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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-213-11**

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

and

**British Columbia Hydro and Power Authority
Application for Large General Service Rate
Electric Tariff Supplement No. 82**

BEFORE: L.F. Kelsey, Panel Chair/Commissioner
C.A. Brown, Commissioner
N.E. MacMurchy Commissioner

December 13, 2011

ORDER

WHEREAS:

- A. On June 29, 2010, the British Columbia Utilities Commission (Commission, BCUC) issued Order G-110-10 which approved the Negotiated Settlement Agreement (NSA) that concluded the regulatory review of British Columbia Hydro and Power Authority's (BC Hydro) application regarding its Large General Service (LGS) rate;
- B. Clause 13 of the LGS NSA allows for customers who anticipate significant, permanent increases in energy consumption, as defined in Clause 13, to apply to the Commission to seek an increase in their Historical Baseline (HBL) on a prospective basis;
- C. On November 24, 2010, Pacific BioEnergy Prince George Limited Partnership (PBPGLP) filed an application pursuant to Clause 13 of the LGS NSA requesting an adjustment to the calculation of the HBL due to an anticipated significant increase in energy consumption as a result of significant capital investments in its plant;
- D. On December 15, 2010, PBPGLP responded to the Commission's questions on its application and cited its difficulty in providing certain data. It requested more time from the Commission so that it could work with BC Hydro to assess and resolve the HBL issues;
- E. On May 18, 2011, BC Hydro filed an application with the Commission proposing an Electric Tariff Supplement (TS) No. 78 which contains rules regarding customers' applications under Clause 13 of the LGS NSA (Application). The Application also includes BC Hydro's response to PBPGLP's application dated November 24, 2010. Specifically, BC Hydro seeks: (a) an order to approve TS No. 78 and the consequential changes to rate schedules 16xx; and (b) an order to approve the modified LGS rate that will apply to PBPGLP pursuant to its November 24, 2010 application for prospective growth adjustment;

- F. BC Hydro's proposed TS No. 78 sets out the modified pricing rules for those LGS accounts that are eligible to apply under Clause 13 of the LGS NSA. The modified pricing rules propose to treat the incremental load growth of existing customers in the same manner as the load of new customers. BC Hydro also proposed a mechanical and formulaic approach to process customer applications;
- G. On July 26, 2011, BC Hydro filed a letter with the Commission and proposed a written hearing process to review the Application;
- H. Interveners and Interested Parties registered in this proceeding include active participants from the LGS negotiated settlement process, LGS customers who have applied pursuant to Clause 13 of the LGS NSA and have their applications currently held in abeyance, as well as customers of BC Hydro who have previously approached the Commission to complain about their ineligibility under Clause 13 because of low historical baselines flowing from their involvement in demand side management (DSM) programs;
- I. By Order G-136-11 dated August 2, 2011, the Commission established a regulatory timetable for one round of Information Requests and a written hearing process to review the Application;
- J. On September 19, 2011, BC Hydro filed its Response to Information Request No. 1. In its response, BC Hydro submitted that it would be acceptable if customers applied to BC Hydro in the first instance. BC Hydro attached a Revised Tariff Supplement to the response to Information Request No. 1 which provided that BCUC will only receive applications under this Tariff Supplement when there is a dispute between BC Hydro and a customer after the application had already been received by BC Hydro;
- K. On September 27, 2011, the Commission Panel issued a letter to Interveners and BC Hydro inviting them to include in Final Submissions and Reply Submission their respective views on three issues identified by the Commission Panel. The three issues are related to analyses on the evidentiary record regarding prospective growth eligibility as a result of actions in DSM or greenhouse gas (GHG) emissions;
- L. Six Registered Interveners filed Final Submissions. They are: Vancouver Island Health Authority, B.C. Sustainable Energy Association and the Sierra Club of British Columbia, Bentall Kennedy (Canada) LP, International Forest Products Limited, Commercial Energy Consumers Association of B.C., and the Association of Major Power Customers of British Columbia. The written hearing process concluded with the filing of Reply Submissions by BC Hydro on October 12, 2011.
- M. By letter dated October 25, 2011, BC Hydro filed a letter of errata with the Commission. The letter indicated that TS No. 78 should instead be referred to as TS No. 82.

NOW THEREFORE pursuant to sections 58-61 of the *Utilities Commission Act* and as set out in the Reasons for Decision appended hereto as Appendix A, the Commission Panel orders as follows:

- 1. BC Hydro's application for TS No. 82 (as revised and filed on September 19, 2011, and further revised by this order) is approved. BC Hydro shall revise the TS No. 82 accordingly and amend rate schedules 16xx to be effective from the date of this order. BC Hydro must file a revised TS No. 82 forthwith to the Commission.

2. BC Hydro's application for an order approving a modified LGS rate for PBPGLP is denied.
3. BC Hydro is to process all applications pursuant to Clause 13 of the LGS NSA which are currently being held in abeyance within 20 working days, subject to receipt of revised applications, from the date of this Order.
4. The Tariff Supplement 82, as revised pursuant to the September 19, 2011 filing, is further revised as follows:

Despite section 3.2 of this Tariff Supplement, and pursuant to section 13 of the Negotiated Settlement agreement, the customer's application may address the electricity efficiency and/or GHG effect of its capital investment. Should an applicant wish to address such the applicant must provide appropriate evidence so that BC Hydro may consider this, as an exception to section 3.2. Applications to vary the criteria provided in section 3.2 must meet the following conditions:

- (1) that the energy savings are expected to persist for three years or more (for example, those of a hard-wired or control system nature) to match the three year period over which the modified pricing rules would apply under TS No. 82;
- (2) that the DSM project meets a minimum (kWh) threshold size, the exact level of this threshold would need to be determined based on a review of DSM projects for this rate class;
- (3) that the customer had a higher energy-consuming plant investment alternative (for example, one that is technically viable, and net present value positive, and would have resulted in a productive plant similar to the project actually completed).

For greater certainty, any applicant who is not satisfied with the results of this process may apply to BCUC for a determination under this section.

4. BC Hydro is to comply with any other directives in the Reasons attached to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day December, 2011.

BY ORDER

Original signed by:

L.F. Kelsey
Panel Chair/Commissioner

Attachment

British Columbia Hydro and Power Authority
Application for Large General Service Rate
Electric Tariff Supplement No. 82

REASONS FOR DECISION

INTRODUCTION

British Columbia Hydro and Power Authority's (BC Hydro) Large General Service (LGS) Tariff was approved by the Commission under Order G-110-10 dated June 29, 2010, following a Negotiated Settlement Process. The purpose of the new LGS rate is to induce conservation. The LGS rate is applied to all customer accounts with electricity demand at or above 150 kW or consumption in excess of 550,000 kWh in any 12-month period.

The new LGS rate was implemented on January 1, 2011. The energy rate component has a two-part rate structure based on historical baseline (HBL) consumption. The Part 1 energy charge is composed of a two-tier declining block rate. The Part 2 is either an energy charge or credit depending on whether energy consumption in the billing period in question is higher or lower than the customer's baseline. Generally speaking, if the customer's consumption is higher than baseline, it will be charged based on a marginal cost based energy rate; conversely if the customer's consumption is lower than customer's baseline, there will be a corresponding energy credit. In addition, several features are built into this rate to mitigate bill volatility. One such feature is the application for prospective growth adjustment under Clause 13 of the LGS Negotiated Settlement Agreement (NSA). Clause 13 is the subject matter of this Application.

Clause 13 reads as follows:

Application for Prospective Growth Adjustment

13. "Customers on a two-part rate who anticipate significant, permanent increases in energy consumption may apply to the BCUC to seek an increase in their HBLs, on a prospective basis. "Permanent" means arising from a significant capital investment in plant. "Significant" means increases in energy consumption totaling at least 30%, or 4,000,000 kWh. In addition, the customer's application may address the electricity efficiency and/or GHG effect of the capital investment."

On May 18, 2011, BC Hydro applied to the British Columbia Utilities Commission (Commission, BCUC) for approval of Tariff Supplement No. 82¹ and consequential changes to Rate Schedules 16xx. For the Reasons that follow, the Commission Panel has concluded that BC Hydro's request for approval of Tariff Supplement (TS) No. 82, in its revised form, as filed on September 19, 2011, should be approved. BC Hydro's second request for an order to approve a modified LGS rate for Pacific BioEnergy Prince George Limited Partnership (PBPGLP) is denied as it is no longer necessary given the approval of the Revised Tariff Supplement.

The Commission Panel is cognizant of the positions put forward by Interveners who support an express right of customers to complain to the BCUC in the event their Demand Side Management (DSM) makes them ineligible for relief. The Commission Panel has addressed their concerns in the section on Commission Determinations below.

PROCEDURAL BACKGROUND

A number of LGS rate customers have applied to the Commission for prospective growth adjustment to HBLs under Clause 13 of the LGS NSA. On May 18, 2011, BC Hydro filed an application with the Commission proposing an Electric Tariff Supplement No. 82, containing explicit pricing rules for these applications (Application) (Exhibit B-1).

¹ A letter of errata indicates that Tariff Supplement No. 78 should be referred to as Tariff Supplement No. 82 (Exhibit B-1-2)

The Commission has been requesting BC Hydro's positions on the various prospective growth applications and BC Hydro's position has been limited to supporting the respective current rates of the applicants to be set as "interim and refundable" pending the Commission review of this Application.

In November 2010, the Commission received its first application for a prospective growth adjustment pursuant to Clause 13 of the LGS NSA from Pacific BioEnergy Prince George Limited Partnership (PBPGLP). This application was put on hold to allow more time for further discussions between BC Hydro and PBPGLP.

On July 11, 2011, the Commission issued Order G-119-11, rescinding Order G-64-11, which effectively held International Forest Products Ltd.'s (Interfor) prospective growth application in abeyance subject to the review of this Application.

On August 2, 2011, the Commission issued Order G-136-11 establishing a written hearing process and a regulatory timetable to review the Application (Exhibit A-1). One round of Information Requests was held. The evidentiary phase ended on September 19, 2011 with the filing of BC Hydro's response to BCUC and Interveners' Information Requests (IRs).

By the close of the evidentiary phase, a total of six applications for prospective growth adjustments had been held in abeyance pending the outcome of this hearing. In addition to the PBPGLP and Interfor applications noted above, there were applications from Evolution Homeowners Association, Sunnyside Greenhouses, Cowichan Valley Regional District, and Vancouver Island Health Authority (VIHA). Since the close of the evidentiary phase, a seventh application from Nelsen Lodge Strata Plan EPS54 has been received.

On September 27, 2011, the Commission Panel issued a letter to all parties requesting submissions on issues related to:

- (1) Investment in Demand Side Management (DSM) - in assessing prospective growth eligibility, should actual electrical energy consumption and customer's forecast of future energy consumption net of DSM be used? Or should investment in DSM and subsequent savings in energy be considered?
- (2) Energy efficiency and/or greenhouse gas (GHG) emissions reductions effects – are these relevant in assessing prospective growth eligibility?
- (3) If parties believe that there may be circumstances where actions related to DSM or GHG emissions reductions have resulted in a party not being eligible for TS No. 82, should the TS contain explicit language that allows parties that fall into this category to apply to the BCUC for approval?
(Exhibit A-4)

Final Submissions were received from VIHA, British Columbia Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), Bentall Kennedy (Canada) LP (Bentall), Interfor, Commercial Energy Consumers of British Columbia (CEC), and Association of Major Power Customers of British Columbia (AMPC).

The Written Hearing concluded with the filing of the Reply Submission by BC Hydro on October 12, 2011.

POSITIONS OF PARTIES

BC Hydro's Proposed Principle and Methodology of the Modified Pricing Rules

The Applicant seeks two orders from the Commission:

- (a) an order to approve TS No. 82 and the consequential changes to rate schedules 16xx; and

- (b) an order to approve the modified LGS rate that will apply to PBPGLP pursuant to its November 24, 2010 application (Exhibit B-1, p. 1).

BC Hydro's premise for proposing a tariff to address LGS prospective growth applications is to be as mechanical and formulaic as possible. A tariff document serves the objectives of consistency and transparency for potential applicants (Exhibit B-1, p. 3). The proposed tariff contains a modified pricing rule, which is based on what BC Hydro refers to as the principle of equivalence. Customers experiencing incremental load, due to economic growth, will receive the same billing treatment as new load associated with a new account, and both types of accounts will see the same relative degree of exposure to the long run marginal cost of new energy supply (Exhibit B-1, p. 5). Under Clause 15 of the NSA, new customers are subject to the "85-15 Rule" where 15% of their load is billed at the marginal cost based rate. Therefore, the applicant's principle of equivalence treats incremental load from existing clients consistently with new load from new clients. BC Hydro proposes that any interpretation issues, primarily respecting qualifying incremental load, would be resolved in accordance with Section 7 of the Tariff Supplement

With regard to customer investment in Demand Side Management (DSM) and consequent savings in energy, BC Hydro had concerns about whether this investment should be considered in applications for prospective growth adjustments. Its concerns include: subjectivity on accounting for energy savings, the increase to rate administration, the potential for disputes, and the increased complexity of customer information requirements (Exhibit B-3, BCUC IR 1.10.3). In fact, BC Hydro proposed that all issues related to the pricing rules should be dealt with through reliance on billing system information only, which is objective evidence. BC Hydro refers to this approach as "mechanical and formulaic." BC Hydro proposes to use actual electrical energy consumption and the customer's forecast of future energy consumption, net of DSM, to assess prospective growth eligibility (Exhibit B-1, p. 3; Exhibit B-3, BCUC IR 1.4.1.1).

The Commission Panel notes BC Hydro's proposed TS includes items such as information requirements from applicants, back-billing, exclusion of applicability to Medium General Service accounts, and pre-investment consumption calculations. These issues were not explicitly addressed by Interveners in their Final Submissions.

Interveners

Regarding BC Hydro's proposed principle of equivalence, the AMPC submits that rates for existing customers for incremental electricity must be equal to, or in no event, not any worse than the rates for a new customer. It submits that qualifying purchases by existing customers must not be treated worse than similar purchases by new customers and that application to the Commission should be permitted if it subsequently turned out that proposed tariff does not meet this objective (AMPC Submission, p. 1).

The BCSEA supports the principle of equivalence as proposed by BC Hydro (BCSEA Submission, p. 1).

Both CEC and Interfor did not make explicit endorsements. Interfor submits that the Application should be approved as filed (Interfor Submission, p. 1) and CEC provides general support to the Tariff Supplement (CEC Submission p. 2).

Both VIHA and Bentall suggest a more subjective approach to the issue of equivalence. VIHA submits that the intent of the LGS NSA was to encourage and reward lower consumption with a part 2 credit methodology on the energy bill and the interpretation of Clause 13 should not be contrary to this philosophy. VIHA submits that the increase to its HBL should be equal to the new load (VIHA Submission, p. 1). Bentall suggests that consumption growth in a development project such as theirs should be billed in accordance to its new stand-alone building (Bentall Submission, p. 2).

The Commission Panel notes that four of the six Interveners either support BC Hydro's principle of equivalence or implicitly endorse it through a general endorsement of the TS as proposed. The exceptions are VIHA and Bentall. No Intervener made submissions to address the interpretation issues of the principle of the '85-15 Rule'.

With respect to the first and second issues raised in the Commission Panel letter, concerning the consideration of DSM investment by customers, AMPC agrees with BC Hydro on the mechanical and formulaic approach but notes that there may be some rare and unusual circumstances where the customer should have a right to apply to the Commission. AMPC believes that opportunity to achieve DSM may be missed or discouraged if the tariff is too inflexible. However, AMPC submits that it is hard to see how the analysis of energy efficiency and GHG reductions could be beneficial given the cost of these determinations (AMPC Submission, p. 2).

BCSEA believes that a mechanical and formulaic approach to prospective growth applications would not materially discourage investments incorporating DSM and GHG reductions. It contends that creating a potentially complicated and resource-intensive process for certain large-sized prospective growth situations could undermine the mechanical and formulaic principle that facilitates implementation and acceptance of the already-complicated two-part LGS and MGS rates (BCSEA Submission, pp. 1, 2). BCSEA says that a customer's actual electrical energy consumption and forecast of future energy consumption net of DSM should be used.

CEC begins their submissions with the following statement: "One of the consistent themes from a commercial perspective is the ability of companies and institutions to grow and succeed and to do this on a level playing field with respect to competition" (CEC Final Submissions, p. 1). They suggest that the Commission should be open and accommodating to customer concerns about eligibility for prospective growth adjustments. CEC also submits that in the TSR, the rate design should consider DSM. Fair and equitable treatment requires an examination of principles in the TSR rate design. In addition, CEC suggests that the Commission should not avoid applying judgment, particularly in these early days, to find an appropriate solution for those concerns (CEC Submission, p. 3).

Interfor concurs with BC Hydro that the rate should be as mechanical and formulaic as possible such that the tariff is dependent on billing information only. However, it does not oppose a modification to TS No. 82 which provides for a right of review, but only under the criteria put forward by BC Hydro as in BCUC IR 1.10.3 (Interfor Submission, p. 2).

The Commission Panel notes that AMPC and Interfor, while supporting a mechanical and formulaic rate, believe that there are some circumstances where customers should have the right to apply to the Commission or the Commission should have a right of review. The Commission Panel also notes CEC's view that the Commission has a role in finding the appropriate balance to accommodate customers' concerns about eligibility.

The Commission Panel, in the third issue of its letter (Exhibit A-4), raised a question as to whether the new tariff should contain specific provisions for LGS customer's whose DSM or GHG emission reduction has a negative impact on the customer's ability to apply for a prospective growth adjustment. AMPC argued that if a tariff with eligibility dependent on DSM or GHG is instituted, its interpretation would be so new to stakeholders that it would require at least interim oversight by the Commission (AMPC Submission, p. 2).

BCSEA submits, in response to the Commission's third issue of its letter that while it is not opposed to the exception to the general rule, there will be difficulty in wording such an exception. The challenge is to word it broadly enough to achieve the desired purpose, yet ensure that it is not simply a loophole (BCSEA Submission, p. 2).

CEC submits that an amendment to BC Hydro's proposed TS is the ideal opportunity for BC Hydro to focus on DSM implementation programs and gain extra energy savings (CEC Submission, p. 5).

Interfor submits that certain circumstances may require exceptions but exceptions should be limited to avoid increased regulatory costs and inefficiencies (Interfor p. 3).

VIHA and Bentall did not make submissions on the Commission Panel issues. VIHA submits that its Royal Jubilee Hospital site HBL should be increased by the actual consumption so that it will receive the Part 2 credits it has earned through the implementation of DSM projects, and that any future DSM projects will receive Part 2 credits, as was the intention of the LGS NSA (VIHA Submission, p. 1).

Bentall's submission includes a request for relief from the current Part 2 LGS rate applied to the property in redevelopment. It indicates that it has made every effort to develop buildings on the site which meet or exceed the current industry energy and conservation standards for new development (Bentall Submission, p. 1).

The Commission Panel notes that AMPC, BCSEA and Interfor are not opposed to including explicit language to allow parties with eligibility dependent DSM and GHG to apply to the Commission for approval, but their support contains various caveats. CEC takes the position that the amendment to the proposal TS would be an ideal opportunity for BC Hydro to focus on DSM implementation programs.

Reply Submission by BC Hydro

BC Hydro submits that the Commission should approve a tariff-based approach to approve prospective growth applications under Clause 13 of the LGS NSA. It states: "Provided that the BCUC does not require BC Hydro to account for DSM, electricity efficiency or GHG-reducing investments of customers in the eligibility requirements for TS No. 78, BC Hydro proposes that the form of TS No. 78 filed with its IR responses be accepted by BCUC order" (Reply Submission, p. 2).

On the principle of equivalence from which the '85-15 Rule' is derived, BC Hydro submits that this principle would avoid discriminatory treatment between members of the same rate class (Reply Submission, p. 4).

BC Hydro submits that certain positions put forward by Interveners would, if accepted, provide preferable treatment to existing customers when compared to new customers. Examples cited by BC Hydro include: (a) VIHA on the HBL of the Royal Jubilee Hospital (RJH) site be increased by the actual consumption; (b) PBPGLP on applying modified pricing over five years; (c) CEC's support of an uncertain process for customer specific relief for at least a few years particularly in regard to accounting for the DSM, electricity efficiency or GHG-reducing investments; and (d) Interfor, BCSEA, CEC and AMPC support for an express right of customers to complain to the BCUC in the event their DSM investments make them ineligible for relief under TS No. 82. BC Hydro, however, concedes that if the express right does not provide any more substantive right to relief than would ordinarily be the case given the existing right of customers to complain to the BCUC, then it is not providing a preference to existing customers over new customers (Reply Submission, pp. 4,5).

On the first two issues in the Commission Panel letter, BC Hydro does not support taking DSM investments and subsequent savings into consideration in the determination of eligibility. One reason put forward by BC Hydro was its TSR experience which involved complex customer-specific information requirements and their verification and evaluation, as well as the potential for disputes in the TSR customer baseline setting. Another reason is the subjective nature of assessing DSM investments which would require BCUC orders, as is the case with customer baseline Load adjustments in the TSR stepped rate. BC Hydro disagrees with CEC's recommendation for the BCUC to consider applying TSR-like processes to the LGS rate. According to BC Hydro's submission, the TSR has 130 accounts and the resources to provide the appropriate level of customer support for "TSR-like processes" for about 6,000 LGS accounts are not at BC Hydro's disposal (Reply Submission, p. 9).

BC Hydro disagrees with CEC that the BCUC is asked to consider the government's energy policy and environmental objectives. BC Hydro suggests that the rate-making powers of the BCUC as established in sections 58-61 of the UCA make no reference to the energy objectives or other policy considerations in rate design (Reply Submission, p. 11). BC Hydro replied to the third issue raised by the Panel (Exhibit A-4), whether parties believe that the TS No. 82 should

contain explicit language that allows parties, whose actions relating to DSM or GHG emissions reductions impact eligibility for prospective growth adjustments, to apply to the BCUC for approval. BC Hydro submits that such explicit language would simply open a loophole in the LGS rate and potentially result in a large number of independent applications to the BCUC (Reply Submission p. 12).

COMMISSION DETERMINATIONS

With respect to the Revised Tariff Supplement, the Commission Panel is of the view that Clause 13 of the LGS NSA provides measures to mitigate bill volatility for LGS customers with significant growth from capital investment, in circumstances that are defined in the same paragraph. The Commission has been receiving a number of applications under Clause 13 since a two-part rate was approved for LGS customers and, at the end of the evidentiary stage, six of these applications were being held in abeyance. Applications to the Commission from LGS customers pursuant Section 13 of the LGS NSA have continued in parallel with this proceeding. The Commission Panel agrees with AMPC's submission that codifying the terms and conditions surrounding an increase in HBL's is appropriate at this time and accepts BC Hydro's proposed tariff-based approach to resolve applications under Clause 13.

In addressing the concerns of the parties, the Panel has divided their reasons into three themes: the principle of equivalence, whether prospective growth applications ought to consider DSM and GHG emission investment, and whether the tariff should specifically provide for DSM and GHG prospective growth application criteria to BCUC.

Principle of Equivalence

The Commission Panel notes that there were no direct objections to BC Hydro's proposed principle of equivalence or the "85-15 Rule" which treats the incremental load of existing customers in a manner similar to the new load of new customers. VIHA and Bentall did not specifically address this principle. However, their requests for relief run counter to the principle of equivalence.

The Commission Panel agrees with BC Hydro that under the "85-15 Rule," discriminatory treatment between members of the same rate class would be avoided. However, the Commission Panel does not agree with BC Hydro that certain positions put forward by Interveners would, if accepted, provide preferable treatment to existing customers compared to new customers.

In agreeing with BC Hydro's proposed principle of equivalence and the "85-15 Rule," the Commission Panel approves the Tariff Supplement as revised in BC Hydro's September 19, 2011 filing subject to the changes outlined below.

As a result of approving the Revised Tariff Supplement, as further revised pursuant to this order, a further order respecting PBPGPLP's application, or each individual customer for that matter, is no longer necessary. Accordingly, the second request in BC Hydro's application for an order to approve the modified LGS rate for PBPGPLP is denied. BC Hydro is directed to review PBPGPLP's request to revise or re-submit its application in order to address its Effective Date under the approved TS No. 82.

BC Hydro is directed to process all the applications under Clause 13 of the LGS NSA which are currently being held in abeyance. Subject to re-submission by customers of new information or revised applications, BC Hydro is granted 20 working days to process the applications from the date of this Order.

As a result of the acceptance of TS No. 82 and its inherent "85-15 Rule" the VIHA's request to increase the HBL of its RJH site as equivalent to its actual consumption is not acceptable. BC Hydro is directed to review with VIHA its existing application currently held in abeyance.

The Commission Panel agrees with BC Hydro that Bentall's submission appears to be a highly subjective solution for Bentall. The Commission Panel is of the view that Bentall's request for sub-metering of its new building does not follow the principle of equivalence and accordingly is denied.

Assessing Prospective Growth Eligibility, DSM and GHG Emissions – First and Second Panel Issues (Exhibit A-4)

As noted above, the Commission Panel does not accept BC Hydro's characterization that preferable treatment is being given to existing customers as compared to new customers in some of the instances it cited as examples. Specifically, the Commission Panel is of the view that CEC's support of a process for customers for specific relief to account for the DSM, energy efficiency or GHG-reducing investments, as well as Interfor, BCSEA, CEC and AMPC support for an express right of customers to complain to the BCUC in the event their DSM investments make them ineligible for relief under TS No. 82, do not constitute preferable treatment.

The concluding sentence in Clause 13 of the NSA says: *"In addition, the customer's application may address the electricity efficiency and/or GHG effect of the capital investment."* The Commission Panel notes that Clause 15 of the LGS NSA under which new accounts are treated, contains no reference to DSM or GHG reductions. The Commission Panel considers that parties to the negotiated settlement process anticipated that existing customers could be treated differently from new customers.

BC Hydro commented that CEC is incorrect in stating that the BCUC must consider the government's energy policy and environmental objectives. The Commission Panel disagrees. While it may be true that sections 58-61 of the UCA make no specific reference to the energy objectives, the Commission endeavours to issue determinations and decisions that consider, inter alia (among other things), the government's energy policy.

The Commission Panel therefore considers that while the mechanical and formulaic approach is appropriate to TS No. 82, there are circumstances where DSM savings of customers have already been verified through BC Hydro's own Power Smart Measurement and Verification department or are in the process of being verified. For those customers, the Commission Panel directs BC Hydro to consider their DSM savings as part of the eligibility assessment.

Explicit Tariff provisions for DSM and GHG Emission Related Applications (Third Issue, Exhibit A-4)

With respect to the third issue raised (Exhibit A-4), the Commission Panel is cognizant of BC Hydro's caution that providing an exception, by explicit language in TS No. 82, could be perceived as a restriction in the right of customers to apply to the BCUC in circumstances not explicitly contemplated, or simply open a loophole (Reply Submission, p. 12). Although the Commission understands this concern, the Commission Panel considers it more desirable to provide LGS customers with tariff language that supports the spirit and intent of the NSA.

The Commission Panel believes that the right to complain to the Commission by any aggrieved party is provided for pursuant to section 83 of the UCA. The Commission will deal with the potential dispute over eligibility between customers and BC Hydro one at a time, guided by the wording in Clause 13 of the LGS NSA as well as the energy objectives of B.C. that are enshrined in legislation such as the *Clean Energy Act*.

In order to provide for a systematic approach to parties who may have a legitimate and material concern that they are being adversely impacted as a result of DSM investment, the Commission Panel finds itself in agreement with Interfor's submission that the Commission's review should be guided by the criteria put forward by BC Hydro as in BCUC IR 1.10.3 (Exhibit B-3).

The Commission Panel has determined that the Tariff Supplement 82, as revised pursuant to the September 19 2011 filing, and as further revised pursuant to this order will contain the following clause to provide consistency with Clause 13 of the LGS NSA :

Despite section 3.2 of this Tariff Supplement, and pursuant to section 13 of the Negotiated Settlement agreement, the customer's application may address the electricity efficiency and/or GHG effect of its capital investment. Should an applicant wish to address such, the applicant must provide appropriate evidence so that BC Hydro may consider this, as an exception to section 3.2. Applications to vary the criteria provided in section 3.2 must meet the following conditions:

- (1) that the energy savings are expected to persist for three years or more (for example, those of a hard-wired or control system nature) to match the three year period over which the modified pricing rules would apply under TS No. 82;
- (2) that the DSM project meets a minimum (kWh) threshold size, the exact level of this threshold would need to be determined based on a review of DSM projects for this rate class; or
- (3) that the customer had a higher energy-consuming plant investment alternative (for example, one that is technically viable, and net present value positive, and would have resulted in a productive plant similar to the project actually completed).

For greater certainty, any applicant who is not satisfied with the results of this process may apply to BCUC for a determination under this section.