

William J. Andrews

Barrister & Solicitor

1958 Parkside Lane, North Vancouver, BC, Canada, V7G 1X5
Phone: 604-924-0921, Fax: 604-924-0918, Email: wjandrews@shaw.ca

March 23, 2016

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
Attn: Erica Hamilton, Secretary
By Web Posting

Dear Madam:

Re: British Columbia Hydro and Power Authority 2015 Rate Design Application (RDA);
March 21, 2016 Request for Submissions (Exhibit A-24);
BC Sustainable Energy Association and Sierra Club BC Submissions

These are BCSEA-SCBC's submissions in response to the Commission's March 21, 2016 request for submissions (Exhibit A-24) regarding an application by Mr. Roger Bryenton for reconsideration and reversal of the Commission's November 3, 2015 Decision and Order G-156-15 in which the Commission revoked Mr. Bryenton's status as an intervener.

I. Summary

BCSEA-SCBC have very carefully examined Mr. Bryenton's March 9, 2016 submissions and his October 2015 submissions. For the reasons set out below, BCSEA-SCBC are unable to conclude that the Panel erred in determining that Mr. Bryenton had not demonstrated a substantial interest in a substantial issue that is within the scope of the 2015 RDA. Further, BCSEA-SCBC are of the view that the Panel would have permissive authority to refuse Mr. Bryenton's request for intervener status under Rule 9.06(c) on the basis that the request is not in response to issues within the BC Hydro 2015 rate design application proceeding. In BCSEA-SCBC's view, Mr. Bryenton has raised numerous issues but none that are specific to the 2015 RDA. BCSEA-SCBC do not oppose Mr. Bryenton being granted intervener status on the condition that he address only issues that are within the scope of the 2015 RDA and not out-of-scope issues such as long-term planning, resource acquisition, revenue requirements, DSM expenditures, and the Site C Project.

II. BCSEA-SCBC's interests in this matter

BCSEA-SCBC described its interests in a request for reconsideration of revocation of intervener status earlier in this proceeding.¹ These interests are equally applicable regarding Mr. Bryenton's application. To reiterate, BCSEA-SCBC's interests in the outcome of this matter are in three categories:

- Fairness. As interveners in this and other proceedings of the Commission, BCSEA-SCBC have an interest in any and all parties being treated in accordance with the principles of fairness.
- Public participation. BCSEA-SCBC believe that the Commission's proceedings are greatly enhanced by participation of people and organizations representing a diversity of

¹ Exhibit C3-4.

concerns and interests. BCSEA-SCBC strongly support a broad approach to intervener standing.

- Regulatory efficiency. To the extent that the RDA proceeding becomes more complicated, lengthier and more time-consuming than is necessary, the size of BCSEA-SCBC's financial risk of an adverse cost award decision is unnecessarily increased.

III. Background

(a) Registration as an intervener, status opposed by BC Hydro

Mr. Bryenton registered as an intervener by email on October 13, 2015 (Exhibit C11-1). He described topics he wished to address and his expertise and experience. On October 14, 2015, Mr. Bryenton provided extensive written comments on various points to do with BC Hydro (Exhibit C11-2). On October 26, 2015, Mr. Bryenton provided submissions (Exhibit C11-3) in response to BC Hydro's position that he should not be granted standing as an intervener.

(b) Revocation of intervener status

On November 3, 2015, the Commission Panel issued Decision and Order G-156-15 addressing various procedural matters. In section 7.3.1 of the reasons for decision the Panel addressed Mr. Bryenton's intervention and BC Hydro's opposition to it. The Panel summarized the issues Mr. Bryenton said he intended to raise in the proceeding. The Panel quoted Mr. Bryenton's statement of his expertise, experience and anticipated involvement. The Panel noted that BC Hydro took the position that Mr. Bryenton had not shown that he has relevant information or that he intends to pursue any issue that is within the scope of the 2015 RDA. The Panel then expressed a determination that Mr. Bryenton had "not demonstrated a substantial interest in a substantial issue that is within the scope of this RDA." The Panel states: "The issues cited by Mr. Bryenton in his intervention request are issues that are more relevant to a revenue requirement proceeding or the review of an integrated resource plan." The Panel rescinded Mr. Bryenton's intervener status."²

(c) Reconsideration Request

In two submissions dated March 9, 2016, Mr. Bryenton asks to be reinstated as an intervener. These submissions are attached to Exhibit A-24.³ These are described by the Commission in Exhibit A-24 as a request for reconsideration of the decision to revoke Mr. Bryenton's intervener status.

(d) Commission request for submissions

The Commission requests submissions from BC Hydro and interveners on:

1. *Whether Mr. Bryenton's request for reinstatement of this intervener status is appropriate and relevant to the 2015 Rate Design Application proceeding; and*
2. *If yes, should the Commission allow Mr. Bryenton's late intervention to address his stated issues?*

² Exhibit A-4, Decision and Order G-156-15, Reasons for Decision, page 10 of 10.

³ Mr. Bryenton states in his first March 9, 2016 submission that he is attaching his "original submission regarding BC Hydro's application," which was filed as Exhibit C11-1.

III. BCSEA-SCBC Submissions

1. *Legal framework*

When the Panel revoked Mr. Bryenton's intervener status in December 2015 the Commission's new Rules of Practice and Procedure had not yet been adopted. The Rules of Practice and Procedure were adopted January 7, 2016, effective January 15, 2016.⁴ Arguably, the question of whether the revocation decision was in error should be determined on the basis of the rules then in effect, and any fresh decision on whether Mr. Bryenton should now be granted intervener status should be determined under the Rules of Practice and Procedure that are now in effect. However, in BCSEA-SCBC's view the issues in the current application (for reconsideration and intervener status for Mr. Bryenton) are not materially different whether considered under the old rules or the new Rules.

The test for intervener standing is set out in Rule 9.04:

9.04 Persons requesting intervener status must demonstrate to the satisfaction of the Commission that they are directly or sufficiently affected by the Commission's decision, or that they have experience, information, or expertise relevant to a matter before the Commission that would contribute to the Commission's decision-making. [underline added]

Notably, there are two bases for intervener standing:

- being directly or sufficiently affected by the Commission's decision, and
- having experience, information, or expertise relevant to a matter before the Commission that would contribute to the Commission's decision-making.

Rule 9.06 sets out certain reasons on which the Commission may refuse a request for intervener status in a proceeding. Rule 9.06 states in material part:

9.06 The Commission may refuse a request for intervener status for reasons, including but not limited to, that the request: ... (c) is irrelevant or is not in response to issues addressed in the particular proceeding...⁵ [underline added]

Presumably, the Panel was applying what became codified as the "not in response to issues addressed in the particular proceeding" factor when it determined in Order G-175-15 that Mr. Bryenton's intervener status would be revoked because he had not demonstrated a substantial interest in a substantial issue that is within the scope of the 2015 RDA.

In the event that the Commission decides to grant Mr. Bryenton intervener status, Rules 9.07 and 9.08 may be relevant. They state:

9.07 The Commission may grant intervener status subject to conditions it considers appropriate.

⁴ Order G-1-16, Rules of Practice and Procedure,

<http://www.ordersdecisions.bcuc.com/bcuc/orders/en/127520/1/document.do>

⁵ Paragraphs 9.06(a) and 9.06(d) are omitted because they are not relevant in the current circumstances. Paragraph 9.06 (b) – "(b) does not meet the requirements in section 9.04" – is omitted for simplicity because at least in the present context it duplicates Rule 9.04.

9.08 The Commission may determine the scope of an intervener's participation considering, for example, the person's interest, and the nature, importance and breadth of issues the person plans to address.

In summary regarding the legal framework applicable to whether a person should be granted intervener status, there four questions to consider. The first two questions are:

1. Is the person directly or sufficiently affected by the Commission's decision? (Rule 9.04)
2. Does the person have experience, information, or expertise relevant to a matter before the Commission that would contribute to the Commission's decision-making? (Rule 9.04)

If the Commission is not satisfied that one or both of those criteria have been established then intervener status will not be granted. If one or both of the Rule 9.04 criteria are met then the third question is:

3. Should the Commission exercise its discretion to refuse the request for intervener status on ground that the request is not in response to issues addressed in the particular proceeding? (Rule 9.06(c))

Finally, if the Commission is inclined to allow intervener status, the fourth question is:

4. Should the Commission grant intervener status subject to appropriate conditions, or determine the scope of an intervener's participation considering, for example, the person's interest, and the nature, importance and breadth of issues the person plans to address? (Rules 9.07 and 9.08)

2. Application of the legal framework to Mr. Bryenton's intervener status

In this section, BCSEA-SCBC review Mr. Bryenton's submissions in light of the legal framework for determining intervener status.

(a) Is the person directly or sufficiently affected

Mr. Bryenton states that he is "a BC resident [and] ratepayer."⁶ He does not specify if he is a BC Hydro ratepayer. However, for the purpose of this submission, BCSEA-SCBC will assume that Mr. Bryenton meets the "directly or sufficiently affected" criterion.

(b) Information or expertise to contribute to decision-making

Mr. Bryenton says he represents "an actual 'class of customer' of BC Hydro... who are concerned about costs of supply, price of power, financial and economic stability and reliability of power supply and use." He says he offers "valuable and helpful information and insight into the RDA process, which can help guide BC Hydro and the Province and Ratepayers into a new era of electricity supply and use." In point 7 of his second March 9, 2016 submission Mr. Bryenton states that "I believe that I offer technical insight that will be of value in these hearings, with my decades of experience and knowledge, my analytical approach and somewhat broader perspective of integrating suppliers and users to create the most robust, cost-effective generation and service delivery system."

In BCSEA-SCBC's view, Mr. Bryenton has not demonstrated experience or expertise in rate design issues that would support his participation in the RDA proceeding on that basis.

⁶ Bryenton, March 9, 2016, Exhibit A-24, pdf p.7 of 7.

(c) Whether the request is not in response to issues addressed in the 2015 RDA proceeding

Assuming, as stated above, that Mr. Bryenton is “directly or sufficiently affected” by the 2015 RDA decision, should the Commission exercise its discretion to refuse the request for intervener status on ground that the request is not in response to issues addressed in the 2015 RDA proceeding?

In the following paragraphs BCSEA-SCBC address the points Mr. Bryenton has articulated and whether they are in response to issues addressed in the 2015 RDA proceeding.

LRMC

In the first submission of March 2016, Mr. Bryenton emphasizes BC Hydro’s Long Run Marginal Cost (LRMC) as a topic he wishes to address. He notes correctly that information requests have been made in the RDA proceeding about BC Hydro’s LRMC. He considers that these topics have not been sufficiently explored and indicates that he would examine them in more depth. However, BC Hydro’s LRMC is relevant to numerous issues, some of which are within the scope of the RDA, and most of which are outside the scope of the RDA. The information requests about the LRMC in the RDA are related to the use of the LRMC in the RDA. Mr. Bryenton’s comments about BC Hydro’s LRMC estimates are not linked to any issues involving the use of BC Hydro’s LRMC within the RDA proceeding. Rather, Mr. Bryenton’s relates his discussion of BC Hydro’s LRMC estimates and revisions to DSM as a least cost resource and a “massive new project” he says BC Hydro “is deceiving the public and BCUC into believing...is both necessary and the best choice.” Whatever the merits of those views, they are not issues in the RDA.

New rate design criteria

In his March 2016 submissions Mr. Bryenton proposes three criteria he says should be added to, or should replace, the Bonbright criteria (principles) for rate design.⁷ At a general level, the principles of rate design are obviously within the scope of the 2015 RDA proceeding. However, that does not mean that any proposal to change the rate design principles is automatically an issue in the proceeding that would support intervener status. BCSEA-SCBC accept that there has to be a minimum threshold of plausibility for a proposal to support intervener status.

Mr. Bryenton’s first proposed new rate design criterion is “cooperation,” in which Mr. Bryenton says the concept of Supplier and Customer is no longer valid and should be replaced by an electricity system, or an energy system, in which users of energy are also producers of energy. While the concept is attractive, the topic is in the realm of long-term planning. Mr. Bryenton states that this cooperation criterion “ought to be a fundamental principle of rate design” [underline added.] However, he does not identify how a “cooperation” criterion would impact the rate design choices to be made in the RDA proceeding. BCSEA-SCBC are not convinced that the concept of a utility and its customers cooperating in the production and use of energy being used as a rate design criterion (or principle) in the 2015 RDA proceeding is a plausible proposal such that it could be said to be an issue in the proceeding.

Mr. Bryenton’s second proposed new rate design criterion is “customer service.”⁸ Customer understanding of rates is already a factor within the Bonbright rate design criteria that the

⁷ Exhibit A-24, pdf p.3 of 7.

⁸ *Ibid.*

Commission applies. Moreover, Mr. Bryenton's image of the BC Hydro CEO going door to door to consult with customers about their needs and fears regarding customer service is clearly beyond the scope of the RDA proceeding.

Third, Mr. Bryenton proposes "a fundamental Rate Design Criterion [that] 'rate increases should always be held to at or below the rate of inflation.'"⁹ This is not a rate design issue. General rate increases are a primary focus of a revenue requirement application, not a rate design application. In addition, the Commission has no jurisdiction to set BC Hydro's rates in a manner that did not allow BC Hydro to recover its Commission-approved revenue requirement.

Social inclusion, openness

In point 1 of his second March 9, 2016 submission, Mr. Bryenton argues that he should be given intervener standing because a principle of rate design should be that interested parties are welcomed to participate in a rate design application proceeding to present their concerns, which are deemed to be within scope because they are concerns. In BCSEA-SCBC's view, whatever the merits of an open house approach to decision making, this is not the approach taken by the B.C. Utilities Commission under the *Utilities Commission Act*. The law is that the Commission has adopted Rules of Practice and Procedure that, among other things, establish requirements for intervener standing. As Judge Stratas said regarding the National Energy Board, the federal counterpart to the BCUC, "Board hearings are not an open-line radio show where anyone can dial in and participate."¹⁰

Site C and rate design

In point 2 of his second March 9, 2016 submission Mr. Bryenton argues that Site C is not effective rate design or project selection and will dramatically affect future costs and rates. However, as is well known, the Commission does not have legal authority to review the merits of the Site C Project.¹¹ Certainly, the Site C Project is not within the scope of the current BC Hydro rate design application. No amount of repetition of the potential impacts of Site C will bring Site C within the scope of the RDA proceeding.

LRMC redux

In point 3 of his second March 9, 2016 submission Mr. Bryenton provides a number of additional points about BC Hydro's LRMC. He states a "concern that this [revision of LRMC estimates] does not reflect the price the user must pay, and a split in demand/energy of 55/45 may be substantially in error if and when substantial new DSM and self-generation technologies are implemented, which in other jurisdictions, have already created problems integrating variable sources such as solar and wind into traditional grids." With respect, these comments reflect a misunderstanding of how the Cost of Service Study applies to issues within the RDA proceeding.

Mr. Bryenton argues that "Numbers such as the LRMC presented [in the RDA] without discussion and dissection may misguide future decisions without being thoroughly addressed."¹²

⁹ *Ibid.*

¹⁰ *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245 (CanLII), <<http://canlii.ca/t/gf4vc>>, paragraph 76.

¹¹ BCSEA-SCBC are on record as calling for the BC government to refer the Site C Project to the Commission for evaluation. To date, the government has not done so.

¹² Exhibit A-24, pdf p.6 of 7

However, BC Hydro's LRMC estimates are not presented for Commission approval in the rate design application. The use of the LRMC estimates in future proceedings or planning contexts is not within the scope of the 2015 RDA proceeding.

Demand-side management

In point 4 of his second March 9, 2016 submission Mr. Bryenton says that DSM spending and technologies affect "the demand/energy split." This is apparently in reference to BC Hydro's proposed demand 55%/energy 45% classification of Heritage Hydro in its Cost of Service Study. BC Hydro's Cost of Service Study is within the scope of the proceeding. However, Mr. Bryenton's statements about DSM and "the demand/energy split" do not appear to identify a substantial issue. In the Cost of Service Study, the functionalization and classification of DSM spending is different than the classification of Heritage Hydro costs.

Renewable generation

In point 5 of his second March 9, 2016 submission Mr. Bryenton says BC Hydro lacks current data on geothermal or solar costs and so cannot effectively price power. However, the cost of future renewable generation is not within the scope of the RDA proceeding.

Housing stock and end user analysis

In point 6 of his second March 9, 2016 submission Mr. Bryenton says that rate design should be informed by data on housing stock and end uses and that he does not see these analyses (on the record). It is accepted that end use data can potentially be relevant to residential rate design, which is within the scope of the RDA proceeding. However, there is residential end use data on the record and there will be more when BC Hydro and FortisBC Inc. file their respective reports on the Minister's questions regarding residential inclining block rates. Mr. Bryenton does not appear to have identified a particular issue that he would address involving residential end use data and the outcomes of the RDA proceeding.

Conclusion

In BCSEA-SCBC's view Mr. Bryenton has not identified any issue within the scope of the 2015 RDA proceeding that he would address if granted intervener status. It follows that the Commission would have discretionary authority to refuse the request for intervener status on ground that the request is not in response to issues addressed in the particular proceeding.

That said, BCSEA-SCBC have chosen not to take a position on whether the Commission should exercise its authority to refuse the request for intervener status in Mr. Bryenton's case. They take this approach in consideration of two factors.

First, as stated above, BCSEA-SCBC believe that the Commission's proceedings are greatly enhanced by participation of people and organizations representing a diversity of concerns and interests. BCSEA-SCBC strongly support a broad approach to intervener standing. They are reluctant to see the Commission deprived of the benefit of someone's viewpoint.

Second, it is the Commission that Mr. Bryenton must persuade of the merits of his application for intervener status, not BCSEA-SCBC. The submissions above reflect BCSEA-SCBC's best efforts to try to understand Mr. Bryenton's points and how they might relate to the issues in the 2015 RDA proceeding. Frankly, however, Mr. Bryenton's points are difficult to understand, and

perhaps the Commission will be able to see a connection to an issue in the proceeding that BCSEA-SCBC have missed.

(d) Intervener status with conditions

It is clear that Mr. Bryenton has raised many points that are far beyond the scope of the 2015 RDA proceeding. Notably, many of Mr. Bryenton's points his March 2016 submissions are the same as the ones in his October 2015 submissions that the Commission determined in December 2015 were beyond the scope of the proceeding. If Bryenton is to be granted intervener status, then in BCSEA-SCBC's view express conditions or limitations on the scope of his intervention would be appropriate.

Accordingly, BCSEA-SCBC do not oppose Mr. Bryenton being granted intervener status on the condition that he address only issues that are within the scope of the 2015 RDA and not out-of-scope issues such as long-term planning, resource acquisition, revenue requirements, DSM expenditures, and the Site C Project.

IV. Response to Commission questions

For the reasons set out above, BCSEA-SCBC would respond to the Commissions two questions as follows.

1. In BCSEA-SCBC's view Mr. Bryenton has not identified any issue within the scope of the 2015 RDA that he would address if granted intervener status.
2. BCSEA-SCBC do not oppose Mr. Bryenton being granted intervener status on the condition that he address only issues that are within the scope of the 2015 RDA and not out-of-scope issues such as long-term planning, resource acquisition, revenue requirements, DSM expenditures, and the Site C Project.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



Barrister & Solicitor

cc. Distribution List by email
Mr. Roger Bryenton by email