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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-42-06

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

and

**An Application by Princeton Light and Power Company, Limited
for Approval to Defer Extraordinary Legal Costs**

BEFORE: L.F. Kelsey, Commissioner
L.A. Boychuk, Commissioner April 7, 2006

O R D E R

WHEREAS:

- A. On November 18, 2005, Princeton Light and Power Company, Limited ("Princeton", "Utility") applied pursuant to Section 56(1) of the Utilities Commission Act (the "Act") for Commission approval to record extraordinary legal and penalty costs incurred due to the outcome of the court trial and unsuccessful appeal of a power theft case (the "Application"); and
- B. The BC Supreme Court had awarded approximately \$20,000 in compensatory damages and \$62,000 of punitive damages to a customer of Princeton. The Utility appealed the decision but the BC Court of Appeal upheld the earlier judgment; and
- C. The Application proposes to establish a depreciation (deferred) account to record \$141,062 representing the awarded costs and Princeton's legal costs of \$59,062. Princeton proposes to amortize the rate base deferral account balance over sixty months commencing January 2006; and
- D. By Order No. G-139-05, the Commission established a written hearing process for the review of Princeton's 2006 Revenue Requirements Application and approved interim rate increases in Princeton's Service Charges, Access Charges and Energy Charges effective January 1, 2006; and
- E. By Order No. G-35-02, the Commission approved a Princeton application to establish a holding (deferral) account for contracting activities to record extraordinary income and expenses of up to \$100,000 and to draw down the deferral account to such an extent that it would boost its income to approved ROE levels.
- F. On February 6, 2006, Princeton responded to a Commission information request and reported that the Utility earned a loss in 2005 and the contracting deferral account was expected to be in a deficit balance at the end of 2005. The Application proposes a five-year amortization period for the requested legal and penalty costs deferral account to reduce the impact on customer's rates while allowing Princeton to meet its financial obligations; and
- G. The Commission has reviewed the Application and supporting material, all as set forth in the Reasons attached as Appendix A to the Order.

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NOW THEREFORE pursuant to Sections 23(1) and 56(1) of the Act, the Commission orders as follows:

1. The establishment of a rate base deferral account to recover Princeton's extraordinary legal fees and disbursements of \$59,062 and the compensatory damage award of approximately \$20,000 is approved effective November 18, 2005.
2. The Commission approves the amortization of this deferral account balance over sixty months commencing January 2006.
3. The recovery from customers of the punitive damages award of \$62,000 is denied.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of April 2006.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

PRINCETON LIGHT AND POWER COMPANY, LIMITED
APPLICATION TO DEFER EXTRAORDINARY LEGAL COSTS

REASONS FOR DECISION

1.0 APPLICATION

On November 18, 2005, Princeton Light and Power Company, Limited (“Princeton”, “Utility”) applied pursuant to Section 56(1) of the Utilities Commission Act (the “Act”) for Commission approval to record extraordinary legal and penalty costs incurred due to the outcome of the court trial and unsuccessful appeal of a power theft case (the “Application”). The Application proposes to establish a depreciation (deferred) account to record \$141,062 incurred in fiscal 2006 representing the awarded costs of approximately \$20,000 for compensatory damages and \$62,000 for punitive damages and Princeton’s legal costs of \$59,062 in a rate base deferral account. Princeton proposes to amortize the deferral account balance over sixty months commencing January 2006 to avoid rate shock to its customers.

2.0 BACKGROUND

April 8, 2004, Princeton informed the Commission that, after a lengthy trial, a jury had awarded a customer compensatory and punitive damages after the Utility disconnected him for illegal bypass of the meter and refused to re-connect without payment of the outstanding debt. Through the use of a monitoring device, the Utility had found that the meter in the premises rented by the customer to a tenant was being bypassed and informed the police, who discovered a marijuana grow operation. Princeton cut off the power and made its own calculations as to how much power had been used and for how long. Princeton back-billed the customer \$18,500 representing 36 months of stolen power, the amount PLP concluded it was owed for the unauthorized use. The customer had rented the property to a first tenant for approximately three years from June 1996 to March 1999 and then to a second tenant to June 1999 when the grow operation and power bypass were discovered. Princeton calculated the stolen power amount by projecting three months of stolen power backwards three years to the beginning of the first tenancy. Before the trial began, the customer paid Princeton a total of \$1,200 including interest for three months of stolen power related to the term of the second tenancy.

At trial, Ralph J. determined that the essential nature of the dispute arises out of the manner in which Princeton made its decision to back-bill the customer and cut off power to the property until the amount was paid. In his view, this did not call for a detailed examination of the tariff but of the circumstances which caused the plaintiff to apply the tariff in this particular case. The underlying dispute, therefore, was whether the power was stolen for three months or three years. The ruling also determined that Princeton was entitled to bill its customer for the stolen power provided to the property and was entitled to refuse connection until the company was paid. The jury found that Princeton had no reasonable grounds to back-bill for more than three months and awarded the customer compensatory damages and punitive damages. The Utility appealed the decision, which was upheld by the BC Court of Appeal. The facts of the case are fully described in the BC Court of Appeal ruling.

3.0 ISSUES

The Court of Appeal ruling noted that on December 9, 1999, counsel for the customer wrote to the Commission seeking an order for reconnection pending resolution of the dispute over the back-billing, promising to continue “good faith negotiations” with Princeton. By letter dated December 13, 1999, the Commission denied the counsel’s request and advised that “The Commission finds that [Princeton Light] has acted in accordance with its filed Electric Tariff and that if your interpretation is contrary to that finding, you may wish to pursue the matter through the courts”.

In the Court of Appeal reasons for judgment, Huddart J.A., for the Court, was persuaded that “the Commission does not have the exclusive jurisdiction to determine whether Princeton Light properly back-billed the respondent, and, in the absence of any submission to the contrary, that a duty of good faith and fair dealing is implied in the utility’s standard form service agreement”. In her view, “the dispute in this case was over the amount of the bill, the duration of the unauthorized use, and more particularly, whether Princeton had reasonable grounds to believe that stolen power was used to benefit the customer’s property from June 1996 to April 1999. None of these issues were before the Commission, but even if they were, the Commission did not have the jurisdiction to determine them.” She concluded that Princeton Light breached its contract with the respondent when it back-billed him for 36 months and did so in such a manner as to justify the jury’s award of punitive damages. She noted that the emphasis throughout the charge to the jury was on the fairness and reasonableness of the backbilling” and, in her view, “it seems incontrovertible that Princeton acted unreasonably, not only in back-billing the customer for three years, but also in refusing to review its bill when challenged, and in insisting on payment before reconnection”. She commented that the underlying purpose of a punitive damage award is to penalize conduct that departs to a marked degree from ordinary standards of decent behaviour, concluded that the punitive damage award, while substantial, and possibly on the high side, was justified because of the arbitrary, callous and oppressive conduct of the utility.

Princeton reported that it expensed costs related to the court cases of \$89,766 incurred in fiscal 2004 and \$89,592 incurred in fiscal 2005. In its February 6, 2006 response to a Commission information request (“Princeton’s IR Response”), the Utility stated that for the period ending December 31, 2005, Princeton had incurred a loss and had a nil rate of return on equity. A contracting deferral account had been approved by Commission Order No. G-35-02 to record extraordinary income and expenses of up to \$100,000 related to contracting activities by the Utility and to draw down the deferral account to such an extent that it would boost Princeton’s income to approved ROE levels. In Princeton’s IR Response, the Utility reported that the contracting deferral account was expected to be in a deficit position at the end of 2005. Accordingly, the contracting deferral account is unable to offset these additional costs and boost Princeton’s income to approved ROE levels.

4.0 COMMISSION DETERMINATIONS

The Commission considers that Princeton had endeavoured to act in accordance with its Electric Tariff and accordingly pursuant to Sections 23(1) and 56(1) of the Act approves the recovery of the \$19,672.61 awarded for compensatory damages and Princeton’s legal costs of \$59,062 in a rate base deferral account effective November 18, 2005. The Commission approves the amortization of this deferral account balance over sixty months commencing January 2006.

In light of the court’s decision on punitive damages, the Commission has determined that the award of \$62,000 for punitive damages should not be recovered from customers. The Commission notes, but does not accept, Princeton’s concern that the Court of Appeal decision in this matter “will set a precedent that will make life very difficult for utilities everywhere”, PLP’s June 30, 2005 response to Commission Letter No. L-47-05. While, the Commission supports and continues to support the action of utilities to properly apply and enforce tariff provisions, the Commission cannot, certainly on the facts of this case, allow the recovery of costs associated with behaviour found to be worthy of punitive damages and where the utility was found to not have acted fairly and reasonably when dealing with a customer.