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VIA ELECTRONIC MAIL

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Attention: Marija Tresoglavic, Acting Commission Secretary

Dear Sirs/Mesdames:

Re: British Columbia Hydro and Power Authority ("BC Hydro") F2020 to F2021 Revenue Requirements Application ~ Project No. 1598990

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "**CEC**"). We write in response to the questions posed by the Panel in Exhibit A-38. The CEC has had the benefit of reviewing the submissions of BC Hydro as contained in Exhibit B-60 and is generally supportive of their positions. The CEC submissions are as follows:

1. Given that it will likely be 17 to 18 months into the test period by the time the final decision is issued for this proceeding, does this timing limit the amount of expenditures that the Panel can disallow for recovery because section 3 of Direction No. 8 requires the BCUC to "ensure" that the rates set for the test period "allow the authority to collect sufficient revenue <u>in each fiscal year</u> to enable the authority to achieve an annual rate of return on deemed equity that would yield a distributable surplus of $712 million"? [emphasis added]

The CEC submits that section 3 of Direction No. 8 does not limit the Commission's ability to review the reasonableness of BC Hydro's forecast revenue requirements. Despite the wording contained in the Direction, that the Commission "ensure" test period rates "allow the authority to collect sufficient revenue in each fiscal year to enable the authority to achieve an annual rate of return on deemed equity that would yield a distributable surplus of $712 million", the fair return standard only requires that BC Hydro be given a reasonable opportunity to earn the fair return, not that the Commission must ensure any particular figure is reached.

The CEC has had the benefit of reviewing BC Hydro's submissions on the issue and agrees with their position, including that Direction No. 8 leaves the Commission sufficient discretion to

complete its review of the reasonableness of BC Hydro revenue requirements. The contents of the Direction must be read within the broader context of the *Utilities Commission Act* and the common law, which provide that despite the use of absolute terms, the regulatory compact requires only that the utility be granted the opportunity to earn a fair return.

2. Whether a final decision for this proceeding if issued earlier in the process would make a difference in the amount of expenditures that the Panel can disallow for recovery due to the requirement of section 3 of Direction No. 8.

The CEC submits that the timing of the final decision in this proceeding has no consequential effect on the amount of expenditures the Panel can disallow under the terms of section 3 of Direction No. 8. The role and obligation of the Commission remains the same in this proceeding regardless of the extent to which a portion of the Test Period may have passed. If the Commission determines there are imprudent costs and/or costs which should be disallowed as unnecessary to provide appropriate service for customers and a fair return to the utility in the public interest, then such costs should be excluded in any event, whether or not they have already been incurred by the utility.

The CEC agrees with BC Hydro that shifting towards earlier filing dates for revenue requirements applications and striving to shorten the length of future proceedings are admirable outcomes to shoot for and will contribute to fair and efficient regulation moving forwards.

3. Whether the timing of the decision is irrelevant, and the only consideration is that the approved level of expenditure and cost recovery would have provided the required return if it could have been implemented in a timely manner.

The CEC agrees with BC Hydro's submission that the law is, and should be, applied in the same manner regardless of the timing of the Commission's decision.

4. The common law notion of "regulatory compact" requires that a utility be provided with the opportunity to earn a reasonable return on invested capital. Is section 3 of Direction 8 simply a restatement of the regulatory compact, substituting a fixed return of $712 million for a "reasonable return," or does it afford BC Hydro some additional certainty regarding its return?

As indicated in response to question 1, the CEC submits section 3 of Direction 8 is a restatement of the regulatory compact except to the extent that a subset of the regulatory compact is modified by a specific request for a particular distributable surplus. The fair return standard only requires the utility be given the opportunity to earn a fair return and the addition of a particular distributable surplus does not afford BC Hydro additional certainty regarding its fair return.

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5. If, pursuant to the rates set by the BCUC, BC Hydro fails to collect sufficient revenue to achieve the stipulated distributable surplus amount, does that mean that ratepayers must pay the deficiency in the subsequent test period? Why or why not? Conversely, if BC Hydro achieves a distributable surplus that is greater than the stipulated amount pursuant to the rates set by the BCUC, does that mean that BC Hydro must refund to ratepayers the excess surplus in the subsequent test period? Why or why not?

The rates must be set at a level that will allow BC Hydro the opportunity to earn a fair return. In this instance, due to section 3 of Direction 8, a target distributable surplus is set at $712 million. Whether or not BC Hydro achieves, exceeds, or falls short of that distributable surplus is of no consequence to a subsequent deficiency payment sought from, or refund of excess to, ratepayers, which is the sole jurisdiction of the Commission to determine.

BC Hydro has appropriately cited the law in regard to retroactive ratemaking as established by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4.

6. Aside from the fact that BC Hydro's annual return on deemed equity is a fixed dollar amount, whether section 3 of Direction No. 8 changes how the BCUC can regulate and set rates for the test period for BC Hydro compared to an investor owned utility.

As outlined above, the only difference following from section 3 of Direction No. 3 is the setting of rates to enable a particular fixed dollar annual return on deemed equity, sufficient to provide a $712 million distributable surplus to the government. Otherwise, the Commission maintains its regulatory and rate-setting power as would be exercised in regulating an investor-owned utility.

7. Certain events initiated by the BCUC, in the course of "regulating…the authority" could potentially give rise to an expenditure in F2020 or F2021 that is not anticipated in the revenue requirement. Examples of this include: a BCUC directed audit or review; an unanticipated hearing ordered by the BCUC; or an Administrative Penalty. What consideration, if any, should be given to the expenditures that arise from such an event? Does section 3 of Direction 8 require the panel to consider these when setting rates? In the case of an administrative penalty, section 109.5 of the Utilities Commission Act (UCA) states: "In setting rates for a public utility, the commission must not allow the public utility to recover from persons who receive or may receive service from the public utility the costs of paying an administrative penalty imposed under this Part." Does this section of the UCA require a different approach to penalties than other expenditures when considering section 3 of Direction 8?

The CEC supports the submissions of BC Hydro in response to this question. Section 3 of Direction No. 8 should not affect the Commission's regulation of the utility with respect to any of the listed examples in the question.

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All of which is respectfully submitted.

Yours truly,

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Christopher P. Weafer

CPW/jj
cc: CEC
cc: BC Hydro
cc: Registered Interveners