



**LETTER NO. L-69-05**

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Log No. 9355

**VIA E-MAIL AND FACSIMILE**

August 22, 2005

**BCH 2005 REAP Exhibit A-9**

To: British Columbia Hydro and Power Authority  
Intervenors and Interested Parties

Re: British Columbia Hydro and Power Authority ("BC Hydro")  
Project No. 3698388/Letter No. L-28-05  
Resource Expenditure and Acquisition Plan Application ("REAP")

Commission Letter No. L-51-05 dated July 8, 2005 (Exhibit A-5) established a Pre-hearing Conference ("PHC") that was held on August 17, 2005 to consider matters identified in a Commission Letter dated August 16, 2005 (Exhibit A-8) and other matters raised by Participants. This letter addresses issues raised at the PHC and approves the enclosed Regulatory Timetable.

All Participants at the PHC, who took a position with respect to whether or not a negotiated settlement process ("NSP") should be included in the Regulatory Timetable, strongly supported an NSP. The Regulatory Timetable includes an NSP to be held in the Commission's Homer Street Hearing Room on the Third Floor, 855 Homer Street, Vancouver, B.C., commencing on September 20, 2005 at 9:00 a.m. The entire 2005 REAP, including the 2006 Call, will be within the scope of the NSP.

During the PHC BC Hydro identified five components of the 2005 REAP: 1) Capital Expenditure Plan; 2) DSM Plan; 3) Acquisition Plan; 4) 2006 Call – need and amount to be acquired; and 5) 2006 Call – mandatory requirements, valuation methodology, and terms and conditions. BC Hydro then made two motions. First, BC Hydro sought an order that the registration date for intervenors and interested parties be extended to August 26, 2005 so that the date did not preclude participation in the NSP, on the understanding that late registration did not result in changes to the Regulatory Timetable. Second, BC Hydro sought an order that the record be closed with respect to the Capital Expenditure Plan, DSM Plan, and the EPA expenditure components ("three components") of the 2005 REAP, except to the extent that the NSP and amendments to the existing EPA expenditures address those three components (Exhibit B-13; T1: 20-21). BC Hydro submits that the scope of the NSP should include the three components.

Although the Commission has, in a prior proceeding, extended the date for registration as proposed by BC Hydro, the Commission Panel denies BC Hydro's first motion. However, given that BC Hydro's F2006 Supplemental Call Evidence, filed July 8, 2005 as Exhibit No. B-11, has substantially altered the nature of the call proposed in the REAP filed on March 7, 2005, intervenors and interested parties, particularly independent power producers or others who may be affected by the proposed call, can reasonably expect that requests to register late in this proceeding would be approved so long as the regulatory timetable established for this proceeding is adhered to.

BC Hydro's submissions in support of the second motion, in part, arise from prior regulatory processes and decisions, information requests in this proceeding, future regulatory reviews, and the nature and magnitude of the expenditures for the three components. Further, BC Hydro refers to the Commission decision in Letter No. L-28-05 dated April 7, 2005 (Exhibit A-1) that stated: "the Commission concludes that the review of the REAP should include an oral and written hearing process. ...A determination with respect to the scope of the oral hearing process will be made following...a pre-hearing process."

Intervenors stated that granting the motion would deny the opportunity for both intervenor evidence and cross-examination on the three components. IPPBC submits that issues arising from the three components may be relevant to the 2006 Call (T1: 32-34). BCSEA submits that it intends to file intervenor evidence with respect to the three components (T1: 44-45).

The Commission Panel concludes BC Hydro's second motion should be denied because the record should not be closed prior to the NSP. The Negotiated Settlement Process Guidelines state at page 10:

"Participants dissenting from a proposed agreement may submit a written argument to the Commission panel. ...If the dissent is determined to be reasonable and material, the dissenting party retains the right to cross-examine, call evidence, and make final arguments on the issue at a settlement hearing."

The Commission Panel is concerned that closing the record prior to the NSP might unfairly change the balance of the negotiations.

The Commission Panel also confirms the conclusion found in Exhibit A-1 that the review should include an oral and written proceeding. Therefore, if the NSP does not result in a settlement, Participants should expect that following the second PHC, the Commission Panel will determine the scope of the oral hearing and matters that are not included within the scope of the oral hearing will be within the scope of the written hearing. It follows that those matters within the scope of the written hearing will not be subject to cross-examination during the oral hearing. The schedule for filing arguments for both the written and oral hearing argument will be determined during the oral hearing. The Commission Panel notes that the considerations raised by BC Hydro in support of the second motion will be relevant considerations as to the scope of the oral hearing.

IPPBC submits that the final terms of the EPA ("pro forma EPA") should be approved by the Commission before the bidding process starts (T1: 4). In support of this submission, IPPBC refers to the BC Hydro Revenue Requirements decision dated October 29, 2005, page 120, where it states:

"The Commission Panel encourages BC Hydro to file pro forma contracts with the Commission for comment prior to the commencement of a competitive process, where practicable. In any case, if BC Hydro desires an efficient and effective regulatory process it is incumbent upon BC Hydro to design its competitive processes so that there is a reasonable opportunity for the Commission to comment on the terms and conditions of EPAs prior to the awarding of contracts."

IPPBC submits that it would be more efficient to look at both the terms and the pro forma EPA in this proceeding. BC Hydro submits that the terms of the EPA have been filed in this proceeding so as to provide the "reasonable opportunity" referred to in the Revenue Requirement decision. Further, BC Hydro submits that the Commission does not have jurisdiction to direct BC Hydro to file the pro forma EPA for comment at this time (T1: 15). Further, BC Hydro states that it would be very difficult to file the detailed EPA by October 18, 2005 (T1: 59).

The Commission Panel agrees that the regulatory process would be more efficient and effective if this proceeding provided an opportunity for comment on the pro forma EPA, and not only the terms as set forth in the filings to date. Although invited to do so at the PHC, intervenors were not prepared to make submissions on the question of

the Commission's jurisdiction to direct the filing of the pro forma EPA. If BC Hydro concludes that it does not intend to file the pro forma EPA in this proceeding, then by August 29, 2005 it is to file argument on the question of the Commission's jurisdiction to direct the filing of a pro forma EPA. Intervenor and Commission Counsel may then file argument by September 2, 2005, with reply by BC Hydro by September 9, 2005.

The Commission Panel expects that it will issue a jurisdictional decision prior to the commencement of the NSP. The Commission Panel expects that the jurisdictional decision will neither reach conclusions with respect to whether it will comment on or approve the pro forma EPA nor with respect to the effect such comment or approval may have on BC Hydro's discretion to make further revisions to the EPA as part of the CFT process. The Commission Panel expects that if the pro forma EPA is filed in this proceeding those two issues will be the subject of argument after the evidentiary portion of the oral hearing.

At any time during this proceeding participants may make requests, by letter, for the Commission to direct respondents to provide further information than made available in responses to information requests.

Yours truly,

*Original signed by:*

Robert J. Pellatt

RHH/cms  
Enclosure

British Columbia Hydro and Power Authority  
Project No. 3698388 – Letters No. L-28-05 and L-33-05  
Resource Expenditure and Acquisition Plan (“REAP”) Application

**REGULATORY AGENDA AND TIMETABLE**

<b>ACTION</b>	<b>(2005)</b>
Intervenors to file Evidence	Friday, September 9
Participant Information Requests to Intervenors	Thursday, September 15
NSP commences*	Tuesday, September 20
Intervenor Responses to Information Requests	Monday, October 3
Pre-hearing Conference No. 2	Wednesday, October 5
Oral Hearing commences on specified issues*	Tuesday, October 18

\* Location of NSP and Oral Hearing will be at the Commission’s Homer Street Hearing Room, Third Floor, 855 Homer Street, Vancouver, BC.