

To:
Mr. Robert J. Pellatt
Commission Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, B.C.
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VIA E-Mail
<Commission.Seretary@bcuc.com>

Date: 2005.02.04rd (Friday P.M.)

Sir:

**RE: British Columbia Utilities Commission
British Columbia Hydro and Power Authority
Call for Tenders for Capacity on Vancouver Island
Review of Electricity Purchase Agreement
Project No. 3698354**

From:
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Final Argument Statement of Keith W. Steeves, Intervenor

For my Final Argument to the Commission, I have broken my statement down into seven elements, namely:

- 1.) Preamble
- 2.) Opening Remarks
- 3.) Main Argument
- 4.) Recommendation
- 5.) Conclusion
- 6.) References
- 7.) Addendum

1.) Preamble

I must first start with a Disclaimer. My following remarks are not meant as personal criticism of anyone or any organization, or to cast aspersions on anyone. Nor are my remarks meant to be Flippant, Trite, or Factitious. Quite the opposite. My comments here are meant to be taken quite serious, no matter how outlandish they may sound.

Also, at this point, I think this would be a good time before leading into my argument to embellish upon my earlier comments in my discussion with Mr. Ken Tiedemann on BC Hydro's Panel 4 – Cost Effectiveness issue held on Thursday, January 20th, 2005. [Transcript, Volume 9 (January 20/2005) P. 2110 – 2118]. For this purpose, I have added these comments as an **Addendum** to my Final Argument Statement. These comments should be considered with my **Opening Remarks** that now follow.

2.) Opening Remarks

To lead the reader into my argument, I have chosen to start with the following expression: “The Right Decision” as stated by the representation for BC Hydro as taken verbatim from the following transcript record statement:

“You know, if you did one of these ten years from now, having built Duke Point, you still wouldn’t know whether you’d made the right decision. That is, at any particular point in time, it’s going to look like a very wise decision or an unfortunate one. And from Duke Point’s perspective, it’s going to look like a very wise investment or a very unfortunate one. Twenty – five years from now, or 25 years from after it’s built, maybe, somebody will be able to say whether it was the right decision. But even then, you’re going to have to make a bunch of guesses about what would have otherwise been.”

Source: [Transcript, Vol. 1 (November 29/2004) Page 40 (Line 23 to Line 26 and Page 41 (Line 1 to L8)] Underlines added to words in text.

Now, the point I am trying to raise here concerning the “Right Decision” is this: It begs the question: “*If they – BC Hydro, don’t know for sure, who does?*” Has BC Hydro shown both definitively and conclusively that they do? On this question, please refer to my **Addendum**. Second, will BCUC, the BC provincial government, the people of BC, or the “marketplace” determine this “Right Decision”? (If the latter, what does this imply? Will BC Hydro be sold?)

So, what do we draw from my reference to this “Right Decision” statement? From these above remarks, I will note two corollary observations here as a direct consequence:

Corollary A: All financial data and analysis; i.e., e.g.: QEM, Cash Flow, NPV, etc., pertaining to the Duke Point Power project simply does not matter. It is not relevant to the decision. (Please take a moment and re – read that statement. I would like to give it a second or two to sink in!)

N.B. Both during the Pre – Hearing stage and during the Public Hearing stage, the intervenors had to sit through sessions while the representation for BC Hydro ruled one issue after another as being out of Scope. Well, I have to ask you the reader: “*Why should he have all the fun?*” In this Final Argument, we will go one better. If you the reader accept my above interpretation about the “Right Decision”, then all financial data and analysis is out the window, and hence, is Out of Scope.

Corollary B: If you can’t make the “Right Decision” and don’t have any financial information to make the decision, doesn’t this situation imply that any old project will do? For example, all the other bidders in the CFT process, such as Green Island Energy, Sea Breeze, Norske, etc.

If this is considered a true statement, then how do you evaluate all these projects without any financial data, and how do you go about this process? (Something to think about.)

3. Main Argument

Now, moving on to my Main Argument. So, if you the reader do accept my above **Opening Remarks**, where do we stand? What is the issue and what is the problem? These questions are especially relevant if you can not make the “Right Decision” without any financial data. This is a very serious problem for the BCUC. Financial data and analysis is the basis of BCUC’s provincial government mandate as established by the provincial government under the *Utilities Commission Act*.

Therefore, to answer these questions, we have to go back to the most appropriate source to determine the main issue. For my argument, I claim that the main issue involved in the CFT/EPA decision is in fact Item No. 2 on Exhibit No. (A-2) which is BCUC’s November 24th letter to BC Hydro that discusses the nature and scope of the Public Hearings for the CFT/EPA. Item No. 2 deals with the issues pertaining to *fairness, transparency and appropriateness*.

Therefore, when we examine these topics, this is where we get down to the “Nitty – gritty” of the problem. So, what is the problem all about?

Well, taking everything together, the whole problem comes down to a single word. This word was stated by the representation for BC Hydro. It was not used as a wrong word in thought. It was not used as an inappropriate word in speech. Nor was this word said in haste. It was a word deliberately chosen to describe a “process”. This word is found in the transcript at: [Transcript, Vol. 1 (November 29/2004) Page 26, Line 18] To spare you the reader from having to look it up, the word in question is “**Evolving**”.

Why this word? Well, look at what we are examining: the CFT/EPA. To continue on with this analysis, we have to ask a very basic question here: “What is a tender?” For the proper definition of the word, I took the liberty to look up the etymology of the word in the good old Oxford English Dictionary [Ref. 1]. What I found were three pages of text definitions for this single word. The definition that appears to come closest to what we are dealing with in this CFT/EPA was defined:

“3. Comm. a. An offer made in writing by one party to another (usually to a public body) to execute, at an exclusive price or uniform rate, an order for the supply or purchase of goods, or for the execution of work, the details of which have been submitted, often through the public press, by the second party.”

In addition, for good measure, I also checked a number of standard undergraduate law textbooks [Ref. 2 – 10] for their definition of the word. Of these textbooks, the one [Ref. 10] that had a more thorough description defined it as such:

“The tender in contract law, as it related to the formation of a legal relationship, differs from the ordinary offer. Tenders are frequently used by business firms, government organizations, and others with a view to establishing a contractual relationship for the supply of goods or services or the construction of buildings, machinery, or equipment. Municipalities frequently use the tender method in the acquisition of supplies or services as a means of fairly opening competition to all firms in the municipality (and elsewhere). The tendering process frequently uses the seal to render an offer irrevocable, and often uses the payment of money deposit as a special type of consideration.

*The tender process usually involves the advertisement of the particular needs of the firm to potential suppliers of the goods or services, either by way of newspapers or by direct mail contract. This step in the process is known as **calling for tenders**, and has no binding effect on the firm that makes the call. It is merely an offer to negotiate a contract. In most cases it represents an invitation to persons or business firms to submit offers that the firm calling for the tenders may, at its option, accept or reject. The firm making the call is not bound to accept the lowest offer nor, for that matter, any of the offers.*

As a general rule, unless provided to the contrary in the call for tenders, an offer made in response to the call may be revoked at any time before acceptance. To avoid this, the call for tenders frequently requires offerors to submit their offers as irrevocable offers under seal. In this manner the offer may not be revoked, and will stand until such time as it is either accepted or it expires. Businesses and organizations calling for tenders may also require the offerors to provide a money deposit as well to ensure that the successful offer will execute the subsequent contract that is usually required to formalize the agreement between the parties. When a deposit has been submitted with the tender under seal, a failure or refusal on the part of the successful bidder to enter into the formal contract and perform it according to its terms would result in forfeiture of the deposit, as well as entitle the party who made the call to take legal action.”

Now, the question that must be asked here is: “Do we see in any of these definitions making use of or give reference to the word ‘evolving’?” The answer is no we do not. The word is not germane to the definition. To paraphrase the definition of a tender, what takes place is the establishment of a business contractual arrangement where the ‘Recipient’ lets out a tender and an ‘Offeror’ makes an offer. The Recipient collects in the offers, makes an assessment and evaluation, then comes to a decision as to the Offer to be accepted. Goods and services change hands and payments are made in consideration. Done deal. End of story. Period! Nowhere in here do we have the word ‘evolving’ entering the picture.

As an aside to the picture, yes there can be tenders that do ‘evolve’ such as in the case of say architectural bids where the requirements of the bid change at each stage of the bidding process as the competition goes through a series of bid design submissions. However, under this type of structured tender, Offerors know the rules, know the requirements and know the risks and they have feedback as they

go along. In this example, the tender process is fixed. However, this is not the case in the BC Hydro's CFT/EPA. The tendering process 'evolved' and that was not fair to the Offerors/bidders.

How can I claim this conjecture? Didn't the Independent Reviewer as the Duke Point Power Limited Partnership (DPP) claimed in their February 1st/2005 Final Argument confirm the following points:

- A.) 'Rules were complete and appropriate' (8T1778)
- B.) There was 'Equal Footing with respect to Terms and Conditions' (8T1790 –91)
- C.) 'All parties knowing clearly what such criteria are and understanding how they will be treated in the evaluation'
- D.) 'All bidders would be treated equally'
- E.) 'No apparent bias designed into the process, regardless of technology'
- F.) 'Criteria used is consistent ... Nothing unique about the criteria' (8T1825)

In reply I would have to say that what the representation for Duke Point Power claims is a bit of a stretch. First, the role of the Independent Reviewer must be noted before commenting on issue of 'fairness'. With regards to the Independent Reviewer, I have no problem with their role in the CFT process. They performed admirably to task assigned. They did their job in upholding the rules of the tendering process under a Pre – established Mandatory Criteria that was given to them by BC Hydro. They were there in a "Position of Silence" to 'review', 'observe', and 'monitor' the situation. In essence, there was no "Procedural Bias" on their part in the tendering process. Their scope was confined to "Fairness of the competition to determine the lowest Net Present Value of Bidders" and to prevent collusion.

The main downfall of the Independent Reviewer is that their mandate stopped far short of what was required in this situation. They were not hired to 'consult' or to act as an 'interventionist'. The following two statements found in the Transcripts sums up this opinion:

- A.) *"Fairness applies to arriving at the result, not the characterization of the result."*

Source: [Transcript, Vol. 8 (January 19/2005) P. 1834, Line 3 & 4]

- B.) *"Mr. Fulton: '...There is no comment on the fairness of the CFT terms'."*

"Mr. Sorensen: 'Yes, other than judgements suggests that they are fair, or what's rendered as fair. But there's no specific on terms'."

Source: [Transcript, Vol. 8 (January 19/2005) P. 1875, Line 8 to Line 12]

Now, in terms of lack of fairness, I am not claiming that there was a Machiavellian manipulation to achieve a predetermined outcome. Nor am I claiming that there was a deliberate policy to deceive. I am not even saying that there was a 'Management Bias' in the selection process. I affix no blame. I assume no manipulation by BC Hydro. I assume no predetermination by BC Hydro. Instead, all that I will claim is there was an unfortunate intertwining of events and circumstances that came together to coalesce into the situation that we now find ourselves – if you will pardon my description: "a mess".

How did we get into this 'mess'? I think it comes down to a series of tactical decisions and events over time where no one was looking at the overall strategic picture of where all these steps were leading, and that is how we got into this 'mess'.

And what were these steps?

The 'mess' starts back in at the Vancouver Island Generation Project (VIGP) decision. First, the inclusion of:

"...a call for the sale of VIGP (VIEC Argument, P. 7). Section 2.6 of Schedule A permits bidders in the CFT to tender for the acquisition of the existing VIGP assets."

Source: [VIGP Decision, September 8th, 2003, 83]

This asset sale should not have been included in the CFT. It may have looked good at the time as a tactical decision, but carries with it the implication of using Natural Gas. When VIGP went down, this should have meant that Natural Gas as a fuel source option should also have gone down as well and made room for Alternative Energy Sources. For this reason I claim one of the primary objectives of the CFT process was to solicit 'unconventional' Alternative Energy Sources, and not conventional Natural Gas. Therefore, the CFT was not a "level playing field" to begin with as BC Hydro claims. Further biases were introduced by the application of a High – level of reliability standard and a zero – rated test standard that would contribute to a predisposition in the tender outcome. To these biases, I will also add the following other unintended biases that impacted on 'fairness':

- A.) Mr. Bois' comments about the element of "change" (i.e. 'evolved') through addendums [Transcript, Vol. 8 (January 19/2005, Page 1772, Line 17]
- B.) Mr. Andrews' comments about the 'Resource Bias' issue [Transcript, Vol. 8 (January 19/2005, Pages 1860 - 1863]
- C.) The issue of BC Hydro taking the 'gas price risk' [Transcript, Vol. 8 (January 19/2005, Page 1863]
- D.) The issue about the 'term' of the tender [BC Hydro's February 1st/2005 Final Argument, Page 27]
- E.) The issue of the 'minimum Portfolio size' [BC Hydro's February 1st/2005 Final Argument, Page 27]
- F.) The change of the terms of the CFT with the change of the adjustment to the 'Transmission Deferral Credit' [BC Hydro's February 1st/2005 Final Argument, Page 28]

Taken all together these unintended biases have lead to the VIGP resurfacing in the guise of Duke Point Power once again. Same project, same assets, same site, same fuel – with only the ownership changing. This is not acceptable. If VIGP was rejected last time, then Duke Point Power - with or without Duct Firing should be rejected again!

4.) Recommendation

Numerous times throughout these Hearings, the representation for Duke Point Power stressed the need to maintain the "Sanctity" of this contractual agreement in order to safeguard the future Tendering process. The position taken here is that there is nothing 'sacred' about a "flawed" tendering process. Instead, what must be protected is BC Hydro from itself. What are at stake are the very Integrity, Honour, and Reputation of BC Hydro, a provincial crown corporation which by extension represents the people of BC and their Integrity, their Honour, and their Reputation. That is what we must ultimately protect in the end and what will be violated if this EPA is approved!

Therefore, the CFT/EPA must be abrogated, and the CFT declared null and void, and the EPA disallowed. If this is not done, then what same person would want to bid on a BC Hydro tender if there is the slightest whiff of unfairness or perceived inappropriate conditions in the tender? One would have to be insane to enter into a tender bidding process if there was any perception of either a predetermined decision or where the rules were stacked so as to prevent a tenderor from ever winning. Under the current scenario, to allow the EPA to proceed would only do greater harm to BC Hydro and the future tendering process.

5.) Conclusion

Both BC Hydro and British Columbia are now entering into an uncertain period of history. Fossil fuels will not last forever. The end of this type of fuel is within sight. So, it is no longer a case of build another conventional resource asset and business as usual. The same "old rules" do not apply. BC Hydro must be forced to deal with unique and unconventional Alternative Energy sources; e.g., Biomass, Solar, Wind, Wave, Run of the River, etc., where "Proven Technologies" either do not yet exist and/or experimentation will be the rule of the day and where failure can be expected to occur. Therefore, both BC Hydro and BCUC must recognize that this issue is not contained in either the "least – cost test" or the "most cost – effective test" principle but will definitely bear on this decision and all future decisions. How well BC Hydro manages in this new type of business environment will be a measure of how well they will succeed.

As for now, BC Hydro must go back and start all over again, from the beginning – no matter what the cost or no matter what the risk, and issue a new unbiased tender.

Likewise, BCUC must now this time issue a directive to BC Hydro stating in clear and concise terms to “Get It Right” while using the benefit of hindsight gained through this experience.

As a final note to this submission, I would have liked to have gone back and corrected my statements and some minor errors in the Transcript; but alas, time does not permit: Friday, 2005.02.04.4:15 P.M.

Respectfully submitted,
Keith W. Steeves

6.) References

- 1.) **The Oxford English Dictionary**, Second Edition – Volume XVII (Su – Thrivingly) (Ed.: J.A Simpson & E.S.C. Weiner) Clarendon Press: Oxford, 1989, PP 768 – 770.
- 2.) **The Legal, Ethical and International Environment of Business**, 5th Edition, (Ed.: Herbert M. Bohlman & Mary Jane Dundas) West Legal Studies in Business, a div. of Thomson Learning: Cincinnati, Ohio, 2002, P. 321.
- 3.) **Pocket Dictionary of Canadian Law**, 3rd Edition, (Ed.: Daphne A. Dukelow) Carswell, A Thomson Company: Toronto, 2002, P397.
- 4.) **Osborn Concise Law Dictionary**, 9th Edition, (Ed.: Sheila Bone) A Thomson Company: London, 2001, P.374.
- 5.) **Dictionary of Law**, 3rd Edition, Peter Collin Publishing, 2000, P. 365.
- 6.) **Stroud’s Judicial Dictionary of Words and Phrases**, 6th Edition, Vol. #3 (Q-Z) (Ed.: D. Greenberg & A. Millbrook) Sweet & Maxwell, 2000, P. 2630.
- 7.) **Oxford Dictionary of Law – New Edition**, 4th Edition, Oxford University Press: Oxford, 1997, 461.
- 8.) **Critical Concepts of Canadian Business Law**, Jan D. Weir & Shane A. Ellis, Addison – Wesley Publishers Limited: Don Mills, Ontario, 1997, PP. 48 & 49.
- 9.) **Merriam Webster’s Dictionary of Law**, Merriam – Webster, Incorporated: Springfield, Massachusetts, 1996, PP. 491 & 492.
- 10.) **Contemporary Canadian Business Law, Principles & Cases**, 3rd Edition, John A. Wiles, McGraw – Hill Ryerson Limited: Toronto, 1990, PP. 143 & 144.

7.) Addendum

Section A

The following comment is what I would like to add as an elaboration on to my January 20, 2005 statement [Transcript, Vol. 9, PP. 2110 to 2118] that I made to the Commission. I feel what said previously was not good enough or clear enough in explanation, so further comment is warranted.

In my previous statement, I attempted to challenge BC Hydro on its use of the input values given in Table 4.2 Growth Assumptions (P. 11) for the British Columbia Hydro and Power Authority (“BC Hydro”) **Revised Electric Load Forecast 2004/05 to 2024/25** document dated December 2004 Forecast. In Table 4.2, what we see are pretty much stable constant growth rates. These stable linear projections I claim are false. To justify this claim, I would first like to say that no one knows the future. The future can (and does) take any form it wants. Hence, no one can predict it with certainty. Therefore, my opinion is just as good as BC Hydro’s opinion. Now, BC Hydro can source from all the outside experts they want, but when it comes to predicting the future, these experts are merely expressing their own opinion. (Granted, some opinions are better than others. That is what makes a “real” forecaster better than the little old lady with the crystal ball. – my assumption here.) But, “*Why should the Commission accept my opinion over BC Hydro’s opinion in this case?*” Well, the reason I give is that I claim the “Future is not written in Stone”. Since the future entails uncertainty, this implies variation in possible outcomes. Do we see variation between the different forecast values in Table 4.2. No we do not. Only constant stable growth

rates year after year. Even if these input values are taken to be average mean values, there should be greater variation of these values over the forecasted period. What you the reader would expect to see should be a range of values more like the values given above in the top section of Table 4.2 for the “Actual” values. Second, there is no variation ; i.e., standard deviation, about these predicted average mean forecasted input values over the forecasted period. Third, BC Hydro in their forecast has not provided an adequate 20 to 30 year “Back -cast” record of historical values with their associated measure of standard deviations to compare against the predicted future forecast values to ascertain any similar or difference for relevance. The picture that BC Hydro forecast model paints from their REAPS and Command software with these input values is a world with no variation and no uncertainty. Hence, BC Hydro’s model of the world is ‘unreal’. Compared to the picture that I propose, the world I model has both variation and uncertainty. Hence, using these factors would describe a ‘real’ world, a world that is dynamic in where prices go up and down, and changes in the economic system effect the factors of supply and demand.

Therefore, if the Commission accepts my interpretation that the input values are wrong, then what we have here is a classic case of “garbage in, garbage out” methodology; and hence, the **Revised Electric Load Forecast 2004/05 to 2024/24** document is not worth the paper it is printed on! I can’t be more blunt than that.

Section B:

As recommended by both Mr. Fulton (BCUC) and Mr. Keough (representative for Duke Point Power) in their Thursday, 2005.02.03 E-mail messages to me, I am attaching here to my **Addendum** my January 31st, 2005 letter that I previous sent to the BCUC. This previous letter was sent for the purpose of correcting the official transcript record of the BC Hydro CFT/EPA Public Hearings. If Mr. Keough wishes to address this issue, please be my guest.

By the way, perhaps Mr. Keough meant the cost rate factor was only \$ 15.00/tonne in order to arrive at the figure: \$ 3.6 Billion? Even so, this value would be more than four times the recommended Greenhouse gas costs – (\$ 3.60/MWh in real 2002 dollars) input value for use in the NPV model used for the CFT Benchmark as specified in the BCUC’s September 8th, 2003 Vancouver Island Generation Project Decision, P. 81.

And remember, Kyoto is just the first step in a series of steps to come!

Please see my earlier letter to the BCUC for these figures on the following page below.

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Sir:

RE: Correction to BC Hydro CFT/EPA Review Public Hearing Transcript

One of the other intervenors has brought the following statements made by Mr. Loyola Keough to the witness, Mr. Mark Jaccard to my attention. These statements are found in the Transcript, Volume No. 14, January 27th/2005:

1.) Found at Page 2922, Line 21 to 24:

“... but are you aware that Canada’s current commitment is for a 240 megatonne reduction in GHG emissions from the 1990 levels?”

2.) Found at Page 2923, Line 12 to 14:

“What kind of cost do we come up with if we take your low – end number of \$ 150.00 per tonne and multiply it by even the 240 number?”

3.) Found at Page 2923, Line 18 to 19:

“Yeah. Do the multiplication. How about 3.6 billion, is that – ”

4.) Found at Page 2924, Line 9 to 11:

“And directionally, that’s helpful. I was simply doing the math between the 150 and the 240 to get the 3.6 billion.”

As has been pointed out to me and to which I concur, the mathematical calculation offered by Mr. Keough appears to be incorrect. Since a megatonne is equivalent to one million (1,000,000.0) tonnes units, 240 megatonnes has a numerical value equal to: 240,000,000.0 tonnes. When this figures is multiplied by the cost rate factor, namely: \$ 150.00/tonne, the resulting calculated value is \$ 36,000,000,000.0, or alternatively stated: \$ 36.0 billion, and not the \$ 3.6 billion figure offered by Mr. Keough.

If the Commission accepts this calculation, we ask that the public record for the above transcripts please be changed from the incorrect figures to the appropriate correct sums. These corrections are justified because they have a direct impact on the cost – effectiveness issue of these proceedings. Thank you.

Respectfully submitted,
Keith W. Steeves

