



LETTER NO. L-95-07

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VIA E-MAIL

November 29, 2007

TO: British Columbia Hydro and Power Authority
Alcan Inc.
Registered Intervenors

Re: British Columbia Hydro and Power Authority ("BC Hydro")
Filing of Electricity Purchase Agreement with Alcan Inc.
as an Energy Supply Contract Pursuant to Section 71

The decision regarding impacts on water flows arising from the 2007 EPA, which were the subject of submissions during Oral Argument held on November 27, 2007, are attached. At T7:1239 and T7:1399, the Chair requested written comments by noon tomorrow regarding the process and schedule for Phase II of the CSTC reconsideration motion (Exhibit C21-2).

Yours truly,

Original signed by:

Erica M. Hamilton

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Attachment

British Columbia Hydro and Power Authority
Filing of Electricity Purchase Agreement with Alcan Inc.
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Impacts on Water Flows

REASONS FOR DECISION

INTRODUCTION

In this decision the Commission Panel considers the question of whether or not the 2007 EPA impacts water flows on the Nechako River. In addressing that central question, the Commission Panel will also consider whether or not the 2007 EPA impacts water levels in the Nechako Reservoir and water flows on the Kemano River.

The question was first identified during the Phase I review of the motion of Carrier Sekani Tribal Council (“CSTC”) filed as Exhibit C21-2. Following the Phase I review, the Commission Panel concluded that the CSTC established a prima facie case sufficient to warrant a reconsideration of the Scoping Order (Exhibit A-9) on the ground identified at item 5(d) of the motion (T5: 695). The Chair further identified the question during the cross-examination conducted by counsel for CSTC of the Alcan panel:

“We’re here to talk about the impacts on the water flows arising from the 2007 EPA, not the consequences of changes that may arise from the impact. The change in the impact on flows arising from the 2007 EPA is the issue” (T7:1284-1285).

Oral argument was heard on November 27, 2007 (T8). The submissions of counsel for both BC Hydro and Alcan were focused on the narrow issue as was identified and contemplated by the Commission Panel.

The significance of the finding in this decision is a matter for argument in Phase II of the reconsideration of the Scoping Order, and it may also be relevant to submissions to be made regarding the 2007 EPA.

BACKGROUND

As counsel for BC Hydro submits, the impacts on water flows arising from the 2007 EPA were not emphasized in the materials filed by BC Hydro. Alcan described the operation of the Nechako Reservoir in filed evidence (Exhibit B2-1, p. 24). A description of Alcan’s existing infrastructure, including the Kemano system was filed by Alcan in an undertaking response to a question in cross-examination by counsel for IPPBC (T6:1145, 1146; Exhibit B2-18).

Water is released from the Nechako Reservoir through either the Skins Lake Spillway or the Tahtsa Intake. Downstream of the Skins Lake Spillway is the Cheslatta River system, which in turn flows into the Nechako River. Downstream of the Tahtsa Intake is the Kemano Powerhouse, which controls flows into the Kemano River.

The releases from the Skins Lake Spillway, inter alia, are the subject of the 1987 Settlement Agreement (Exhibit C21-5), which determines the minimum flow regime for fisheries purposes. The releases through the Kemano Powerhouse are the subject of Alcan's water license, which authorizes the use of water for power generation. The responsibility for operation of the Nechako Reservoir remains with Alcan under the 2007 EPA (T5:720), and Alcan normally operates the reservoir within a range of 10 feet around a mean value, with a historical range of 13 feet between extreme minimum and extreme maximum elevation (Exhibit B2-1, Appendix G, Slides 10, 11; Exhibit B2-18, p. 15; T7:1315). BC Hydro and Alcan testified that the 2007 EPA sets the priority of generation produced but does not set the priority for water (T5:740; T7: 1296).

RELEASES FROM THE NECHAKO RESERVOIR INTO THE NECHAKO RIVER

Generally, the evidence regarding releases from the Nechako Reservoir to meet regulatory requirements is that regulatory requirements are always met (T7:1263). This evidence is not contradicted. Further, the regulatory requirements do not change with the 2007 EPA.

The evidence regarding the priority of releases from the Nechako Reservoir is first to fish flows and second to power service (T7:1258). The Alcan panel testified that the 1987 Agreement is followed without exception, and Alcan has curtailed power production as necessary to meet the salmon spawning period (T7:1259).

Additional water may be released if necessary to reduce the risk of spilling due to high reservoir levels; that is, Alcan may release (pre-spill) more water through the Skins Lake Spillway than is necessary under the 1987 Agreement (T7: 1255, 1261).

In summary, the evidence and submissions from counsel for BC Hydro and Alcan is that the obligation to release flows into the Nechako River will be met in exactly the same way after the effective date of the 2007 EPA as before (T7:1319; T8:1421, 1429).

RELEASES FROM THE NECHAKO RESERVOIR INTO THE KEMANO POWERHOUSE

Once the regulatory requirements for flows into the Nechako River are met, Alcan operates the Nechako Reservoir to optimize power generation (T7: 1255).

The 2007 EPA provides BC Hydro with rights to schedule Tier 1 power, and to take coordination and equichange service. The exercise of these rights may change the timing of releases from the Nechako Reservoir for generation at the Kemano Powerhouse. As a result, the water levels in the Nechako Reservoir may change with the 2007 EPA. The evidence is that the expected change in water levels is from one to two inches (T7:1313, 1315).

CSTC submits that the evidence establishes that the reservoir will be operated differently, and the dispute is whether or not the two inch change to water levels in the Nechako Reservoir is substantive or not (T8:1450). Counsel for CSTC has provided a calculation of the volume of water in a two inch increase to the reservoir level (T8:1451).

Counsel for CSTC submits that the forecast generation under the 2007 EPA is greater than historic generation, and that with the increased generation the discretionary operation of the reservoir levels are “going to disappear in the exact ratio to the additional operational constraint that ensuring continuity of supply of the Tier 1 power is going to take place” (T8:1453). CSTC identified discretionary operation between the 1987 Agreement requirements at the low end and the spill maximum at the high end (T8:1452).

The Alcan panel testified that the EPA has no impact on the amount of power that can be generated (T7:1296). The Alcan panel further testified that only the timing of power production will change with the 2007 EPA, not the total production (T7:1306). The BC Hydro panel testified that the change in timing of releases into the Kemano Powerhouse will have no impact on the releases into the Nechako river system (T5:729).

The evidence of BC Hydro and Alcan panels is that the one to two inch change in reservoir levels is insignificant (T7:1313; T5:769). Counsel for BC Hydro and Alcan submit that the one to two inch change in water levels in the Nechako Reservoir needs to be considered in the context of the normal operating range of 10 feet (T8:1424, 1432).

JOINT OPERATING COMMITTEE

Sections 4.13 and 4.14 of the 2007 EPA provides for a Joint Operating Committee. CSTC submits that the Joint Operating Committee will alter the management structure for the reservoir (T8:1449). CSTC submits that the 2007 EPA changes the reservoir from being exclusively operated by Alcan to a joint operation.

BC Hydro submits that the new management structure has nothing to do with dictating releases into the Nechako River (T8:1475), and the purpose of the Joint Operating Committee is administrative (T8:1476). The evidence of BC Hydro and Alcan panels is that the role of the Joint Operating Committee is limited to information exchange and does not change the operating responsibility for the reservoir (T5:724; T7:1329).

COMMISSION DETERMINATION

The Commission Panel accepts the testimony of the Alcan and BC Hydro panels regarding the matters that are the subject of this decision. Their evidence is consistent and not contradicted. Specifically, the Commission Panel accepts the evidence and submissions of BC Hydro and Alcan regarding the insignificance of the one to two inch change in reservoir levels when compared to the normal and historical range.

The Commission Panel accepts the submissions of counsel for BC Hydro regarding the determinations that should be made at this time in the proceeding. The Commission Panel concludes as a matter of fact that:

- a) the 2007 EPA will have no impact on the volume, timing or source of water flows into the Nechako River;
- b) the 2007 EPA will not change the volume of water to be released into the Kemano River;
and
- c) the 2007 EPA may cause reservoir elevations to vary approximately one or two inches which will be an imperceptible change in the water levels of the Nechako Reservoir. This change to reservoir levels will not affect water flows other than the timing of releases to the Kemano River.