


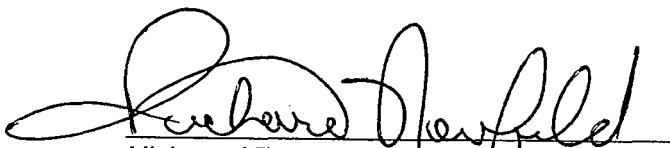
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

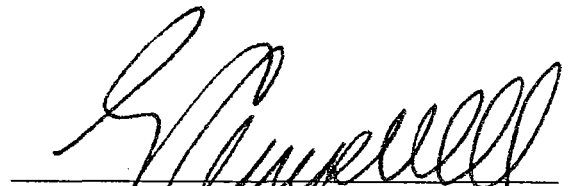
Order in Council No. **1123**, Approved and Ordered **NOV 27 2003**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective April 1, 2004, the attached Special Direction No. HC2 is made.


Minister of Energy and Mines


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- BC Hydro Public Power Legacy and Heritage Contract Act, sections 3 and 4

Other (specify):- _____

November 20, 2003

1408 /2003/33

HERITAGE SPECIAL DIRECTION NO. HC2 TO THE BRITISH COLUMBIA UTILITIES COMMISSION

Definitions

1 In this Special Direction:

“**Act**” means the **BC Hydro Public Power Legacy and Heritage Contract Act**;

“**debt**” means, in relation to a fiscal year of the authority, the amount obtained by

(a) adding the outstanding amounts of the following at the end of the fiscal year:

- (i) borrowings;
- (ii) bonds;
- (iii) notes;
- (iv) debentures, and

(b) deducting from the amount determined under paragraph (a) the sum of the of the following amounts at the end of the fiscal year:

- (i) sinking funds;
- (ii) temporary investments;
- (iii) repurchased debt;

“**equity**” means the sum of the following amounts at the end of the fiscal year:

- (a) retained earnings;
- (b) deferred revenue;
- (c) contributions arising from the Columbia **River** Treaty;
- (d) contributions in aid of construction;

“**government policy directive**” means a directive in writing to the authority from the minister charged with the administration of the *Hydro and Power Authority Act*;

“**heritage contract**” means the document attached as Appendix A to this Special Direction;

“**heritage deferral account**” means an account established under section 7 (a) of this Special Direction;

“**heritage energy**” has the same meaning as in the heritage contract;

“**heritage payment obligation**” has the same meaning as in the heritage contract;

“**heritage resources**” has the same meaning as in the heritage contract;

“**trade income**” means the audited net income of Powerex Corp., according to generally accepted accounting principles, adjusted by,

- (a) if the audited net income is less than zero, adding the amount necessary to make it zero, and

- (b) where audited net income is greater than \$200 million, subtracting any amounts in excess of \$200 million;

“transmission rate customers” means industrial or commercial customers of the authority who are eligible for service under rates designed by the commission under section 3.

Application

- 2 This Special Direction is issued to the commission under sections 3 and 4 of the Act.

Consideration in designing rates for transmission rate customers

- 3 (1) In designing rates for the authority’s transmission rate customers, the commission must ensure that those rates are consistent with recommendations #8 to #15 inclusive in the commission’s report and recommendations to the Lieutenant Governor in Council dated October 17, 2003.
- (2) Without limiting subsection (1), the commission must ensure the following:
 - (a) the rates for the authority’s transmission rate customers are subject to
 - (i) the terms and conditions found in Supplements 5 and 6 to the authority’s tariff, and
 - (ii) any other terms and conditions the commission considers appropriate for those rates;
 - (b) customers who own multiple plants under common ownership may engage in load aggregation for energy, **if** each plant
 - (i) is in operation, and
 - (ii) meets the requirements to be a transmission rate customer that are set out in the authority’s ~~tariff~~, or is otherwise authorized by the commission to be treated **as** a transmission rate customer;
 - (c) the authority publishes the Tier 2 rate in the manner and with the frequency required by the commission.

Basis for establishing authority revenue requirements

- 4 Subject to section 7, in regulating and setting rates for the authority, the commission must ensure that those rates allow the authority to collect sufficient revenue in each fiscal year to enable the authority to
 - (a) provide reliable electricity service,
 - (b) meet all of its debt service, *tax* and other financial obligations,
 - (c) comply with government policy directives, including, without limitation, government policy directives requiring the authority to construct, operate or extend a plant or system, **and**
 - (d) achieve an annual rate of return on equity equal to the pre-income tax annual rate of return allowed by the commission to the most comparable investor-owned energy utility regulated under the *Utilities Commission Act*.

Determining the cost of energy

- 5 In setting the authority’s rates, the commission

- (a) must treat the heritage contract as if it were a legally binding agreement between 2 arms-length parties,
- (b) must determine the energy required by the authority to meet its domestic service obligations and must determine the cost to the authority of the portion of that required energy that is in excess of the energy supplied under the heritage contract,
- (c) may employ any mechanism, formula or method referred to in section 60 (1) (b. 1) of the *Utilities Commission Act*, and
- (d) unless a different mechanism, formula or method is employed under paragraph (c), must ensure that electricity used by the authority to meet its domestic service obligations is provided to customers on a cost-of-service basis.

Return on equity

- 6** In setting the authority's rates, the commission must allow the authority an annual rate of return on equity calculated using forecast consolidated operating income, which forecast consolidated operating income is calculated on the basis of forecast trade income.

Deferral accounts

- 7** When regulating and setting rates for the authority, the commission:
 - (a) must allow the authority to establish one or more accounts to reflect and record variances between
 - (i) the heritage payment obligation and the authority's forecast of the heritage payment obligation, and
 - (ii) the trade income and the authority's forecast of trade income,
 - (b) may allow the authority to establish one or more other deferral accounts for other purposes, and
 - (c) 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.

Annual distributable surpluses allowed

- 8** When regulating and setting rates for the authority, the commission must ensure that those rates allow the authority to allocate annual distributable surpluses in the manner specified by the Lieutenant Governor in Council under section 4 of the Act or section 35 of the *Hydro and Power Authority Act*.

APPENDIX A TO HERITAGE SPECIAL DIRECTION No. HC2

HERITAGE CONTRACT

WHEREAS on November 25, 2002, the Province of British Columbia released Energy for Our Future, A Plan for B.C. (the “Energy Plan”);

AND WHEREAS the Energy Plan outlines certain policy actions designed to ensure British Columbians have continued access to sufficient supplies of dependable low-cost electricity;

AND WHEREAS the Energy Plan provides in Policy Action #1 that a legislated heritage contract will be created between BC Hydro’s generation line-of-business and BC Hydro’s distribution line-of-business for an initial term of **10** years.

THEREFORE, BCH Distribution and BCH Generation (the “parties”) agree as follows.

Definitions

1. In this Agreement:

“**Act**” means the *BC Hydro Public Power Legacy and Heritage Contract Act*;

“**Agreement**” means this Heritage Contract including Schedule A;

“**Ancillary Service Requirements**” means services necessary to deliver energy;

“**BC Hydro**” means the British Columbia Hydro and Power Authority;

“**BCH Distribution**” means BC Hydro’s distribution line-of-business;

“**BCH Generation**” means BC Hydro’s generation line-of-business;

“**Commission**” means the British Columbia Utilities Commission;

“**heritage electricity**” means the capacity, energy and ancillary services that BCH Generation is required to supply to BCH Distribution under this Agreement;

“**heritage energy**” means

- (a) subject to paragraph (b), 49 000 GW.h per year less the energy generated for delivery under the Skagit Valley Treaty, or
- (b) the quantity of energy determined by the Commission under section 8 of this Agreement to be heritage energy;

“**heritage payment obligation**” means

- (a) subject to paragraph (b), the annual payment determined in accordance with the procedure set out in Schedule A to this Agreement, or
- (b) the annual payment determined by the Commission under section 8 of this Agreement to be the heritage payment obligation;

“**heritage resources**” means the Electric Facilities and Thermal Facilities described in Schedule A to the Terms of Reference, together with

- (a) the related civil works and plant, and
- (b) potential future investments that increase the capacity, energy *or* ancillary service capability of such facilities, including potential future units 5 and 6 at Mica and potential future units 5 and 6 at Revelstoke;

“**Order**” means an order of the Commission;

“**Terms of Reference**” means Schedule A, Terms of Reference, to Order-in-Council No. 025312003;

“Transfer Pricing Agreement” means the Transfer Pricing Agreement for Electricity and Gas dated April 1, 2003 between BC Hydro and Powerex Corp. as amended from time to time;

“Year” means fiscal year.

Electricity Supply

2. BCH Generation must provide the full capacity of the heritage resources to BCH Distribution on a priority call basis.

Obligation to supply

3. BCH Generation must supply to BCH Distribution, in each Year, the heritage energy or such lesser amount of energy as may be required by BCH Distribution.

Obligation to deliver

4. BCH Generation will deliver the heritage energy to **BCH** Distribution at the various points of interconnection of the generating stations included in the heritage resources with the BC Hydro transmission grid or at points of interconnection with other utilities, as appropriate.

Responsibility for obtaining transmission services

5. BCH Distribution will be responsible for obtaining transmission services for energy provided to BCH Distribution.

Ancillary services

6. The parties may use the capacity available to them under section 2 to deliver energy to meet customer demand and to satisfy the parties’ Ancillary Service Requirements, regardless of whether provision for self-supply is made under any tariff.

Payment

7. BCH Distribution must, on ~~or~~ before the end ~~of~~ each Year, pay to BCH Generation an amount equal to the heritage payment obligation.

Adjustment

8. The parties acknowledge that
 - (a) the Commission may, by Order, modify one or both of the definitions of “heritage energy” and “heritage payment obligation” if the commission is satisfied that a change in circumstances has permanently affected
 - (i) the capability of the heritage resources to provide one or both of capacity and energy, or
 - (ii) the authority’s cost of generating the heritage energy, and
 - (b) any such modification will automatically modify the heritage energy or the heritage payment obligation, ~~as~~ the case may be, without further action by the parties.

Information exchange and cooperation

9. Each party will continue to freely provide the other with any requested information to facilitate the coordinated and optimal operation ~~of~~ the BC Hydro system.

Dispute resolution

10. (1) The parties will make reasonable efforts to resolve disputes arising in relation to this Agreement at the staff level.

- (2) As needed, issues may be dealt with by management levels within each party to achieve timely resolution.
- (3) Issues that cannot be resolved in a timely manner at senior management levels, may be referred by either party to the commission for resolution.

Term and termination

- 11. (1) This Agreement shall commence on April 1,2004.
- (2) This Agreement may be terminated by government, with 5 years notice, any time after April 1,2009 and if such notice is given, the Agreement shall terminate at the end of the 5-year notice period without any further action by the parties or the government.

Dated as of this ____ day of _____,2004.

BCH Distribution

BCH Generation

SCHEDULE A

HERITAGE PAYMENT OBLIGATION

The heritage payment obligation for any Year is the amount determined by

- (a) adding those of the following costs incurred by BCH Generation in the Year that the Commission orders may be included in the heritage payment obligation:
 - (i) cost of energy such as the cost of water rentals and energy purchases, including purchases of gas and electricity, required to supply heritage electricity;
 - (ii) operating costs such as the costs of operating and maintaining the heritage resources, including an allocation of corporate costs;
 - (iii) all costs of owning the heritage resources, including, without limitation, depreciation, interest, finance charges and other asset related expenses;
 - (iv) all costs or payments related to generation-related transmission access required by the heritage resources;
 - (v) the applicable return on equity on investments in heritage resources based on Heritage Special Direction No. HC2 to the Commission under the authority of the Act, and
- (b) by subtracting from the sum obtained under paragraph (a), any revenues BCH Generation receives from other services provided from the heritage resources, including, without limitation,
 - (i) revenues related to Skagit Valley Treaty obligations,
 - (ii) revenues from provision of ancillary services to the transmission operator in respect of third party use of the transmission system, and
 - (iii) revenues from the sale of surplus hydro electricity under section 5 of the Transfer Pricing Agreement.