IN THE MATTER OF

UTILITY SYSTEM EXTENSION TESTS

RECONSIDERATION DECISION

Phase II

August 13, 1996

BEFORE:

Dr. Mark K. Jaccard, Chairperson
Lorna R. Barr, Deputy Chairperson
Kenneth L. Hall, P. Eng., Commissioner

TABLE OF CONTENTS

1.0 INTRODUCTION

In June 1995, the British Columbia Utilities Commission ("the Commission", "BCUC") issued Order No. G-50-95 directing the six largest gas and electric utilities (the "Utilities") in British Columbia to participate in a generic hearing on the tests used by the Utilities for approving system extensions. Such tests, in addition to being used by utilities to decide whether or not to construct an extension, are used to calculate the proportion of costs which will be recovered from customers attaching to the extension versus the proportion which will be invested by the utility to be recovered later in the rates charged to all customers in a class. The hearing commenced with the presentation of oral testimony on October 30, 1995 and ended on November 30, 1995, following written argument and reply.

The Commission issued its Decision on Utility System Extension Tests ("System Extension Decision" or "Decision") on February 16, 1996. On February 23, 1996, the B.C. Court of Appeal ("BCCA") issued its judgment regarding an appeal by British Columbia Hydro and Power Authority ("B.C. Hydro") that the Commission had exceeded its jurisdiction with respect to directions contained in another Commission Decision regarding B.C. Hydro's Integrated Resource Plan ("IRP"). The BCCA allowed the B.C. Hydro appeal ("BCCA Judgment"). The Commission has since filed Notice of Leave to Appeal the BCCA Judgment to the Supreme Court of Canada.

On March 18, 1996, B.C. Hydro filed a Notice of Application for Leave to Appeal the Commission's System Extension Decision and alleged that the Commission had exceeded its jurisdiction with respect to certain orders or directions in the Decision. A Notice of Application for Leave to Appeal was also filed by Methanex Corporation, Council of Forest Industries and the Mining Association of British Columbia (the "Industrials") regarding the Commission's directions in the System Extension Decision with respect to the incorporation of social costs into system extension tests.

Subsequently, the Commission received applications for a reconsideration of its System Extension Decision on behalf of B.C. Hydro and the Industrials. B.C. Hydro based its reconsideration application on the arguments that:

- the Commission lacks jurisdiction over the distribution extension policies of utilities;
- the BCCA Judgment found that the Commission lacks express policy making powers;
- the Commission lacks legislative authority to direct utilities to consider social costs in the manner directed in the System Extension Decision; and

- the determination of the Commission with respect to recovery of the Uneconomic Extension Allowance expenditures was beyond the jurisdiction of the Commission in a generic hearing on extension policies and that a fair hearing on this issue had been denied.

The Industrials reconsideration application was based on the view that the Commission had erred in law in the following respects:

- the Commission's rate regulation mandate does not include the authority to include social costs in the manner directed in the System Extension Decision;
- the Commission lacks policy making powers; and
- the Commission lacks taxation authority and cannot therefore include social costs that are unrelated to the utilities' business in utility rates.

The Consumers' Association of Canada (B.C.) et al. ("CAC(B.C.) et al.") also applied for a reconsideration and proposed that the Commission identify and reformulate elements of the System Extension Decision which might have been cast into doubt by the earlier BCCA Judgment, in order to ensure that the objectives of the System Extension Decision would be achieved.

The Commission, by Order No. G-35-96, directed that it would hear argument on May 22, 1996 regarding the prima facie test of whether there were sufficient grounds to warrant a reconsideration of the System Extension Decision. Following consideration of the arguments presented, the Commission issued Order No. G-47-96 along with the Commission's Reasons for Decision. In those Reasons for Decision, the Commission found that the Judgment handed down by the B.C. Court of Appeal and its comments with respect to the Commission's jurisdiction over utility IRP activities represented a significant change in circumstances since the System Extension Decision was issued, and that the Commission would hear further argument for reconsidering the Decision on June 24, 1996. The hearing took place on that date.

In the Commission's view, the principal issues for reconsideration are the following:

- Does the Commission have the authority to issue generic system extension test directions?
- What authority does the Commission have to include social costs when considering system extensions?
- Did the Commission err by including in its System Extension Decision specific directions with respect to B.C. Hydro's Uneconomic Extension Allowance?

2.0 THE COMMISSION'S AUTHORITY TO ISSUE GENERIC SYSTEM EXTENSION TEST DIRECTIONS

B.C. Hydro argued that the Legislature has not given the Commission the power to direct utility management's policy decisions in relation to system extension tests (B.C. Hydro letter of May 10, 1996, p. 3). In supporting its argument, B.C. Hydro pointed to p. 20 of the BCCA Judgment where it states that the Commission lacks express policy-making powers and that no such powers should be implied (T1: 64). In support of its position, B.C. Hydro reviewed sections of the Utilities Commission Act (the "Act") that may relate to system extensions. According to B.C. Hydro, Section 28 of the Act is a general supervisory section which does not give the Commission the authority to write policy. Nor, in the view of B.C. Hydro, do Sections 31, 34, or 35 provide a basis for the directions in the System Extension Decision. In particular, Section 35, as interpreted by B.C. Hydro, applies to "... a particular extension for which either application has been made by a potential customer or on the Commission's own motion", and, therefore, does not provide the Commission with authority to set a general policy for system extension tests (T1: 179). Thus, B.C. Hydro acknowledged that while the Commission does have the jurisdiction to review and analyze the extension test included in a filed tariff, "... the charge in particular", as part of its rate making authority, the policy considerations which go into the test are exclusively B.C. Hydro's (T1: 68 and 69). Finally, B.C. Hydro acknowledged that the Commission has the jurisdiction to write voluntary guidelines (T1: 182) and offered an amended version of the Commission's System Extension Decision that made all aspects of the Decision non-mandatory (Exhibit 17).

The B.C. Energy Coalition ("Energy Coalition") argued that the Commission has authority to regulate system extensions under Sections 28, 35, and 51 to 53 of the Act and emphasized Section 51, which gives the Commission the authority to designate which extensions require approval through the Certificate of Public Convenience and Necessity ("CPCN") process (T1: 97). The Energy Coalition recommended that the Commission amend its System Extension Decision to become guidelines for the exercise of its discretion under Section 51 of the Act in order to designate which extensions would require a CPCN. Under the Energy Coalition proposal, utilities would have the opportunity to propose a different methodology than the one proposed by the Commission in its guidelines, although the burden would be on the utility to justify why an approach different from the guidelines should be allowed under the circumstances (T1: 93).

CAC(B.C.) et al. recommended that the Commission amend its System Extension Decision and submitted a copy with the proposed revisions (Exhibit 16). The essence of the CAC(B.C.) et al. revision was to amend any language that, in their view, suggests that the System Extension Decision requires utility management to conduct its internal planning methodology in any particular way. CAC(B.C.) et al. argued that the Commission has jurisdiction whenever utility management makes a decision that has ramifications in terms of a requirement for a CPCN or of a prudency evaluation in the context of revenue requirements,

and has authority to require whatever information is necessary in order for it to review extension projects in terms of these requirements (T1: 7). In the view of CAC(B.C.) et al., voluntary guidelines are not adequate because they would not establish transparent and consistent principles for utilities and interested parties. CAC(B.C.) et al. stated that although system extensions could be reviewed through a CPCN approach, and might have to be if utilities chose to do so, CAC(B.C.) et al. would prefer to see a more flexible and efficient process (T1: 22).

West Kootenay Power Ltd. ("WKP") argued that the broad definition of rates in the Act can incorporate extension tests and the connection charges that result from these as part of rates. WKP went on to cite Section 64(1) of the Act which states that the Commission may on its own motion fix rates, and Section 64(2) which states that following a hearing the public utility affected by an order under this section shall amend its schedules in conformity with the order and file amended schedules with the Commission (T1: 121). WKP also argued that the Commission's directives in the System Extension Decision did not violate utilities' policy-making prerogative since extension tests had real rate impacts for customers and fell within the ambit of utility practices rather than policies (T1: 123). WKP further noted the role extension policies play in establishing the competitive position of utilities and the need for a "level playing field" among utilities with respect to their connection charges and their extension tests.

BC Gas Utility Ltd. ("BC Gas") also argued that system extension tests are, in effect, rates. BC Gas submitted that a rate can be on a per gigajoule basis or, if a customer is connecting to the system, the rate can be a connection charge or it can be a calculation that determines whether or not the customer is required to make an additional connection contribution (T1: 143). Further, BC Gas argued that reliance on Section 51 for approval of individual extensions by way of CPCNs would create an unworkable and costly administrative burden since there are many extensions made to the system in any given year. In the case of BC Gas, there are approximately two to three thousand system extension applications annually (T1: 127-131).

The Peace River Regional District ("PRRD") also argued that the Commission has authority for its System Extension Decision as written. While the PRRD acknowledged that the Commission could reframe the directions in its System Extension Decision to become guidelines, it questioned the point of doing so (T1: 153).

The Renewable Energy Association ("REA") submitted that Sections 28 and 31 through 40 of the Act provide the Commission with the necessary jurisdiction for the System Extension Decision, with the exception of the sections that require conformance with a utility's IRP (T1: 80). The REA argued that the Commission's System Extension Decision directs utilities to provide information so that the Commission can determine whether or not an extension is appropriate. The REA pointed to Section 49 of the Act

(T1: 81), which gives the Commission the authority to request information and requires the utility to provide it.

Commission Determination

The Commission has considered the arguments of some intervenors that it has the authority to require the filing of a system extension test under various sections of the Act. However, the Commission has also considered the statement in the BCCA Judgment that "the administration of the jurisdiction conferred upon the Commission is amply delineated by express terms. There is no need to imply terms for this purpose." (paragraph 51). While Sections 28, 35, 39 and 40 of the Act refer specifically to the Commission's authority to make orders with respect to extensions, and while Sections 64, 65, 66 and 67 detail the Commission's authority with respect to rates, none of these sections refer specifically to system extension tests which might be applied in all circumstances.

The Commission also considered B.C. Hydro's argument that, although the Commission does have the jurisdiction under its rate making authority to review and analyze the considerations taken into account by a utility to justify expenditures for system extensions for recovery in rates, this jurisdiction does not extend to the policy considerations which go into a system extension test (T1: 68 and 69).

In warning the Commission against the use of implied powers, the BCCA Judgment notes the express powers that the Commission has under Section 51 with respect to CPCNs (paragraphs 40 and 48). In particular, Section 51(3) gives the Commission authority to require a public utility to file yearly information on "the extensions to its facilities that it plans to construct" and then to decide if any of these extensions require a separate CPCN application. System extension tests are not mentioned, but there is a clear authority to determine by some means which extensions, if any, require a CPCN application. Once the Commission makes the determination that a CPCN application is required, Section 53 provides the Commission with the authority to determine what information, material, evidence and documents it requires to decide the CPCN application.

The Commission has considered the argument of BC Gas and others that reliance on the CPCN process for regulating system extensions could be unwieldy and inefficient in the absence of agreed upon streamlining procedures. By comparison, the existence of an approved tariff which includes a system extension test, consistent with the current practice of some utilities, provides an efficient mechanism for ensuring that the costs of extending the system to new customers are allocated in a fair and consistent manner. However, the Commission has also concluded that its general authority with respect to system extensions is most clearly defined by Sections 51 and 53 of the Act. The Commission believes that relying on the sections of the Act that provide it with express powers over system extensions will avoid

jurisdictional uncertainty and need not result in onerous regulation because utilities and the Commission, in the interests of customers and efficient regulation, can develop effective streamlining procedures.

Therefore, the Commission has reconsidered its initial decision and makes the following changes.

The Commission is converting the directions in the system extension decision into voluntary guidelines - the System Extension Test Guidelines. The potential use of these guidelines by the Utilities is explained below. Given the degree of changes required, the Commission will issue a new System Extension Decision shortly.

Under Section 51(3), each regulated utility is required to file each year a statement, in a form prescribed by the Commission, of the extensions to its facilities that it plans to construct. The Commission directs that, in future, all system extensions be identified in this statement. For extensions proposed for 1997, the statement should be submitted by October 31, 1996. The Commission prefers to consider utility proposals for providing this information in a general and aggregated format. The extent of aggregation will depend on the projects planned by each utility in a given year. Many standard infill projects could be aggregated while significant extensions beyond the existing service network would be identified individually. The Commission must then make a determination, also under Section 51(3), of which extensions, if any, will require a CPCN application. The System Extension Test Guidelines provide utilities and other interested parties with information on the Commission's likely concerns as it makes its determination on CPCN requirements under Section 51(3).

In their statement under Section 51(3), utilities may opt to simply identify the extensions they plan to make and leave it to the Commission to determine on what basis it will decide if CPCN applications are required. In the alternative, utilities may wish to file (with the statement or at some other time) information on the criteria that they apply in determining whether or not a particular extension is justifiable - in essence a System Extension Test. Explanations of the divergences of this test from the Commission's System Extension Test Guidelines are not required, but may assist the Commission in making its Section 51(3) determination of whether or not a CPCN is required. Indeed, at some earlier time, utilities may wish to ask the Commission for review and commentary on their individual System Extension Tests so as to reduce regulatory uncertainty. For extension expenditures after January 1, 1997, utilities requesting such a review and commentary should file their System Extension Tests by September 30, 1996.

Finally, if the Commission decides that a CPCN application is required for any or all system extensions, the System Extension Test Guidelines provide utilities and interested parties with an indication of the Commission's likely information requirements for an application under Section 53 of the Act. Here, the Commission also wishes to consider utility proposals for reviewing system extension CPCN applications in a general and aggregated format.

3.0 SOCIAL COSTING

Social costing includes the total financial costs (costs for items which have prices in a functioning market) plus externalities (uncompensated impacts on parties outside of a financial transaction).

The Industrials argued that the Commission exceeded its jurisdiction regarding the incorporation of social costs that were not part of the business of the utility. Discussion during the hearing suggested that the System Extension Decision is potentially misleading with respect to social costing in that it may suggest that the Commission will address externalities in a manner beyond the mandate of utilities commissions.

The Industrials indicated that they were less concerned with the incorporation of social costs in resource selection decisions than they were about the possible inclusion of social costs in rates (T1: 42). The Industrials argued that, when the inclusion of social costs in system extension tests is reflected in rates, the social cost component becomes in the nature of a tax (T1: 52), and that taxation is beyond the mandate of utilities commissions. Even with respect to resource selection decisions, the Industrials argued that the Commission's mandate is constrained to address only externalities that are likely to become internalized costs to ratepayers in the future through some other mechanism, such as an environmental regulation (T1: 29 and 38).

In support of their position, the Industrials referred to a decision of the Massachusetts Supreme Judicial Court on an appeal from a decision of the Massachusetts Department of Public Utilities ("MDPU") by the Massachusetts Electric Company and the National Coal Association and suggested that the approach to social costing taken by this Commission should be similar. The MDPU required electric utilities to consider monetary values for environmental externalities in choosing among alternative electricity generation sources. The Massachusetts case can be summarized as follows:

(a) The appeal involved externality values that the MDPU itself had developed[1].

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[1] The Commission notes that the MDPU appeal case differs from the reconsideration applications before the Commission in this respect. The Commission has not developed any externality values for British Columbia utilities and was not directing utilities to adopt any particular value for environmental externalities or any other social cost.

(b) National Coal Association argued that the MDPU had no authority to consider environmental impact in selecting between alternative resources. The court rejected this view.

(c) Massachusetts Electric Company argued that the MDPU had no authority to select new resources based on externality values that encompassed costs that ratepayers would not otherwise incur. The Massachusetts Court upheld this view.

(d) The Court determined that a commission's authority to require consideration of externalities by utilities is constrained to those instances in which it is likely that the externality will eventually be internalized, resulting in financial costs to the utility and its customers.

As stated by the Massachusetts Court:

> "The department does not have responsibility for the protection of the environment. It has regulatory authority over an electric utility's rates, and reasonable costs to be incurred in protecting the environment, whether mandated or voluntary, may be reflected in a utility's approved rates. In its rate regulatory function, therefore, the department may direct the avoidance of conditions that a utility might experience, provided that reasonably anticipated future circumstances will impose costs on the utility that will be detrimental to the interests of ratepayers. Thus, if it reasonably appears that the current emission of a pollutant in lawful amounts will be affected in the foreseeable future by a prohibition, new restrictions, costly regulation, or pollution penalties or taxes, for example, the department has the authority as a rate regulatory [sic regulator?] to consider the appropriateness of avoiding that reasonably foreseen change and requiring that the utility pursue a course likely to be less costly to ratepayers in the long term." (158PUR4th, p. 165).

The Industrials acknowledged that the ultimate judgment regarding the probability that a particular social cost might otherwise be embedded in future rates was the Commission's (T1: 36).

The other intervenors took various positions on the Commission's jurisdiction to consider social costs.

The Energy Coalition argued that the Commission does have the authority to consider environmental costs and benefits in the approval of system extensions, although it proposed some refinements to the Commission's System Extension Decision (T1: 103). The Energy Coalition, as well as some other intervenors, noted that the BCCA Judgment acknowledged that social and environmental considerations are relevant to the Commission's determination of public convenience and necessity (REA, T1: 81; Energy Coalition, T1: 104).

The REA argued that to characterize the impact of a Commission Decision approving a system extension as a tax was incorrect and, in any event, would have no material implication (T1: 86 and 87).

The CAC(B.C.) et al. also disagreed with the characterization of social costing as taxation in the context of the System Extension Decision. The CAC(B.C.) et al. indicated that they supported the need to take a broad view of all social costs in energy use questions and where possible to have full cost recovery in energy use. They indicated that, in general, the Commission has and ought to exercise full jurisdiction with respect to considering social costs (T1: 9).

BC Gas argued that, even if extension tests were considered rates, the Commission was not provided with any extended jurisdiction to include social costs or any other form of externalities (T1: 138). BC Gas went on to say that various sections of the System Extension Decision do not properly distinguish between the external costs which might be internalized over time and those broader social costs which, in the view of BC Gas, do not form part of the Commission's jurisdiction over a utility (T1: 141). Finally, BC Gas argued that in certain situations, the System Extension Decision's directions regarding social costing could be applied in a way that would lead to discriminatory rates under Section 65(2) of the Act (T1: 131-133).

B.C. Hydro took the position that the Commission has no jurisdiction to mandate social costing or externalities to be considered in an extension policy, because "... if you can't mandate the policy you can't mandate what's in it." B.C. Hydro also said that it took no position on whether social costing could be considered by the Commission elsewhere, although the utility thought that the Commission could consider social costs under certain circumstances as indicated by the BCCA Judgment (T1: 62 and 63).

Discussion during the hearing also concerned the weight that the Commission should place on government policy given the different forms by which that policy might be expressed. The REA argued that the Commission has the authority to consider government policy and suggested that, in the System Extension Decision, the Commission was trying to implement policy set forth by the government in a letter to the Commission from the Ministry of Energy, Mines and Petroleum Resources dated October 27, 1995 (Exhibit 29A of the System Extension hearing). The REA argued that since the BCCA Judgment stated that there is no specific policy making authority in the Act, then the Commission would be outside of its jurisdiction to ignore government policy (T1: 83 and 84). WKP argued that there was no need for the government to issue a direction pursuant to Section 3(1) or 3.1 because the Commission has very broad jurisdiction with respect to rates (T1: 124). BC Gas argued that the Cabinet of government has the authority to provide the Commission with Special Directions which are to be followed, but that broader policy statements should not be granted a much greater evidentiary value than a statement by other parties. In the view of BC Gas, if government wishes to enact policy it could do so by way of regulation or legislation.

Commission Determination

The Commission generally believes that the Act supports an approach to externality considerations by the BCUC that is consistent with that presented by the Massachusetts Court for the MDPU. The Commission finds that this view is supported by the phrase "public convenience and necessity" as applied in Section 51 of the Act and as commented upon by the BCCA Judgment at paragraph 35.

The Commission is persuaded by the view that the Act accords general policy statements of government no more weight than any other evidence brought before it, unless the policy statement is given the weight of a direction or special direction under Section 3(1) or 3.1 of the Act. Therefore, the Commission is not relying for support regarding its jurisdiction in this matter on the letter of October 27, 1995 from the then Ministry of Energy, Mines and Petroleum Resources.

For reasons indicated in the first part of this Decision, the Commission does not claim the regulatory authority to set a generic System Extension Test for the Utilities. Nonetheless, the concerns over social costing, as expressed in this reconsideration process, are broad enough that some general Commission determinations may be helpful. Also, the Commission has determined that some specific changes in wording for the new System Extension Guidelines are required.

The Commission finds that it has the authority to consider externalities (hence, social costs) in its regulation of utilities under various sections of the Act. However, the Commission also finds that such regulatory authority is more properly limited to externality considerations that have the potential, in the judgment of the Commission, to eventually emerge as unavoidable regulatory costs for the Utilities and their customers, and to externality considerations that have been expressly directed by government under the appropriate sections of the Act.

The Commission agrees with the Industrials' argument that it does not have the authority to require utilities to levy environmental taxes. However, the Commission does not agree that the System Extension Decision suggested that such taxation should occur.

The Commission has reconsidered its initial decision and will make some changes in wording with respect to social costing and system extensions. These changes are in the new System Extension Decision, to be issued shortly.

Finally, the Commission will also make wording changes to modify the references to Integrated Resource Planning in the initial decision. This is in response to the changed circumstances resulting from the BCCA Judgment.

4.0 B.C. HYDRO'S UNECONOMIC EXTENSION ALLOWANCE ("UEA")

B.C. Hydro argued that Commission direction with respect to the UEA was inappropriate in that a generic decision should not have included specific directions with respect to its own policy.

The Commission agrees that the Commission's decision regarding the UEA was misplaced in the context of a generic hearing and amends its Decision by withdrawing the direction regarding the UEA.

5.0 COMMISSION DECISION

Based on the evidence and arguments presented, the Commission finds it appropriate to make certain amendments to its February 16, 1996 System Extension Decision.

For the reasons outlined in the preceding Chapters, the Commission therefore:

- **rescinds Order No. G-19-96 and replaces it with Order No. G-80-96, appended to this Decision; and**
- **will issue a new System Extension Decision shortly.**

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of August, 1996.

Original signed by:
Dr. Mark K. Jaccard
Chairperson

Original signed by:
Lorna R. Barr
Deputy Chairperson

Original signed by:
Kenneth L. Hall, P.Eng.
Commissioner

APPEARANCES

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D. BURSEY	Methanex Corporation Council of Forst Industries, et al.
D. RICE	British Columbia Hydro and Power Authority
R.J. GATHERCOLE	Renewable Energy Association of British Columbia
C. REARDON	British Columbia Energy Coalition
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B. LONG	Cariboo Regional District

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ALLWEST COURT REPORTERS LTD.	Court Reporters & Hearing Officer

LIST OF EXHIBITS

Phase I and **Phase II**

	Exhibit No.
B.C. Utilities Commission Order No. G-50-95, dated June 9, 1995	1
B.C. Utilities Commission Order No. G-19-96, dated February 13, 1996	2
B.C. Utilities Commission Order No. G-35-96, dated April 18, 1996	3
B.C. Utilities Commission Order No. G-47-96, dated May 22, 1996	**3A**
The British Columbia Public Interest Advocacy Centre letter to the B.C. Utilities Commission, dated April 16, 1996	4
B.C. Utilities Commission letter to the Regulated Utilities and Registered Intervenors, dated April 19, 1996	5
The British Columbia Public Interest Advocacy Centre letter to the B.C. Utilities Commission, dated April 24, 1996	6
Bull, Housser & Tupper, Barristers & Solicitors letter to the B.C. Utilities Commission, dated May 10, 1996	7
Lawson Lundell Lawson & McIntosh, Barristers & Solicitors letter to the B.C. Utilities Commission, dated May 10, 1996	8
B.C. Utilities Commission letter to the Registered Intervenors, dated May 15, 1996	9
Renewable Energy Association of British Columbia letter to the B.C. Utilities Commission, dated May 16, 1996	10
The British Columbia Public Interest Advocacy Centre letter to the B.C. Utilities Commission, dated May 16, 1996	11
Lawson Lundell Lawson & McIntosh, Barristers & Solicitors letter to the B.C. Utilities Commission, dated May 16, 1996	12
B.C. Utilities Commission letter to the Registered Intervenors, dated May 17, 1996	13
Pacific Northern Gas Ltd. letter to the B.C. Utilities Commission, dated May 17, 1996	14
Heenan Blaikie, Lawyers letter to the B.C. Utilities Commission, dated May 21, 1996	15
Proposed Amendments to System Extension Tests Decision submitted by Consumers' Association of Canada (B.C. Branch) et al., dated June 24, 1996	**16**
British Columbia Hydro and Power Authority Blacklined Version of USET Decision (the "Decision"), dated June 24, 1996	**17**