

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-141-07

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

**British Columbia Hydro and Power Authority ("BC Hydro")
2007 Rate Design Application ("2007 RDA") -- Phase III
Zone II Special Contract Rate Application**

BEFORE:

A.J. Pullman, Panel Chair
R.J. Milbourne, Commissioner
L.A. O'Hara, Commissioner

November 21, 2007

O R D E R

WHEREAS:

- A. BC Hydro filed on October 1, 2007, pursuant to Commission Orders No. G-84-07 and No. G-97-07, the Zone II Special Contract Rate Application ("Application") (Exhibit B-105-1); and
- B. Attached to the Application is Attachment E which contains information on the annual bill impact of Special Contract Customers who would be affected by BC Hydro's proposal. BC Hydro filed Attachment E with the Commission as a confidential document (Exhibit B-105-2). The copy of the Application sent to each End-Use Special Contract customer contains Attachment E with only that particular customer's annual bill impact disclosed; and
- C. By Commission Order No. G-122-07 dated October 5, 2007, the Commission established a preliminary Regulatory Timetable for the review of the Application; and
- D. On October 2, 2007, the Commission received an executed Undertaking (Exhibit C23-43) from Mr. Weisberg, counsel for the Heiltsuk Tribal Council and Shearwater Marine Ltd. ("Heiltsuk" and "Shearwater" collectively "Heiltsuk/Shearwater"), requesting access to Attachment E; and
- E. By letter dated October 10, 2007 (Exhibit A-36), the Commission, in accordance with the Practice Directive of the Commission related to Confidential Filings ("Practice Directive"), asked Registered Intervenor(s) to advise the Commission if they object to BC Hydro's claim for confidentiality of Attachment E. The same letter also asked BC Hydro to advise the Commission of its reason(s) if it objects to the release of Attachment E to Mr. Weisberg. The letter set October 16, 2007 as the deadline for submitting objections; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-141-07

2

- F. By letter dated October 15, 2007 to the Commission (Exhibit B-106), BC Hydro provided reasons as to why the release of the bill impact information would make public what would otherwise be confidential consumption and billing data. BC Hydro noted that it is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) Section 21 which states, in essence, that BC Hydro must not disclose information if the disclosure could reasonably be expected to harm significantly the competitive position of the third party. BC Hydro noted that Heiltsuk and Shearwater are both Special Contract customers. Furthermore, BC Hydro requested that the deadline for objecting to the release of Attachment E to Mr. Weisberg be moved to October 26, 2007; and
- G. By letter dated October 26, 2007 to BC Hydro (Exhibit A-38), the Commission accepted Exhibit B-106 as sufficient compliance with Section 2 of the Practice Directive in response to Mr. Weisberg’s request. The letter from the Commission extended the deadline for filing objections to October 29, 2007. The letter further asked BC Hydro to advise the Commission why it believes that Section 61 of the *Administrative Tribunal Act* does not provide an answer to its submissions on Section 21 of the FIPPA; and
- H. The Commission has not received any objections to the release of Attachment E to Mr. Weisberg on his Undertaking other than from BC Hydro. The British Columbia Old Age Pensioners’ Organization *et al.* disagreed with BC Hydro’s position on the onus that would arise under the Practice Directive (Exhibit C6-20); and
- I. By letter dated November 13, 2007 (Exhibit B-110), BC Hydro responded to the Commission letter dated October 26, 2007. BC Hydro submits that it may lawfully submit Attachment E in confidence to the BCUC as it did, but may not lawfully disclose Attachment E publicly unless and until BCUC makes a legally valid disclosure order, in which case BC Hydro may disclose the document only to the extent of such an order; and
- K. The Commission Panel has considered the submissions of BC Hydro and concludes that the release of Attachment E to Mr. Weisberg is not warranted.

NOW THEREFORE the Commission orders that access by Special Contract customers to the confidential document as filed in Attachment E of the Application is restricted to only that particular customer’s annual bill impact.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of November 2007.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair

British Columbia Hydro and Power Authority ("BC Hydro")
2007 Rate Design Application ("2007 RDA") -- Phase III
Zone II Special Contract Rate Application

REASONS FOR DECISION

BACKGROUND

On October 1, 2007, British Columbia Hydro and Power Authority ("BC Hydro") filed the Zone II Special Contract Rate Application ("Application") with the Commission pursuant to Commission Orders No. G-84-07 and No. G-97-07.

In the Application, BC Hydro proposes to remove the Special Contract provisions to those customers with loads in excess of 45 kVA. The Application states that there are 23 End-Use Special Contract customers of whom six are "grandfathered" while the balance are "standard". BC Hydro plans to place the Special Contract customers onto Rate Schedule 1255 (Zone II General Service >35kW), effective November 1, 2007.

The Application further states that the revenue from the 23 Special Contract customers was approximately \$841,000 in F2007 and placing these customers onto RS 1255 would reduce BC Hydro's revenue by approximately \$315,000. BC Hydro has also analyzed the annual bill impact to those End-Use Special Contract customers and has filed the bill impact information as a confidential document (Attachment E to the Application). The title page of Attachment E contains the following description: "Confidential Zone II Special Contract Customers' Annual Bill Impacts". Only the title page is attached to the Application filed as Exhibit B-105-1. The entire Attachment E forms Exhibit B-105-2 and has been filed as a confidential document in the proceedings. According to page 6 of the Application, each End-Use Special Customer's copy of the Application contains an edited Attachment E which discloses only the annual bill impact to that particular customer. Exhibit B-105-02 is the only document filed confidentially in the proceeding.

On October 2, 2007, Mr. Weisberg, counsel for the Heiltsuk Tribal Council and Shearwater Marine Ltd. ("Heiltsuk/Shearwater"), filed an Undertaking with the Commission requesting access to confidential information in the record of the proceeding and undertaking to agree to the terms of that access. The Undertaking is in the form attached to the Confidential Filings Practice Directive of the Commission ("Practice Directive"). His covering fax specifically requested "copies of all documents filed in Attachment E to the Application". Both Heiltsuk and Shearwater are Special Contract customers.

In accordance with the Practice Directive, Registered Intervenors were asked to advise the Commission if they objected to BC Hydro's claim for confidentiality of Attachment E and to provide reason(s) for their objections. BC Hydro was asked to advise the Commission if it objected to the release of Attachment E to Mr. Weisberg, and of its reason(s) for any objection.

VIEWS OF THE INTERVENORS

The Commission has not received any objections from Intervenors to the release of Attachment E to Mr. Weisberg on his Undertaking.

Nor has the Commission received any objections to BC Hydro's claim for confidentiality. The British Columbia Old Age Pensioners' Organization *et al.* advised the Commission that they have concluded that they would not require disclosure of Attachment E but at the same time they disagreed with BC Hydro's position on the onus that would arise under the Practice Directive.

VIEWS OF BC HYDRO

BC Hydro describes the information contained in Attachment E as the annual bill impact on the Zone II Special Contract customers who would be affected by BC Hydro's proposal. BC Hydro takes the position that the release of the bill impact information will effectively make public what would otherwise be confidential consumption and billing data of the Zone II Special Contract customers given that the rate for each Zone II Special Contract customer is contained in the filed Tariff Supplement for each customer.

BC Hydro states that it endeavours to always keep such customer information confidential because commercial customers can be expected to have particular sensitivities regarding the release of billing data to potential competitors.

BC Hydro states that both Heiltsuk and Shearwater are Special Contract customers and that Shearwater is clearly a party with commercial interests without any proof of legitimate interests in the bill impact information of other Zone II Special Contract customers.

BC Hydro states it believes that it may lawfully submit Attachment E in confidence to the BCUC, as it did, but may not lawfully disclose the document publicly unless and until the BCUC makes a legally valid disclosure order.

DETERMINATION

The Commission Panel relies on the Practice Directive as a guideline to address requests by parties on information filed on a confidential basis during public hearings. As acknowledged in the Practice Directive, sections 41 and 42 of the Administrative Tribunals Act apply to proceedings before the Commission.

The Commission Panel has reviewed Exhibit B-105-2 and accepts that BC Hydro has accurately described the nature of the information in Attachment E. The Commission accepts BC Hydro's reasons for the request for confidentiality for Exhibit B-105-2.

The Commission Panel finds that

- Exhibit B-105-2 contains financial information that is confidential and has been consistently been treated as confidential by BC Hydro
- disclosure of bill impact information to parties with potential competitive commercial interests could create undue material financial loss to the person whose information is disclosed and a corresponding undue material financial gain to Heiltsuk/Shearwater which outweighs the public interest in that disclosure in this proceeding.

The Commission Panel therefore denies Mr. Weisberg access to Exhibit B-105-2.