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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-91-07

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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
2007 Rate Design Application**

BEFORE: A.J. Pullman, Panel Chair
R.J. Milbourne, Commissioner August 13, 2007
L.A. O'Hara, Commissioner

O R D E R

WHEREAS:

- A. British Columbia Hydro and Power Authority ("BC Hydro") filed on March 15, 2007, pursuant to the Utilities Commission Act ("UCA") and Commission Order No. G-148-06, a rate design application ("Application") to update BC Hydro's rates and terms and conditions of service; and
- B. By Order No. G-50-07 dated May 8, 2007, the Commission established an oral public hearing process for the review of the 2007 Rate Design Application ("2007 RDA") and proceeded with the Regulatory Timetable as attached in Appendix A to that Order; and
- C. At the hearing, the Commission determined that the 2007 RDA would be heard in three phases and that Phase I would cover the issues in Sections 1 to 5 of Exhibit A-23; Phase 2 would consider the issues in Sections 6 and 7 of the Issues List in Appendix A-23 as well as a report on the ability of the three parties, namely: the Applicant BC Hydro and Registered Intervenor Central Coast Power Corporation ("CCPC") and the Heiltsuk Tribal Council and Shearwater Marine Limited ("Heiltsuk"); to negotiate a response to certain questions and information request posed by Heiltsuk; and that Phase III would consider the Special Contract Rate and other applications with respect to interruptible rates to the Independent Power Producers serving Zone II customers. The Commission also severed the complaints entered by Heiltsuk against CCPC and BC Hydro from Phase I and Phase II of the proceeding; and
- D. On July 3, 2007, the Commission issued Letter No. L-57-07 (Exhibit A-20) which summarized the various Information Requests ("IR") to the Applicant and Responses to IRs, the correspondence from CCPC to the Commission regarding the jurisdiction of the BCUC and CCPC's position on releasing information regarding the Power Supply Contract ("EPA") and lease agreement between BC Hydro and CCPC, the letter of

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justification and application from Heiltsuk with respect to the production of the EPA and lease agreement (“Heiltsuk Motion”), and BC Hydro’s response to the Heiltsuk Motion. The Commission informed all Participants that the Heiltsuk Motion would be heard following the Opening Statement of the Chair; and

- E. By letter dated July 5, 2007 (Exhibit A-22 Attachment), CCPC wrote to the Commission to state its position that its contract with BC Hydro is neither an appropriate nor a necessary component of the hearing process, and requested that the Commission either adjourn the Heiltsuk Motion or dismiss the portions of the Motion that relate to the contract between BC Hydro and CCPC; and
- F. By letter dated July 5, 2007 (Exhibit B-21), BC Hydro wrote to the Commission to: respond to the Commission Staff Issues List; inform the Commission that it would be filing an application in a week’s time to maintain the Special Contract rate on an interim (refundable) basis; inform the Commission that it would bring a separate application on or before December 1, 2007 to address all issues related to the Zone II rates, and to draw the Commission’s attention to Orders in Council 508 and 509 that deal with, among other things, Zone II rates; and
- G. At the oral public hearing, the Commission, on July 10, 2007, informed the parties that it would defer its decision with respect to the Heiltsuk Motion to compel BC Hydro to disclose various agreements between it and the CCPC pending the Heiltsuk, CCPC and BC Hydro’ collective attempt to respond, by July 31, 2007, to the 33 questions as contained in Heiltsuk’s letter (Exhibit C23-7). The Commission stated that if these 33 questions could be answered satisfactorily, there should be no need to compel BC Hydro to disclose the various agreements it has with CCPC; and
- H. BC Hydro and CCPC informed the Commission on July 31, 2007 that BC Hydro and CCPC have come to a common view on how the 33 questions from Heiltsuk as contained in Exhibit C23-7 could best be responded to. The joint response was filed as an attachment to the BC Hydro letter dated July 31, 2007 (Exhibit B-79) and the reasons for not providing certain answers were given by CCPC, including its concern that the information could be used to its detriment and only for competition purposes (Exhibit C30-6); and
- I. By letter dated August 2, 2007 (Exhibit C23-18), Heiltsuk requested that the Commission direct BC Hydro and CCPC provide responsive answers to the questions it identified in its letter, and in the absence of answers to those questions, that the Agreement between BC Hydro and CCPC should be produced without further delay; and
- J. By letter dated August 3, 2007 (Exhibit B-81), BC Hydro opposed the motion by Heiltsuk to direct BC Hydro to answer all the questions and observed that such questions could not be answered any better by production of the contract. BC Hydro takes no position on the alternative relief sought by Heiltsuk/Shearwater that an order that the contract be produced; and
- K. The Commission Panel has made determinations with respect to the issues of the Exempt Order and BCUC jurisdiction, confidentiality and relevance of the EPA and lease agreement between BC Hydro and CCPC.

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NOW THEREFORE the Commission orders as follows:

1. BC Hydro is to make available within 7 calendar days of the date of this Order the following documents:
 - a) the original EPA between BC Hydro and CCPC;
 - b) the exchange of correspondence between BC Hydro and CCPC referred to by BC Hydro's counsel at T2:185 that sets out the terms and conditions of the amended EPA between BC Hydro and CCPC; and
 - c) the original lease agreement between BC Hydro and CCPC and any amendments thereto.
2. That the documents referred to in 1. above be filed with the Commission on a confidential basis , and that access to the documents be restricted to the counsel and experts retained by the parties to this proceeding who have first executed and filed a declaration in respect of the use of the confidential information in the Undertaking form attached as Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of August 2007.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair

Attachment

Undertaking

I, _____, am a participant _____ in the matter of _____.

In this capacity, I request access to the confidential information in the record of this proceeding. I understand that the execution of this undertaking is a condition of an Order of the Commission, and the Commission may enforce this Undertaking pursuant to the provisions of the *ATA*.

I hereby undertake

- (a) to use the information disclosed under the conditions of the Undertaking exclusively for duties performed in respect of this proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access to such information or to staff of the Commission;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking except for purposes of the proceeding;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking;
- (e) to return to _____, under the direction of the _____, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the Commission a certification of destruction at the end of the proceeding or within a reasonable time after the end of my participation in the proceeding; and
- (f) to report promptly to the Commission any violation of this Undertaking.

Dated at _____ this _____ day of _____ 2007.

Signature: _____

Name: _____
(please print)

Address: _____

Telephone: _____

Fax: _____

E-mail: _____