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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-66-12**

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

and

**An Application by Hemlock Utility Services Ltd. and 0762608 B.C. Ltd.
for Approval of Various Matters**

BEFORE: L.F. Kelsey, Commissioner
D.M. Morton, Commissioner
R.D. Revel, Commissioner
May 24, 2012

ORDER

WHEREAS:

- A. In 1982, Hemlock Valley Electrical Services Ltd. received approval to construct an electrical distribution system to primarily service the Hemlock Valley recreational area by way of British Columbia Utilities Commission (Commission) Order C-5-82;
- B. In 2005, Hemlock Valley Electrical Services Ltd. had entered insolvency proceedings and Mackay & Company Ltd. (Mackay) was assigned as receiver manager in that matter;
- C. In early 2006, Mackay was replaced by the Bowra Group Inc. (Bowra) as receiver manager in the Hemlock Valley Electrical Services Ltd. bankruptcy proceeding;
- D. On August 24, 2006, Bowra was successful at securing a buyer of certain assets of Hemlock Valley Electrical Services Ltd., which included the electrical distribution system. A purchase agreement was entered into by 0762608 B.C. Ltd., an entity within the Berezan Management Group (Berezan) and Bowra, in its capacity as the receiver manager appointed in Court Action S056571 and 0762608 B.C. Ltd. The transaction obtained Court Approval on October 3, 2006;
- E. On October 19, 2006, 0762608 B.C. Ltd. entered into a second purchase agreement with another Berezan-controlled entity, Hemlock Utility Services Ltd. (Hemlock, the Utility) for the sale and disposition of certain assets, including the Hemlock Valley electrical distribution system, as set forth in an agreement;
- F. On March 6, 2007, the Commission began inquiries to Hemlock requesting information related to the various transfers and transactions that had occurred;

- G. On March 23, 2007, the Commission issued Letter L-26-07 to Bowra requesting a timetable for the application for the disposition and sale of the Hemlock Valley electrical system, by means of shares or assets, under sections 52 or 54 of the *Utilities Commission Act* (UCA);
- H. On November 30, 2010, 0762608 B.C. Ltd. and Hemlock, filed an application (the Application) pursuant to section 52(1) of the UCA, requesting approval for the sale and disposition by Bowra to 0762608 B.C. Ltd. of certain assets as set forth in an agreement dated August 24, 2006, between Bowra, in its capacity as the receiver manager appointed in Court Action S056571, and 0762608 B.C. Ltd (the First Purchase Agreement);
- I. The Application also sought approval of the sale and disposition by 0762608 B.C. Ltd. to Hemlock, pursuant to section 52(1) of the UCA, of certain assets as set forth in an agreement dated October 19, 2006, between 0762608 B.C. Ltd. and Hemlock (the Second Purchase Agreement);
- J. The Application also sought Commission approval of a rate increase for the electricity charges to the customers of the subject utility and an automatic mechanism for rate increases, pursuant to sections 59 to 61 of the UCA;
- K. Hemlock is seeking a rate increase for customers who use between 0 and 124 kilowatt hours from \$20 per month to \$24 per month;
- L. Hemlock is seeking a rate increase for customers who use in excess of 124 kilowatt hours per month from \$0.165 per kilowatt hour to \$0.2644 per kilowatt hour;
- M. The Commission believes the approvals are warranted, subject to a number of amendments and conditions contained in this Order.

NOW THEREFORE the Commission orders as follows:

- 1. The sale and disposition by Bowra to 0762608 B.C. Ltd. of certain assets as set forth in the Purchase Agreement is hereby approved, pursuant to section 52(1) of the UCA, and the sale and disposition by 0762608 B.C. Ltd. to Hemlock Utility Services Ltd. of the utility assets referred to in the Second Purchase Agreement is hereby approved, pursuant to section 52(1) of the UCA, subject to the following conditions:
 - a. The year ending balance of rate base of Hemlock at April 30, 2011, for rate setting purposes is deemed to be \$189,939. This amount was determined using one third of the fixed assets of Hemlock at April 30, 2011, which amounted to \$205,474, less a deemed amortization charge totalling \$15,535, to recognize unrecorded amortization on assets between April 30, 2004 and October 25, 2006. Should the Utility wish to include any other assets within the rate base of the Utility, an application to the Commission can be made for such inclusion;

- b. To protect the public's interest and subject to satisfactory proof as described below, Hemlock Utility Services Ltd. will honour the commitments for customer deposits collected prior to August 24, 2006, without interest. Should customers seek collection of funds, the customer shall first notify Hemlock. If both parties agree that sufficient evidence of the deposit is available, Hemlock shall refund the amount. If both parties are not in agreement on the refund of the deposit, Hemlock is directed to notify the customer to contact the Commission regarding the claim and will notify the Commission of all such requests within 30 days of their receipt. Further, if both parties are not in agreement, the customer shall have the onus of proving to the Commission that the customer made such deposit.
2. The Commission approves all prior changes in control of utility assets that occurred between 2005 and 2006 between Hemlock Valley Electrical Services Ltd. and MacKay as they led up to the ultimate acquisition of the Hemlock Valley electrical distribution system by Hemlock.
3. For the purposes of rate setting, the Commission accepts Hemlock's legal structure, which includes assets and operations of both the electrical utility and other non-regulated items. In order to set rates using a cost of service model, the Commission deems Hemlock's electrical utility to have the following:
 - a. A debt to equity structure of 40 percent to 60 percent;
 - b. An allowable return on equity at 9.5 percent, consistent with the current rate of return of BC's benchmark Utility;
 - c. A deemed debt financing rate, as determined using the Bank of Canada prime rate for February 2012, of the Canadian prime rate plus a two percent risk premium.
4. The Commission accepts Hemlock's forecasts of electrical utility costs for purposes of rate setting, subject to adjustment as noted within this Order.
5. The Commission approves Hemlock's request to increase its electrical rates for customers who use between 0 and 124 kilowatt hours per month from \$20 per month to \$24 per month.
6. The Commission does not approve Hemlock's request to increase its electrical rates for customers who use in excess of 124 kilowatt hours per month from \$0.165 per kilowatt hour to \$0.2644 per kilowatt hour as such an increase will result in forecasted earnings in excess of the benchmark and Utility's approved return on equity as approved in this Order. Rather, the Commission approves an increase in Hemlock's electrical rates for customers who use in excess of 124 kilowatt hours per month from \$0.165 per kilowatt hour to \$0.23 per kilowatt hour.

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7. The Commission does not accept Hemlock's request for an automatic rate adjustment mechanism at this time due to the limited demonstrated ability of Hemlock to calculate regulated rates. However, should rate changes be required, Hemlock is directed to file with the Commission an updated schedule demonstrating rates both before and after the requested change. As well, a summary narrative of assumptions, calculations and reasons for any requested change in rates should be provided.
8. The Commission accepts all documents that have been provided by Hemlock and the various parties to the proceeding as sufficient to discharge Hemlock's regulatory reporting requirements to the Commission for the purposes of Annual Reporting up to April 30, 2011. Hemlock's next annual report will be for the year ended April 30, 2012, to be filed with the Commission within four months of the Utility's fiscal year end.
9. The Commission directs Hemlock to file with the Commission the Utility's amended and up to date tariff pages and General Terms and Conditions of service within 60 days of the release of the attached Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of May 2012.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner