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Our File:	04-3082
Date:	December 16, 2004

British Columbia Utilities Commission
Box 250
600 - 900 Howe Street
Vancouver BC V6Z 2N3

Attention: Robert J. Pellatt, Commission Secretary

Dear Sirs/Mesdames:

Re: BC Hydro Application for Approval of the Vancouver Island Electricity Purchase Agreement

We are writing to the Commission on behalf of the Joint Industry Electricity Steering Committee ("JIESC") to join with BCOAPO et. al. in requesting the Commission reconsider and rescind the Commission's ruling dated November 30, 2004, that many of the significant terms of the Electricity Purchase Agreement, including critical pricing terms, be kept from the participants and the public. The JIESC also requests that the Commission make public the information requests it has directed to BC Hydro and the responses thereto (if any),. Finally, the JIESC requests the Commission reconsider the limited scope it has set for this hearing and broaden it to allow consideration of all evidence necessary to determine if the CFT is in fact the most cost-effective solution to the potential capacity shortfall on Vancouver Island.

We request that all of these matters be placed on the agenda for the pre-hearing conference set for December 17, 2004.

Background

The key finding in the Commission's September 8, 2003 Decision with respect to VIGP was:

"Based on the evidence and the Commission Panel conclusions in this Decision, the Commission Panel finds that VIEC has not established that VIGP is the most cost-



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effective means to reliably meet Vancouver Island Power needs. Therefore the Commission Panel denies the Application for a CPCN.”¹ (*emphasis added*)

Other key findings were:

“The evidence in this hearing suggests that the appropriate next reserve addition should be on-island generation, provided that the costs of the proponents projects can be confirmed near to their expected values.”² (*emphasis added*)

“It will be BC Hydro’s choice whether to proceed with the CFT recognizing that BC Hydro must develop sufficient information to identify the most cost-effective resource addition for Vancouver Island. The results of the CFT would provide valuable information for BC Hydro to discharge its responsibility. The Commission Panel encourages BC Hydro to proceed with the CFT and to closely follow the schedule set forth in Schedule A. It is the Commission Panel’s hope that the information in BC Hydro’s future filing, coupled with the extensive review undertaken in this proceeding, will allow the Commission to approve the preferred resource addition without a second oral hearing.”³ (*emphasis added*)

On November 30, 2004 the Commission identified the principal issue in this hearing as:

“Is Tier 2, Tier 1, or the No Award option the most cost effective option to meet the capacity deficiency on Vancouver Island commencing in the winter of 2007/07?”⁴
(*emphasis in original*)

While we believe this is too restrictive a formulation for determining the cost effectiveness of the EPA, BC Hydro should not be heard to complain. It is the question its own executives pondered in approving proceeding with the EPA and the Commission cannot do anything less.

Secrecy

Even with this restrictive formulation of the principal issue, there is some basic information that is required for the public to provide meaningful impact to the Commission. That information includes, at minimum the contract cost or price to BC Hydro, yet the BC Hydro, with the Commission’s acquiescence, is keeping that information hidden from the public. We would have thought that BC Hydro, with all its rhetoric around fairness and transparency would come

¹ Transcript p. 77

² Transcript p. 78

³ Transcript p. 79

⁴ Transcript p. 313-41



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to you ready to demonstrate cost-effectiveness of this EPA. Instead it comes to you wanting to hide the key price terms of its contract. This is unacceptable. Section 71(5) provides that:

“An energy supply contract or other information filed with the commission under this section must be made available to the public unless the commission considers that disclosure is not in the public interest.” (Emphasis added)

While there may be one or more private interests in keeping the price under this agreement hidden from ratepayers, there is clearly no public interest. The representations of all ratepayer groups are unanimous that this information must be made public. As far as private interests go, the winning bidder knew that the Commission would be conducting a public hearing pursuant to UCA section 71(2) to review the cost-effectiveness of the agreement and that the public interest in this project meant there would be a probable need for disclosure.

While there may be some limited precedent for keeping bids secret under previous calls for tender, the circumstances in this case are very different. On earlier calls for tender there were price caps and relatively simple public agreements, so that it was easy for all parties to understand the implications of successful bids within the limits of the call for tender parameters. That is not the case here. The Vancouver Island Generation Project has been, and remains, a very controversial resource acquisition in terms of both need and cost. The terms and conditions of the EPA are unique and very complex. In particular, the actual price level and price structure can dramatically affect the determination of the successful bidder and ultimate cost of this project to ratepayers. Stakeholders cannot fully comment on this agreement without knowing the price.

Whatever the precise costs are it is clear they are substantial and BC Hydro's submissions must be seen and must be tested. The JIESC estimates that this project will have annual fixed costs in the range of \$75 million per year, and that at an 80% utilization rate the costs will be approximately \$88/MWh. Furthermore, we are advised that at current gas prices the Duke Point Gas Plant will only be utilized about 20% of the time, like most similar plants, and will have a cost of around \$220/MWh, several times the prices contemplated in the VIGP Decision.

Ratepayers are the ones who will pay the cost of this agreement for the next twenty five years and the public interest dictates that they must have an opportunity to examine the costs of the EPA and must have the time and information to allow them to have informed input to your decision.

Scope

The JIESC also requests the Commission review and reconsider its decision, quoted previously, on the principal issue or scope of this hearing.



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The challenge the Commission set out for BC Hydro in the VIGP decision was to demonstrate cost effectiveness. The test the Commission must apply in approving the EPA under section 71(2) is the public interest which cannot be anything less than the most cost effective solution to Vancouver Island's potential capacity problems, not just a comparison of Tier 1, 2 and "no award".

Clearly the objective of the VIGP hearing was to determine if that project was the most cost-effective solution. The objective of this proceeding should not be any more restrictive. Restricting the principle issue and the permissible evidence in the way the Commission has means the Commission cannot carry out its legislative mandate.

Communications between the Commission and BC Hydro

The JIESC is also concerned by the unprecedented secret or confidential direct communications between the Commission, its staff and the Applicant. These communications, to the extent the intervenors are aware of them, include information requests from the Commission dated December 8th and December 13th and may or may not include "in camera" meetings between the Commission, its staff, BC Hydro and Duke Point Power as mentioned at Transcript p. 314. Neither of the information requests are available to intervenors in redacted form or otherwise.

Confidential communications of this sort are nothing less than direct communications between the Commission and/or its staff and the Applicants on substantive matters without other stakeholders being permitted to be present. We are not aware of similar communications ever occurring in any other proceeding of this Commission or other similar commissions or boards. Rather, the authorities show that where board members communicate on substantive matters concerning an application with one party, outside the presence of other parties, they are often found to have acted improperly and required to step down.⁵

We request that the Commission immediately and fully disclose all communications by the Commission Panel or its staff with the applicant and/or Duke Point Power or its representatives since the filing of the Application in this matter.

Summary

The JIESC requests the Commission reconsider its decisions of November 30, 2004 and immediately:

1. Direct BC Hydro to provide a non-redacted copy of the Electricity Purchase Agreement in this matter to all parties;

⁵ *CNG Transmission Corp. v. Canada (National Energy Board)* [1992] F.C. 346



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2. Disclose all other confidential communications and information exchanged between the Commission, its staff and BC Hydro and Duke Point Power Limited Partnership; and
3. Broaden the scope of the hearing to require demonstration by BC Hydro that the EPA is the most cost-effective solution to the potential problems on Vancouver Island.

Yours truly,

Bull, Housser & Tupper

Original Signed by

R. Brian Wallace
RBW/sg/1261397