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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-46-04

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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
Application for a Reconsideration and Variance of the June 5, 2003 Decision in the
matter of Centra Gas British Columbia Inc. 2002 Rate Design Application**

BEFORE: R.H. Hobbs, Chair)
L.A. Boychuk, Commissioner) May 13, 2004
R.J. Milbourne, Commissioner)

O R D E R

WHEREAS:

- A. On June 5, 2003, the Commission issued Order No. G-42-03 and its Decision (available for reference at <http://www.bcuc.com>) in the matter of the 2002 Rate Design Application of Centra Gas British Columbia Inc. ("the Decision"); and
- B. Centra now does business under the name of Terasen Gas (Vancouver Island) Inc. ("TGVI"); and
- C. On September 30, 2003, British Columbia Hydro and Power Authority ("BC Hydro") applied ("BC Hydro Application") to the Commission for reconsideration and variance of certain parts of the Decision; and
- D. On October 21, 2003, the Commission issued Letter No. L-49-03 inviting Intervenors to comment on the issue of whether the BC Hydro Application met the threshold for reconsideration and setting out a timetable for Intervenor submissions and reply submissions by BC Hydro; and
- E. The Commission received a submission from TGVI on October 31, 2003 with respect to the BC Hydro Application and a reply submission from BC Hydro on November 7, 2003; and
- F. On December 24, 2003, the Commission issued Order No. G-87-03 allowing BC Hydro Application for reconsideration on specific issues as set out in Reasons for Decision attached to the Order, and establishing a schedule for argument and reply argument; and
- G. The timetable established by Order No. G-87-03 was amended by Order No. G-09-04; and
- H. BC Hydro filed its Argument on January 19, 2004; TGVI filed its Argument on February 6, 2004; and BC Hydro filed its Reply Argument on February 13, 2004; and

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- I. The Commission Panel also heard oral argument on March 24, 2004 and March 26, 2004; and
- J. The Commission Panel has considered the BC Hydro Application and the submissions all as set forth in the Reasons for Decision attached as Appendix A to this Order.

NOW THEREFORE, pursuant to Section 99 of the *Utilities Commission Act*, the Application by BC Hydro for reconsideration and variance of certain parts of the June 5, 2003 Decision is denied as set forth in the Reasons for Decision attached as Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of May 2004.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

**British Columbia Hydro and Power Authority
Application for Reconsideration of the June 5, 2003 Decision in the matter of
Centra Gas British Columbia Inc. 2002 Rate Design Application**

REASONS FOR DECISION

INTRODUCTION

On September 30, 2002, Centra Gas British Columbia Inc. (“Centra”) filed a Rate Design Application (“the Rate Design Application”) that proposed rate design principles for 2003 and beyond and approval of final rates for all proposed classes of customers except ACR-2 Pioneer Rate Class customers and those customers with rates determined by existing agreements. On December 20, 2002, Centra also applied for approval of three amending agreements involving the British Columbia Hydro Authority (“BC Hydro”) and Centra for natural gas service to the Island Cogeneration Plant (“ICP”) (“Application for Approval of Amending Agreements”).

The Commission reviewed the Rate Design Application by way of an oral public hearing that commenced in February 2003 and, following argument by Centra and Intervenor, culminated with Centra’s reply argument on April 7, 2003. On April 25, 2003, shareholders of BC Gas Inc., Centra’s parent company, approved a change to its company name to Terasen Inc. and Centra was renamed Terasen Gas (Vancouver Island) Inc. (“TGVI”). The Commission issued its Decision on the Rate Design Application, along with Order No. G-42-03 on June 5, 2003 (together “the Decision”). Recognizing that both “Centra” and “TGVI” refer to the same entity, these Reasons for Decision will use “Centra” unless the reference is to a quote from the Decision or to evidence in which a form of the new name appears.

On September 30, 2003, BC Hydro applied to the Commission for reconsideration and variance of certain parts of the Decision (“BC Hydro Application”). BC Hydro alleged that the Commission erred in two ways in allocating the cost of service for determining Centra’s rates. It first submitted that the Commission accepted Centra’s “residual” method for the Centra Distribution System (“CDS”) allocation factor for allocating the cost of service and that it erred in the use of 145 TJ/day rather than 155.1 TJ/day to derive the allocation factors (“Issue No. 1”). Second, BC Hydro submitted that the Commission erred in concluding that 1) the peaking arrangements provide compensation to BC Hydro, 2) that all shippers on the HPTS benefit from the Commission’s acceptance of peaking costs and demand allocators, and 3) that the outcome of the treatment of peaking arrangements is not dissimilar to curtailments rights on the BC Gas system (“Issue No. 2”).

On October 21, 2003, the Commission issued Letter No. L-49-03 establishing a phase one (“Phase One”) examination of the BC Hydro Application, inviting Intervenor’s comments on whether the BC Hydro Application met the threshold for reconsideration and establishing a timetable for Intervenor submissions and reply submissions by BC Hydro. The Commission received a submission from Centra on October 31, 2003 with respect to the BC Hydro Application (“Centra Phase One Submission”) and a reply submission from BC Hydro on November 7, 2003 (“BC Hydro Phase One Submission”).

In its Phase One Reasons for Decision, attached to Commission Order No. G-87-03, the Reconsideration Panel allowed the BC Hydro Application on specific issues and established a second phase (“Phase Two”) of the process to consider those issues.

On Issue No. 1, the Reconsideration Panel found that an apparent inconsistency between the capacity references and the use of the allocation factors based on 145 TJ/day established a *prima facie* basis from the language of the Decision to conclude that an error may have been made. The Reconsideration Panel also found that the BC Hydro Application established a *prima facie* basis that an error related to allocation factors based on 145 TJ/day would have significant material implications. Therefore, the Reconsideration Panel allowed the BC Hydro Application to proceed to Phase Two of the reconsideration process in respect of this issue.

On Issue No. 2, the Reconsideration Panel found that the Decision is unclear as to what the Commission intended by the use of the term “compensation” and that neither the Decision nor the submissions regarding the Reconsideration Application demonstrated what form and quantum of compensation is provided to BC Hydro in support of the acceptance by the Commission of Centra’s position in the proceedings. The Reconsideration Panel found that a *prima facie* case had been established to bring into question the basis on which this aspect of the Decision was reached, and, given the materiality of the issue, also allowed this issue to proceed to Phase Two of the reconsideration process. The Reconsideration Panel determined that it would not reconsider the second and third errors of Issue No. 2 alleged by BC Hydro to have arisen from the error related to the issue of compensation. In the view of the Reconsideration Panel these had not been shown to constitute a *prima facie* basis on which to call into question the Decision. The Reconsideration Panel noted that participants were at liberty to address, as appropriate, the third alleged error within the overall context of the first alleged error related to the issue of compensation.

The Reconsideration Panel determined that it would consider the allowed issues by way of written argument and issued Order No. G-87-03, which established a phase two (“Phase Two”) process for the filing of argument during January and February 2004, and noted that it did not consider that evidence in addition to that which was already before the Commission was either required or appropriate.

In Phase Two of the reconsideration process, the Reconsideration Panel requested that participants address the issue of whether or not the Commission concluded that the allocation factors were to be based on 145 TJ/day or 155.1 TJ/day and the appropriate findings and conclusions regarding the resolution of the apparent inconsistency between the capacity references and the use of the 145 TJ/day as the basis for the allocation factors.

BC Hydro filed its argument on January 19, 2004 (“BC Hydro Phase Two Argument”), the Vancouver Island Gas Joint Venture (the “Joint Venture”) filed a submission on January 22, 2004 (“Joint Venture Phase Two Submission”), Centra filed its argument on February 6, 2004 (“Centra Phase Two Argument”), and BC Hydro filed a Reply Argument on February 13, 2004 (“BC Hydro Phase Two Reply Argument”). Subsequently, Centra filed a further submission dated February 19, 2004 in response to the BC Hydro Reply that was objected to by BC Hydro by letter of the same date. Centra filed a further letter on February 20, 2000 and the Reconsideration Panel, by letter No. L-16-04 dated March 8, 2004, indicated that it would accept and consider Centra’s February

19 submission (“Centra Phase Two Reply Submission”) and granted leave to BC Hydro to respond by March 15, 2004, which it did (“BC Hydro Phase Two Final Reply”).

By letter No. L-16-04, the Reconsideration Panel requested that BC Hydro and TGVI appear for an oral phase of the proceeding, which took place on March 24 and March 26, 2004 at the Commission offices.

ISSUE NO. 1

The Decision Panel stated that it accepted Centra’s proposal to allocate transmission capacity costs. The acceptance of Centra’s allocation methodology over BC Hydro’s allocation methodology is not disputed in the BC Hydro Application. However, comments in the Decision about Centra’s allocation methodology raised concerns by BC Hydro about whether the Decision Panel fully understood Centra’s proposed allocation methodology. The Reconsideration Panel concludes that the Decision Panel decided that the demand allocators should be derived from 145 TJ/day.

The Decision states:

The Commission accepts Centra’s proposal to allocate transmission capacity based on the coincident peak of the system with the CDS portion determined on the basis of the residual capacity of the HPTS (Decision, p. 36).

BC Hydro submits that the Decision Panel erred when it incorporated Centra’s proposed delivery capacity of 145 TJ/day to derive allocation factors when the Commission concluded the delivery capacity of the HPTS was 155.1 TJ/day in 2002/03 and 5.1 TJ/day less in 2003/04 (BC Hydro Phase Two Argument, p. 1). The delivery capacity of the HPTS, both before and after the addition of the V4 compressor on Texada Island, is not in dispute. However, whether the Decision Panel accepted 145 TJ/day or 155.1 TJ/day to derive allocation factors is the central issue in dispute.

In considering the amending agreements filed on December 20, 2002, the Decision Panel noted that the addition of the V4 compressor increased the overall system capacity from 134.2 TJ/day (net of fuel gas) to 155.1 TJ/day, an increase of approximately 20.9 TJ/day (Decision, p. 50). The Decision Panel also noted that under the amending agreement for the BC Hydro Transportation Service Agreement (“BCH TSA”) the increase in BC Hydro’s firm contract demand is only 10 TJ/day, leaving approximately 10.9 TJ/day of interruptible capacity available as a result of the additional facilities (Exhibit 1D, Application for Approval of Amending Agreements).

BC Hydro stated that:

BC Hydro has fully funded the costs of the Texada compressor. At the same time, the allocation of costs to the CDS would be reduced. ...In effect, BC Hydro would end up paying not only all of the capital costs of the Texada facility, but would also receive an increased allocation of existing HPTS costs under the partial capacity allocation approach proposed by Centra (BC Hydro Phase One Submission, p. 5).

BC Hydro also stated that:

A full rolled-in allocation approach should be used. ...On the other hand, the use of 155.1 TJ/day as the peak transmission capacity for 2003 conforms to standard utility cost recovery and cost allocation practices and does not establish a new principle of cost allocation for lumpy and discrete additions to capacity, particularly when that capacity is used and useful (BC Hydro Phase One Submission, p. 5).

BC Hydro provides numerical examples to support its contention that Centra's allocation methodology would reduce the cost allocation to CDS customers at the expense of BC Hydro (BC Hydro Phase Two Reply Argument, Table 1, pp. 4-5). BC Hydro submits that such an outcome is unfair and unreasonable given that BC Hydro has fully funded the capital cost of the V4 compressor (BC Hydro Phase Two Reply Argument, P. 6). However, fairness considerations are beyond the scope of considerations appropriate to this reconsideration decision, in the absence of a finding of error.

Centra outlines its position supporting the use of 145 TJ/day, submitting that "...the use of 145 TJ/day to derive allocation factors for transmission capacity costs is appropriate and entirely consistent with the facts before the Commission" (Centra Phase Two Argument, p. 2). Centra argues that its allocation methodology is a "bottom up" approach. This appears to be inconsistent with the Decision Panel's description of the Centra allocation methodology that "the CDS portion determined on the basis of the residual capacity of the HPTS" (Decision, p. 36). During the oral phase of argument, Centra explained that the "CDS portion" was determined on the basis of load duration curves (T1: 61, line 20 – T1: 66, line 23). In support, Centra referenced an information response from the hearing into the Rate Design Application (Exhibit 2A, Tab B, Response to BC Hydro 6-6.1.1). The Decision approved a rate of \$0.859/GJ for firm transportation ("FT") service that was derived as set forth in Exhibit 30 using 145 TJ/day (Decision, p. 36; T1: 72, lines 12-17; and T2: 129, lines 7-17). The Reconsideration Panel is of the view that the Decision Panel, in approving the rate of \$0.859/GJ, accepted the use of 145 TJ/day for allocation of the HPTS costs.

BC Hydro submits that the essential issue is what the Commission Panel meant when it used the term "residual" (BC Hydro Phase Two Final Reply, p. 2). Centra submits that references to the "residual capacity" method are an imprecise use of the term, but such references did not lead to an error in the Commission's determination of the allocation factors for transmission capacity costs (Centra Phase Two Argument, p. 2).

The Reconsideration Panel accepts that references in the Decision to "residual capacity" are imprecise. However, references to the "residual capacity" method do not support the acceptance of either 145 TJ/day or 155.1 TJ/day for the allocation of transmission capacity costs. It is this ambiguity in the language of the Decision that has given rise to the request by BC Hydro for a reconsideration and the Reconsideration Panel's willingness to proceed to Phase Two on this issue. However, it is this very ambiguity and, in this regard, a measure of deference to the Decision Panel, that leads the Reconsideration Panel to conclude that references to "residual capacity" are not inconsistent with the use of 145 TJ/day for the allocation of HPTS costs. The Reconsideration Panel notes that BC Hydro did not advocate the use of 155.1 TJ/day during the hearing (T1: 103, lines 2-23), which also supports a conclusion that 145 TJ/day was accepted by the Decision Panel.

The Decision Panel states that it “...accepts Centra’s proposal to allocate transmission capacity based on the coincident peak of the system with the CDS portion determined on the basis of the residual capacity of the HPTS” (Decision, p. 36). This statement must be interpreted in the context of the complete Decision.

The Decision Panel had before it evidence which suggested that, at least initially, Centra’s approach could be characterized as a ‘residual’ approach. For instance, the September 17, 2001 letter from Centra (Exhibit 1A, Tab C, p. 5) states that “...the peak day demand of the HPTS that is available to the CDS is 65,561 GJ, based upon a system capacity of 134,975 GJ, a CD of 37,614 GJ for the VIGJV, 28,000 GJ for BCH and 3,800 for Squamish. This method of calculating the demand for the CDS is consistent with the method specified in the Joint Venture Transportation Service Agreement (“TSA”) (Exhibit 7). Clause 12.01 of the Joint Venture TSA describes a residual method for determining the entitlement of the CDS to FT service on the HPTS. However, in the rate design proceeding Centra subsequently clarified in its rebuttal evidence (Exhibit 1F) that it was not using a ‘residual approach:’

BC Hydro contends that the cost allocation is fundamentally flawed as it utilizes a ‘residual’ methodology that is not enduring or based upon industry accepted practice (p. 1.7). ...BC Hydro also coins the phrase ‘residual’ for the cost allocation that Centra Gas has performed. This is a liberty that should be corrected. Centra Gas has not represented that it proposes to accept the difference between system capacity and contract demands as the contract demand of the Centra Distribution System (CDS) (p. 1.8).

As noted above, the addition of the V4 compressor increases system capacity by approximately 20.9 TJ/day, from 134.2 TJ/day to 155.1 TJ/day. However, with the addition of the V4 compressor, the Decision Panel appears, based on the quotes below from the Decision, to accept the use of 145 TJ/day for the allocation of the HPTS costs. It also appears that the Decision Panel accepted Centra’s assertion that the additional capacity is not needed to serve the CDS and so the associated HPTS costs should not be allocated to it (Exhibit 1F, pp. 1.8 and 1.9). The Reconsideration Panel notes that the effect of the use of 145 TJ/day is to reduce the allocation of HPTS costs to CDS.

The Decision Panel describes Centra’s cost allocation methodology proposal as follows:

Centra allocates transmission capacity for the CDS as the residual of total system capacity less the contract demands of the Joint Venture, BC Hydro and Squamish Gas. When the capacity of the system was increased by more than 10,000 GJ/day (accomplished by the addition of the V4 compressor on Texada Island), to accommodate a BC Hydro demand increase of 10,000 GJ/day, Centra determined that the residual would stay the same by arguing that the needed capacity had only increased by 10,000 GJ/day (Decision, pp. 32-33).

As noted above, the Decision Panel accepted Centra’s proposal, stating that:

The Commission accepts Centra’s proposal to allocate transmission capacity based on the coincident peak of the system with the CDS portion determined on the basis of the residual capacity of the HPTS (Decision, p. 36).

BC Hydro argues that the use of 145 TJ/day to derive allocation factors is unfair and unreasonable given that BC Hydro has fully funded the capital cost of the V4 compressor (BC Hydro illustrates this argument in the tables on pages 4 and 5 of its Phase Two Reply Argument). However, the fundamental issue is whether the Decision Panel, by referring to a “residual” view of the Centra allocation methodology, erred in accepting 145 TJ/day as the total allocation factor, rather than accepting 155.1 TJ/day. The Reconsideration Panel notes that there were unique circumstances before the Decision Panel in its consideration of the Rate Design Application, including the issues of BC Hydro’s funding of the V4 compressor and BC Hydro’s request for additional capacity without a long term commitment. In the view of the Reconsideration Panel, these issues were before, and were considered by, the Decision Panel in reaching its Decision.

Final Determination

After reviewing the arguments of BC Hydro and Centra in this reconsideration process and the evidence referred to and considered in the rate hearing proceeding, the Reconsideration Panel concludes it does not find an error material to the Decision Panel’s approval of rates derived from an allocation of HPTS costs based on 145 TJ/day.

ISSUE NO. 2

In its Reconsideration Application, BC Hydro alleged that the Decision Panel erred when it concluded that:

1. The peaking arrangements provide compensation to both BC Hydro and the Joint Venture for any associated curtailments;
2. All shippers on the High Pressure Transmission System (“HPTS”) benefit from the Commission’s acceptance of Centra’s proposed treatment of peaking costs and demand allocators, and further, that a new principle has arisen as a result of these conclusions; and
3. The outcome of the treatment of peaking arrangements is not dissimilar to curtailment rights on the BC Gas system.

With respect to the first of these alleged errors, the Reconsideration Panel found that there was a *prima facie* basis on which to call into question this aspect of the Decision. With respect to the second and third errors, the Reconsideration Panel found that BC Hydro had not demonstrated that the related statements in the Decision were sufficient, on a *prima facie* basis, to call into question the Decision. The Reconsideration Panel did note that the participants were at liberty, as appropriate, to address the third error within the course of Phase Two argument regarding the first alleged error.

Regarding the first error, BC Hydro maintained the position which it took in the BC Hydro Application (p. 3), the BC Hydro Phase One Submission and in the BC Hydro Phase Two Argument (p. 5) that it is not compensated for peaking services.

The amounts payable by Centra to BC Hydro under the BC Hydro Peaking Agreement (“BCH PA”) are described in Section 6.1 of the BCH PA (Exhibit 1D). BC Hydro explained that the intention of the pricing in the BC Hydro Peaking Agreement (“BCH PA”) is, first, to reimburse BC Hydro on a cost basis for the capacity that is curtailed under the BC Hydro Transportation Service Agreement (“BCH TSA”) and, second, to keep BC Hydro whole on its costs of making the gas available to Centra. BC Hydro submits that no reservation, demand or fixed charges are payable by Centra to BC Hydro for peaking services and it reiterates that the Commission erred by concluding that BC Hydro was compensated for the impact on BC Hydro of the cost allocation (BC Hydro Phase Two Argument, p. 7).

As a result of the cost allocation methodology accepted by the Decision Panel, BC Hydro submits that the CDS capacity cost allocation factor is reduced while BC Hydro’s is increased, resulting in a shift in cost allocation or ‘harm’ to BC Hydro of \$1.6 million (BC Hydro Application, p. 3). This amount is based on the difference between BC Hydro’s proposed cost allocation methodology and that proposed by Centra and accepted in the Decision (T2: 130). In BC Hydro’s view, the original premise for capacity pricing under the BCH PA has been undermined (BC Hydro Phase Two Argument, p. 8) insofar as the BCH PA does not provide compensation to BC Hydro commensurate with any cost burden imposed on BC Hydro by Centra’s capacity cost allocation treatment (BC Hydro Phase Two Argument, p. 4). BC Hydro, therefore, submits that the capacity pricing provided under the BCH PA and the current BCH PA, as extended, is inadequate to properly compensate BC Hydro (BC Hydro Phase Two Argument, p. 8).

BC Hydro argues that the capacity cost allocation method for the HPTS creates a disincentive for a shipper to enter into capacity peaking agreements, unless those arrangements include fixed demand charges for providing the peaking services (BC Hydro Phase Two Argument, p. 14) to offset the excess costs allocated to shippers offering capacity peaking service under the residual capacity allocation method.

BC Hydro states that its first choice would be to have the Commission implement the rate allocation methodology proposed by BC Hydro at the hearing in that the Commission’s error on the compensation issue led the Commission to an incorrect decision on allocation methodology. However, BC Hydro suggests, as a practical alternative, that a process be established to consider the appropriate compensation to be paid to BC Hydro under the BCH PA (BC Hydro Phase Two Argument, p. 16).

Centra submits that all of these matters, but for the adequacy of compensation under the BCH PA for the peaking services, were well canvassed in the rate design proceedings, and that the consideration received by BC Hydro is in fact compensation. Centra states that BC Hydro was an active participant in the cost of service allocation (“COSA”) process, which started in March 2000, and that BC Hydro and its staff were fully aware of the position Centra was taking with respect to cost allocation, and the basis for capacity allocation, at the time BC Hydro signed the BCH PA and agreed to its extension (Centra Phase Two Reply Submission, p. 2).

Centra argues that the relief sought by BC Hydro is to have the Commission, by order, alter the terms of one of the contracts negotiated between BC Hydro and Centra, and approved by the Commission. Centra submits that the Commission has no jurisdiction to order a process which would have such a result and that the Commission’s

jurisdiction is limited to reconsidering the Decision. Centra states that the BCH PA is part of a package of agreements that cannot be examined in isolation. Rather, the adequacy of compensation of a package of contractual arrangements is determined by the parties during their negotiations.

Centra suggests that the compensation payable is part of the trade off of obligations and rights that form the package of agreements relating to the service provided to BC Hydro. According to Centra, the real issue is the impropriety of altering an agreement when that agreement and other arrangements between BC Hydro and Centra were negotiated and agreed as a package of associated contractual arrangements (Centra Phase Two Argument, p. 8).

The Decision Panel discussed the matter of compensation to BC Hydro and the Joint Venture, noting in some detail several factors taken into account as compensation for the provision of peaking services by the Joint Venture, and noting “a contrast” with the arrangements with BC Hydro (Decision, pp. 34-35). A recitation of the factors, comparable or otherwise, providing compensation to BC Hydro is not provided in the Decision, yet Centra’s position that “.... both the Joint Venture and BC Hydro are compensated in the event that Centra curtails them...” was accepted by the Decision Panel in its Decision (Decision, p. 34).

It was unclear, however, what the Decision Panel intended by the use of the term “compensation” and, therefore, whether an error was made in reaching the conclusion that BC Hydro is compensated for any curtailments.

In their written submissions, both BC Hydro and Centra agree that the Commission’s reference to ‘compensation’ in the Decision was not made in the course of interpreting the *Utilities Commission Act* (“UCA”)(Centra Phase Two Argument, p. 8; BC Hydro Phase Two Argument, p. 5), or the definition of compensation found therein.

The Reconsideration Panel notes that, among other definitions, “compensation” is given the plain meanings of both:

“something given as an equivalent, or to make amends for a loss ...”, and
“payment for services, especially ...remuneration”

During the course of the reconsideration process, particularly the oral phase, it was evident to the Reconsideration Panel that the Decision Panel indeed had evidence before it to suggest that BC Hydro was compensated under the BCH PA at least to the extent that there are payments made to BC Hydro in respect of any curtailments. Reference was made to Centra’s Response to BC Hydro Information Request No. 3-3.3.2 (Exhibit 2A) where Centra provided an estimation of the split of capacity and commodity components for peaking as follows:

Capacity	\$ 113,000
Commodity	\$ 1,928,000

During the oral phase, BC Hydro stated that the “113,000 figure and the other associated number ...are really directed at what flows from a curtailment” and that it is “the reimbursement that’s being referred to when the compensation for any associated curtailment is being talked about” (T2: p. 118). BC Hydro suggested that “the questions are whether there was compensation for the curtailments, i.e. reimbursement, and whether there was a payment for the service provided under the BCH PA, i.e. a demand charge” and noted that there was payment on the reimbursement side but nothing akin to a demand charge or a payment for the provision of peaking services (T2: 119). The Reconsideration Panel is of the view that it is evident that BC Hydro is ‘compensated’ to the extent that it is ‘reimbursed’ or ‘kept whole’ under the BCH PA for associated curtailments. BC Hydro, however, does not agree that the payments under the BCH PA are adequate given the cost allocation methodology accepted in the Decision.

Centra maintained that the issue of the adequacy of compensation under the BCH PA was not before the Commission, nor was there any evidence of what the appropriate payments would or should be. In fact, during the oral phase, both BC Hydro and Centra confirmed that the notion of payment or compensation for the provision of the peaking service per se was not a matter that was before the Decision Panel (BC Hydro: T2: 121-122; Centra: T2: 166-167). BC Hydro acknowledged that “the question as to the adequacy of consideration in that regard was not something that was canvassed during the course of the hearing” (T2: 121, line 19 to 122, line 2).

Final Determination

The Reconsideration Panel finds that the Decision Panel did not err when it concluded that “the peaking arrangements provide compensation to BC Hydro and the Joint Venture for any associated curtailments.” The Reconsideration Panel, accordingly, finds no basis upon which to vary the Decision. There was evidence before the Decision Panel to find that BC Hydro was reimbursed or kept whole and thereby “compensated” under the BCH PA “for any associated curtailments.” The adequacy of the compensation for the provision of peaking services or resulting from the cost allocation methodology is a separate matter that was not before the Decision Panel. There was no specific issue raised in this regard in the rate design hearing process and, particularly, there was no evidence presented upon which the Decision Panel could have made such a determination in any event.

With respect to the third error, as noted above, the Reconsideration Panel, in its Phase One determination, did not find that this issue by itself constituted a *prima facie* basis on which to call into question the Decision but suggested that the Parties were at liberty to address this issue in the course of their submissions in Phase Two of the Reconsideration process with respect to the first error. Since the Commission has found no error with respect to the Decision Panel’s conclusion regarding the first error, this matter need not be specifically addressed and the Reconsideration Panel maintains that there is no basis upon which to vary the Decision.

BC Hydro Unfairness Arguments

While the Reconsideration Panel has concluded that the Decision should not be revised on the basis of the errors alleged by BC Hydro, the Reconsideration Panel notes the unfairness arguments made by BC Hydro throughout this proceeding. The Reconsideration Panel is concerned that the negotiated peaking arrangements, in view of the cost allocation proposal accepted in the Decision, raise issues that may require further consideration by the parties and by the Commission. The Reconsideration Panel notes that peaking arrangements that reduce the need to expand the system are often in the interests of all customers. Further, rates that result in a disincentive for shippers to enter into peaking arrangements may not be fair and reasonable. Pursuant to section 59(4)(a) of the UCA, the Commission is the sole judge of whether a rate is unjust or unreasonable. Pursuant to section 58(1) of the UCA, the Commission may on its own motion, or on complaint by a public utility or other interested person, after a hearing, make a determination to set rates.

BC Hydro states that it had no choice but to accede to Centra's demands to provide peaking services without fixed payment for such services and BC Hydro suggests that the Commission has the authority to prevent utilities with monopoly power from imposing inappropriate and unfair conditions (BC Hydro Phase Two Argument, p. 14). It is unnecessary in this Decision to address this issue because the Reconsideration Panel did not find an error.

BC Hydro may elect to pursue concerns of unfairness that have been raised in this proceeding in the context of a complaint or other appropriate request for relief.

Dated at the City of Vancouver, in the Province of British Columbia, this 14th day of May, 2004.

Original signed by: _____

Robert H. Hobbs
Chair

Original signed by: _____

Lori A. Boychuk
Commissioner

Original signed by: _____

Robert J. Milbourne
Commissioner