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March 26, 2012

Ms. Alanna Gillis  
Acting Commission Secretary  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Ms. Gillis:

**RE: Project No. 3698622**  
**British Columbia Utilities Commission (BCUC)**  
**British Columbia Hydro and Power Authority (BC Hydro)**  
**Amended F2012-F2014 Revenue Requirements Application**  
**(Amended F12-F14 RRA)**  
**April 30, 2012 Negotiated Settlement Process (NSP)**

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Further to the process established by Letter L-14-12 in this proceeding (Exhibit A-30), these are BC Hydro's reply submissions on the proposed April 30, 2012 NSP, and staff's role therein.

BC Hydro has reviewed submissions from the following:

- Association of Major Power Customers of BC (AMPC) (March 21, 2012, Exhibit C18-8)
- BC Sustainable Energy Association and Sierra Club British Columbia (BCSEA/Sierra) (March 13, 2012, Exhibit C10-11; March 21, 2012, Exhibit C10-12)
- British Columbia Old Age Pensioners' Organization (BCOAPO) (March 21, 2012, Exhibit C1-12)
- Canadian Office and Professional Employees Union Local 378 (COPE) (March 21, 2012, Exhibit C2-15)
- Clean Energy Association of British Columbia (CEBC) (March 21, 2012, Exhibit C13-7)
- Commercial Energy Consumers Association of BC (CEC) (March 21, 2012, Exhibit C5-8)
- Energy Solutions for Vancouver Island Society (ESVI) (March 21, 2012, Exhibit C16-8)
- Fortis BC Utilities (March 20, 2012, Exhibit C4-4)
- Leis, Ilse (March 13, 2012 Exhibit C9-4); March 16, 2012, Exhibit C9-6; March 20, 2012, Exhibit C9-7; March 21, 2012, Exhibit C9-8)
- Ministry of Energy and Mines (Ministry) (March 19, 2012, Exhibit E-20)

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- Vanport Sterilizers (March 20, 2012, Exhibit C27-6)
- Vulcano, Terry (March 19, 2012, Exhibit C17-10)
- V.W. Ruskin & Associates Ltd. (Vernon Ruskin) (March 21, 2012, Exhibit C26-3;  
March 23, 2012, Exhibit C26-4)
- Wait, Alan (March 19, 2012, Exhibit C23-4)

These reply submissions are organized as follows:

1. Merits of NSP;
2. Timing of NSP;
3. NSP Staff Roles;
4. Intervener Evidence.

## **1. Merits of NSP**

The majority of interveners support the establishment of an NSP<sup>1</sup> and, importantly, all those interveners who represent major BC Hydro customer segments support an NSP, namely the BCOAPO, AMPC, BCSEA/Sierra and the CEC. Each of these four organizations has a long history of participation in BCUC proceedings and has been recognized as representative of broad customer interests.

ESVI, the Fortis BC Utilities and the Ministry also support an NSP.

Those who oppose an NSP for the purpose of resolving the Amended RRA are Mr. Wait, Mr. Vulcano, Mr. Ruskin, Ms. Leis, CEBC and COPE. None of these interveners represent broad customer interests; Ms. Leis and Mr. Ruskin make submissions in the name of BC Hydro customers, and while both are individual residential customers, neither has any basis to claim a broader representative status.

Neither Mr. Wait nor Mr. Vulcano give any substantive reason for opposing an NSP.

Mr. Ruskin and Ms. Leis oppose an NSP for procedural reasons; the issues they raise are addressed in the following section.

COPE and CEBC provide the only substantive reasons for not establishing an NSP for this proceeding. The balance of this section addresses their submissions.

The thrust of COPE's submission in opposition to an NSP is that only the BCUC panel charged with determining the application can be trusted to arrive at a correct solution to

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<sup>1</sup> Excluding Vanport Sterilizers, whose position on the merits of an NSP is not clear.

the issues raised. This argument is premised on the fact that one of the central issues in this proceeding is the tension between current and future rates (intergenerational equity and deferral account balances) and the proposition that this issue is one of high, provincial-level policy import that shouldn't properly be left to NSP participants to resolve. BC Hydro agrees that a central issue in this proceeding is the tension between current and future rates, but believes that COPE is simply wrong in asserting that the BCUC's NSP processes are inadequate to arrive at a suitable solution.

Tension between current and future rates, and consideration of the means available to resolve those tensions, are not matters of grand, rarified public policy in the manner COPE suggests. Instead, they are essentially matters of rate design: a core BCUC responsibility to be sure, and an area within which the BCUC may exercise a great deal of discretion, but also an area in which there is never a single objectively correct solution. In matters of rate design, there are always many reasonable solutions to choose from, and none is better than others except in a largely subjective way. At the end of the day, an NSP is nothing more than an alternative process the BCUC employs to select from the range of potential solutions. Further, the BCUC's responsibility to review any settlement agreement, and endorse it before it becomes lawful, confirms rather than detracts from the BCUC's role in public policy matters that are within its ambit (i.e. rate design).

In this proceeding, the NSP participants can be expected to understand the BCUC's concerns regarding the tension between current and future rates, and know that any settlement agreement that does not reasonably address those concerns is likely to be rejected by the BCUC. That is, the various solutions to the issues raised in this proceeding will be brought to the table by participants, including "active" BCUC staff (as discussed below), with the knowledge that the negotiated solution must not only pass muster at the negotiating table, but must also be one that the BCUC might have selected. In BC Hydro's view, that knowledge will serve to impose a discipline on the NSP participants that COPE's submissions do not give credit to.

CEBC makes arguments similar to those made by COPE in opposition to an NSP, expressly arguing that an NSP amounts to a delegation of the BCUC's authority. For the reasons described above, it is not such a delegation, and participants in an NSP are not blind to the BCUC's ultimate authority and responsibility for setting rates and resolving the issues arising from the Amended Application.

CEBC also argues that an NSP is particularly unsuited for resolution of prudency issues. No reasons are provided for this assertion however, and BC Hydro rejects the proposition. CEBC would have the opportunity to put its position forward at the NSP, supported by evidence and submissions as it sees fit, and seek a resolution that is acceptable to the NSP parties.

## **2. Timing of NSP**

BC Hydro's March 13, 2012 request to establish the NSP in the week of April 30, 2012 emphasized the importance of holding the process before BC Hydro's F2012 financial statements are finalized. All the interveners who support an NSP either support the April 30th date for that reason, or are silent on the point. BC Hydro reiterates the necessity for an April 30th commencement date, and is of the view that in the absence of that date, the BCUC should assume that the current level of support for an NSP would not continue.

## **3. NSP Staff Roles**

Each of the interveners have made specific and somewhat varying submissions regarding potential staff roles in an NSP, and process issues in general; these reply submissions do not summarize and respond to each. Instead, BC Hydro makes a specific proposal regarding staff roles and process; and explains how its proposal responds to two issues that were common to almost all the intervener submissions, namely fairness, and a perceived need for a "strong" BCUC staff role.

### **BC Hydro Proposal**

BC Hydro agrees with a number of interveners who have observed that under the new NSP Guidelines<sup>2</sup>, staff can fulfill more than one role, and that roles can be filled by individuals other than staff. BC Hydro's proposal reflects this common view, as follows:

1. **Observer:** BC Hydro supports the appointment of an observer, pursuant to the NSP Guidelines. The Observer would attend the formal NSP meetings that would begin on April 30, 2012, but would also attend any meetings or discussions between BC Hydro and one or more NSP participants on matters relating to the NSP prior to April 30, 2012 (Pre-NSP Discussions).
2. **Active Staff:** BC Hydro also supports the appointment of staff in an "active" role, pursuant to the NSP Guidelines. Active staff would be considered the same as all other interveners for the purpose of the NSP, including any Pre-NSP Discussions.
3. **Facilitator:** Finally, BC Hydro supports the appointment of a facilitator, pursuant again to the NSP Guidelines.

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<sup>2</sup> See Appendix A to Order G-11-12: *Negotiated Settlement Process – Policy, Procedure and Guidelines* (February 2012).

### **Discussion**

One of the significant issues raised in the submissions, particularly by Ms. Leis, was the propriety, and fairness, of recent discussions between BC Hydro and some but not all interveners.

BC Hydro is in regular, on-going contact with its stakeholders, including customers and customer representatives it is involved with in BCUC proceedings, both during and outside of such proceedings. With respect, there is nothing untoward in such communications. Indeed, given that each of BCSEA/Sierra, CEC, AMPC and BCOAPO had an effective veto on an NSP – arising from paragraph 3 of the F11 RRA NSA – it would have been imprudent for BC Hydro to make any submissions to the BCUC on the topic without consulting them first.

However, BC Hydro is sensitive to the potential concerns that might arise as a result of any further discussions between the date of a BCUC order establishing an NSP, and its formal commencement on April 30, 2012. No NSP participant would want to arrive at the first formal NSP session on April 30 to face an agreement, no matter how preliminary or tentative, that had been negotiated by a sub-set of the NSP participants. In the current circumstances, however, achieving a negotiated settlement prior to the close of BC Hydro's F2012 financial statements will require that all available time be used, and BC Hydro can perceive that it would be beneficial to meet before or discuss at least some issues prior to April 30.<sup>3</sup> Assuming the BCUC establishes an NSP for the week of April 30, as requested, BC Hydro is committed to a fair process throughout, and in particular will not entertain substantive discussions with some NSP participants without making equivalent opportunities available to all. However, different parties can and will have different ideas of "equivalent". The observer role that BC Hydro proposes would ensure that equivalent opportunities to participate in the NSP and any Pre-NSP Discussions are available to all participants. BC Hydro suggests that BCUC counsel, as an officer of the court, would be best suited for this role.

A second theme expressed by those in favor of an NSP on April 30 was the need for significant active involvement by BCUC staff, to maximize the likelihood of success. BC Hydro is prepared to accept, for the purpose of advancing the NSP, the strongest possible staff role, namely an "active" role. In an active role BCUC staff can pursue with as much partisanship as any intervener its views on what ought to be reflected in a negotiated settlement, without being constrained by potentially conflicting duties to other participants.

An active staff role requires the appointment of a facilitator, whose central task, as set out in the NSP Guidelines, would be to "help foster an environment of cooperation and trust among Participants". With staff in an active role, transparently advancing its own

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<sup>3</sup> CEC requests in its submission that time spent in Pre-NSP Discussions be designated as NSP days for cost award purposes. BC Hydro supports this proposal.

views on possible settlement provisions, a facilitator is required who can command the respect and attention of all NSP participants; who is knowledgeable of the regulatory framework within which BC Hydro's rates are set; and who is manifestly non-partisan. BC Hydro is strongly of the view that each of the observer, active staff and facilitator roles must be filled by different people. They each play different and conflicting roles, as described in the NSP Guidelines, and cannot fulfill one without compromising the other. This is particularly true of possible observer/active or facilitator/active combinations, where the freedom to advance positions associated with the active role is plainly inconsistent with the neutrality required of either an observer or facilitator, with their responsibilities of fairness to the other participants and the process.

A number of interveners have made proposals regarding specific personnel to fill staff roles in an NSP. In particular, there is a great deal of enthusiasm for Mr. Bill Grant to have a central staff role, at least from those who support an NSP. Further, some have proposed that Mr. Grant be appointed a dual facilitator/active role. BC Hydro reiterates its view that combining the roles of active staff and facilitator in one person, regardless of who the person is, would be inappropriate, and lead to material concerns regarding procedural fairness.

BC Hydro notes that the enthusiasm for Mr. Grant's role in the NSP is premised largely on his ability to achieve settlements, which in turn is premised on qualities such as "forcefulness" and "persistence".<sup>4</sup> The new NSP Guidelines, and the creation for the first time of an "active" staff role, allow those qualities to be employed in a manner that is transparent and unlikely to raise procedural fairness concerns. In short, BC Hydro would not object to Mr. Grant being appointed as the head of a staff team that had active participant status.

With respect to a potential facilitator, there are a few potential candidates who have the necessary qualities described above. BC Hydro proposes to enquire into their availability and report back to the BCUC by the end of the week (March 30, 2012).

#### **4. Intervener Evidence**

A number of interveners propose a change to the schedule regarding the filing of intervener evidence, and the subsequent exchange of IRs and IR responses.

BC Hydro accepts that the filing date for intervener evidence should be extended by a week, to April 17, 2012, and further proposes that the subsequent intervener evidence dates, as follows:

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<sup>4</sup> See AMPC's submissions, Ex. C18-8.

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Intervener evidence	April 17, 2012
IRs on intervener evidence	April 30, 2012
Responses to IRs on intervener evidence:	May 15, 2012
BC Hydro rebuttal evidence:	May 22, 2012.

This proposal might require some interveners to have to work on IR responses during the negotiation week of April 30, 2012. However, in BC Hydro's experience, the bulk of the work in an NSP falls to the applicant, who invariably has to develop responses and negotiating positions to the myriad requests made of it by the interveners, while interveners are typically interested in a smaller sub-set of the issues that are on the table. Further, BC Hydro expects that by the end of the week of April 30 it will be readily apparent whether there will be an agreement, or not, thereby limiting the actual overlap period to no more than three or four days. Finally, BC Hydro believes that in light of the lengthy delays in this proceeding to date, nothing should be done to unnecessarily compromise the June 18 oral hearing date. In these circumstances, BC Hydro suggests that the overlap is not inappropriate, and that the revised schedule as set out above ought to be approved.

For further information, please contact Fred James at 604-623-4317 or by e-mail at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Janet Fraser  
Chief Regulatory Officer

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Copy to: BCUC Project No. 3698622 (F12-F14 RRA) Registered Intervener Distribution List.