

1 Q. Is it Hydro's position that a direction under section 5.1 of the EPCA could change a
2 final rate set for and paid by a Hydro customer, or class of Hydro customers? If
3 Hydro's response to the foregoing question is "yes", please provide Hydro's full
4 justification for that response.

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7 A. In Hydro's opinion, providing a "yes" or "no" response to this question would not be
8 sufficient to provide a full understanding of the issue raised.

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10 There is a general rule against retroactive rate making that applies to Board orders
11 whether or not there is a directive involved. The rule against retroactive rate
12 making does not apply to interim orders. In those cases, which are authorized by
13 the *Public Utilities Act*, the Board has expressly retained the power to make a final
14 order which differs from the interim order. The other circumstance where an
15 opportunity exists for the Board to reconsider its rate making approach is where it
16 is dealing with an amount held in a deferral account. Once a final decision has been
17 made as to the disposition of an amount in a deferral account, that decision
18 constitutes a final order which the Board cannot change retroactively. If the Board
19 does not have jurisdiction to revise that final order, it cannot be directed to do so.
20 However, while amounts remain in a deferral account to be distributed, the Board
21 retains jurisdiction as to how that distribution will be made. It is required to make
22 that decision as to the disposition of that account in accordance with proper rate
23 making principles and practices. Until that final order is made and those deferral
24 account amounts are distributed, the Board may be properly directed, under
25 section 5.1 of the EPCA, on the rates policies to apply to such a decision.