

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-142-09**

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

and

**An Application by British Columbia Transmission Corporation
for an Aboriginal Relations Deferral Account, a Polychlorinated Biphenyls mitigation Deferral Account, and an
Amendment to the Definition of the Emergency Maintenance Deferral Account**

BEFORE: L.F. Kelsey, Commissioner
P.E. Vivian, Commissioner
D.A. Cote, Commissioner
November 26, 2009

O R D E R

WHEREAS:

- A. On October 30, 2009 British Columbia Transmission Corporation ("BCTC") applied to the British Columbia Utilities Commission (the "Commission"), pursuant to section 60 of the Utilities Commission Act (the "Act") and section 6 of Special Direction No. 9, requesting the approval of the Aboriginal Relations Deferral Account ("ARDA"), the Polychlorinated Biphenyls ("PCB") mitigation Deferral Account ("PCBDA") and the amendment of the definition of the Emergency Maintenance Deferral Account ("EMDA"), effective April 1, 2010 (the "Application"); and
- B. On February 18, 2009, the Court of Appeal for British Columbia released its decisions in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 and *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)*, 2009 BCCA 67. The Court of Appeal has held that the Commission has a constitutional duty to consider whether the Crown's constitutional duty of consultation and, if necessary, accommodation has been fulfilled with respect to its regulation of public utilities; and
- C. BCTC requests approval of two one-time deferral accounts, the ARDA and PCBDA, to record F2010 and F2011 incremental costs associated with activities that are required but not included in the approved F2010 Transmission Revenue Requirements ("TRR") rates; and
- D. BCTC is of the view that First Nations consultation may be required in the Planning Phase, in advance of specific capital projects to which costs might be allocated. BCTC forecasts incremental non-capital costs for First Nation consultation assessment and activities in the range of \$0.4 million for F2010 and \$1.2 million for F2011; and

- E. On September 17, 2008, new Federal PCB Regulations (“Regulations”) were issued regarding the management of PCBs. BCTC’s F2010 TRR rates did not include the cost of complying with the new Regulations. The incremental non-capital cost to address the requirements of the new Regulations is forecast to be approximately \$1.5 million in each of F2010 and F2011; and
- G. BCTC also requests Commission approval to record all incremental non-capital costs and recoveries for third party damages to transmission assets through the EMDA for future disposition of the outstanding balance, and to adjust the definition of the EMDA as follows:
- “Non-capital emergency expenditures, such as higher-than-forecast costs incurred as a result of unanticipated major equipment failures, extreme weather, wildfires, *third party damages and associated recoveries* or similar events.”; and
- H. Furthermore, BCTC proposes that the revised definition for EMDA be used to record eligible costs and associated recoveries from F2011 onward; and
- I. BCTC also seeks to recover in rates any interest costs associated with the balances in the ARDA, PBCDA and EMDA using interest rates similar to BCTC’s other deferral accounts. In addition, BCTC proposes that the balances in the ARDA, the PCBDA and the third party damages and associated recoveries included in the EMDA form part of BCTC’s application for annual clearing of its other Deferral Accounts; and
- J. The Commission has reviewed the ARDA, PCBDA and the amendment to the EMDA and considers that approval is warranted.

NOW THEREFORE the Commission, pursuant to section 60 of the Act and section 6 of Special Direction No. 9, determines as follows:

1. The Commission approves the establishment of a deferral account to recover the cost of incremental F2010 and F2011 First Nation consultation assessment and activities that are required but not included in the approved F2010 TRR rates.
2. The Commission approves the establishment of a deferral account to recover the incremental cost of complying with new Federal PCB Regulations that are required but not included in the approved F2010 TRR rates.
3. The Commission approves the change in the definition of the EMDA as follows:

“Non-capital emergency expenditures, such as higher-than-forecast costs incurred as a result of unanticipated major equipment failures, extreme weather, wildfires, *third party damages and associated recoveries* or similar events.”

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4. The Commission approves the inclusion of all incremental non-capital costs and recoveries for third party damages to transmission assets in the EMDA.
5. The Commission approves the recovery in rates interest costs associated with the balances in the ARDA, PBCDA and EMDA using interest rates similar to BCTC's other deferral accounts.
6. The Commission approves the recovery of the balances in the ARDA, the PCBDA and the third party damages and associated recoveries included in the EMDA as part of BCTC's application for annual clearing of its other Deferral Accounts.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of November 2009.

BY ORDER

Original signed by:

D.A. Cote
Commissioner