

William J. Andrews

Barrister & Solicitor

1958 Parkside Lane, North Vancouver, BC, Canada, V7G 1X5
Phone: 604-924-0921, Fax: 604-924-0918, Email: wjandrews@shaw.ca

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British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
Attn: Mr. Robert J. Pellatt, Secretary

BY EMAIL

Dear Sir:

**Re: BCUC Project No. 3698388 / BCUC Letter L-28-05,
BC Hydro 2005 Resource Expenditures and Acquisitions Report (2005 REAP)**

This is on behalf of the intervenors B.C. Sustainable Energy Association and the Sierra Club of Canada (BC Chapter) [BCSEA, *et al*].

This letter is in response to the Commission's invitation¹ to file argument on the question of the Commission's jurisdiction to direct the filing of a pro forma Electricity Purchase Agreement (EPA) by BC Hydro. We have had the opportunity to review an August 29, 2004, letter from BC Hydro (Exhibit B-14) and an August 31, 2005, letter from Commission Counsel (Exhibit A-9). Shortly before finalizing this letter we also received a copy of a September 2, 2005, letter from counsel for IPPBC which apparently withdraws IPPBC's request for the Commission to order BC Hydro to file a pro forma EPA in this hearing.

BCSEA, *et al* reiterate the position they took at the August 17, 2005, Procedural Conference² that that it would be highly desirable for BC Hydro to file a pro forma EPA (and to file the proposed evaluation methodology and criteria) in this proceeding. That information concerns issues that will have to be dealt with by the Commission, whether in this proceeding or in a subsequent proceeding.

Regarding the Commission's jurisdiction to direct BC Hydro to file a pro forma EPA in this proceeding, BCSEA, *et al* offer the following comments:

1. A significant distinction should be made between information filed as *evidence* in the proceeding and information filed as part of a "*plan*" filed pursuant to s.45(6.1) of the *Utilities Commission Act*.
2. If the question was whether the Commission has authority to require BC Hydro to file a pro forma EPA as (mere) *evidence* in this proceeding, then the answer would lie in the Commission's power to compel witnesses and to order disclosure. These powers are broad, being limited mainly by considerations of admissibility and relevance.

¹ Letter L69-05, BCH 2005 REAP Exhibit A-9, August 22, 2005, pp.2-3.

² T1:45.

3. However, the Commission's August 22, 2005, letter, as well as the August 29 and August 31 letters from BC Hydro and Commission Counsel respectively, characterize the issue as the Commission's jurisdiction to require Hydro to file a pro forma EPA *for approval* and/or as a component of the "plan" filed by BC Hydro pursuant to s.45(6.1). This jurisdictional question is complicated, as it involves the interplay between the 1996 "Goldie Decision"³ and the subsequently enacted wording of s.45(6.1) and s.45(6.2) of the Act. In addition, the jurisdictional question is made more difficult by the absence of clarity as to whether the requested order contemplates that the pro forma EPA would be filed necessarily for approval or whether it would be filed as a component of the s.45 plans without predetermination of whether the pro forma EPA is a plan component that requires approval under s.45(6.2).
4. In any event, in light of IPPBC's apparent withdrawal of its request for an order (in whatever terms) the question of the Commission's jurisdiction to grant such an order is moot. Accordingly, BCSEA, *et al* respectfully submit that the Commission should decline to make a decision regarding jurisdiction.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



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³ *British Columbia Hydro and Power Authority v. British Columbia Utilities Commission* (1996), 20 B.C.L.R. (3d) 106.