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September 10, 2018

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Sirs/Mesdames:

Re: British Columbia Hydro and Power Authority Review of the Regulatory Oversight of Capital Expenditures and Projects ~ Project 3698877

Re: Order No. G-148-12

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC") in this matter.

Further to the Commission's letter of August 29, 2018 (Exhibit A-19), the CEC is writing to respond to the submissions of BC Hydro and Power Authority ("BC Hydro" or "Utility") dated September 5, 2018, on whether the CEC's proposed evidence topics are in scope for the above-referenced proceeding.

Background

The CEC submits that the BC Hydro submissions fundamentally mischaracterize the evidence that the CEC is proposing to provide in this proceeding. The CEC reiterates its submission from its letter of August 27, 2018 (Exhibit C3-6), which stated:

"The CEC submits that the information set out in the proposed CEC evidence is within scope and is directly supported by section 43(1)(b)(i) of the *Utilities Commission Act* ("UCA") which provides that a public utility must provide all of the information that the Commission requires. The CEC's evidence will propose information that the Commission should require from BC Hydro."

The CEC's proposed evidence will identify information that is relevant to the Commission's review of the Regulatory Oversight of Capital Expenditures and Projects. The CEC is not proposing, as argued by BC Hydro, that the Commission extend its jurisdiction to the

management of the Utility. The Commission requesting information from the Utility is not “managing the Utility”, nor is it beyond the jurisdiction of the Commission. It is expressly provided for in the UCA.

The CEC would highlight the stated position of BC Hydro set out in Appendix A to Order G-174-16, where the Commission stated:

“BC Hydro confirmed its view, as set out in its pre-filed comments, that the scope as set out in Order G-63-16 is appropriate, adding that BC Hydro intends to be “pragmatic and practical” with respect to the scope in this proceeding.³ All parties supported the scope of the proceeding as set out in Order G-63-16. BCOAPO stated they agree with the proposed scope, but noted that the Commission should not “overly restrict” the scope at this stage.⁴ Similarly, BCSEA supported the proposed scope, as long as it remains flexible.⁵ MoveUP stated it prefers that the scope remain flexible, for instance to accommodate findings from the Inquiry of Expenditures related to the adoption of the SAP Platform (SAP Inquiry), another proceeding involving BC Hydro presently before the Commission.⁶”

In reply, BC Hydro agreed the scope should “not be overly constrained” and if there are issues coming out of the BC Hydro SAP Inquiry and RRA proceedings, those issues could be incorporated into this proceeding⁷ and could be addressed at a second procedural conference.⁸”

The Commission summarized its determination on scope as follows:

“The Panel notes there was general consensus between the parties that the scope set out by the Commission in Order G-62-16 for the Review remains appropriate *provided it is flexible and the parties can seek to add to the scope, if warranted, during the process.*” (emphasis added)

The parties, including BC Hydro, all acknowledged the need for flexibility around scope including in regard to information disclosure matters, given the concerns around BC Hydro information disclosure issues which were at the core of triggering the SAP Inquiry. The SAP Inquiry determinations remain outstanding and the CEC takes the position the BC Hydro information disclosure proposals in this proceeding remain deficient. Thus, its evidence proposal.

The CEC acknowledges that in Order G-126-18 the Commission denied the CEC’s proposed amendment to the scope of review. At that time, the Commission indicated that it was making

“no determination on whether the CEC’s proposal to permit a more significant and thorough review of BC Hydro’s internal processes to assess whether BC Hydro’s acting prudently, efficiently and effectively with regard to significant capital expenditures is within the jurisdiction of the BCUC”.

The CEC submits that it is not asking for such a review to occur through the proposed evidence. Rather, it is simply asking that the Commission consider additional information requirements to

be filed by BC Hydro as part of the capital review processes so that the Commission can effectively exercise its statutory jurisdiction to oversee the Utility.

The Commission may or may not accept the evidence of the CEC as persuasive in regards to expanding the information requirements sought from BC Hydro during capital review processes. The CEC submits that requiring such expanded information is not interference with the management of the Utility, but is the Commission properly exercising its jurisdiction pursuant to section 43(1)(b)(i) of the UCA. To prevent even the consideration of such evidence is “overly constrained” and inconsistent with BC Hydro’s original commitment in this proceeding to be “pragmatic and practical”.

Whether the topics contained in the CEC evidence summary are within the scope of Review

BC Hydro submits that much of the CEC’s proposed evidence is not, or should not be, in scope. The CEC submits that expansion of information requirements is clearly within scope in terms of achieving the appropriate Regulatory Oversight of Capital Expenditures and Projects. BC Hydro should not be the party determining what level of information should be required in order to enable the Commission to exercise its statutory jurisdiction to provide Regulatory Oversight of Capital Expenditures and Projects. On the one hand, BC Hydro indicates that Appendix B to Order G-63-16 does not refer to information requirements, but then acknowledges that information requirements can be relevant to addressing items within the approved scope. Not only is the proposed CEC evidence in scope, it should be in scope, as otherwise the Commission is simply defaulting to BC Hydro’s view as to what information should be provided to the Commission in performing its regulatory oversight. That is inconsistent with the objectives of the UCA and Item 1 of Order G-63-16, which sets out that “scope, timing, and process for the Commission’s review of BC Hydro’s capital expenditures” are fundamental considerations in this proceeding. Surely a plain reading of the word “scope” would include what information the Commission requires for its review.

BC Hydro is opposed to the detailed list of information requirements proposed by the CEC in its proposed evidence. That is a matter for argument as opposed to a determination of scope issue. The CEC’s proposed evidence may or may not be accepted by the Commission. However, the appropriateness of setting expanded information requirements on BC Hydro should certainly be considered in this proceeding.

Review of management of BC Hydro not in scope (Section 1(a)(b) and (c))

As noted, the CEC is not intending to encourage the Commission to impinge on the management of the Utility, and the proposed evidence of the CEC is not contrary to the principals set out in *BC Hydro v. British Columbia Utilities Commission*, 20 BCLR 3d 106. The Commission has express statutory jurisdiction to request information from the Utility and that is what the proposed CEC evidence will comment on. BC Hydro also comments that the CEC is seeking review of CPCN Guidelines. The proposed CEC evidence is not intended to be a review of the CPCN Guidelines, but rather is evidence on information that the CEC submits would be a benefit to the Commission in its review of the capital expenditures of BC Hydro.

BC Hydro indicates they are not satisfied that the CEC evidence summary provided sufficient information on the respective content of the proposed evidence.

BC Hydro has already effectively sought to chill the participation of a ratepayer group in this proceeding by challenging PACA funding for work done on evidence. BC Hydro also took a rather aggressive position on the Commission staff filing of evidence.

At this stage, the CEC has not developed the evidence beyond preliminary form, as it is not prepared to be at financial risk. Unlike BC Hydro, whose resources are guaranteed to be covered by ratepayers, interveners representing ratepayers take on significant financial risk to provide the Commission with a perspective to counter the well-resourced Utility. The CEC is not in a position to expend resources on evidence where the Utility has threatened to challenge access to PACA.

The CEC submits that the summary provided, and the general statement in G-63-16 Item 1, is sufficiently general to reasonably conclude that “scope” includes evidence asserting a public interest need for more information from the Utility in capital project filings.

Should the Commission render a decision that the CEC’s proposed evidence is in scope for this proceeding, the CEC requests six weeks from the date of such a decision in order to prepare evidence and would request the schedule for this proceeding be adjusted accordingly.

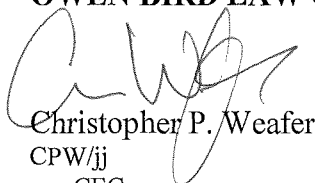
In closing, the CEC acknowledges and agrees with the submissions of the ratepayer representative, the British Columbia Old Age Pensioners’ Organization (“BCOAPO”) dated September 5, 2018 supporting the filing of the CEC’s evidence and particularly their submission:

“Furthermore, in contrast to BC Hydro’s proposals which are based largely on past practice and what has been historically provided to the Commission, CEC takes an alternative and, in BCOAPO’s view, a more comprehensive approach to the question of what the Commission’s filing requirements regarding BC Hydro’s capital expenditures should be. BCOAPO sees the evidence as making useful contribution to the current proceeding and it should be allowed to be put on the record, tested, and considered accordingly.”

All of which is respectfully submitted.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jj

cc: CEC

cc: BC Hydro

cc: Registered Intervenors