



March 21, 2012

By e-mail

Alanna Gillis
Acting Commission Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, B.C.
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Dear Sirs and Mesdames:

Re: British Columbia Hydro and Power Authority – Amended F2012-F2014 Revenue Requirements Application – Exhibit A-30

The Clean Energy Association (“CEA”) sympathizes with the desire of all parties to have cost effective and timely regulatory reviews of all applications to the British Columbia Utilities Commission (“BCUC”) but the review of BC Hydro’s Amended F2012-F2014 Revenue Requirements Application (“Application”) is inevitably going to be a complex undertaking. Unlike its predecessors, it covers a three year time period and a number of issues to be dealt with have already been postponed a number of times because they were to be dealt with as part of the Application. For example, a possible Demand Side Management prudency review.

Accordingly, it should not be surprising if this proceeding is longer and more arduous than some of its predecessors.

After due consideration, the CEA has concluded that it is not in favour of a Negotiated Settlement Process (“NSP”) with respect to the Application. There is one exception to this position namely the transition to International Financial Reporting Standards (“IFRS”) which is a highly technical and stand alone area that is a candidate for an NSP.

Beyond an area such as this, an NSP is appropriate when a regulated utility is in a relatively static state which is definitely not the case with BC Hydro. It is undertaking a massive capital spending program to rebuild and renew its distribution, transmission and generating assets while preparing to meet an increase in the demand for electricity the likes of which haven’t been experienced since the 1970’s. This is a very dynamic state that requires a large measure of oversight by its regulator the BCUC. It is this body that truly represents the public interest through open and transparent processes.



BC Hydro was put under regulation in the early 1980's by the then Government of the day because of the missteps that were made in the last period of large capital expenditures.

An NSP is essentially a delegation of the BCUC's oversight authority to a group of participants that are bound by confidentiality agreements. While the BCUC has the ultimate authority to approve or disapprove the terms of an NSP it does not have direct access to the discussions and information that underpin any settlement. In this respect, BCUC staff that are present at a NSP are not a substitute for decision making BCUC Commissioners.

As an illustration of the inadequacy of an NSP for the Application, one need only look at what has happened in the area of BC Hydro's Deferral Accounts. In its decision regarding BC Hydro's 2004/05 to 2005/06 Revenue Requirements Application which followed a public hearing the BCUC said¹:

"The Commission Panel is concerned about the time required to clear large balances in deferral accounts and in this regard notes the submission of the IPPBC stated above."

The Negotiated Settlement processes that have followed this decision have side stepped the problem.

In the Negotiated Settlement Agreement with respect to BC Hydro's F2007/2008 Revenue Requirements Application² can be found the following:

"3. Despite the Commission's conclusion regarding the scope of this NSP referred to in recital F above, it would have been impossible to reach any settlement of the F07/F08 RRA, without addressing and agreeing on amortization of the current deferral accounts and the resulting level of the rate increases, as reflected in the Settlement Agreement. The Parties agree that none of the provisions of this Settlement Agreement are severable. If the Commission does not accept and approve the Settlement Agreement in its entirety, there is no agreement."

Recital F says in part:

"... In the cover letter (Exhibit A-15; IEP/LTAP) to Order No. G-96-06 the Commission concluded, on the basis of the material before it at the time, that the disposition of balances in the current deferral accounts should not be within the scope of the NSP (Exhibit B-5-1, Section 2.3.2)."

¹ October 29, 2009 at page 35

² Appendix A to Order No. G-143-06, November 6, 2006 at page 4

In the F2011 Negotiated Settlement Agreement the Deferral Account Rate Rider was set at 3.5 and falling to 1.7 % by 2015. This was not consistent with the more structured approach to clearing the net balance in the Deferral Accounts that the BCUC established in its F2009 and F2010 Revenue Requirements Decision³ and that was referred to in Order G-17-12 with Reasons for Decision dated February 15, 2012.

In addition, the balances in the Regulatory Accounts continue to grow and they are also not a matter that can be adequately dealt with through an NSP.

An NSP is also not an adequate process for a prudency review. The CEA will be seeking one for certain past Demand Side Management Expenditures within the parameters established for prudency reviews by the BCUC in its F2009-F2010 Revenue Requirement decision⁴. The CEA first raised this matter in the context of BC Hydro's F2011 Revenue Requirements application⁵. It was also referred to in its letter dated November 19, 2010 to the BCUC with respect to the F2011 Negotiated Settlement Agreement and as replied to by BC Hydro by letter dated November 22, 2010.

Depending on the responses to the second round of Information Requests there may also be other matters that the CEA will be requesting prudency reviews for.

In certain circumstances, an NSP can be a very useful tool for dealing with applications for regulatory approval. However given the dynamic state that BC Hydro is now in it is not appropriate for the Application especially in relation to some of the long term implications of various matters that are contained in it e.g. hiring of additional employees.

Irrespective of the above, if the BCUC decides that an NSP is appropriate then the BCUC staff should maintain an observer role except with respect to IFRS were it should have an active role. It is with a great deal of reluctance that the CEA makes this suggestion. The contributions that BCUC staff make in regulatory reviews are invaluable. However, there is a high likelihood that most of the issues that will be the subject of NSP discussions will be subsequently addressed in an oral hearing i.e. no settlement is reached. If BCUC Staff actively participate in an NSP and interveners and/or BC Hydro disagree with some of the views expressed by BCUC Staff then despite everyone's best intentions, the subsequent oral hearing could be very awkward e.g. interveners and/or BC Hydro have no formal way of responding to positions previously taken by BCUC staff.

³ March 13, 2009 at page 172

⁴ May 13, 2009 at page 38

⁵ Transcript V1 at page 62



Because of the one week extension given to interveners to file their second round of Information Requests, interveners should be given an additional week to file their evidence.

All of which is respectfully submitted.

Yours truly,

“Original signed by David Austin”

David Austin