



**LETTER L-5-11**

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**VIA EMAIL**

February 10, 2011

TO: Corix Multi-Utility Services Inc.  
British Columbia Hydro and Power Authority

Re: Corix Multi-Utility Services Inc.  
Application for Exemption from British Columbia Hydro and Power Authority  
Large General Service Two-Part Rate  
Request for the Filing of Sur-Reply

Commission Order G-172-10 dated November 4, 2010 established a Written Hearing process for review of the Corix Multi-Utility Services Inc. (Corix) application for exemption from the British Columbia Hydro and Power Authority (BC Hydro) Large General Service Two-Part Rate. The regulatory timetable required that Corix file its Final Submission by January 12, 2011, that Interveners file their Final Submissions by January 18, 2011, and that Corix file any Reply Submission by January 24, 2011.

On January 26, 2011 (as amended on February 1, 2011), BC Hydro filed a letter with the Commission raising an issue of procedural fairness. BC Hydro takes the position that the Commission must either disregard Article 12 of Corix's Reply (which deals with the issue of whether Corix is required to mirror relevant BC Hydro rates for its end use customers) or allow BC Hydro the opportunity to file Sur-Reply. The Commission, by letter dated February 1, 2011, provided Corix with the opportunity to respond to BC Hydro and also provided BC Hydro with the opportunity to reply to Corix's response.

This letter addresses the procedural fairness issue raised by BC Hydro in its letter to the Commission dated January 26, 2011.

By letter dated February 3, 2011 (as revised), Corix asserts that although it was silent on the issue "that Corix was obliged by BC Hydro to charge otherwise applicable BC Hydro rates to Corix's customers" in its Final Submission, it does not mean that Corix in any way conceded or acknowledged that it ceased to hold this view. Furthermore, Corix asserts that it was BC Hydro that introduced new evidence as part of its Final Submission on January 18, 2011 by way of a document showing correspondence on this matter. Corix takes the position that it was simply qualifying its position in Article 12 of its Reply because it was responding to new information introduced by BC Hydro. Corix submits that the Commission should not disregard Article 12 of its Reply because to do so would to ignore evidence raised by BC Hydro in its Submission. Corix also submits that BC Hydro's claim regarding procedural fairness is without merit and should be dismissed but concedes that if the Commission finds that a new argument has been raised or somehow re-introduced, BC Hydro should be provided with the opportunity to submit Sur-Reply.

By letter dated February 4, 2011, BC Hydro submits that because Corix failed to advance the argument in question in its Final Submission, the only reasonable inference BC Hydro could draw was that Corix had

abandoned the argument. BC Hydro also submits that Corix's Response states a preference for allowing a Sur-Reply rather than ignoring Article 12 should the Commission find that Article 12 unfairly raises an argument that could have been made in Corix's Final Submission. BC Hydro submits that, in the circumstances, the Commission should allow it to file a Sur-Reply to the argument contained in Article 12 of Corix's Reply.

The Commission Panel finds that Corix did advance the argument in question in its initial correspondence and that it was responded to by BC Hydro. The Commission Panel also notes that this argument was not raised in Corix's Final Submission but was re-introduced in the Reply Submission, although arguably in response to BC Hydro's Final Submission. However, in the interests of expediency, and to ensure there is no suggestion of unfairness, and in light of the Commission's ability to accept relevant information whether or not the same information would necessarily be admissible in a court of law under the *Administrative Tribunals Act*<sup>1</sup>, the Panel will allow BC Hydro file a Sur-Reply, which is to be strictly limited to the argument contained in Article 12 of Corix's Reply.

BC Hydro is to file its Sur-Reply on or before 4:00 p.m. on Monday, February 14, 2011.

Yours truly,

Erica M. Hamilton

AAR/ac

cc: Registered Interveners

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<sup>1</sup> Administrative Tribunals Act, S.B.C. 2004 c. 45 s. 40