



LETTER L-65-12

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 40403

ERICA HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

VIA EMAIL

bchydroregulatorygroup@bchydro.com

November 22, 2012

Ms. Janet Fraser
Chief Regulatory Officer
British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, BC V6B 5R3

Dear Ms. Fraser:

Re: British Columbia Hydro and Power Authority
Application to Permanently Cease Operations at the Heber Diversion Dam

Application for Reconsideration of portions of Order G-42-12

On June 15, 2012, BC Hydro filed an Application with the Commission under section 99 of the *Utilities Commission Act* (UCA) for Reconsideration of portions of Commission Order G-42-12. Specifically, BC Hydro seeks to delete paragraph 3 of Order G-42-12 and to include a reference to section 43 of the UCA in the "Now Therefore" clause of the Order.

Paragraph 3 states:

"The Commission directs BC Hydro to seek agreement from Fisheries and Oceans Canada, BC Ministry of Transportation, BC Parks and other government agencies and stakeholders that administer properties and/or that maintain a direct responsibility for, over or associated with the site, that they will accept the BC Ministry of Environment's determination of the satisfactory remediation of the contaminated site and that upon satisfactory completion of the project, BC Hydro will no longer have any connection or responsibility for, over or associated with the former site of the Heber Diversion. BC Hydro is directed to report the outcome on these agreements in its project completion report." (emphasis added)

BC Hydro submits that:

- the Commission made an error in law in directing BC Hydro to seek the type of agreements from the government agencies and stakeholders enumerated in paragraph 3 in that it has no jurisdiction to do so; and
- section 43 of the UCA is the statutory source of the BCUC's jurisdiction to require the filing of Project completion and other Project-related reporting and should therefore be referenced in the Order.

In the Commission's view, the Reconsideration Application does not establish that an error was made, nor does it establish that if an error was made, as alleged, that such error is of any significance. The Commission

therefore finds that BC Hydro has failed to establish that a reasonable basis exists for allowing the Reconsideration.

The Commission disagrees with BC Hydro and finds that, *inter alia*, its general supervisory role as set out in section 23 of the UCA contemplates it making orders about a broad range of matters, including the direction in question. In this case, paragraph 3 merely directed BC Hydro to “seek” certain agreements for the purpose of limiting potential future liability which might arise from the Heber Decommissioning Project. For greater clarity, the Order was intended to direct BC Hydro to make reasonable attempts to relieve itself from future liabilities associated with the site of the Heber Diversion, and to report the outcome of those efforts.

The Commission is of the further view that the inclusion of references to additional sections of the UCA is not required and, given its determination on the alleged error, does not intend to revise and re-issue the Order.

For the reasons set out above, the Commission does not find that proceeding with a Reconsideration of this matter is warranted.

Yours truly,

Original signed by:

Erica Hamilton

/yl

cc: British Columbia Old Age Pensioners Organization
(lworth@bcpiac.com, support@bcpiac.com)