



Suite 1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC  
Canada V6C 3L2

BY E-FILING

June 28, 2017

Ian Webb  
T: 604.631.9117  
F: 604.694.2932  
iwebb@lawsonlundell.com

British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, B.C. V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

**Re: British Columbia Utilities Commission (Commission)  
British Columbia Hydro and Power Authority (BC Hydro)  
Inquiry of Expenditures related to the adoption of the SAP Platform (Inquiry)  
Project No. 3698878**

We write on behalf of BC Hydro in connection to Commission Order No. G-86-17 which directs BC Hydro to file the Code of Conduct complaint received by BC Hydro's Code of Conduct Advisor in April 2010 (the Code of Conduct Complaint) and documents related to the resolution of that complaint.<sup>1</sup> As outlined below and detailed in the confidential information we are filing with the Commission separately in hard copy, BC Hydro is submitting the Code of Conduct Complaint and approximately 100 documents related to the resolution of the Code of Conduct Complaint in 2010 and also related to a review of the Code of Conduct Complaint undertaken in 2016 (2016 Review).

**The documents are filed on a confidential basis**

BC Hydro remains of the view that all Code of Conduct matters at BC Hydro must be treated with a high degree of confidentiality to ensure all parties involved are provided with a confidential environment in which to report and address sensitive and confidential Code of Conduct questions or concerns. BC Hydro encourages its employees to report suspected Code of Conduct breaches and provides assurances that whistle-blower reporting will be kept strictly confidential except in truly exceptional circumstances.

Due to these concerns, and as noted in BC Hydro's June 13, 2017 letter to the Commission requesting a two-week extension to the date for filing this evidence, BC Hydro's Ethics Officer

<sup>1</sup> Pursuant to Order No. G-92-17 the Commission extended the date for BC Hydro's filing to June 28, 2017.

was asked to review the documents to be filed with the Commission and help BC Hydro to better understand the impact that disclosure could have on the Code of Conduct reporting program. The Ethics Officer has set out his views on the matter in a letter to the Commission which is enclosed with this submission. The Ethics Officer's letter emphasizes the importance of safeguarding the confidentiality and preserving the integrity of BC Hydro's whistleblowing process, and urges the Commission to ensure confidentiality of any employees' identities and personal information contained within the documents being provided.

In its Order No. G-86-17 Decision, the Commission acknowledged the concerns regarding protection of private personal information, and also noted that it is sensitive to the concern that disclosure of the Code of Conduct Complaint could discourage future Code of Conduct reporting. Accordingly, Order No. G-86-17 provides that BC Hydro shall redact any information BC Hydro considers necessary to protect the privacy of personal information of the individuals referenced in the requested documents.

In considering how to fulfill the directives of the Commission's order, BC Hydro has considered the advice of the Ethics Officer and his strong concerns that disclosure of the identities and personal information contained in the documents would betray trust and create significant risk to BC Hydro and its stakeholders.

BC Hydro also considered its *Freedom of Information and Protection of Privacy Act* (FOIPPA) obligations to protect personal information that is in BC Hydro's custody and control. Specifically, pursuant to section 30.4 of FOIPPA, "an employee, officer or director of a public body..., who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act." FOIPPA defines personal information broadly as "recorded information about an identifiable individual other than contact information". Pursuant to sections 33 and 33.1(1)(t) of FOIPPA, a public body may disclose personal information to comply with an order made by a court or a body such as the Commission.

We have considered what redactions would be necessary to protect the privacy of identifiable individuals, and have concluded that in these circumstances a great majority of the information would need to be redacted. It would not be sufficient to redact the names of individuals, for example, because the individuals could be readily identified by other information in the documents and connected to the private personal matters addressed. If we redacted the names of individuals, information that indirectly identifies individuals and their private personal information, there would be little information left unredacted. We believe such an approach would frustrate the intent of the Commission's order. Accordingly, we are submitting the documents unredacted on a confidential basis.

BC Hydro specifically requests confidential treatment of the information we are filing separately in hard copy with the Commission to protect the privacy of personal information and mitigate harm to the Code of Conduct reporting program.

BC Hydro also requests that access to the confidential documents be limited to the Commission and legal counsel for interveners again to ensure that these documents are handled with the utmost care. Legal counsel for interveners may have access to hard copies of the confidential documents by signing and submitting the Commission's Confidentiality Declaration and Undertaking Form.

Order No. G-86-17 provides for one round of information requests on these documents. BC Hydro requests that the information request process also be confidential for the same reasons articulated above. For greater certainty, information requests would be submitted to BC Hydro on a confidential basis, and BC Hydro's response would be submitted on a confidential basis.

Following the information request process, if the Commission or an intervener counsel believes that any of the information should be placed on the public record, redaction of specific documents could be considered at that time.

### **Overview of Code of Conduct Complaint process in 2010 and related confidential documents**

The Commission has directed BC Hydro to file the Code of Conduct Complaint and documents related to the resolution of the Code of Conduct Complaint. Concurrently with this letter, we are filing separately with the Commission approximately 100 confidential documents in hard copy. A full listing of the documents and explanatory comments are included within the confidentially filed binder of documents. The following overview of BC Hydro's Code of Conduct reporting process as it was in 2010 is provided to place these documents in context.

In 2010, Code of Conduct concerns were reported to the independent Code of Conduct Advisor (a contractor). The Code of Conduct Advisor would forward a report of a potential breach of the Code of Conduct, on an anonymous basis, to BC Hydro's Director of Audit Services who would lead the review of the allegations. A copy of the Code of Conduct Complaint that the Director of Audit Services received from the Code of Conduct Advisor in April 2010 is provided at Tab 1 of the confidentially filed binder.

BC Hydro notes that the process now used in investigating and reviewing Code of Conduct concerns has been revised since 2010. Code of Conduct concerns are now reported to BC Hydro's Ethics Officer and if an investigation is to be undertaken, an external independent investigator is engaged and provided with terms of reference to be followed. A written report is then provided to the Ethics Officer from the independent investigator.

An extract of the Audit Services Operations Manual in respect of the Code of Conduct process, as it was in 2010, is provided at Tab 2 of the confidentially filed binder. The Director of Audit Services would lead the review of the allegations in coordination with representatives of the Corporate Human Resources group, Corporate Security group and/or the Legal Department as required. A great majority of the documents in the confidential enclosure consist of emails among the BC Hydro staff investigating the Code of Conduct Complaint.

The Director of Audit Services reported the findings to the Code of Conduct Advisor, the Chair of the Audit and Risk Management Committee (ARMC) of the Board of Directors and the appropriate BC Hydro officer(s). A copy of the report of the Director of Audit Services with respect to the Code of Conduct Complaint is provided at Tab 78 of the confidentially filed binder.

The Director of Audit Services presented the report to the Chair of the ARMC in person. A summary report was also provided to all ARMC members. A copy of the summary report provided to all ARMC members is provided at Tab 84 of the confidentially filed binder.

Any communication back to the complainant would have been by the Code of Conduct Advisor. BC Hydro is not aware of any documents related to the Code of Conduct Advisor's communications with the complainant. BC Hydro understands that the Code of Conduct Advisor's practice was to communicate with reporting employees verbally and not by written correspondence.

### **Overview of the 2016 Review and the 2010 Code of Conduct Complaint and related confidential documents**

As stated in BC Hydro's January 8, 2016 response to the initial December 2015 complaint from Mr. Dix, filed as Exhibit A2-2 in this inquiry, BC Hydro took the allegations in that complaint very seriously and accordingly, undertook an extensive search and review of all internal records related to that complaint. In addition, BC Hydro initiated a Code of Conduct review (2016 Review) through the BC Hydro Ethics Office, and conducted by an external investigator, in order to gain further insights into the judgements that led to the testimony itself and the failure to correct the record.

The search and review of internal records included a review of the Code of Conduct Complaint which BC Hydro referenced in its September 30, 2016 letter filed as Exhibit B-8 of this Inquiry by stating: "BC Hydro also notes that during our review of materials while preparing our January 8, 2016 submission, we reviewed a relevant Human Resource (HR) matter that arose in 2010. Due to the confidentiality of such matters, BC Hydro has not included this document herein but raised that fact to the attention of the Commission."

As noted in BC Hydro's earlier letter dated May, 17, 2017 filed as Exhibit B-15, the Code of Conduct Complaint is almost identical to Mr. Dix's complaint. Through the review of the Code of Conduct Complaint, BC Hydro became concerned that the scope of the Code of Conduct review in 2010 was too narrowly focused on the legal requirements for testimony and document filings at Commission hearings and whether those legal requirements were met. The 2010 review did not take into consideration whether or not the overall culture at BC Hydro and its relationship with the Commission may have indicated a systemic problem. The scope of the 2016 Review was therefore expanded to address these issues as set out in the Terms of Reference for the 2016 Review listed below.

As stated in the January 8, 2016 response, BC Hydro believes that the testimony relating to IT&T expenditures in the F2009/F2010 RRA oral hearing during October 2008, including the failure to update the Commission on the SAP strategy, did not attain the standards BC Hydro expects of itself for its participation in regulatory processes before the Commission.

For this reason and to ensure a similar situation does not happen again, BC Hydro purposefully designed the terms of reference for the 2016 Review to obtain further insight into the judgements that led to those shortcomings during the 2008 hearing that are at the centre of both the Code of Conduct Complaint submitted to the Code of Conduct Advisor in April 2010 and the complaint Mr. Dix submitted to the Commission in December 2015. Specifically the terms of reference for the 2016 Review were:

1. To determine if BC Hydro had developed an overall culture and identified an approach to its relationship with BCUC in 2008 and if so to determine what it was and what expectations were communicated to its employees in the context of sharing information with BCUC.
2. To determine if the conduct demonstrated by BC Hydro staff aligned with our expectations at the time (safety/service/integrity/accountability/teamwork/ingenuity).
3. To determine the nature of employees' understanding of the regulatory process and evidentiary requirements.
4. To obtain learnings from the 2008 Regulatory Review Process to inform the development of appropriate Regulatory practices in the future.

The 2016 Review also investigated whether there was an internal systemic problem in 2008, why the complainant did not come forward with the concerns about the testimony during the F2009/F2010 Revenue Requirements Application proceeding sooner, and why the Code of Conduct Complaint indicated a misunderstanding of the nature of the SAP strategy and of BC Hydro's financial oversight and project governance policies

While eight years had passed, the report on the 2016 Review concluded that there was no evidence of an internal systemic problem in 2008, found no evidence of any intent to withhold information from the Commission, and suggested that the shortcomings of the testimony in 2008 could be attributable to inexperience and a lack of understanding of the significance of the regulatory process.

The report on the 2016 Review contains confidential personal information about individuals involved, and is provided at Tab 95 of the confidentially filed binder.

As previously described, the confidential information we are filing with the Commission separately in hard copy includes a full listing of the documents being provided and explanatory comments respecting the documents.

Yours very truly,

LAWSON LUNDELL LLP



Ian Webb

Letter dated June 22, 2017 from Peter Clark, BC Hydro Ethics Officer, to the Commission is enclosed.

Six copies of the binder of confidential documents are being submitted separately in hard copy to the Commission.

cc. BC Hydro and Registered Interveners (without confidential documents)



Peter Clark  
Ethics Officer  
Ethics Office, BC Hydro  
Phone: 604-528-3400

June 22, 2017

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N2

Dear Mr. Wruck:

**RE: Project No. 3698878  
British Columbia Utilities Commission (BCUC or Commission)  
BC Hydro and Power Authority (BC Hydro)  
BC Hydro Code of Conduct Advisor (Code Advisor)  
Expenditures Related to the Adoption of the SAP Platform**

I understand that BC Hydro is directed to file the April 2010 Code of Conduct complaint received by our Code of Conduct Advisor; and documentation relating to the resolution of this complaint, including any internal report(s) prepared by BC Hydro, as well as any letter(s) or documentation provided to the complainant at the conclusion of the investigation. It is my further understanding that BC Hydro is directed to redact information which BC Hydro considers necessary to protect the privacy of the complainant and personal information of the individuals who are referenced in the requested documents. I applaud the direction by the BCUC to preserve the confidentiality of the complainant's name and the privacy of others referenced in the requested documents.

As BC Hydro's Ethics Officer, I want to share my rationale and emphasize the importance of safeguarding the confidentiality and preserving the integrity of BC Hydro's confidential disclosure and/or whistleblowing process. Confidentiality is the cornerstone of the Ethics Office. It preserves the sanctity of our employee's trust when they report a violation of The Code knowing that we will not put them at risk of harm by ensuring their identities and personal information remain confidential.

.../2

Maintaining the trust of our employees and the public is so important that we champion it in the first five words of our vision 'to be the most trusted, innovative utility company in North America... by being smart about power in all we do'. BC Hydro wants to continue to build and sustain a culture of trust with our employees because it is vital for their confidence in the Ethics Office and BC Hydro's Code of Conduct. The Code explicitly states we will preserve an employees' privacy when we receive their confidential disclosures, witness statements and/or when providing confidential counsel. BC Hydro's continued desire is to foster a respectful and open environment that encourages diverse opinions, and the freedom to raise concerns and report unethical or illegal conduct. To achieve this, we encourage confidential internal disclosures and whistleblowing:

*The privacy of anyone who seeks advice or discloses a breach or potential breach under the Code will be respected by management of BC Hydro as much as is possible in the circumstances.*

*Any disclosures or reports under the Code will be treated as confidential and will only be disclosed if absolutely necessary (for example where there is a threat of serious harm). This confidentiality is subject to all laws, which may oblige us to disclose information.*

*We will not permit any individual who, in good faith, has made a disclosure about another person or party having breached or potentially breached the Code to suffer any adverse consequences as a result.*

From my observations, it takes enormous courage to report unethical or illegal conduct because of the fear of retaliation from making a disclosure. We count on and require our employees to report potential violations of our code of conduct to ensure that we are able to respond appropriately, impartially and in a timely manner.

I deem it be our continued duty to create a safe space for disclosures in a respectful and open environment where our employees are confident about and trust in our stewardship of their disclosure. They need to be assured that their concerns will be investigated in a way that keeps them safe from current and future harm.

I believe that we have earned our employee's trust one disclosure at a time by consistently demonstrating our trustworthiness in protecting disclosing person's identities and personal information while impartially investigating their concerns. Trust takes a very long time to develop and can be very quickly diminished if betrayed.

While holding the sanctity of our employee's trust is paramount, I also recognize the importance of maintaining our stakeholders trust by consistently communicating and operating with openness and transparency in everything we do. These principles support our values of integrity and trust and are fundamental to the way BC Hydro serves our communities.

.../3

To earn the trust of our employees and of our stakeholders is our vision. To achieve this, we must balance confidentiality with transparency. We must uphold the promise of confidentiality and therefore the safety of disclosing persons and witnesses while openly, transparently and impartially sharing information with integrity when required.

I have strong concerns that disclosing the identities and personal information of the persons involved with our internal Code of Conduct reviews would betray the trust of our employees. It would place our trusting and vulnerable employees who cared enough to disclose essential information into positions of potential harm. It would cast doubt on BC Hydro's commitment to safety and confidentiality and jeopardize the willingness of people to come forward with future concerns about unethical or illegal conduct. This would create significant risk to BC Hydro and its' stakeholders by closing the door on those whose voices need to be heard. It would undermine the trust of our employees and create a culture of fear, avoidance and mistrust. This would be the antithesis of what we stand for. Risks of misconduct are significantly heightened in environments where confidential reporting of wrongdoing is not supported or protected.

We must uphold the trust of both our employees and our stakeholders. For this reason, I urge the commission to ensure confidentiality of any employees' identities and personal information contained within the submission of the attached documents. I would request that their review uphold the sanctity of our employee's trust in the confidential disclosure process that is integral to BC Hydro. Please help us to protect the cornerstone of the Ethics Office and safeguard BC Hydro's culture of trust.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Clark", written in a cursive style.

Peter F. Clark  
Ethics Officer  
BC Hydro