

IRIS LEGAL

Environmental, Natural Resources &
Indigenous Law

VIA EFILE

June 1, 2021

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC. V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck,

**Re: Zone II Ratepayers Group's Final Argument
British Columbia Utilities Commission Review of BC Hydro's
Performance Based Regulation Report – Project No. 1599045**

Please accept the enclosed final argument for the Zone II Ratepayers Group in the above proceeding.

If you require anything further, please let us know.

Yours truly,
IRIS LEGAL



Jana McLean
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BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE *UTILITIES COMMISSION ACT*,
RSBC 1996, c. 473

BC UTILITIES COMMISSION REVIEW OF
BC HYDRO'S PERFORMANCE BASED REGULATION REPORT
(PROJECT No. 1599045)

Final Submissions of
Zone II Ratepayers Group
("Zone II RPG")

Overview

1. Zone II RPG agrees with BC Hydro's submission that the Commission's decision in this proceeding "should be devoted to findings about how certain characteristics of BC Hydro would affect the efficacy and implementation of the various measures raised in this proceeding, and whether any potential benefits can be expected to outweigh the identified challenges."¹
2. Zone II RPG agrees with BC Hydro that "Incentive Regulation should be viewed as a continuum, not a binary choice between COSR and PBR"² and that BC Hydro's current regulatory regime falls "part-way along the incentive continuum"³.
3. In Zone II RPG's submission, more time, information and analysis are needed on whether Performance Based Regulation ("**PBR**"), or any elements of PBR, is appropriate for regulating BC Hydro, except for the three PBR mechanisms proposed by BC Hydro in its submission. BC Hydro is a unique public-owned utility, and this proceeding has made it clear that a "one-size fits all" solution is not

¹ BCH Final Argument, p. 3

² BCH Final Argument, p. 9.

³ BC Hydro Final Argument, para. 1; see also pp. 17 – 24 (Section E).

appropriate or even possible. The evidence establishes that “publicly-held utilities with fully-integrated operations are fairly rare”⁴, making it more difficult to simply apply regulatory structures from other jurisdictions to BC Hydro.

4. Zone II RPG supports the adoption of BC Hydro’s proposed plan for implementing three incentive mechanisms in Fiscal 2023 – Fiscal 2025, being the use of: a three-year test period; statistical benchmarking; and expanded use of performance metrics.⁵ The Commission could then evaluate the effectiveness of these measures and if further PBR measures are deemed warranted, they could be implemented in consultation with BC Hydro and intervenors / stakeholders.

Zone II Ratepayers Group – Kwadacha and Tsay Keh Dene Nations

5. Zone II RPG consists of the Kwadacha Nation (“**Kwadacha**”) and Tsay Keh Dene Nation (“**Tsay Keh Dene**”), whose traditional territories are in remote areas of northern British Columbia. Kwadacha is based in Fort Ware, BC and Tsay Keh Dene in Tsay Keh Dene, BC.
6. Both Kwadacha and Tsay Keh Dene became non-integrated area (“**NIA**”) BC Hydro customers in 2013 pursuant to the Remote Communities Electrification program. The two Nations take non-integrated service from BC Hydro under subsidized Zone II rates which do not reflect the real cost of electricity generated by BC Hydro’s diesel-powered generators. In addition to diesel-powered generation, Kwadacha has a biomass facility that it constructed and operates, which became operational in April 2017. Its output is sold to BC Hydro under a long-term power purchase agreement.
7. Kwadacha and Tsay Keh Dene are two communities most impacted by BC Hydro’s infrastructure in the Province, as a result of their forced relocation during the construction of the WAC Bennett Dam. These two Nations bring a unique perspective to this proceeding, as northern Indigenous Nations located in BC

⁴ Exhibit A2-13, Zone II RPG IR 1.1.

⁵ BCH Final Argument, p. 1, p. 47.

Hydro's NIA who seek energy independence and full recognition of their rights, including title.

8. Zone II RPG regularly participates in the Commission's review of BC Hydro applications that directly impact Zone II RPG's interests, including rate applications. It participated in this proceeding in order to be better informed about proposed regulatory changes and participate in the discussion about the appropriate PBR mechanisms for encouraging efficiencies and reduce costs for BC Hydro that would benefit ratepayers.

BC Hydro Has Incentives to Operate Efficiently and Effectively

9. Zone II RPG agrees that BC Hydro's current regulatory framework provides incentives for "good performance"⁶, including efficient provision of its services to ratepayers.⁷ Zone II RPG agrees with the five incentives listed in BC Hydro's Final Argument, and the reasons provided therein, being:
 - (a) BC Hydro's Mandate from the Government of BC;
 - (b) BCUC Oversight;
 - (c) Forward Test Years / Operating Within Approved Rates;
 - (d) Holdback Pay (ie. management compensation structure); and
 - (e) Public Scrutiny and Public Reporting.
10. Zone II RPG in particular is supportive of the Commission's regulatory oversight role and the participation and input of interveners, which even as currently structured imposes considerable obligations on BC Hydro to ensure it is operated efficiently and effectively.

⁶ BC Hydro Final Argument, para. 2; see also pp. 13 – 17 (Section D).

⁷ BC Hydro Final Argument, paras. 33 to 49.

Tangible Evidence that BC Hydro Responds to Existing Incentives

11. Zone II RPG also notes that BC Hydro has presented evidence to support its claim that there is tangible evidence that BC Hydro responds to existing incentives,⁸ as follows:
 - (a) BC Hydro's rates have been held below inflation^{9 10}
 - (b) The Brattle Group's benchmarking study, filed during the F2020-2021 RRA, indicated that BC Hydro's operating costs compare favourably to those of an appropriate peer group; and
 - (c) In its F2020-2021 RRA Decision, the Commission made favourable findings about BC Hydro's cost discipline, budgeting and governance processes¹¹, which also was a considerable shift from the criticisms levied against BC Hydro by the Commission in its Decision from the F2017-2019 RRA.
12. Zone II RPG agrees with BC Hydro that there is now a "legitimate question" about whether the original impetus for the PBR Report now exists¹².

Benefits of PBR More Modest Than Initially Assumed

13. The evidence also supports the conclusion, as BC Hydro submits, that the benefits of PBR would be more modest than initially assumed.¹³
14. In particular, the fact that BC Hydro is a Crown corporation, who does not have a mandate to exceed its allowed return,¹⁴ raises real questions as to the utility of

⁸ BC Hydro Final Argument, p. 25 (see para. 77 in particular).

⁹ BC Hydro Final Argument, p. 26.

¹⁰ F2022 Review Session Transcript, p. 43. Mr. O'Riley states, "And we are looking through the 20s, through 2030, of rate increases below inflation."

¹¹ For example, in that Decision the Commission stated: "The Panel accepts BC Hydro's approach to leveraging a top down to bottom up budgeting to forecast its base operating costs for the Test Period, which provides insight into the cost pressures and savings opportunities for BC Hydro" (p. 58); "The Panel acknowledges BC Hydro's efforts to minimize the increase in base operating costs" (p. 75); and "The Panel finds that BC Hydro's capital planning process is reasonable" (p. 78).

¹² BC Hydro Final Argument, p. 29.

¹³ BC Hydro Final Argument, para. 78.

¹⁴ BC Hydro Final Argument, p. 28; Exhibit B-10, Zone II RPG IR 1.6.1.

many PBR mechanisms. As BC Hydro notes at paras. 88 – 95 of its Final Submissions, the expert evidence in this proceeding subjects that the absence of a mandate to exceed the allowed ROE significantly undermines the incremental incentive power of PBR mechanisms focused on increased earnings.

BC Hydro’s Proposal to Implement and Examine Three PBR Mechanisms is Appropriate.

15. Zone II RPG supports BC Hydro’s proposal to implement a three-year test period, statistical benchmarking and expanded use of performance metrics in the upcoming Fiscal 2023-Fiscal 2025 Revenue Requirements Application proceeding.¹⁵ Zone II RPG agrees with BC Hydro that:

The evidence demonstrates that the three mechanisms are forms of PBR, are compatible with the unique circumstances of BC Hydro, are relatively easy to implement, will improve the existing incentives for BC Hydro to perform well, and can be expected to deliver benefits that outweigh disadvantages.¹⁶

16. Zone II RPG does not support the broader implementation of PBR measures at this time. To the contrary, Zone II RPG suggests that the Commission ought to review the effectiveness of the three mechanisms during the test period, with the input of the BC Hydro, stakeholders and interveners and the assistance of expert evidence on the topic, while also taking into account relevant information from other jurisdictions, such as Alberta¹⁷ prior to implementing additional PBR measures. The Alberta Utilities Commission is currently considering whether to continue the PBR regime in Alberta, and its imminent report ought to contain valuable information that could be considered by this Commission in respect of BC Hydro.
17. Zone II RPG also agrees with BC Hydro that this approach will provide “additional

¹⁵ BC Hydro Final Argument, para. 3; Exhibit B-10, Zone II RPG IR 1.3.3.3.

¹⁶ BC Hydro Final Argument, para. 3.

¹⁷ BCH Final Argument, p. 46, Alberta Utilities Commission, Evaluation of Performance-Based Regulation in Alberta, Proceeding 26356, March 1, 2021.

time and review to build familiarity and understanding among the BCUC and interveners ¹⁸ particularly “coming out of a period of constrained regulation” ¹⁹

ALL OF WHICH IS RESPECTFULLY SUBMITTED

¹⁸ BC Hydro Final Argument, p. 42, Exhibit A2-1, BC Hydro PBR Report, pp. 11-63 to 11-67; Exhibit B-9, BCUC IR 1.2.2.

¹⁹ BC Hydro Final Argument, pp. 41 – 42.