



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-1-10**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by British Columbia Hydro and Power Authority
Gordon M. Shrum Units 1 to 5 Turbine Replacement Project

BEFORE: A.J. Pullman, Commissioner January 5, 2010

O R D E R

WHEREAS:

- A. On August 5, 2009, British Columbia Hydro and Power Authority ("BC Hydro") filed with the British Columbia Utilities Commission (the "Commission") an application pursuant to section 44.2(1)(b) of the *Utilities Commission Act* (the "Act"), for acceptance pursuant to section 44.2(3)(a) of a schedule of capital expenditures in the amount of \$262.0 million that BC Hydro anticipates making in respect of the Gordon M. Shrum ("GMS") Units 1 to 5 Turbine Replacement Project (the "Project") and a determination that the schedule is in the public interest (the "Application"); and
- B. By Order G-95-09 dated August 14, 2009, the Commission established a written public hearing and Regulatory Timetable for the review of the Application; and
- C. On November 12, 2009, BC Hydro filed its Final Submission; and
- D. On November 25, 2009, British Columbia Old Age Pensioners' Organization ("BCOAPO") filed its Final Submission and on November 26, 2009 Commercial Energy Consumers Association of British Columbia ("CEC"), Joint Industry Electricity Steering Committee ("JIESC"), Vanport Sterilizers Inc. ("Vanport"), and Independent Power Producers Association of BC ("IPPBC") filed their Final Submissions; and
- E. On December 3, 2009, BC Hydro filed its Reply Argument; and
- F. CEC, JIESC, and IPPBC support the Application; and
- G. BCOAPO submits that the Project is in the public interest and should proceed but requests that the Commission reject the Application as filed and invite BC Hydro to re-file for approval under section 45 of the Act.
- H. Vanport submits that the expenditures associated with the project schedule are not in the public interest and should be rejected under section 44.2(5) of the Act that requires the Commission to consider the BC government's energy objectives, as well as BC Hydro's most recent long term resource plan; and

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- I. The Commission Panel has reviewed BC Hydro's Reply Argument regarding the Final Submissions of BCOAPO and Vanport. The Commission Panel has concluded that BC Hydro may file a capital expenditure schedule for the Project under section 44.2(1)(b) of the Act. The Commission Panel agrees with BC Hydro's submission that Vanport has not established the relevancy of its submission to this proceeding and that Vanport attempts to introduce new evidence not on the record of this proceeding; and
- J. The Commission Panel has review the Application, evidence, submissions and arguments, the positions taken by BCOAPO and Vanport, and for the Reasons for Decision that are Appendix A to this Order concludes that the capital expenditures in the Application are in the public interest.

NOW THEREFORE the Commission orders that:

1. Pursuant to section 44.2(3)(a) of the Act, the Commission Panel finds that the Project is in the public interest, and accepts the capital expenditure schedule having a Project Expected Cost estimate of \$262.0 million.
2. Pursuant to section 43 of the Act, the Commission Panel directs BC Hydro to file with the Commission
 - a. a report consisting of the tests, level of efficiency improvements, evaluation, increased energy production, and results of the competitive model testing and the successful supplier or a report setting out the reasons why neither of the turbine designs were adequate and the final cost of terminating the contract, within 90 days of making a decision on the successful turbine supplier or to terminate the turbine contract;
 - b. written notification in a timely manner if acceleration of the turbine in-service dates by year round construction occurs, in the event acceleration of the project is permitted by the future system load/resource balance as well as project critical path items;
 - c. bi-annual progress reports, in a format acceptable to the Commission and as outlined in BC Hydro's confidential response to Commission's Information Request 1.21.2, on the Project schedule, cash flow, costs and any variances or difficulties that the Project may be encountering, within 30 days of the end of each reporting period; and
 - d. a final report consisting of a complete breakdown of the final costs of the project, a comparison of these costs to the Project Expected Cost estimate and providing an explanation of all material cost and schedule variances, within six months of the end or substantial completion of the Project.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of January 2010.

BY ORDER

Original signed by:

A.J. Pullman
Commissioner

Attachment

British Columbia Hydro and Power Authority
Gordon M. Shrum Units 1 to 5 Turbine Replacement Project

REASONS FOR DECISION

On August 5, 2009, British Columbia Hydro and Power Authority (“BC Hydro”) filed with the British Columbia Utilities Commission (the “Commission”) an application pursuant to section 44.2(1)(b) seeking acceptance, pursuant to section 44.2(3)(a) of the *Utilities Commission Act* (the “Act”), of i) a schedule of capital expenditures in the amount of \$262.0 million BC Hydro anticipates making in respect of the Gordon M. Shrum (“GMS”) Units 1 to 5 Turbine Replacement Project (the “Project”) and ii) a determination that making the expenditures is in the public interest (the “Application”).

By Order G-95-09 dated August 14, 2009, the Commission established a written public hearing and Regulatory Timetable for the review of the Application. Interventions were made by the following: British Columbia Old Age Pensioners’ Organization *et al* (“BCOAPO”), Commercial Energy Consumers Association of British Columbia (“CEC”), Joint Industry Electricity Steering Committee (“JIESC”), Vanport Sterilizers Inc. (“Vanport”), and Independent Power Producers Association of BC (“IPPBC”). Following two rounds of information requests, BC Hydro filed its final submission on November 12, 2009, Intervenor filed their final submissions by November 26, 2009, and on December 3, 2009 BC Hydro filed its Reply.

These Reasons for Decision will mainly address First Nations issues and the submissions by two Intervenor that the Commission should reject the Application as filed.

Sections 44 and 45 of the Act

BCOAPO submits that the Commission should “regrettably” reject the Application as filed, but invites BC Hydro to re-file for approval under section 45 of the Act and urges the Commission to avoid duplicative processes by expediting the disposition of the CPCN Application and ordering that the record of this Application comprise the record of the properly-filed one, and issue an order giving its approval (BCOAPO Argument, p.4). BCOAPO bases its submission on its interpretation of sections 44(1) and 44(2) and of section 45 of the Act. BCOAPO takes issue with BC Hydro’s assertion that “where a capital expenditure schedule consists of only one Project, the BCUC does not have the jurisdiction to reject part of that expenditure schedule, where the rejection would alter the Project filed” while it allows that “If BC Hydro were to file an expenditure schedule consisting of a number of projects, the BCUC would have the jurisdiction to reject or accept each individual project.”

BCOAPO submits that section 44 “envisions an Application to approve the utility’s intended capital investments over a stated time-period. It does not purport to be a vehicle for approval of one-off projects: sections 45 and 46 expressly address that sort of Application. Section 44.2 was enacted together with section 44.1, and is part of a legislative package for integrated planning approvals which take a longer view than the more traditionally piecemeal, project-by-project mechanism of the CPCN.”

CEC recommends that the Commission make its rulings in this proceeding under section 44.2 of the Act, and submits that BC Hydro has the right to make a filing of an expenditure schedule under this section and once such a filing has been made the Act requires the Commission to respond. (CEC Argument, para 10)

CEC addresses the issue of rejecting part of a schedule and submits that the Commission has the jurisdiction to reject part of a project specific expenditure schedule: “...should the Commission believe that a component of the Project such as expenditures related to the choice of turbines may need to be resolved at a later date as the evidence on the record suggests, the Commission can accept the expenditure schedule except the parts that are yet to be resolved. The CEC submits this can be done by accepting the expenditure schedule under section 44.2(4) except for the parts it chooses to reject as not yet established as being in the public interest.” (CEC Argument, para 2)

BC Hydro submits that section 44.2 contemplates a schedule of capital expenditures that may be more than a table of unqualified costs. It may also include a narrative explanation of expenditures. BC Hydro also submits that the Commission accepted the Expenditure Request for Fort Nelson Generating Station Upgrade Project under section 44.2(3)(a) of the Act which, as is the case with the present Application, was an expenditure schedule consisting of a single project. (BC Hydro Reply, p. 4) Therefore, BC Hydro submits that the Application falls squarely within the language and intent of section 44.2 and is consistent with the Commission's previous interpretation of section 44.2 of the Act.

BC Hydro addresses section 45 of the Act and submits that it is deemed under section 45(2) of the Act to have a CPCN for the entirety of its system, as it existed in September 11, 1980, and any extensions thereto. Since the GMS generating station (including the turbines) was part of BC Hydro's system on September 11, 1980, BC Hydro submits that it has a CPCN in regard to it and to any extension to it.

BC Hydro addresses the concept of an extension, where the Commission may, under section 45(5) of the Act, require by order an application for a CPCN in regard to any "extension" to that system, provided such order is issued within 30 days of the start of construction of the "extension." BC Hydro submits that it does not believe that the Project is an "extension", and thus could not have been and cannot be compelled to seek a CPCN for it, a view which CEC supports. (BC Hydro Reply, pp. 6-7)

COMMISSION PANEL DETERMINATION

While the Commission Panel considers that at first glance section 44.2 of the Act may appear better suited to an application for a schedule of several planned capital expenditures over a period of time, it nevertheless concludes that the wording of section 44.2 does not preclude the use of a schedule for a single project if a utility chooses to apply on that basis. Consequently, the Commission has the jurisdiction and a responsibility to respond to the Application under section 44.2.

Commission acceptance of an expenditure schedule for the Project under section 44.2 does not grant a CPCN for the Project. Furthermore, the Commission Panel observes that section 45(2)(a) provides a CPCN to a public utility only to operate a plant or system that it was operating on September 11, 1980, while section 45(2)(b) provides it a CPCN to construct and operate extensions to a system or plant that it was operating on September 11, 1980. As BC Hydro notes, section 45(2)(b) is subject to section 45(5).

The Commission Panel has reviewed the scope of the Project, particularly the evidence that the Project will increase the amount of energy produced at the GMS generating station and will facilitate a capacity rating increase at the facility as well as improving reliability and safety, and concludes that the Project comprises considerably more than "operation" and is an "extension" of the facility. At the same time, based on its review of the Project in this proceeding and considering the level of support for the Project, the Commission Panel concludes there is no need for an order under section 45(5) requiring a separate CPCN application for the Project. Consequently, the Commission concludes that section 45(2)(b) deems BC Hydro to have a CPCN to construct and operate the Project. **Therefore, the Commission denies the request of BCOAPO that it reject the Application on the basis that it was made under the wrong section of the Act.**

The Commission Panel rejects BC Hydro's assertion that the Fort Nelson Generating Station Upgrade Project was a single project expenditure request schedule. The relief requested by BC Hydro in its Argument filed in BC Hydro's 2008 LTAP included a schedule of seven expenditure requests (see Attachment 1). BC Hydro had requested that the Commission Panel in that proceeding address the Fort Nelson Generating Station Upgrade Project on an expedited basis, and the project was dealt with in a stand-alone decision in Order G-75-09.

Section 44.2(4) states that the Commission may accept or reject a part of an expenditure schedule. The Commission agrees with CEC that some of the difficulty stems from the lack of definition of terms like "expenditure schedule" and "part" and from BC Hydro's concept of equating parts of an expenditure schedule to projects. (CEC Final Submission, p. 8)

The Commission Panel considers that a simple answer to this issue in this proceeding would be that if the Commission Panel were to reject one item on a schedule that comprises a single expenditure request then it would reject the entire schedule. However, as the Commission Panel finds no reason to reject part of the expenditure schedule for the Project, there is no need to make a determination on its jurisdiction to reject a part of a capital expenditure schedule for a single project.

The question whether the Commission has jurisdiction to reject part of the expenditure schedule for a single major project may turn in part on whether the expenditure and project can reasonably be separated into two or more parts. This would appear to be a finding of fact that is within the authority of the Commission to make, as the finding will in no way constrain how the utility carries out the project.

GOVERNMENT'S ENERGY OBJECTIVES

BC Hydro states that section 44.2(5) of the Act obliges the Commission, in considering whether the expenditures are in the public interest, to consider:

- the Government's energy objectives;
- BC Hydro's most recent long term resource plan;
- whether the expenditure schedule is consistent with sections 64.01 and 64.02 of the Act in respect of electricity self-sufficiency and clean and renewable resources; and
- the interests of present and future ratepayers.

(Exhibit B-1, p. 1-1)

BC Hydro submits that the expenditures related to the Project are in the interests of present and future ratepayers as the Project is a cost effective way to reduce both the risks of forced outages and the increased maintenance requirements and operating restrictions currently required for the units.

The Project will maintain the reliability of output from GMS for the benefit of BC Hydro ratepayers and it is in the economic interest of BC Hydro ratepayers that output from GMS Units 1 to 5 remains reliable. In addition, BC Hydro submits that the Project supports and is supported by the B.C. Government's energy objective (c) "*to encourage public utilities to produce, generate and acquire electricity from clean or renewable sources*" outlined in section 1 of the Act as it will contribute to the continued, reliable generation of clean and renewable electricity from GMS. (BC Hydro Argument, p. 6)

Vanport submits that the expenditures associated with the project schedule are not in the public interest and should be rejected under section 44.2(5) of the Act in that the project does not support the government's energy objectives since "BC Hydro has failed to account for the volume of methane emissions from the Williston Reservoir, including the relation of these emissions to the problem of climate change and their contribution to accelerating the loss of the glacial water source that feeds the reservoir", and submits that the project "cannot be claimed to be a net contributor to the continued, reliable generation of clean and renewable electricity." (Vanport Argument, p. 1)

BC Hydro strongly objects to Vanport's submission in this proceeding as it seeks to introduce new evidence not on the record in this proceeding. Further, BC Hydro respectfully submits that Vanport has not established the relevancy of its submission to this proceeding. (BC Hydro Reply, p. 15)

COMMISSION PANEL DETERMINATION

The Commission Panel agrees with BC Hydro that Vanport's submission seeks to introduce new evidence to the record and that Vanport has not established the relevancy of its submission to this proceeding. **The Commission Panel has considered the government's energy objectives and finds that the evidence and submissions set out by BC Hydro demonstrates that the Project is in compliance.**

FIRST NATIONS

BC Hydro submits that its consultation with identified First Nations in respect of the Project has been adequate to this stage, and describes the efforts it made to identify and consult with the First Nations who may be potentially impacted by the Project (BC Hydro Argument, p. 13). No intervenor takes issue with BC Hydro's submissions in this regard.

COMMISSION PANEL DETERMINATION

The Commission Panel determines that BC Hydro's consultation with identified First Nations in respect of the Project has been adequate to this stage.

CONCLUSION

In these Reasons, the Commission Panel has denied the request by BCOAPO that it reject the Application on procedural grounds, has found that the Project is in compliance with the government's energy objectives and has determined that BC Hydro's consultation with identified First Nations in respect of the Project has been adequate to this stage. The Project has a positive Net Present Value, and is the most cost-effective alternative to address the condition of the GMS Units 1 to 5 turbines. All Intervenors except Vanport support that the Project should go ahead. **Having considered the evidence and the submissions of the Parties, the Commission Panel finds that the Project is in the public interest and accepts the schedule of expenditure in the amount of \$262.0 million.**

ATTACHMENT 1

“Primary relief No. 2: A Commission Order determining pursuant to subsection 44.2(3) (a) of the *UCA* that the following seven expenditures are in the public interest:

- \$418 million in F2009, F2010 and F2011 for the Implementation of the DSM Plan;
- \$600,000 in F2009 and F2010 to undertake and complete the Definition phase work for capacity-related DSM;
- \$1.6 million in F2010 for sustaining capital to ensure the reliability of Burrard;
- \$30.0 million in F2009, F2010 and F2011 to undertake and complete the Definition phase work for Mica Units 5 and 6;
- \$41.0 million in F2009 and F2010 to undertake and complete the Site C Stage 2 Definition and Consultation phase work;
- \$2.0 million in F2009 and F2010 to complete the Definition phase work, and to Implement, the Clean Power Call; and
- \$140.1 million in F2009 to F2012 to complete the Definition phase work for, and Implement, the FNGU project Case 3 (FNU3).”