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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-180-10**

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**IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

**and**

**An Application by British Columbia Hydro and Power Authority  
for Review of its F2011 Revenue Requirements Application**

**BEFORE:** D.A. Cote, Panel Chair/Commissioner  
L.A. O'Hara, Commissioner  
M.R. Harle, Commissioner  
December 2, 2010

**O R D E R**

**WHEREAS:**

- A. British Columbia Hydro and Power Authority (BC Hydro) filed on March 3, 2010 with the British Columbia Utilities Commission (Commission), pursuant to sections 44.2 and 58 to 61 of the *Utilities Commission Act* (the Act), its F2011 Revenue Requirements Application (the F11 RRA, or Application) for, among other things, final approval of an across-the-board rate increase of 6.11 percent, effective April 1, 2010, and final approval to increase the Deferral Account Rate Rider from 1.0 percent to 4.0 percent, effective April 1, 2010. For the residential inclining rate block Rate Schedules 1101 and 1121, BC Hydro proposes to apply the 6.11 percent increase equally to the Basic charge and Step 1 and Step 2 energy charges;
- B. The Application also sought refundable interim relief, pursuant to sections 58 to 61, 89 and 90 of the Act and section 15 of the *Administrative Tribunals Act*, to allow BC Hydro to increase its rates by 6.11 percent on an across-the-board basis, and to increase its Deferral Account Rate Rider from 1.0 percent to 4.0 percent, both effective April 1, 2010, pending the hearing into the F11 RRA and orders subsequent to that hearing, on the basis that on April 1, 2010 BC Hydro's current rates would otherwise no longer be fair, just and not unduly discriminatory;
- C. On March 15, 2010, Commission Order G-47-10 approved BC Hydro's request for interim rates subject to refund with interest at BC Hydro's weighted average cost of debt for its most recent fiscal year;
- D. By Commission Order G-136-10 dated August 23, 2010, the Commission established a Further Amended Regulatory Timetable that provided in part for a Negotiated Settlement Process (NSP) to begin on September 22, 2010 and a Default Schedule in the event no agreement was reached as a result of the NSP;
- E. In a letter dated October 13, 2010, BC Hydro advised the Commission that the NSP had failed;
- F. By Order G-157-10 dated October 21, 2010, the Commission established a Revised Regulatory Timetable;

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- G. In a letter dated October 26, 2010, BC Hydro advised the Commission that it had continued informal discussions with NSP participants, despite BC Hydro's view that the NSP had failed. BC Hydro reported that the discussions had given it cause to believe that a settlement of the Application was both achievable and imminent; therefore, it sought a reinstatement of the NSP to allow the settlement process to continue, and a suspension of the regulatory schedule established by Order G-157-10;
- H. By Order G-163-10 dated October 27, 2010, the Commission suspended the regulatory schedule established by Commission Order G-157-10 until further order of the Commission and reinstated the NSP;
- I. A Negotiated Settlement Agreement (NSA) dated for reference November 18, 2010 was entered into by the majority of the participants to the NSP to settle all the issues arising from the F11 RRA. Two participants to the NSP, the Independent Power Producers of British Columbia (IPPBC) and the Line Contractors Association of BC (LCABC), were not parties to the NSA;
- J. The NSA, together with Letters of Comment on the NSA that had been received, was made public on November 19, 2010, and circulated to all Interveners and the Commission. Interveners who had not participated in the NSP were requested to provide their comments on the Settlement Package to the Commission by November 26, 2010;
- K. By letter dated November 19, 2010, the IPPBC filed a submission advising that it supported the NSA with the exception of section 9.xiv;
- L. The Commission received four letters from Interveners who had not participated in the NSP;
- M. On November 22, 2010, BC Hydro filed its comments in reply to the submission of the IPPBC;
- N. The Commission has reviewed the proposed NSA and the Letters of Comments from the participants and, after due consideration considers that approval is warranted.

**NOW THEREFORE** for the reasons stated in the Reasons for Decision attached as Appendix A to this Order, the Commission orders that the NSA dated for reference November 18, 2010 and attached as Appendix B to this Order is approved.

**DATED** at the City of Vancouver, in the Province of British Columbia, this *Second* day of December 2010.

BY ORDER

*Original signed by:*

D.A. Cote  
Panel Chair/Commissioner

Attachment



**IN THE MATTER OF**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

**F2011 REVENUE REQUIREMENTS**

**REASONS FOR DECISION**

**December 2, 2010**

**BEFORE:**

**D.A. Cote, Panel Chair / Commissioner  
L.A. O'Hara, Commissioner  
M.R. Harle, Commissioner**

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## **1.0 INTRODUCTION**

On November 19, 2010, a proposed settlement package for British Columbia Hydro and Power Authority's (BC Hydro) F2011 Revenue Requirement Application (F11 RRA) was circulated to the British Columbia Utilities Commission (BCUC, the Commission) and all parties who intervened in the process. The package included the Negotiated Settlement Agreement (NSA) dated for reference November 18, 2010, along with a number of Letters of Comment in support of the NSA and two letters opposing it.

The Commission Panel approves the Negotiated Settlement Agreement for the reasons that follow.

## **2.0 BACKGROUND**

On March 3, 2010, BC Hydro filed its F11 RRA pursuant to sections 44.2, and 58 to 61 of the *Utilities Commission Act* (the Act) seeking, among other things, an increase of 6.11 percent as well as approval to increase the rate schedule 1901 Deferral Account Rate Rider (DARR) from 1.0 percent to 4.0 percent. The increases were both to be effective April 1, 2010. BC Hydro sought approval to apply these rate increases on an across-the-board basis, but subject to specific rate designs such as the residential inclining block (RIB) rate schedules 1102 and 1121, and the transmission service rate schedule 1823. BC Hydro sought approval to apply the 6.11 percent increase equally to the Basic Charge and Step 1 and 2 Rates of the RIB 2 rate. BC Hydro also sought interim orders pursuant to sections 58 to 61, 89 and 90 of the Act and section 15 of the *Administrative Tribunals Act*, S.B.C. 2004, c.45 to allow it to increase these rates effective April 1, 2010, pending final determination of the F11 RRA. Finally, BC Hydro sought orders regarding both proposed new and existing regulatory accounts. (Exhibit B-1, pp. 1-9-1-12)

By Order G-136-10 dated March 15, 2010, the Commission approved BC Hydro's request for interim rates on a refundable basis and established an Initial Regulatory Timetable. A Procedural Conference took place on May 28 and by Order G-99-10 the Regulatory Timetable was amended to provide for a second Procedural Conference following the BC Hydro Evidentiary Update and responses to the second set of Information Requests (IRs). The second Procedural Conference took place on August 20, 2010 where it was agreed the Regulatory Timetable be further amended to go forward with a Negotiated Settlement Process (NSP) on September 22, 2010 following a third set of IRs. Following the second Procedural Conference the Commission, by Order G-136-10, issued a Further Amended Regulatory Timetable which provided, in part, for a third Procedural Conference to be held on October 14, 2010, and further process leading to an Oral Hearing to be held on December 13, 2010 in the event the NSP failed.

The NSP began on September 22, 2010 as scheduled. BCUC Staff tabled a written request from the Commission Panel detailing two items of concern which it requested be addressed by the participants: (i) the recovery of BC Hydro's deferral account balances, and (ii) the process and preparation for the next BC Hydro RRA.

By letter dated October 13, 2010, BC Hydro advised the Commission that the NSP had failed and stated that, in the absence of Intervener motions or Commission Panel questions, it did not believe the third Procedural Conference was necessary. On October 21, 2010, following further submissions from the parties with respect to proposed changes in dates up to and including the Oral Hearing, the Commission issued Order G-157-10 which included a Revised Regulatory Timetable outlining the process leading to an Oral Hearing scheduled for December 13, 2010.

On October 26, 2010, BC Hydro informed the Commission by letter that it had continued informal discussions with NSP participants which caused it to believe that a settlement of the Application was after all both achievable and imminent. Accordingly, BC Hydro sought a suspension of the Regulatory Timetable established by Order G-157-10 and reinstatement of the NSP to allow for the settlement process to continue. By Order G-163-10 dated October 27, 2010, the Commission accepted BC Hydro's proposal and suspended further regulatory process until further order and reinstated the NSP.

By letter dated November 2, 2010, BC Hydro advised the Commission that the NSP participants, with the possible exception of the Independent Power Producers of British Columbia (IPBC) and the Line Contractors Association of BC (LCABC), had achieved an agreement on the substantive terms of a comprehensive settlement of all F11 RRA issues.

The NSA, together with Letters of Comment on the NSA that had been received, was made public on November 19, 2010, and circulated to all Interveners and the Commission. Interveners who had not participated in the NSP were requested to provide their comments on the Settlement Package to the Commission by November 26, 2010.

The Commission received a Letter of Comment from the Canadian Office and Professional Employees Union, Local 378 (COPE) stating that the proposed Settlement package was acceptable to it.

The Commission also received letters from FortisBC Inc., the City of New Westminster Electric Utility Commission, and the group of Terasen gas distribution companies including, Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and Terasen Gas (Whistler) Inc., all of whom had intervened in the proceedings but did not participate in the NSP. All advised that they had no comment on the Settlement package.

By letter dated November 19, 2010, the IPPBC filed a submission advising that it supported the NSA with the exception of section 9.xiv. On November 22, 2010, BC Hydro filed its comments in reply to the IPPBC submission.

The Commission Panel is not privy to the events of the NSP other than what is outlined in the NSA and Letters of Comment it has received from the participants.

### **3.0 NEGOTIATED SETTLEMENT AGREEMENT**

A group consisting of BC Hydro, the Joint Industry Electricity Steering Committee (JIESC), the Commercial Energy Consumers of British Columbia (CEC), the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO), the British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA), Catalyst Paper, Teck Coal and Mr. Ruskin (the Parties) reached an agreement to settle all issues arising from the F11 RRA.

Full details of the Negotiated Settlement Agreement are provided in Appendix B to Order G-180-10 issued concurrently with these Reasons, but some of the highlights are as follows:

#### **1) General**

- The Parties expect the next RRA will be reviewed in an oral public hearing.
- None of the provisions of the NSA are severable.
- The NSA is a comprehensive settlement of all issues related to F11 RRA.

2) BC Hydro Commitments

- To provide, in the next RRA, an analysis of, and a proposal for, a DARR effective April 1, 2011, based on a 5 year amortization of the Trade Income Deferral Account and 10 year amortization of the Non-Heritage Deferral Account and Heritage Deferral Account.
- To meet with interested parties and BCUC staff prior to November 30, 2010, to try to agree on an approach to the next RRA, which will best allow for a comprehensive review conducted in a transparent, efficient and effective manner.
- To apply for a minimum two-year and maximum three-year test period by March 2011.
- Not to object to a review of the efficacy of its F2009-2011 DSM expenditures in its F2012 section 44.2 DSM filing, that will be filed no later than July 31, 2011.
- To increase its focus on management and control of its cost structure and undertake to propose to government changes to government-related aspects of BC Hydro's revenue requirement. This is in recognition of customer concerns with currently projected future rate increases.

3) Changes to F2011 Revenue Requirement and Rate Relief

- Forecast capital expenditures shall be reduced for F2011 by \$100 million and forecast capital additions shall be reduced by \$50 million.
- BC Hydro F2011 operating costs shall be reduced by \$35 million.
- The approved interim across-the-board 6.11 percent rate increase is confirmed as final.
- The final F2011 DARR will be 4.0 percent for the period of April 1 to December 31, 2010, and 2.5 percent thereafter.
- A 4.71 percent credit shall be applied to charges payable to other approved rates (not including DARR) for the period January 1 to March 31, 2011 inclusive. This represents the net impact of regulatory account write-offs, reductions in capital expenditures and additions and the reduction in operating costs.

The above changes result in an effective weighted average rate increase for F2011 of 4.67 percent.

## 4.0 ISSUES OF CONCERN TO PARTICIPANTS OPPOSING THE SETTLEMENT

### 4.1 IPPBC

The IPPBC, in its Letter of Comment dated November 19, 2010, submits that it supports the NSA with the exception of section 9.xiv, which is related to the review of the efficacy of BC Hydro's F2009-F2011 DSM Expenditures and anticipated F2012 section 44.2 DSM filing. In particular it cites the filing date of July 31, 2011 as a particular concern in this provision. IPPBC notes that from the outset it has made it clear it wished to pursue the issue of the efficacy of BC Hydro's DSM programs through a prudency review if required. It further notes that although DSM expenditures were previously approved by the Commission, the amortization of costs related to prior expenditures is included as a part of the F11 RRA and requires BCUC approval. The IPPBC points out that it is this retrospective approval by the Commission that provides the opportunity to review the efficacy of the prior expenditures by way of a prudency review. In its view, BC Hydro's response to BCUC IR 1.38.1 (Exhibit B-6) and 2.356.1 (Exhibit B-11) is indicative that the initial requirement for prudency review has been met and that "the efficacy of DSM should be fully reviewed" as soon as possible. It is IPPBC's position that delaying the start of this review until July 31, 2011 is not in the best interest of BC Hydro customers.

The IPPBC further comments that given that the forecast for the next 2-3 year period covered by the next RRA will include Power Smart expenditures, conducting a review following the July 31, 2011 submission date is hard to understand as it should coincide with BC Hydro's March 2011 RRA filing. On a final point the IPPBC raises concerns with respect to the anticipated filing of the Integrated Resource Plan (IRP) (prior to the end of December 2011). In its view it would benefit all concerned if the review of the efficacy of Power Smart is completed prior to the IRP being submitted to government.

The IPPBC in closing notes that no useful purpose would be served if the BCUC were to reject the F11 RRA in its entirety. Accordingly it requests that BCUC do one of two things:

1. Accept the NSA except for a nominal amount of the DSM amortization amounts described in the F11 RRA Evidentiary Update (Exhibit B-1, Appendix 1, Schedule 7) and conduct a prudency review of Power Smart on this basis.
2. Accept the NSA, but amend the date in Section 9.xiv from July 31, 2011 to March, 2011.

BC Hydro, in Reply dated November 22, 2010, notes that by the terms of the NSA, the Parties have agreed it is a comprehensive settlement of all issues arising from the F11 RRA and that none of the provisions are severable. BC Hydro states that if the BCUC does not accept and approve the entire NSA, there is no agreement. BC Hydro further submits that BCUC has no jurisdiction to order the filing of its F2012 DSM Expenditures by a certain date as section 44.2 filings are made at the option of the public utility.

### 4.2 LCABC

The LCABC, in its Letter of Comment of November 18, 2010, notes that its sole reservation concerning the NSA relates to the LCABC complaint only. The concern raised by the LCABC relates to the amount of time being taken by BC Hydro to resolve the LCABC complaint and BC Hydro's failure to follow through on commitments it has made with respect to setting up a meeting with the LCABC and BC Hydro senior management to review what progress has been made on the issues that form the basis of its complaint. Because of this, LCABC has stipulated that it requires a timeline and an end date for the resolution of its complaint before it is willing to sign off on the NSA.

## 5.0 COMMISSION DETERMINATION

The concerns which have been raised by the IPPBC with respect to the timing of BC Hydro's F2012 DSM filing have some validity. An earlier date for this filing would allow for a more complete review of it within the context of the next RRA in March 2011. Further, if a review of the F2012 DSM filing could be completed sufficiently early to allow BC Hydro to incorporate the results in its next IRP, it would be of benefit to all concerned. However, as BC Hydro points out, the terms of the NSA as signed off by the Parties are comprehensive and non-severable. The Commission Panel is in agreement with BC Hydro that if the BCUC accepted either of the options presented by the IPPBC it would, in effect, cancel the NSA which has been reached amongst the Parties.

Further, the Panel, not being a party to the process can only assume that the Parties agreed to the non severability and comprehensive settlement sections in the NSA with full knowledge of their implications. Put into different terms, the Panel accepts that the agreed upon dates were part of the negotiation process. **Accordingly, the Panel has determined that there is no way the options presented by the IPPBC can be considered without nullifying the agreement among the Parties. Therefore, the Panel does not consider it necessary to address BC Hydro's submission with respect to the Commission's jurisdiction to order a specific date for filing under section 44.2.**

With respect to the issues raised by LCABC, the Commission Panel, while concerned about the lack of progress on the LCABC complaint, is unwilling to accept that this should have a bearing upon the NSA. This proceeding is a rate setting review and disputes between participants cannot be allowed to impede the settlement process. However, we do encourage both BC Hydro and LCABC to work toward a timely resolution of the matter. Failing a satisfactory resolution to the complaint we note it can be resubmitted to the BCUC.

In considering section 44.2 (5.1) the Panel sees no reason the NSA should not be approved. The Parties, as part of the NSA, have agreed that the amounts BC Hydro has spent on energy conservation rates in F2009 and F2010 which total \$10.3 million shall be written off in F2011. The \$5.2 million for F2011 has been agreed to by the Parties and forms part of the NSP. The Panel notes that none of the expenditures for work on energy conservation rates for the period F2009 to F2011 have previously been accepted by the Commission. Therefore, the Panel views as reasonable the agreement among the Parties to write-off non-approved expenditures from previous years and approve the F2011 expenditures.

The Parties to the NSA have, through Letters of Comment, all supported the NSA. Moreover, both the IPPBC and the LCABC have indicated that they have no other concerns with the terms of the NSA other than those which have been stated. Overall, the Panel is satisfied the NSA, which has been agreed to by the Parties, represents a fair settlement considering the circumstances, results in rates that are fair, just and reasonable and not unduly discriminatory or unduly preferential and that the NSA is in the public interest. The alternative would have to be to go to an Oral Hearing process where, at best, a decision would not be reached until very late in the test period. This would serve no useful purpose as there would be little that could be done to effect change at that late date. **The Commission Panel approves the NSA as submitted.**

The Panel recognizes that this has been a lengthy and likely frustrating process for the participants. We would like to acknowledge and praise the efforts of the Applicant, the Interveners, the BCUC Staff and Facilitator who continued to work to resolve issues which had arisen in the NSP and threatened to derail the process permanently. Subjecting this to further process would have achieved no better result.

**Attach Settlement Package as Appendix B**