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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-12-10**

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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 Hydro and Power Authority
for the Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest
in the Waneta Dam and Associated Assets

BEFORE:

A.W.K. Anderson, Commissioner
and Panel Chair
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

February 3, 2010

O R D E R

WHEREAS:

- A. On June 17, 2009 British Columbia Hydro and Power Authority ("BC Hydro") entered into a non-binding master term sheet (the "Term Sheet") with Teck Metals Ltd. ("Teck") and Teck Resources Limited that contemplates the sale and purchase ("Waneta Transaction") of an undivided one-third interest in the Waneta Dam on the Pend d'Oreille River and associated assets (the "Waneta Assets"); and
- B. On July 6, 2009 BC Hydro made a filing ("Filing") pursuant to section 44.2(1) of the *Utilities Commission Act* (the "Act") requesting acceptance by the British Columbia Utilities Commission (the "Commission") that proceeding with the expenditures contemplated in the Term Sheet is in the public interest pursuant to section 44.2(3)(a) of the Act; and
- C. On September 23, 2009 BC Hydro filed the executed Asset Purchase Agreement ("APA") with the Commission. The APA will take effect if several conditional precedents are met and the parties execute final agreements substantially in the form of the several draft associated agreements filed with the APA; and
- D. The Commission, by Order G-97-09A and Letter L-61-09, established a Regulatory Timetable for a written public hearing for the review of the Application; and
- E. The Commission, by Letters L-98-09, L-100-09 and L-105-09, revised and clarified the Regulatory Timetable for the proceeding; and
- F. By Order G-173-09 dated December 30, 2009, the Commission Panel ordered that the Okanagan Nation Alliance ("ONA") Reply Submission dated December 22, 2009 would be admitted, and provided Teck, Commercial Energy Consumers Association of British Columbia ("CEC") and the Sinixt Nation an opportunity to reply to the ONA Reply Submission by Wednesday, January 6, 2010; and

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- G. Final arguments, replies and sur-replies were filed by BC Hydro and Intervenor during the period December 9, 2009 and January 6, 2010; and
- H. The Commission Panel has considered the evidence and submissions with respect to BC Hydro's consultation with First Nations and has determined that those consultations, to the date of this decision, have been adequate and upheld the honour of the Crown in the circumstances of the Waneta Transaction.
- I. The Commission Panel has reviewed the Filing, information requests, Intervenor evidence, transcripts, Interested Party documents, Letters of Comment, Final Submissions and Reply Submissions, and concluded that the Waneta Transaction is in the public interest. The Commission Panel has reviewed the draft Surplus Power Rights Agreement and has identified no reason why this agreement should not be accepted for filing, but reserves the right to make the final determination on acceptance upon BC Hydro filing a fully executed copy of the agreement under section 71 of the Act. The Reasons for Decision for this Order will be released at a later date.

NOW THEREFORE the Commission orders as follows:

- 1. Pursuant to section 44.2(3)(a) of the Act the expenditure schedule contained in the Filing, consisting of an \$825 million payment to Teck Metals Ltd., Teck Resources Limited or Teck American Limited to acquire a one-third interest in the Waneta Assets, plus associated transaction costs currently estimated at \$25 million, is in the public interest and is accepted.
- 2. Subject to Directives 3 and 4 of this Order and closure of the Waneta Transaction, the Commission accepts that it is in the public interest for BC Hydro to enter into the Co-Ownership and Operating Agreement.
- 3. BC Hydro shall file a fully executed Co-Ownership and Operating Agreement that is substantially in the form of the draft agreement within 60 days of the closure of the Waneta Transaction, and shall file all amendments to the agreement in a timely manner.
- 4. Expenditures made by BC Hydro under the Co-ownership and Operating Agreement that BC Hydro is not able to veto, or not able to refer to an independent third party referee, or which the referee determines BC Hydro is required to make, will be deemed to be in the public interest. BC Hydro shall ensure that each other expenditure under the Co-ownership and Operating Agreement is in the public interest. Such other expenditures may be subject to a prudency review by the Commission.
- 5. Pursuant to section 43 of the Act, the Commission Panel directs BC Hydro to file with the Commission:
 - a. A report of the final actual Waneta Transaction costs, including a comparison with the estimated transaction costs, within 90 days of acquiring a one-third interest in the Waneta Assets together with an explanation for any variance greater than ten percent from the estimated transaction costs; and
 - b. An annual Waneta Transaction report ("Report") disclosing the operations, maintenance and capital expenditures. This will include those major sustaining capital expenditures or operating and maintenance expenditures that BC Hydro was entitled to refer to a third party referee and the related referee determinations as well as any significant non-sustaining capital expenditures that BC Hydro had the right to veto; and

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- c. The Report shall consist of and shall be provided in a format acceptable to the Commission and include the following:
- i. An annual cash flow comparison of actual expenditures versus estimated expenditures and an explanation for any variance greater than ten percent from the estimated expenditures;
 - ii. An organization chart showing the Operator and members of the Operating Committee;
 - iii. The cumulative and annual average levelized unit energy cost (in \$/MWh) to BC Hydro as compared to \$64.08/MWh based on an eight percent discount rate and \$78.6/MWh at a ten percent discount rate as outlined in the Filing;
 - iv. Electricity Price Scenarios similar to Figure 5-3, Electricity Price Scenarios at Mid-C by Calendar Year;
 - v. A summary of the Resource Physical Major Risks and mitigation measures employed;
 - vi. Statement of Delivery of Capacity and Energy to BC Hydro under the Waneta Transaction; and
 - vii. Statement of Entitlement Adjustments under the Canal Plant Agreement and amendments to the Canal Plant Agreement.
- d. The Reports will be submitted as part of BC Hydro's Regulatory Annual Report and as an appendix in its Revenue Requirements Applications until 2036.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of February 2010.

BY ORDER

Original signed by:

A.W.K. Anderson
Commissioner/Panel Chair

