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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-48-14**

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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
Application Regarding its Rates for F2014, F2015 and F2016,
Expenditures on Demand Side Measures in F2014, F2015 and F2016 and
Retail Access**

BEFORE: L.F. Kelsey, Commissioner
C.A. Brown, Commissioner
N.E. MacMurchy, Commissioner March 24, 2014
B.A. Magnan, Commissioner
D.M. Morton, Commissioner

O R D E R

WHEREAS:

- A. On November 26, 2013, the Province of British Columbia announced a 10-year plan regarding British Columbia Hydro and Power Authority (BC Hydro) rates and revenue requirements including, among other things, average rate increases of 9 percent and 6 percent in fiscal 2015 (F2015) and fiscal 2016 (F2016), respectively;
- B. On March 6, 2014, B.C. Reg. 29/2014 enacted Direction No. 6 (Direction No. 6) to the British Columbia Utilities Commission (Commission) pursuant to section 3 of the *Utilities Commission Act* (Act);
- C. Direction No. 6 requires the Commission to issue final orders set out in the direction within twenty days of an application for such orders by BC Hydro. Direction No. 6 concerns fiscal year 2014 (F2014), F2015 and F2016 only. Once the Commission has issued the requested orders Direction No. 6 will no longer have legal effect;
- D. On March 6, 2014, B.C. Reg. 28/2014 enacted Direction No. 7 (Direction No. 7) to the Commission pursuant to section 3 of the Act. Direction No. 7 primarily concerns fiscal year 2017 (F2017) and future fiscal periods, although some of its provisions also impact F2014, F2015, and F2016;
- E. Direction No. 7 also repeals Heritage Special Direction No. HC2, but continues the essential elements of the Heritage Contract framework formerly enshrined in Heritage Special Direction No. HC2;

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- F. On March 7, 2014, BC Hydro filed an application pursuant to the Act and Directions No. 6 and 7, seeking Commission orders that, among other things would confirm as final, and no longer subject to refund, BC Hydro's F2014 rates and set its F2015 and F2016 Electric Tariff and Open Access Transmission Tariff rates as final (Application);
- G. The F2015 and F2016 rates for which approval is sought are prescribed by Direction No. 6, and mostly effect average rate increases of 9 percent and 6 percent per year, respectively, subject to in all cases, except the Transmission Service Rate stepped rate (RS 1823), the Commission approved pricing principles;
- H. Notwithstanding the pricing principles established in Order G-79-05, Direction No. 6 effectively results in the 9 percent and 6 percent rate increases in F2015 and F2016, respectively, being applied to both the Tier 1 and Tier 2 RS 1823 energy rates;
- I. Three other rate schedules are also affected as a consequence of the equal application of the rate increase to the Tier 1 and Tier 2 energy charge of RS 1823 since those rate schedules are directly tied to the RS 1823 Tier 2 price. The affected rate schedules are: RS 1825 - Transmission Service - Time-of-Use, RS 1880 - Transmission Service - Standby and Maintenance Supply, and Tariff Supplement No. 76 - Shore Power;
- J. On March 13, 2014, the Commission issued Order G-36-14 in compliance with Direction No. 7, sections 14(1)(a) and (b);
- K. On March 13, 2014, the Ministry of Energy and Mines filed a letter with the Commission identifying a typographical error in Direction No. 6, Appendix B, with respect to the indicated units in the Electric Tariff Rates for RS 3808 Transmission Service to FortisBC Inc.;
- L. On March 17, 2014 BC Hydro filed a submission in which it identified the error in Direction No. 6. BC Hydro submitted that as a matter of statutory interpretation the Commission could substitute the correct rates for the erroneous (and unacceptably absurd) rates and amended the relief it was seeking in the Application;
- M. On March 19, 2014, FortisBC Inc., Commercial Energy Consumers Association of British Columbia, the British Columbia Municipal Electrical Utilities, BC Sustainable Energy Association and the Sierra Club British Columbia and the Association of Major Power Customers of British Columbia filed letters in support of BC Hydro's March 17, 2014 submission;
- N. On March 21, 2014 BC Hydro filed a supplemental submission adding section 16(3) of Direction No. 7 as an additional basis for granting the relief BC Hydro had applied for in its March 17 submission; and
- O. The Commission has considered the Application as amended and the submissions it has received.

NOW THEREFORE for the reasons set out in the Reasons attached as Appendix B to this Order, the Commission orders as follows:

F2014 Final Rates

1. Pursuant to Direction No. 6, section 3(a), BC Hydro's F2014 schedule of expenditures on demand-side measures is accepted as shown in Schedule A to Appendix A of this Order.
2. Pursuant to Direction No. 6, section 3(b), BC Hydro's F2014 rates, set as interim by Order G-77-12A, are confirmed as final and no longer subject to refund.
3. Pursuant to Direction No. 6, section 3(v), BC Hydro must defer to the Non-Heritage Deferral Account the amount that is determined by subtracting the amount in subparagraph (ii) from the amount in subparagraph (i):
 - (i) the forecast return on deemed equity in F2014 calculated on the basis of an annual rate of return on deemed equity in that year of 11.84 percent, and
 - (ii) the forecast return on deemed equity in F2014 calculated on the basis of an annual rate of return on deemed equity in that year that is greater than or less than 11.84 percent as a result of the Commission's order arising from the generic cost of capital proceeding initiated by Order G-20-12.

F2015 and F2016 Baseline Forecasts

4. Pursuant to Direction No. 6, sections 3(e) and 3(f) the following forecasts of costs and revenues are approved for the purposes of the applicable regulatory accounts:

Forecast (Regulatory Account)	F2015 (\$ million)	F2016 (\$ million)
Heritage Payment Obligation (HDA)	353.2	399.2
Non-Heritage cost of Energy Subject to Deferral (NHDA)	1,074.3	1,032.2
Total Rate Revenue (NHDA)	4,168.3	4,459.7
Trade Income (TIDA)	110.0	110.0
Non-Current Pension Costs	2.9	0.1
Storm Restoration Costs	3.9	3.9
Total Finance Charges	602.6	725.2
Amortization of Capital Additions	34.7	106.7
Real Property Gain/Loss	10.0	10.0
Asbestos Remediation Costs	1.8	0.9

F2015 and F2016 Regulatory and Deferral Accounts

Non-Heritage Deferral Account

5. Pursuant to Direction No. 7, section 7 (c)(i), BC Hydro must continue to defer to the Non-Heritage Deferral Account the variances between the actual and forecast cost of energy arising from differences between forecast and actual domestic customer load.
6. Pursuant to Direction No. 7, section 7 (c)(ii), BC Hydro must defer to the Non-Heritage Deferral Account its Burrard costs.

Site C Regulatory Account

7. Pursuant to Direction No. 6, section 3(h), BC Hydro must defer to the Site C Regulatory Account its F2015 and F2016 operating costs incurred in regard to the development of the Site C project.

Smart Metering Infrastructure (SMI) Regulatory Account

8. Pursuant to Direction No. 6, section 3(l)(ii), BC Hydro must defer to the SMI Regulatory Account its F2015 and F2016 net operating costs arising from the smart metering and infrastructure program and the net operating costs arising from Order G-166-13.
9. Pursuant to Direction No. 6, section 3(l)(i), BC Hydro must amortize from the SMI Regulatory Account the amounts of \$30.5 million and \$31.3 million in F2015 and F2016 respectively.

Demand-side Management (DSM) Regulatory Account

10. Pursuant to Direction No. 7, section 7(d)(i), BC Hydro must defer to the DSM Regulatory Account its costs arising from the development, implementation and administration of demand-side measures, including costs arising from specified demand-side measures and public awareness programs.

Rock Bay Regulatory Accounts

11. Pursuant to Direction No. 7, section 7(e), BC Hydro must continue to defer to the Rock Bay Remediation Regulatory Account its Rock Bay costs.
12. Pursuant to Direction No. 6, section 3(o), BC Hydro must amortize from the Rock Bay Remediation Regulatory Account the amounts of \$51.5 million and \$50.5 million in F2015 and F2016 respectively.

Arrow Water Regulatory Accounts

13. Pursuant to Direction No. 6, section 3(r), BC Hydro must amortize from the Arrow Water Divestiture Costs Regulatory Account the amounts of \$4.7 million and \$4.5 million in F2015 and F2016 respectively.

14. Pursuant to Direction No. 6, section 3(s), BC Hydro must amortize from the Arrow Water Provision Regulatory Account the amount of \$0.3 million in each of F2015 and F2016.

Asbestos Remediation Regulatory Account

15. Pursuant to Direction No. 7, section 7(f), BC Hydro must continue to defer to the Asbestos Remediation Regulatory Account the variances between its actual and forecast asbestos remediation costs.
16. Pursuant to Direction No. 6, section 3(t), BC Hydro must amortize from the Asbestos Remediation Regulatory Account the amounts of \$12.1 million and \$10.7 million in F2015 and F2016 respectively.

Non-Current Pension Costs Regulatory Account

17. Pursuant to Direction No. 7, section 7(g), BC Hydro must continue to defer to the Non-Current Pension Costs Regulatory Account the variances between its actual and forecast non-current pension costs.
18. Pursuant to Direction No. 6, section 3(n), BC Hydro must amortize from the Non-Current Pension Costs Regulatory Account the amounts of \$32.6 million and \$15.5 million in F2015 and F2016 respectively.

International Financial Report Standards (IFRS) Pension Regulatory Account

19. Pursuant to Direction No. 6, section 3(q), BC Hydro must amortize from the IFRS Pension Regulatory Account the amount of \$38.2 million in each of F2015 and F2016.

First Nations Costs Regulatory Account

20. Pursuant to Direction No. 7, section 7(i)(i), the First Nations Costs Regulatory Account must accrue interest in a fiscal year at BC Hydro's weighted average cost of debt in that year.
21. Pursuant to Direction No. 6, section 3(g), BC Hydro must amortize from the First Nations Costs Regulatory Account the amounts of \$43.5 million and \$43.3 million in F2015 and F2016 respectively.

Storm Restoration Regulatory Account

22. Pursuant to Direction No. 6, section 3(i), BC Hydro must amortize from the Storm Restoration Regulatory Account the amounts of \$1.4 million in each of F2015 and F2016.

Capital Additions Regulatory Account

23. Pursuant to Direction No. 6, section 3(j), BC Hydro must amortize from the Capital Additions Regulatory Account the amounts of \$9.8 million and \$9.4 million in each of F2015 and F2016 respectively.

Total Finance Charges Regulatory Account

24. Pursuant to Direction No. 6, section 3(k), BC Hydro must amortize from the Total Finance Charges Regulatory Account the amount of \$25.5 million in each of F2015 and F2016.

Home Purchase Option Plan (HPOP) Regulatory Account

25. Pursuant to Direction No. 6, section 3(m), BC Hydro must amortize from the Home Purchase Option Plan Regulatory Account the amounts of \$11.8 million and \$11.3 million in F2015 and F2016 respectively.

IFRS Property Plan and Equipment (PP&E) Regulatory Account

26. Pursuant to Direction No. 6, section 3(p)(i), BC Hydro must amortize from the IFRS PP&E Regulatory Account the amounts of \$15.9 million and \$19.8 million in F2015 and F2016 respectively.
27. Pursuant to Direction No. 6, section 3(p)(ii), BC Hydro must defer to the IFRS PP&E Regulatory Account \$156.8 million and \$134.4 million in F2015 and F2016 respectively.

Rate Smoothing Regulatory Account

28. Pursuant to Direction No. 7, section 7(h)(i), the Rate Smoothing Regulatory Account is approved to defer for recovery in rates in future fiscal years BC Hydro's allowed revenue requirements in a particular year that were not or are not to be recovered in rates in that particular fiscal year.
29. Pursuant to Direction No. 6, section 3(u), BC Hydro must defer to the Rate Smoothing Regulatory Account \$166.2 million and \$121.2 million in F2015 and F2016 respectively.

Real Property Sales Regulatory Account

30. Pursuant to Direction No. 7, section 7(h)(ii), the Real Property Sales Regulatory Account is approved to defer the variances between BC Hydro's actual and forecast real property gains and losses.
31. Pursuant to Direction No. 7, section 7(i)(ii), the Real Property Sales Regulatory Account must accrue interest in a fiscal year at BC Hydro's weighted average cost of debt in that year.

Return on Deemed Equity

32. Pursuant to Direction No. 7, section 4(d)(i), BC Hydro's allowed rate of return on deemed equity is set at 11.84 percent for each of F2015 and F2016.

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F2015 and F2016 Final Rates

33. Pursuant to Direction No. 6, section 3(a), and section 44.2 of the *Utilities Commission Act*, BC Hydro's F2015 and F2016 schedule of expenditures on demand-side measures is accepted as shown in Schedule A to Appendix A of this Order.
34. Pursuant to Direction No. 6, section 3(c) and Direction No. 7, section 16(3), BC Hydro's F2015 and F2016 Electric Tariff rates are set as shown in Schedule B to Appendix A of this Order, effective April 1, 2014 and April 1, 2015 respectively on a final, non-refundable basis.
35. Pursuant to Direction No. 6, section 3(d), BC Hydro's F2015 and F2016 Open Access Transmission Tariff rates are set as shown in Schedule C to Appendix A of this Order, effective April 1, 2014 and April 1, 2015 respectively on a final, non-refundable basis.

Deferral Account Rate Rider

36. Pursuant to Direction No. 7, section 10(1), the Deferral Account Rate Rider is set at 5 percent on a final, non-refundable basis.
37. Pursuant to Direction No. 7, section 10(3), forecast revenue from the Deferral Account Rate Rider must be accounted for by BC Hydro in accordance with paragraph 10(3) of Direction No. 7.

Compliance Filing

38. Pursuant to section 61 of the *Utilities Commission Act*, BC Hydro must file amended rate schedules for F2015 in accordance with the directives in this Order by March 31, 2014.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of March 2014.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachments

British Columbia Hydro and Power Authority
Application regarding its Rates for F2014, F2015 and F2016,
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F2014-F2016 DSM Expenditure Schedule

\$ MILLION	F2014	F2015	F2016
Codes and Standards	2.4	4.0	4.2
Rate Structures	6.5	2.0	1.7
Programs			
Residential	30.4	17.7	18.9
Commercial	66.4	39.5	40.0
Industrial	101.9	64.3	42.9
Total Programs	198.7	121.5	101.8
Supporting Initiatives	28.7	20.6	20.3
Total Energy Efficiency Portfolio	236.3	148.0	128.0
Capacity Focused DSM	0.0	2.4	3.1
Total	236.3	150.5	131.1

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ELECTRIC TARIFF RATES – F2015 and F2016

Rate Class	Rate Schedule	Rate	F2015	F2016
Residential	1101/1121	Basic Charge(\$/day)	0.1664	0.1764
		Step 1 energy rate (\$/kWh)	0.0752	0.0797
		Step 2 energy rate (\$/kWh)	0.1127	0.1195
Residential	1105 (closed)	Energy rate (\$/kWh)	0.0492	0.0522
		Energy rate during period of interruption (\$/kWh)	0.2865	0.3037
Residential Zone II	1107/1127	Basic Charge (\$/day)	0.1775	0.1882
		Step 1 energy rate (\$/kWh)	0.0901	0.0955
		Step 2 energy rate (\$/kWh)	0.1548	0.1641
Residential	1148 (closed)	Basic Charge(\$/day)	0.1775	0.1882
		Energy rate (\$/kWh)	0.0901	0.0955
Residential	1151/1161	Basic Charge (\$/day)	0.1775	0.1882
		Energy rate (\$/kWh)	0.0901	0.0955
Exempt General Service	1200/1201/ 1210/1211	Basic Charge(\$/day)	0.2129	0.2257
		Demand rate – Step 1 (\$/kW)	0	0
		Demand rate – Step 2 (\$/kW)	5.19	5.50
		Demand rate – Step 3 (\$/kW)	9.95	10.55
		Energy Rate – Tier 1 (\$/kWh)	0.1012	0.1073
		Energy Rate – Tier 2 (\$/kWh)	0.0486	0.0515
General Service	1205/1206/ 1207	Energy rate – Tier 1 (\$/kWh)	0.0492	0.0522
		Energy rate – Tier 2 (\$/kWh)	0.0323	0.0342
		Energy rate during period of interruption (\$/kWh)	0.2865	0.3037
Small General Service Zone II	1234	Basic Charge (\$/day)	0.2129	0.2257
		Energy rate – Tier 1 (\$/kWh)	0.1012	0.1073

Rate Class	Rate Schedule	Rate	F2015	F2016
		Energy rate – Tier 2 (\$/kWh)	0.1686	0.1787
Distribution Service	1253	Monthly Minimum energy charge (\$/month)	39.03	41.37
Distribution Service	1268	Energy charge (\$/kWh)	0.00157	0.00166
Power Service	1278 (Closed)	\$/kVA	2.526	2.678
		Energy charge (\$/kWh)	0.06604	0.07
		Monthly minimum greater of \$/kVA or (\$)	4.93 9868.64	5.23 10460.76
Large General Service Zone II	1255/1256/ 1265/1266	Basic Charge (\$/day)	0.2129	0.2257
		Energy charge – Tier 1 (\$/kWh)	0.1012	0.1073
		Energy charge – Tier 2 (\$/kWh)	0.1686	0.1787
Net Metering Service	1289	Energy rate (\$/kWh)	0.0999	0.0999
Small General Service	1300/1301/ 1310/1311	Basic Charge (\$/day)	0.2129	0.2257
		Energy Charge (\$/kWh)	0.1012	0.1073
Irrigation	1401/1402	Irrigation season energy rate (\$/kWh)	0.0487	0.0516
		Non-irrigation season energy charge – Tier 1 (\$/kWh)	0.0487	0.0516
		Non-irrigation season energy rate - Tier 2 (\$/kWh)	0.3864	0.4096
		Minimum charge irrigation season (\$/kW)	4.87	5.16
		Non-irrigation season if consumption >500 kWh (\$ per kW)	38.98	41.32
Medium General Service	1500/1501/ 1510/1511	Basic Charge (\$/day)	0.2129	0.2257
		Demand rate – Step 1 (\$/kW)	0.00	0.00
		Demand rate – Step 2 (\$/kW)	5.19	5.50
		Demand rate – Step 3 (\$/kW)	9.95	10.55
		Part 1 Energy Rate – Tier 1 (\$/kWh)	0.0934	0.0989
		Part 1 Energy Rate – Tier 2 (\$/kWh)	0.0651	0.0690
		Part 2 Energy Rate (\$/kWh)	0.0971	0.0990
		Minimum Energy Rate (\$/kWh)	0.0311	0.0330

Rate Class	Rate Schedule	Rate	F2015	F2016
Large General Service	1600/1601/ 1610/1611	Basic Charge (\$/day)	0.2129	0.2257
		Demand rate – Step 1 (\$/kW)	0.00	0.00
		Demand rate – Step 2 (\$/kW)	5.19	5.50
		Demand rate – Step 3 (\$/kW)	9.95	10.55
		Part 1 Energy Rate - Tier 1 (\$/kWh)	0.1010	0.1066
		Part 1 Energy Rate– Tier 2 (\$/kWh)	0.0486	0.0513
		Part 2 Energy Rate (\$/kWh)	0.0971	0.0990
		Minimum Energy Charge (\$/kWh)	0.0311	0.0330
Large General Service (150 kW and over) for Distribution Utilities	2600/2601/ 2610/2611	Basic Charge (\$/day)	0.2129	0.2257
		Demand rate – Step 1 (\$/kW)	0.00	0.00
		Demand rate – Step 2 (\$/kW)	5.19	5.50
		Demand rate – Step 3 (\$/kW)	9.95	10.55
		Part 2 Energy Rate \$/kWh (RS1600)	0.0971	0.0990
		Embedded Cost Rate \$/kWh	0.0501	0.0531
		Discount (\$/kWh)	-0.0037	-0.0039
Street Lighting	1701	100 SV fixture rate (\$/month)	15.61	16.55
		150 SV fixture rate (\$/ month)	18.61	19.73
		200 SV fixture rate (\$ month)	21.49	22.78
		175 MV fixture rate (\$/ month)	17.15	18.18
		250 MV fixture rate (\$/ month)	19.76	20.95
		400 MV fixture rate (\$/ month)	25.48	27.01
Street Lighting	1702	Each Unmetered Fixture (\$/watt per month)	0.03	0.0318
		Each Metered Fixture (\$/kWh)	0.0901	0.0955
Street Lighting	1703	Energy rate (\$/watt per month)	0.03	0.0318
		Contact rate (\$/contact per month)	0.9057	0.96
Street Lighting	1704	Energy rate (\$/kWh)	0.0901	0.0955

Rate Class	Rate Schedule	Rate	F2015	F2016
Street Lighting	1755 (closed)	1. Pole owned by Customer		
		175 MV or 100SV fixture charge (\$ per month)	14.63	15.51
		400 MV or 150SV fixture charge (\$ per month)	25.22	26.73
		2. Pole on public property		
		175 MV or 100SV fixture charge (\$ per month)	15.54	16.47
		400 MV or 150SV fixture charge (\$ per month)	26.13	27.70
		3. Pole paid by BC Hydro		
		175 MV or 100SV fixture charge (\$ per month)	19.13	20.28
		400 MV or 150SV fixture charge (\$ per month)	30.11	31.92
Transmission Service	1823	Demand rate (\$/kVA)	6.925	7.341
		Energy rate A (\$/kWh)	0.04059	0.04303
		Energy rate B - Tier 1 (\$/kWh)	0.03619	0.03836
		Energy rate B - Tier 2 (\$/kWh)	0.08022	0.08503
		Minimum demand (\$/kVA)	6.925	7.341
Transmission Service	1825	Demand rate (\$/kVA)	6.925	7.341
		Winter HLH energy rate (below 90%) (\$/kWh)	0.03619	0.03836
		Winter HLH energy rate (above 90%) (\$/kWh)	0.08952	0.09489
		Winter LLH energy rate (below 90%) (\$/kWh)	0.03619	0.03836
		Winter LLH energy rate (above 90%) (\$/kWh)	0.08113	0.08600
		Spring energy rate (below 90%) (\$/kWh)	0.03619	0.03836
		Spring energy rate (above 90%) (\$/kWh)	0.07226	0.07660
		Remaining energy rate (below 90%) (\$/kWh)	0.03619	0.03836

		Remaining energy rate (above 90%) (\$/kWh)	0.07923	0.08398
Transmission Service	1827	Demand rate (\$/kVA)	6.925	7.341
		Energy rate (\$/kWh)	0.04059	0.04303
		Minimum demand (\$/kVA)	6.925	7.341
Transmission Service	1852	Excess demand rate (\$/kVA)	6.925	7.341
Transmission Service	1853	Minimum Monthly Charge (\$/month)	39.03	41.37
Transmission Service	1880	Administrative Charge per Period of Use (\$)	150.00	150.00
		Energy charge (\$/kWh)	0.08022	0.08503
Transmission Service FortisBC	3808	Demand Charge (\$/kW)	6.925	7.341
		Energy rate (\$/kWh)	0.04059	0.04303

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BC HYDRO OPEN ACCESS TRANSMISSION RATES – F2015 and F2016

Service	Rate Schedule in Authority's Open Access Transmission Tariff	F2015 Rate	F2016 Rate
Network Integration Transmission Service	00	\$52.1 million/month	\$62.1 million/month
Long-Term Firm Point to Point Transmission Service	01	\$53,698/MW/Year	\$64,968/MW/Year
Monthly Short-term Firm and Non-Firm Point to Point Transmission Service	01	\$4,474.87/MW/month	\$5,413.99/MW/month
Weekly Short-term Firm and Non-Firm Point to Point Transmission Service	01	\$1,032.66/MW/week	1,249.38/MW/week
Daily Short-term Firm and Non-Firm Point to Point Transmission Service	01	\$147.12/MW/day	\$177.99/MW/day
Hourly Short-term Firm and Non-Firm Point to Point Transmission Service	01	\$6.13/MW/hour	\$7.42/MW/hour
Scheduling, System Control, and Dispatch Service Fee	03	\$0.102/MWh	\$0.099/MWh

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REASONS FOR DECISION

On November 26, 2013, the Province of British Columbia announced a 10-year plan regarding British Columbia Hydro and Power Authority (BC Hydro) rates and revenue requirements including, among other things, average rate increases of 9 percent and 6 percent in fiscal 2015 (F2015) and fiscal 2016 (F2016), respectively.

On March 5, 2014, the Lieutenant Governor in Council issued three directions to the British Columbia Utilities Commission (Commission) under section 3 of the *Utilities Commission Act* (Act), which directions took effect when they were deposited on March 6, 2014. Direction No. 6, B.C. Reg. 29/2014, and Direction No. 7, B.C. Reg. 28/2014 are relevant to the Application as amended.

Direction No. 6 relates to the rates of the British Columbia Hydro and Power Authority (BC Hydro) for the fiscal years F2014, F2015, and F2016. Sections 3(c) and 3(d) of Direction No. 6 require the Commission to issue final orders setting BC Hydro's F2015 and F2016 rates as set out in Appendix B and Appendix C to that direction within 20 days of the date on which BC Hydro files an application with the Commission to request final orders regarding BC Hydro's F2014, F2015 and F2016 rates.

Direction No. 7 primarily concerns F2017 and beyond although some of its provisions also impact F2014, F2015, and F2016.

On March 7, 2014, BC Hydro filed an application (Application) pursuant to the Act and Directions No. 6 and 7, seeking Commission orders that would, among other things, confirm as final, and no longer subject to refund, BC Hydro's F2014 rates and set its F2015 and F2016 Electric Tariff and Open Access Transmission Tariff rates as final. The F2015 and F2016 rates for which approval was sought are those prescribed by Direction No. 6.

By operation of the 20 day time period in sections 3(c) and 3(d) of Direction No 6, March 27, 2014 is the final date for the Commission to approve the rates set out in Appendix B and Appendix C to that direction.

On March 13, 2014, the Ministry of Energy and Mines (Ministry) filed a letter with the Commission identifying an error in Direction No. 6, Appendix B, with respect to the energy rate unit in the Electric Tariff Rates for RS 3808 Transmission Service to FortisBC Inc. The letter states that the energy rate should be in cents per kilowatt hour, as in the existing RS 3808 rate, rather than in dollars per kilowatt hour as it appears in Direction No. 6.

The letter further states that the Ministry is working with the Ministry of Justice Legislative Counsel to draft an amendment to Direction No. 6 to rectify the error; however, the amendment cannot be made prior to the Commission's issuing deadline of Thursday, March 27, 2014.

On March 17, 2014 the BC Hydro filed a submission in which it also identified the error in Direction No. 6. BC Hydro submits that the Rate Schedule 3808 energy rates set out in Direction No. 6 are over 100 times greater than the current energy rate in Rate Schedule 3808 and that "[i]ncreasing the energy rates from the current rate of \$0.03724/kWh to \$4.059/kWh would result in monthly charges in the order of hundreds of millions of dollars and annual charges in the billions of dollars." BC Hydro submits that as a matter of statutory interpretation the Commission could substitute the correct rates for the erroneous (and unacceptably absurd) rates. BC Hydro amended the relief it was seeking accordingly.

On March 19, 2014, FortisBC Inc.(FortisBC), Commercial Energy Consumers Association of British Columbia (CEC), the British Columbia Municipal Electrical Utilities (BCMEU), BC Sustainable Energy Association and the Sierra Club British Columbia (BCSEA-SCBC) and the Association of Major Power Customers of British Columbia (AMPC) filed letters in support of BC Hydro's March 17, 2014 submission.

On March 21, 2014, BC Hydro filed a supplemental submission asking the Commission, as an additional basis for granting the relief sought in its March 17 submission, to treat the March 17 submission as an application for purposes of section 16(3) of Direction No. 7.

Legislative Framework

Subsection 3(1) of the Act provides that the Lieutenant Governor in Council, by regulation, may issue a direction to the Commission with respect to the exercise of its powers and the performance of its duties, including a direction requiring the Commission to exercise a power or perform a duty, or refrain from doing either, as specified in the regulation.

Subsection 3(2) of the Act provides that:

- The commission must comply with a direction issued under subsection (1), despite
- (a) any other provision of
 - (i) this Act, except subsection (3) of this section, or
 - (ii) the regulations,
- (a.1) any provision of the *Clean Energy Act* or the regulations under that Act, or
- (b) any previous decision of the commission.

The Lieutenant Governor in Council issued three directions to the Commission under section 3 of the Act on March 5, 2014, which directions took effect when they were deposited on March 6, 2014. Relevant to the Application as amended are Direction No. 6 and Direction No. 7.

Section 3 of Direction No. 6 provides that within 20 days of the date on which the authority files an application with the Commission to request final orders in regard to the authority's F2014, F2015 and F2016 rates, the Commission must issue final orders as specified in Direction No. 6. In particular, section 3(c) of Direction No. 6 requires the Commission to set the electric tariff rates for F2015 and F2016 as set out in Appendix B to the direction. In Appendix B, the Energy rate for RS 3808 for Transmission Service to FortisBC is expressed in \$/kWh to be 4.059 in F2015, and 4.303 in F2016.

Section 16 of Direction No. 7 provides that:

- (1) The commission may not reconsider, vary or rescind the orders it issues under this direction or Direction No. 6 to the British Columbia Utilities Commission, except on application by the authority.

...

- (3) In setting the authority's rates for F2015, F2016, F2017, F2018 and F2019, the commission must exercise its powers and perform its duties consistently with the orders it issues under Direction No. 6 to the British Columbia Utilities Commission, except on application by the authority.

Submissions to the Commission

On March 7, 2014, BC Hydro filed, among other things, its F2015 to F2016 Revenue Requirements Rate Application. In the Application, it sought approval for the F2015 and F2016 rates prescribed by Direction No. 6, including the same Energy rate for RS 3808 as that set out in Appendix B to Direction No. 6.

On March 13, 2014, the Ministry of Energy and Mines filed a letter with the Commission identifying a typographical error in Direction No. 6 with respect to the indicated units for Rate Class “Transmission Service FortisBC” in Appendix B. The letter notes that the energy rate unit for RS 3808 in Direction No. 6 indicates that the rates are in dollars per kilowatt hour, and states that the energy rate should be in cents per kilowatt hour.

On March 17, 2014, BC Hydro filed a submission noting the same typographical error in Direction No. 6, and in the draft order filed with the Application regarding F2015 and F2016 rates. BC Hydro filed a revised version of the draft order showing the Energy rate for RS 3808 in \$/kWh to be .04059 in F2015, and .04303 in F2016.

BC Hydro notes that the current RS 3808 energy rate in BC Hydro's Electric Tariff is \$0.03724/kWh, that applying the F2015 9 percent rate increase to that amount would result in an energy rate of \$0.04059/kWh, and that applying the F2016 6 percent rate increase to the F2015 amount would result in an energy rate of \$0.04303/kWh. These energy rates are exactly 1/100 of the rates which are set out in Appendix B to Direction No. 6.

BC Hydro submits that the Commission has jurisdiction to issue the revised draft order on the basis of a principle of statutory interpretation in *Sullivan on the Construction of Statutes* (5th ed., 2008) at 175. Sullivan states that if there is no way to interpret a legislative provision to avoid an absurdity, then the court has power to redraft the legislative provision where all three of the following factors are present: manifest absurdity, traceable error, and an obvious correction.

BC Hydro cites *United States of America v. Allard*, [1991] 1 S.C.R. 861 as an example of a decision-maker interpreting an otherwise clear provision to avoid an absurdity.

BC Hydro then argues that the three-part test set out in *Sullivan* is met with respect to the error in Appendix B to Direction No. 6, and requests the Commission “to effectively correct the drafting errors before it by substituting 0.04059 and 0.04303 for 4.059 and 4.303 in regard to the F2015 and F2016 Rate Schedule 3808 energy rates, respectively ...”.

On March 19, 2014, FortisBC, CEC, BCMEU, BCSEA-SCBC and AMPC filed letters in support of BC Hydro’s March 17, 2014 submission.

On March 21, 2014, BC Hydro filed a supplemental submission asking the Commission, as an additional basis for granting the relief sought in its March 17 submission, to treat the March 17 submission as an application for purposes of section 16(3) of Direction No. 7.

Statutory interpretation, legislative drafting errors, and jurisdiction of the Commission

In *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, [2000] 2 S.C.R. 919, the majority questioned whether there was an error in the statutory provision it was considering, and noted at para. 40 that:

Although there are statutes whose strict reading might make this more complicated, typographical errors in legislation should not ordinarily compel us to read statutes absurdly. As Côté, *supra*, notes at p. 390,

Material errors may slip into a legislative text during the process of drafting or publication. The result may be absurd either in itself, in relation to other provisions of the enactment, or with respect to the aim of the legislation. The law should be interpreted in the light of its aims, passing over obviously defective written expression.

However, in *R. v. McIntosh*, [1995] 1 S.C.R. 686, the majority held that:

I would adopt the following proposition: where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be (para. 34)

Thus, only where a statutory provision is ambiguous, and therefore reasonably open to two interpretations, will the absurd results flowing from one of the available interpretations justify rejecting it in favour of the other. Absurdity is a factor to consider in the interpretation of ambiguous statutory provisions, but there is no distinct “absurdity approach.” (para. 36)

R. v. McIntosh was followed by the British Columbia Court of Appeal, in a five-judge panel, in *Bedwell v. McGill*, 2008 BCCA 526 at para. 31, where the court stated:

Although it appears that Professor Sullivan is of the view that “in certain circumstances”, courts may “reject the apparent clear meaning of a text” in order to give effect to what the legislature most likely intended (see *Sullivan and Driedger, supra*, at 243), I know of no judicial authority that would support our disregarding the clear terms of an enactment on the basis of absurdity.

BC Hydro's submissions do not address this line of authority, or the conflict between it and Professor Sullivan's assertion that the court has power to “redraft” legislation where there is a clear error. BC Hydro has also not cited any instances in which the courts have approved the exercise of this “redrafting” power by a statutory decision-maker.

The Commission cannot exceed the powers that are granted to it by its enabling legislation. (*ATCO Gas and Pipelines Ltd. v. Alberta Energy and Utilities Board*, 2006 SCC 4, [2006] 1 S.C.R. 140 at para. 35) The powers of the Commission are restricted by the prescriptive nature of a direction made under section 3 of the Act.

In its submission of March 17, 2014, BC Hydro has requested the Commission to “effectively correct the drafting errors” by approving a tariff that contains provisions regarding RS 3808 which differ from Appendix B to Direction No. 6. However, section 3(c) of Direction No. 6 requires the Commission to set the electric tariff rates for F2015 and F2016 as set out in Appendix B.

Although the Commission is of the view that the RS 3808 energy rates in Appendix B are in error, it does not have jurisdiction to override the clear provisions of Direction No. 6 to correct the error.

In the Application, BC Hydro made a supplemental submission that was filed March 21, 2014. BC Hydro submits that if the Commission does not accept the interpretation argument advanced in the March 17 submission, then section 16(3) of Direction No. 7 provides an additional basis for the Commission to grant the relief applied for in the March 17 submission. On that basis, BC Hydro submits that in consequence of section 16(3) of Direction No. 7 the Commission can grant the relief sought in the March 17 application despite section 3(c) of Direction No. 6, provided there is a meritorious basis for granting that relief.

The Commission is required to set the authority's rates for F2015 and F2016 in accordance with Direction No. 6, except to the extent that the authority makes an application under section 16(3) of Direction No. 7.

The only changes from Direction No. 6 requested by BC Hydro in its submissions of March 17 and 21, 2014 are to approve the Energy rate for RS 3808 in \$/kWh to be 0.04059 instead of 4.059 in F2015, and 0.04303 instead of 4.303 in F2016.

BC Hydro requests these changes on the basis of the drafting error in Appendix B, as identified in its submission of March 17, 2014, and the prospect of the rate charged by BC Hydro to FortisBC increasing by more than one hundred-fold as a result of that error.

Commission Determination

The Commission has considered BC Hydro's Application dated March 7, 2014, its submissions of March 17 and 21, 2014 and the letters of support that were received on March 19, 2014.

The Commission recognizes the error in Direction No. 6, Appendix B noted by BC Hydro in its submissions, in which it appears that the Energy charges for Electric Tariff Rates under RS 3808 Transmission Service to FortisBC Inc. were changed from ¢/kWh to \$/kWh without moving the decimal points.

Given the prescriptive nature of section 3 of the Act, and the clear language of Direction No. 6, the Commission does not have the jurisdiction to correct the typographical errors in Appendix B to the Direction, as requested by BC Hydro and supported by FortisBC, CEC, BCMEU, BCSEA-SCBC and AMPC.

However, the Commission does have jurisdiction under section 16(3) of Direction No. 7 to approve rates that differ from Direction No. 6, on application by the authority. The Commission finds that the BC Hydro submissions of March 17 and 21, 2014 constitute an application for purposes of section 16(3) of Direction No. 7.

The Commission agrees with the following reasons put forward by BC Hydro for adjusting the RS 3808 Energy rate to substitute 0.04059 and 0.04303 for 4.059 and 4.303 in regard to the F2015 and F2016 Rate Schedule 3808 energy rates, respectively:

- (a) If left unchanged, the RS 3808 energy rates would be over 100 times greater than the current energy rate in RS 3808, resulting in annual charges in the billions of dollars. The rates would be entirely inconsistent with the historical RS 3808 energy rate and with BC Hydro's revenue requirements model.

- (b) It is clear how this error occurred, through the drafter's failure to move the decimal point in the energy rates when the rates became expressed in dollars rather than cents.
- (c) The substituted rate requested in BC Hydro's submission is consistent with the original legislative intention, based on the fact that applying the F2015 rate increase of 9 percent to the current Electric Tariff of \$0.03724/kWh would result in an F2015 energy rate of \$0.04059/kWh, and that applying the F2016 rate increase of 6 percent to the F2015 amount would result in an F2016 energy rate of \$0.04303/kWh.

For these reasons, the Commission agrees there is a meritorious basis for granting the section 16(3) relief sought by BC Hydro. Accordingly, the Commission approves the F2015 and F2016 rates as contained in Schedule B to Appendix A, of Order G-48-14 effective April 1, 2014 and April 1, 2015 respectively on a final and non-refundable basis.

In addition, the Commission makes the other orders sought by BC Hydro in the Application.

BC Hydro must file amended rate schedules for F2015 in accordance with the directives in Order G-48-14 by March 31, 2014.