

August 19, 2019

**Sent By E-mail**

British Columbia Utilities Commission  
Suite 410, 900 Howe St.  
Vancouver, BC V6Z 2N3

**Attention: Patrick Wruck, Commission Secretary**

Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, BC V6B 0M3 CANADA

F: +1 604.641.4949  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Matthew D. Keen**  
+1 604.641.4913  
[matthew.keen@nortonrosefulbright.com](mailto:matthew.keen@nortonrosefulbright.com)

Assistant  
+1 604.641.4527 / [rosalind.endo@nortonrosefulbright.com](mailto:rosalind.endo@nortonrosefulbright.com)

Our reference: 19-2955

Dear Mr. Wruck:

**Project No. 1598990 ~ British Columbia Hydro and Power Authority's ("BC Hydro")  
F2020-F2021 Revenue Requirements Application ("Application")  
Request to Reschedule Procedural Conference**

We are legal counsel to the Association of Major Power Customers of BC ("AMPC") in this matter. We write on AMPC's behalf in response to the Commission's proposed rescheduling of the second procedural conference, at BC Hydro's request.<sup>1</sup> The proposed schedule moves the procedural conference from December 19 to November 22, before the current intervener evidence deadline of December 3.<sup>2</sup>

AMPC opposes the proposed rescheduling for two reasons. First, it is simply more straightforward to address the scope of the oral hearing with the evidentiary record largely in place, following intervener evidence. Second, given BC Hydro's earlier comments about restricting the scope of the oral hearing, the proposed change will harm interveners by interfering with their ability to finalize intervener evidence on December 3. In parallel, they will have to prepare to identify and defend an appropriate hearing scope at the procedural conference (for planning purposes, the Commission should expect interveners and BC Hydro to differ on scope).

In short, the potential schedule change would be less efficient and prejudice any interveners filing evidence – notably, all of the interveners BC Hydro identifies as supporting a November date have confirmed they do not intend to file intervener evidence. AMPC appreciates the Commercial Energy Consumers Association of British Columbia's like recognition of these issues.<sup>3</sup> Following BC Hydro's initial letter, AMPC had intended to suggest December 6, 13 or 16 as alternate dates that could reconcile both AMPC and BC Hydro concerns, as AMPC agrees with BC Hydro that witness selection before the holiday break is desirable. However, AMPC understands from the Commission's August 2 letter that dates between November 22 and December 19 are not available,<sup>4</sup> and therefore proposes the following options.

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<sup>1</sup> Exhibits A-10 and A-11.

<sup>2</sup> Exhibits B-9 and B-10.

<sup>3</sup> See the CEC's statement in [Exhibit C9-5](#), that "BC Hydro interests must be weighed against fairness to Interveners who will be assessing the appropriate topics for the oral hearing up to and after closing of the written evidentiary record. This assessment will include a review of issues which may be raised by Intervener written evidence."

<sup>4</sup> [Exhibit A-10](#).

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### Alternative Oral Hearing Date

Absent an internal Commission solution to facilitate earlier December dates, the procedural conference could be held on December 19 and the oral hearing date moved back slightly, e.g., to February 3, to respond to BC Hydro's concerns in a different fashion (other relevant deadlines would follow suit). BC Hydro was the only party to express concern about a later oral hearing start date at the first procedural conference, albeit on relatively thin and generic grounds (a preference for calendar year completion and avoiding the budget lock-up after February 18).<sup>5</sup> Under this approach, the only party potentially prejudiced by a schedule change made to assist BC Hydro would be BC Hydro itself.

### Written Option

A further option is a written process to replace an in-person procedural conference. A schedule that reconciles intervener evidence on December 3 and identifying BC Hydro hearing witnesses before the break would be:

- BC Hydro proposes areas of the Application for written support only, via a filing sometime between November 22 and November 29.
- Interveners respond on December 6, identifying any areas of disagreement, i.e., where cross-examination is intended on the areas BC Hydro has proposed for written treatment only.
- The Commission issues a scoping Order during the week of December 9.

### Intervener Cross-Examination

AMPC expects that BC Hydro and interveners will ultimately agree on much of the appropriate oral hearing scope. But where there is disagreement, it is important that the structure of any scoping process does not place an undue burden on interveners to justify access to BC Hydro witnesses for cross-examination purposes.

In the Courts, the value of cross-examination is self-evident. Cross-examination has been described as “an essential safeguard of the accuracy and completeness of testimony”, with the three basic functions of shedding light on a witness’ credibility, bringing out additional facts related to evidence already led, or bringing out facts “which tend to elucidate any issue in the case.”<sup>6</sup> The Supreme Court of Canada has observed that “Cross-examination may often be futile and sometimes prove fatal but it remains nonetheless...an indispensable ally in the search for truth. At times, there will be no other way to expose falsehood, to rectify error, to correct distortion or to elicit vital information that would otherwise remain forever concealed.”<sup>7</sup>

The Commission’s experience also shows the value of cross-examination, contrary to suggestions that the level of effort would be disproportionate to the value of an oral process – even for a hearing of this importance.<sup>8</sup> For example, the SAP Inquiry arose from a discrepancy between oral testimony and later filings. Absent an oral hearing, the serious underlying issues, resulting in a public apology by BC Hydro, might never have been identified. Other BCUC hearings have also illustrated the importance of ensuring an application and IR responses are supported and/or tested by way of sworn testimony.<sup>9</sup> Doing so is standard for regulated entities in most jurisdictions in Canada and the United States, and certainly proportionate here for a utility seeking to charge customers billions of dollars per year.

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<sup>5</sup> [Exhibit B-8](#), pp. 16-17, section 3.5.4 and [2TR217](#), lines 10-14.

<sup>6</sup> [R. v. Huber, 2007 BCSC 1074](#) at para. 24, citing [R. v. Rowbotham \(No.5\) \(1977\)](#), 2 C.R. (3d) 293 at 296.

<sup>7</sup> [R. v. Lyttle, 2004 SCC 5](#) at paras. 1-4.

<sup>8</sup> It is BC Hydro’s first revenue requirement outside the structure of the prior ten-year rate plan (i.e., since F2011), and the first revenue requirement oral hearing since October, 2008.

<sup>9</sup> E.g., [BCUC Decision re FortisBC Energy Utilities’ 2012-2013 Revenue Requirement and Rates Application](#), pp. 181-182. Note exhibits [B-94](#), [C5-7](#) and [C6-6](#) from that proceeding for additional context.

By definition, interveners are typically unable to show before cross-examination that pre-filed written evidence suffers from accuracy, completeness or credibility issues, or that related information possessed by BC Hydro witnesses but not interveners would assist interveners' cases before the Commission. And requiring interveners to justify the need for cross-examination by describing their cross-examination plans in detail at a procedural hearing creates a serious strategic disadvantage, by alerting witnesses to the content of intended questions. Such justification should therefore not be required.

Accordingly, where interveners express a reasonable intent to test parts of BC Hydro's Application through cross-examination, in a manner consistent with a *bona fide* interest in the proceeding, the Commission should give effect to such requests. The oral hearing should be scoped, but nevertheless permit broad opportunities to cross-examine on matters identified by interveners that are generally relevant to the proceeding.

Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen  
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