



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER E-19-14**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Filing of the 2014 Electricity Purchase Agreement
between BC Hydro and Covanta Burnaby Renewable Energy, ULC

BEFORE: L.A. O'Hara, Commissioner
I.F. MacPhail, Commissioner
R.D. Revel, Commissioner
July 11, 2014

O R D E R

WHEREAS:

- A. On March 24, 2014, British Columbia Hydro and Power Authority (BC Hydro) pursuant to section 71 of the *Utilities Commission Act* (UCA) filed with the British Columbia Utilities Commission (Commission) an Energy Purchase Agreement dated January 1, 2014 (2014 EPA) between BC Hydro and Covanta Burnaby Renewable Energy, ULC (Covanta) and in relation to the SEEGEN municipal solid waste incineration plant (2014 Filing). BC Hydro seeks an Order from the Commission that the 2014 EPA is in the public interest and should be accepted for filing;
- B. On March 24, 2014, BC Hydro filed both redacted and un-redacted copies of the 2014 Filing and advised the Commission that it provided a redacted copy of the 2014 Filing to interveners in the BC Hydro F2012 to F2014 Revenue Requirements proceeding. BC Hydro requests that the un-redacted version of the Filing be held confidential as it contains information that is commercially sensitive, the release of which may prejudice BC Hydro's position in alternate negotiations;
- C. The Commission issued Letter L-14-14 dated April 14, 2014, inviting submissions from stakeholders specifically regarding the matter of accepting the 2014 EPA for filing under section 71 of the UCA. Letter L-14-14 noted that, by Commission Order G-61-12 dated May 17, 2012, the Commission established "Rules for Energy Supply Contracts for Electricity" to facilitate the Commission review of energy supply contracts for electricity. The Letter also stated the Commission will rely on all information it considers necessary to determine whether an energy supply contract is in the public interest. In doing so, it will be guided by the factors referred to in subsection 71(2.21) of the UCA given the 2014 EPA is an energy supply contract filed by BC Hydro;

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- D. Over the period April 15 to April 28, 2014, the B.C. Sustainable Energy Association and the Sierra Club British Columbia (BCSEA), British Columbia Pensioners' and Seniors' Organization *et al.*, Commercial Energy Consumers Association of British Columbia, FortisBC Inc., Fraser Valley Regional District, Metro Vancouver, NextUse Recycling Ltd. (NextUse), and Vanport Sterilizers Inc. submitted comments regarding the 2014 EPA to the Commission. A number of submissions raised matters beyond the scope of the Commission to address. Some parties were supportive of the 2014 Filing and did not believe a hearing was required to determine if the 2014 EPA is in the public interest. Other parties believed a public hearing was necessary to determine if the 2014 EPA is in the public interest;
- E. On May 2, 2014, BC Hydro submitted its reply comments which addressed key issues raised in each submission and further submitted that the 2014 EPA is in the public interest and that there was no need for a public hearing;
- F. The Commission issued Letter L-21-14 dated June 3, 2014, to obtain a response from BC Hydro on items for additional clarification regarding the 2014 EPA before making any determinations on the propriety of the 2014 EPA, or whether a hearing into the propriety of the 2014 EPA is required under section 71 of the UCA;
- G. On June 12, 2014, BC Hydro responded to Commission Letter L-21-14 on the items for additional clarification;
- H. On June 18, 2014, BCSEA submitted a letter, supported by a NextUse letter on June 19, requesting the Commission to determine that a public hearing is required to determine whether the 2014 EPA is in the public interest under section 71 of the UCA;
- I. On June 24, 2014, BC Hydro submitted comments in response to BCSEA and NextUse stating that the Commission has authority to determine its own process, interested parties have had an opportunity to be heard, and accordingly there is no need for further process;
- J. On June 26, 2014, NextUse submitted a letter to the Commission clarifying its role as referred to in BC Hydro's June 24, 2014 submission;
- K. On July 7, 2014, Fraser Valley Regional District filed a further submission responding to BC Hydro's June 12, 2014 reply to the Commission's June 3, 2014 request for additional clarification;
- L. On July 8, 2014, Metro Vancouver filed a response to the June 26, 2014 NextUse comments on BC Hydro's June 24, 2014 Submission; and
- M. On July 8, 2014, BC Hydro filed an executed copy of an amendment agreement dated June 12, 2014 between BC Hydro and Covanta (EPA Amendment) extending the Regulatory Condition Expiry Date set out in the 2014 EPA from 180 to 270 days of the Effective Date of January 1, 2014;

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- N. The Commission reviewed the submissions by BC Hydro and the submissions by the stakeholders and considers that the 2014 EPA and the EPA Amendment are in the public interest and that a public hearing is not necessary.

NOW THEREFORE for the reasons set out in the Reasons for Decision attached as Appendix A to this Order, the British Columbia Utilities Commission orders as follows:

1. The 2014 Electricity Purchase Agreement dated January 1, 2014 between British Columbia Hydro and Power Authority and Covanta Burnaby Renewable Energy, ULC and the June 12, 2014 EPA Amendment extending the Regulatory Condition Expiry Date are accepted for filing pursuant to section 71 of the *Utilities Commission Act* as being in the public interest.
2. BC Hydro is directed to request from Covanta copies of the Operational Certificate and any additional material necessary for the continued operation of the SEEGEN facility and to file such material with the Commission as soon as available. Also, if such material is not available by December 31, 2014, BC Hydro is to file an update on the status of the Operational Certificate for the SEEGEN facility by that date.
3. The Commission will hold the un-redacted version of the 2014 Filing confidential.

DATED at the City of Vancouver, In the Province of British Columbia, this 11th day of July 2014.

BY ORDER

Original signed by:

L.A. O'Hara
Commissioner

Attachment



IN THE MATTER OF

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
FILING OF THE ELECTRICITY PURCHASE AGREEMENT
BETWEEN BC HYDRO AND COVANTA BURNABY RENEWABLE ENERGY, ULC**

REASONS FOR DECISION

July 11, 2014

BEFORE:

L.A. O'Hara Panel Chair / Commissioner
I.F. MacPhail, Commissioner
R.D. Revel, Commissioner

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1.0 INTRODUCTION

1.1 Background

This Reasons for Decision addresses an Electricity Purchase Agreement (EPA) between British Columbia Hydro and Power Authority (BC Hydro) and Covanta Burnaby Renewable Energy, ULC (Covanta or the Seller). BC Hydro submitted this filing to British Columbia Utilities Commission (Commission) on March 24, 2014. Additional background is provided below.

1.1.1 SEEGEN Facility

The SEEGEN incinerator project (Burnaby Incinerator) is a waste-to-energy facility located in Burnaby, B.C. owned by Metro Vancouver via the Greater Vancouver Sewerage and Drainage District (GVS&DD), which is operated by Covanta under a 25 year agreement that expires March 2, 2025. The facility's Municipal Solid Waste (MSW) incinerator has a plant capacity of 24.75 MW and it has been in operation since March 1988. Currently, the SEEGEN facility converts about 285,000 tonnes of MSW into 940,000 tonnes per year of steam directed to generate up to 170,000 MWh of electricity per year.

1.1.2 Covanta Electricity Sales to BC Hydro

BC Hydro first awarded an EPA for the energy from the SEEGEN facility to Montenay Inc. (acquired by Covanta in mid-2009) in 2003 under its Customer Based Generation Call (Original 2003 EPA) for a term of 10 years, with an end date on July 19, 2013. BC Hydro and Covanta agreed to extend the term to December 31, 2013 to allow the parties and Metro Vancouver to continue negotiating a new EPA. The negotiations were successfully concluded in late 2013 resulting in the EPA which became effective January 1, 2014 (2014 EPA). (BC Hydro Filing, p. 3 of 10)

1.2 BC Hydro Requests

On March 24, 2014, pursuant to section 71 of the *Utilities Commission Act* (UCA), BC Hydro filed with the Commission an Energy Purchase Agreement dated January 1, 2014 between BC Hydro and Covanta in relation to the SEEGEN municipal solid waste incineration plant in Burnaby (BC Hydro Filing). BC Hydro seeks an Order from the Commission that the 2014 EPA is in the public interest and is accepted for filing. (BC Hydro Filing, p. 1 of 10)

Confidentiality

Additionally, BC Hydro requests that the Commission will hold the un-redacted version of the Filing confidential. BC Hydro states it has redacted from the public version of the Filing the contract energy price information, price escalators, monthly energy volumes, liquidated damages and certain aspects of the contractual turn-down rights and recall options. BC Hydro explains that this information is commercially sensitive and may prejudice its position in other similar negotiations. However, BC Hydro states it has disclosed the levelized firm energy price for the 2014 EPA as it does not consider public disclosure harmful under these circumstances.

BC Hydro has further redacted the entire Sellers Plant Agreement (SPA) in the public version of the Filing, as BC Hydro believes the un-redacted SPA is not relevant to the Filing and is commercially sensitive information (BC Hydro Filing, pp. 1-2).

On July 8, 2014, BC Hydro filed an executed copy of an amendment agreement dated June 12, 2014 between BC Hydro and Covanta (EPA Amendment) extending the Regulatory Condition Expiry Date set out in the 2014 EPA from 180 to 270 days of the Effective Date of January 1, 2014. BC Hydro requested that the Commission accept the EPA Amendment for filing.

1.3 Regulatory Review Process and Stakeholders

The Commission issued Letter L-14-14 dated April 14, 2014, inviting submissions from stakeholders on the need for a hearing to determine if the 2014 EPA is in the public interest. Specifically, interested parties who are stakeholders in regard to the BC Hydro Filing were asked to consider the Commission's jurisdiction and to limit comments to issues that are within the Commission's jurisdiction.

Submissions were received from the following eight parties over the period from April 15 to April 28, 2014:

- B.C. Sustainable Energy Association and the Sierra Club British Columbia (BCSEA)
- British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO)
- Commercial Energy Consumers Association of British Columbia (CEC)
- FortisBC Inc. (FortisBC)
- Fraser Valley Regional District (FVRD)
- Metro Vancouver
- NextUse Recycling Ltd. (NextUse), and
- Vanport Sterilizers Inc. (Vanport).

BC Hydro submitted its reply comments on May 2, 2014 (BC Hydro Reply).

After reviewing the Filing and submissions received, the Commission determined it required further clarification in five areas. Consequently, the Commission issued Letter L-21-14 dated June 3, 2014 requesting additional information from BC Hydro before making any decision on the propriety of the EPA, or whether a hearing into the propriety of the EPA is required under section 71 of the UCA.

BC Hydro submitted its response to Letter L-21-14 on June 12, 2014 (BC Hydro Response).

Without an established regulatory timetable, BCSEA and NextUse made further unsolicited submissions on June 18 and June 19, 2014, respectively. BC Hydro provided its reply comments on June 24, 2014. NextUse, FVRD and Metro Vancouver made further submissions on June 26, July 7 and July 8, 2014, respectively. The various rounds of submissions will be addressed in Section 4.0.

2.0 LEGISLATION AND RULES

2.1 Assessment Criteria

The review of the 2014 EPA is conducted pursuant to section 71 of the UCA and the “Rules for Energy Supply Contracts for Electricity” (ESC Rules) that were established by the Commission under Order G-61-12.

Section 71 of the UCA

Subsection 71(1) of the UCA requires that a person who enters into an energy supply contract must,

- (a) File a copy of the contract with the commission under rules and within the time it specifies, and
- (b) Provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

Under subsection 71(2) the Commission may make an order determining that an energy supply contract is not in the public interest but can only do so after a hearing.

Under subsection 71(2.21), in determining under subsection 71(2) whether an energy supply contract filed by the authority is in the public interest, the Commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider and be guided by:

- (a) British Columbia's energy objectives;
- (b) an applicable integrated resource plan approved under section 4 of the *Clean Energy Act*;
- (c) the extent to which the energy supply contract is consistent with the requirements under section 19 of the *Clean Energy Act*;
- (d) the quantity of the energy to be supplied under the contract;
- (e) the availability of supplies of the energy referred to in paragraph (d);
- (f) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (d); and
- (g) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (d).

Section 19 of the *Clean Energy Act* sets out that BC Hydro must pursue actions to meet the prescribed targets in relation to clean or renewable resources in order to achieve the energy objective of generating 93 percent of the electricity in British Columbia from clean or renewable resources as specified below.

British Columbia's energy objectives are set out in section 2 of the *Clean Energy Act*, which details the objectives from (a) to (p) as follows:

- (a) to achieve electricity self-sufficiency;
- (b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%;

- (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
- (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the *BC Hydro Public Power Legacy and Heritage Contract Act* continue to accrue to the authority's ratepayers;
- (f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;
- (g) to reduce BC greenhouse gas emissions
 - i. by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,
 - ii. by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007,
 - iii. by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,
 - iv. by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and
 - v. by such other amounts as determined under the *Greenhouse Gas Reduction Targets Act*;
- (h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;
- (i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;
- (j) to reduce waste by encouraging the use of waste heat, biogas and biomass;
- (k) to encourage economic development and the creation and retention of jobs;
- (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;
- (m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;
- (n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia;
- (o) to achieve British Columbia's energy objectives without the use of nuclear power; and
- (p) to ensure the commission, under the *Utilities Commission Act*, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.

Commission Rules for Energy Supply Contracts

Appendix A of Commission Order G-61-12 provides the ESC Rules.

Rule 1.2 states:

“The Commission will rely on all information it considers necessary to determine whether an ESC is in the public interest. In doing so it will consider the factors referred to in section 71(2.1) and (2.2) of the Act where the ESC is filed by a public utility other than BC Hydro and the Commission will consider and be guided by the factors in section 71(2.21) of the Act where the ESC is filed by BC Hydro.”

Rule 1.3 states:

“Generally, the Commission will decide within 60 days of the filing of an ESC as to whether a public hearing is required, and if not, will issue an Order determining the ESC is in the public interest and accepting the ESC for filing. If the Commission determines a public hearing is required, it will take place where:

- (a) the Commission is unable to determine on the basis of the information filed under these General Rules that the ESC is in the public interest; or
- (b) it appears to the Commission on the basis of the information filed under these General Rules that the ESC may not be in the public interest.”

Rule 1.6 states:

“Where applicable, an ESC filing pursuant to section 71(1) of the Act ... must at a minimum include the following information: duration, rights of renewal and other special provisions, reliability considerations, price and price escalation and alternate sources of supply of the ESC or Proposed ESC and, where a person seeks Commission acceptance of an amendment to an ESC, that notice has been provided to all parties that intervened in any Commission proceeding concerning the filing of the original ESC under section 71 of the Act.”

3.0 THE 2014 EPA FILING

On March 24, 2014, BC Hydro filed the 2014 EPA for a term of 11.2 years effective on January 1, 2014 and expiring on March 2, 2025. The March 2, 2025 date corresponds with the expiry of the facility operating agreement between Covanta and GVS&DD (BC Hydro Filing, p. 3 of 10).

Product

BC Hydro explains the product details, as follows:

- Under the 2014 EPA, BC Hydro will purchase the same amount of electricity from the same facility (approximately 166 GWh per year of firm energy plus a small amount of non-firm energy) (BC Hydro Reply, p. 1 of 7);

- The 2014 EPA provides about 19.5 MW of dependable capacity for BC Hydro planning purposes (BC Hydro Filing, p. 6 of 10);
- The firm energy being provided under the 2014 EPA is high-quality in that it is generated by a non-intermittent thermal resource with a capacity factor of about 77 percent (BC Hydro Filing, p. 6 of 10);
- Monthly firm energy is purchased at \$42.89/MWh (\$2013) on a levelized basis (BC Hydro Filing, p. 3 of 10);
- Non-firm energy is priced at the average Platts Mid-C price (not to exceed firm energy price) (BC Hydro Filing, p. 3 of 10); and
- All environmental attributes associated with the electricity generation are transferred to and owned by BC Hydro (BC Hydro Filing, p. 4 of 10).

Terms and Conditions

BC Hydro will be compensated for liquidated damages from energy delivery shortfalls, has real-time dispatch and turn-down rights, and own all environmental attributes associated with the generation of electricity. Covanta is responsible for compliance with all emission regulations and BC Hydro is indemnified from any emission liabilities at the SEEGEN facilities. The fuel used to generate energy must be comprised of municipal solid waste. However, natural gas can be used as an auxiliary fuel of up to 3 percent of the total. Covanta has a one-time right to decrease its firm energy delivery commitment with a subsequent decrease in the firm energy price. (BC Hydro Filing, p. 4 of 10)

4.0 STAKEHOLDER SUBMISSIONS

4.1 Submissions in Response to Commission Letter Dated April 14, 2014

Eight parties filed submissions: BCSEA, BCPSO, CEC, FortisBC, FVRD, Metro Vancouver, NextUse, and Vanport.

The parties supportive of BC Hydro and its Filing are FortisBC and Metro Vancouver. FortisBC submits that BC Hydro has met the requirements of section 71 of the UCA and has provided sufficient information for the Commission to determine if the 2014 EPA is in the public interest. FortisBC further submits that the Commission should review the 2014 EPA expeditiously and accept it for filing without a hearing in accordance with its Rules for Energy Supply contracts for Electricity (FortisBC Submission).

The parties that submit a hearing is necessary to determine if the 2014 EPA is in the public interest are: BCSEA, CEC, FVRD, and NextUse.

BCPSO does not object to the 2014 EPA and advises that it would not participate in any hearing, should the Commission decide to have a hearing on the Filing. Vanport does not state its position concerning the need for a hearing process.

The parties that submit a hearing is necessary identified a number of issues. The issues are:

- whether the energy sourced from Covanta is clean or renewable;

- whether and what risks to the 2014 EPA exist given that Covanta’s application for an operational certificate for the SEEGEN facility is not finalized;
- that the 2014 EPA’s impact on greenhouse gas (GHG) emission levels is not known;
- negative impact on the air shed and air quality in the eastern Fraser Valley;
- how price was determined to assess BC Hydro’s justification of cost-effectiveness;
- whether there is a need to acquire energy by BC Hydro;
- whether any price above the Seller’s market price subsidizes the incinerator alternative giving it a competitive advantage;
- that the 2014 EPA energy is not considered clean energy in other jurisdictions into which this power may be exported; and
- that no new jobs are created by the 2014 EPA.

In its Reply, BC Hydro highlights issues of substance that are part of a broader policy debate, and therefore outside the scope of the Commission’s mandate. The question of whether the SEEGEN Incinerator resource is clean or renewable is especially addressed. BC Hydro submits the first policy debate is whether municipal solid waste should be incinerated, and what is the treatment of emissions from incinerators. BC Hydro further submits the siting, operation and permitting of solid waste incineration facilities are matters for provincial government ministries and are not relevant to the review of the 2014 EPA.

BC Hydro sees the second policy debate as being the private commercial access to Metro Vancouver’s waste streams, which should not be the focus of the section 71 public interest test. BC Hydro submits that the Commission’s focus should be on the cost-effectiveness of the 2014 EPA. These issues will be addressed in more detail in subsequent Sections of these Reasons for Decision. In summary, BC Hydro believes that the 2014 EPA is in the public interest and that there is no need for a hearing process. (BC Hydro Reply)

4.2 BC Hydro Response to Commission Letter Dated June 3, 2014

On June 3, 2014, the Commission sought further clarification regarding the following five issues:

- British Columbia’s energy objectives;
- How the 2014 EPA may impact the SEEGEN Facility operations;
- EPA Contract Terms and Conditions;
- The need for the 2014 EPA; and
- Long-term, firm and reliable power. (Commission Letter L-21-14)

By letter dated June 12, 2014, BC Hydro complied with the Commission’s request and provided its responses to the questions asked.

In addition, BC Hydro made further submissions regarding the consideration of British Columbia’s energy objectives and the scope of the EPA review as follows.

British Columbia's Energy Objectives

BC Hydro first mentions its omission of a key objective in the Filing which is to “ensure the authority's rates remain among the most competitive rates charged by public utilities in North America” and highlights its relevance because the 2014 EPA is a cost-effective resource. BC Hydro then points out that even though the Commission must be guided by BC's energy objectives, the entire list cannot be furthered in every case. BC Hydro submits “the 2014 EPA does not detract from any of British Columbia's energy objectives and is generally aligned with the CEA overall.” (BC Hydro Response, p. 1 of 3)

Scope of EPA Review

BC Hydro challenged the scope of the Commission review, especially regarding *whether any price above the Seller's market price subsidizes the incinerator alternative giving it a competitive advantage*. BC Hydro submits that the competitive advantage of the SEEGEN Incinerator has no relevance to the Filing. Similarly, BC Hydro submits that it is irrelevant whether other jurisdictions consider the EPA energy clean as it is acquired for domestic needs and not for export. Regarding the issue that *no new jobs are created by the 2014 EPA*, BC Hydro submits that in the case of EPA renewals, it is unlikely that new jobs are created. (BC Hydro Response, p. 2 of 3)

4.3 Further Submissions Not Required by the Comment Deadline

In its letter dated June 18, 2014, BCSEA submits that a public hearing is required into whether the 2014 EPA is in the public interest under section 71 of the UCA, because both reasons for a public hearing are identified in section 71(1)(3) of the UCA. “The Commission can and should conclude that it is *unable to determine* on the basis of the information filed by BC Hydro to date that the EPA is in the public interest ... the Covanta EPA *may* not be in the public interest.”

BCSEA points out that stakeholders have not had an opportunity to test BC Hydro's “evidence” filed on June 12, 2014 or make submissions on it. BCSEA submits procedural fairness requires that the stakeholders be provided this opportunity. (BCSEA Submission dated June 18, 2014)

By letter dated June 19, 2014, NextUse filed its support for the above submissions by BCSEA (NextUse Submission dated June 19, 2014).

By letter dated June 24, 2014, BC Hydro replied to the above submissions as follows:

1. The Commission has authority to determine its own process. It has followed a process to date that is consistent with the UCA and the ESC Rules. Interested parties have had an opportunity to be heard. Accordingly, there is no need for further process;
2. There is no probative value in further exploring or testing whether or not the 2014 EPA is a clean or renewable resource or reduces GHG emissions because the levelized price of \$43 per MWh is lower than the cost of both non-clean and clean or renewable B.C. based resources; and
3. The Commission has sufficient information to determine that the 2014 EPA is in the public interest.

(BC Hydro Reply to BCSEA and NextUse Comments)

On June 26, 2014, NextUse submitted a letter to the Commission clarifying its role as referred to in BC Hydro's June 24, 2014 submission. On July 7, 2014, the FVRD filed a further submission responding to BC Hydro's June 12, 2014 reply to the Commission's June 3, 2014 request for further clarification; and on July 8, 2014, Metro Vancouver filed a response to the June 26, 2014 NextUse letter commenting on BC Hydro's June 24, 2014 Submission.

After the review of all submissions on procedural matters, the Commission Panel will now proceed to analysis and assessment of the information filed. Only then can it determine whether a hearing will be required.

5.0 CROWN DUTY TO CONSULT – FIRST NATIONS CONSULTATION

On the basis of the information provided by Metro Vancouver, BC Hydro is of the view that entering into the 2014 EPA does not trigger the duty to consult any First Nations because there are no potential incremental physical impacts resulting from the 2014 EPA.

BC Hydro supports its conclusion by stating the facility is on an active industrial site owned in fee simple by the GVS&DD within the City of Burnaby. BC Hydro believes it is unlikely that Aboriginal rights or treaty rights have been exercised on the facility site for some time. The physical footprint of the facility will not change as a result of the 2014 EPA. BC Hydro also submits the amount of generated energy will not change in that BC Hydro is purchasing energy it purchased under the Original 2003 EPA, plus energy previously sold to Powerex, and the nameplate capacity of the SEEGEN facility will not change.

No stakeholder or First Nation has made submissions that a duty to consult First Nations has been triggered, or that the 2014 EPA has the potential to cause incremental physical impacts.

Commission Determination

The Commission Panel finds there are no potential incremental physical impacts resulting from the 2014 EPA because the SEEGEN facility has continued to operate from the time of the Original 2003 EPA and the physical footprint and the nameplate capacity of the facility remains unchanged. The Commission Panel determines the Crown's duty to consult on Aboriginal or treaty rights within the meaning of section 35 of the *Constitution Act, 1982* has not been triggered since no potential adverse impacts on Aboriginal or treaty rights arise from the 2014 EPA.

6.0 ANALYSIS AND ASSESSMENT

Based on the assessment criteria according to section 71 of the UCA, the Commission will assess the following key issues from the 2014 EPA: availability, pricing and alternatives, quantity and the need for the EPA, British Columbia's energy objectives, interest of ratepayers, and other public interest issues.

6.1 Availability

BC Hydro describes the electricity product from the SEEGEN facility as reliable because it provides dependable capacity as well as firm energy and is generated in the Lower Mainland, BC Hydro's main load centre (BC Hydro Reply, p. 5 of 7). BC Hydro states: "SEEGEN facility has a good track record, having consistently delivered firm,

reliable energy to the BC Hydro system during the 10-year term of the Original 2003 EPA” (BC Hydro Filing, p. 6 of 10). According to the Solid Waste Management Plan, “Metro Vancouver will continue use of existing waste-to-energy facility in Burnaby” ... “at its current usage and capacity of 280,000 tonnes per year to recover available energy in the waste remaining, after recycling, for district energy and electricity generation” (BC Hydro Filing, p. 9 of 10).

Metro Vancouver and Covanta have informed BC Hydro that the activities under the new 2014 EPA in and of itself will not require new Crown permits or amendments to existing permits (BC Hydro Filing, p. 8 of 10). As set out in the contract, “The Seller and SP Owner have all Permits legally required to own, operate, and maintain the Seller’s Plant and perform the Seller’s obligations set out in the EPA” (BC Hydro Filing, SEEGEN EPA, p. 41 of 102) and “The Seller shall comply with and maintain in full force and effect, and shall cause the SP Owner to comply with and maintain in full force and effect, all Permits” (BC Hydro Filing, SEEGEN EPA, p. 7 of 102).

However, the Ministry of Environment is in the process of incorporating the operating requirements listed in Appendix A of the Solid Waste Management Plan, including some additional requirements, into an operational certificate under the *Environmental Management Act*. BC Hydro considers the Operational Certificate to be a Material Permit, as defined in the 2014 EPA. The Seller would have no express rights or recourse under the 2014 EPA as a result of not being able to obtain a Material Permit (BC Hydro Response to Item 1.3.2). If the failure to obtain an operational certificate, or any required operational changes, result in a breach of the 2014 EPA that constitutes a “Buyer Termination Event” (defined in Appendix 1 of the EPA), BC Hydro would have the right to terminate the 2014 EPA under section 14 (BC Hydro Response to Item 1.3.0). Also, BC Hydro only pays for delivered energy. If the Seller could not deliver part or all of its energy obligations under the 2014 EPA, BC Hydro could be entitled to liquidated damages, as described in section 11 of the 2014 EPA (BC Hydro Response to Item 1.3.0).

Notice of the application for an operational certificate was made by Covanta in November 2013 and the Operational Certificate is anticipated to be issued by the end of 2014 (BC Hydro’s Response to Item 1.3.4). BC Hydro confirms that “there are other government processes in respect of air emission permits and operational certificates related to the SEEGEN facility” (BC Hydro Reply, p. 3 of 7). Covanta and Metro Vancouver have informed BC Hydro that they are not expecting the Operational Certificate to result in substantial operational changes that would affect their ability to perform their obligations under the 2014 EPA (BC Hydro Response to Item 1.3.0). BC Hydro asserts that those “are properly matters for provincial government ministries such as [Ministry of Environment] and are not relevant to the review of the EPA” (BC Hydro Reply, p. 3 of 7).

Commission Determination

The Commission finds that the SEEGEN facility has been shown to be a reliable supplier of firm energy and capacity for BC Hydro. Based on the information filed, Covanta also has enough source waste according to the Solid Waste Management Plan to reliably operate and fulfill its 2014 EPA contractual commitments. With Covanta assuming all responsibilities to acquire and comply with any required permits, the Commission is satisfied that BC Hydro is acquiring energy from a facility that will meet all operational requirements and can reliably supply power to BC Hydro.

The Commission Panel considers it is likely that Covanta will be able to fulfill its contractual commitments and further, in the event it fails to do so, that there are adequate contractual recourse options available to BC Hydro to protect utility interests and the interests of its customers.

However, the outstanding operational certificate for the SEEGEN facility remains a concern. **The Commission Panel thus directs BC Hydro to request from Covanta copies of the Operational Certificate and any additional material necessary for the continued operation of the SEEGEN facility and file such material with the Commission as soon as available. If such material is not available by December 31, 2014, BC Hydro is to file an update on the status of the Operational Certificate for the SEEGEN facility by that date.**

6.2 Pricing & Alternatives

BC Hydro indicates that the negotiated price for the 2014 EPA appropriately reflects the cost of generation, which includes a reasonable rate of return with operating risks assumed by Covanta (BC Hydro Filing, p. 5 of 10). BC Hydro submits the 2014 EPA price is lower than the price in the Original 2013 EPA, below BC Hydro's Long Run Marginal Cost of \$85/MWh to \$100/MWh, and below the value of both clean and non-clean energy alternatives over the term of the 2014 EPA.

BC Hydro explains a proxy for the Seller's market price is the levelized B.C. Border spot market sell price over the contract period, which is about \$24/MWh (\$2013) (BC Hydro Filing, p. 6 of 10). However, BC Hydro believes the Seller's market price is not an appropriate comparison to the 2014 EPA negotiated firm energy price because the spot market provides non-firm energy and no capacity, and generally has a term of one hour. EPA renewals provide a different product than the spot market, including a longer contract term and in some cases dependable capacity, voltage, support and dispatchability (BC Hydro's Filing, SEEGEN EPA, pp. 21-22 of 23).

BC Hydro explains that over the period F2014 to F2016 during which BC Hydro does not have a need for energy, BC Hydro considers the B.C. Border spot market sell price, approximately \$21/MWh (\$F2013), to be a proxy for the value of the 2014 EPA energy. For the period F2017 to F2025, BC Hydro forecasts an energy deficit without the actions agreed to in the IRP. For this period BC Hydro considers (i) \$61/MWh (\$F2013), which is the adjusted levelized Unit Energy Cost (UEC) of a 250 MW combined cycle gas turbine and (ii) \$85/MWh to \$100/MWh (\$F2013), which is BC Hydro's Long Run Marginal Cost (LMRC) and the price signal to guide acquiring new clean or renewable resources which include Demand-side Management (DSM), Independent Power Purchaser (IPP) acquisitions and Resource Smart. BC Hydro then uses these figures as inputs to compute a proxy for the value of EPA energy which results in a blended energy price of between \$51/MWh and \$69/MWh over the EPA term (BC Hydro Filing, p. 6 of 10).

An overview of the price comparison is provided in Table 1 from BC Hydro's filing. This table is reproduced below.

Table 1 Comparative Levelized Energy Prices/Values

Comparator	Levelized Energy Price (\$2013/MWh)
The Seller's Market Price (B.C. Border sell price for F2014-F2025)	24
2014 EPA	43
Original 2003 EPA (if price applied for the 2014 EPA period)	60
Energy Value (based on blend of market prices and energy cost of alternative resources)	51 – 69

BC Hydro concludes that “[t]he levelized firm energy price of \$43 per MWh in the 2014 EPA is attractive even in comparison to the \$51 per MWh Energy Value based on a non-clean gas-fired generation alternative.” (BC Hydro Reply, p. 6 of 7)

Commission Determination

The Commission Panel considers that the 2014 EPA with a price of \$43/MWh is an appropriate comparator to non-clean gas-fired generation with a \$51/MWh energy value and agrees that the \$43/MWh 2014 EPA price is lower than the \$69/MWh clean alternative. The Commission finds that purchasing in the spot market for the entire term of 2014 EPA is not an appropriate comparator given that it is not long term firm energy and offers no capacity value for the years F2017 to F2025. **Therefore, the Commission determines the 2014 EPA to be cost-effective for BC Hydro to purchase.**

6.3 Quantity & the Need for the 2014 EPA

BC Hydro is purchasing the same amount of electricity from the same facility (approximately 166 GWh of firm energy per year plus a small amount of non-firm energy) as the Original 2003 EPA (BC Hydro Reply, p. 1 of 7). Also, the 2014 EPA provides about 19.5 MW of dependable capacity.

The provincial government approved BC Hydro’s Integrated Resource Plan (IRP) through Order in Council No. 514 on November 25, 2013. BC Hydro states: “In the IRP, BC Hydro assessed what actions should be taken to manage near term costs while considering long term customer supply adequacy. The resulting actions consisted largely of pursuing Demand Side Management (DSM) and EPA renewals including the 2014 EPA. Without the actions identified in the IRP there would be a need for additional energy in F2017.” (BC Hydro Filing, p. 5 of 10) BC Hydro informed the Commission in its response to Letter L-21-14 that in its approval of the 2013 IRP, the B.C. Government did not approve specific contracts but rather it approved aggregate energy amounts for EPA renewals, subject to the ability to renew EPAs cost-effectively. In establishing the aggregate EPA renewal volumes that were incorporated into the 2013 IRP, BC Hydro assumed that the SEEGEN facility would provide 131 GWh/year of energy and 15 MW of capacity during the term of the 2014 EPA (BC Hydro’s Response to Item 1.4.1).

Commission Determination

The Commission Panel finds the 2014 EPA is contemplated in the approved IRP as an EPA renewal. The Commission further finds BC Hydro has a need for 166 GWh/year of energy from the 2014 EPA, which contributes to satisfying the energy deficit anticipated in the F2017 to F2025 forecasted period as contemplated in the approved IRP.

6.4 British Columbia’s Energy Objectives

BC Hydro states in the Filing that the 2014 EPA supports four of British Columbia’s energy objectives: 2(a), 2(i), 2(j) and 2(k). Subsequently, when responding to Letter L-21-14 BC Hydro states that the 2014 EPA also supports two additional energy objectives: 2(c) and 2(d). Also, in its response BC Hydro submits that the 2014 EPA does not detract from energy objectives 2(g) and 2(n).

In its response to L-21-14, BC Hydro elaborates how the energy objectives 2(a), 2(i), 2(j), 2(k) are supported by the 2014 EPA. BC Hydro explains it contracts for energy and capacity from a specific facility and has exclusive rights to that energy and capacity during the term of the 2014 EPA, allowing BC Hydro to achieve electricity self-sufficiency as defined under energy objective 2(a) (BC Hydro Response to Item 1.5.2). The SEEGEN generation facility enables the efficient use of waste heat from the incinerator and reduces the amount of waste going to landfills, which supports energy objectives 2(i) and 2(j). BC Hydro notes the facility also encourages economic development by directly employing 47 people, of which three are specifically associated with electricity generation, supporting energy objective 2(k) (BC Hydro Response to Item 1.1.9).

Additionally, BC Hydro states that the 2014 EPA also supports energy objectives 2(c) and 2(d). BC Hydro confirms that over the term of the 2014 EPA it will be able to meet energy objective 2(c) [93 percent clean or renewable energy] whether or not the 2014 EPA is considered clean or renewable (BC Hydro Response to Item 1.1.3). Also, BC Hydro submits energy objective 2(d) [to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources] is supported by the SEEGEN facility by incorporating proven technologies.

Metro Vancouver informed BC Hydro that approximately 60 percent of the waste feedstock is biogenic. BC Hydro notes that biogenic feedstock is considered a clean or renewable resource according to the Clean or Renewable Resource Regulation (B.C. Reg. 81/2011). The approved 2013 IRP characterizes municipal solid waste as a biomass resource and section 1 of the *Clean Energy Act* defines biomass as a clean or renewable resource.

BC Hydro submits in its response to Letter L-21-14 that the 2014 EPA does not detract from energy objectives 2(g) and 2(n). BC Hydro states the 2014 EPA is not expected to change how the incinerator operates given that BC Hydro is buying the same amount of energy from the same facility as it did under the 2003 EPA. In its Filing, BC Hydro noted that Metro Vancouver informed BC Hydro that the SEEGEN facility would not be decommissioned earlier in the absence of the 2014 EPA. BC Hydro states that GHG emissions are a product of the incineration process, not electricity generation, which uses the waste heat from the incineration process. BC Hydro does not expect the 2014 EPA to result in an increase in air emissions, including GHG emissions, and that the 2014 EPA does not detract from energy objective 2(g). BC Hydro believes “It is highly speculative as to whether or not the operation of the SEEGEN facility might change in the absence of the 2014 EPA” (BC Hydro Response to Item 1.2.1). BC Hydro believes energy objective 2(n) is not detracted by the 2014 EPA because the energy is to meet BC Hydro’s domestic load requirements and is not purchased for export. Therefore, BC Hydro concludes the 2014 EPA has no impact on British Columbia being a net exporter of electricity from clean or renewable resources as defined under energy objective 2(n).

In conclusion, BC Hydro notes that “The 2014 EPA does not detract from any of British Columbia’s energy objectives and is generally aligned with the CEA overall.” BC Hydro then summarizes that “British Columbia’s energy objectives are only one factor in section 71(2.21) of the UCA that the BCUC must consider and be guided by. As noted, section 71(2.21) sets out other factors that the BCUC must consider and be guided by including an approved IRP and the price of the energy.” (BC Hydro Response, p. 2 of 3)

Commission Determination

The Commission Panel finds the 2014 EPA supports the energy objectives set out in subsections 2(a), 2(c), 2(d), 2(i), 2(j), and 2(k) of the *Clean Energy Act*. The energy is purchased to satisfy domestic needs, achieving electricity self-sufficiency as defined in subsection 2(a). The Commission Panel is satisfied that BC Hydro will be

able to meet its 93 percent clean or renewable objective regardless of whether or not the 2014 EPA is considered clean or renewable thus meeting energy objective 2(c). The use of proven technology at the SEEGEN facility supports energy objective 2(d). The SEEGEN generation facility enables the efficient use of waste heat from the incinerator and reduces the amount of waste going to landfills, which supports energy objectives 2(i) and 2(j). The facility also encourages economic development by directly employing 47 people, of which three are specifically associated with electricity generation, supporting energy objective 2(k).

The Commission Panel also finds that the 2014 EPA does not generally detract from the other British Columbia energy objectives. The Commission concurs with BC Hydro that it is speculative on how the 2014 EPA impacts the operation of the SEEGEN facility. With regard to energy objective 2(g) to reduce BC greenhouse gas emissions, the Commission finds the information filed is insufficient to allow a definite determination regarding the overall impact on GHG emissions from the 2014 EPA. BC Hydro believes it does not expect the 2014 EPA to increase air emissions and does not expect the facility to be decommissioned. If the facility continues to operate in the same manner with or without the 2014 EPA, the 2014 EPA would have no incremental impact to GHG emissions. For the existing facility, it may be that the 60 percent clean or renewable portion could displace energy that is not clean, which is favourable to reducing GHG emissions in British Columbia. In the future, if the mix of feedstock changes, there may be changes to GHG emissions though there is no information on the quantity or whether it would be favourable or unfavourable. Furthermore, the Commission Panel notes that based on the facility continuing with its 60 percent clean feedstock, any potential GHG impacts favourable or unfavourable are generally limited to the efficiency of the facility, future operations, and producing at a level to the nameplate capacity of the facility.

The Commission Panel finds that overall the 2014 EPA aligns well with the *Clean Energy Act* and is supportive of British Columbia's energy objectives. Since the 2014 EPA supports a number of the other energy objectives, the Commission notes that the indeterminate GHG emissions impacts whether unfavourable, favourable, or neutral are not a material factor that would change the finding that on balance the 2014 EPA is supportive of British Columbia's energy objectives.

6.5 Interest of Ratepayers

Subsection 71(2.21) requires the Commission to consider the interests of persons in British Columbia who receive or may receive service from BC Hydro.

Commission Determination

The Commission considers this to be primarily the interests of BC Hydro ratepayers as a group. Specific customers who have interests beyond the interests of BC Hydro ratepayers as a group are considered in the next section.

Based on the evaluation of the 2014 EPA on price, quantity, availability, alternatives, need, and British Columbia's energy objectives, the Commission Panel finds that the 2014 EPA is in the interest of BC Hydro ratepayers.

6.6 Other Public Interest Issues

Fraser Valley Regional District in its submission expresses concern about the air pollutants generated from the facility in the air shed that deposits near the Fraser Valley communities, contributing to the air contaminants already affecting the health of the residents and the agriculture and tourism industries in the region (FVRD Submission, p. 2).

BC Hydro states “Metro Vancouver has informed BC Hydro that the facility would not be decommissioned earlier in the absence of a new EPA” (BC Hydro Filing, p. 10 of 10). BC Hydro also described how the incinerator was constructed in 1988 for the ongoing need to dispose of post-recycling municipal solid waste. The SEEGEN facility’s continued operation is consistent with Metro Vancouver’s stated goal of reducing as much waste as possible from landfills. Prior to the installation of the cogeneration facility in 2003, much of the energy produced from the combustion process was lost; some of the steam generated from the facility was sold to a nearby industrial operation but most vented to the environment. (BC Hydro Response to Item 1.2.1)

Commission Panel Discussion

The Commission Panel notes that the SEEGEN Incinerator would not be decommissioned any earlier even in the absence of the 2014 EPA. The issue of air pollution is a concern that is best addressed by the appropriate regulatory bodies that oversee this matter. The issuance of an operational certificate under the Environmental Management Act is a matter for the Ministry of Environment to assess. According to the 2014 EPA contract: “The Seller shall comply with and maintain in full force and effect, and shall cause the SP [Seller’s Plant] Owner to comply with and maintain in full force and effect, all Permits.” With this contractual clause the Commission Panel is satisfied BC Hydro will purchase energy from the facility that meets all necessary permits required.

6.7 Issues Not Relevant to the Section 71 Filing

NextUse raised the issue whether the Covanta facility is a public utility and submits that the issue should be considered and resolved as part of the proceeding. The UCA defines who is a public utility. Covanta would meet the definition as a public utility when it sells power. However, M202 Minister’s Order No. M-22-0205 dated June 6, 2002 – Ministerial exemption (<http://www.bcuc.com/Documents/SpecialDirections/M202-MO22-0205.pdf>) exempts persons selling to BC Hydro or Powerex from the provisions of Part 3 except section 22 of the UCA. Covanta is selling power to BC Hydro in this case.

NextUse also states that “the burning of non-biogenic fuel by a municipal waste incinerator is not considered clean energy in other jurisdictions in which British Columbia trades electricity”, and is concerned that “there are implications for relationships where this energy may be sold by BC Hydro/Powerex into export as part of the BC Hydro portfolio” (NextUse Submission, p. 6). BC Hydro confirms that the energy is to fulfill domestic needs and is not purchased for export (BC Hydro Response, p. 2 of 3). As noted previously, BC Hydro believes how other jurisdictions view the 2014 EPA energy is not relevant to this section 71 filing.

Commission Determination

The Commission Panel finds the issue of whether the Covanta facility is a public utility is not relevant to the section 71 filing because M202 Minister’s Order No. M-22-0205 exempts persons selling to BC Hydro or Powerex from the provisions of Part 3 except section 22 of the UCA. There is no rates issue (sections 58 to 61 of the UCA) arising from Covanta as a public utility since Covanta is exempt from regulation from these sections

of the UCA. **The Commission finds the power from the 2014 EPA located at BC Hydro's load centre is not purchased for export; therefore, how other jurisdictions view the 2014 EPA energy is also not relevant to this section 71 filing.**

7.0 COMMISSION DETERMINATION

Subsection 71(2.21) of the UCA provides guidance on the assessment criteria for the Commission to determine whether the 2014 EPA filed by BC Hydro is in the public interest. If the Commission is unable to determine the 2014 EPA is in the public interest based on the information filed, the Commission would determine a public hearing is required.

The criteria to assess whether the 2014 EPA is in the public interest involves the Commission to consider the interests of persons in British Columbia who receive or may receive service from the authority and also must consider and be guided by seven items in paragraphs 71(2.21) (a) to (g). These seven items include British Columbia's energy objectives, the approved integrated resource plan, the quantity of energy, the availability of supply, price and availability of alternatives, and the price of the energy. British Columbia's energy objectives are defined in the *Clean Energy Act*.

The Commission Panel has reviewed the 2014 EPA Filing and the comprehensive supplemental information including stakeholder submissions, BC Hydro's reply on the stakeholder submissions, and BC Hydro's clarification on items listed for additional information.

Based on the analysis and assessment of the issues contained in this Reasons for Decision, the Commission Panel determines the 2014 EPA dated January 1, 2014 between BC Hydro and Covanta and the EPA Amendment dated June 12, 2014 to be in the public interest. Accordingly, no further process is required, and a public hearing is not necessary.

Earlier, the Commission Panel already determined that the 2014 EPA has not triggered a duty to consult First Nations.

The Commission will hold the un-redacted version of the 2014 EPA Filing confidential. The Commission Panel is satisfied that the un-redacted portions contain information that is commercially sensitive and may prejudice BC Hydro's position in other negotiations.