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LETTER NO. L-31-08

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VIA E-MAIL

June 26, 2008

TO: British Columbia Hydro and Power Authority
Registered Intervenor (*BCH-RIB-RI*)

Re: British Columbia Hydro and Power Authority ("BC Hydro")
Project No. 3698504/Order No. G-28-08
Residential Inclining Block Rate ("RIB") Application

Right of Reply by Intervenor to
Arguments of the Other Intervenor

This Letter provides the Commission Panel's determination on the submissions of the Parties on the issue of the right of reply by Intervenor to the Final Submissions of other Intervenor and confirmation of the dates for Final Submissions by the Parties.

At the oral public hearing, the Parties came to agreement on the timing of the filing of the Submissions. The Parties, however, were not able to agree on the extent to which Intervenor would be able to reply to each other. The Intervenor did agree that they should be allowed to reply to Submissions made by the BCOAPO on issues of jurisdiction (T5:810 and 813).

Mr. Andrews of BCSEA submitted that if Intervenor so choose, they should be given a full right of reply to the written Submissions filed by other Intervenor. He submitted that the RIB Application was "polycentric" in nature, and that there were basically two fundamental reasons which supported the granting of his request. The first was that the Commission Panel makes its decisions best when it has all of the evidence and argument that is relevant to the matters before it, while the second related to procedural fairness, namely, that procedural fairness requires Parties such as his clients have an opportunity to know the case to be met (T5:816-817).

In support of his position, Mr. Andrews submitted a copy of Order No. G-120-07 which set out the Schedule of Submissions and Reply from the Alcan 2007 EPA proceeding, and copies of Intervenor's responses to other Intervenor Submissions in that proceeding (T5:818-819).

Mr. Bertsch on behalf of ESVI supported Mr. Andrews' request (T5:825-826), in particular the point that "by having this extra step of having the Intervenor reply to others, is an important step that will provide, I think, very important information to the Panel in helping them make a decision on this subject."

Mr. Quail on behalf of BCOAPO submitted that BC Hydro is the Applicant in this proceeding and the main protagonist with respect to the RIB Application, whereas on certain jurisdictional issues, BCOAPO may be the protagonist. He submitted that customarily the protagonist on an issue receives the opportunity of reply, but that he was "waiving that opportunity" in this case. He cautioned the Commission against adding another layer of process by "taking what is a one-off situation of a single request into a sort of a new normal for the process of the Commission" (T5:827-829). He further submitted that BCOAPO currently proposes to file its Submissions on July 18, 2008, well in advance of the Intervenor's deadline.

Mr. Ghikas on behalf of Terasen Utilities submitted that there is no need for extending the process in this particular case. He stated he did not believe that there was any principle of procedural fairness that suggests a further right of Intervenor to reply to each other simply because a proceeding involves multiple parties (T5:832). Mr. Wallace on behalf of JIESC supported the positions of Mr. Quail and Mr. Ghikas (T5:832). Mr. Weafer on behalf of the CEC agreed with Mr. Quail, Mr. Ghikas and Mr. Wallace (T5:834). Mr. Bursey on behalf of Corix Multi-Utility Services Inc. supported a simple process (T5:834).

Mr. Christian on behalf of BC Hydro stated that BC Hydro did not support the broader right of reply of Intervenor proposed by Mr. Andrews. Mr. Christian, like Mr. Ghikas, did not think there is any procedural right in law for Intervenor to reply to other Intervenor (T5:835).

Mr. Andrews, in reply, submitted that BCSEA wants to have an opportunity to at least consider responding to positions presented by other Intervenor, and in particular, those of the JIESC (T5:837).

The Commission Panel notes that, arguably, many of the proceedings before it could be considered “polycentric” and that there is nothing that distinguishes this proceeding from those or otherwise justifies a departure from the Commission’s usual practices. The Commission Panel also notes that in the Alcan proceeding, the Intervenor’s opportunity to make Reply to the Submissions of other Intervenor was by agreement among the Parties.

The Commission Panel notes that Mr. Andrews in his opening statement commented that his clients “are not expressing a position on the application as such at this time. They will await the evidence and the arguments” (T2:112-13), and prefaced his cross-examination of BC Hydro’s witness panel with the observation “Please, members of the witness panel, please don’t assume from my questions that BCSEA or SCCBC is necessarily supporting or opposing a particular concept. I’m asking these questions to get information” (T3:509).

Given the extensive evidentiary record before it, the Commission Panel is not persuaded by the position that Mr. Andrews’ and Mr. Bertsch’s clients will need to see and comment on other Intervenor’s Submissions before they can express an opinion on the issues and sees no reason to accommodate Mr. Andrews’ request. Instead, the Commission Panel is more persuaded by the positions of BC Hydro, BCOAPO and Terasen Gas. Accordingly, the motion of Mr. Andrews is denied.

The dates for the remaining Undertakings and Final Submissions are confirmed as follows:

Filing of Undertakings by BC Hydro	Friday, July 4, 2008
BC Hydro Final Submissions	Wednesday, July 9, 2008
Intervenor Submissions	Thursday, July 24, 2008
BC Hydro Reply	Thursday, August 7, 2008
Intervenor Reply to BCOAPO Submissions on Jurisdiction	Thursday, August 7, 2008
Oral Phase of Argument, if required	Friday, August 15, 2008

Yours truly,

Original signed by:

Erica M. Hamilton