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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-103-05**

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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
Resource Expenditure and Acquisition Plan and Fiscal 2006 Open Call for Energy

BEFORE: R.H. Hobbs, Chair
L.A. Boychuk, Commissioner
P.E. Vivian, Commissioner
October 5, 2005

O R D E R

WHEREAS:

- A. On March 7, 2005, British Columbia Hydro and Power Authority ("BC Hydro") filed its Resource Expenditure and Acquisition Plan ("REAP") pursuant to Subsection 45(6.1) of the Utilities Commission Act; and
- B. The REAP includes a plan of capital expenditures for Fiscal 2006 ("F2006") and F2007; a forecast of expenditures for the acquisition of energy pursuant to existing electricity purchase agreements for F2006 through F2009; and a plan of how BC Hydro intends to reduce the demand for energy purchased from BC Hydro by its customers and a forecast of expenditures for that purpose for F2006 and F2007. The REAP also includes a plan of how BC Hydro intends to meet the demand for energy by acquiring energy from other persons through a proposed "open call" to the private sector in F2006 ("F2006 Call"); and
- C. By letter dated March 14, 2005, the Commission requested comments on the process for the review of REAP; and
- D. By letter dated March 29, 2005, BC Hydro said that it would submit "Supplemental F2006 Call Evidence" on May 17, 2005; and

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- E. As stated in Letter No. L-28-05 dated April 7, 2005, the Commission concluded that the review of the REAP should include both an oral hearing and a written hearing process, and that the scope of the oral hearing process would be determined following the filing of BC Hydro's Supplemental F2006 Call Evidence. The Commission also established a Regulatory Timetable that included a Pre-Hearing Conference ("PHC") to be held on June 2, 2005; and
- F. By letter dated May 20, 2005, BC Hydro amended the proposed date for filing its F2006 Call Evidence to June 15, 2005; and
- G. By Letter No. L-33-05 dated May 26, 2005, the Commission stated that it would hear submissions regarding issues for the oral hearing process at the PHC, which it re-scheduled for July 12, 2005, and that it expected that issues not included in the scope of the oral hearing process would be addressed by way of written submissions; and
- H. By letter dated June 17, 2005, BC Hydro advised the Commission that it was exercising its right to terminate the Energy Purchase Agreement related to the Duke Point Project and therefore needed to reconsider the evidence it had planned to file in support of the F2006 Call. BC Hydro stated that it expected to be able to advise the Commission on the status of its F2006 Call in advance of the PHC scheduled for July 12, 2005; and
- I. In a letter dated July 7, 2005, BC Hydro advised that it intended to file its Supplemental F2006 Call Evidence the following day, and requested an amended timetable allowing for information requests and responses on the Supplemental F2006 Call Evidence and re-scheduling the PHC until a date in August; and
- J. BC Hydro filed its Supplemental F2006 Call Evidence on July 8, 2005; and
- K. By Letter No. L-51-05 dated July 8, 2005, the Commission re-scheduled the PHC to August 17, 2005; and

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- L. All participants at the PHC who took a position with respect to whether or not a negotiated settlement process (“NSP”) should be included in the Regulatory Timetable strongly supported an NSP; and
- M. By letter L-69-05 dated August 22, 2005, the Commission established a Regulatory Timetable that included an NSP regarding the entire 2005 REAP, including the F2006 Call, commencing on September 20, 2005. The Regulatory Timetable also established a second PHC to be held on October 5, 2005; and
- N. The Negotiated Settlement discussions were held on September 20, 21 and 22, 2005 and a proposed Negotiated Settlement was supported by BC Hydro and Intervenors who participated in the discussions; and
- O. The Negotiated Settlement and letters of comment from NSP participants were circulated to the Commission Panel and all Intervenors on October 4, 2005. Non-participants were requested to provide any comments on the Negotiated Settlement to the Commission at the PHC scheduled for October 5, 2005; and
- P. The only NSP non-participant who commented on the Negotiated Settlement at the PHC supported the Negotiated Settlement; and
- Q. The Commission has reviewed the Negotiated Settlement, including the letters of support filed by participants in the NSP and the comments offered in support of the settlement at the PHC, and considers that approval of the Negotiated Settlement is in the public interest.

NOW THEREFORE the Commission approves the Negotiated Settlement attached as Appendix 1 to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of October 2005.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

~~CONFIDENTIAL~~
NEGOTIATED SETTLEMENT
British Columbia Hydro and Power Authority
2005 Resource Expenditure and Acquisition Plan Application

On 7 March 2005 British Columbia Hydro and Power Authority (BC Hydro) filed its 2005 Resource Expenditure and Acquisition Plan application (the 2005 REAP) pursuant to Section 45(6.1) of the *Utilities Commission Act* (Act) for the British Columbia Utilities Commission's (Commission) review and approval. The 2005 REAP includes planned expenditures on capital (Capital), existing Electricity Purchase Agreements (EPAs), and demand side management (DSM). The 2005 REAP also includes a plan to meet the demand for electricity by acquiring energy from other persons, and seeks Commission approval of an "open call" for energy to the private sector in fiscal 2006 (the F2006 Call).

On 8 July 2005 BC Hydro filed Supplemental F2006 Call Evidence that supplemented and amended the 2005 REAP, and addressed the nature of the proposed F2006 Call and the need for the F2006 Call. BC Hydro sought Commission approval of the need for the F2006 Call, and Commission comment on the proposed terms and conditions of the F2006 Call (Terms and Conditions).

A conference was held on 20, 21 and 22 September 2005 pursuant to the Commission's Negotiated Settlement Process to negotiate a settlement of the 2005 REAP. Participating in the settlement conference were representatives of the Joint Industry Electricity Steering Committee, BC Old Age Pensioners' Organization et al, Commercial Energy Consumers of BC, Independent Power Producers of British Columbia, BC Sustainable Energy Association & Sierra Club, Elk Valley Coal Corporation, the City of New Westminster, Terasen Gas, Cloudworks Energy Inc., Columbia Power Corporation, Geza Vamos, Green Island Energy Ltd., Epcor Power Development Corp., Sea Breeze Power Corp., Dokie Wind Energy, Western GeoPower Corp., Global Cogenix Industrial Corporation and Aeolis Wind Power Corp. and BC Hydro. Parties were assisted in reaching a settlement by Commission staff.

The parties discussed the 2005 REAP in two separate components: (i) the F2006 Call, and (ii) the Capital, existing EPAs and DSM expenditures. The parties were successful in reaching settlements on both components, and these settlements are attached as Schedule A – F2006 Call; and Schedule B – Capital, EPA and DSM Expenditures.

The parties unanimously agree that the F2006 Call is justified in terms of BC Hydro's projected energy requirements and that BC Hydro should proceed as soon as possible with the F2006 Call as set out in the 2005 REAP and evidence filed to date, with the modifications set out in Schedule A. In the interests of proceeding with the F2006 Call as soon as possible, the parties

further agree that the F2006 Call settlement in Schedule A is conditional on the Commission's approval of the F2006 Call size (Issue #1 in Schedule A), and receipt of Commission comments, if any, on the proposed Terms and Conditions of the F2006 Call on or before 27 October 2005, notwithstanding that the Commission may not have approved the Capital, EPA and DSM Expenditures settlement (Schedule B) by that time.

The parties acknowledge and agree that none of the provisions of the F2006 Call settlement (Schedule A) are severable, and that none of the provisions of the Capital, EPA and DSM Expenditures settlement (Schedule B) are severable. If the Commission does not accept Schedule A in its entirety, there is no agreement on the F2006 Call. If the Commission does not accept Schedule B in its entirety, there is no agreement on the Capital, EPA and DSM expenditures in the 2005 REAP. However, in the interests of proceeding with the F2006 Call as soon as possible the parties agree that the settlements in Schedule A and Schedule B are severable from each other.

BC Hydro confirms it will seek regulatory approval of the Long-Term Acquisition Plan (LTAP), to be included with the 2005 Integrated Electricity Plan (IEP), pursuant to Section 45(6.2) of the Act. Without prejudice to the parties' rights to make submissions on the scope of Commission oversight of the 2005 IEP, the evidence in the 2005 IEP that supports the LTAP will be subject to Commission review, and will reflect the following issues, amongst other things:

- later Commercial Operation Dates (COD) for large projects;
- the impact of greenhouse gas (GHG) regulation on resources, including GHG adders; and
- the use of imports for firm supply, and bridging.

BC Hydro and the participants agree to hold confidential the discussions held during the settlement conference unless agreed to by all participants and released publicly by Commission staff. Agreement to this negotiated settlement is on a without prejudice basis. Any position taken or statement made during discussions, by the participants or BC Hydro, will not be made public or restrict in any way, positions taken in future proceedings concerning other applications.

2005 REAP NEGOTIATED SETTLEMENT

SCHEDULE A – F2006 CALL

In its 2005 REAP Application BC Hydro has sought Commission approval of the need for the F2006 Call, and Commission comment on the proposed Terms and Conditions of the F2006 Call. Thus, this part of the Settlement Agreement addresses both the need for the F2006 Call and the Terms and Conditions discussed during the settlement process.

	Issue	Original Proposal	Settlement
1.	Call Size	Target minimum of 800 GWh/yr of firm electrical energy from large projects and associated non-firm electrical energy, and a target minimum of 200 GWh/yr of electrical energy from small projects (<10 MW).	The call will be for a target of approximately 2400 GWh/yr of firm electrical energy (and associated non-firm electrical energy) from large projects. The 200 GWh/yr of electrical energy target minimum for small projects (<10MW) is unchanged. The awards will take into account BC Hydro's need for approximately 800 GWh/yr of firm electrical energy in F2010 and approximately 1600 further GWh/yr of firm electrical energy in F2011.
2.	COD	The target COD is between 1 January 2008 and 1 October 2009, with a 6 month "grace period."	The call will allow for a COD between 1 October 2007 and 1 November 2010, with no "grace period" after 1 November 2010.
3.	Liquidated Damages (LDs) for Delivery Obligation	For monthly firm contracts, the successful bidder is required to deliver the tendered monthly firm energy amount in each month. All energy delivered in any given month (below any Split Bid Threshold Level) is measured against the tendered firm energy amount for that month. Shortfalls in monthly deliveries will be subject to mark-to-market LDs with a \$100/MWh cap. LDs are also capped at twice the performance security per year.	BC Hydro commits to allow greater tolerances on hourly and monthly firm deliveries before LDs will apply. Specifically, BC Hydro will include a provision for a 10% buffer (LDs are applied to deliveries under 90% of contracted firm electrical energy) on hourly and monthly firm deliveries before LDs are applicable. This will include planned and unplanned outages. For clarity, the LDs are only payable on the positive difference between Mid-C and the adjusted bid price (i.e., if the Mid-C price is less than the adjusted bid price there are no LDs). The LDs are capped at a Mid-C price of C\$100/MWh (escalated at CPI) less the adjusted bid price.
4.	Flow Throughs	The proposed EPA allows flow through of 50% of the costs associated with property tax rate changes.	By way of clarification, the baseline property tax rate is the rate at COD.
5.	Compliance with GHG Regulations	Seller to comply with all Canadian federal, provincial and local regulatory regimes for GHG emissions, regardless of whether or not the regimes are otherwise applicable to the successful bidder's plant, based on the timing of COD or any other date stipulated in applicable laws and regulations.	The Seller must comply with all applicable laws and all permits during the term of the EPA, including any requirements imposed by government agencies, relating to GHG emissions from the successful bidder's plant.

6.	Disclosure of Price Data	BC Hydro will publish on its website after EPA award the bid prices of all successful and unsuccessful tenders.	BC Hydro will publish on its website after EPA award the bid prices of all successful and unsuccessful tenders. The intention is to provide sufficient information to allow stakeholders to understand the outcome of the F2006 Call evaluation and basis of the awards; however, the specifics of how bid prices will be disclosed requires further input from independent power producers (IPPs) and stakeholders.
7.	Firm Imports	Projects must be located in British Columbia and capable of connection to the integrated system.	<p>BC Hydro believes this mandatory requirement is appropriate for the reasons set out in BC Hydro's response to JIESC IR 2.18.2:</p> <ul style="list-style-type: none"> • minimize jurisdictional risk over the term of the EPA; • minimize transmission risk over the EPA term; • alignment of F2006 Call with intent of the 2002 BC Energy Plan. The 2002 BC Energy Plan stresses that unless domestic energy sources are developed, British Columbians could find themselves increasingly dependent on imports and vulnerable to price swings. Policy Action No. 13 addresses this concern by providing that BC's IPPs are to develop new electricity generation in BC; • consistent with majority of Canadian jurisdictions; • BC Hydro is confident adequate volumes of cost-effective resources exist within BC and will be bid into the F2006 Call to ensure projected needs are met; • alignment with the desires of a majority of First Nations and stakeholder comments supporting BC development. <p>Addressing the issues described in this response would delay or jeopardize the F2006 Call. The use of imports will be among the range of resource options considered in the 2005 IEP.</p>
8.	Discount of Tier 1 Power	BC Hydro expected the discount to be the same for all successful bidders and the amount to be applied was expected to range from \$8/MWh to \$12/MWh.	BC Hydro has completed its analysis and now proposes an \$8/MWh discount for the non-firm Tier 1.

9.	Pre-Qualification Requirements and Project Risk Assessment	<p>BC Hydro proposes that the call consist of one tender stage, there will be no preliminary or separate pre-qualification stage for bidders or projects. A single stage simplifies the process, shortens the period from issue of the Call for Tenders (CFT) to EPA award, reduces costs for BC Hydro and bidders, and is consistent with input from bidders in past calls. The mandatory requirements and evaluation criteria (including project risk assessment) are set out in the Supplemental Evidence and will be set out in the finalized CFT documents. This information allows bidders to determine whether they are likely to qualify.</p>	<p>No change from Application. For clarity, the mandatory requirements and evaluation criteria set out in the final CFT documents will include the specific thresholds by project type that BC Hydro will use in its project risk assessment. These factors include those listed in Exhibit A to the Direct Testimony of Mary Hemmingsen at page 9, as well as progress in the environmental assessment process if applicable, First Nations and community support, and wind and water availability data. In conducting a project risk assessment, BC Hydro will, amongst other things, take into account whether a bidder proposes to offset its GHG emissions to the applicable Province of British Columbia standard, or, in the absence of such a standard, to a combined cycle gas turbine level, as evidenced in its GHG mitigation plan.</p>
10.	Bridging (use of alternative resources to bridge a bidder's commitments prior to COD)	Not permitted.	<p>No change from Application. The complexity and project risk assessment issues associated with permitting bridging at this late stage would delay or jeopardize the F2006 Call. BC Hydro will consider this concept during the development of future calls.</p>

2005 REAP NEGOTIATED SETTLEMENT

SCHEDULE B – CAPITAL, EPA AND DSM EXPENDITURES

Many parties feel they do not have enough information about certain projects identified in the 2005 REAP Application and, thus, take no position on the Capital, EPA and DSM expenditures in the 2005 REAP.

Therefore the parties agree that:

1. With the filing of the 2005 REAP, BC Hydro is in compliance with the requirements of Section 45(6.1) of the Act in relation to the level of development of the planning process underlying the 2005 REAP.
2. The Commission need not exercise its jurisdiction under Section 45(6.2)(b) or (c) of the Act respecting the 2005 REAP.
3. As part of BC Hydro's F2007 Revenue Requirements Application, BC Hydro will seek a Commission determination that its planned F2007 capital expenditures (F2007 Capital Plan) are in the interests of persons within British Columbia who receive, or may receive, service from BC Hydro. With respect to planned capital expenditures at Mica, GM Shrum, John Hart and Ruskin, BC Hydro will seek a Commission determination that total planned capital expenditures (i.e., beyond F2007) at each of those facilities are in the interests of persons within British Columbia who receive, or may receive, service from BC Hydro. In support of these components of the F2007 Capital Plan BC Hydro would provide the same level of detail and justification that a Certificate of Public Convenience and Necessity application would contain, commensurate with, among other things, the planned level of expenditure and the development status of the various projects at each facility.

To provide an early overview of what the supporting information would look like for capital programs at one of its major facilities, and how it is developed, BC Hydro will host a workshop as soon as practicable with respect to the asset plan of the GM Shrum facility.

4. BC Hydro is in the process of developing its 2005 IEP. BC Hydro will address, amongst other things, Site C, Burrard Thermal and DSM in its 2005 IEP and F2007 Revenue Requirements Application.
5. BC Hydro will address its First Nations expenditures in its F2007 Revenue Requirements Application.
6. Subject to confidentiality and security issues, BC Hydro will make available to any interested party the Annual Dam Safety Report and the Advisory Board Reports in respect of the Little Chief Slide, John Hart and Ruskin projects. As requested, BC Hydro will file with the Commission for information the Annual Dam Safety Report and the Advisory Board Reports in respect of the Little Chief Slide, John Hart and Ruskin projects.
7. BC Hydro will host a workshop for interested parties as soon as practicable with respect to its Aberfeldie project. At that workshop, BC Hydro will present its analysis and assumptions of the project and where practicable, compare it to the requirements of the F2006 Call.

8. BC Hydro will establish a public committee to provide advice and input into DSM (electricity conservation and efficiency) as soon as practicable and will reflect, as appropriate, such input and advice in the F2007 Revenue Requirements Application.
9. BC Hydro will conduct a thorough update of its 2002 Conservation Potential Review to assist in the identification of cost-effective demand side management potential.
10. BC Hydro confirms that it evaluates its own projects inclusive of grants in lieu and water rental charges in constant dollars.