



ORDER NUMBER
E-12-21

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Walden North Hydro Forbearance Agreement

BEFORE:

R. I. Mason, Panel Chair
C. Brewer, Commissioner
B. A. Magnan, Commissioner

on May 7, 2021

ORDER

WHEREAS:

- A. On June 25, 2020, the British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) a forbearance agreement between BC Hydro and Cayoose Creek Limited Partnership relating to the Walden North run-of-river hydroelectric project, pursuant to section 71 of the *Utilities Commission Act* (UCA);
- B. In August 1990, BC Hydro entered into a 20-year Electricity Purchase Agreement (EPA) to purchase energy from the Walden North run-of-river hydroelectric project (Walden North EPA). The Walden North EPA contained a provision allowing the contract to continue from year-to-year unless terminated by either party after providing six months' notice. In November 1990, BC Hydro entered into an associated agreement with the Walden North Independent Power Producer (IPP) respecting the diversion of water from the hydroelectric project (Diversion Agreement);
- C. By Ministerial Order M-22-9801 dated August 28, 1998, any EPA agreed upon by BC Hydro or any persons selling electricity to BC Hydro on or before March 31, 2000, is exempt from section 71 of the UCA. The threshold date for this exemption was subsequently updated to September 30, 2001, by Amending Ministerial Order M-22-9801-A1;
- D. By Order G-61-12, dated May 17, 2012, the BCUC established the Rules for Energy Supply Contracts (ESCs) for Electricity (ESC Rules). The ESC Rules are intended to facilitate the BCUC's review of ESCs and proposed ESCs for electricity;
- E. Effective April 1, 2014, BC Hydro entered into an agreement to forbear from exercising its right to terminate the Walden North EPA for a period of time (Forbearance Agreement);

- F. By Order G-148-20, dated June 10, 2020, the BCUC determined that the Forbearance Agreement is an amendment to the Walden North EPA and should have been filed with the BCUC pursuant to section 71 of the UCA. The BCUC directed BC Hydro to file the Forbearance Agreement by June 25, 2020, and ordered that the un-redacted version of the Forbearance Agreement would be held confidentially due to its commercially sensitive nature;
- G. By Orders G-268-20, G-3-21, and G-48-21, the BCUC established and furthered the written hearing process and regulatory timetable to review the Filing. The regulatory timetable included intervener registration, two rounds of BCUC and intervener information requests, and submission of final and reply arguments;
- H. By November 24, 2020, the BC Sustainable Energy Association (BCSEA), Commercial Energy Consumers Association of British Columbia (the CEC), and British Columbia Old Age Pensioners' Organization et al. (BCOAPO) registered as interveners;
- I. By March 31, 2021, the BCUC received Final Arguments from BC Hydro, BCSEA, the CEC, and BCOAPO. On April 9, 2021, BC Hydro submitted that it would not be filing a reply argument; and
- J. The BCUC has completed its review of the Filing and the evidence and submissions by all parties in this proceeding and finds that the following determinations are warranted.

NOW THEREFORE pursuant to section 71 of the UCA, the BCUC orders as follows:

1. The Forbearance Agreement is accepted for filing.
2. BC Hydro is directed to perform an analysis of alternative means of meeting its obligations to the Department of Fisheries and Oceans in the absence of the Diversion Agreement and to submit this analysis to the BCUC for review as part of BC Hydro's next long-term resource plan.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of May 2021.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

British Columbia Hydro and Power Authority
Walden North Hydro Forbearance Agreement

Reasons for Decision

May 7, 2021

Before:

R. I. Mason, Panel Chair
C. Brewer, Commissioner
B. A. Magnan, Commissioner

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1.0 Executive Summary

On June 25, 2020, pursuant to section 71 of the *Utilities Commission Act (UCA)*, the British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) a forbearance agreement between BC Hydro and Cayoose Creek Limited Partnership (Forbearance Agreement) relating to the Walden North run-of-river hydroelectric facility (Walden North Project).

The Walden North Project was awarded an electricity purchase agreement (EPA) in August 1990 (Walden North EPA). The Walden North EPA had an initial 20-year term with an evergreen provision allowing the contract to continue from year-to-year unless terminated by either party after providing six months' notice. In the Forbearance Agreement, effective April 1, 2014, BC Hydro agrees to forbear from exercising its termination rights under the Walden North EPA for a certain period of time in return for payments that offset the cost of the energy purchased.

The Walden North EPA is exempt from filing under section 71 of the UCA pursuant to Ministerial Orders M-22-9801 and M-22-9801-A1. Further, the BCUC may not disallow the recovery in rates of the Walden North EPA pursuant to Direction No. 8, approved by Order in Council No. 051, issued February 14, 2019.

BC Hydro executed an agreement with the Walden North Independent Power Producer (IPP) in 1990 (Diversion Agreement), which continues so long as the Walden North EPA remains in effect. The Diversion Agreement provides BC Hydro with 24.4 gigawatt hours (GWh) of additional heritage generation each year at its Seton generating station and helps to maintain an appropriate mix of Seton River and Cayoosh Creek water below the Cayoosh confluence, which is a condition of BC Hydro's Department of Fisheries and Oceans (DFO) *Fisheries Act* Authorization.

Since BC Hydro has a surplus of energy at present, it appears to the Panel that BC Hydro does not need the energy it is currently purchasing from the Walden North Project, and that BC Hydro's reasons for not terminating the Walden North EPA relate primarily to the benefits it receives under the Diversion Agreement, which would terminate if the Walden North EPA were to be terminated. Since BC Hydro has not explored alternatives to the Diversion Agreement, the Panel is not convinced that the benefits of the Diversion Agreement outweigh the cost of buying, apparently unnecessarily, energy under the Walden North EPA, a cost to ratepayers which the BCUC is unable to review pursuant to Direction No. 8.

Notwithstanding this concern, the Panel finds that the Walden North EPA as amended by the Forbearance Agreement is in the public interest because it reduces the cost of the Walden North EPA for current and future ratepayers and supports BC's energy objective of keeping rates competitive. The Panel accepts the Forbearance Agreement for filing.

The Panel does not consider it appropriate for the BCUC in future to be placed in the position of accepting the Walden North Project as a source of energy for BC Hydro merely because BC Hydro has not investigated alternatives to the Diversion Agreement. The Panel directs BC Hydro to perform an analysis of alternative means of meeting its obligations to the DFO in the absence of the Diversion Agreement and to submit this analysis to the BCUC for review as part of BC Hydro's next long-term resource plan.

2.0 Background and Context

2.1 Approval Sought

On June 25, 2020, pursuant to section 71 of the *Utilities Commission Act* (UCA), the British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) a forbearance agreement between BC Hydro and Cayoose Creek Limited Partnership relating to the Walden North run-of-river hydroelectric facility.

2.2 Walden North Project and Associated Agreements

The Walden North Project

The Walden North Project is a run-of-river hydroelectric facility located near the confluence of Cayoosh Creek and the Seton River, approximately five kilometers west of Lillooet, BC and downstream of BC Hydro's Seton Dam. The facility has an installed capacity of 16 megawatts and produces an average of 33.8 gigawatt hours (GWh) of electricity per year.¹ Since 2016, the Walden North Project has been owned by Cayoose Creek Power Limited Partnership (the Walden North IPP), which is comprised of the Cayoose Creek Development Corporation (49%) and Innergex (51%).^{2,3}

The Walden North Project was awarded an electricity purchase agreement (EPA) in August 1990 under the 1989 Request for Proposals (Walden North EPA). The Walden North EPA had an initial 20-year term with an evergreen provision allowing the contract to continue from year-to-year unless terminated by either party after providing six months' notice.⁴

The Diversion Agreement

The Walden North Project was designed to direct water from the facility's tailrace into BC Hydro's Cayoosh Diversion Tunnel and into Seton Lake. This diversion provides BC Hydro with 24.4 GWh of additional heritage generation each year at its Seton generating station and facilitates salmon migration to spawning areas in the Bridge River system. Specifically, water diverted from the Walden North Project helps to maintain an appropriate mix of Seton River and Cayoosh Creek water below the Cayoosh confluence, which is a condition of BC Hydro's Department of Fisheries and Oceans (DFO) *Fisheries Act* Authorization.⁵

BC Hydro executed an agreement with the Walden North IPP in 1990 (Diversion Agreement), which sets out the rights and obligations of each party regarding the design, construction, operation, and maintenance of the Walden North Project diversion facilities. The Diversion Agreement continues so long as the Walden North EPA remains in effect.⁶

¹ Exhibit B-1, p. 3.

² Prior to 2016, the Walden North Project was owned by ESI Power-Walden Corporation Ltd. Exhibit B-1, p. 1 n.1. For simplicity, the owner of the Walden North Project is referred to as the "Walden North IPP" throughout these reasons.

³ Exhibit A2-1, p. 7.

⁴ Exhibit B-1, p. 4.

⁵ *Ibid.*, pp. 3–4; Exhibit B-7, BCOAPO IR 2.5.1.

⁶ *Ibid.*

The Forbearance Agreement

In 2012, in anticipation of the expiry of the initial 20-year term of the Walden North EPA, BC Hydro and the Walden North IPP explored the potential for an EPA renewal. These discussions were not successful as the parties were unable to reach an agreement on pricing. Instead, BC Hydro and the Walden North IPP executed an agreement, effective April 1, 2014, wherein BC Hydro agreed to forbear from exercising its termination rights under the Walden North EPA for a certain period of time in return for payments that offset the cost of the energy purchased (Forbearance Agreement).⁷

BC Hydro did not file the Forbearance Agreement with the BCUC at that time. Rather, in May 2018, BC Hydro filed a Walden North EPA Renewal with the BCUC pursuant to section 71 of the UCA. This filing was made conjointly with two other EPA renewals, each with a 40-year term (the EPA Renewals). The Forbearance Agreement was included as an attachment to BC Hydro's EPA renewal filing.⁸

In the Reasons for Decision attached as Appendix A to Order G-278-19, the BCUC acknowledged the benefits the EPA Renewals provided to their respective local and Indigenous communities but expressed concerns with the 40-year term. The BCUC concluded that the level of market and price exposure placed on ratepayers under the EPA Renewals was problematic, particularly given the absence of an updated and approved Integrated Resource Plan (IRP).⁹ The BCUC adjourned the proceeding to allow BC Hydro to restructure the EPA Renewals to terms not exceeding three years in length, as the BCUC considered it reasonable "to accept these EPA renewals until the conclusion of the IRP proceeding as they could potentially provide BC Hydro with options for long term sources of energy should BC Hydro be able to demonstrate the need within the upcoming IRP."¹⁰

On February 21, 2020, BC Hydro informed the BCUC that it was terminating the Walden North EPA Renewal, effective March 22, 2020. As a result, the Walden North EPA and the Forbearance Agreement would continue in effect.¹¹

Following further regulatory process, on June 10, 2020, the BCUC issued Order G-148-20 in the EPA Renewals proceeding. Therein, the BCUC directed BC Hydro to file the Forbearance Agreement with the BCUC pursuant to section 71 of the UCA by no later than June 25, 2020. The BCUC also directed that it would hold confidential the un-redacted copy of the Forbearance Agreement due to its commercially sensitive nature. In the Reasons for Decision attached as Appendix A to Order G-148-20 the BCUC stated that "[t]he Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price." Further, the Panel determined that the Forbearance Agreement was an amendment to the Walden North EPA and, as such, should have been filed with the BCUC in accordance with section 71.¹²

⁷ Exhibit B-1, pp. 4–5.

⁸ British Columbia Hydro and Power Authority Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro proceeding.

⁹ BC Hydro's most recent IRP was approved in 2013 (2013 IRP) by the government of British Columbia. In accordance with Order G-28-21, and pursuant to section 44.1 of the UCA, BC Hydro is to file its next long-term resource plan with the BCUC by no later than December 31, 2021. See BCUC Order G-28-21, dated January 27, 2021.

¹⁰ Exhibit B-5, BCSEA IR 1.1.1; BCUC Order G-278-19, Appendix A, pp. 14–15.

¹¹ *Ibid.*; BCUC Order G-148-20, Appendix A, p. 2.

¹² BCUC Order G-148-20, Appendix A, p. 6.

2.3 Legislative Framework

The review of an EPA is conducted pursuant to section 71 of the UCA and the Rules for Energy Supply Contracts (ESC) for Electricity (ESC Rules). The ESC Rules were established by the BCUC by Order G-61-12, dated May 17, 2012.

Section 71(2) states:

The commission may make an order under subsection (3) if the commission, after a hearing, determines that an energy supply contract to which subsection (1) applies is not in the public interest.

Section 71(2.21) states:

In determining under subsection (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

- (a) British Columbia's energy objectives,
- (b) the most recent of the following documents:
 - (i) an integrated resource plan approved under section 4 of the *Clean Energy Act* before the repeal of that section;
 - (ii) a long-term resource plan filed by the authority under section 44.1 of this 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).

A list of British Columbia's energy objectives can be found under Section 2 of the *Clean Energy Act*.¹³

Ministerial Order M-22-9801, dated August 28, 1998, exempts any EPAs agreed upon by BC Hydro or any persons selling electricity to BC Hydro on or before March 31, 2000, from section 71 of the UCA. The threshold date for this exemption was subsequently revised to September 30, 2001, by Amending Ministerial Order M-22-9801-A1.

¹³ *Clean Energy Act*, SBC 2010, Chapter 22, section 2, retrieved from http://www.bclaws.ca/civix/document/id/complete/statreg/10022_01#section2

Order in Council No. 051, issued February 14, 2019, includes Direction No. 8 to the BCUC. Section 4(1)(b) of Direction No. 8 states:

In setting rates for the authority, the commission must not disallow for any reason the recovery in rates of the balance of the authority's regulatory accounts as at March 31, 2019 and the costs incurred by the authority with respect to the following:

...

b) energy supply contracts entered into before April 1, 2016.¹⁴

2.4 Regulatory Process and Participants

By Order G-268-20, dated October 26, 2020, the BCUC established the written hearing process and the initial regulatory timetable to review the Filing. The regulatory timetable was subsequently amended by Orders G-3-21 and G-48-21.

The regulatory review process consisted of:

- Intervener registration;
- One round of BCUC information requests (IR) and two rounds of intervener IR; and
- Written final and reply arguments.

Three interveners registered in the proceeding: the BC Sustainable Energy Association (BCSEA); the Commercial Energy Consumers Association of British Columbia (the CEC); and the British Columbia Old Age Pensioners' Organization et al. (BCOAPO).

BC Hydro filed its Final Argument on March 24, 2021, and interveners filed their Final Arguments by March 31, 2021. On April 9, 2021, BC Hydro submitted that it would not be filing a reply argument.

3.0 Forbearance Agreement

In accordance with BCUC Order G-148-20, BC Hydro filed the Walden North Forbearance Agreement with the BCUC pursuant to section 71 of the UCA. The BCUC must now determine whether or not to accept the Forbearance Agreement for filing.

BC Hydro position

Regarding the scope of the BCUC's review, BC Hydro submits that the matter at issue in this proceeding is not the underlying Walden North EPA, but the Forbearance Agreement only, which the BCUC has determined is an energy supply contract within the meaning of section 68 of the UCA. BC Hydro adds that the Walden North EPA is exempt from the section 71 filing requirement pursuant to Minister's Order M-22-9801-A1, and that the BCUC

¹⁴ Order in Council No. 051 retrieved from: https://www.bclaws.gov.bc.ca/civix/document/id/oic/arc_oic/0051_2019

must not disallow for any reason the recovery in rates of the costs incurred by BC Hydro under the Walden North EPA pursuant to section 4(1)(b) of Direction No. 8 to the BCUC.¹⁵

BC Hydro submits that the Forbearance Agreement does not extend the term of the Walden North EPA nor of the Diversion Agreement. Specifically:¹⁶

The Walden North 1990 EPA has an evergreen provision providing that the contract continues from year-to-year unless terminated by either party after providing six months' notice. The Walden North 1990 EPA did not terminate in 2014, and it remains in effect at this time pursuant to its terms and specifically the evergreen provision. The Walden North 1990 EPA does not terminate in the absence of the Forbearance Agreement. The Diversion Agreement does not terminate in the absence of the Forbearance Agreement; it terminates in the absence of the EPA.

BC Hydro adds that it was not obligated in 2014 to exercise its termination rights under the Walden North EPA, and the agreement to forbear from exercising those rights "cannot be implied to mean that BC Hydro would have terminated the [Walden North] EPA absent the Forbearance Agreement." Further, BC Hydro submits that it presently has no plans to issue a termination notice for the Walden North EPA.¹⁷

BC Hydro submits that, of the factors and criteria to be considered under section 71 (2.21) of the UCA, the only ones applicable to consideration of the Forbearance Agreement are:¹⁸

- The interests of both current and future BC Hydro customers - BC Hydro believes that the Forbearance Agreement is in the interests of both current and future BC Hydro customers because BC Hydro does not incur any costs under the Forbearance Agreement, and the agreement reduces the total costs otherwise payable to [the Walden North IPP] by BC Hydro and its ratepayers by way of an offset against amounts invoiced to BC Hydro under [the Walden North EPA]; and
- British Columbia's energy objective (f), "to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above.

BC Hydro concludes that in the absence of the Forbearance Agreement, the Walden North EPA would continue in full force and BC Hydro would continue to recover its costs associated with the EPA in rates, however without the benefit of the offsetting forbearance payment. It submits that the net effect of the Forbearance Agreement is that BC Hydro outlays less money overall for the same energy than it would without the Forbearance Agreement, and therefore the Forbearance Agreement is in the interests of both current and future BC Hydro customers.

¹⁵ BC Hydro Final Argument, pp. 6–7.

¹⁶ *Ibid.*, p. 9.

¹⁷ *Ibid.*, pp. 9–10.

¹⁸ *Ibid.*, p. 10.

Intervener positions

All three interveners, BCSEA, BCOAPO and the CEC, submit that the BCUC should accept the Forbearance Agreement for filing under section 71 of the UCA.

BCSEA submits that the matter at hand is whether the Forbearance Agreement should be filed as an energy supply agreement under section 71 of the UCA, and agrees with BC Hydro that the BCUC should review the Forbearance Agreement as a stand-alone energy supply contract. BCSEA submits that the focus of the BCUC's review should be on whether energy procured under the Forbearance Agreement is cost effective in the context of the drivers and policies of British Columbia's energy objectives and the most recent IRP. BCSEA agrees with BC Hydro that the Forbearance Agreement does not extend the term of the Walden North EPA.¹⁹ BCSEA also agrees with BC Hydro that the Forbearance Agreement is not inconsistent with the 2013 IRP, and views that the continuation of the Diversion Agreement is desirable as it avoids the need for an alternative method to feed water into BC Hydro's diversion tunnel.²⁰

BCSEA submits that the Forbearance Agreement is in the interests of current and future BC Hydro ratepayers and is consistent with the BC energy objective to keep BC Hydro's rates competitive, noting that BC Hydro does not incur any costs under the Forbearance Agreement but rather the Forbearance Agreement reduces the total costs otherwise payable under the Walden North EPA.²¹

BCOAPO agrees with BC Hydro that the BCUC's powers with respect to an amendment to an energy supply contract under section 71 are limited to examining the amending contract filed, noting that in the case of the Forbearance Agreement this is reinforced by the fact that the Walden North EPA is exempt from the section 71 filing requirement.²²

BCOAPO submits that the Forbearance Agreement changes the termination provisions of the Walden North EPA, limiting BC Hydro's flexibility to terminate the EPA and to consider other alternatives for a specified period of time, and also changes the levelized price paid for energy by BC Hydro under the Walden North EPA. As a result, BCOAPO submits that, in addition to the two considerations from section 71 (2.21) of the UCA identified by BC Hydro, the BCUC should also consider:²³

- The quantity, availability and price of the energy to be supplied under the contract; and
- The quantity, availability and price of any other form of energy that could be used instead of the energy to be supplied under the contract.

BCOAPO submits it is a critical assumption to the conclusion that the Forbearance Agreement was and is cost-effective that BC Hydro had and has no plans to terminate the Walden North EPA, regardless of the alternative supply options available. BCOAPO notes that BC Hydro, in its response to BCUC IR 1.11.2, "specifically avoids any discussion of the cost-effectiveness of the Forbearance Agreement relative to a scenario where the

¹⁹ BCSEA Final Agreement, pp. 7–8.

²⁰ *Ibid.*, pp. 9–10.

²¹ *Ibid.*, p. 10.

²² BCOAPO Final Argument, p. 5.

²³ *Ibid.*, p. 6.

Forbearance Agreement is determined to not be in the public interest and is declared unenforceable as of January 1, 2021, and BC Hydro chooses to immediately issue a termination notice under the Walden North EPA.”²⁴

BCOAPO acknowledges that, assuming BC Hydro had/has no plans to terminate the Walden North EPA, the Forbearance Agreement is cost effective and satisfies the relevant criteria set out in section 71 of the UCA. However, BCOAPO submits that BC Hydro’s plans not to terminate the Walden North EPA were/are based on the need to maintain the Diversion Agreement, which continues only so long as the Walden North EPA is in effect. BCOAPO finds it troubling that BC Hydro’s plans not to terminate the Walden North EPA are not because it is the most cost-effective alternative, but rather are due to the fact that BC Hydro appears to have no viable alternatives to meeting its obligations to the DFO other than to continue the Diversion Agreement.²⁵

BCOAPO recommends the Panel accept the Forbearance Agreement for filing under section 71 of the UCA, subject to its concerns as set out above.²⁶

The CEC agrees with BC Hydro that the only two factors from section 71 (2.21) of the UCA that are relevant to the BCUC’s assessment of the Forbearance Agreement are:²⁷

1. The interests of persons in British Columbia who receive or may receive service from the authority; and
2. British Columbia’s energy objectives, and specifically objective 2(f) of the *Clean Energy Act*, being ensuring the authority’s rates remain among the most competitive of rates charged by public utilities in North America.

The CEC submits that the Forbearance Agreement helps BC Hydro reduce costs, as amounts payable by BC Hydro under the terms of the Walden North EPA are offset by payments under the terms of the Forbearance Agreement. The CEC adds that the Forbearance Agreement ensures that the benefits to BC Hydro under the Diversion Agreement are maintained.

The CEC submits that the benefits to BC Hydro of the Diversion Agreement were worth maintaining in any event, regardless of the operation of the Walden North EPA, noting that there is nothing on the record in this proceeding regarding the feasibility of any alternatives.²⁸

BC Hydro submitted that it would not be filing a reply argument, since all the interveners supported BCUC acceptance of the Forbearance Agreement.²⁹

Panel determination

Pursuant to section 71 of the UCA, the Panel accepts the Forbearance Agreement for filing.

²⁴ BCOAPO Final Argument, p. 7.

²⁵ Ibid.

²⁶ Ibid., p. 8.

²⁷ CEC Final Argument, p. 6.

²⁸ Ibid., p. 4.

²⁹ BC Hydro Reply, p. 1.

The Panel agrees with BC Hydro that the matter at issue in this proceeding is whether to accept the Forbearance Agreement for filing or not. The BCUC has no jurisdiction over the Walden North EPA as this was exempted from BCUC oversight by Ministerial Order M-22-9801 and by Direction No. 8. Regardless of whether or not the Panel accepts the Forbearance Agreement, the Walden North EPA and the recoverability of its costs from ratepayers are unaffected.

There is a presumption in section 71 of the UCA that an energy supply contract is in the public interest. The BCUC may not accept an energy supply contract if, after a hearing, it determines the energy supply contract is not in the public interest, and pursuant to section 68 the term “energy supply contract” includes an amendment of an energy supply contract. Taken together, the Panel interprets this to mean it may not accept the Forbearance Agreement if it determines the Walden North EPA as amended by the Forbearance Agreement (Amended Walden North EPA) is not in the public interest.

If, after a hearing, the BCUC determines the Amended Walden North EPA is not in the public interest, then pursuant to sections 71 (3) and (4) of the UCA the BCUC may by order declare the Forbearance Agreement unenforceable in whole or in part, and may order that the rights accrued before the date of the order be preserved. This would negate the effect of the Forbearance Agreement from the date decided by the BCUC, leaving BC Hydro operating under the terms of the Walden North EPA without the amendments contemplated in the Forbearance Agreement.

Therefore, the Panel’s consideration of whether to accept the Forbearance Agreement is not an examination solely of the terms of the Forbearance Agreement in isolation. Rather, it is a comparison between the current situation with the Amended Walden North EPA in force and the situation if BC Hydro were to revert to the terms of the Walden North EPA without the amendments made by the Forbearance Agreement.

Section 71 (2.21) of the UCA sets out matters which the Panel must consider in determining whether the Amended Walden North EPA is in the public interest. The Panel has considered all items set out in section 71 (2.21), and agrees with BC Hydro that the interests of both current and future BC Hydro customers and BC’s energy objective “to ensure the authority’s [BC Hydro’s] rates remain among the most competitive of rates charged by public utilities in North America” are relevant. No interveners disputed BC Hydro’s position in this regard.

The Panel agrees with BC Hydro that the Amended Walden North EPA is in the interests of BC Hydro’s current and future ratepayers and supports BC’s energy objective of keeping BC Hydro’s rate competitive, at least to the extent that it reduces the cost of the energy BC Hydro purchases under the Walden North EPA compared to purchasing the same energy under the unamended Walden North EPA.

The Panel also agrees with BCOAPO that the quantity, availability and price of the energy to be supplied under the Amended Walden North EPA are relevant considerations. Given that the Forbearance Agreement reduces the price of the energy delivered under the Walden North EPA and does not change the availability or quantity of the energy supplied, the Panel considers the Amended Walden North EPA is consistent with the public interest with respect to these factors.

However, the Panel does not agree with BCOAPO that the quantity, availability and price of other forms of energy that could be used instead of the energy to be supplied under the Walden North EPA are relevant considerations in these circumstances. As explained above, the choices faced by the Panel are between the Amended Walden North EPA and the Walden North EPA. Because the BCUC has no jurisdiction over the Walden North EPA, there is no decision that could be made by this Panel which would make the Walden North EPA unenforceable under section 71 of the UCA, so there is no merit in considering alternatives in this proceeding.

That said, as BCOAPO argues, BC Hydro's conclusion that the Forbearance Agreement is cost-effective for ratepayers relies on the assumption that it would not terminate the Walden North EPA, which BC Hydro would be entitled to do in the absence of the Forbearance Agreement. Since BC Hydro has a surplus of energy at present,³⁰ it appears to the Panel that BC Hydro does not need the energy it is currently purchasing from the Walden North Project, and that BC Hydro's reasons for not terminating the Walden North EPA relate primarily to the benefits it receives under the Diversion Agreement, which would terminate if the Walden North EPA were to be terminated.

The Panel agrees that the Diversion Agreement provides benefits to BC Hydro, specifically 24.4 GWh of additional generation from other BC Hydro facilities and the maintenance of the dilution ratio of Cayoosh Creek to Seton Creek water below the Cayoosh Confluence, the latter being a requirement of Fisheries Act Authorization from the DFO.³¹ However, since BC Hydro has not explored alternatives to the Diversion Agreement,³² the Panel is not convinced that the benefits of the Diversion Agreement outweigh the cost of buying, possibly unnecessarily, energy under the Walden North EPA, a cost to ratepayers which the BCUC is unable to review pursuant to Direction No. 8.

Notwithstanding this concern, the Panel finds that the Amended Walden North EPA is in the public interest because it reduces the cost of the Walden North EPA for current and future ratepayers and supports BC's energy objective of keeping rates competitive.

4.0 Diversion Agreement

The Panel does not consider it appropriate for the BCUC in future to be placed in the position of accepting the Walden North Project as a source of energy for BC Hydro merely because BC Hydro has not investigated alternatives to the Diversion Agreement, which terminates if the Walden North EPA is terminated. BC Hydro has been ordered to submit its long-term resource plan by December 31, 2021,³³ which the Panel expects will include analysis of BC Hydro's alternative sources of energy and their respective costs and benefits. In order to ascertain whether there are alternatives to the Diversion Agreement that might enable BC Hydro to evaluate the Walden North EPA on the merits of the quantity, availability and price of the energy to be supplied, **the Panel directs BC Hydro to perform an analysis of alternative means of meeting its obligations to the DFO in the absence of the Diversion Agreement and to submit this analysis to the BCUC for review as part of BC Hydro's next long-term resource plan.**

³⁰ Exhibit B-3, BCUC IR 1.4.3.

³¹ Exhibit B-7, BCOAPO IR 2.5.1.

³² Exhibit B-3, BCUC IR 1.15.4.

³³ BCUC Order G-28-21.