



Canadian Office and Professional Employees Union Local 378  
2nd Floor, 4595 Canada Way, Burnaby, BC V5G 1J9  
TEL: 604-299-0378 TOLL FREE IN BC: 1-800-665-6838 FAX: 604-299-8211 www.cope378.ca

LF: COPE/ORGN/BCUC-BCH

March 21, 2012

Via email to [Commission.Secretary@bcuc.com](mailto:Commission.Secretary@bcuc.com)

British Columbia Utilities Commission  
Box 250  
Sixth Floor - 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Ms. Alanna Gillis, Acting Commission Secretary**

Dear Mesdames/Sirs:

**Re: Project No. 3698622  
British Columbia Hydro and Power Authority (BC Hydro)  
Amended F2012-F2014 Revenue Requirements Application  
Comments Pursuant to Exhibit A-30**

---

These are the comments of the Canadian Office and Professional Employees' Union local 378 (COPE 378) in response to the Commission's letter of March 14, 2012, Exhibit A-30.

**BC Hydro for Extension of Time to Respond to IR2**

We ask that there be a consequential amendment to the deadline for the filing of Intervenor Evidence, arising from the one-week postponement of BC Hydro's time to respond to IR2.

The present arrangement allows only one week between the receipt of BC Hydro's IR2 responses and the due date for filing Intervenor Evidence. Most of that week is taken up by the Easter Long Weekend, leaving only three working days for the preparation of the evidence. We submit that this is completely unrealistic and unreasonable.

We ask that the Commission adjust the deadline for Intervenor Evidence by one week, to Tuesday April 17. That would leave a full week (unencumbered by a statutory holiday) for other parties to formulate any IRs arising from that evidence.

**Advisability of Referral of the Amended RRA to a Negotiated Settlement Process**

BC Hydro has applied for an amendment to the regulatory timetable in this matter. Specifically, it seeks an order that the Amended RRA be referred to a Negotiated Settlement Process (NSP), and that the tentative date for an NSP be moved ahead to the week of April 30, 2012.

If the Commission determines that this matter should be referred to an NSP, COPE 378 expects to participate constructively in that process. However, in our submission it would be unwise for the Commission to refer the matter to an NSP as BC Hydro requests.

## The Auditor General's Report

In October 2011, the Auditor General of British Columbia (AGBC) released a report entitled *BC Hydro:*

*The Effects of Rate-Regulated Accounting.* It underscored the growing problem – and potential crisis – posed by BC Hydro's escalating deferred costs. The covering letter to the Report made the following comments:

As allowed under Canadian GAAP, BC Hydro uses rate-regulated accounting in its financial statements. In effect, rate-regulated accounting allows BC Hydro to defer to future years certain expenses that would normally be recorded in the current year's financial statements. As of March 31, 2011, a net total of \$2.2 billion in expenses had been deferred and, by government's own estimate, the balance is predicted to grow to nearly \$5 billion by 2017.

There does not appear to be a plan to reduce the balance of these accounts, let alone halt their growth. Rate regulated accounts must be managed carefully. If overused, rate-regulated deferrals can mask the true cost of doing business, distort the financial condition of an enterprise and place undue burdens on future ratepayers.

At page 5 of the Report, AGBC commented that "growth of deferral accounts cannot continue indefinitely." He provided a brief history at page 9:

When BC Hydro has applied to the BCUC to have its rates approved, it has asked that certain types of costs or surpluses be eligible for deferral. BC Hydro first established a deferral account on March 30, 2000, to mitigate the impact of short-term volatility of revenues and expenses on ratepayers. This Rate Stabilization Account was created to ensure that BC Hydro could achieve the annual rate of return on equity required by government by transferring amounts to and from the account as needed depending on the required net income for the year.

In 2004 the Rate Stabilization Account was cleared out and government issued a regulation effective for 2005 and beyond that mandated the BCUC to allow BC Hydro to establish more specific deferral accounts as required. Since 2005, the balance in these new deferral accounts has grown from \$182 million to \$2.2 billion at March 31, 2011, and is comprised of 27 different accounts according to BC Hydro's most recent annual report (see Appendix A).

This was hardly news to the Commission, which has been addressing the issue for several years. In our submission, the most significant task facing the Commission in this proceeding is the necessity of getting a firm handle on the runaway trajectory of these accounts. That will entail developing a longer-term strategy to tame the deferrals and get them under control.

## The Commission's NSP Guidelines

COPE 378 submits that the Commission's own guidelines suggest that in this instance the NSP may not be suitable. The Guidelines state:

To assist the Commission in determining when to use the Negotiated Settlement Process, all or portions of an application should be evaluated in light of the following considerations:

- (i) Will customer classes or other groups that are likely to be affected by the agreement be participants in the negotiating sessions? It may be necessary to exercise judgement as to the significance of any settlement agreement for parties that will not be active participants. Will the interests of the non-represented groups be adequately addressed by other interveners and/or the active participation of Commission staff?

COPE 378 submits that one particular group will not be represented at the NSP – namely BC Hydro’s future customers. BC Hydro refers to them as “persons within British Columbia who [receive, or who] may receive, service from BC Hydro”, whenever it addresses and defines the public interest.

As AGBC states at p.13 of his report:

“While deferral accounts can be helpful in ensuring rate stability in the near term, over the long term significant costs deferred today may be unfairly passed on to future ratepayers who receive little or no benefit. This concept of a potential unequal matching of costs and benefits is known as intergenerational inequity”.

COPE 378 submits that in this instance it would be unreasonable for the Commission to use the Negotiated Settlement Process when the major issue in these proceedings revolves around BC Hydro’s deferred costs.

#### The Deferral Accounts and the Dynamics of the NSP

In our respectful submission, the Commission cannot realistically expect that this can be achieved if the Application is referred to an NSP – in effect, delegating the task to the utility and its ratepayer stakeholders. We have all postponed taking some unpleasant medicine, facing up to the inevitable reckoning for deferred costs. This has not led to the problem going away. Quite the contrary.

Some four weeks after the release of AGBC’s Report, BC Hydro filed its Amended Application in this proceeding. It proposed not to trim its deferrals, but rather to deepen them further to a very significant degree. Furthermore, it proposed to maintain the Deferral Account Rate Rider at a level that was one-half of the amount mandated by the Commission’s approved formula, and much less than half of the rate required had the formula not been capped at 5%, with the balances in the three deferral accounts capped at \$0.5 billion.

The rationale BC Hydro advanced for this apparently retrograde action was to comply with a demand from government to propose lesser rate increases than in its original Application. Those increases had been held short of the classically-defined rate shock threshold but were nevertheless sufficiently steep to trigger a political reaction.

In January 2012, COPE 378 raised an alarm concerning the establishment of Interim Rates for fiscal 2013. Interim Rates based upon the Amended RRA, and the maintenance of an inadequate DARR, would result in a patent and massive under-collection of revenues, and tend to pre-determine an outcome which would compound rather than address the central problem. The Commission responded with respect to the backward-looking part of the story, the DARR, by boosting it back up to its formulaically-correct 5% in F2013 interim rates in Order G-17-12.

A key consideration in relation to the advisability of an NSP in this matter is the agreement between BC Hydro and the government, which shaped the Amended RRA. BC Hydro is obligated to seek rate increases over the test period which are one-half of those flowing from the Original RRA it filed in the spring of 2011. It appears to follow that BC Hydro cannot negotiate an outcome which exceeds a 3.19% bill impact for fiscal 2013 and 2014, unless it is released from that obligation.

Such a release would have significant implications spilling through the entire application. If the government grants it, many features of the Amended RRA will lose their motivation.

The agreement also presumably means that Hydro cannot enter into a negotiated settlement which fails to effectively negate the Commission's establishment of the 5% DARR in the Interim Rates decision. The Minister has been clear enough, in his public comments, that government would be seeking final rates which achieved precisely that.

In that context, we are hardly surprised to read the Ministry's letter of March 19, endorsing an NSP as its preferred vehicle for resolving this proceeding, although a procedural comment from a non-intervenor is unusual.

Even if its commitment to the government would not preclude a settlement incorporating a DARR higher than 2.5%, BC Hydro cannot agree to substantial reductions in the hefty new deferrals proposed in the Amended RRA. There is very little possibility of a Negotiated Settlement Agreement, with the assent of the utility, which makes any move to address the problem underscored by the Auditor-General, or that even retreats meaningfully from the way the Amended RRA would exacerbate that problem.

Thus the core players in a negotiation would include BC Hydro (its hands tied by its agreement with the government) and customer groups who cannot realistically be expected to seek higher rates than those proposed in the Application presently before them. Following the Commission's decision regarding Fiscal 2012 Interim Rates and the DARR, no doubt the consumer groups are hoping to at least "cut their losses," as it were, by removing the remaining part of the job – the forward-looking revenue requirement calculation – from the active purview of the Commission.

We wish to emphasize that we do not import any kind of negative comment about those intervenors. Quite the contrary: they are effectively advancing the interests of the ratepayer groups they represent, in relation to BC Hydro's rates for the duration of the test period. Similarly, we do not impute any impropriety to BC Hydro.

This is where the natural dynamic of the proposed NSP leads, if the stakeholders conduct themselves as they should, according to the constraints arising from the interests they represent and the commitments to which they are subject. It makes NSP simply the wrong tool for the job.

Our position does not rely upon a presumption that in the final result after a hearing the Commission would disallow the deferrals proposed in the Amended RRA, or that the DARR could not be re-set at 2.5%. Rather, we submit that the process should not effectively eliminate that possibility, and that an NSP would do just that.

More to the point, we submit that the issues call for the Commission to play its full role in determining regulatory policy and strategic direction for the province's most important utility.

As the undersigned has commented in the past, an NSP is an excellent mechanism to find best-fit resolutions of bottom-line issues between diverse competing interests, but is unsuited to resolving issues of public policy. If the issues embedded in this Application are delegated to the utility and its ratepayer stakeholders, they may be given the capacity to determine the outcome, but accountability for that outcome will continue to reside with the Commission.

We submit that the Commission has a role which demands a wider and longer-term perspective. The thorny problem presented by the deferral accounts can only be tackled from that vantage-point. Delegating the disposition of the Application to the competing interests of the stakeholders cannot be expected to provide the solution.

In addition to the overarching problem of developing a strategy to manage BC Hydro's deferral accounts, there are important issues embedded in the Application which involve policy dimensions requiring determination by the Commission. In its submission to the Commission dated January 27, 2012, COPE 378 raised the following issues:

- BC Hydro's proposal to increase the amortization period for deferred DSM expenditures from the 10 years previously endorsed by the Commission to 15 years. This has major implications for the scale of deferrals and for intergenerational equity;
- BC Hydro's proposal to postpone the amortization of the SMI deferral account beyond the test period, contrary to the general regulatory principle that ratepayers should begin to pay for assets once they are deployed and become usefully operational;
- BC Hydro's revision to the forecast of Trade Income during the test period;
- BC Hydro's proposal to transfer in excess of \$100 million to the NHDA in respect of additional energy costs arising from their update included in its Amended Application; and
- BC Hydro's proposal to defer the administrative cost of implementing outsourcing measures.

(Exhibit C2-11)

On February 1, 2012, at page 6 of Exhibit B-17, BC Hydro argued in response to COPE 378 as follows:

"The extent to which the deferral of certain costs is appropriate is one of the many issues to be determined by the BCUC in the F12-F14 RRA proceeding."

Now, five weeks later, the utility seeks to remove those issues from the Commission's reach.

### Regulatory History

There is some history which may be useful in assessing this question. In the 2007-8 BC Hydro Revenue Requirements proceeding, the Commission sought to gain better control over the deferral accounts, while making use of the negotiated settlement mechanism. In the covering letter to Order G-96-06 (Exhibit A-15 in the BC Hydro IEP Proceeding), the Commission gave the following direction, aimed at squaring that circle:

### Negotiated Settlement Process (“NSP”) on F07/F08 RRA

Order G-96-06 establishes a NSP for the F07/F08 RRA. The Commission Panel concludes that the disposition of the current deferral account balances should not be within the scope of the NSP (Exhibit B 5-1, section 2.3.2), and the proposed changes to the deferral accounts are within the scope of the NSP (Exhibit B-5-1, section 2.3.3). In the event that the changes to the deferral accounts are settled, the Commission Panel suggests that the settlement be prepared in two “packages”, that is, a package for changes to the deferral accounts that is separate from all other terms of the settlement. If the Commission Panel decides to suggest changes to one of the packages and accepts the other package, then it will provide the full opportunities for participants to address any proposed changes for the subject “package” as provided for in Section 11 i) of the NSP Guidelines. The other provisions of Section 11 will also apply.

However, the participants in the NSP proceeded to negotiate a single package which purported to resolve all of the issues in the RRA, including the disposition of deferral account balances. The 2007-8 BC Hydro RRA NSA commented as follows:

3. Despite the Commission’s conclusion regarding the scope of this NSP referred to in recital F above [i.e., the direction reproduced 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 this 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.

This was in no sense an act of subterfuge: the reality of a negotiation of this nature is that participants cannot achieve settlements if large elements affecting rates are left unresolved. They cannot obtain instructions to make the necessary trade-offs to reach compromise agreements without knowing the “bottom line” impact. That is the essence of the negotiation dynamic.

Be that as it may, in the end result an NSA was negotiated and presented to the Commission on a “take-it-or-leave-it” basis, which left the issue of deferrals substantially unresolved and kicked the metaphorical can further down the road. In fact, the end result refunded a portion of interim rate revenues to ratepayers, despite \$1.77 Billion in deferrals projected for the end of the test period [Source: Table in Appendix A to Order No. G-143-06 at Page 15 of 45].

The undersigned, having been a participant in this process, expects that none would deny that the displeasure of the Commission at this juncture was palpable; nevertheless it approved the NSA, apparently seeing this as a smaller evil than tossing a negotiated outcome overboard and undermining the prospects for future negotiated settlements, which was the only alternative according to the extract from the NSA quoted above.

### The NSP of F2011

COPE 378 wishes to remind the Commission of the NSA for BC Hydro’s F2011 Revenue Requirement. As a result of this process the following items were negotiated by BC Hydro and its ratepayer groups, one of which was represented by the undersigned:

- the transfer to the NHDA of \$222.5 million of F2011 operating/energy costs, opaquely described as “NHDA Baseline adjustment”;

- the refund to customers of \$43.8 million rather than reduce the energy deferral accounts;
- the application of a the Total Finance Charges Regulatory Account with a credit balance of \$104 million to reduce the F2011 revenue requirement rather than reduce the energy deferral accounts; and
- the reduction of the DARR from 4% to 2.5% effective January 1 2011, resulting in a reduction of some \$15 million in that year.

These items had the effect of reducing the amount paid by BC Hydro's customers in F2011 by almost \$400 million and of course increased the amount that future generations of BC Hydro's customers would have to pay by a similar amount as well as interest thereon. It did not reduce in any material manner the amount of the provincial government's return or the amount of dividend paid to it.

The Commission has run this movie before, and has no reason to expect a happier ending upon re-screening. COPE 378 respectfully submits that the Commission should proceed with an oral public hearing into BC Hydro's Amended Revenue Requirements Application for fiscal years 2012 through 2014.

#### **Role of Commission Staff in the Event of an NSP**

If despite these considerations the Commission decides to refer the Application to an NSP, we submit that the staff should be assigned as large and active a role as possible, on the same footing as any other participants in the process, so that there is as robust as possible a means for the broader mandate of the Commission to be felt.

However, we submit that this is a distant second-best, at most serving to mitigate the inadequacy of a negotiation process which excludes the Commissioner Panel from an active role.

#### **Timing of Filing and Review of Intervenor Evidence in the Event of an NSP**

In the event that the Commission decides to refer the Application to an NSP, if the timetable proposed by BC Hydro is adopted the NSP would occur between the dates currently set for IRs to be filed on Intervenor Evidence and the deadline for responses. That is obviously not workable, assuming that intervenors would be actively engaged in the negotiation process during the time provided for preparing responses; it would also mean that resources and effort expended on the responses would be thrown away if a settlement were reached in the course of the NSP, prior to the date for responding to those IRs.

We submit that if the Commission accepts BC Hydro's suggested time-frame for an NSP, the date for filing Intervenor Evidence should be postponed until sufficiently after the conclusion of the negotiation process to permit intervenors to prepare it. We suggest that it be scheduled for three weeks following the conclusion of any NSP, including the Commission's determination whether to approve a Settlement, if BC Hydro's accelerated timetable is approved.

We submit that the better course, if an NSP is to take place, is to retain the regulatory timetable set out in Order G-206-11 (Exhibit A-18). That is, to provide a proper opportunity for intervenors to file evidence and subject it to the IR process before the application is delegated to the utility and intervenors by way of negotiations.

All of which is respectfully submitted.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Quail', with a stylized flourish at the end.

James Quail, Barrister & Solicitor  
COPE 378 Legal Director

JQ:sl-usw2009

cc: parties of record, via email