

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-70-06

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

**An Application by British Columbia Hydro and Power Authority ("BC Hydro")
for the Review of the F2007 and F2008 Revenue Requirements Application ("F07/08 RRA")
and for the Review of the 2006 Integrated Electricity Plan ("2006 IEP")
and the Approval of the 2006 Long-Term Acquisition Plan ("2006 LTAP")**

BEFORE:

R.H. Hobbs, Chair
L.A. Boychuk, Commissioner
A.J. Pullman, Commissioner

June 19, 2006

O R D E R

WHEREAS:

- A. On May 25, 2006, BC Hydro filed the balance of its F07/08 RRA as proposed in its letter to the Commission dated March 15, 2006. The F07/08 RRA requests approval, pursuant to Sections 58, 59, 60 and 90 of the Utilities Commission Act (the "Act"), for an across-the-board rate increase of 4.65 percent from July 1, 2006 to allow a partial recovery of its F07 revenue requirements, a further increase of 2.71 percent effective April 1, 2007 and a regulatory asset (deferral account) to record the F07 revenue deficiency between April 1, 2006 and the date its rates are raised on an interim basis, net of any disallowance of F07 revenue requirements; and
- B. In a letter dated March 15, 2006, BC Hydro had applied for Commission approval to set its current rates as interim effective April 1, 2006, and in the same letter informed the Commission that it proposed to file its F07/08 RRA in late April 2006; and
- C. By Order No. G-32-06 dated March 23, 2006, the Commission approved current customer rates as interim effective April 1, 2006; and
- D. On May 10, 2006, the Commission issued a letter with a draft regulatory timetable and an accompanying Order No. G-51-06 (IEP Exhibit A-4) to address issues raised by Intervenor with respect to the delay by BC Hydro in filing the F07/08 RRA; and
- E. Following a Procedural Conference held on May 19, 2006, by Order No. G-59-06 the Commission approved the request for a reconsideration of Order No. G-32-06 with Reasons attached to Letter No. L-21-06; and
- F. By Letter No. L-21-06, the Commission also established a timetable for argument and reply on the second phase of the reconsideration ("Reconsideration Application"); and

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- G. In accordance with the timetable established by Order No. L-21-06, by letters dated May 31, 2006, arguments were filed by the JIESC, Exhibit C15-3, B.C. Old Age Pensioners Organization *et al.* (BCOAPO), Exhibit C4-6, Terasen Gas, Exhibit C5-2, and Sierra Club of Canada, B.C. Chapter *et al.* (SCCBC), Exhibit C24-3. By letter dated June 5, 2006, BC Hydro responds to the arguments filed on May 31, 2006. By letters dated June 6, 2006 and June 7, 2006, BCOAPO (Exhibit C4-7) and the JIESC (Exhibit C15-4), respectively, replied to the argument of BC Hydro; and
- H. By Order No. G-71-06, the Commission approved BC Hydro's requested July 1, 2006 interim rate increase of 4.65 percent. The cover letter to Order No. G-71-06, advised BC Hydro and the registered intervenors/interested parties that Order No. G-70-06 will contain the Commission's determination on the Reconsideration Application and the request in the F07/08 RRA for a regulatory asset (deferral account) to record the F07 revenue deficiency between April 1, 2006 and the date its rates are raised on an interim basis, net of any disallowance of F07 revenue requirements; and
- I. The Commission has reviewed the submissions received on the Reconsideration Application.

NOW THEREFORE the Commission orders as follows with Reasons attached:

1. The Commission denies the Reconsideration Application.
2. The Commission approves the request in the F07/08 RRA for a regulatory asset (deferral account) to record the F07 revenue deficiency for the period April 1, 2006 to July 1, 2006, net of any disallowance of F07 revenue requirements. If BC Hydro expects to bring an application for carrying costs on this account then it is directed to do so within 30 days of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of July 2006

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

An Application by British Columbia Hydro and Power Authority
for the Review of the F2007 and F2008 Revenue Requirements Application (“F07/08 RRA”)
and for the Review of the 2006 Integrated Electricity Plan (“2006 IEP”)
and the Approval of the 2006 Long-Term Acquisition Plan (“2006 LTAP”)

REASONS FOR DECISION

By Commission Order No. G-59-06, the Commission approved a Joint Industry Electricity Steering Committee (“JIESC”) request to reconsider Order No. G-32-06 (“Reconsideration Application”). Reasons and a regulatory schedule for the Reconsideration-Second Phase were provided by Letter No. L-21-06 (Exhibit A-5).

By letters dated May 31, 2006, Arguments were filed by the JIESC, Exhibit C15-3, the BC Old Age Pensioners Organization *et al.* (“BCOAPO”), Exhibit C4-6, Terasen Gas Inc. (“Terasen”), Exhibit C5-2, and the Sierra Club of Canada, B.C. Chapter *et al.* (“SCCBC”), Exhibit C24-3. In the first phase of this reconsideration process, the Commercial Energy Customers (T1:24), Elk Valley Coal (T1:17) and Independent Power Producers of B.C. (T1:22) supported the JIESC application for reconsideration. By letter dated June 5, 2006, BC Hydro responded to the submissions filed on May 31, 2006. By letters dated June 6, 2006 and June 7, 2006, BCOAPO (Exhibit C4-7) and the JIESC (Exhibit C15-4), respectively, filed Reply Arguments to the submissions of BC Hydro.

The Commission Panel denies the application to reconsider Order No. G-32-06. In these Reasons, the facts and issues relevant to the Reconsideration-Second Phase are identified first. Then the Reasons are provided for denying the Reconsideration Application. Finally, other concerns raised by intervenors such as timely filing concerns and regulatory efficiency concerns are addressed.

Facts and Issues Relevant to Reconsideration-Second Phase

The Intervenors, excluding Terasen, make submissions regarding earlier filing delays by BC Hydro in this proceeding as well as the one month delay in filing the materials identified in the March 15, 2006 letter, Exhibit B-1. On the other hand, BC Hydro and Terasen submit that only the one month delay is relevant to this reconsideration. BC Hydro limits its submissions to those matters arising from the one month delay (Exhibit B2-1).

<p>Note to Reader: All exhibit numbers referred to in this document are exhibits numbered in the F07/08 RRA proceeding. Although the Intervenors in the RRA proceeding may be more appropriately considered Applicants in the Reconsideration Application process, they are referred to as Intervenors in the Reasons.</p>

The Intervenor, excluding Terasen, characterize the March 15, 2006 filing differently than do BC Hydro and Terasen. The intervenors submit that it was not an application. BC Hydro submits that it was an application and characterizes the filing on May 25, 2006 as the balance of the revenue requirements application. Moreover, BC Hydro submits that the March 15, 2006 letter provides adequate evidence and justification for Order No. G-32-06.

Terasen submits that the only ground identified in Letter No. L-21-06 for the Reconsideration-Second Phase is the one month delay in the filing of the application. Terasen said “The issue before the Commission is not ‘whether or not Order G-32-06 should have been made’ ... The issue now before the Commission is limited to ‘whether or not a one month delay in filing the application is a sufficient change in the facts that the previous order should be varied or rescinded’ ” (Exhibit C5-2, p. 2).

Commission Determination

The Commission Panel accepts that the issue is whether or not the one month delay is a fundamental change in circumstances or facts that justify a rescission of Order No. G-32-06. However, the other delays by BC Hydro in this proceeding are relevant circumstances for determining whether or not the one month delay is a fundamental change.

The Commission found that the evidence filed as Exhibit B-1 regarding the forecast net income in F2007, established that current rates were no longer just and reasonable. It follows that Exhibit B-1 can be reasonably considered an application for interim rates, although BC Hydro should not assume that material similar to Exhibit B-1 will generally be accepted by the Commission as an adequate application for interim rates.

Reconsideration Application Submissions

The JIESC submits that the “breach by BC Hydro of the assurances that it gave in requesting the rates be made interim, by filing a month later than proposed, amounts to significant change of circumstances that warrant rescinding Order No. G-32-06”. BCOAPO submits that “... the issue is whether the change in circumstances warrants rescission” (BCOAPO Submission, p. 4). BCOAPO further submits that the proper way to frame the question is two-fold:

- had the Commission been aware of the further unexplained delay, would it have granted the Order making Hydro’s rates interim on March 23rd ; and
- are there other regulatory considerations that call for the rescission of the Order?

BC Hydro submits that delay had no “bearing or relevance to the question of whether BC Hydro’s rates were just and reasonable on April 1, 2006”, and although the one month delay is a change it is not a fundamental change (Exhibit B2-1, p. 2). BC Hydro further submits that the additional delay cannot be said to harm or cause harm to any of BC Hydro’s customers.

BC Hydro submits that it is not appropriate to sanction BC Hydro for the late filing and refers the Commission to *Hemlock Valley Electrical Services Ltd. v. BCUC* (1992), 66 B.C.L.R. (2d) 1 (B.C.C.A.) [*Hemlock*] (T1:35).

The JIESC submits that the consequences of the late filing include ineffective and more expensive regulation. The JIESC notes that the Commission decision cannot be reasonably anticipated until late in F2007, after “roughly 2/3 of its F2007 budget and probably committed far more irrevocably”, and that the delay is bad for customers, bad for BC Hydro, and bad for the Commission (Exhibit C15-3, p. 2). The JIESC is also concerned that the failure of BC Hydro to file on time will cause the Commission to expedite the hearings. The BCOAPO refers to the possibility of a “regulatory stampede”.

The BCOAPO submits that the Commission should rescind the Order to ensure that utilities are “appropriately incented to meet their regulatory obligations in a responsible and disciplined fashion” (Exhibit C4-6, p. 4). The BCOAPO urges the Commission to exercise its discretion to rescind the Order, “primarily on the basis that BC Hydro’s delay has materially changed the potential exposure of ratepayers to significant and prejudicial retroactive liability” (Exhibit C4-6, p. 5). BCOAPO submits the interim application was an attempt by BC Hydro to ensure that they can collect any increase retroactively (T1:19). The BCOAPO cites *Re Coseka Resources Ltd. v. Saratoga Processing Co.* (1981), 126 D.L.R. (3d) 705 (Alta. C.A.) in support of its submission that application lag is a material circumstance which the Commission will take into account when considering whether to make an order for interim rates (Exhibit C4-6, pp. 2-3; Exhibit C4-7, p. 2).

Commission Determination

The Commission Panel concluded, based on the evidence filed as Exhibit B-1, that the existing rates were no longer just and reasonable. Insufficient evidence was filed to set the rates at higher levels than the existing rates, even on an interim basis, but that did not change the finding that, for the purposes of the interim order, the existing rates were no longer just and reasonable.

The conclusion that the current rates are no longer just and reasonable does not change with the one month delayed filing. The Commission Panel finds that the arguments made by BCOAPO based on *Coseka* are not persuasive, given the 5 years during which the rates were interim in that case. In some circumstances, a delay in filing may be material to an interim order. In these circumstances, the Commission Panel accepts the submissions of BC Hydro that the delayed filing is not relevant to whether BC Hydro's rates were just and reasonable on April 1, 2006. A delay of one month is not a sufficient change in the circumstances or facts that Order No. G-32-06 be rescinded. Therefore, the Commission Panel denies the Reconsideration Application.

The Commission Panel, as stated above, agrees that in some circumstances, a delay might be fundamental to a determination of just and reasonable rates. Moreover, a further delay of a short duration combined with previous delays may be fundamental even in circumstances where an earlier one month delay might not be. However, in these circumstances, the Commission Panel concludes that the one month delay is not fundamental to Order No. G-32-06 based on BC Hydro's "no bearing or relevance" argument.

The Commission Panel does not accept the submissions of BC Hydro that incremental delay cannot be said to disadvantage customers. A delay in rate-setting may disadvantage customers for reasons of uncertainty, planning, or an "unexpected thirteenth hydro bill in a year" (Exhibit C4-6, p. 3). Although such effects are relevant to the obligation of utilities to file in a timely manner, in these circumstances, they do not constitute sufficient grounds for denying BC Hydro a reasonable opportunity to earn a fair return. In this regard, the Commission Panel accepts the submission of BC Hydro based on *Hemlock*, and notes the conclusion of the Commission in the *Terasen Gas Inc. et al.* Return on Equity and Capital Structure Decision, dated March 2, 2006, page 8, that "the Commission has a duty to approve rates that will provide a reasonable opportunity to earn a fair return on invested capital".

Although the Commission Panel has denied the Reconsideration Application, the circumstances of the Reconsideration Application suggest that the broader issues raised by Intervenor's warrant comment by the Commission.

Timely Filing and Other Concerns Raised by Intervenor's

Utilities have an obligation to contribute to an efficient and effective regulatory process. In this section, the Commission Panel will comment on whether or not BC Hydro has met this obligation to date in this proceeding. The Commission Panel will also comment on the Commission's filing requirements generally.

BC Hydro contemplates that the 2006 IEP and LTAP may be consolidated with the F2007/08 RRA. Consequently, the filing date of its 2006 IEP and LTAP is also relevant to the process of setting its F2007/08 rates and should have been considered by BC Hydro when assessing its obligation to file in a timely manner. Contrary to Letter No. L-60-05, which directed BC Hydro to file its 2006 IEP and LTAP in November 2005, BC Hydro was late in filing the 2006 IEP and LTAP, which may well contribute to the “application lag” concerns identified by the Intervenor (Exhibit C4-6, p. 2). As a result, the Commission’s decision setting the F2007 rates for BC Hydro cannot be reasonably expected to be issued before the end of F2007. This was a foreseeable consequence of the late filing of the 2006 IEP and LTAP and the F07/08 RRA. In these circumstances, BC Hydro should have filed both the 2006 IEP and LTAP and the F07/08 RRA earlier than it did and much closer to the times initially contemplated.

The JIESC submits that filing of the application on May 25, 2006 (Exhibit B5-1) is three months later than expected under the normal rules for filing a revenue requirements application. Elk Valley Coal makes a similar submission (T1:18). The JIESC further submits that the late filing by BC Hydro shows a remarkable disregard for the regulatory process and the interest of its customers.

The JIESC submits that interim applications are no longer appropriate, and were only appropriate during a high inflationary period to prevent regulatory lag (T1:13; T1:46). The JIESC submits that in the future there must be advance filings, and the Commission should consider its whole concept of allowing interim rates (T1:46).

The BCOAPO submits that the late filing is the latest stage of a protracted exercise in “procrastination and indecision” by BC Hydro that has spanned many months, and has thrown the regulatory timetable far out of synch with the fiscal year cycle.

The JIESC remains of the view that directions from regulators are most effective when made prior to expenditures, rather than after. The JIESC further submits that when expenditures are disallowed in advance of their actually being incurred, the money is never spent and everyone, utility, shareholder and rate payer, is better off. The Commission does make findings regarding the recoverability of expenditures that have already been incurred, which is often attributable to the date of the application. In some circumstances, this cannot be avoided; however, the risk of denial is borne by utilities and so timely filing is in the interests of the utility.

The Commission Panel believes the submissions by the JIESC and BCOAPO have considerable merit. BC Hydro, as a regulated utility, has an obligation to file in a timely manner. There are established filing practices that BC Hydro did not meet when it failed to file 30 days prior to the end of its fiscal year. BC Hydro also did not

meet its commitment and obligation to file the 2006 IEP and LTAP by November 2005 and the F07/08 RRA prior to fiscal year end, March 31, 2006.

The Commission Panel also notes the JIESC submissions that established filing practices may need to change so as to ensure timely filing. The Commission Panel believes that in the future the Commission may need to further consider this submission by the JIESC, and concludes that utilities, particularly BC Hydro, should review their filing practices so as to ensure timely filing, and to contribute to efficient and effective regulation.

BC Hydro submits that "... whether rates are set prior to, during or even after a fiscal period is a matter of practice and is not required by law, one way or another. Indeed, BC Hydro notes that in some jurisdictions the practice is to employ a retrospective test period for rate-making purposes" (Exhibit B2-1, p. 3).

Section 61(1) of the Utilities Commission Act states:

"A public utility must file with the commission, under rules the commission specifies and within the time and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced."

Under cover of letter dated December 12, 1989, the Commission circulated "Timing and Guidelines for the Filing of Information" in which the 30-day period is established. Other than by establishing the 30-day period, the Commission has not exercised its jurisdiction pursuant to Section 61(1) and specified rules for the timely filing of rate schedules. The Commission does not intend to do so at this time, unless utilities make it necessary to do so by not meeting their obligation to contribute to an effective and efficient regulatory process through timely filing of applications.

The Commission Panel rejects BC Hydro's submission that timely filing is not a matter of law. BC Hydro did not meet the minimum filing requirements established by letter dated December 12, 1989 noted above and by Letter No. L-60-05. Not only did BC Hydro not meet these minimum filing requirements, but given the complexity of the issues it should have filed earlier than these dates. In circumstances where BC Hydro continues to not meet its obligation to file in a timely manner, then it should expect the Commission to exercise its jurisdiction pursuant to Section 61(1). BC Hydro and other utilities need to ensure that applications are filed in a timely manner if they desire some discretion, other than the 30-day period, regarding filing dates.

BC Hydro submits that it did not, at the time of filing Exhibit B-1, seek an increase in rates because it was still developing the evidence in support of just and reasonable rates for F2007 and F2008. At that stage in BC Hydro's budget cycle, it ought to have been able to forecast the rate increase necessary to establish just and reasonable rates for F2007. Although it may not always be possible for a utility to develop evidence in support of just and reasonable rates in a manner that will eliminate the need for interim rates as suggested by the JIESC, such evidence should be available at least 30-days prior to year end, if not considerably sooner.

In concluding this section, the Commission Panel notes the following submission of BCOAPO:

“So it's incumbent on BC Hydro to start disciplining itself to file applications on a regular basis and on a timely basis, so that the rest of the world can do its planning accordingly.”
(T1:24)

So far in this proceeding, BC Hydro has not met its obligation to contribute to an efficient and effective regulatory process by filing both the 2006 IEP and LTAP and the F2007/08 RRA late.

Carrying Costs

The final issue to be addressed is the carrying costs of revenue deficiencies, if any, for the period April 1, 2006 to July 1, 2006. This issue was not addressed by Intervenors.

BC Hydro did state: “Thus, at worst, customers are no worse off because of the incremental delay (they would pay the same amount over time whether there was a 2 month delay or 3 month delay) or, arguably, they are somewhat better off, in that they postpone payments.” (Exhibit B2-1, p. 3)

Given this submission by BC Hydro, BC Hydro should not expect carrying costs prior to the end of F2007 on the revenue deficiency, if any, for the period April 1 to July 1, 2006. If BC Hydro expects to bring an application for carrying costs on such amount, then it is directed to do so within 30 days of this Decision.