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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-17-12

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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
F2012 to F2014 Revenue Requirements Application

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
D. Morton, Commissioner
A.A. Rhodes, Commissioner

February 15, 2012

O R D E R

WHEREAS:

A. On March 1, 2011, the British Columbia Hydro and Power Authority (BC Hydro) filed its F2012 to F2014 Revenue Requirements Application (the Application or F2012 to F2014 RRA) with the British Columbia Utilities Commission (Commission) pursuant to sections 56, and 58 to 61 of the *Utilities Commission Act* (the Act) seeking, among other things, the determination of just, reasonable and sufficient rates for its fiscal years 2012, 2013 and 2014 (F2012, F2013 and F2014);

B. BC Hydro also sought an order, on an interim and refundable basis, pending determination of the Application to: (i) increase rates by an average of 9.73 percent, (ii) retain the Deferral Account Rate Rider (DARR) at 2.5 percent, and (iii) increase the Open Access Transmission Tariff (OATT) pursuant to sections 58 to 61, 89 and 90 of the Act and section 15 of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45;

C. By Order G-40-11 dated March 8, 2011, the Commission established an Initial Regulatory Timetable for the Application;

D. By Order G-41-11 dated March 14, 2011, the Commission approved the interim rate relief as requested;

E. At a Procedural Conference on March 25, 2011, BC Hydro sought an adjournment of the proceeding and an extension of the Initial Regulatory Timetable;

F. By Order G-61-11 dated March 28, 2011, the Commission adjourned the Procedural Conference to April 8, 2011, amended the Initial Regulatory Timetable and, among other things, suspended Order G-41-11 which resulted in the suspension of the interim rate relief;

G. By Letter L-25-11 dated March 31, 2011, the Commission further amended the Initial Regulatory Timetable and, among other things, rescheduled the Procedural Conference previously scheduled for April 8, 2011 to April 20, 2011;

H. On April 7, 2011, the Premier and the Minister of Energy and Mines on behalf of the Province of British Columbia, as the sole shareholder of BC Hydro, announced that the Provincial Government would conduct a review of BC Hydro (Provincial Government Review) in order to provide recommendations and options for minimizing the rate increase;

.../2

I. By letter dated April 8, 2011, BC Hydro filed a submission including, among other things, clarification in respect of the Provincial Government Review, BC Hydro's position on the process going forward, and a request to establish an average interim rate increase of 8.23 percent, effective May 1, 2011;

J. Following a Procedural Conference on April 20, 2011, the Commission issued Order G-72-11 on April 21, 2011, directing, among other things, an across-the-board interim rate increase of 8.0 percent effective May 1, 2011, on a refundable basis pending the determination of this Application and suspended the Amended Regulatory Timetable established by Letter L-25-11 subject to further Order;

K. The Provincial Government Review was made public on August 11, 2011;

L. By letter dated September 27, 2011, BC Hydro filed a submission addressing: (i) BC Hydro's plan to reduce the F2012 to F2014 revenue deficiency by $800 million; (ii) the proposed form and content of the Amended F2012 to F2014 RRA; (iii) a proposed Revised Initial Regulatory Timetable; and (iv) an extension request for the filing of the expenditures BC Hydro plans to make on demand-side measures (DSM) during F2012 and F2013 (F12/F13 DSM Expenditure Application) to coincide with the filing of the F2012 to F2014 RRA;

M. By Order G-173-11 dated October 13, 2011, the Commission, among other things, established a Revised Initial Regulatory Timetable which included a Procedural Conference to take place on December 6, 2011, and directed BC Hydro to file the DSM Expenditure Application for consideration as part of the Amended F2012 to 2014 RRA and not as a standalone Application;

N. On November 24, 2011, BC Hydro filed its amendments to the Application (Amended F2012 to F2014 RRA), which include, among other things, the following amendments to the relief sought in the original Application:

   (i) final approval to increase rates by an average of 8.0 percent effective May 1, 2011; 3.91 percent effective April 1, 2012; and 3.91 percent effective April 1, 2013, subject only to the Commission's future review of an expenditure schedule regarding the expenditures on DSM that BC Hydro anticipates making during F2014;

   (ii) final approval to set OATT rates effective May 1, 2011 and April 1, 2012, as set out in Amended Appendix X and a final determination that OATT rates are to be set effective April 1, 2013, subject only to the Commission's future review of an expenditure schedule regarding the expenditures on DSM that BC Hydro anticipates making during F2014;

   (iii) final approval to set the DARR at 2.5 percent effective April 1, 2011, and for the DARR to remain at 2.5 percent until the Commission orders a change to the DARR, no earlier than April 1, 2014;

O. In addition, BC Hydro also sought an order to increase rates by an average of 3.91 percent as set out in Amended Table X-1 in Amended Appendix X for F2013, effective April 1, 2012, on an interim and refundable basis, pending determination of the Application and to continue the Deferral Account Rate Rider (DARR) at 2.5 percent;

P. On November 30, 2011, the Commission issued an agenda for the Procedural Conference scheduled for December 6, 2011 (Exhibit A-17);

Q. At the Procedural Conference that took place December 6, 2011, BC Hydro and Interveners made submissions on the issues listed in Exhibit A-17;

R. On December 7, 2011 the Commission issued Order G-206-11 setting out a Regulatory Timetable in which an Oral Public Hearing will take place commencing June 18, 2012. The Regulatory Timetable also included a date of May 18, 2012 for commencement of a possible Negotiated Settlement Process;

S. On January 10, 2012, the Canadian Office of Professional Employees Union Local 378 (COPE) wrote to the Commission requesting a Regulatory Timetable for a process to consider the F2013 interim rate increase to be effective April 1, 2012 (Exhibit C2-10);

T. On January 19, 2012, the Commission invited Interveners to make submissions on the level of the interim rate increase and the DARR for F2013, along with any comments on a further process (Exhibit A-22);

U. On January 27, 2012, submissions were provided to the Commission by: the Association of Major Power Customers of British Columbia (AMPC); Commercial Energy Consumers Association of British Columbia (CEC); British Columbia Old Age Pensioners Organization *et al*. (BCOAPO); B.C. Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA); Vanport Sterilizers Inc. and COPE;

V. On February 1, 2012, BC Hydro provided a reply submission to the Commission.

NOW THEREFORE for the Reasons attached as Appendix A to this Order, the Commission orders that:

1. The applied-for across-the-board F2013 interim rate increase of 3.91 percent and the Open Access Transmission Tariff as set out in Amended Table X-1 in Amended Appendix X, is approved effective April 1, 2012, on an interim and refundable basis pending the determination of this Application.

2. The applied for continuation of the DARR at 2.5 percent in F2013 is rejected for interim rate setting purposes. The F2013 DARR is to be set at 5.0 percent effective April 1, 2012, on an interim and refundable basis pending the determination of this Application.

3. The interim rate increase and interim DARR are both subject to adjustment with interest at BC Hydro's weighted average cost of debt for its most recent fiscal year.

4. BC Hydro is to provide customers with notification of the interim rate increases as soon as is practicable.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of February 2012.

BY ORDER

Original signed by:

L.A. O'Hara
Panel Chair/Commissioner

Attachment

IN THE MATTER OF

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
F2012 – F2014 REVENUE REQUIREMENTS APPLICATION

REASONS FOR DECISION

February 15, 2012

BEFORE:

L.A. O'Hara, Panel Chair / Commissioner
D. Morton, Commissioner
A.A. Rhodes, Commissioner

TABLE OF CONTENTS

Page No.

BACKGROUND

On March 1, 2011, BC Hydro and Power Authority (BC Hydro) submitted its original Revenue Requirement Application for F2012-F2014 seeking rate increases of 9.73 percent for each of the three years. By Order G-41-11 dated March 14, 2011, the British Columbia Utilities Commission (BCUC, Commission) approved this rate increase on an interim basis effective April 1, 2011. By Order G-61-11 dated March 28, 2011, this increase was suspended due to the announced Government Review. By Order G-72-11 dated April 21, 2011, the Commission approved an interim rate increase of 8.0 percent effective May 1, 2011, and the continuation of the Deferral Account Rate Rider (DARR) at 2.5 percent.

On November 24, 2011, BC Hydro filed its Amended F2012-F2014 Revenue Requirements Application (ARRA) in which it sought, among other things, an interim increase of 3.91 percent for F2013 effective April 1, 2012 and the continuation of the DARR at 2.5 percent. After receiving a letter from the Canadian Office and Professional Employees Union Local 378 regarding interim rates (Exhibit C2-10) on January 19, 2012, the Commission invited Interveners to make submissions on the level of the interim rate increase and the DARR for F2013, along with any comments on a further process, if any. BC Hydro was given a right of reply. (Exhibit A-22)

The Commission received submissions in accordance with the Timetable provided in Exhibit A-22.

By letter dated February 6, 2012, participants were advised of the Commission Panel's determination that the oral argument phase listed in the Timetable was not necessary and that it would issue its decision in due course. (Exhibit A-25)

INTERVENER SUBMISSIONS

On January 27, 2012, the following Interveners filed submissions:

- Association of Major Power Customers of British Columbia (AMPC);
- B.C. Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA);
- British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);
- Canadian Office and Professional Employees Union Local 378 (COPE);
- Commercial Energy Consumers Association of British Columbia (CEC);
- Vanport Sterilizers Inc. (Vanport).[(2)]

The Intervener submissions regarding the level of interim rate increase and the DARR for April 1, 2012, can be summarized as follows:

Intervener	Rate Increase (%)	DARR (%)
AMPC	3.91	2.50
BCOAPO	3.91	2.50
CEC	3.91	2.50
BCSEA	7.50	5.00 [(1)]
COPE	6.00	5.00

Note(s):

(1) BCSEA submits the Commission should approve an interim and refundable rate increase that is lesser of (a) 9.73 percent and (b) a rate increase that when combined with the F2013 DARR yields an average net bill increase of not more than 10 percent in F2013.

(2) Vanport's submissions did not address interim rates.

Submissions in Support of Higher Interim Rate Increase:

COPE highlights the unique potential problem of under-collection of revenues in F2013 in the event the Commission finds that the final rate increase should be greater than what BC Hydro has applied for because of a likely rejection of some of the proposed deferrals. COPE submits "there is no realistic prospect… that the BCUC will find itself concluding that even more current cost should be deferred, or that even greater short-term cuts should be imposed on BC Hydro on a sufficient scale to permit smaller rate increases…". COPE further submits that should the interim rates result in under collection for F2013, there is no viable mechanism for rectification. (Exhibit C2-10, pp. 1-2; Exhibit C2-11, pp. 3-4)

COPE submits that the factors a regulator should take into account when considering an application to approve interim rates are those set out in Alberta Energy and Utilities Board (AEUB) Decision *2005-099, ATCO Gas 2005-2007 General Rate Application - Interim Rate Application* which were followed in AEUB Decision *2007-110, ATCO Pipelines 2008·Interim Rates.* (Exhibit C2-11, pp. 2-3)

Regarding the DARR, COPE submits the Commission should reject BC Hydro's request that Rate Schedule 1901 – Deferral Account Rate Rider (RS1901) be frozen at 2.5% until at least April 1, 2014, for the following reasons:

1. No sufficient "special circumstances" exist to deviate from Order G-16-09 which established the current DARR mechanism in the F09/F10 RRA Decision. In that Decision the Commission approved BC Hydro's proposed methodology, and found that "the estimated amortization period of 4-6 years is reasonable."
2. Special Direction HC2 (SDHC2), section 7(c) directs that the Commission must set or regulate the authority's rates in such a way as to allow the deferral accounts to be cleared from time to time and within a reasonable period of time. (Exhibit C2-11, p. 5, pp. 10-11)

BCSEA supports COPE's conclusion that it is important that the F2013 interim rate increase not create a risk of substantial under-collection of revenues. BCSEA submits that "intergenerational equity is the principle at stake here" and notes that the Commission, BC Hydro and the B.C. Auditor General all have recently recognized this concern. BCSEA also agrees with COPE that if the interim rate increase is too low "the hands of the Commission will be largely tied, and its ability to address the thorny issues of BC Hydro's deferral accounts and DARR will be compromised." (Exhibit C10-7, pp. 2-3)

Submissions in Support of BC Hydro's Proposal

AMPC disagrees strongly with the submissions of COPE and submits that "[t]o the best of our knowledge there is no precedent for this Commission granting a higher interim [rate] than that sought by the Applicant and we should not create one now." AMPC further notes that the cuts and restraint shown in the ARRA do not go as far as recommended by the Review Panel and that the Decision following a hearing on the merits of the case may, in fact, result in lower final rates. (Exhibit C18-5, pp. 1-2)

BCOAPO also notes the unique circumstances by stating: "For the first time in recent memory, our clients are being forced to consider whether their electrical utility is, as a result of direct government involvement in the Utility's ratemaking process, applying for rates sufficient to their needs." BCOAPO further submits: "Only in deference to the extremely unusual circumstances present in this case, we are recommending that BC Hydro's applied for rate increase of 3.9% for the upcoming fiscal be granted on an interim basis." (Exhibit C1-9, pp. 1-2)

The CEC observes that "COPE seeks to argue through additional regulatory process issues which will be the subject of the final determination of this proceeding." The CEC submits: "That is neither a good precedent nor an efficient use of the regulatory process." (Exhibit C5-6)

BC HYDRO REPLY SUBMISSIONS

BC Hydro submits that its application for interim F2013 rates be approved and the COPE Application be dismissed. The two key reasons for this position are provided by BC Hydro as follows:

- Of the 28 registered Interveners in the proceeding, only COPE and BCSEA opposed BC Hydro's application for interim rates. Further AMPC, CEC and BCOAPO expressly opposed the COPE Application and supported BC Hydro's proposal.
- It is inappropriate to pre-suppose the outcome of a complex regulatory proceeding such as the F12-F14 ARRA as COPE did in its submissions.

BC Hydro further states that asking the Commission to consider ARRA issues now "amounts to inviting BCUC to pre-judge relevant aspects of the F12-F14 RRA proceeding, which would undermine procedural fairness to all parties …". BC Hydro also submits that mechanisms could be configured to rectify any potential under-collection issues and that "extent to which the deferral of certain costs is appropriate is one of the many issues to be determined by the BCUC in the F12-F14 RRA proceeding." (Exhibit B-17, pp. 3 and 6)

BC Hydro distinguishes AEUB Decision *2007-110, ATCO Pipelines 2008·Interim Rates* on the basis that the Decision involved facts which are the exact opposite of the facts before the Commission Panel. In the AEUB Decision, one of the interveners argued there should be no interim increase at all. BC Hydro submits that the Commission Panel can disregard the AEUB Decision in the present circumstances. (Exhibit B-17, p. 5)

COMMISSION DETERMINATION

The Commission Panel approves an across-the-board F2013 rate increase of 3.91 percent, as set out in Amended Table X-1 in Amended Appendix X, effective April 1, 2012, on an interim and refundable basis pending the final determination of this Application. The F2013 Deferral Account Rate Rider is to be set at 5.0 percent effective April 1, 2012, on an interim and refundable basis pending the determination of this Application.

By way of background, the Panel notes that traditionally, the interim rate which is approved is either the applied for rate or a lower rate. However, in the case of this Application the Panel is facing, as pointed out by a number of Interveners, most unusual circumstances, which could require a different action. As a result of the Government Review and the Review Panel's observation that BC Hydro's application for a 9.73 % rate increase was an insufficient attempt to decrease costs to an acceptable level for the ratepayers, BC Hydro's ARRA now seeks rate increases amounting to a little over half of those sought originally. (June 2011 Review of BC Hydro, p. 3) This significant change raises the question, can BC Hydro realistically achieve this short-term goal without any further deferrals? Yet, the Commission Panel also respects the notion that there is no precedent for the Commission to grant a higher interim rate than that sought by the Applicant and agrees that "we should not create one now."

The Commission Panel agrees with BC Hydro that the Alberta Energy and Utilities Board (AEUB) Decision *2007-110, ATCO Pipelines 2008·Interim Rates* does not apply as that was a case where one of the interveners argued that there should be no interim rate increase at all. The AEUB Decision *2005-099, ATCO Gas 2005-2007 General Rate Application - Interim Rate Application* is also distinguishable as there, too, an intervener argued there should be no increase at all. Here, COPE and BCSEA are seeking interim rates above those applied for.

Finally, on the issue of interim rates, the Commission Panel agrees with the Interveners that it is neither a good precedent nor an efficient use of the regulatory process to prematurely argue or determine issues that will be subject of the regulatory review in the ordinary course. Accordingly, the Panel finds that because the applied for 3.91 percent interim

rate increase is forward looking, and subject to a further process, it ought not to approve a higher interim rate increase or a lower increase without a full review of the evidence and the benefit of submissions thereon.

In contrast, the DARR is backward looking – based on hindsight and available facts. The DARR is a percentage surcharge on a customer's bill that is intended to recover the amortization of BC Hydro's Deferral Accounts. The percentage, to be effective on April 1 of a given fiscal year, is based on the net balance in the Deferral Accounts as of September 30 of the previous year. In the F2009-F2010 RRA Decision, Order G-16-09, the Commission approved BC Hydro's proposed methodology to establish the appropriate percentage of the DARR at various ranges of net deferral account balances. The Commission Panel notes that BC Hydro's Quarterly Deferral Account Report for the six months ended September 30, 2011, filed on December 6, 2011, shows the net Deferral Account balances as $701.8 million. In accordance with the approved methodology, the DARR effective April 1, 2012, should be set at a minimum at 5.0 percent.

The Commission Panel also notes that in its original F2012–F2014 RRA, BC Hydro applied to follow the DARR mechanism for F2012 and F2013. It deviated from this plan in the ARRA in order to achieve lower overall rate increases. The Panel's ultimate concern with this deviation is that of intergenerational equity. Recent history indicates that the Deferral Account net balances have continued and are continuing to grow, without any opportunity in sight to clear them as directed by SDHC2. In conclusion, the Commission Panel finds that there is no reason to deviate from the accepted DARR mechanism until and unless further process determines this to be necessary. Accordingly, the DARR is approved at 5.0 percent effective April 1, 2012, on an interim and refundable basis pending the determination of the Application. The increase represents a 2.5 percent increase from the current level.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of February 2012.

Original signed by:

LIISA A. O'HARA
PANEL CHAIR/COMMISSIONER

Original signed by:

DAVID MORTON
COMMISSIONER

Original signed by:

ALISON A. RHODES
COMMISSIONER