

B-10

BC Hydro submissions for BCUC Procedural Conference October 28, 2016

1. Whether an oral hearing is necessary and why.

- In considering the option of an oral hearing for a fact-finding Inquiry like this one, BC Hydro respectfully submits that the Commission can consider the potential value of oral testimony to the Inquiry's objectives, and also consider the time and complexity of convening an oral hearing. I will review both of these considerations.
- The fundamental objective of the Inquiry is to achieve common understanding of BC Hydro's SAP-related expenditures over the F2009 to F2016 period. In Order G-81-16, the Commission Panel confirmed as final five scope items with respect to that objective.
- The Commission has made clear that the Inquiry is a fact-finding exercise. In addition, if the Commission considers it appropriate it might make recommendations with respect to future processes and matters within the Commission's mandate under the *Utilities Commission Act*.
- The Inquiry will not result in determinations impacting rights or obligations of BC Hydro or anyone else. In these perhaps unique circumstances, the Commission has very broad discretion with respect to process generally and specifically whether an oral hearing provides value.

- In considering the potential value of an oral hearing, the Commission could consider whether there is information that, (1) is not available on the record and only obtainable through testimony, and (2) is of sufficient importance to the scope of the Inquiry that the value of pursuing it outweighs the time and complexity of convening an oral hearing.
- The existing record is comprehensive and robust. A team of BC Hydro staff with external support made diligent efforts to gather and submit approximately 9,800 pages of information covering all five scope items. BC Hydro has been open and transparent in organising and submitting this information and in responding to information requests.
- Turning to the Scope Items for the Inquiry,
- **Scope Item 1** is “What are the total capital and operating expenditures incurred by BC Hydro as at the end of F2016 on the SAP platform, SAP modules and other supporting capital enhancements to support the platform adoption?”
 - The Consolidated Information Filing and BC Hydro’s responses to the Inquiry IRs provide complete information for Scope Item 1.
- **Scope Item 2** is “What are BC Hydro’s approval and oversight controls and processes related to the authorization and governance of information technology capital

expenditures and projects? Were these controls and processes appropriately designed and operating effectively with respect to management’s review and oversight of SAP-related expenditures?”

- Scope Item 2 has two questions. The Consolidated Information Filing and responses to the Inquiry IRs provide complete information with respect to the first question. The second question could involve the Commission making a judgement with respect to whether the controls and processes in place were appropriately designed and operating effectively. The Consolidated Information Filing and responses to Inquiry IRs provide substantial information for the Commission to make such judgements.
- **Scope Item 3** is “Have the goals outlined in BC Hydro’s Information Technology and Telecommunication (IT&T) Five-Year Plan related to SAP initiatives been achieved?”
- The Consolidated Information Filing and responses to the Inquiry IRs provide complete information on what are the goals set out in the IT&T five-year plan dated November 2009, which of those goals relate to the SAP strategy adopted in May 2008, and the extent to which BC Hydro has tracked achievement of those goals. The Consolidated Information Filing and responses to Inquiry IRs also provide substantial information on BC Hydro’s goals for its SAP strategy generally,

the goals for each SAP-related project BC Hydro has undertaken during the F2009 to F2016 period, and the extent to which BC Hydro has achieved those goals.

- **Scope Item 4** is “What is BC Hydro’s planned capital spending on the adoption of the SAP platform and independent SAP projects on a go-forward basis?”
 - The Consolidated Information Filing and BC Hydro’s responses to the Inquiry IRs provide complete information for Scope Item 4.
- **Scope Item 5** is “Were all SAP-related disclosures to the Commission appropriate, reasonable and in accordance with the *Utilities Commission Act*?”
 - BC Hydro’s January 8, 2016 response to Mr. Dix’s complaint, BC Hydro’s responses to the Commission’s March 2016 IRs, the Consolidated Information Filing and the responses to the Inquiry IRs identify and provide all of BC Hydro’s SAP-related disclosures to the Commission over the F2009 to F2016 period, and why in BC Hydro’s view these were in accordance with the *Utilities Commission Act*.
 - Through this process, BC Hydro has not been able to obtain full insight into the thinking that led to two issues of particular interest to Mr. Dix, being certain testimony and the response to a certain undertaking during the F2009/F2010 Revenue Requirements Application hearing in October 2008. In the January 8,

2016 response to Mr. Dix's complaint, BC Hydro's Chief Executive Officer personally stated that in both this testimony and undertaking response, BC Hydro failed to take the opportunity to bring the Commission up-to-date with respect to its approach to IT&T systems. The failure to bring the Commission up to date in October 2008 was, however, remedied in June 2009 when BC Hydro made a compliance filing to the Commission disclosing its plan to adopt the SAP financial module. BC Hydro's CEO has openly acknowledged that BC Hydro's performance during the 2008 hearing with respect to those two issues did not meet BC Hydro's standards of transparency, and she has taken the specific step of personally apologising for that. BC Hydro has also said that it has found no evidence of an internal systemic problem.

- The information record is extensive and, in our view, enables the Commission to make findings of fact with respect to each of the Scope Items. In their written submissions filed on Monday, the participants have not suggested that the record is insufficient or that further information requests are needed. There is one exception, which is captured as item 4(a) on today's agenda. I will return to that when I address the agenda item, and I do not expect it to be a problem.
- Turning now to the time and complexity of attempting to convene an oral hearing, there would be issues that would further drag on the potential value of oral testimony.

- To identify potential witnesses, BC Hydro would need specific direction as to what the issues would be for an oral hearing.
- For example, it would not be possible for BC Hydro to provide witnesses to speak to all of the information on the record because the record spans some 13 years. As another example, it would not be practical if it is even possible to provide a slate of witnesses with knowledge of all aspects of the business cases, expenditure authorisation requests, and compliance with policies and controls for financial approval and project governance in relation to each of the more than 70 SAP-related IT projects during the F2009 to F2016 period.
- Additionally, BC Hydro has not identified anything that it might want to supplement through testimony. So BC Hydro would need specific direction as to what the issues would be for an oral hearing to identify potential witnesses.
- With respect to the events of greatest interest to Mr. Dix, these events transpired 8 or more years ago. Memories of 8-year old events will be of uncertain reliability.
- Perhaps more importantly, most of the people involved with those events are no longer with BC Hydro – some have retired while others left BC Hydro for other opportunities.

- It is important for the Commission and participants to appreciate that in this case, complex and time-consuming issues would need to be overcome in order to obtain testimony from a person that is not currently a BC Hydro employee.
 - In most cases it would not be appropriate for BC Hydro or its counsel to present such a witness at an oral hearing if there was to be one. The Commission or Commission counsel would need to contact such person or persons, request that they appear to testify, explain the nature of the testimony sought, and advise them that they may wish to retain their own counsel. BC Hydro would not be expected to have a material role in that process.
 - Finally, BC Hydro has acknowledged that it could have done better with respect to the two issues in connection with the hearing in 2008.
 - Given all of these considerations, BC Hydro is struggling to identify what the purpose or value of an oral hearing would be. We are, however, keenly aware of the complex procedural issues which would likely arise if an oral hearing was to be pursued.
- 2. If the Commission considers that an oral hearing is necessary, what issues should be in scope? Please make specific reference to the five scope items established by the Commission in Appendix B to Order G-62-16.**
- As per my previous comments, BC Hydro struggles to understand what issues there could be for an oral hearing given the objectives and scope of the Inquiry, and the existing record.

- If the Commission Panel was to determine that an oral hearing is required, BC Hydro would need clear and specific direction as to what the issues would be for oral hearing so that it could identify witnesses and determine whether a current employee is knowledgeable to speak to the issue. The guidance would need to be as specific as possible with respect to both issue and time period.

3. The proposed timing for the remainder of the regulatory timetable, including proposed date for an oral hearing in the event that the Commission Panel determines an oral hearing is warranted.

- Given the complex and time-consuming issues that would need to be overcome in order to convene an oral hearing and the problems with identifying witnesses in the absence of clear guidance on the issues for an oral hearing, we would have no submissions regarding dates for an oral hearing in the event the Commission determines there was to be one.
- With respect to the remainder of the regulatory timetable, participants in their written submissions did not ask for further information requests. BC Hydro does not see benefit in further information requests.
- If the Commission determines that the Inquiry will not include an oral hearing component, BC Hydro's submission would then be that the Inquiry can move to a final argument phase, and that the argument phase could be focused and efficient.

- Final arguments could be directed to the specific questions of the five scope items for the Inquiry.
- With respect to timetable for final arguments, for an Inquiry like this one BC Hydro would support a process where all participants file their final arguments at the same time and no reply arguments by anyone including BC Hydro.
- BC Hydro could file a final argument within a month from the date of a Commission procedural order directing that the Inquiry will move into the final argument phase.

4. Comments on the following requests made by counsel for Adrian Dix in the October 24, 2016 submission

(a) Request for the Commission to direct BC Hydro to disclose certain SAP agreements

- Mr. Dix's IR 1.21.0 asked for, among other things, "a copy of all contracts with SAP". BC Hydro's response to the IR referenced and quoted the provision of the contract between BC Hydro and SAP Canada providing that BC Hydro shall not disclose the contract to any third party otherwise than as compelled in furtherance of an obligation at law. It was on this basis that BC Hydro was unable to disclose the requested documents.

- BC Hydro wants to be very clear that but for the above-noted contractual provision, it does not object to disclosure of these requested documents, without any redaction, to the Commission and intervener counsel in accordance with the Commission's standard protocols for confidential filings and disclosure on undertakings. There would be some risk of commercial harm if the contract is placed on the public record, and so BC Hydro supports unredacted disclosure within the Commission's confidentiality protocols.
- BC Hydro has discussed Mr. Caroline's request with SAP Canada, and is able to report that SAP Canada consents to disclosure on the following terms:
 - "With respect to the Commission itself, SAP agrees to allow disclosure of all SAP license contracts, redacted for price and quantities of software, subject to appropriate non-disclosure terms.
 - With respect to intervenors, SAP agrees to allow intervenors counsel to review the same redacted agreements at a secure location, such as at BC Hydro's offices or SAP's offices. Counsel can review the agreements but may not make copies. Such access would still be subject to appropriate non-disclosure terms.
 - If the Commission (or through the Commission, the intervenors) have any concerns about the redacted information, SAP may consider specific requests for unredacted information.

- SAP's agreement to this disclosure is not a waiver of SAP's rights or BC Hydro's obligations respecting Confidential Terms and Conditions under the End-User License Agreement between SAP Canada Inc. and the British Columbia Hydro & Power Authority dated August 2, 2002."

4. (b) Request that parties and Commission counsel work toward a written Agreed Statement of Facts in advance of the proposed oral hearing.

- BC Hydro is not comfortable with the idea that participants would negotiate an Agreed Statement of Facts for the Inquiry. The Inquiry is a fact finding exercise, and BC Hydro believes it important that the Commission Panel retain the role of finder of fact. This responsibility should not be in effect delegated to the participants.
- In addition, the proposal to work toward an Agreed Statement of Facts would be very time consuming – possibly months – and it likely would not be successful because, in our respectful submission there is a comprehensive record of facts now available on the record with respect to each of the five scope items.
- BC Hydro does not see how participants could settle on an Agreed Statement of Facts that is different from the existing information record given that no participant other than BC Hydro has or proposes to put alternative information on the record. Mr. Dix has some information on the record, though his filings have been primarily argument.

- For all of these reasons, BC Hydro does not support the Agreed Statement of Facts proposal.

4. (c) Identification of controversial documents in advance of the proposed oral hearing

- BC Hydro has no objection to the proposal. BC Hydro expects that all of the documents it has disclosed would be admissible at a hearing if there was one.

5. Any other relevant matters?

- None.