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**VIA E-MAIL**

[Michael.walsh@brookfieldpower.com](mailto:Michael.walsh@brookfieldpower.com)

March 24, 2009

Mr. Michael Walsh  
Brookfield Renewable Power Inc.  
Royal Centre, PO Box 11179  
#2050-1055 West Georgia Street  
Vancouver BC V6E 3R5

Dear Mr. Walsh:

Re: British Columbia Hydro and Power Authority ("BC Hydro")  
2008 Long Term Acquisition Plan ("2008 LTAP")  
BC Hydro's Objection to Comments of Jack Burkom, Director of  
Marketing for Brookfield Renewable Power Inc.

By letter dated March 19, 2009, BC Hydro strongly objects to Brookfield Renewable Power Inc.'s letter dated March 6, 2009 ("Brookfield Letter") forming part of the 2008 LTAP evidentiary record and requests that the Commission strike the Brookfield letter from the 2008 LTAP record. The Commission received the Brookfield letter on March 11, 2009 and posted it on the Commission's 2008 LTAP proceeding website as Exhibit C18-2 on March 13, 2009.

BC Hydro submits that it is prejudiced by the Brookfield letter because it contains a number of unsubstantiated assertions put forward as "evidence" which BC Hydro has been unable to test by either Information Requests or cross-examination. In its March 19, 2009 letter, BC Hydro also particularizes the assertions that it considers have not been substantiated by the evidence. It further submits that permitting an Intervenor to file late evidence where the Applicant, BC Hydro, cannot test such evidence does not accord with the rules of natural justice.

By this letter, the Commission requires Brookfield to file its response to the submissions in BC Hydro's letter by no later than Friday, March 27, 2009, copying BC Hydro and all Registered Intervenors in the 2008 LTAP proceeding. BC Hydro is to file its reply, if any, to the Brookfield submissions by Monday, March 30, 2009.

Following receipt of the submissions, the Commission Panel will determine whether the Brookfield Letter should be struck from the record, either wholly or in part.

Yours truly,

*Original signed by:*

Erica M. Hamilton

cms  
Enclosures (2)

**BC HYDRO – 2008 LTAP**  
**EXHIBIT C18-2**

# **BC Hydro 2008 Long Term Acquisition Plan dated June 12, 2008 ~ Project No. #3698514**

**Comments of**  
**Jack Burkom**  
**Director of Marketing**

**On behalf of**  
**Brookfield Renewable Power Inc. (“Brookfield”)**

**March 6, 2009**



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## **Introduction**

This document was prepared by Jack Burkom. I am Director of Marketing at Brookfield Energy Marketing Inc. (“BEMI”) an affiliated company of Brookfield. I have over 10 years of diversified experience in the North American electricity markets including asset valuation, acquisitions, project management, corporate strategy, power trading, power marketing and structured transactions.

Brookfield is a wholly-owned subsidiary of Brookfield Asset Management Inc., and has over 100 years of experience as an owner, operator and developer of hydroelectric power facilities. Its portfolio includes more than 160 generating facilities with over 4,000 megawatts of capacity, almost all of which is sourced from renewable energy. It also has a 6,500 megawatt development pipeline of hydroelectric and wind projects, which include several projects located in British Columbia. Brookfield’s operations are primarily located in North America and Brazil.

Brookfield manages its power operations’ revenues through a centralized energy marketing platform that is responsible for all physical and financial (forward trading) sales of energy products across North American markets, including electricity, capacity, ancillary services, renewable energy credits and other green power attributes, and certified emission reduction credits. Brookfield has ownership interests in 135MW of hydroelectric generating capacity in British Columbia, including 5 hydro stations located on 5 separate river systems.

Over the past 5 years, Brookfield has made investments exceeding \$3 billion in power generation assets over the past 5 years and intends to continue its growth through a multi-billion dollar investment program over the next 5 years in North and South America, as well as other international markets.

### **1. What is Brookfield’s Electricity Market Experience?**

As part of its growth initiatives, Brookfield has analyzed numerous power markets for investment purposes, and has conducted in-depth long-term price forecasting in a number of jurisdictions.

The markets (system operator) analyzed in depth include:

- Ontario (IESO)
- Alberta (AESO)
- British Columbia
- New Brunswick (NBSO)
- New England (ISO-NE)
- New York (NYISO)
- PJM Interconnection
- Midwest ISO (MISO)
- California (CAISO)
- Texas (ERCOT)
- Brazil (ONS)
- Australia (NEMMCO)
- Peru (COES)

Brookfield has also reviewed the electricity market structure and trends in other jurisdictions, such as:

- Manitoba
- Saskatchewan
- Quebec
- North America's Pacific Northwest
- Louisiana
- Missouri
- Chile
- India
- Turkey
- Colombia
- Western Europe
- Scandinavian countries (NordPool)

These power market analyses are conducted to support investment decisions and determine the long-term value of electricity based on a fundamental analysis of:

- the cost and availability of fuels and other natural resources
- the capital, financing and operating cost of various power generation technologies
- power system needs (available supply and load growth)
- regulatory structure: rate-based (vertically integrated utilities), market-based (partial or full unbundling of activities, competitive markets and de-regulation), bilateral contractual market, etc.
- ownership: state or privately-owned, concentration of ownership, vertical integration

Brookfield's fundamental analysis supports its capital allocation decisions when evaluating acquisition and project development opportunities. Of critical importance in making investment decisions is to determine the confidence level in the market signals obtained through the marketplace regardless of the regulatory structure.

## **2. What is the purpose of Brookfield's filing?**

Brookfield and its affiliates are currently party to over forty renewable electricity purchase agreements. In addition, through our acquisition, marketing and development activities we have had the opportunity to review many other renewable electricity purchase agreements. Based upon this experience and investment in various power markets, our ownership and operating presence in British Columbia and the impact of the British Columbia electricity procurement policies on our future investment decisions in the province, Brookfield wishes to provide input regarding the structure of the British Columbia electricity procurement process.

## **3. Structure of the British Columbia Electricity Market**

The majority of British Columbia's electricity is supplied by government owned BC Hydro. Originally a vertically integrated utility, BC Hydro's generation and transmission businesses were separated in 1996 to comply with FERC Order 888. Currently, the BCTC operates BC Hydro's transmission network and works to provide open access to that transmission network to all registered market participants. BC Hydro continues to own and operate approximately 11,000MW of existing, largely hydroelectric, generation. In addition to BC Hydro and the BCTC, Fortis BC operates a vertically integrated electric utility in the south central portion of the province. While the market restructuring in 1996 created open access to the transmission network, there is still limited competition on the generation side of the business in British Columbia as a result of the monopsony position of BC Hydro. While operating control of the transmission assets has been removed from BC Hydro, the generation and distribution functions all still reside under the umbrella of one owner/operator: BC Hydro.

BC Hydro began issuing Requests for Proposals ("RFPs") for new electric generation to the independent power producers in the 1980s. Unfortunately, the attrition rate for participants in these calls has been well over 50% and has resulted in less new generation getting built than desired.

While British Columbia has traditionally been a net exporter of energy, the province has been increasingly importing energy into the province since 2004 and currently relies on imports for

approximately 10% of the total annual load of the province. As a result of this growing supply gap, the government of British Columbia released the BC Energy Plan in February of 2007. This Energy Plan mandates that BC Hydro must produce and acquire “an additional supply of insurance power beyond the projected increases in demand”<sup>1</sup>.

#### **4. Potential Perceived BC Hydro Conflict of Interest**

In November 2002, the BC government presented a comprehensive, long term energy plan. One explicit goal of this plan was to increase private sector opportunities in the energy sector. Specifically, the plan stated “independent power producers (“IPPs”) will develop new generation, with BC Hydro’s role limited to undertaking efficiency improvements at existing facilities”<sup>2</sup>. Since that time, the government of BC has mandated BC Hydro to begin evaluating the development of a large scale hydroelectric generating station at Site C in Northern British Columbia. Brookfield believes that the government has created a situation where BC Hydro could be perceived as having a conflict of interest in their now concurrent roles as buyer, developer and procurer of energy and capacity. Since the distribution and generation of energy is still largely managed under the monopsonistic control of BC Hydro, BC Hydro may not be perceived to be an independent market participant. The potential competing professional interests of BC Hydro as procurement manager as well as project developer may make it exceedingly difficult for BC Hydro to perform their duties impartially.

Objective #26 of the BC Energy Plan states: “Energy procurement plays a critical role in reaching Government’s self-sufficiency objective, as well as meeting the Government’s objectives for competitive rates, clean or renewable electricity, the development of a vibrant and competitive IPP sector and other fiscal and provincial policy objectives. As such, it is important that all parties.... are satisfied that the approach used by BC Hydro, and the terms and conditions in BC Hydro’s power purchase contracts, meet the objectives set out in this policy”<sup>3</sup>. If energy procurement plays a critical role in reaching the Government’s self-sufficiency objective then it is imperative that the government establish an independent and transparent entity to perform the procurement role in the province. As the BC Government correctly noted in its 2002 Energy Plan, “to function properly, competitive

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<sup>1</sup> [http://www.energyplan.gov.bc.ca/PDF/BC\\_Energy\\_Plan.pdf](http://www.energyplan.gov.bc.ca/PDF/BC_Energy_Plan.pdf) page 10

<sup>2</sup> [http://www.gov.bc.ca/empr/down/energy\\_for\\_our\\_future\\_sept\\_27.pdf](http://www.gov.bc.ca/empr/down/energy_for_our_future_sept_27.pdf) page 9

<sup>3</sup> [http://www.energyplan.gov.bc.ca/PDF/BC\\_Energy\\_Plan\\_Electricity.pdf](http://www.energyplan.gov.bc.ca/PDF/BC_Energy_Plan_Electricity.pdf) page 8

markets require many buyers and sellers. Despite the recent growth in private power, the BC market is still dominated by a large Crown corporation”<sup>4</sup>.

It is important to note that there need not have occurred any inappropriate act for a conflict to exist. The simple appearance of conflict can undermine confidence. In this instance the conflict serves to undermine confidence in the process as well as the market signals that drive investment decisions for IPPs in British Columbia. An analysis of the recent Clean Power Call RFP issued June 11, 2008 reveals a number of areas where a conflict of interest could be perceived:

1. Section 20 (General Terms and Conditions) of the Clean Power Call RFP states that: “each Proponent represents and warrants that its Proposal has been prepared without collusion with any other Proponent, and in particular the price(s), if any, and other elements of its Proposal have been arrived at independently”<sup>5</sup>. While all IPP Proponents are restricted from reviewing or discussing their projects with other Proponents, BC Hydro will have complete pricing information on every proposed project in the province. This cost and pricing information would certainly be of interest to BC Hydro as they proceed with their development efforts at Site C.
2. Bid submission for the Clean Power Call is November 25, 2008. However, Proponents will not be notified of selection for final contract negotiations until June, 2009. At that point, proposals will be subject to BCUC deliberations which could last up to an additional 150 days. Consequently, the time between bid submission and final contract execution could be up to a year. This extraordinary time lag makes it extremely difficult to finalize construction costs as well as financing and hence serves to drive up bid prices and hence costs to ratepayers. A higher bid price in the Clean Power Call RFP may appear to make other BC Hydro development projects look relatively better than what is proposed in response to the RFP.
3. Most renewable power projects have some level of intermittent production as a result of the uncertain renewable resource that powers the associated generators. As such, renewable power developers across the world are accustomed to living with the volume risk associated with developing, financing, constructing and operating a renewable generating project. The

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<sup>4</sup> [http://www.gov.bc.ca/empr/down/energy\\_for\\_our\\_future\\_sept\\_27.pdf](http://www.gov.bc.ca/empr/down/energy_for_our_future_sept_27.pdf) page 16

<sup>5</sup> BC Hydro Clean Power Call RFP dated June 11, 2008 page 19

BC Hydro Clean Power Call is no different in this respect as the Proponent must wear the production or volume risk associated with the project. However, BC Hydro has introduced two non-standard commercial risks over and above those that would be considered normal for a renewable electricity purchase agreement; non-firm energy pricing and firm energy delivery shortfall liquidated damages. Since intermittent renewable resources have little to no control over their fuel resource these two punitive contract terms serve only to increase the bid price of proposals and hence the cost to taxpayers. The energy produced by the projects and ultimately consumed in the province is not affected by these additional contract costs. The only impact is to increase the risk to the project developer. Again, these risks may lead to higher bid prices in the Clean Power Call RFP and have the appearance of making BC Hydro's other development projects look relatively better than what is proposed in response to the RFP.

4. Section 18 of the BC Hydro Clean Power Call RFP states that: "BC Hydro will determine in its sole and unfettered discretion the most cost effective portfolio of Proposals". A large majority of the evaluation criteria are subjective and non-transparent. This subjective, non-transparent evaluation of proposals again creates an appearance of conflict as BC Hydro is in the process of developing a large hydroelectric generating station with storage far from the load center in the lower mainland of British Columbia. Presumably, renewable proposals that exhibit a better "fit" with BC Hydro's other developments will be looked at more favourably than other proposals which do not.

These few terms and conditions from the recent Clean Power Call provide some examples of the manner in which Brookfield believes that the government may have put BC Hydro in an awkward situation where they are subject to conflicts of interest. Having reviewed numerous renewable electricity purchase contracts across North America, Brookfield would note that the majority are straightforward take-or-pay contracts such as the one recently proposed by the Ontario Power Authority in their Renewable Energy Supply III Contract<sup>6</sup>. The BC Hydro Clean Power Call Specimen EPA has the most non-standard and challenging terms and conditions of any renewable electricity contract we have yet come across.

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<sup>6</sup> [http://www.powerauthority.on.ca/GP/Storage/17/1227\\_SETOR1-5337536-v27-cm\\_Ontario\\_Power\\_Authority\\_-\\_Renewable\\_Energy\\_Supply\\_III\\_Contract.pdf](http://www.powerauthority.on.ca/GP/Storage/17/1227_SETOR1-5337536-v27-cm_Ontario_Power_Authority_-_Renewable_Energy_Supply_III_Contract.pdf)

Brookfield would also note that few other jurisdictions in North America suffer the same attrition rate in bringing new, renewable generating projects on-line as is the case in British Columbia. Most of the other RFPs for new, renewable energy that Brookfield has reviewed have much higher levels of qualification for registration as well as for final contract execution than is apparent throughout the series of calls issued by BC Hydro. This high rate of attrition may create the appearance of a conflict of interest for BC Hydro. As more projects fail to progress to commercial operation, BC Hydro by default becomes the only remaining option to ensure there is construction of the needed electric generating infrastructure in British Columbia.

## **5. Conclusion**

As an alternative mechanism, Brookfield would recommend that the government of British Columbia create an independent, transparent, arms-length entity to manage all electric generation procurement activities from this point forward. Removing any appearance of a conflict of interest will greatly serve to improve the confidence in the market signals driving investment in renewable energy in British Columbia. In addition, Brookfield believes that the creation of an independent, transparent, arms-length entity would also serve to reduce the large attrition rate that has existed with respect to bringing new, contracted renewable generating stations on-line in British Columbia.

**Craig Godsoe**  
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March 19, 2009

Ms. Erica M. Hamilton  
Commission Secretary  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N3

BCUC Log # 28844  
**RECEIVED**

MAR 20 2009

Dear Ms. Hamilton:

Routing \_\_\_\_\_  
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**RE: Project No. 3698514**  
**British Columbia Utilities Commission (BCUC)**  
**British Columbia Hydro and Power Authority (BC Hydro)**  
**2008 Long Term Acquisition plan (2008 LTAP)**

BC Hydro writes with respect to Exhibit C18-2, the Brookfield Renewable Power Inc. (**Brookfield**) letter of 6 March 2009 (**Brookfield Letter**), which was not received by BC Hydro until 17 March 2009.

BC Hydro strongly objects to the Brookfield Letter forming part of the 2008 LTAP evidentiary record, and requests that the BCUC strike the Brookfield Letter from the 2008 LTAP record. BC Hydro is prejudiced by the Brookfield Letter because it contains a number of unsubstantiated assertions put forward as “evidence” which BC Hydro is unable to test through Information Requests (**IRs**) or cross examination as the 2008 LTAP evidentiary record was closed at 10:35 a.m., 12 March 2009 (Transcript, Volume 15, page 2846, lines 2-3).

### *Late Evidence*

The following unsubstantiated assertions are set out in Brookfield Letter and are not on the record:

- “The BC Hydro Clean Power Call Specimen EPA has the most non-standard and challenging terms and conditions of any renewable electricity contract we have come across” (page 8).
- “Brookfield would also note that few other jurisdictions in North America suffer the same attrition rate in bringing new, renewable generation projects on-line as is the case in British Columbia” (page 9).
- “Most of the other RFPs for new, renewable energy that Brookfield has reviewed have much higher levels of qualification for registration as well as for final contract execution than is apparent throughout the series of calls issued by BC Hydro” (page 9).

- There are numerous references to the British Columbia Government's 2002 Energy Plan, which does not form part of the 2008 LTAP record (pages 6 and 7; footnotes 2, 3 and 4).
- Less egregious, but still constituting new evidence, are: (1) the details concerning Brookfield's operations at page 3, which clearly go beyond those provided in Exhibit C18-1; and (2) the asserted depth of Brookfield's market assessment experience at page 4.

There are also numerous assertions with respect to BC Hydro-related "conflicts" and the impact of such conflicts, which among other things Brookfield asserts "serves to undermine confidence in the process as well as the market signals that drive investment decisions for IPPs in British Columbia" (page 7 though 9). The assertion that BC Hydro is in a conflict of interest with respect to the Clean Power Call because it may advance self-build projects in the future is a very serious allegation which BC Hydro does not accept. Nor does BC Hydro accept Brookfield's assertions concerning the so-called market impacts. What has been clearly established on the record is that BC Hydro has received 68 proposals from 43 registered proponents representing in aggregate some 17,000 Gigawatt hours per year of firm energy in response to the Clean Power Call Request for Proposals (**RFP**) (Exhibit B-10, page 27).

#### *Requested Remedy*

The Brookfield Letter is not properly characterized as Argument because it is rife with new evidence; rather it is in the nature of intervenor evidence. Brookfield is an intervenor (Exhibit C18-1). The Brookfield Letter is intervenor evidence, and has been submitted some four months too late. The timetable for filing intervenor evidence was 14 November 2008, and was clearly laid out by BCUC Order No. G-126-08 (Exhibit A-4). Brookfield is a sophisticated party who either knew or ought to have known of the timetable for the submission of intervenor evidence, and has brought no application forward for the submission of late evidence.

Permitting an intervenor to file late evidence where the applicant cannot test such evidence does not accord with the rules of natural justice, which are binding on the BCUC. There is no question that if Brookfield had put forward the Brookfield Letter as intervenor evidence on 14 November 2008, BC Hydro would have issued IRs and cross examined Brookfield on the content of the Brookfield Letter because it strongly disagrees with the many assertions contained in the Brookfield Letter.

BC Hydro also notes that:

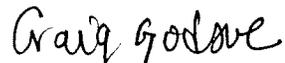
- Brookfield can intervene in any Clean Power Call section 71 filing, which is likely the better forum for assertions with respect to the structure of the Clean Power Call RFP (at pages 7 and 8).

- The BCUC clearly has no jurisdiction to implement Brookfield's suggested remedy for the so-called conflict assertions - the creation of a new entity to manage all electric generation procurement activities - and therefore the proposed remedy cannot assist the BCUC with its review of the 2008 LTAP (page 9).

The prejudice suffered by BC Hydro is significant enough that BC Hydro respectfully submits the only proper course is for the BCUC to strike the Brookfield Letter from the 2008 LTAP record.

All of which is respectfully submitted,

Yours truly,



Craig Godsoe  
Solicitor and Counsel

c. BCUC Project No. 3698514 (BC Hydro 2008 LTAP) Registered Intervenor Distribution List.

Brookfield Renewable Power Inc.  
Attention: Jack Burkom,  
Director of Marketing