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LF: COPE/ORG/BCUC/BCH

June 1, 2012

Letter via email to commission.secretary@bcuc.com

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

Attention: Alanna Gillis, Acting Commission Secretary

Dear Mesdames/Sirs:

**Re: British Columbia Hydro and Power Authority (BC Hydro)
Project No. 3698622/Order G-40 -11
F2012 to F2014 Revenue Requirements Application**

These are the further comments of COPE 378 in response to the Commission's letter of May 30, 2012, Exhibit A-34 in this proceeding.

In our submission, there remains a substantial body of work to be done with respect to BC Hydro's Amended Application. This work arises pursuant to the general jurisdiction of the Commission as provided in the Utilities Commission Act, and specifically pursuant to section 3(2) of Direction No. 3 to the British Columbia Utilities Commission ("the Special Direction"). We note that while there is a 30-day deadline imposed upon the Commission with respect to the orders stipulated in section 3(1) of the Special Direction, no such time restriction applies to the Commission's compliance with section 3(2).

Special Direction section 3(2)

Section 3(2) reads as follows:

3(2) In addition to the orders referred to in subsection (1), the commission must also issue the final orders requested in section 1.7 of the application, except as they are inconsistent with the orders referred to in subsection (1).

Section 1.7 of the application commences with the following paragraph:

1.7 Approval Sought

Draft orders for the following approvals sought are provided in Appendix B.

The draft Order for the disposition of the Amended Application, located in Amended Appendix B, includes the following item, which BC Hydro sought to be ordered against itself:

12. BC Hydro will comply with all other directives in the Decision accompanying this Order.

Thus the Special Direction requires that the Commission issue a Decision to accompany the Order (or orders) disposing of the Application. It further contemplates that the Decision will contain “other directives” from the Commission, binding upon BC Hydro.

“Other Directives”

We make two general observations about the Special Direction and what it requires the Commission to do with respect to the disposition of BC Hydro’s Amended Application.

First, it is not by its terms exhaustive or exclusive. It requires the Commission to make certain orders, but it does not stipulate that these are the only orders which the Commission may make with respect to the Amended Application, nor does it in any way impair the jurisdiction (and we say the duty) of the Commission to exercise its full range of powers, subject only to the requirement that it cannot make orders inconsistent with the Special Direction or other binding instruments.

Second, the obligations it imposes on the Commission are in the nature of making a series of “bottom line” orders. They are not clothed in the analysis, elaborations, conditions or directions which normally flesh out the orders and decisions of the Commission, especially in a major Revenue Requirement proceeding, which are needed to provide the full extent of regulatory guidance which are entailed in the fulfillment of the Commission’s jurisdiction and public duty. Furthermore, they do not address any consequential matters flowing from the “bottom line” determinations which arise in the ongoing regulatory relationship between the Commission and the utility.

Thus the Commission retains the power and the duty to attach conditions to the relief where they are needed to maintain regulatory integrity and to protect the public interest. For example, a typical RRA final order includes a host of reporting requirements and other consequential requirements of the utility.

These features of the Special Direction are consistent with its contemplation that the Commission will issue a Decision (as is the normal case in such proceedings), which includes other directives to BC Hydro.

Unfinished Business

All of this constitutes unfinished business in this proceeding.

We submit that the Special Direction and its context – in terms of the content of the Amended Application, the regulatory issues and themes which it engages, and the consequences going forward – require the Commission to construct the scenario which would have arisen had it come to the substantive bottom-line conclusions set out in the Direction. It must ask itself “what more would the Commission, in the proper exercise of its jurisdiction, have addressed and resolved in the disposition of the Application?”

We submit that Mr. Andrews has identified what is perhaps the most important – indeed, urgent – element of unfinished business. We submit that there can be little doubt that had the hearing followed its normal course, even if the Commission’s bottom line determinations coincided perfectly with those set out in the Special Direction, it would have tackled the over-arching problem of how to gain control over the deferral accounts, and would have developed a mechanism – or at least a process – for their appropriate

management and amortization, even if only on a going-forward basis. That is unfinished business and is in no way precluded by the Special Direction.

We submit that this is the largest single regulatory problem facing BC Hydro and its regulator. Failure to take up the opportunity to address it now, in a timely way, by instead putting it off until the Commission responds to whatever BC Hydro filed by the way of a Revenue Requirements Application for Fiscal 2015 and beyond, would only exacerbate the problem – it would constitute yet another instance of avoidance of the thorny and difficult problem of escalating deferrals.

How to go about that task is not something which should be left to a round of written comments from BC Hydro and intervenors. The Commission should hear submissions at a Procedural Conference about how best to fashion a process to address this most important piece of unfinished business.

Furthermore, it is common that a Revenue Requirement decision of the Commission will look beyond the test period in issue, and give directions to the utility pertaining to future rate applications, and to preparatory work to be done in the interim. That task remains incomplete as things stand and should be taken up by the Commission; the outcomes would be binding upon BC Hydro pursuant to the Special Direction and to paragraph 12 of the Draft Order, mandated by section 2(3) of the Direction.

Participants will no doubt have a variety of specific priorities and suggestions for groundwork for the next rate application. We do not propose to provide an exhaustive list of COPE 378's concerns. We submit that an appropriate item of business for a Procedural Conference would be a discussion of that subject, and of the appropriate process to address it in the Commission's final Decision and Reasons in this proceeding.

Some other Specific Items

Nevertheless, we offer the following partial list of items which COPE 378 says should be addressed, as specific pieces of "unfinished business" and/or as preparatory work for the next Hydro RRA:

Energy Deferral Accounts

Notwithstanding the outcome for the current test period, the Commission should proscribe the practice of charging energy cost revisions to the Non Heritage Deferral Account on an *ex ante* basis. BC Hydro should be directed to prepare its next application on the footing that it cannot treat costs as deferred before they are incurred.

DARR

For the purposes of the next Application, BC Hydro should be directed to design a proposed amortization plan or table so that it does not contain a maximum/minimum limit in a range which has already been surpassed. That is, it should be directed to design a process which is updated to reflect the trajectory of growth of deferral accounts and include that proposal in the earlier of its next RRA or a Commission process flowing from this application to design a mechanism to clear the net balance of deferral accounts along the lines proposed by Mr. Andrews.

We submit that the delicacy of the balancing of interests which must be brought to this task makes it clearly beyond the realm of matters appropriately dealt with summarily through written submissions.

DSM costs

The Commission should issue directions to BC Hydro for the preparation of its next RRA with respect to its accounting practices and policies concerning DSM expenditures. Of particular note:

- the deferral of costs related to rate structures and codes and standards;
- the deferral of “sector enabling activities”;
- the deferral of program support costs;
- the nature of charges to “Personal Behaviour” such as Team PowerSmart and its related perquisites; and
- the practice of allocating 80% of certain customer service departments’ costs to DSM.

Trade Income

The Commission should revisit its Decision to treat the TIDA as one of the energy deferral accounts. It would make sense for the Commission to determine that until the TIDA is back in credit, all Powerex’s net earnings should be applied to reduce the debit balance on the TIDA.

Deferral Accounts

The Commission should direct BC Hydro to calculate the amount it should have amortized in the test period for the following deferral accounts:

- First Nations settlement;
- HPOP; and
- Rock Bay.

SMI

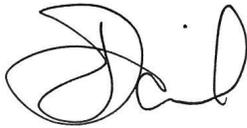
The Commission should direct BC Hydro to calculate the first year impact of SMI, based on an amortization period that reflects the useful life of the new meters. That is, the Commission should examine whether the amortization period creates a material risk that the meters will begin to fail or require replacement before their cost has been substantially amortized, and should give directions as to the appropriate means of recovery of cost (and from whom it will be recovered). Alternatively, it should direct BC Hydro to include an analysis of this issue in its next rate application, and to include a proposal to resolve any risks which are identified in that analysis.

Conclusion

In conclusion, COPE 378 submits that there are many outstanding tasks which are required for the final disposition of the BC Hydro Fiscal 2012-14 Amended Revenue Requirements Application. We have identified some of them. We submit that the complexity of the situation in which the Commission finds itself at this juncture calls, at a minimum, for a Procedural Conference for the proper canvassing of participants and to assist the Commission to determine its way forward.

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.

Jim Quail, Barrister & Solicitor
Legal Director

JQ:sl-usw2009

cc: parties of record via email