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VIA EMAIL

September 12, 2007

TO: Regulated Utilities
BCH 2007 Rate Design
BCH Revelstoke Unit 5 CPCN
BCH_F2007-08 Revenue Requirements
BCTC F2008-2017 TSCP

FortisBC Big White Rate Design
ForitsBC Naramata Substation
ICBC_2007 Revenue Requirements
ICBC_2007Rate Design
TGVI-TGI Mt. Hayes LNG Facility CPCN

Re: Practice Directive of the British Columbia Utilities Commission
"Confidential Filings"

Further to the Commission's letter dated July 11, 2007, the Commission would like to thank all those who provided comments by the August 12, 2007 deadline on the proposed "Confidential Filings Practice Directive". Comments were received from the following:

Chris Daley
Karl Gustafson, Lang Michener
British Columbia Public Interest Advocacy Centre
EPCOR
City of New Westminster
Joint Industry Electricity Steering Committee
Columbia Power Corporation
Central Coast Power Corp.
B.C. Sustainable Energy Association, et al.

British Columbia Transmission Corporation
Pacific Northern Gas Ltd.
Terasen Gas Inc.
FortisBC Inc.
Insurance Corporation of British Columbia
British Columbia Hydro and Power Authority

The Commission has considered the comments received and has issued the attached Practice Directive related to Confidential Filings in Commission public hearings, written or oral.

The Commission would note that this Practice Directive is intended to provide direction or guidance as to the approach that the Commission will take and how the Commission will deal with requests by parties that information be filed on a confidential basis during Commission public hearings. While intended to be helpful to all parties, it is a guideline and, by virtue of section 11 of the Practice Directive, the Commission may vary or utilize other procedures when it considers it necessary or appropriate to do so.

As well, the Commission would note that the Practice Directive is subject to other related statutory provisions and exceptions or exclusions by law (sections 1 and 10).

The Commission accepts the revisions proposed to section 2(a) and has replaced “the specific harm that would result” with “the specific harm that could reasonably be expected to result”.

The Commission does not consider it necessary at this time, as suggested by Terasen Gas and Columbia Power Corporation, to implement guidelines similar to those of sections 5.1.12 to 5.1.14 of the Ontario Energy Board’s Practice Direction on Confidential filings. As noted by the Joint Industry Electricity Steering Committee, if the Commission determines that a document is to be disclosed, a party has the right to apply to the Commission for an order that the document remain confidential pending an appeal.

The Commission agrees with Terasen Gas and Central Coast Power that the process should be flexible enough to permit information to be filed with the Commission contemporaneously with the request for confidentiality.

While the Commission recognizes the concerns of Terasen Gas, BC Hydro and others that non-participating third parties may be affected by requests for the disclosure of certain information, the Commission is concerned that the public hearing process remain efficient and effective while affording an opportunity, in appropriate circumstances, to obtain the views of affected persons. Accordingly, the Commission anticipates that the party claiming confidentiality will work with non-participating third parties when making a request or replying to an objection.

As noted above, the Commission appreciates the comments received and trusts that this new Practice Directive will, as suggested by the BC Old Age Pensioners Organization *et al.*, represent an improvement to the Commission’s processes.

Yours truly,

Original signed by:

Robert J. Pellatt

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Enclosure

Practice Directive of the British Columbia Utilities Commission

“Confidential Filings”

This Practice Directive is made pursuant to section 13 of the *Administrative Tribunals Act*, SBC 2004, Chapter 45 (ATA).

Section 2(4) of the *Utilities Commission Act* (UCA) makes certain sections of the ATA applicable to the Commission and its proceedings, including sections 41 (Hearings open to public) and 42 (Discretion to receive evidence in confidence) of the ATA.

Section 41 provides that:

- (1) An oral hearing must be open to the public.
- (2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that
 - a. The desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or
 - b. It is not practicable to hold the hearing in a manner that is open to the public.
- (3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2)(a) or section 42 applies to that document.

Section 42 provides that:

The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any intervenors, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Consistent with these statutory provisions, the Commission wishes to provide further guidance with regard to the handling of confidential information in the context of its public hearings.

1. Subject to the following, and subject to other related statutory provisions and exceptions or exclusions by law, including the *Freedom of Information and Protection of Privacy Act*, the *ATA*, and the *UCA*, the information filed by parties in a public hearing will be placed on the public record.

If a party wishes to keep confidential any information in a document filed in a public hearing, the party must file a request that all or any part of the document be held in confidence and serve a copy of the request on the other parties.

2. The request for confidentiality should:
 - (a) briefly describe the nature of the information in the document and the reasons for the request for confidentiality, including the specific harm that could reasonably be expected to result if the document were placed on the public record, and
 - (b) indicate whether all or only a part of the document is the subject of the request.
3. The request for confidentiality shall be placed on the public record.
4. A party may object to a request for confidentiality by filing an objection with reasons in a timely manner and serving the objection on the other parties to the hearing and the Commission will give the party claiming confidentiality, together with a person who may be affected by disclosure, an opportunity to reply to an objection.
5. The Commission may, with or without a hearing or further process, grant a request for confidentiality on any terms it considers necessary.
6. Where the Commission holds a hearing to consider the request for confidentiality, the Commission may direct that the hearing be held in the absence of the public.
7. In determining whether the nature of the information or documents require a confidentiality direction, the Commission will have regard to matters that it considers relevant, including,
 - (a) whether the disclosure of the information could reasonably be expected to result in
 - i. undue material financial loss or gain to a person, or
 - ii. significant harm or prejudice to that person's competitive or negotiating position, and
 - (b) whether the information is financial, commercial, scientific or technical information that is confidential and consistently treated as confidential by the person,
 - (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing, and
 - (d) whether it is practicable to hold the hearing in a manner that is open to the public.

8. Documents that are filed with the Commission or with the Hearing Officer on a confidential basis or that contain confidential material must be clearly so designated on the cover letter and the document. If accepted by the Commission as confidential, these documents or portions thereof will not be placed on the record for the public hearing and will not be posted to the Commission website. The Commission's Document Filing Protocols provide further directions concerning the filing of confidential information.
9. If the Commission grants a request for confidentiality, the Commission may, upon request, consider whether access to the confidential information should be provided to all other parties to the proceeding, or only to their counsel or consultants and experts. If the Commission grants such request, each party or individual eligible to receive a copy of the confidential information shall first sign and file a declaration or undertaking, in a form consistent with Attachment A, in respect of the use of the confidential information and stating that the party or individual will hold the document in confidence and use it only for the purpose of the public hearing, as the Commission considers appropriate. The Commission may impose any other additional conditions or safeguards as it considers appropriate.
10. For greater certainty, nothing in this Practice Direction is intended to serve to limit the operation of any statutory provision that protects the confidentiality of information of documents.
11. Notwithstanding the guidance provided above, the Commission, in accordance with subsection 13(2) of the ATA, is not bound by this Practice Directive.
12. To comply with subsection 13(3) of the ATA, this Practice Directive dated **September 1, 2007** will be made available on the Commission's website at <http://www.bcuc.com>>*Guidelines & Resources*>*Other Resources and Documents*.

ATTACHMENT A

Undertaking

I, _____, am a participant _____ in the matter of _____.

In this capacity, I request access to the confidential information in the record of this proceeding. I understand that the execution of this undertaking is a condition of an Order of the Commission, and the Commission may enforce this Undertaking pursuant to the provisions of the *ATA*.

I hereby undertake

- (a) to use the information disclosed under the conditions of the Undertaking exclusively for duties performed in respect of this proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access to such information or to staff of the Commission;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking except for purposes of the proceeding;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking;
- (e) to return to _____, under the direction of the _____, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the Commission a certification of destruction at the end of the proceeding or within a reasonable time after the end of my participation in the proceeding; and
- (f) to report promptly to the Commission any violation of this Undertaking.

Dated at _____ this _____ day of _____ 200__.

Signature: _____

Name: _____
(please print)

Address: _____

Telephone: _____

Fax: _____

E-mail: _____