

1 Q. Section 5.1 of the *Electrical Power Control Act, 1994* (EPCA) only authorizes the  
2 Lieutenant-Governor in Council to “*direct the public utilities board with respect to*  
3 *the policies and procedures to be implemented by the board with respect to the*  
4 *determination of rate structures of public utilities under the Public Utilities Act*”.  
5 Is it Hydro’s position that changing the RSP load variation rules applicable to final IIC  
6 rates in effect prior to January 1, 2008 would be a direction “*with respect to the*  
7 *policies and procedures to be implemented by the board with respect to the*  
8 *determination of rate structures of public utilities under the Public Utilities Act*”? If  
9 Hydro’s response to the foregoing question is “yes”, please provide Hydro’s full  
10 justification for that response.  
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13 A. In Hydro’s opinion, providing a “yes” or “no” response to this question would not be  
14 sufficient to provide a full understanding of the issue raised.  
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16 The RSP is set each January in accordance with the rules that apply at the time. At  
17 each such instance, the activity that occurred in the RSP in the prior year impacts  
18 the balances in the RSP and therefore, the RSP rate adjustment that is to be made.  
19 Due to the fact that the RSP is a deferral account, the Board has the jurisdiction to  
20 make orders with respect to the RSP that are in accordance with proper rate making  
21 practices. The RSP is calculated in accordance with its rules. Before making RSP  
22 rate adjustments, Hydro proposes them to the Board for approval in accordance  
23 with the rules that apply at that time. The Board always has jurisdiction over both  
24 and making changes to either the RSP rules or to a rate adjustment, implicitly and  
25 unavoidably involves making a change to the other.

1       The Board holds full jurisdiction to approve and make RSP adjustments. In making  
2       these RSP rate adjustments, the Board is carrying out rate making and it is applying  
3       rate making policies. Section 5.1 of the EPCA empowers the Lieutenant-Governor in  
4       Council to give directives as to rates policies. This would include the rates policies  
5       that the Board applies in making RSP rule changes and RSP rate adjustments. One  
6       of these decisions pertained to the RSP rate to apply as of January 1, 2008. That  
7       rate flowed out of RSP activity that occurred in 2007 but until that rate change was  
8       made as of January 1, 2008, there was no certainty as to the allocation of RSP  
9       account amounts and no vested rights in them. The Board issued an interim order  
10      as to RSP rates at that time. By its nature, an interim order can be revisited by the  
11      Board. In the case of this interim order, it concerns a deferral account and the  
12      Board retains jurisdiction over amounts held in deferral accounts until such time  
13      that it makes a final order as to the account's disposition. The Lieutenant-Governor  
14      in Council has the authority under section 5.1 of the EPCA to direct the Board as to  
15      rates policies. Where a rate adjustment is interim and therefore remains within the  
16      Board's jurisdiction to revisit, a directive issued under 5.1 of the EPCA can be  
17      properly made with respect to those rates (and by necessary implication, the rules  
18      under which the rates are calculated). The issue of whether there may be  
19      circumstances concerning final rates that can properly be the subject of a directive  
20      is not presently before the Board. The present decision to be made by the Board as  
21      to the RSP adjustment (which concerns a balance in a deferral account) can  
22      properly be the subject of a directive until disposed of by way of a final order.