



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

Log No. 16659

VIA E-MAIL

regulatory.group@bchydro.com

December 29, 2006

Ms. Joanna Sofield
Chief Regulatory Officer
British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

Dear Ms. Sofield:

Re: British Columbia Hydro and Power Authority ("BC Hydro")
BCUC Order No. G-142-06/Project No. 3698446
Filing of Energy Supply Contract with Alcan Inc. ("Alcan")
LTEPA Amending Agreement, Amended and Restated
Long-Term Electricity Purchase Agreement

Further to your November 1, 2006 Section 71 filing of the Long-Term Electricity Purchase Agreement ("LTEPA") Amending Agreement dated October 27, 2006 to which was attached the form of Amended and Restated LTEPA between Alcan Inc., enclosed is Commission Order No. G-176-06.

The Commission Panel accepts submissions by Alcan that, pursuant to RESA, it has certain rights that must be exercised by January 1, 2007. The following is provided to assist Alcan in this regard. Further analysis of these issues will be provided in detailed reasons.

1. The Commission Panel concludes that BC Hydro should not have agreed to the pricing provisions of LTEPA+, and in particular should not have agreed to pricing provisions based on the F2006 Call. Prices from the F2006 Call were obtained through a competitive process for a specific product with pre-determined terms and conditions. The LTEPA+ was negotiated in a tri-lateral environment with no pre-determined terms and conditions, and the pricing should have reflected both Alcan's opportunity cost and the specific risks to both Alcan and BC Hydro arising from the recall notice. Although the F2006 Call is accepted as a reasonable starting point for consideration of the pricing provisions of LTEPA+, the Commission Panel does not agree with BC Hydro that other benchmarks are inappropriate.
2. For the purposes of assessing Alcan's opportunity cost, the Commission Panel concludes that firm transmission service from Kitimat to other potential purchasers is not currently available on the British Columbia Transmission Corporation transmission system. Therefore, the Commission Panel accepts the submissions of the BC Old Age Pensioners Organization *et al.* regarding Alcan's likely opportunity cost (BCOAPO Submission, para. 38 and 39). Moreover, the Commission Panel is of the view that the benchmark established by the F2006 Call should have been reduced, given the options available to Alcan, before it was used as a reference price for LTEPA+.

3. The Commission Panel does not accept BC Hydro's evidence regarding the value of the benefits to ratepayers in LTEPA+, and expressly rejects BC Hydro's submissions that "the value of these benefits fully offsets that portion of the recall attributable to reinstated electricity" (BC Hydro Submission, para. 108). The Commission Panel concludes that the present value of these benefits is less than the amounts calculated by BC Hydro.
4. The Commission Panel has decided that LTEPA+ should not be accepted for filing because of concerns related to the pricing provisions of LTEPA+ that are not related to the incentive or disincentive for the modernization project. The Commission Panel is of the view that an energy supply contract may, in unique circumstances, include terms, conditions and/or pricing provisions that provide incentives for industrial development. However, the Commission will need to consider and weigh ratepayer interests and other public interests in the context of a specific energy supply contract.
5. The Commission Panel accepts, as stated in the VITR decision, that the public interest is a flexible test. Regarding this Section 71 filing, the Commission Panel needs to decide if the impacts of LTEPA+ on the District of Kitimat should be considered along with other public interest considerations. On this issue, the Commission Panel concludes that many of the interests and concerns expressed by Mr. McLaren and the District of Kitimat should be considered together with other public interests, although these may not necessarily be determinative. The reasons to follow will address this issue and others more comprehensively.

Yours truly,

Original signed by:

Constance M. Smith

for: Robert J. Pellatt

cms
Enclosure

cc: Registered Intervenor (BCH-ALCAN-RI)
Interested Parties (BCH-ALCAN-IP)

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-176-06

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

and

A filing by British Columbia Hydro and Power Authority
of Energy Supply Contracts with Alcan Inc.
LTEPA Amending Agreement, Amended and Restated
Long-Term Electricity Purchase Agreement

BEFORE: R.H. Hobbs, Chair
A.J. Pullman, Commissioner December 29, 2006
N.F. Nicholls, Commissioner

O R D E R

WHEREAS:

- A. On November 1, 2006, British Columbia Hydro and Power Authority ("BC Hydro"), pursuant to Section 71 of the Utilities Commission Act (the "Act"), filed the Long-Term Electricity Purchase Agreement ("LTEPA") Amending Agreement dated October 27, 2006 to which was attached the form of Amended and Restated LTEPA between Alcan Inc. ("Alcan") and BC Hydro, and a letter dated October 27, 2006 from Alcan to BC Hydro and the Province (the "October 27, 2006 letter"); and
- B. In its November 1, 2006 filing, BC Hydro requested that the Commission issue an Order accepting the LTEPA Amending Agreement and the Amended and Restated LTEPA as filed, pursuant to Section 71 of the Act ("the s. 71 Filing"); and
- C. In the s. 71 Filing, BC Hydro requested that the LTEPA Amending Agreement, the Amended and Restated LTEPA and the October 27, 2006 letter be kept confidential, for reasons of commercial sensitivity; and
- D. At the November 8, 2006 Third Procedural Conference concerning BC Hydro's 2006 Integrated Electricity Plan ("IEP") and Long-Term Acquisition Plan ("LTAP"), BC Hydro proposed possible review processes for the LTEPA Amending Agreement and the Amended and Restated LTEPA; and

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- E. At the Third Procedural Conference, BC Hydro, with the support of Alcan, also withdrew its request that the LTEPA Amending Agreement and the Amended and Restated LTEPA be kept confidential. BC Hydro continued to maintain its claim for confidentiality over the October 27, 2006 letter pending discussions with the Province. By an attachment to its letter to the Commission Secretary dated November 17, 2006, BC Hydro disclosed a copy of the October 27, 2006 letter; and
- F. At the Third Procedural Conference, BC Hydro further requested that evidence filed to date in the 2006 IEP/LTAP proceeding with respect to the agreement with Alcan be accepted as evidence in the proceeding to review the s. 71 Filing; and
- G. By Order No. G-142-06 dated November 10, 2006, the Commission established an Oral Public Hearing and Regulatory Timetable for the regulatory review of the s. 71 Filing; and
- H. By letter dated November 10, 2006 accompanying Order No. G-142-06, the Commission concluded that the issues for the proceeding should not include the legality of the LTEPA Amending Agreement and the Amended and Restated LTEPA; and
- I. By letter dated November 17, 2006 the Commission issued Reasons for Decision regarding the issue of the legality of the LTEPA Amending Agreement and the Amended and Restated LTEPA; and
- J. An Oral Public Hearing was held on December 6, 7, 8 and 11, 2006; and
- K. BC Hydro, Alcan and the Ministries of Energy, Mines and Petroleum Resources and Economic Development (“the Ministries”) submitted Written Argument on December 14, 2006; and
- L. Other Intervenors submitted Written Argument on December 19, 2006; and
- M. BC Hydro, Alcan and the Ministries made Oral Reply Argument on December 21, 2006; and

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N. The Commission has considered the evidence and submissions, and concludes that it should make a determination on the s. 71 Filing.

NOW THEREFORE:

1. The Commission does not accept the LTEPA Amending Agreement and the Amended and Restated LTEPA that BC Hydro filed on November 1, 2006 (“the Contracts”), as Energy Supply Contracts filed pursuant to Section 71 of the Act, and finds, pursuant to subsection 71(2) of the Act that the Contracts are not in the public interest and, pursuant to subsection 71(3) of the Act, declares that the Contracts are wholly unenforceable.
2. The Commission will issue Reasons for Decision in the matter at a future date.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of December 2006.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair