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June 15, 2017

Via: E-filing

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

**Re: British Columbia Hydro and Power Authority
Inquiry of Expenditures related to the adoption of the SAP Platform
British Columbia Utilities Commission Action on Complaint**

We continue to represent the intervenor Mr. Adrian Dix, MLA.

This letter is in response to (i) BC Hydro's letter of June 13th requesting an extension of its June 14th filing deadline; and (ii) the Commission's Order G-92-17 dated June 14th granting BC Hydro's extension request.

We note that the Commission did not invite the participants to comment on BC Hydro's extension request. We therefore ask that this letter be considered as our submission on this matter.

For the reasons that follow, we object to BC Hydro's extension request and ask that the Commission reconsider its most recent order.

In an order issued May 31st (G-86-17), the Commission directed BC Hydro to disclose, by June 14th, an anonymous 2010 Code of Conduct complaint as well as "[d]ocumentation relating to the resolution of the Code of Conduct complaint, including any internal report(s) prepared by BC Hydro, as well as any letter(s) or documentation provided to the complainant at the conclusion of the investigation". As BC Hydro advised on June 13th, it expects to be filing more than 100 such documents.

BC Hydro's June 13th extension request – made just one day before deadline – is premised on an assertion that its Ethics Officer must review all these documents in order to "fully understand the impact on [BC Hydro's] Code of Conduct Reporting Program".

We have a number of concerns about the propriety of BC Hydro's extension request at this juncture, including the following.

The question of whether or not BC Hydro "fully understand[s]" the impact that disclosure might have on its reporting regime is irrelevant to the legal effect of the Commission's disclosure order. The order was made and it ought to be followed. If the document review undertaken by BC Hydro's Ethics Officer is in fact aimed at providing some foundation for an eventual argument that the scope of the disclosure order ought to be varied, then BC Hydro should be upfront about its intentions. If, however, such an argument is not on the horizon, then the documents should be disclosed and BC Hydro's Ethics Officer can continue reviewing them along with the participants.

We also see some inconsistency between (i) the ostensible need for a thorough document review by the Ethics Officer and (ii) the relevant procedural timeline as we understand it. For example, BC Hydro was aware as early as February 2017 that the Complaint – and by logical extension, documents closely related to the Complaint – might become subject to a disclosure order from the Commission. Indeed, by mid-February 2017 BC Hydro was raising specific concerns regarding the possible impacts disclosure of the Complaint might have on its reporting regime.¹ In other words, BC Hydro has already had nearly four months to "understand the impact" of Complaint-related disclosures, yet it apparently has not taken sufficient efforts to do so.

Moreover, even if in February 2017 BC Hydro failed to foresee the possibility that a disclosure order might apply not just to the Complaint but also to closely related documents, the Commission's May 31st Order was explicit in this regard. Given the extremely late notice of BC Hydro's inability to meet the deadline, however, it would

¹ In a letter of February 15, 2017, for example, BC Hydro's counsel wrote as follows (p. 1).

BC Hydro treats such Code of Conduct HR matters with a high level of confidentiality because of its responsibility to ensure that both the complainant and all others involved are provided a confidential environment in respect of the complaint and also because disclosure of such matters could discourage future Code of Conduct reporting.

BC Hydro reiterated this point in correspondence of May 3rd and again in correspondence of May 17th, which read in part as follows (p 2).

We remain of the view that the 2010 Complaint, and all Code of Conduct HR matters at BC Hydro, must be treated with a high degree of confidentiality to ensure all parties are provided with a confidential environment in which to report and address sensitive Code of Conduct questions or concerns.

appear that BC Hydro did not embark promptly on a thorough review of the documents. Had it done so, the Commission and the participants would surely have been informed of the need for an extension far sooner.

Further and in any event, had BC Hydro simply disclosed the existence of the 2010 Complaint and closely related documents at the outset of these proceedings – which in our view BC Hydro quite obviously should have, given the documents' apparent relevance – then there would be no conceivable need for an extension at this juncture.

In these circumstances, BC Hydro's extension request should not be indulged. We therefore ask that the Commission (i) reconsider its most recent Order, (ii) affirm the original June 14th deadline and (iii) order that BC Hydro comply with its current disclosure obligation immediately.

In the alternative, and regardless of whether disclosure of all documentation is ordered at this time, we ask that the Commission order the immediate disclosure of the 2010 Complaint itself. As the Commission is aware, this document has received much attention in recent months and BC Hydro has had every opportunity to weigh any concerns stemming from its release. In short, there is no basis whatsoever for BC Hydro's continued non-disclosure of the Complaint.

Yours truly,

CAROLINE + GISLASON LAWYERS LLP


for Gary Caroline

c. Client
eFiling List of Participants