1.63%, and
 - (ii) for any other fiscal year of the authority, that is equal to the pre-income tax annual rate of return allowed by the commission to the most comparable investor-owned energy utility regulated under the *Utilities Commission Act*.

[am. B.C. Regs. 11/2008, ss. (c) and (d); 27/2009, s. (a); 15/2011, s. 2; 104/2012, s. (b).]

Determining the cost of energy

5 In setting the authority's rates, the commission

- (a) must treat the heritage contract as if it were a legally binding agreement between 2 arms-length parties,
- (b) must determine the energy required by the authority to meet its domestic service obligations and must determine the cost to the authority of the portion of that required energy that is in excess of the energy supplied under the heritage contract,
- (c) may employ any mechanism, formula or method referred to in section 60 (1) (b.1) of the *Utilities Commission Act*, and
- (d) unless a different mechanism, formula or method is employed under paragraph (c), must ensure that electricity used by the authority to meet its domestic service obligations is provided to customers on a cost-of-service basis.

Return on deemed equity

6 In setting the authority's rates, the commission must allow the authority an annual rate of return on deemed equity calculated using forecast consolidated net income, which forecast consolidated net income is calculated on the basis of forecast trade income.

[am. B.C. Regs. 11/2008, s. (e); 104/2012, s. (c).]

Deferral accounts

7 When regulating and setting rates for the authority, the commission

- (a) must allow the authority to establish one or more accounts to reflect and record variances between
 - (i) the heritage payment obligation and the authority's forecast of the heritage payment obligation, and
 - (ii) the trade income and the authority's forecast of trade income,
- (b) may allow the authority to establish one or more other deferral accounts for other purposes,
- (c) must set or regulate the authority's rates in such a way as to allow the deferral accounts to be cleared from time to time and within a reasonable period of time, and

(d) for the authority's 2009-2010 fiscal year, must allow the authority to establish an account to defer for recovery in a later fiscal year or years the difference between the revenue required under section 4 as it read before it was amended effective February 17, 2009, and the revenue required under that section as it reads after that date.

[am. B.C. Reg. 27/2009, s. (b).]

Annual distributable surpluses allowed

- 8 When regulating and setting rates for the authority, the commission must ensure that those rates allow the authority to allocate annual distributable surpluses in the manner specified by the Lieutenant Governor in Council under section 4 of the Act or section 35 of the *Hydro and Power Authority Act*.

Appendix A to Heritage Special Direction No. HC2

[am. B.C. Reg. 335/2008.]

Heritage Contract

WHEREAS on November 25, 2002, the Province of British Columbia released *Energy for Our Future, A Plan for B.C.* (the "Energy Plan");

AND WHEREAS the Energy Plan outlines certain policy actions designed to ensure British Columbians have continued access to sufficient supplies of dependable low-cost electricity;

AND WHEREAS the Energy Plan provides in Policy Action #1 that a legislated heritage contract will be created between BC Hydro's generation line-of-business and BC Hydro's distribution line-of-business for an initial term of 10 years.

THEREFORE, BCH Distribution and BCH Generation (the "parties") agree as follows.

Definitions

- 1 In this Agreement:

"**Act**" means the *BC Hydro Public Power Legacy and Heritage Contract Act*;

"**Agreement**" means this Heritage Contract including Schedule A;

"**Ancillary Service Requirements**" means services necessary to deliver energy;

"**BC Hydro**" means the British Columbia Hydro and Power Authority;

"**BCH Distribution**" means BC Hydro's distribution line-of-business;

"**BCH Generation**" means BC Hydro's generation line-of-business;

"**Commission**" means the British Columbia Utilities Commission;

"**heritage electricity**" means the capacity, energy and ancillary services that BCH Generation is required to supply to BCH Distribution under this Agreement;

"**heritage energy**" means

(a) subject to paragraph (b), 49 000 GW.h per year less the energy generated for delivery under the Skagit Valley Treaty, or

(b) the quantity of energy determined by the Commission under section 8 of this Agreement to be heritage energy;

"**heritage payment obligation**" means

(a) subject to paragraph (b), the annual payment determined in accordance with the procedure set out in Schedule A to this Agreement, or

(b) the annual payment determined by the Commission under section 8 of this Agreement to be the heritage payment obligation;

"heritage resources" means the Electric Facilities and Thermal Facilities described in Schedule A to the Terms of Reference, together with

- (a) the related civil works and plant, and
- (b) potential future investments that increase the capacity, energy or ancillary service capability of such facilities, including potential future units 5 and 6 at Mica and potential future units 5 and 6 at Revelstoke;

"Order" means an order of the Commission;

"Terms of Reference" means Schedule A, Terms of Reference, to Order-in-Council No. 0253/2003;

"Transfer Pricing Agreement" means the Transfer Pricing Agreement for Electricity and Gas dated April 1, 2003 between BC Hydro and Powerex Corp. as amended from time to time;

"Year" means fiscal year.

Electricity Supply

- 2 BCH Generation must provide the full capacity of the heritage resources to BCH Distribution on a priority call basis.

Obligation to supply

- 3 BCH Generation must supply to BCH Distribution, in each Year, the heritage energy or such lesser amount of energy as may be required by BCH Distribution.

Obligation to deliver

- 4 BCH Generation will deliver the heritage energy to BCH Distribution at the various points of interconnection of the generating stations included in the heritage resources with the BC Hydro transmission grid or at points of interconnection with other utilities, as appropriate.

Responsibility for obtaining transmission services

- 5 BCH Distribution will be responsible for obtaining transmission services for energy provided to BCH Distribution.

Ancillary services

- 6 The parties may use the capacity available to them under section 2 to deliver energy to meet customer demand and to satisfy the parties' Ancillary Service Requirements, regardless of whether provision for self-supply is made under any tariff.

Payment

- 7 BCH Distribution must, on or before the end of each Year, pay to BCH Generation an amount equal to the heritage payment obligation.

Adjustment

- 8 The parties acknowledge that

(a) the Commission may, by Order, modify one or both of the definitions of "heritage energy" and "heritage payment obligation" if the commission is satisfied that a change in circumstances has permanently affected

- (i) the capability of the heritage resources to provide one or both of capacity and energy, or
- (ii) the authority's cost of generating the heritage energy, and

(b) any such modification will automatically modify the heritage energy or the heritage

payment obligation, as the case may be, without further action by the parties.

Information exchange and cooperation

- 9 Each party will continue to freely provide the other with any requested information to facilitate the coordinated and optimal operation of the BC Hydro system.

Dispute resolution

- 10 (1) The parties will make reasonable efforts to resolve disputes arising in relation to this Agreement at the staff level.
- (2) As needed, issues may be dealt with by management levels within each party to achieve timely resolution.
- (3) Issues that cannot be resolved in a timely manner at senior management levels, may be referred by either party to the commission for resolution.

Term

- 11 (1) This Agreement shall commence on April 1, 2004.
- (2) Repealed. [B.C. Reg. 335/2008.]

Dated as of this day of, 2004.

.....
BCH Distribution

.....
BCH Generation

Schedule A

Heritage Payment Obligation

The heritage payment obligation for any Year is the amount determined by

- (a) adding those of the following costs incurred by BCH Generation in the Year that the Commission orders may be included in the heritage payment obligation:
- (i) cost of energy such as the cost of water rentals and energy purchases, including purchases of gas and electricity, required to supply heritage electricity;
 - (ii) operating costs such as the costs of operating and maintaining the heritage resources, including an allocation of corporate costs;
 - (iii) all costs of owning the heritage resources, including, without limitation, depreciation, interest, finance charges and other asset related expenses;
 - (iv) all costs or payments related to generation-related transmission access required by the heritage resources;
 - (v) the applicable return on equity on investments in heritage resources based on Heritage Special Direction No. HC2 to the Commission under the authority of the Act, and
- (b) by subtracting from the sum obtained under paragraph (a), any revenues BCH Generation receives from other services provided from the heritage resources, including, without limitation,
- (i) revenues related to Skagit Valley Treaty obligations,
 - (ii) revenues from provision of ancillary services to the transmission operator in respect of third party use of the transmission system, and
 - (iii) revenues from the sale of surplus hydro electricity under section 5 of the Transfer Pricing Agreement.

1. See B.C. Reg 180/2005, British Columbia Gazette Part 2, Volume 48, Number 7, page 389.

[Provisions of the *BC Hydro Public Power Legacy and Heritage Contract Act*, S.B.C. 2003, c. 86, relevant to the enactment of this regulation: sections 3 and 4]

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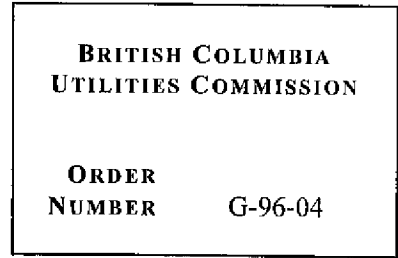
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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

British Columbia Hydro and Power Authority
2004/05 and 2005/06 Revenue Requirements Application
and
British Columbia Transmission Corporation
Application for Deferral Accounts

BEFORE: R.H. Hobbs, Chair)
L.A. Boychuk, Commissioner) October 29, 2004
M.P. Birch, Commissioner)

O R D E R

WHEREAS:

- A. British Columbia Hydro and Power Authority ("BC Hydro") filed on December 15, 2003, pursuant to the Utilities Commission Act ("the Act"), an application to increase its rates by 7.23 percent effective April 1, 2004 and by 2.00 percent effective April 1, 2005 ("the Application"); and
- B. British Columbia Transmission Corporation filed on December 15, 2003, pursuant to the Act, an application for approval of certain deferral accounts ("the BCTC Application"); and
- C. By Letter No. L-1-04 the Commission determined that the BCTC Application would be heard at the same time as BC Hydro's Application and that there would be one record for both Applications; and
- D. Following a Pre-hearing Conference held on January 14, 2004, the Commission issued Order No. G-7-04 which established a regulatory timetable to deal with the Applications; and
- E. By Order No. G-8-04 the Commission approved an increase of 7.23 percent in BC Hydro's revenue requirements and a reduction to certain wholesale customers service rates to be applied to rates on an interim basis as described in Appendix B to the Application effective April 1, 2004, subject to refund with interest; and
- F. On March 29, 2004 BC Hydro revised its Application to seek an additional increase in rates of 1.67 percent (for a total rate increase in 2004 of 8.9 percent) to be effective 30 days after the Commission's Decision on the Application and withdrew the 2.00 percent rate increase requested effective April 1, 2005; and

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- G. On March 31, 2004 BC Hydro filed both its 2004 Integrated Electricity Plan ("IEP") and its Resource Expenditure and Acquisition Plan ("REAP"); and
- H. On April 6, 2004, the Commission held a second Pre-hearing Conference. By Letter No. L-25-04, the Commission addressed the issues that were raised at the second Pre-hearing Conference and further determinations made by the Commission Panel; and
- I. By Order No. G-42-04 the Commission amended the Regulatory Timetable established by Order No. G-7-04 and made certain procedural orders; and
- J. Participants made Opening Statements on May 12-13, 2004 and a Hearing Issues List was subsequently issued; and
- K. The oral public hearing into the Applications commenced on May 18, 2004 and the oral evidentiary phase concluded on June 10, 2004. Written arguments were filed in accordance with the Regulatory Timetable established by Order No. G-42-04 with oral argument taking place on August 17, 2004 and on August 31, 2004; and
- L. The Commission has considered the Applications and the evidence all as set forth in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission, for the reasons stated in the Decision, orders as follows:

- 1. The applied-for rate increase of 7.23 percent effective April 1, 2004 and the additional increase in rates of 1.67 percent (for a total rate increase in F2005 of 8.9 percent) to be effective 30 days after the Commission's Decision on the Application and a reduction to certain wholesale customers service rates effective April 1, 2004 are not approved as filed.
- 2. BC Hydro's Wholesale Transmission Service ("WTS") rate application and WTS rates are approved as filed, subject to the adjustments required by the Commission's Decision.
- 3. BC Hydro is to calculate F2005 rates and file financial schedules A to E inclusive of the Application, in accordance with the directives in the Commission's Decision, by November 15, 2004. In accordance with the Commission's Decision, the permanent BC Hydro rates for F2005 and F2006 are to be based on BC Hydro's allowed pre-income tax rate of return on equity for F2005.
- 4. If the F2005 permanent rates are less than the interim rates of 7.23 percent, BC Hydro is to refund to customers the difference in revenue with interest at the average prime rate of the principal bank with which BC Hydro conducts its business. If the F2005 permanent rates exceed the interim rates of 7.23 percent, the interim rates from April 1, 2004 to November 30, 2004 are confirmed as permanent and the increased permanent rates will take effect on December 1, 2004. BC Hydro is to report on the average refund or rate increase by customer class.

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5. Following the determination of the 2005 allowed rate of return on equity and the effective income tax rate for Terasen Gas Inc., BC Hydro is to apply to adjust its F2006 tariff rates based on its allowed pre-tax rate of return on equity for F2006.
6. The Commission will accept, subject to timely filing, amended Electric Tariff Rate Schedules which conform to the Commission's Decision. BC Hydro is to provide all customers, by way of an information notice and media publication, with a notice of the change in rates.
7. BC Hydro's and BCTC's requests for approval of deferral accounts and carrying costs are approved, except for BC Hydro's distribution emergency restoration cost element in the Non-Heritage Deferral Account.
8. BC Hydro and BCTC will comply with all other directives in the Decision accompanying this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of October 2004.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair