

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF THE *Utilities Commission Act*, RSBC 1996, c.473

and

British Columbia Hydro and Power Authority
Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest in the Waneta
Dam and Associated Assets

BCUC Project No. 369865

WRITTEN ARGUMENT
OF INTERVENORS
B.C. SUSTAINABLE ENERGY ASSOCIATION
AND
SIERRA CLUB BRITISH COLUMBIA

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I. Introduction

1. This is the final argument of the intervenors B.C. Sustainable Energy Association and Sierra Club British Columbia (“BCSEA-SCBC,” or “BCSEA, *et al*”) concerning the British Columbia Hydro and Power Authority (“BC Hydro”) *Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest in the Waneta Dam and Associated Assets*.
2. These submissions respond to the December 9, 2009 Submissions filed by counsel for BC Hydro (“BC Hydro Final Argument”).
3. BCSEA and SCBC are described as follows:¹

BCSEA is a non-profit association of citizens, professionals and practitioners committed to promoting the understanding, development and adoption of sustainable energy, energy efficiency and energy conservation in British Columbia. BCSEA has eight chapters across B.C. and approximately seven hundred individual and corporate members. Many of BCSEA’s members are ratepayers of BC Hydro or FortisBC. BCSEA’s goals include sustainable energy, energy efficiency and energy conservation in British Columbia.

SCBC is a non-profit organization of British Columbians from all walks of life who care about a broad range of environmental issues including climate change and clean energy. SCBC has over 5,000 members and supporters across the province, many of whom are ratepayers of BC Hydro or BC Hydro. SCBC focuses on a broad range of environmental issues including climate change and clean energy. The promotion of environmentally sustainable electricity falls within SCBC’s mandate.

II. Argument

Factors to be considered

4. BCSEA-SCBC submit that determining whether the Waneta Transaction is in the public interest under s.44.2 of the *Act* requires consideration of the following factors:

¹ Exhibit C20-1.

- (a) the cost of the power to be acquired by BC Hydro, in comparison with feasible alternatives,
- (b) the “need” (in planning terms) for the power to be acquired, in relation to the supply and demand forecast and the ‘self-sufficiency with insurance’ requirements,
- (c) characteristics of the power to be acquired in terms of “clean or green” and generation within B.C.,
- (d) Teck’s opportunity cost,
- (e) the honour of the Crown in relation to First Nations’ title and rights, and
- (f) other factors.

(a) The cost of the power to be acquired

5. The nature of the Waneta Transaction is such that the cost of the power to be acquired has to be estimated. There is no ‘per MWh’ price as such.
6. At the time the Filing was made the levelized unit energy cost was estimated to be \$63.1/MWh.² This is an Effective Adjusted Price (EAP),³ using an 8% discount rate. Taking into account BC Hydro’s due diligence analysis (e.g., reflecting potential additional costs due to BC Hydro’s ownership of a one-third interest in the Waneta Assets), BC Hydro’s EAP estimate is \$64.08/MWh at an 8% discount rate.⁴
7. In Chapter 6 of the Filing, BC Hydro conducts an economic analysis of the EAP of the power to be acquired through the Waneta Transaction. BCSEA-SCBC consider that the most appropriate comparator is BC Hydro’s cost of power from IPPs under long-term electricity purchase agreements. BC Hydro’s cost of purchases on the spot market are not an appropriate comparator because (a) they are short-term prices, and (b) they do not meet the criteria of ‘clean or renewable’ or ‘generated in B.C.’ The

² BC Hydro Final Argument, p.4, lines 4-5, citing Exhibit B-1, p.5-15, line 7.

³ Defined at Exhibit B-1, p.5-10. Formerly referred to as Adjusted Bid Price (ABP)

⁴ Exhibit B-13, Response to BCUC IR 2.34.2.2 at p. 4 of 4.

Standing Offer Program price is closer to the EAP of the Waneta Transaction, but the SOP is not a valid comparator because BC Hydro has no ability to choose to take more power under the SOP than proponents happen to offer.

8. BC Hydro's costs of power from IPPs under long-term EPAs vary: for example, \$97.3/MWh for the 2006 Call For Tenders, \$114.0/MWh for the Bioenergy Phase 1 EPAs, and \$101/MWh for the Clean Power Call (based on LTAP portfolio analysis).⁵
9. BCSEA-SCBC are satisfied that at an estimated EAP of \$64.08/MWh the cost of power to be acquired by BC Hydro under the Waneta Transaction compares very favourably with the cost of power from IPPs under long-term EPAs. The financial cost-effectiveness of the Transaction is also confirmed by the rate impact analysis.⁶

(b) Need, in planning terms

10. At the time of the Filing, BC Hydro described its situation regarding pre-Waneta Transaction energy planning net of DSM as "BC Hydro remains deficit in firm energy when measured against its mid load forecast for all years F2014 and beyond."⁷
11. The inclusion of energy from the Waneta Transaction puts BC Hydro's energy planning net of DSM in a surplus measured against the mid load forecast until F2016, after which there is a deficit.⁸ Measured against the high load forecast, there is a planning deficit for energy in all years (even with energy from the Waneta Transaction).
12. BCSEA-SCBC would argue that this establishes the "need" for energy from the Waneta Transaction for planning purposes net of DSM.

⁵ Exhibit B-1, Table 6-6.

⁶ Exhibit B-1, section 6.3.

⁷ Exhibit B-1, p.4-5.

⁸ Exhibit B-1, Figure 4-5, and Exhibit B-13, BCUC IR2.49.1, p.2 of 4.

13. In any event, however, the analysis of the ‘need’ for the power from the Waneta Transaction has been overtaken by the October 28, 2009 Direction No. 2 to the Commission.⁹ Section 3 of Direction No. 2 reads in material part:

... beginning on the date this direction comes into force, [BC Hydro] must rely on Burrard Thermal for no more than the following:

- a) 900 megawatts of capacity
- b) 0 gigawatt hours of firm energy per year.¹⁰

14. BC Hydro’s analysis of the energy supply demand outlook, both in the Filing and in the October 23, 2009, IR responses, included Heritage Thermal resources of 3,000 MWh/y for F2013 onward for planning purposes from Burrard Thermal. The elimination of this 3,000 MWh/y resource from BC Hydro’s supply stack for planning purposes makes the energy from the Waneta Transaction undoubtedly “needed” for planning purposes.

(c) Characteristics of the power to be acquired in terms of ‘clean or green’ and generation within B.C.

15. To be clear, due to the Canal Plant Agreement, BC Hydro already (pre-Waneta Transaction) owns the electricity generated by the Waneta Assets, but is obligated to provide electricity (from any source, not necessarily from Waneta) to the Owners in amounts defined by the Owner’s Entitlements. This will not change with the closing of the Waneta Transaction. What *will* change under the Waneta Transaction is that one-third of Teck’s owner’s entitlement under the Canal Plant Agreement will be transferred to BC Hydro.

16. Thus, the power that BC Hydro effectively acquires under the Waneta Transaction is the power from the BC Hydro system that BC Hydro is no longer obligated to provide to Teck pursuant to Teck’s owner’s entitlement under the CPA (e.g., an amount of power equal to one-third of Teck’s pre-Waneta Transaction owner’s entitlement.)

⁹ Direction No. 2 to the British Columbia Utilities Commission, O.I.C 565, October 28, 2009 (*Utilities Commission Act*).

¹⁰ Quoted by the Commission in the Reasons for the 2008 LTAP Reconsideration Decision, BCUC Order G-150-09, Appendix A, 2.

17. Power from BC Hydro's system certainly meets the criterion of coming from generation sources within BC. And, power from BC Hydro's system meets the 'clean or renewable' criterion, particularly now that Burrard Thermal accounts for no firm energy for planning purposes. Therefore, the power from the Waneta Transaction meets the 'clean or green' and 'BC generation' criteria.

(d) Teck's opportunity cost

18. Teck's opportunity cost is a valid consideration in the Commission's determination of whether the cost of power is "cost effective" and, more generally, whether the transaction is in the public interest.¹¹

19. BC Hydro estimates Teck's total opportunity cost as NPV \$1,046-million at 8% and \$746-million at 10% and says these figures are directly comparable to the \$825-million purchase price.¹² BCSEA-SCBC asked BC Hydro if there is any rationale for the \$825-million figure related to the estimates of Teck's total opportunity cost, or if the \$825-million figure is simply the outcome of business negotiations. BC Hydro's response is:

BC Hydro paid careful consideration to Teck's opportunity cost in its assessment of the Waneta Transaction. The \$825 million purchase price was the outcome of business negotiations; BC Hydro did not share its range of values with respect to opportunity cost with Teck during the course of the discussions.¹³

20. BCSEA-SCBC are satisfied with that response. Both BC Hydro and Teck were well informed, professionally represented parties of approximately equal bargaining power engaged in business negotiations. There is no evidence that BC Hydro ought to have achieved better terms (for it) that it did in the Waneta Transaction.

(e) The honour of the Crown in relation to First Nations' title and rights

21. BCSEA-SCBC will not express a position on the substance of any First Nations issues that may arise in this proceeding. However, on the assumption that First

¹¹ BCUC Alcan Decision, January 29, 2008.

¹² Exhibit B-1, p.6-19.

¹³ Exhibit B-13, BSECA IR 1.4.2.

Nations intervenors will make arguments foreshadowed by their respective information requests and filed evidence, BCSEA-SCBC do respectfully submit that the Commission is legally required to determine (a) whether the making of the Waneta Transaction affects any First Nations title or rights so as to engage the honour of the Crown, and (b) if so, whether the Crown's honour has been maintained under the circumstances.¹⁴

(f) Other factors

Effect on operation of Trail smelter, jobs and community economics

22. There appear to be two basic concerns about the effect of the Waneta Transaction on the operation of Teck's Trail smelter.
23. One concern is that by reducing Teck's owner's entitlement under the Canal Plant Agreement to a size that is just sufficient to meet Smelter Load the Transaction precludes or inhibits Teck from expanding the Trail smelter in a manner that increases energy requirements in the future.
24. While the concern is sincerely expressed, BCSEA-SCBC are not persuaded that the concern is supported by the weight of evidence. There is no evidence that Teck has, or had, prior to the signing of the Waneta Transaction, plans to expand the Trail smelter. Nor is there any evidence to the effect that lack of access to the power to be acquired by BC Hydro under the Waneta Transaction would preclude or inhibit Teck from expanding the Trail smelter if it should desire to do so in the future.
25. The second concern is that the Waneta Transaction eliminates or reduces Teck's ability to keep the Trail smelter going by curtailing production and selling power at times when the prices for the smelter products are low relative to the price of market power. It has been said, for example, that Teck has sometimes made more profit from selling power than from smelting. However, the logical flaw with this argument is that the Waneta Transaction does not prevent Teck from curtailing production at the

¹⁴ *Carrier Sekani Tribal Council v. British Columbia Utilities Commission*, 2009 BCCA 79; and BCUC Order G-108-09 and Reasons for Decision, re Duty to Consult with First Nations, Transmission Inquiry.

Trail smelter and selling the electricity on the market when it makes economic sense to do so.

Effect on operation of Waneta dam and generating plant

26. BCSEA-SCBC are satisfied that the operation of the Waneta dam and the Waneta generating plant is governed by the Canal Plant Agreement and will not be affected by the Waneta Transaction.¹⁵

Effect on FortisBC and FortisBC ratepayers

27. Based on FortisBC's IRs, it appears that FortisBC is concerned that the Waneta Transaction will negatively affect FortisBC and FortisBC's customers. BCSEA-SCBC are not fully aware of the mechanism(s) by which it is suggested these negative affects would occur. However, they do point out that FortisBC is a major customer of BC Hydro, and thus FortisBC, and FortisBC's ratepayers, benefit directly from an acquisition of power by BC Hydro that is otherwise cost effective.

Effect on City of Trail tax base

28. The evidence does appear to support the conclusion that the Waneta Transaction will reduce the assessed value of Teck's Waneta Assets for property tax purposes, by one-third (corresponding to BC Hydro's one-third ownership interest). The evidence is not clear as to the size of any payment *in lieu* of property tax associated with its one-third interest in the Waneta Assets that BC Hydro would make to the City of Trail, or, in particular, whether such a payment in lieu would fully make up for the reduction in property tax payable by Teck regarding the Waneta Assets. However, it seems reasonable to predict that the Waneta Transaction will have the effect of reducing the property tax base of the City of Trail, net of incremental *in lieu* payments by BC Hydro. That would shift the relative tax burden away from Teck and toward the other property taxpayers. However, in the absence of any evidence confirming and quantifying this potential consequence of the Transaction, BCSEA-SCBC are unable to say it should be considered a material factor against approval.

¹⁵ See Exhibit B-13, BCSEA IR 1.1.1, among other sources.

III. Conclusion

29. In this proceeding, BC Hydro seeks an order from the Commission under s.44.2(3)(a) of the *Utilities Commission Act* that it is in the public interest for BC Hydro:

- (a) to spend \$825-million plus transaction costs to acquire a one-third interest in the Waneta Assets, and
- (b) to commit itself to future expenditures pursuant to the Operating Terms as defined in the Filing.¹⁶

30. For the reasons set out above, BCSEA-SCBC support the order requested by BC Hydro in this proceeding. BCSEA-SCBC believe that the Waneta Transaction is cost-effective and in the public interest.

ALL THE ABOVE IS RESPECTFULLY SUBMITTED



December 17, 2009

¹⁶ Exhibit B-13, BC Hydro response to BCUC IR 2.17.6 confirms that this request is pursuant to s.44.2(3)(a) of the *Act*.