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19 December 2008

Ms. Erica M. Hamilton
Commission Secretary
British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Hamilton:

Re: Project No. 3698522
British Columbia Utilities Commission (BCUC)
British Columbia Hydro and Power Authority (BC Hydro)
Net Metering Re-pricing Application (the Application)

Final Submissions of BC Hydro

In accordance with BCUC Order No. G-170-08, BC Hydro attaches its Final Submissions with respect to the Application.

If there are any questions regarding the attached, please contact the undersigned.

Yours truly,



Craig Godsoe
Solicitor and Counsel

- c. BCUC Project No. 3698522 (Net Metering Re-pricing Application)
Registered Intervenor Distribution List

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF THE *UTILITIES COMMISSION ACT*, R.S.B.C. 1996, c. 473

and

**British Columbia Utilities Commission
British Columbia Hydro and Power Authority
Net Metering Re-pricing Application**

**FINAL SUBMISSIONS OF
BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY (BC Hydro)**

19 December 2008

Part 1 – Introduction and Structure of Submissions

1. Pursuant to British Columbia Utilities Commission (**BCUC**) Order G-170-08,¹ BC Hydro files its Final Submissions concerning its Net Metering Re-Pricing Application (**Application**).
2. BC Hydro's Final Submissions are organized as follows. Part 2 reviews what BC Hydro is applying for, and sets out the policy and legal context for the Application. Part 3 responds to the Final Submissions of B.C. Sustainable Energy Association and Sierra Club B.C. (referred to collectively as **BCSEA**), and the Final Submissions of Energy Solutions for Vancouver Island Society, the Okanagan Environmental Industry Alliance and Island Transformations.org (referred to collectively as **ESVI**) with respect to the filing of a future Net Metering evaluation report and the expansion of BC Hydro's marketing of the Net Metering program. In BC Hydro's view, these two issues are connected to the Application. Part 4 responds to the remainder of ESVI's Final Submissions, which are either out of scope (as is the case with ESVI Submissions #1 and #2) or lack any legal basis (as is the case with ESVI Submission #3).

Part 2 - Application and Legal Context

3. BC Hydro applied to the BCUC on 3 October 2008 pursuant to sections 58 to 61 of the *Utilities Commission Act*² (**UCA**) for approval to increase the Net Metering Service (**RS 1289**) Energy Price from the current 5.40 cents/kWh³ to a proposed 8.16 cents/kWh. The proposed 8.16 cents/kWh is based on the Standing Offer Program (**SOP**) levelized base rate (2006\$).

¹ Exhibit A-3.

² R.S.B.C 1996, c. 473.

³ BC Hydro submitted its first application for a Net Metering rate on 3 November 2003. This first application was approved by BCUC Order No. G-26-04. The approved rate at that time was 5.40 cents/kWh. Refer to Exhibit B-1, page 1.

4. The Application results from Policy Action No. 11 of the British Columbia (B.C.) Government's **2007 Energy Plan**, entitled *The BC Energy Plan: A Vision for Clean Energy Leadership*.⁴ Policy Action No. 11 of the 2007 Energy Plan directed BC Hydro to establish a standing offer for clean electricity projects up to 10 megawatts (MW). BC Hydro's SOP was approved by the BCUC on 19 March 2008 pursuant to BCUC Order No. G-43-08.

5. With respect to Net Metering, Policy Action No. 11 provides:

In addition, to ensure even treatment of new supply acquired through BC Hydro's net metering program and the Standing Offer approach, Government will issue a direction to the Commission that BC Hydro makes appropriate changes to its net metering program. This will ensure the price paid for net annual surpluses of generation 'purchased' by BC Hydro is generally consistent with the prices paid in the Standing Offer program. [Emphasis added].

6. The B.C. Government has not issued a direction to the BCUC with regard to Net Metering.⁵ BC Hydro respectfully submits that because the intent of Policy Action No. 11 is clear as it relates to Net Metering re-pricing, no direction from the B.C. Government is necessary for the BCUC to approve the Application. BCSEA accepts BC Hydro's position in this regard.⁶

7. Sections 58-60 of the *UCA* prescribe the BCUC's rate-setting powers and obligations. For the purposes of this Application, BC Hydro submits that the legal test for the RS 1289 rate the BCUC must determine and set is "fair, just and not unduly discriminatory". The proposed RS 1289 re-pricing is clearly not discriminatory as the new pricing would be available to, and applicable to, all customers in a manner identical to the current approved pricing. Further, there is no evidence that the new pricing would have any discriminatory effect.

⁴ A copy of the 2007 Energy Plan is found at Attachment 1 to Exhibit B-4, response to ESVI IR 1.8.1.

⁵ Exhibit B-4, response to BCSEA IR 1.1.1.

⁶ BCSEA Final Submissions, page 2.

8. The SOP base price is the relevant base price for the Net Metering rate because: (1) it represents a measure of the avoided cost of comparable clean or renewable electricity generation; and (2) it aligns with Policy Action No. 11 of the 2007 Energy Plan. Each of these points will be addressed in turn.

RS 1289 is Based on Avoided Cost

9. The RS 1289 Energy Price is being reset to align with the avoided cost of comparable clean or renewable non-firm energy. The SOP pricing provides a reasonable measure for the avoided cost of clean or renewable non-firm energy.⁷ The SOP is based on the F2006 Call for Tenders Small Project stream, which was a competitive process that targeted independent power producer projects larger than 0.05 MW and less than 10 MW. The Small Project stream was comprised of clean or renewable projects, and was contractually non-firm.⁸

Alignment with B.C. Government Policy

10. Bill 15, the *Utilities Commission Amendment Act, 2008 (Amending Act)* was brought into force on 1 May 2008.⁹ The Amending Act sets out “government’s energy objectives” including, among other things, “to encourage public utilities to reduce greenhouse gas emissions” and “to encourage public utilities to produce, generate and acquire electricity from clean or renewable resources”. The Application engages the BCUC’s rate-setting powers under sections 58-61 of the *UCA*. However, as explained in the response to ESVI IR 1.8.1.3,¹⁰ while the “government’s energy objectives” apply to the *UCA* provisions relating to long-term resource plans such as BC Hydro’s 2008 Long-Term Acquisition Plan (**LTAP**), they are not directly engaged in the BCUC’s treatment of the Application.

⁷ Exhibit B-3, response to BCUC IRs 1.2.2; Exhibit B-4, responses to BCSEA IR 1.3.1 and 1.3.3.

⁸ Exhibit B-1, page 2.

⁹ S.B.C. 2008, c.13.

¹⁰ Exhibit B-4.

11. While the law is clear that absent a B.C. Government directive that is expressly contemplated by enabling legislation, the BCUC cannot fetter itself by blindly following B.C. Government policy,¹¹ BC Hydro respectfully submits that the B.C. Government's direction to BC Hydro to ensure that the Net Metering price is "generally consistent"¹² with the prices paid under the SOP ought to be accorded significant weight when reviewing the Application and setting the RS 1289 rate. The BCUC ought to employ a test that acknowledges that BC Hydro must take into account B.C. Government policy direction.

Conclusion

12. The relief sought by BC Hydro in the Application ought to be granted by the BCUC. No intervenor has objected to or raised any material critique of BC Hydro's Net Metering pricing methodology. BCSEA supports the Application.¹³ ESVI has not commented on whether it approves or disapproves of the rate and has not added any substantive comments with respect to the methodology used in calculating the Net Metering Energy Price.

Part 3 – Response to BCSEA and ESVI Final Submissions Regarding Evaluation Report and Marketing

Net Metering Evaluation Report

13. BCSEA, at page 10 of its Final Submissions, requests that the BCUC direct BC Hydro to file an evaluation report on the Net Metering program with recommendations for any change to the program, including re-pricing, after the BCUC concludes its review, if any, of the April 2010 SOP evaluation report. ESVI contends that "BC Hydro should provide an evaluation report on Net Metering with the 2010 SOP report".¹⁴ BC Hydro commits to submitting a Net Metering evaluation report following the filing of its spring 2010 SOP report and following the implementation of any recommendations with regard

¹¹ *Innisfil (Township) v. Vespra (Township)* (1981), 123 D.L.R. (3d) 530 at 533, 551 (Supreme Court of Canada).

¹² BC Hydro's interpretation of "even treatment" and "generally consistent" is set out in Exhibit B-3, response to BCUC IR 1.4.3.

¹³ *Supra*, note 6, page 10.

¹⁴ ESVI Final Submissions, Submission # 5.

to changes to the SOP.¹⁵ This timing will permit BC Hydro to analyze and reflect as necessary SOP-related information in the Net Metering evaluation report. BCSEA supports this approach at page 10 of its Final Submission. ESVI's proposed timing for the filing of the Net Metering evaluation report would not allow for such analysis, and ought to be rejected by the BCUC.

14. BC Hydro accepts BCSEA's request at page 10 of its Final Submissions that the Net Metering evaluation report "address, among other things, customer service issues".

Expansion of Marketing

15. At pages 10 and 11 of its Final Submissions, BCSEA states that it believes BC Hydro should expand its marketing of the Net Metering program, and asks that the BCUC "encourage BC Hydro to address its marketing of the Net Metering program in the next program evaluation report". In its Final Submissions, ESVI is not entirely clear as to what it is asking the BCUC to do with respect to Net Metering marketing activities. ESVI Submission #4 simply states: "BC Hydro should actively market the Net Metering program to encourage more participation".¹⁶ In contrast, as discussed above ESVI is clear that it is seeking a BCUC direction with respect to the evaluation report. The assumption underlying both BCSEA's and ESVI's position is that increased marketing activities will encourage greater participation.

16. BCSEA does not ask that the BCUC direct BC Hydro to expand its Net Metering marketing activities, and for good reason. First, as acknowledged by BCSEA at page 6 of its Final Submissions, with respect to Net Metering, in addition to BCUC regulatory review processes, BC Hydro has engaged various internal and external audiences as follows:¹⁷

- BC Hydro responds to numerous Net Metering inquiries from many customers and interested groups on a daily basis;

¹⁵ As set out in Exhibit B-3, response to BCUC IR 1.1.1.

¹⁶ ESVI Final Submissions, page 10.

¹⁷ Exhibit B-4, response to BCSEA IR 1.6.3.

- BC Hydro has given several seminars and public presentations to various groups in promotion of Net Metering;
- BC Hydro has also brought up Net Metering in many events such as Independent Power Producers Association of B.C. conferences, BC Hydro Power Smart/DSM events, distributed generation (**DG**) events, and SOP stakeholder engagement sessions across B.C.; and
- BC Hydro outlines all public information in the Net Metering webpage.

17. Second, BC Hydro respectfully submits that it would not be appropriate for the BCUC to direct BC Hydro to expand its Net Metering marketing activities at this time, prior to implementation of the RS 1289 re-pricing, and prior to any assessment of the results of the B.C. Government's LiveSmart BC program, which includes financial incentives to customers that install DG.¹⁸ BC Hydro submits that it would be premature to conclude that additional Net Metering-related marketing is required to increase uptake or that such marketing is desirable.

18. BC Hydro accepts BCSEA's request on page 11 of its Final Submissions that the Net Metering evaluation report address the "marketing of the Net Metering program".

Part 4 - ESVI Final Submissions

19. In its Final Submissions ESVI addresses several issues other than the re-pricing of the Energy Price of RS 1289. BC Hydro does not respond to all of the issues raised in ESVI Submissions #1 and #2 as they are clearly out of scope, but does provide the following comments.

20. ESVI makes a number of assertions with respect to the "circularity of the regulatory review process". With respect, these assertions are without any foundation. First, ESVI asserts that it is unclear as to what process will address the issues of Net Metering as a potential demand side measure, and how Net Metering figures into BC Hydro's load/resource gap. BC Hydro has been clear that both issues should be

¹⁸ Exhibit B-1, page 4.

addressed in the 2008 LTAP proceeding. For example, in its response to ESVI IR 1.8.1.1,¹⁹ BC Hydro stated:

BC Hydro respectfully submits that whether or not net metering is or is not a “demand-side measure” as defined in section 1 of the UCA is not relevant to the Application. Accordingly, the Application regulatory review is not the appropriate process to discuss the relevancy of the Demand-Side Measures Regulation to BC Hydro; this issue will be addressed as part of BC Hydro’s 2008 Long-Term Acquisition Plan (LTAP) proceeding.

21. ESVI has asked questions in the 2008 LTAP proceeding with respect to how Net Metering figures into BC Hydro’s load/resource balance. As stated in BC Hydro’s response to ESVI IR 2.7.1, submitted in the 2008 LTAP proceeding and referenced in ESVI’s Final Submissions at page 3:

BC Hydro did not include the net metering rate schedule as an existing and committed resource in the 2008 Long-Term Acquisition Plan (LTAP) because BC Hydro does not expect the volume of electricity produced under the net metering rate schedule to become material for the purpose of the 2008 LTAP. In contrast, the volume of electricity savings from the DSM Plan, including the Load Displacement and Sustainable Community programs, are material for the purpose of the 2008 LTAP.

ESVI is free to pursue this issue in the 2008 LTAP proceeding.

22. Second, ESVI continues its submissions on this topic through Submission #1 at page 2 of its Final Submissions, which provides that BC Hydro should commit to investigate and include Net Metering in its residential and commercial load displacement Demand Side Management (**DSM**) programs in the 2008 LTAP, and gives Policy Action No.1 of the 2007 Energy Plan as the basis for its request. BC Hydro respectfully submits that Policy Action No.1 provides no basis for the request. Policy Action No. 1 is addressed in the response to ESVI IR 1.5.2.3:²⁰

The 2007 Energy Plan states that demand-side measures “may” include net metering. Accordingly, BC Hydro submits that Policy Action No. 1 is not relevant to the Net Metering Re-pricing Application. It is Policy Action No. 11 of the 2007 Energy Plan which is relevant ...

¹⁹ Exhibit B-3.

²⁰ *Ibid.*

The B.C. Government very clearly used the term “may” as to whether Net Metering is a demand-side measure. BC Hydro’s also notes its response to ESVI IR 1.5.2.2,²¹ which states that Policy Action No. 1 is not applicable to the Application because any inclusion of Net Metering at the current estimated annual amount of 1.1MWh²² is small when considered in the broader context of Policy Action No. 1’s goal of conservation through DSM measures.

23. ESVI Submission #2 at pages 4 and 5 of the ESVI Final Submissions seeks a BC Hydro commitment as part of the 2008 LTAP regulatory review process to engage in meaningful stakeholder engagement concerning residential and commercial load displacement DSM programs and in particular engage with respect to feed-in tariffs. BC Hydro respectfully submits that feed-in tariffs are outside the scope of the Application, as stated in the response to ESVI IR 1.10.1:²³

BC Hydro does not support the use of a declining feed-in tariff, such as those found in several European countries. BC Hydro currently has no plans to develop any other feed-in tariffs.

Nothing in Policy Action No. 11 of the 2007 Energy Plan directs or authorizes BC Hydro to examine feed-in tariffs, or subsidize different technologies, as part of ensuring that the Net Metering price is “generally consistent” with the prices paid under the SOP. Feed-in tariffs, and subsidizing different technologies, raise Government policy issues which are best left to the 2008 LTAP proceeding. As set out in paragraph 10 above, the 2008 LTAP must be informed by the “government’s energy objectives” pursuant to sections 44.1(8)(a) and 44.2(5)(a) of the *UCA*.

24. In any event, BC Hydro respectfully submits that the BCUC panel reviewing the Application should not address what should, or should not, occur in another regulatory review process entailing a different application - the 2008 LTAP - that is before a different BCUC Panel. Positions with respect to residential and commercial load displacement are best addressed in the 2008 LTAP proceeding, where BC Hydro’s DSM Plan is filed, and not in the Application proceeding.

²¹ *Ibid.*

²² Exhibit B-1, Appendix B.

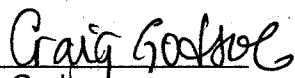
²³ Exhibit B-3.

25. ESVI Submission #3 at page 7 of the ESVI Final Submissions provides that a price of 7.68 cents/kWh should be retroactively applied from August 2006. BC Hydro submits that the RS 1289 Energy Price of 5.4 cents/kWh was approved by the BCUC as a fair, just and not unduly discriminatory and until such time as the BCUC approves a new rate, 5.4 cents is the only price that BC Hydro is able to legally pay.

ALL THE ABOVE IS RESPECTFULLY SUBMITTED

Dated: 19 December 2008

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: 
Craig Godsoe
Solicitor & Counsel

cc: BCUC Project No. 3698522 (Net Metering Re-pricing Application)
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