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June 21, 2004

DELIVERED

Mr. Robert J. Pellatt
Commission Secretary
British Columbia Utilities Commission
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Dear Mr. Pellatt:

**RE: British Columbia Hydro and Power Authority ("BC Hydro")
Project No. 3698360 - Letter No. L-25-04
Revenue Requirements 2004/05 and 2005/06 Application**

We have received the CECBC Undertaking Response filed June 17, 2004, allegedly in response to a question appearing at page 3897 of Volume 21 of the transcript. We do not believe the filing is responsive and suggest below some alternative courses of action in consequence.

During his direct oral testimony, the CECBC witness, Mr. Craig, edited, without prior notice, certain of the conclusions in his prefiled written testimony to reflect his reaction to evidence he had heard over the course of the Hearing. While no objection was taken at that point, clarification was sought in response to Mr. Craig's declaration that the changes to the evidence at page 16 of Exhibit C35-5 had implications for the calculation of the deductions that CECBC would recommend be made to BC Hydro's Application, and the nature of those implications would not be disclosed until argument.

The June 17 filing goes well beyond the request. Rather than simply updating the proposed adjustment amount, the response identifies a methodology in considerably more detail than the prefiled evidence and then very substantially revises upward the cost reductions Mr. Craig says are possible. Perhaps in recognition of the extent of the change, the response then introduces an entirely new deferral account proposal long after the evidence has been closed.

This evidence should have been put to BC Hydro's witnesses in cross-examination so that they would have an opportunity to respond to it. Alternatively, if the evidence was really not available until after Panel 2's testimony was complete, notice should have been given of this proposal before Mr. Craig testified so that he could have been tested on it. Finally, this proposal

should have been identified before BC Hydro was asked to determine whether to call rebuttal evidence. None of these things happened, with the result that a fundamentally flawed piece of evidence has not been subjected to scrutiny and a proposal based on that flawed evidence cannot be properly evaluated.

In these circumstances, we suggest that there are two alternative courses of action to ensure BC Hydro is treated fairly:

1. the June 17 filing should not be accepted in testimony; or
2. if it is accepted, BC Hydro should be permitted to file a written response that identifies the flaw in Mr. Craig's assumption that BC Hydro's short-term debt is limited to its revolving borrowings.

In order to obtain as complete a record as possible, BC Hydro recommends the second course of action. If controversy that cannot be addressed in argument remains after BC Hydro files its responsive evidence, the oral phase of the Hearing could be reconvened for a half day to address this sole issue, but we do not believe that is likely to be necessary.

BC Hydro's responsive evidence could be filed the day after the Commission determines how it wishes to proceed with this matter.

Yours very truly,

LAWSON LUNDELL



Chris W. Sanderson, Q.C.

CWS/bts

cc: Owen Bird
Attention: Christopher P. Weafer

cc: All Intervenors

cc: BC Hydro
Attention: Richard Stout