



LETTER NO. L-63-08

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VIA E-MAIL

December 30, 2008

BC HYDRO

F2009/F2010 REVENUE REQUIREMENT

EXHIBIT A-26

**TO: British Columbia Hydro and Power Authority
Registered Intervenors (BCH-F09-10RR-RI)**

**Re: British Columbia Hydro and Power Authority ("BC Hydro")
Project No. 3698500/Order No. G-21-08
F2009 and F2010 Revenue Requirements Application**

Further to Exhibit A-25, the Commission Panel ("Panel") has determined the Oral Phase of Argument provisionally scheduled to begin at 9:00 a.m. on January 16, 2009 is required.

The Panel invites Oral Submissions from the parties directed towards it achieving a better understanding of the parties' positions in respect of the matters listed below. The parties are cautioned that the manner in which the matters are framed is not to be taken as any indication of the direction as to the determinations, if any, that the Commission may make in respect of any of these matters.

Submissions are to be confined to the evidentiary record. The parties may refer to authorities from other proceedings of the Commission, or the Courts where they believe those authorities may be of relevance but have not been entered.

Parties are requested to advise the Commission, in writing with reference by item number, by January 12, 2009 if they wish to make submissions on an item. Unless the parties otherwise agree, the Panel presently intends that on all issues, BC Hydro will make any submissions it has first, followed by Intervenors with a right of reply by BC Hydro. If any party intends to rely upon an authority during the oral phase not previously referred to in Argument, a copy of the authority is to be provided with its letter to the Commission along with references by item number(s) to the matter(s) to which it applies. The Panel will allow BC Hydro during reply, or any other party that it may allow to reply to the submissions of another party on an item during the oral phase, to refer to authorities not identified by that party in its letter to the Commission, provided the authorities are in response to authorities referred to in the other party's letter to the Commission.

The matters are as follows:

1. Pursuant to Order G-40-08, an interim refundable general rate increase for F2009 is in place and (i) if the Panel should determine that the rate increase for F2009, inclusive of any change in the Rate Rider, should be different, and if the Panel determines that the rate changes for F2009 and F2010 should not be made final until the 2008 LTAP Decision is rendered, are there any reasons why the Panel could not rescind and/or vary or amend Order G-40-08 to reflect that new value for F2009 in order that, if appropriate, refunds for F2009, if any, could be made to ratepayers in a timely fashion?

If the Panel was to make a determination of an interim rate for F2009 that is different from that in the Order G-40-08 and which also results in a refund, (ii) in light of BC Hydro's comments in its Reply Argument at page 53, the Panel also invites argument on BC Hydro's position that "it is open to the Commission to decide, in this proceeding, the appropriate level of recovery of the Deferral Account balances for F2009."

2. BC Hydro takes the position that, unless a forecast expenditure can be determined to be demonstrably imprudent, the Commission has no basis on which to disallow it from its Revenue Requirements, and cites *Hemlock Valley* as its authority. Certain other parties have directed the Panel to sections 59 and 60 of the Act, specifically to the language at s. 60(1)(b)(iii) which speaks to other factors the Commission is to consider in setting rates, which factors BC Hydro submits are "subordinate" to the determination in *Hemlock Valley*. The Panel invites further argument on this matter, and refers parties to *ATCO Electric Limited v. Alberta (Energy and Utilities Board) 2004 ABCA 215 (CanLII)*, paragraphs 126 – 136.
3. Further to 2. above, BC Hydro takes the position that, absent a determination of imprudence on its part, the burden of establishing which falls to the party seeking such a determination, all of its forecast expenditures, along with any past expenditures on which those forecasts may be based, are "immunized" against amendment or variation by the Commission. The Panel notes the general agreement among the parties that the appropriate standard for assessment of prudence is to be found in *Enbridge*. However, BCOAPO takes exception to BC Hydro's position in respect of the burden of making the case for imprudence, by differentiating between cases involving "retrospective" assessment of the consequences of a utility's past decisions, and cases where the circumstances involve the utility's recovery of its "prospective" expenditures through rates – in which case the burden of establishing the prudence of the proposed expenditure is said to accrue to the utility.

In its Reply Argument, BC Hydro notes that no authority was provided for BCOAPO's view in the case of such prospective expenditures, and further that none of the authorities BC Hydro cited in its Final Argument "support such a position" and accordingly that BCOAPO's position is "simply incorrect." The Panel invites further argument on this matter, and specifically requests that BCOAPO provide it with authority for its submission on this point.

4. Certain parties have argued for an Order from the Commission to disallow any recovery by BC Hydro of the direct and indirect costs associated with the failure of GM Shrum Unit 3 failure on the basis that its decisions in respect of that unit were imprudent. The Panel notes, among other things, that the final costs are not available, there may be a material insurance recovery of a portion of the direct costs, and, while not expressly described in the record of the proceeding, there is a possibility that a portion of the direct repair costs may qualify as a capital expense if in fact the repaired unit's life expectancy is extended as a result of the repair.

If the Panel were to direct BC Hydro to segregate all of the incurred-to-date and future direct and

indirect costs of the repair in a separate Deferral Account (“the GMS3 DA”) and to apply to the Commission for recovery of costs when the facts were better established, and at which time the matter of imprudence could be assessed, would that give rise to any material inter-generational equity or other issues of concern?

5. Certain parties have argued for an Order from the Commission to disallow any recovery by BC Hydro of the incurred-to-date and future costs of the PEI initiative on the basis that the business case for the initiative is inadequate to justify the forecast quantum of the costs of the initiative and accordingly that the decision to proceed with it is imprudent. The Panel notes that BC Hydro has authority pursuant to Order G-17-08 to defer a portion of the portion of the incurred-to-date costs, and that it is seeking to defer a portion of the forecast expenses to be incurred up to the operationality of the program in 2012 while not deferring certain other of the costs of the initiative, which it seeks to recover as OMA expenses in the test period or through a capital account.

If the Panel were to direct BC Hydro to segregate all of the incurred-to-date and future costs of the PEI initiative, inclusive of the capital component, in a Deferral Account (the “PEI DA”) until such time as BC Hydro was more knowledgeable of, and able to, if possible, quantify the benefits of the initiative and then applied for recovery of those costs, at which time the matter of prudence could be assessed, would that give rise to any material inter-generational equity or other issues of concern?

6. A party has argued for an Order from the Commission to disallow any recovery by BC Hydro of the forecast “excess cost” of electricity supplied during the test period by IPP’s over market prices for that electricity on the basis that BC Hydro’s decisions in respect of the amount and timing of IPP supply it awarded in the F 2006 Call were imprudent. The Panel notes that both the party requesting the order and BC Hydro rely on the same Decisions of the Commission in support of their positions, albeit with different interpretations of the Commission’s language.

The Panel invites further argument on this matter and refers parties to *Nova Scotia Power Inc., Re, 2006 NSUARB 23 (Can LII)*, paragraphs 56 to 96, and *Nova Scotia Power Inc., Re 2005 NSUARB 27 (Can LII)*, paragraphs 47 to 97.

7. The Panel acknowledges and appreciates the submissions made by parties in response to its invitation for Argument on the matter of “risk sharing” between BC Hydro and its ratepayers. The Panel notes a general consensus among the parties that the issue of “controllability” of any risk is secondary to the matter of BC Hydro’s prudence in response to the realization or mitigation of that risk. The Panel also notes the direction of the requests of certain parties towards a more widespread utilization of Deferral Accounts to ensure that variation from forecast parameters is captured to the potential benefit of ratepayers, particularly where the potential for variance is asymmetric about the forecast value.

In the aggregate, the Panel believes this suggests a shift in ratepayers’ attitudes from the traditional regulatory paradigm that “a utility is entitled to the opportunity to earn its allowed rate of return on equity” towards a model wherein “BC Hydro is to be given, but not to exceed, its allowed rate of return on equity.” The Panel (i) invites further argument from the parties as to whether the Panel’s interpretation of the positions of the parties is accurate.

Further, (ii) if the Panel were to accommodate or otherwise recognize such a perceived directional shift in making its determinations on some or all of the numerous requests from BC Hydro and the other parties for Deferral Account treatment of the manifold matters in the Application and the parties' arguments, many of which, in the context of an unregulated entity would accrue solely to the corporation save and effect for any force majeure impacts on its customers, would that give rise to any material intergenerational equity or other issues?

Yours truly,

Original signed by:

Erica M. Hamilton

LO'H/dlf