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April 27, 2009

File no: 1531.002

Via E-Mail - commission.secretary@bcuc.com

Erica M. Hamilton
Commission Secretary
British Columbia Utilities Commission
P.O. Box 250
6th Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Hamilton:

**Re: British Columbia Hydro and Power Authority ("BC Hydro")
2008 Long Term Acquisition Plan ("2008 LTAP")
Project No. 3698514; BCUC Order No. G-96-08**

Please find enclosed the Written Submissions of the Intervenor Canadian Office and Professional Employees Union ("COPE"), Local 378 in connection with the above referenced 2008 LTAP proceeding. A copy of the submission is being delivered concurrently by email to BC Hydro and the registered intervenors in this matter.

The authorities referred to in the Argument will be delivered to the Commission under separate cover.

Please call if you have any questions or if you require hard copies of the enclosed.

Yours truly,

Hunter Litigation Chambers

Per:



Mark S. Oulton

MSO/bb

cc BC Hydro (by email; w/encl.)
Attention: Craig Godsoe, Counsel
and Joanna Sofield, Chief Regulatory Officer

Registered Intervenors (by email; w/encl.)

Client (by email; w/encl.)

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF
BRITISH COLUMBIA HYDRO and POWER AUTHORITY
PROJECT NO. 3698524/ORDER NO. G-96-08

BC HYDRO 2008 LONG TERM ACQUISITION PLAN

**WRITTEN SUBMISSIONS OF
CANADIAN OFFICE and PROFESSIONAL EMPLOYEES
UNION, LOCAL 378**

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COPE 378**

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF
BRITISH COLUMBIA HYDRO and POWER AUTHORITY
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I. INTRODUCTION

1. British Columbia Hydro and Power Authority (“BC Hydro”) filed its 2008 Long-Term Acquisition Plan (the “2008 LTAP”) with the British Columbia Utilities Commission (the “Commission”) on June 12, 2008.¹ An evidentiary update was filed on December 22, 2008 to address recent economic events and their projected impact on BC Hydro’s load forecast and Demand Side Management (“DSM”) Plan.²

2. As noted by COPE in its opening statement,³ and acknowledged by BC Hydro in its argument,⁴ the 2008 LTAP filing is one of considerable significance as it is the first opportunity for the Commission to assess BC Hydro’s long term resource plan since the issuance

¹ Exhibit B-1.

² Exhibit B-10.

³ See, for example, Transcript, Vol. 3, pg. 232, line 14 to pg. 235, line 10.

⁴ BC Hydro argument, section 1, pg. 1.

and/or enactment of a number of significant regulatory and statutory instruments and policy statements, including:

- (a) Special Direction No. 10 (“SD 10”),⁵
- (b) the British Columbia government’s 2007 Energy Plan; and
- (c) recent amendments⁶ made to the *Utilities Commission Act* (“UCA”).⁷

3. As set out in section 1.2.2 of its argument, BC Hydro seeks a variety of relief in the 2008 LTAP, including the Commission’s endorsement of a number of its planning and resource acquisition initiatives. Of the relief sought, COPE will direct and limit its submissions to two principal subject areas that, of necessity, touch on a number of the aspects of the relief sought by BC Hydro. Specifically, COPE’s submissions will focus on BC Hydro’s proposed downgrading of the Burrard Thermal Generating Station (“Burrard”) for planning purposes and BC Hydro’s proposed implementation of the Clean Power Call at either a pre-attrition target of 3,000 Gigawatt hours (“GWh”) or a post-attrition target of 2,100 GWh.

4. As noted in its comments in the 2009-2010 revenue requirements hearing, COPE’s submissions are limited in this manner because, like most of the intervenors participating in this hearing, COPE has finite resources available to it. Of necessity, COPE has elected to focus its efforts on those areas of particular interest to its constituents where it believes it can have a material impact on the Commission’s deliberations. COPE’s relative silence on issues other than those specifically addressed in this submission ought not to be taken as agreement or acquiescence to BC Hydro’s position on those elements of the 2008 LTAP unless otherwise noted herein.

5. The submissions set out below are divided into four general areas. First, section II of these submissions sets out COPE’s preliminary comments regarding the extent and scope of the Commission’s jurisdiction in reviewing a long-term resource plan such as the 2008 LTAP. In this section, COPE also addresses some of the specific jurisdictional questions which have

⁵ B.C. Reg. 245/2006. See also, Exhibit B-1-1, Appendix B2 to the 2008 LTAP.

⁶ *Utilities Commission Amendment Act*, S.B.C. 2008, c. 13, which received Royal Assent effective May 1, 2008.

⁷ R.S.B.C. 1996, c. 493 [Tab 7, **Brief of Authorities of COPE 378 (“COPE BOA”)**].

been raised by BC Hydro in its argument as well as one of the issues raised by the Commission in its letter to the parties of April 2, 2009.

6. Section III of these submissions contains COPE's position on BC Hydro's proposal to downgrade reliance on Burrard from approximately 6,100 GWh/ year to 3,000 GWh/year for planning purposes. COPE submits that such action is unjustified and, more to the point is not in the public interest. COPE submits that the Commission should reject BC Hydro's request for endorsement of BC Hydro's plan to rely on Burrard in this manner. COPE also addresses Issue No. 6 from the Commission's letter of April 2, 2009 in this section.

7. Section IV of these submissions contains COPE's position regarding the Clean Power Call. COPE acknowledges that the acceptance or rejection of any particular contract or contracts awarded under the Clean Power Call as being cost effective or in the public interest is not a matter for determination at this hearing. Those are issues for any hearing convened under s. 71 of the UCA to address those contracts.

8. COPE's position regarding the Clean Power Call is that the preponderance of evidence before the Commission demonstrates that the proposed call volumes for which BC Hydro seeks the endorsement of the Commission are unnecessary at this time. BC Hydro does not need to proceed with the Clean Power Call at this time in order to meet its projected load forecast. As such, COPE submits that BC Hydro's request for approval of \$2,000,000 in F2009 and F2010 to complete the definition phase and implement the Clean Power Call ought to be rejected and the proposed call volumes should not be endorsed.

9. Section V, the final substantive section of these submissions, sets out COPE's position on one additional issues raised in the Commission's letter of April 2, 2009 which has potential ramifications for the matters raised by COPE in this proceeding.

II. JURISDICTION OF THE COMMISSION:

10. As noted by BC Hydro in section 2.1.1.1 of its argument,⁸ the Commission is a creature of statute and derives its jurisdiction from its enabling statute, namely the UCA. Indeed,

⁸ BC Hydro argument, pg 24.

it is well established that the Commission's powers, like those of most tribunals, are exhaustively set out in the UCA and other related statutory and regulatory instruments.⁹

11. COPE agrees with BC Hydro that the starting point for determining the scope of the Commission's jurisdiction in reviewing the 2008 LTAP is section 44.1(6) of the UCA, which reads:¹⁰

- (6) After reviewing a long-term resource plan filed under subsection (2), the commission must
 - (a) accept the plan; if the commission determines that carrying out the plan would be **in the public interest** or
 - (b) reject the plan.

[emphasis added]

12. Section 44.1 goes on, in subsection (8), to set out certain specific criteria that must be considered by the Commission in determining whether a long-term resource plan is in the "public interest", namely:

- (a) the government's energy objectives,
- (b) whether the plan is consistent with the requirements under section 64.01 and 64.02 of the UCA, if applicable,
- (c) whether the plan shows that BC Hydro intends to pursue adequate, cost effective DSM, and
- (d) the interests of persons in British Columbia who receive or may receive service from the public utility.

13. COPE agrees with BC Hydro's submission that the second of these criteria (consistency with ss. 64.01 and 64.02 of the UCA) is not applicable on this application as no requirements have been established under the referenced provisions of the UCA.

⁹ See, for example, *British Columbia Hydro and Power Authority v. British Columbia Utilities Commission*, [1996] B.C.J. No. 379 (C.A.) [Tab 15 – BC Hydro's Book of Authorities]

¹⁰ UCA, *supra* [Tab 7, COPE BOA].

14. The “public interest” standard invoked by s. 44.1(6) is one that the Commission is frequently asked to apply in carrying out its duties and obligations under the UCA.¹¹ As such, the scope and content of the “public interest” standard within the context of the UCA is a topic that has received significant attention in both administrative and judicial forums. The Commission and the Courts have repeatedly confirmed that the test to be applied in determining whether a matter is “in the public interest” is a broad and flexible one.

15. For example, the B.C. Court of Appeal recently confirmed that the broad approach taken by the Commission to matters of “public interest” in connection with an application for a certificate of public convenience and necessity was the correct one. In an application for leave to appeal from a Commission decision relating to the Vancouver Island Transmission Reinforcement Project, the Court of Appeal made the following salient comments:¹²

29 The commission’s discussion and conclusion of the content of the public interest and the test of public convenience and necessity are relevant to the claims...that the commission erred in holding that public convenience and necessity is to be determined by the most cost-effective option rather than what is in the public interest. **The commission was clearly alive to its obligation to consider all relevant factors, and to determine the appropriate balance in the context of identifying a viable alternative to meet the needs of Vancouver Island residents.** An analysis of the decision as a whole demonstrates that it did so. **Had the commission limited its consideration of the factors put before it by the participants in the proceedings to matters of cost only, that would have been an error of law...**

32 **In chapter 3, the commission also discussed the necessity to consider socio-economic and other non-financial considerations, including safety, reliability, health, aesthetic, recreation, habitat, first nations and construction impacts...**

33 This discussion demonstrates the Commission’s consideration of factors other than cost-effectiveness in determining public convenience and necessity,...

34. The fifth chapter of the decision addressed **socio-economic impacts, including safety and health issues, the impact of transmission lines on property values, and environmental and archaeological impacts.**

¹¹ See, for example, sections 45 [Certificate of public convenience and necessity] and 71[Energy Supply Contracts] of the UCA [Tab 7, COPE BOA].

¹² *Tsawwassen Residents Against Higher Voltage Overhead Lines Society v. British Columbia (Utilities Commission)*, 2006 BCCA 537 [Tab 6, COPE BOA] at para. 29 and 32-34.

16. COPE submits that the Commission must take a similarly broad approach under s. 44.1(6) in determining whether the 2008 LTAP is in the public interest. The Commission's deliberations are not to be limited to considerations of specific statements or positions taken in the 2007 Energy Plan or any other specific interests. Rather, a broader view must be taken where all of the different elements comprising the broader "public interest" must be considered by the Commission in assessing whether the 2008 LTAP.

17. COPE further submits that this broad approach is consistent with the specific criteria that section 44.1(8) of the UCA mandates must be considered by the Commission in determining whether to accept a long-term resource plan as being "in the public interest".

18. In particular, the broad approach taken by the Commission to the task of considering the "public interest" in the *BCTC* decision discussed by the Court of Appeal above is clearly invoked by the broad language of section 44.1(8). Specifically, the requirement that the Commission have regard to the interests of those persons in British Columbia who receive or may receive service from BC Hydro, clearly refers to the broad interests of BC Hydro's existing and future customers and does not exclude any particular class or category of interests from consideration. In this regard, COPE notes and supports BC Hydro's submission that, of the various factors identified in s. 44.1(8), it is the interests of the ratepayers that are paramount in considering whether the 2008 LTAP is in the public interest.¹³

19. Finally, COPE accepts the submission of BC Hydro that the Commission's role in this proceeding is not to assume the role of management of BC Hydro. That is the clear responsibility of BC Hydro's Board of Directors as stipulated in s.5 of the *Hydro and Power Authority Act*. As such, COPE accepts that the Commission cannot require BC Hydro to amend the 2008 LTAP.

20. However, COPE submits that the Commission is free and, in COPE's submission, obliged to provide any comments and/or recommendations to BC Hydro that it feels are appropriate in respect of any matters covered by the 2008 LTAP in the course of rendering its decision in this matter. Those comments, while perhaps not binding (see, e.g. s. 75 of the UCA)

¹³ BC Hydro Argument, p. 19, lines 8 – 12.

would assist and guide BC Hydro and the intervenors in future proceedings and may assist BC Hydro in its deliberations on whether to re-submit any rejected portions of the 2008 LTAP (see s. 44.1(7)(a) of the UCA) or to press forward notwithstanding the Commission's rejection of those elements.¹⁴

(a) SECTION 28(3) OF THE UCA

21. In section 2.1.3.1 of its Argument, BC Hydro takes issue with COPE's evidence regarding new electric intensive loads. Specifically, as it relates to the jurisdiction of the Commission, BC Hydro seems to take issue with the response given by COPE to the question posed in Commission Information Request 1.10.3.¹⁵ That request reads as follows:¹⁶

1.10.3 Please provide reference to policy, legislation and regulations in B.C. that might require, encourage or enable the Commission to consider the impacts of new industrial customers on existing customers in its decision. Please explain how and why a public interest test may be limited to existing customers.

22. The response given by Dr. Shaffer was as follows:¹⁷

Section 28(3) of the BCUC Act would suggest that the Commission could consider the impacts of a new electricity service on the public interest because of the rate impacts it would have. That section would not apply to existing customers.

23. First, COPE does not take the position that the public interest test under section 44.1(6) is limited to consideration of BC Hydro's existing customers. As noted above, s. 44.1(8)(d) of the UCA clearly requires the Commission to consider "the interests of persons in British Columbia who receive or may receive service" from BC Hydro. This provides a clear indication that the public interest considerations invoked under s. 44.1 include not only BC Hydro's existing customers but also their future customers.

24. COPE does submit; however, that any consideration of the interests of BC Hydro's future customers must be balanced against the interests of existing customers, and all

¹⁴ See also, BC Hydro Argument, pg. 19, lines 17 – 22.

¹⁵ BC Hydro Argument, pg. 38, lines 2 - 6.

¹⁶ Exhibit A – 8.

¹⁷ Exhibit C16-9 at pg. 13 – 14.

other competing considerations invoked under section 44.1(8) and, more broadly, the “public interest test” as a whole.

25. Turning now to s. 28(3), the reference to this section by Dr. Shaffer, was in specific response to the Commission’s request for any policy or statutory instruments that “might require, encourage or enable” the Commission to consider the impacts of new industrial customers on existing customers. Although Dr. Shaffer is not a lawyer, COPE respectfully submits that his suggestion that s. 28(3) provides a mechanism under which the Commission could:

- (a) consider the impacts of new electricity loads on existing customers; and
- (b) relieve BC Hydro from its obligation to serve such new loads where doing so was in the public interest,

is correct.

26. Section 28(3) of the UCA reads as follows:¹⁸

- (3) After a hearing and for proper cause, the commission may relieve a public utility from the obligation to supply service under this Act on terms the commission considers proper and in the public interest.

27. On its face, this section clearly provides the Commission with the requisite jurisdiction to relieve BC Hydro of its obligation to supply service to a new industrial customer where it considers such relief to be “proper and in the public interest”.

28. BC Hydro takes the position that the Commission’s jurisdiction to relieve BC Hydro from its obligation is largely, if not completely, removed by the provisions of the Heritage Contract, Tariff Supplement 6 and the recent rate design decision of the Commission.¹⁹ Respectfully, this assertion is misplaced and, incorrect.

¹⁸ UCA, *supra* [Tab 7, COPE BOA].

¹⁹ BC Hydro Argument, pg. 36, line 22 – pg. 37, line 2.

29. First, it is important to note that Heritage Special Direction No. HC2 is subordinate legislation. It is well established that subordinate legislation is inoperative to the extent that it conflicts with its enabling statute.²⁰

30. Expressed another way, the Governor-in-Council does not have the authority to enact any regulation that would oust or vary the jurisdiction of a tribunal, unless it is expressly authorized to do so by the enabling statute.²¹

31. Heritage Special Direction No. HC2 was issued pursuant to the authority given to the Lieutenant Governor in Council by section 3 of the UCA. That section provides, in material part, as follows:²²

3(1) Subject to subsection (3), the Lieutenant Government in Council, by regulation, may issue a direction to the commission with respect to the exercise of the powers and the performance of the duties of the commission, including, without limitation, a direction requiring the commission to exercise a power or perform a duty, or to refrain from doing either, as specified in the regulation.

(2) The commission must comply with the direction issued under subsection (1), despite

(a) any other provision of

(i) this act, except subsection (3) of this section, or

(ii) the regulations, or

(b) any previous decision of the commission. ...

[emphasis added]

²⁰ See, for example, *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 [Tab 1, COPE BOA] at para. 42 (“...subordinate legislation cannot conflict with its parent legislation...”; and *Smith v. Chamberlain* (1993), 81 B.C.L.R. (2d) 391 [Tab 5, COPE BOA] at para. 24 (S.C.) (“the jurisprudence dealing with subordinate legislation clearly establishes that regulations made pursuant to, but in conflict with, an enabling statute are *ultra vires*...”).

²¹ See, for example, *R. v. Wold* (1956), 19 W.W.R. 75 (Man. C.A.) [Tab 4, COPE BOA] at pg 79; para. 14 QL (“...in regard to the law there is no dispute that regulations must come within the statutory power conferred upon the maker of regulations to enact them; and that in the absence of express statutory powers to do so, regulations cannot enlarge or abridge any statutory provisions...”); and *Reference Re Regulations in Relation to Chemicals*, [1943] S.C.R. 1 (QL) [Tab 3, COPE BOA] at pp. • (“...s. 7 of the *War Measures Act* must prevail over para. 4 of the Order in Council, since it is not open to the governor in council to derogate from the provision of the *War Measures Act*, except insofar as that Act may have been amended or modified by a subsequent Act of Parliament. ...”).

²² UCA, *supra* [Tab 7, COPE BOA].

32. The emphasized portions of this section appear to give the Governor in Council the potential authority to direct that the Commission refrain from exercising its discretion under section 28(3). However, when the language of Heritage Special Direction No. HC2 is examined it clearly does not do so.

33. The salient portions of Heritage Special Direction No. HC2 are set out below:²³

3 (1) In designing rates for the authority's transmission rate customers, the commission must ensure that those rates are consistent with recommendations #8 to #15 inclusive in the commission's report and recommendations to the Lieutenant Governor in Council dated October 17, 2003.

(2) Without limiting subsection (1), **the commission must ensure** the following:

(a) **the rates for the authority's transmission rate customers are subject to**

(i) **the terms and conditions found in Supplements 5 and 6 to the authority's tariff**, and

(ii) **any other terms and conditions the commission considers appropriate** for those rates; ...

5 **In setting the authority's rates**, the commission

(a) must treat the heritage contract as if it were a legally binding agreement between 2 arms-length parties,

(b) must determine the energy required by the authority to meet its domestic service obligations and must determine the cost to the authority of the portion of that required energy that is in excess of the energy supplied under the heritage contract,

(c) may employ any mechanism, formula or method referred to in section 60 (1) (b.1) of the *Utilities Commission Act*, and

(d) unless a different mechanism, formula or method is employed under paragraph (c), must ensure that electricity used by the authority to meet its domestic service obligations is provided to customers on a cost-of-service basis.

[emphasis added]

²³ Appendix B4, Exhibit B-1-1.

34. What is clear from the foregoing excerpts from Heritage Special Direction No. HC2 is that it simply contains a number of directives regarding rate setting for BC Hydro. COPE submits that, in order to derogate or oust the clear discretionary authority granted to the Commission under s. 28(3) of the UCA (i.e. to determine whether to relieve BC Hydro of its obligation to supply service by section 28(3)), the language of Heritage Special Direction HC2 would need to be express. Significantly, there is nothing in Heritage Special Direction No. HC2 which addresses in any manner BC Hydro's obligation to serve new customers which is the subject matter of section 28(3) of the UCA.

35. Tariff Supplement No. 6 suffers from similar deficiencies. First, Tariff Supplement 6 does not have the status of subordinate legislation. Tariff Supplement 6 is simply that part of the Electric Tariff which sets out the general terms and conditions on which BC Hydro's system will be extended to new transmission voltage customers.

36. The Electric Tariff is simply a document prepared by BC Hydro and approved by the Commission that sets out the terms and conditions of BC Hydro's distribution voltage service and the approved rates for service at distribution voltage and transmission voltage. It has no statutory or regulatory status in and of itself. The most that can be said about Tariff Supplement 6 is that it is referenced in s. 3(2)(a)(i) of Heritage Contract Special Direction No. HC2. This is not sufficient to elevate the Tariff Supplement to regulatory or statutory status. As such, Tariff Supplement 6 cannot legally vary or derogate from the Commission's authority under s. 28(3) of the UCA even if it purported to do so expressly.

37. In any event, the Tariff Supplement, like Heritage Special Direction 6, does not contain any express provision that purports to oust or limit the jurisdiction of the Commission to relieve BC Hydro from its obligation to serve.

38. Viewed in this context, COPE submits that the regime established by the Heritage Contract is more appropriately seen as a general regime for setting the rates for BC Hydro's customers. It does not oust the Commission's residual discretion (as embodied in s. 28(3) of the UCA) to relieve BC Hydro of its obligation to supply service in any specific situation if doing so is "proper and in the public interest".

39. In this regard, it is noted that subsection 3(2)(a)(ii) of Heritage Special Direction No. HC2 expressly provides that the Commission must ensure that the rates for BC Hydro's transmission rate customers are subject to "any other terms and conditions the Commission considers appropriate". This implicitly incorporates the notion that the Commission has the requisite authority to relieve BC Hydro of its obligation to provide service in accordance with the prescribed rates if the public interest requires.

40. Finally, with respect to distribution voltage customers, BC Hydro points to the Commission decision on the 2007 Rate Design Application²⁴ to assert that the Commission has already determined and resolved the issue raised by Dr. Shaffer in his evidence. BC Hydro further notes that COPE has not sought any reconsideration of the 2007 RDA Decision nor put forward any evidence on why it ought to be reconsidered.

41. Respectfully, the 2007 RDA Decision did not address the question of whether BC Hydro could or ought to seek relief under s. 28(3) of the UCA from its obligation to serve new electricity intensive industrial loads. Rather, it – like Heritage Special Direction No. HC2 and Tariff Supplement 6 – related to the rate setting procedures employed by BC Hydro rather than the obligation to serve.

42. In any event, the question of the proper scope of the discretion vested in the Commission by section 28(3) of the UCA does not appear to have been raised at the hearing. The Commission appears to have been *per incuriam* on the issue of whether BC Hydro could obtain relief from its obligation to serve new industrial loads under this section. Even if the issue had been raised, as the Commission and BC Hydro are well aware, this Commission is not bound to follow its earlier decisions.²⁵

43. COPE submits that reconsideration of the 2007 RDA Decision is unnecessary. The 2007 RDA Decision did not address or abrogate in any way the Commission's clear jurisdiction under section 28(3).

²⁴ *In the Matter of British Columbia Hydro and Power Authority: 2007 Rate Design Application – Phase One*, Decision, 26 October 2007 ["**RDA Decision**" - **Tab 20 of BC Hydro's Book of Authorities**].

²⁵ See s. 75 of the UCA [**Tab 7, COPE BOA**].

44. As such, the point made by Dr. Shaffer's in his response to BCUC I.R. 1.10.3 to COPE is valid and correct.

(b) ISSUE 1: LETTER OF APRIL 2, 2009 - SCOPE OF THE COMMISSION'S JURISDICTION UNDER S. 44.1(7) OF THE UCA

45. On April 2, 2009, the Commission Panel circulated a list of seven (7) issues on which it invited comment from the Intervenors. The first of these issues relates to the scope of the Commission's jurisdiction under s. 44.1(7) of the UCA. Specifically, the Commission asked the parties to comment on the following:

Section 44.1(7) of the [UCA] states that the Commission's (sic) may accept or reject a "part" of a public utility's plan. In light of the fact that "part" is not a defined term under the Act, the Commission Panel seeks clarification of the views of the Parties as to what might constitute a "part" of the 2008 LTAP. In their submissions the Parties should address the ability of the Commission to reject a part of a public utility's plan while still accepting it as a plan.

46. As noted, the Commission has asked for the parties' views on the ability of the Commission to reject part of BC Hydro's 2008 LTAP while still accepting it as a "plan". This question arises out of the language of section 44.1(7) of the UCA, which reads in material part as follows:²⁶

44.1 (7) The commission may accept or reject, under subsection (6), a part of a public utility's plan and, if the commission rejects a part of a plan,

- (a) the public utility may resubmit the part within a time frame specified by the commission, and
- (b) the commission may accept or reject, under subsection (6), the part resubmitted under paragraph (a) of this subsection...

47. COPE agrees with BC Hydro that the plain meaning of subsections 44.1(6) and (7) of the UCA provides the Commission with the jurisdiction to reject any part of a long-term resource plan while accepting the remainder of the plan as being in the public interest.

²⁶ UCA, *supra* [Tab 7, COPE BOA].

48. The Commission also seeks clarification of what a “part” of a long-term resource plan may be for the purposes of subsection 44.1(7) of the UCA. As noted by BC Hydro,²⁷ “part” is defined in the *Concise Oxford Dictionary* as meaning “some but not all of a thing or a number of things”.

49. Similarly, *Blacks Law Dictionary* defines “part” in the following manner:²⁸

An integral portion, something essentially belonging to a larger whole; that which together with another or others makes up a whole.

50. COPE submits that the clear language of the statute and the ordinary and legal definitions of “part” make it clear that the Commission may reject any constituent element of the 2008 LTAP while accepting the balance of the plan as being in the public interest. In other words, the Commission may reject any specific element of the plan so long as it may be segregated and identified as a separate element of the plan as a whole.

51. For example, the 2008 LTAP contains BC Hydro’s Base Resource Plan which sets out BC Hydro’s existing and committed resources, proposed new resources and Demand Side Management initiatives for both the operating and planning time frames.²⁹ In COPE’s submission, the Commission may reject any particular part or element of the Base Resource Plan as not being in the public interest (e.g. reliance on the Clean Call to meet its future demand) under the scope of its jurisdiction in section 44.1(7) while accepting the balance of the 2008 LTAP as being in the public interest. It would then be up to BC Hydro whether to re-submit the rejected portion of the plan for consideration by the Commission or to move forward notwithstanding the Commission’s decision as set out at page 22, lines 17 – 30 of BC Hydro’s Argument.

52. COPE submits that the Commission may similarly reject any particular expenditure for which BC Hydro seeks approval in the 2008 LTAP while accepting the balance of the expenditures and/or initiatives proposed in the plan.

²⁷ BC Hydro argument, pg 21.

²⁸ *Blacks Law Dictionary*, abridged 6th edition (St. Paul, Minn.; West Publishing Co., 1991) [Tab 8, COPE BOA] at p. 771.

²⁹ See for example table 2-10 of exhibit B-10, pg 29.

(c) **SPECIAL DIRECTION NO. 10**

53. SD10 is another regulatory instrument that may have potential implications for the Commission's deliberations in this matter. Like Heritage Special Direction No. HC2, SD10 was issued pursuant to regulations made under s. 3 of the UCA. While it addresses a number of matters, including biomass energy supply contracts and rates, the material part of SD10 for the purposes of the 2008 LTAP is the self-sufficiency requirement set out in s. 3. This section reads, in material part, as follows:³⁰

3. Subject to section 5 (2) (a), in regulating, ..., [BC Hydro],

...

the commission must use the criterion that [BC Hydro] is to achieve **energy and capacity self-sufficiency by becoming capable of**

(d) meeting, by 2016 and each year thereafter, the electricity supply obligations, and

(e) exceeding, as soon as practicable but no later than 2026, the electricity supply obligations by at least 3000 GWh per year and by the capacity required to integrate that energy in the most cost-effective manner

solely from electricity generating facilities within the Province, assuming no more in each year than the firm energy capability from the assets that are hydroelectric facilities.

[emphasis added]

54. From this excerpt, it is clear that there are two distinct self-sufficiency requirements set out in SD10. First, BC Hydro should be capable of meeting its electricity supply obligations with generation facilities within the Province no later than 2016. The second has been referred to over the course of the hearing as the "insurance" requirement and requires that BC Hydro's generation capability exceed its electricity supply obligations by at least 3,000 GWh/year by 2026. The 2008 LTAP covers the period ending 2028, so both requirements are *prima facie* relevant to the Commission's deliberations regarding the 2008 LTAP.

³⁰ Appendix B2, Exhibit B-1-1.

55. COPE agrees with BC Hydro's assertion that determining whether BC Hydro is capable of achieving self-sufficiency does not require demonstrating that the actions set out in the 2008 LTAP will guarantee self-sufficiency with 100% certainty.³¹

56. COPE further agrees with BC Hydro that, while the "insurance" requirement is relevant in so far as the 2008 LTAP covers a period extending beyond 2026, it is too early to either:

- (a) determine the best manner for implementing the insurance requirement; and/or
- (b) implement the insurance requirement at this time.³²

57. COPE also agrees that the "energy supply obligations" referred to in SD10 must, of necessity, include reserve margins to ensure BC Hydro can reliably meet its customer demands.³³

58. Finally, COPE agrees with BC Hydro that the non-firm/market allowance, the Canadian Entitlement and that portion of the reserve margins that has historically come from external markets are not sources of electricity that can be relied upon by BC Hydro for planning purposes after 2015 as they are not from generating facilities "within the Province".³⁴ However, COPE submits that non-firm/market resources and the Canadian Entitlement remain valuable resources for meeting BC Hydro's operational needs where it is economic or necessary to use them. As discussed further below, COPE submits that making use of these resources to meet its operational needs where necessary or where economic dispatch would dictate does not contravene the requirements of SD10.

59. Where COPE does disagree with BC Hydro is regarding the potential implications of SD10 on BC Hydro's continuing reliance on Burrard for planning purposes. This is discussed further below.

³¹ BC Hydro Argument, pg. 28, lines 12 – 15.

³² BC Hydro Argument, s. 2.1.2.5

³³ BC Hydro Argument, s. 2.1.2.2

³⁴ BC Hydro Argument, ss. 2.1.2.1, 2.1.2.2 and 2.1.2.3.

III. BURRARD THERMAL GENERATING STATION:

60. The 2008 LTAP seeks two specific forms of relief with respect to Burrard:

- (a) an Order determining that an expenditure of \$1.6 million in F2010 for sustaining capital to ensure the reliability of Burrard is in the public interest; and
- (b) the Commission's endorsement of BC Hydro's plan to rely on Burrard for 900 megawatts of dependable capacity and 3,000 GWh/year of firm energy for planning purposes.

61. COPE takes no issue with BC Hydro's proposed expenditure in F2010 to ensure the reliability of Burrard. Indeed, as discussed further below, COPE fully supports the maintenance of Burrard and its continuing use as a planning and capacity resource by BC Hydro. COPE submits that the requested expenditure for Burrard ought to be approved by the Commission as being in the public interest.

62. With respect to the second form of relief sought, COPE submits that BC Hydro's proposed plan to downgrade its planning reliance on Burrard to 3,000 GWh/year should not be endorsed by the Commission. As noted earlier, COPE accepts that the Commission's jurisdiction on a review of the 2008 LTAP is as set out in section 44.1 of the UCA and, as such, the Commission can only accept or reject the 2008 LTAP, either in whole or in part. However, COPE repeats its earlier comments that it is well within the Commission's mandate and jurisdiction to give guidance and recommendations to BC Hydro on what long-term measures it feels would be appropriate and in the public interest.

63. As such, COPE submits that the Commission ought to reject BC Hydro's plan to rely on Burrard for 3,000 GWh/year for planning purposes and recommend that reliance on Burrard for up to 6,000 GWh/year for planning purposes (certainly up to 2016 and at least for as long as it is retained for capacity and system stability purposes) would be appropriate and in the public interest at this time. The reasons for this are set out in the following sections.

(a) **BURRARD – THE FACILITY**

64. As acknowledged by BC Hydro in section 6.2 of its Argument, Burrard is a natural gas-fired generating station located in the City of Port Moody consisting of six turbine

generator units brought into service between 1964 and 1975.³⁵ Notwithstanding its relative age, Burrard remains a unique generation asset with tremendous value to BC Hydro.³⁶

65. The significance of Burrard for BC Hydro's operations is twofold. First, it performs a significant capacity reliability and voltage support function both with respect to BC Hydro's operations as a whole and, in particular, for the Lower Mainland and Vancouver Island. This function is critical to BC Hydro and cannot be jeopardized, at least until 2019 when 5L83 is expected to be in service.³⁷

66. As stated by BC Hydro in its argument:³⁸

In response to the 2006 IEP/LTAP Decision, and following a significant internal review, including the results of the consultants' reports, BC Hydro determined that **it must continue to rely on Burrard for 900 MW and its associated voltage support.** Relying on Burrard for capacity and voltage support will, by operational necessity, result in some energy being produced each year. In the 2008 LTAP, this has been estimated to be approximately 600 GWh/year. **Such operation is the minimum acceptable amount of reliance that BC Hydro can place on the plant if it is to reliably meet its obligations to customers at least until 5L83 is complete.**

[emphasis added]

67. COPE agrees that Burrard is a critical capacity resource for BC Hydro and submits that the operational expenditure of \$1.6 million in F2010 to ensure the reliability of Burrard ought to be approved in order to ensure that Burrard will continue to be available to BC Hydro in this regard.

68. The second significant aspect of Burrard to BC Hydro's operations is that it has a significant firm energy capability that BC Hydro can draw upon, if needed, to meet its operational needs and can rely upon for planning purposes.³⁹ It is undisputed that the full firm

³⁵ BC Hydro argument, pg 133, line 21- pg 134, line 12.

³⁶ Transcript, vol. 5, pg. 664, line 16 – pg. 665, line 7.

³⁷ BC Hydro Argument, pg. 135, lines 2 – 6. See also, for example, Transcript, Vol. 5, pg. 696, line 22 to pg. 697, line 9; and Transcript, Vol. 7, pg 1206, lines 7 - 25.

³⁸ BC Hydro Argument, pg. 136, lines 11 – 18.

³⁹ See, for example, Transcript, Vol. 5, pg. 665, lines 8 – 14.

energy capability of Burrard, if all six units are operating, is slightly in excess of 6,000 GWh/year.

69. Historically, BC Hydro has relied on Burrard for planning purposes at a firm energy capability of 6,100 GWh per year.⁴⁰ However, it has never operated at anywhere near this level, particularly not in recent years.⁴¹ Indeed, in the 39 years since 1970, Burrard has only operated above 3,000 GWh/year seven times. The majority of the time (24 of 39 years), Burrard has operated at less than 1,000 GWh/year. The historical average operation for Burrard over the past 40 years has been approximately 1,100 GWh per year.⁴²

70. The principal reason for the difference between Burrard's actual operations and its planning reliance levels is that, notwithstanding Burrard's generation capability, it was and remains generally more economic to displace Burrard with other resources available to BC Hydro. As such, Burrard has been and is expected to continue to operate at or around its system reliability and support levels, absent other considerations affecting the need for Burrard power (e.g. low water conditions, adverse market prices). The balance of its annual capability for planning purposes would be displaced by other more economic sources. This was referred to throughout the hearing as the "economic dispatch" of Burrard.⁴³

71. COPE accepts that the "system reliability and support level" of operations for Burrard is the approximately 600GWh/year identified by BC Hydro in the excerpt from its argument reproduced at paragraph 66 above.

72. The central issue pertaining to Burrard in the 2008 LTAP is BC Hydro's proposal to reduce its planning reliance on Burrard from Burrard's full annual capability (e.g. 6,100 GWh/year) to 3,000 GWh/year. As noted earlier, COPE takes issue with this proposal and submits that the Commission should not endorse this part of the 2008 LTAP.

⁴⁰ See: Transcript, Vol. 5, pg 669, line 9 – 17; Transcript, vol. 7, pg 1209, line 18 to pg 1210, line 3; and 2006 IEP/LTAP Decision, dated May 11, 2007, [Tab 2, COPE BOA] at pg 69.

⁴¹ Exhibit B-1, pg 5-25, Figure 5-7.

⁴² Transcript, Vol. 5, pg 669, line 22 – pg 671, line 122; and Transcript, vol. 7, pg. 1210, line 10 - pg. 1211, line 11; Exhibit B-1, pg. 5-25.

⁴³ Transcript, Vol. 5, pg. 671, line 13 – pg. 672, line 20.

73. BC Hydro's principal argument in favour of reducing reliance on Burrard from 6,100 GWh/year to 3,000 GWh/year is based on its position that reliance on Burrard at historic levels may jeopardize the "social license" held by BC Hydro in connection with its operation of Burrard. BC Hydro further asserts that SD10, the 2007 Energy Plan and other governmental initiatives support a reduced reliance on Burrard.

74. COPE addresses each of these matters in the following sections.

(b) TECHNICAL CAPABILITY OF BURRARD

75. As noted by BC Hydro, AMEC concluded that reliance on Burrard for operations greater than system reliability and support levels (i.e. 600GWh/year) even up to 6,000 GWh/year was technically feasible. COPE submits that this is determinative of this issue.

76. Further, it must be remembered that AMEC's conclusions were premised on the assumption that Burrard would actually be operated at these levels.⁴⁴ However, BC Hydro admitted during cross-examination that the intention is to continue to operate Burrard in accordance with economic dispatch concerns.⁴⁵ As such, the concerns expressed by AMEC regarding the technical capability of Burrard to operate at 6,000 GWh/year must be significantly discounted.

77. COPE submits that the evidence before the Commission is clear. Burrard is technically capable of operating at 6,000 GWh/year, if necessary, but that it would rarely, if ever, be operated at anywhere near that level. The consequence of this is that the risk of mechanical failure or breakdown is reduced considerably. It is submitted that there is no technical issue with the operation of Burrard that would support BC Hydro's assertion that its planning reliance on Burrard should be reduced to 3,000GWh/year.

(c) SOCIAL LICENCE

78. The evidence at the hearing clearly demonstrates that BC Hydro currently has "social license" to operate Burrard in accordance with its current operations. The manner in

⁴⁴ Transcript, Vol. 8, pg. 1277, line 3 – pg 1278, line 2.

⁴⁵ See, for example, BCUC I.R. 1.102.1, Exhibit B-3; Transcript, Vol. 7, pg 1173, line 13 – pg 1175, line 25; and Vol. 7, pg 1183, lines 6 – 25.

which Burrard has been operated in recent years is as a peaking facility, in other words one that runs at approximately 600 GWh per year as a backup capacity emergency supply, but has a supply capability for planning purposes of 6,000 GWh per year. BC Hydro intends to continue to operate Burrard on this basis going forward.

79. The fundamental flaw in BC Hydro's approach to the social license issue is that it presumes that continuing to operate the facility in this will somehow put at risk its social license. The only concern that it points to in order to justify this position is the potential misconception by the public and/or regulatory authorities that reliance on Burrard for anything other than 6,000 GWh per year constitutes a change in how Burrard will actually be operated. By BC Hydro's own admission it has taken no steps to proactively deal with any such misconception on the part of the public, the regulators or other stakeholders. As discussed below, in light of the significant potential benefit of maintaining Burrard at its current planning reliance levels (i.e. 6,000 GWh/year), such an approach by BC Hydro is unwarranted.

80. First, it must be noted, that "social license" is not a strict legal requirement. Indeed, BC Hydro acknowledges in its argument that "social license" extends beyond technical permitting issues and compliance and includes the "positions of the various levels of government and the public".⁴⁶ It was also described from time to time in the evidence as "public support".⁴⁷

81. The only requirements that are binding on BC Hydro regarding its operation of Burrard are the legal constraints governing its operation. These would include the various statutory, regulatory and permitting regimes dealing with matters such as air and water emissions, municipal zoning and other matters. BC Hydro is not legally constrained by matters such as public opinion.

82. COPE recognizes that adverse public opinion – if not addressed – may over time result in changes to local and provincial governmental policies. However, it is submitted that any such changes would not happen without notice to BC Hydro. If changes to BC Hydro's permits or other legal operating constraints were proposed, BC Hydro would have an opportunity to provide its perspective and address any public misconception or misinformation. If that were

⁴⁶ BC Hydro argument, pg 140, lines 21-23.

⁴⁷ Transcript, Vol. 6, pg. 958, lines 10-26.

unsuccessful, BC Hydro would have the opportunity to change its operations to accommodate any resulting changes to its regulatory framework.

83. As noted, the fundamental flaw in BC Hydro's position regarding Burrard is that reliance on Burrard for planning purposes at 6,000 GWh will not amount to any material change in its proposed operation. BC Hydro admitted during cross-examination that it intends to continue to operate Burrard as it does today, optimizing its operation accordingly to economic dispatch considerations. In other words, in its operation of Burrard, even after 2016, BC Hydro intends to displace Burrard with non-firm energy or market purchases depending on which is available and lowest cost at the time.⁴⁸

84. While BC Hydro suggested that the more they planned to rely on Burrard the more they will use it,⁴⁹ no modelling or other evidence was provided to support that statement or to indicate whether any change in the actual use of Burrard would be material if BC Hydro relied on Burrard for greater than 3,000 GWh per year for planning purposes.

85. Moreover, reliance on Burrard for 6,000 GWh per year for planning purposes is simply a continuation of the existing practice of BC Hydro. No assertion was made in the evidence that BC Hydro lacked the social license required for its operations over the past 10 years. On the contrary, Dr. Preston admitted that BC Hydro has a social licence to operate Burrard in the manner that it does currently, i.e. with planning reliance at 6,000 GWh/year but actual operation more as a peaking facility. The only caveat that she put on that is that the public may not understand that BC Hydro has been relying on Burrard for 6,000 GWh/year for planning purposes.⁵⁰

86. This point was picked up by BC Hydro at pages 150-151 of its argument where it suggests that relying on Burrard for 6,000 GWh per year "is likely to be perceived as a change in operation from a peaking to more substantial operating role." While there may well be those who misconstrue BC Hydro's planning documents as representing such a change, as noted

⁴⁸ See, for example, Transcript, Vol. 7, pg 1173, line 13 – pg 1175, line 25; and Vol. 7, pg 1183, lines 6 – 25.

⁴⁹ See Transcript, Vol. 7, pg 1125, line 10 – pg 1126, line 12; pg 1212, line 15 – pg 1214, line 20.

⁵⁰ Transcript, Vol. 7, pg 1221, lines 16 – 24.

earlier, the evidence is clear that reliance on Burrard for 6,000 GWh would in fact represent no material change from the current or past planning assumptions for Burrard.

87. If misconception by the public or misinformation is a concern of BC Hydro, this can clearly be proactively addressed with stakeholder meetings and/or discussions or other possible arrangements or offsets.⁵¹ More to the point, the significant potential cost savings of relying on Burrard at its historic level mandate that such proactive measures be taken before changing BC Hydro's reliance on Burrard for planning purposes.

88. In this regard, COPE says it is significant that BC Hydro has put forward no evidence of any specific proactive efforts it has made to:

- (a) educate Metro Vancouver or other stakeholders as to the distinction between its planning reliance on Burrard and how the facility will actually operate in most years; and/or
- (b) explore options (for example, offset measures) with Metro Vancouver or other stakeholders to address any potential concerns regarding the possible operation of Burrard at its planning reliance levels in limited situations (i.e. a critical water cycle).

89. Regarding the first of these, it is noted that, when asked what steps or efforts had been taken by BC Hydro to explain this issue to the Director/Metro Vancouver, Mr. Matheson gave evidence that they had each participated in radio programs and exchanged information through the media following the publication of a Globe and Mail Article which contained comments made by the Director reflecting certain misconceptions regarding BC Hydro's proposed operation of Burrard as set out in the 2008 LTAP.⁵² In those discussions, Mr. Matheson said he offered to meet with Metro Vancouver although no face-to-face meetings have occurred to address this issue.⁵³

⁵¹ It is significant that RWDI acknowledges that BC Hydro's social licence to operate Burrard may, with appropriate education of the public and offset of any GHG concerns, accommodate Scenario 3B. Scenario 3B provided for reliance on Burrard at 6,100 GWh/year for planning purposes, but the actual operation of Burrard only approaching 5,000 or 6,100 GWh/year during low water years. See Exhibit B-1-1, Appendix J3 to the 2008 LTAP, Executive Summary, pgs ii – iii (5-6 of 250).

⁵² Ex. B-3, Attachment 1 to BCUC I.R. 1.99.1.

⁵³ Transcript, Vol. 8, pg 1267, line 7 – pg 1268, line 23.

90. The point here is that there is no evidence before the Commission that BC Hydro has taken any proactive (as opposed to reactive) steps to educate Metro Vancouver, the public or other stakeholders regarding its intentions with Burrard or the potential implications, if any, of its planning reliance level on the actual operation of the facility both generally and in terms of the rarely occurring critical water years.

91. The apparent lack of any proactive efforts by BC Hydro in this regard is remarkable in light of the significant potential cost to ratepayers of decreasing planning reliance on Burrard. The evidence of BC Hydro clearly shows that reliance on Burrard for 6,000 GWh per year for planning purposes could result in a saving to BC Hydro of as much as \$660 million relative to what it is proposing in the 2008 LTAP.⁵⁴

92. In the circumstances, COPE submits that the Commission ought not to endorse BC Hydro's plan to abandon its current planning reliance level for Burrard without cogent evidence that BC Hydro has first explored, if not exhausted, any reasonable options available to it to address the potential concerns of the public or other stakeholders in order to ensure that the ratepayers (and BC Hydro) receive the maximum benefit from Burrard.⁵⁵

93. In other words, COPE submits that BC Hydro has failed to demonstrate in the 2008 LTAP that it has taken any reasonable steps to mitigate or eliminate the potential risk of losing its social licence to operate Burrard that it says would exist if it maintained reliance at 6,000 GWh/year. As such, BC Hydro's argument that such risk justifies reducing its planning reliance on Burrard to 3,000 GWh/year must be rejected.

(i) **GOVERNMENT POLICY – 2007 ENERGY PLAN**

94. At section 6.2.2.2(A) of its argument, BC Hydro points to the B.C. Government's comments regarding Burrard in the 2007 Energy Plan, to support its position that reliance on Burrard ought to be downgraded. COPE responds briefly to this assertion below.

95. First, it must be remembered that it is legislation and regulatory instruments such as special directions which are binding on the Commission and BC Hydro. While policy must be

⁵⁴ BCUC Information request 1.102.1, Exhibit B- 3; Transcript, Vol. 8, pg. 1268, line 24 – pg 1270, line 25.

⁵⁵ Transcript, Vol. 15, pg 2825, line 25 – pg 2828, line 5; and pg 2832, line 25 – pg 2834, line 23.

considered, it cannot trump or circumvent legal requirements. Moreover, policy objectives such as those set out in the 2007 Energy Plan must be balanced with other competing objectives, including the clear objective that BC Hydro minimize its costs in order to maximize value to its ratepayers and its shareholders.

96. Second, COPE submits that reliance on Burrard for 6,000 GWh per year of firm energy is not inconsistent with the 2007 Energy Plan.

97. The 2007 Energy Plan simply states that the BC Government supports BC Hydro's proposal to replace Burrard with other firm supply. That is a reference to the proposal made by BC Hydro in the 2006 IEP, a proposal that the Commission rejected.⁵⁶ The Energy Plan also states that BC Hydro may choose to retain Burrard for capacity purposes after 2014.⁵⁷ As noted by Mr. Elton, the language used in this part of the 2007 Energy Plan was intended to give BC Hydro some flexibility with how it addressed Burrard.⁵⁸

98. COPE agrees that the language of the 2007 Energy Plan clearly gives BC Hydro flexibility in how it deals with Burrard. It does not dictate any particular result or timeframe, but rather leaves these choices in the hands of BC Hydro. In particular, the 2007 Energy Plan does not require BC Hydro to replace Burrard with other firm energy, nor does it require BC Hydro to reduce its reliance on Burrard for planning purposes.

99. COPE submits that this flexibility clearly permits BC Hydro to continue to rely on Burrard for 900 MW of capacity and up to 6,000 GWh/year for planning purposes for some portion of, if not all, of the planning period covered by the 2008 LTAP.

100. COPE further submits that continued reliance on Burrard for 6,000 GWh/year for planning purposes is warranted, at least up to 2019 if not beyond by a number of factors, the most significant of which being:

⁵⁶ See, for example, 2006 IEP/LTAP Decision [Tab 2, COPE BOA] at pg. 73.

⁵⁷ Action item 22, 2007 energy plan, Exhibit B-1-1, Appendix B1.

⁵⁸ Transcript, vol. 4, pg 397, line 25 to pg 400, line 12.

- (a) the critical function of Burrard in ensuring that BC Hydro can reliably service the capacity required in the Lower Mainland/Vancouver Island means that Burrard will continue to be operated as a peaking facility, at least until 2019;
- (b) on the evidence before the Commission, reliance on Burrard for 6,000 GWh/year for planning purposes will not result in any material increase to the actual operations of Burrard from that which would occur from reliance at 3,000 GWh/year for planning purposes. BC Hydro fully intends to continue to operate Burrard accordingly to economic dispatch considerations which means that it will generally continue to operate at system support and reliability levels (e.g. as a peaking facility) only; and
- (c) the significant potential cost savings available to BC Hydro (and therefore the ratepayer) if it maintained a firm energy reliance on Burrard for planning purposes at its historic levels.

101. COPE submits that BC Hydro has provided no compelling evidence that would override these factors and justify reducing its planning reliance on Burrard in the manner it has proposed.

(ii) GOVERNMENT POLICY – SD10

102. BC Hydro also suggests that SD10 mandates or supports its assertion that Burrard ought to be downgraded for planning purposes. COPE's response is twofold.

103. First, the self sufficiency requirement in SD10 does not take effect until 2016. Accordingly, to the extent that SD10 requires some downgrading of Burrard for planning purposes, which COPE submits it does not, there is no obligation for BC Hydro to reduce its reliance on Burrard prior to 2016.

104. Second, COPE submits that BC Hydro's interpretation of the self sufficiency requirement in SD10 is flawed. As noted earlier, s. 3 of SD10 provides that, when regulating BC Hydro's activities, the Commission must apply the criteria that BC Hydro is "to achieve energy and capacity self-sufficiency by becoming capable of" meeting its "energy supply obligations" by 2016 and each year thereafter solely with electricity generation facilities within the Province.

COPE submits that there is nothing in BC Hydro's continuing reliance on Burrard for 6,000 GWh per year for planning purposes that is inconsistent with this requirement.

105. It is not disputed that Burrard is an electricity generation facility located within the province of British Columbia.⁵⁹ Further, the AMEC report makes it clear that, subject to certain operating and maintenance expenditures, Burrard is technically capable of operating at 6,000 GWh/year.⁶⁰

106. Moreover, BC Hydro's own evidence is clear that it currently holds the necessary permits to allow it to operate Burrard at those levels⁶¹ and holds a social license to operate the facility in the manner in which it has in recent years.⁶²

107. Some evidence was given by BC Hydro during the course of the hearing that relying on Burrard for one level for planning purposes while operating it at another would be inconsistent with the "intent" of SD 10.⁶³ With respect, the intent of SD 10 is manifest in the clear language of the special direction. BC Hydro is required to be capable of meeting its supply obligations within province resources by no later than 2016. In light of the foregoing, there is nothing to suggest that maintaining Burrard as a critical element in BC Hydro's resource planning stack is inconsistent with that requirement.

108. Furthermore, any assertion by BC Hydro that reliance on Burrard for 6,000 GWh/year for planning purposes when it intends to operate Burrard at considerably less than that in most years is inconsistent with the requirements or intent of SD10 is misconstrued. It ignores the reality that the evidence before the Commission clearly demonstrates that BC Hydro intends to take the same approach to Burrard in relying on it for 3,000 GWh/year for planning purposes. In other words, BC Hydro intends to displace Burrard according to economic dispatch considerations and generally operate it as a peaking facility regardless of whether it relies on Burrard for 3,000, 4,000 or 6,000 GWh/year for planning purposes.

⁵⁹ See, for example, Transcript, Vol. 5, pg 664, lines 21 – 26.

⁶⁰ Exhibit B-4, BCUC I.R. 2.215.2, pg. 3.

⁶¹ See, for example, Exhibit B-1-1, Appendix J1 to the 2008 LTAP, Executive Summary, pg. S4 (9 of 167); and Exhibit B-1-1, Appendix J3 to the 2008 LTAP, Executive Summary, pgs iv (7 of 250).

⁶² Transcript, Vol. 7, pg 1221, lines 16 – 24.

⁶³ See, for example, Exhibit B-3, IPPBC I.R. 1.7.1

(iii) GOVERNMENT POLICY – GREENHOUSE GASES

109. BC Hydro also points to the government's efforts to reduce greenhouse gas emissions ("GHG Emissions") in the province as a further ground to justify reduced reliance on Burrard. In this regard, BC Hydro points to the fact that Burrard, if operated at 4,000 or 6,000 GWh per year, would be the largest point source of GHG Emissions in British Columbia.⁶⁴ Respectfully, BC Hydro's submission confuses the issue by failing to distinguish between reliance on Burrard for planning purposes and what is likely to occur in operations.

110. It may be true that Burrard would be the largest point source of GHGs in the Province if it were operated at either 4,000 GWh or 6,000 GWh/year. However, as noted earlier, the clear evidence before the Commission was that BC Hydro intends to continue to displace Burrard with other more economic sources where economic dispatch considerations dictate. BC Hydro intends to make its operational decisions for Burrard on this basis regardless of whether it relies on Burrard for 3,000, 4,000 or 6,000 GWh/year for planning purposes.

111. Accordingly, reliance on Burrard for planning purposes at either 4,000 or 6,000 GWh per year would not result in operation at that level except possibly in very exceptional circumstances, i.e. critical water years. In most, and likely all, other years, Burrard's operation would be essentially as a peaking facility. This would result in actual generation of approximately 600 GWh per year and any GHG emissions associated with Burrard would be corresponding lower.

(d) ISSUE 6: LETTER OF APRIL 2, 2009 - CAPITAL EXPENDITURES RELATING TO BURRARD

112. As noted, the Commission Panel circulated a list on April 2, 2009 of seven (7) issues on which it invited comment from the Parties. Issue No. 6 relates to Burrard and is addressed here.

113. Issue 6 from the Commission's letter of April 2, 2009 is expressed as follows:

In order to determine if BC Hydro can rely on Burrard for planning purposes for 900 megawatts of capacity and either of 600 GWh, 3,000 GWh or 6,000 GWh of

⁶⁴ BC Hydro Argument, pg. 146.

energy would the Commission have to find that the capital expenditures in excess of \$300,000,000 for each scenario that Amex stated would be required (Exhibit B-1-1, Appendix J1, page 94) were cost effective?

114. COPE agrees with BC Hydro that its plan to rely on Burrard for 900 megawatts of capacity will require sustaining capital and additional operating and maintenance costs regardless of whether it is relied upon for 600 GWh/year, 3,000 GWh/year or 6,000 GWh/year of firm energy for planning purposes.⁶⁵ In other words, there is a minimum level of capital expenditures that will be required to ensure the reliability and technical capacity of Burrard over the planning period covered by the 2008 LTAP, regardless of what specific level of reliance is placed on the facility for planning purposes. As noted earlier, COPE agrees that reliance on Burrard for 900MW of capacity at least up to 2019 is in the public interest.

115. In COPE's submission the Commission's deliberations under section 44.1 clearly includes some consideration of the relative costs of the various resources that BC Hydro proposes will be used to meet the energy demand it faces in the time period covered by the 2008 LTAP. In this regard, the potential costs of future reliance on Burrard will be one factor that must be considered and balanced when considering whether BC Hydro's overall resource plan is in the "public interest".

116. That said, there is no specific requirement in section 44.1 that the cost effectiveness of those aspects of the plan be considered and/or approved at this time. This is to be contrasted with the references in section 44.1 to "cost effective demand-side measures". COPE submits that this distinction in language must have meaning. In other words, while BC Hydro may bear some obligation in this application to demonstrate that its DSM Plan as set out in the 2008 LTAP is cost effective (although COPE takes no position on whether BC Hydro has complied with this obligation) no such similar requirement exists with respect to the facilities BC Hydro intends to use to meet its demand.

117. Moreover, COPE's understanding of the relief sought in this proceeding is that BC Hydro is not seeking approval of any of these capital expenditures at this time.⁶⁶ In COPE's

⁶⁵ BC Hydro argument, pg 158, lines 11-16. See also, Transcript, Vol.7, pg. 1059, lines 10 – 20.

⁶⁶ Transcript, Vol. 6, pg. 948, lines 10 – 26.

submission the appropriate time for the Commission to consider the cost effectiveness of any specific expenditure regarding the on-going operation and maintenance Burrard is when BC Hydro brings forward such expenditures as part of its revenue requirements application.

IV. THE CLEAN POWER CALL

118. The 2008 LTAP, BC Hydro requests the following relief with respect to the Clean Power Call:

- (a) an Order that the expenditure of \$2.0 million in F2009 and F2010 to complete the Definition phase work, and to implement the Clean Power Call is in the public interest;
- (b) the endorsement of the Commission of the proposed Clean Power Call at a pre-attrition target of 3,000 GWh per year or, alternatively, a post-attrition target of 2,100 GWh per year; and
- (c) the endorsement of the Commission of the clean or renewable eligibility requirement that is contained within the Clean Power Call.

119. COPE submits that the Commission should not endorse the proposed Clean Power Call as it is neither necessary nor justified as being in the public interest at this time. As such, COPE submits that the proposed expenditures relating to the Clean Power Call are similarly not in the public interest. The reasons for this assertion are set out below.

120. COPE takes no position on whether the Commission ought to endorse the clean or renewable eligibility requirement sought by BC Hydro.

(a) REASONS FOR ENDORSEMENT

121. At page 9 of its argument, BC Hydro sets out the reason it is seeking endorsement of the proposed clean power call at either a 3,000 GWh/year pre-attrition, or 2,100 GWh/year post-attrition targets. It states:⁶⁷

⁶⁷ BC Hydro argument, pg 9 (references omitted).

Endorsement of the clean power call target would provide greater certainty to independent power producers (IPPs) in the section 71 filing because endorsement of the target would mean the need for either 3,000 GWh/year of pre-attrition, or 2,100 GWh/year of post-attrition, firm energy had been made out, thereby focussing the section 71 filing on whether BC Hydro awarded the appropriate, cost effective Electricity Purchase Agreements (EPAs) to fill the target. Ms. Van Ruyven gave evidence that IPPs are generally supportive of the 2008 LTAP addressing the need for the clean power call. If BC Hydro awards EPAs greater than the endorsed clean power call target, the onus would be on BC Hydro to demonstrate the need for the additional energy purchase.

122. This passage from BC Hydro's argument highlights the reasons that COPE submits the Commission should not endorse the call. From this passage, BC Hydro's position appears to be that once the Commission endorses the pre – or post – attrition target set out in this application, its obligations under the required section 71 review of any Electricity Purchase Agreements issued in connection with the call would be limited to demonstrating that the contract awards made were the most cost effective of the bids it received up to that target level. BC Hydro appears to say it would not have to demonstrate that the contract awards were in any objective sense in the ratepayer interest having pre-determined that either a 3,000 GWh/year pre-attrition or 2,100 GWh/year post-attrition target was needed.

123. In COPE's submission, BC Hydro has failed to demonstrate that any power from the Clean Power Call is needed at this time. The reasons for this flow directly from COPE foregoing submissions regarding Burrard. If Burrard is maintained for planning purposes at its historic and technically capable levels (i.e. 6,000 GWh per year), BC Hydro admits that no Clean Power Call would be needed to meet its projected load in the coming years.⁶⁸ Indeed, there will be a considerable surplus in most years.

124. As BC Hydro has not conclusively demonstrated any need for the power to be purchased from the Clean Power Call, it is submitted that the proposed pre- and post-attrition targets ought not to be endorsed. Similarly, the expenditures associated with the Clean Power Call will not be in the public interest if there is no demonstrable need for the power at this time.

⁶⁸ See, for example, Exhibit B-12, COPE I.R. 3.1.4; Transcript, Vol. 5, pg. 705, line 24 – pg. 707, line 13; Transcript, Vol. 7, pg. 1188, lines 1-8; and pg. 1203, line 2 – pg. 1204, line 7.

125. COPE further notes that BC Hydro would still be free to proceed with the Clean Power Call even if the Commission declines BC Hydro's request for endorsement of the proposed pre- and post-attrition targets. However, what rejection of the endorsement would ensure is that any subsequent section 71 review of the contract or contracts awarded under the Clean Power Call would be properly focussed on whether the proposed contract awards were beneficial for BC Hydro ratepayers (i.e. truly cost effective) and not simply notionally necessary in order to meet the target which BC Hydro asserts in the 2008 LTAP.

126. Before turning to the remaining issue identified in the Commission's letter of April 2, 2009, COPE wishes to respond to one final point made by BC Hydro in respect of the Clean Power Call. At page 166 of its argument, BC Hydro reproduces the comments of Ms. Van Ruyven regarding the timing of IPP deliveries under the Clean power Call. Respectfully, these comments miss the point.

127. COPE does not assert that BC Hydro or any other party can control precisely when new IPP power will come on stream. However, what BC Hydro can control is the date from which it agrees to pay a new supplier, IPP or otherwise, the guaranteed and higher prices for firm supply. Why this is significant is that the evidence is clear that IPP power is the most or one of the most expensive resource options available to BC Hydro to meet new demand, i.e. the marginal cost of IPP power is at the highest end of the cost curve.⁶⁹

128. In an appropriately structured Call, BC Hydro could offer a market price to any supply coming on stream prior to the date on which it projects having a need for the power. After that date, the higher firm energy price would be paid. In that manner, BC Hydro could minimize the risk that it would be exporting power in excess to its needs at a loss prior to the specified in service date for the Call.

V. COMMISSION LETTER OF APRIL 2, 2009:

129. As noted earlier, on April 2, 2009, the Commission Panel circulated a list of seven (7) issues on which it invited comment from the Intervenors. Of the seven issues identified, COPE takes the position that three are relevant or potentially relevant to the matters raised by

⁶⁹ See, for example, Transcript, Vol. 3, pg. 317, line 4 – pg. 318, line 17.

COPE, namely issues one, three and six. Issues one and six were addressed in sections II(b) and III(d), respectively, above. Issue 3 is addressed briefly below.

(a) **ISSUE 3: SECTION 44.1(8) – CONSIDERATION OF THE “GOVERNMENT’S ENERGY OBJECTIVES”**

130. Issue 3 set out in the attachment to the Commission’s letter of April 2, 2009 seeks the parties’ views on whether the approval of FNU 3 by the Commission would contravene the direction given in section 44.1(8) of the UCA that the Commission must consider “the government’s energy objectives”, among other things, in determining whether to accept a long-term resource plan filed under the UCA. While COPE does not take any particular position with respect to the relief sought by BC Hydro in connection with the Fort Nelson Upgrade, COPE does wish to make the following brief comments on the scope and nature of the exercise mandated by section 44.1(8) of the UCA.

131. Section 44.1(8) provides that the Commission must consider four specific matters in determining whether to accept a long-term resource plan under subsection 44.1(6), namely:

- (a) the government’s energy objectives,
- (b) whether the plan is consistent with the requirements under section 64.01 and 64.02 of the UCA, if applicable,
- (c) whether the plan demonstrates that BC Hydro intends to pursue adequate, cost effective demand-side measures, and
- (d) the interests of persons in British Columbia who receive or may receive service from BC Hydro

132. COPE’s position is that this section requires a balancing of the various interests set out in that section. In addition, any consideration of the government’s energy objectives cannot be made in isolation. The Commission must also be mindful of the various legal and regulatory requirements that BC Hydro is obliged to operate under, as well as those which guide or shape the Commission’s jurisdiction (e.g. the various special directions issued to the Commission under the UCA and other legislation). It is the legal and regulatory requirements that must be paramount. Those requirements cannot be abrogated or varied by policy.

133. Moreover, with specific reference to the “government’s energy objectives”, COPE submits that consideration of any one particular objective in isolation (e.g. the objective “to encourage public utilities to reduce greenhouse gas emissions”) must be balanced by the other objectives government has for BC Hydro, including cost effectiveness.

134. In the end, while BC Hydro and the Commission may consider policy statements, including the “government’s energy objectives”, BC Hydro and the Commission are only truly constrained by the applicable legal and regulatory requirements. Policy statements are just that. They are not legally binding, although they may be considered both by BC Hydro in developing its plan and the Commission in determining whether to accept such a plan, they cannot override or alter the applicable legal framework.

VI. ORDER SOUGHT:

135. BC Hydro seeks various forms of relief in this proceeding. As set out in the foregoing, COPE’s has focussed its efforts two specific areas of the 2008 LTAP, Burrard and the Clean Power Call.

136. For the foregoing reasons, and in accordance with the Commission’s jurisdiction under ss. 44.1 and 44.2, COPE submits that the Commission should:

- (a) Order that, subject to the following, the 2008 LTAP is in the public interest;
- (b) grant the Order requested by BC hydro determining that an expenditure of \$1.6 million in F2010 for sustaining capital to ensure the reliability of Burrard is in the public interest;
- (c) dismiss BC Hydro’s for an Order that the expenditure of \$2.0 million in F2009 and F2010 to complete the Definition phase work, and to implement the Clean Power Call is in the public interest; and
- (d) reject BC Hydro’s request for endorsement of
 - (i) BC Hydro’s plan to rely on Burrard for 900 megawatts of dependable capacity and 3,000 GWh/year of firm energy for planning purposes; and

- (ii) The proposed Clean Power Call pre-attrition target of 3,000 GWh/year or post-attrition target of 2,100 GWh/year.

RESPECTFULLY SUBMITTED THIS 27th DAY OF APRIL, 2009



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