bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

April 3, 2018

Sent via eFile/email

BC HYDRO ELECTRICITY PURCHASE AGREEMENT EXTENSION APPLICATIONS EXHIBIT A-2

Mr. Fred James
Chief Regulatory Officer
Regulatory & Rates Group
British Columbia Hydro and Power Authority
16th Floor – 333 Dunsmuir Street
Vancouver, BC V6B 5R3
bchydroregulatorygroup@bchydro.com

Re: British Columbia Hydro and Power Authority – Electricity Purchase Agreement Extension Applications for Armstrong Wood Waste Co-Generation and NWE Williams Lake Wood Waste Facilities – Regulatory Timetable with Reasons

Dear Mr. James:

Further to your February 27, 2018 application to accept two extension agreements for the Armstrong Wood Waste Co-Generation Plant and the NWE Williams Lake Wood Waste project, pursuant to section 71 of the *Utilities Commission Act*, please find enclosed BCUC Order G-69-18 establishing a regulatory timetable with reasons.

Sincerely,

Original Signed By:

Patrick Wruck
Commission Secretary

/ad
Enclosure

bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER
G-69-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Electricity Purchase Agreement Extension Applications
for Armstrong Wood Waste Co-Generation and
NWE Williams Lake Wood Waste Facilities

BEFORE:
D. M. Morton, Commissioner/Panel Chair
B. A. Magnan, Commissioner
R. I. Mason, Commissioner

on April 3, 2018

ORDER

WHEREAS:

A. On February 27, 2018, British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) an application, pursuant to section 71 of the *Utilities Commission Act* (UCA), to accept two separate agreements (Extension Agreements) as follows (collectively, the Application):

   I. An agreement dated November 17, 2017 that amends and extends a 2009 electricity purchase agreement (EPA) with an original expiration date of November 20, 2017 between BC Hydro and Tolko Industries Ltd. (Armstrong EPA Extension) for the Armstrong Wood Waste Cogeneration Plant. The Armstrong EPA Extension is set to expire June 30, 2019, and BC Hydro may exercise an option to extend the expiry date to September 30, 2019; and

   II. An agreement dated December 29, 2017 that amends and extends a 1990 EPA with an original expiration date of April 1, 2018 between BC Hydro and Atlantic Power Preferred Equity Ltd. for the NWE Williams Lake Wood Waste project (NWE Williams Lake EPA Extension). The NWE Williams Lake EPA Extension is set to expire June 30, 2019, and BC Hydro may exercise an option to extend the expiry date to September 30, 2019;

B. By Ministerial Order M-22-9801, dated August 28, 1998, any EPAs agreed upon by BC Hydro or any persons selling electricity to BC Hydro on or before March 31, 2000, were exempted from section 71 of the UCA. The threshold date for this exemption was subsequently updated to September 30, 2001, by Amending Ministerial Order M-22-9801-A1;

C. By Order E-10-90, dated November 16, 1990, BCUC approved an EPA for BC Hydro to purchase electricity produced by the NWE Williams Lake Facility, effective June 30, 1990 (NWE Williams Lake EPA);

D. On October 18, 1999, terms of the NWE Williams Lake EPA were amended, however M-22-9801-A1 exempted the amendments' review under section 71 of UCA;

E. By Order E-17-09, dated November 19, 2009, BCUC approved an EPA for BC Hydro to purchase electricity produced by the Armstrong Co-Gen Facility, pursuant to section 71 of the UCA;

F. By Order G-61-12, dated May 17, 2012, BCUC approved the Rules for Energy Supply Contracts for Electricity (Rules). Appendix A of Order G-61-12 contains the Rules, which are intended to facilitate BCUC's review of energy supply contracts for electricity, pursuant to section 71 of the UCA;

G. On December 19, 2016, BCUC received a letter from Ms. Erin Gray, who represents four Williams Lake residents, requesting to be notified when the NWE Williams Lake EPA Extension was filed with BCUC, and that if and when the EPA Extension was filed that BCUC require a hearing;

H. On January 5, 2018, BC Hydro requested an extension to file the Armstrong EPA Extension from January 16, 2018 to February 27, 2018, pursuant to section 1.1.2 of the Rules, which requires an EPA to be filed within 60 days of the date when the agreement came into effect;

I. On January 12, 2018, BCUC granted BC Hydro's request to extend the filing of the Armstrong EPA Extension to February 27, 2018 to coincide with the filing of the NWE Williams Lake EPA Extension; and

J. BCUC determines that a written hearing process should be established in accordance with the regulatory timetable as set out in Appendix A to review the Application.

NOW THEREFORE pursuant to section 71 of the UCA and for the reasons attached as Appendix B, BCUC orders as follows:

1. A written hearing process is established for the review of the Application in accordance with the regulatory timetable as set out in Appendix A of this order.

2. BCUC will keep the unredacted version of the Application confidential as it contains commercially sensitive information.

3. As soon as reasonably possible, BC Hydro is to publish the public version of the Application, this order and the regulatory timetable on its website and to provide a copy of the public version of the Application and this order to all registered interveners in its BC Hydro F2017-2019 Revenue Requirement Application proceeding, the First Nations communities identified on page 25 of the Application that are within the consultative boundaries of the two Extension Agreements, Tolko Industries Ltd., Atlantic Power Preferred Equity Ltd., and Ms. Erin Gray.

4. Interveners who wish to participate in the regulatory proceeding are to register with BCUC by completing a Request to Intervene Form, available on BCUC's website at http://www.bcuc.com/Registration-Intervener-1.aspx, by the date established in the regulatory timetable attached as Appendix A to this order, and in accordance with BCUC's Rules of Practice and Procedure attached to Order G-1-16.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of April 2018.

BY ORDER

Original Signed By:

D. M. Morton
Commissioner

British Columbia Hydro and Power Authority
Electricity Purchase Agreement Extension Applications
for Armstrong Wood Waste Co-Generation and
NWE Williams Lake Wood Waste Facilities

REGULATORY TIMETABLE

Action	Date (2018)
Intervener Registration	Wednesday, April 18
BCUC Information Request (IR) No. 1	Tuesday, April 24
Intervener IR No. 1	Tuesday, May 1
BC Hydro responses to BCUC and Intervener IRs	Tuesday, May 15
Intervener and BC Hydro submissions on further process	Wednesday, May 23
Further process	To be determined

British Columbia Hydro and Power Authority
Electricity Purchase Agreement Extension Applications
for Armstrong Wood Waste Co-Generation and
NWE Williams Lake Wood Waste Facilities

REASONS FOR DECISION

1.0 Background

On February 27, 2018, British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) an application, pursuant to section 71 of the *Utilities Commission Act* (UCA), for acceptance of the following agreements (collectively, the Application):

- An agreement dated November 17, 2017 that amends and extends a 2009 electricity purchase agreement (EPA) between BC Hydro and Tolko Industries Ltd. (Armstrong EPA Extension) for the Armstrong Wood Waste Cogeneration Plant. The Armstrong EPA Extension is set to expire June 30, 2019, and BC Hydro may exercise an option to extend the expiry date to September 30, 2019; and
- An agreement dated December 29, 2017 that amends and extends a 1990 EPA between BC Hydro and Atlantic Power Preferred Equity Ltd. (NWE Williams Lake EPA Extension) for the NWE Williams Lake Wood Waste project (NWE Williams Lake Facility). The NWE Williams Lake EPA Extension is set to expire June 30, 2019, and BC Hydro may exercise an option to extend the expiry date to September 30, 2019. (collectively, the EPA Extensions).

1.1 Legislative framework

Subsection 71(2) of the UCA states that "The commission may make an order under subsection (3) if the commission, after a hearing, determines that an energy supply contract to which subsection (1) applies is not in the public interest."

Further, Subsection 71(2.21) of the UCA states:

> In determining under subsection (2) whether an energy supply contract filed by the authority is in the public interest, the Commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider
>
> a) British Columbia's energy objectives,
>
> b) an applicable integrated resource plan approved under section 4 of the *Clean Energy Act*,
>
> c) the extent to which the energy supply contract is consistent with the requirements under section 19 of the *Clean Energy Act*,
>
> d) the quantity of the energy to be supplied under the contract,
>
> e) the availability of supplies of the energy referred to in paragraph (d),
>
> f) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (d), and

g) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (d).

By BCUC Order G-61-12 dated May 17, 2012, BCUC established the Rules for Energy Supply Contracts for Electricity (Rules) to facilitate the review of energy supply contracts (ESC) for electricity. Regarding the need for a hearing, Section 1.3 of BCUC's Rules states:

> Generally, the Commission will decide within 60 days of the filing of an ESC as to whether a public hearing is required, and if not, will issue an Order determining the ESC is in the public interest and accepting the ESC for filing. If the Commission determines a public hearing is required, it will take place where:
>
> (a) the Commission is unable to determine on the basis of the information filed under these General Rules that the ESC is in the public interest; or
>
> (b) it appears to the Commission on the basis of the information filed under these General Rules that the ESC may not be in the public interest.
>
> The Commission may also hold a hearing where it receives a third-party complaint about the ESC.

2.0 Need for a public hearing

2.1 Complaint and request for a hearing

Customer complaint regarding Williams Lake EPA

On June 9, 2017, Williams Lake and area residents Patricia Weber, Jennifer Noble, Rodger Hamilton and Frances McCoubrey, Rail Ties Be Wise, the BC Sustainable Energy Association, and the Sierra Club BC (the Complainants) filed a complaint and a request for a hearing or inquiry under section 83 of the UCA with BCUC, concerning whether burning retired rail ties contaminated with creosote or pentachlorophenol is clean or renewable electricity or a clean or renewable resource as it relates to the fuel source of the Williams Lake EPA. By BCUC letter L-28-17 dated October 31, 2017, BCUC stated that the Complainants "raised a number of questions relating to the terms of the existing Williams Lake EPA and the Commission's jurisdiction under section 71 of the UCA. The Commission considered that these questions are best addressed outside of the Commission's complaint process." BCUC further determined that the complaint is closed.

On March 6, 2018, the Complainants filed a letter of comment regarding the Williams Lake EPA Extension, stating that:

> My clients do not oppose BC Hydro's request that the Commission accept for filing under s.71 the EPA Extension for the NWE Williams Lake Wood Waste Facility. My clients take this position because BC Hydro states that 'Atlantic Power has contractually committed not to use railway ties as a fuel supply source during the period that the NWE Extension Agreement is in effect.

Customer letter dated December 19, 2016

On December 19, 2016, Erin Gray, legal counsel representing Williams Lake residents Angie Delainey, Becky Bravi, Ellis O'Toole, Tricia McLellan, filed a letter with BCUC, stating:

> I am writing to bring my clients' concerns to the BC Utilities Commission's attention and to request that if and when Atlantic Power's EPA is filed with the BCUC for acceptance under s. 71

of the Utilities Commission Act, that I am notified. I also request that if and when the EPA is filed with BCUC, that BCUC requires a hearing.

2.1 Preliminary issues

BC Hydro states in its Application that "the energy purchased under the Extension Agreements is not by itself cost effective over the extension periods, particularly because BC Hydro does not need the energy during these short-term extensions…."[1] BC Hydro also states that "the Extension Agreements with Tolko and Atlantic Power are bridging mechanisms, pending the completion of the biomass energy strategy, to preserve the option to enter into a longer-term cost-effective EPA in the near future."[2] BC Hydro provides further information in its Application on, among other things, the generation facilities, the terms of the original and extension agreements, BC Hydro's assessment of risk and cost-effectiveness of the EPA Extensions, and BC Hydro's evaluation of the EPA Extensions against the section 71(2.21) factors.

BCUC determination

In light of the complaint and request for a hearing received by BCUC on the NWE Williams Lake EPA, the Panel observes there may be broader stakeholder interest on the EPA Extensions that warrants the review of the Application by way of a public hearing. Further, upon reviewing the information contained in the Application, the Panel considers that additional information is required to fully consider the Application against each of the factors listed under section 71 (2.21) of the UCA, and that it is unable to determine whether the EPA Extensions are in the public interest at this time given the information provided. **Therefore, pursuant to section 71 of the UCA and consistent with Section 1.3 of the Rules, the Panel considers that a public hearing is required to determine whether the EPA Extensions are in the public interest, and hereby establishes a public hearing process and a regulatory timetable contained in Appendix A to this order to review the Application.**

[1] Application, p. 19.
[2] Application, p. 7.