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British Columbia Hydro and Power Authority

Inquiry of Expenditures related to the adoption of the SAP Platform British Columbia Utilities Commission Action on Complaint

Report

September 7, 2018

Before:
D. M. Morton, Panel Chair
H. G. Harowitz, Commissioner
R. I. Mason, Commissioner

believe that BC Hydro is otherwise consistently operating at odds with these recommendations. Rather, they are offered to suggest areas where we believe there is potentially room for improvement.

9.1 BC Hydro's relationship with the BCUC

9.1.1 The role of the BCUC

The Panel acknowledges that the regulatory framework inherently creates some tension, insofar as the interests of a utility's shareholders in any specific situation may not necessarily align with the public interest. If taken to an extreme, the relationship between the regulator and the utility can devolve into an adversarial one, similar to opposing parties in a lawsuit.

At the other end of the spectrum, and particularly in the case of government-owned utilities (i.e. where the ultimate shareholders are in fact the same people who set public policy) the relationship between the utility and the regulator can be collaborative in nature, seeking the best possible solutions that serve the public interest.

The evidentiary record demonstrated a reticence on the part of BC Hydro to engage with the BCUC, and in some cases at least the appearance of avoidance. Thus, while the Panel does not see evidence that BC Hydro viewed its relationship with the BCUC in that extreme light of purely adversarial, the Panel is of the view that there is room for movement along this continuum.

Excerpts from the conclusion section of the 2016 Review Report, under the heading of "BCH: A Regulated Utility," include:

- A number of witnesses discussed the need for BC Hydro employees at all levels to have a better understanding of what it means to be regulated and how regulation impacts the work being done in the organization.
- By incorporating the expectations of regulation as an essential part of BC Hydro's business, there is an opportunity to engage business groups to become responsible for regulatory outcomes, rather than seeing the regulatory process as something that only rests on those charged with regulatory and legal duties within BC Hydro.⁴²¹

Recommendation: BC Hydro should foster and adhere to a corporate culture whereby working with the BCUC is a necessary and important element in achieving the best possible decisions.

9.1.2 Provision of information to the BCUC

As discussed in Section 8 of the Report, section 43(1) of the UCA obligates a utility to "(a) answer specifically all questions of the commission, and (b) provide to the commission the information the commission requires." This suggests that ensuring a complete body of information for any regulatory decision(s) is a shared responsibility: for the BCUC to ask the right questions and adequately set out its information requirements; and for BC Hydro to provide the accurate, complete and transparent information in response.

As previously noted by the Panel, there is a fundamental information imbalance between what BC Hydro knows of its own internal operations/decisions and what portion(s) of that it chooses to pass on to the BCUC. Thus, situations arise where the BCUC "doesn't know what it doesn't know." The Panel has found instances that it characterizes as a culture of reticence to inform the BCUC when there was doubt as to the proper level of disclosure.

⁴²¹ Exhibit B-24, Tab 95, PDF p. 644.

The 2016 Review Report includes the following recommendation: “By integrating regulatory expectations as a part of best business practice, all business groups will hopefully become more proactive in information sharing and producing material that would be necessary in a process.”⁴²²

Recommendation: BC Hydro should approach decisions regarding information disclosure to the BCUC from a perspective that is informed by “if in doubt, provide the information.”

The Panel notes the CEC’s recommendation that the BCUC exercise “staged oversight on all BC Hydro IT&T expenditures, if not all BC Hydro capital expenditures in a Capital Plan Requirement Application (CPRA) review process separated from the usual RRA process.”⁴²³

Recommendation: BC Hydro should consider the CEC’s suggested Capital Plan Requirement Application review process as part of the BC Hydro Review of the Regulatory Oversight of Capital Expenditures and Projects proceeding currently underway with the BCUC.

9.1.3 The role of Regulatory Affairs

The Panel notes the relative absence of Regulatory Affairs’ input in a significant portion of the evidentiary record. As a case in point, the 2010 Review indicates that Regulatory Affairs was not fully engaged in the issue of whether the CIO’s statement in 2008 was correct and whether follow-up with the BCUC was required: the observation that “had [the CRO] had full knowledge at the time of the hearing...,”⁴²⁴ demonstrates that the CRO was not fully informed at the time.

It is arguable that BC Hydro managers outside of Regulatory Affairs may not always understand the breadth and scope of all the regulatory issues being addressed by BC Hydro, and therefore may not appreciate the regulatory significance of one or another decision being made under their purview. This by no means provides an excuse for those individuals not to be well-informed of and guided by the obligation to provide adequate information to the BCUC, but it does argue for the involvement of Regulatory Affairs as an integral participant in the process.

Recommendation: BC Hydro should actively and consistently keep Regulatory Affairs informed of actions/decisions that may have regulatory implications.

9.1.4 The role of Legal Affairs

The evidentiary record demonstrates a strong hand exerted by Legal Affairs in the 2010 Review. The revisions to the final statement of findings in the Code of Conduct investigation demonstrate a mind-set of legal defense as opposed to understanding the events from the perspective of learning for the future. Further, comments from Legal Affairs to justify a finding that the BCUC was not misled appear to be based on a mindset of disclosing only what is necessary for strict compliance: “In the circumstances, there was no positive duty on BCH to advise the hearing further.”⁴²⁵

The 2016 Review Report provides the following summary observation regarding reliance on external counsel:

The evidence indicates that standard legal advice was provided in connection with witnesses in a litigation setting, such as “*It’s not your job to volunteer information,*” “*You’re not there to make a case for the position of the cross-examiner,*” and “*It’s litigation - not a dialogue.*” While the advice may be typical, paired with the strong reliance on external counsel and the adversarial

⁴²² ibid., Tab 95, PDF p. 644.

⁴²³ CEC Final Argument, p. 38.

⁴²⁴ Exhibit B-17-1 (Confidential), Tab 66, p. 5; Exhibit B-24 (Redacted), Tab 66, p. 5.

⁴²⁵ Exhibit B-17-1 (Confidential), Tab 54.

approach of the Witness Consultant, one can imagine an environment created where inexperienced witnesses may not have been clear on how to approach their role as a witness that would be both effective and consistent with the BCH values articulated at the time.⁴²⁶

Clearly, Legal Affairs has a role to play in ensuring that BC Hydro is fully compliant with its obligations as a regulated utility. That said, this is but one standard of conduct. Further to the Panel's findings in Section 8 of this Report, making decisions in the public interest requires a broader perspective than narrow legal compliance.

Recommendation: BC Hydro should avoid taking the narrowest possible "legal defense" view of its regulatory relationship with the BCUC.

9.2 The decision-making/approvals framework

9.2.1 Strategic decisions

As noted by the Panel, many strategic decisions made by BC Hydro's management have significant financial implications attached to them, and thus, it is a false dichotomy to suggest that decisions fall into only one or the other category (i.e. strategic or financial). All decisions with financial implications, whether viewed as also strategic or not in their nature, require regulatory review and approval according to the requirements set out in the UCA and BCUC directives/guidelines.

Recommendation: BC Hydro should operate under the expectation that many if not all strategic decisions have a financial impact, and that all decisions with financial implications must be disclosed/reviewed/approved in accordance with the regulatory requirements in place at the time of the decision.

9.2.2 Clear delineation of approvals required

Significant attention has been paid in this Report to the approvals sought (or not sought) in relationship to SAP. This section does not revisit the quality of the decisions/actions taken, but speaks to the framework for decision-making.

The Panel has found a pattern of costs being segregated/characterized in such a way that BC Hydro's Board of Directors and BCUC scrutiny were avoided on numerous occasions associated with the SAP initiative, and at multiple levels of decision-making. Decisions such as the approval of the SAP Strategy and approvals of EARs associated with SAP projects were structured and approved with the result that they were below the thresholds whereby they would attract the scrutiny of the Board, CEO or the BCUC. Further, the Panel found in the case of the SAP Financials project that BC Hydro failed to adhere to the EAR procedure that states that multiple projects intended to be run as a program, while requiring approval individually at appropriate levels, must also be consolidated into a Program Initiative for approval purposes.

Recommendation: BC Hydro should adhere to a clear approval/decision-making framework that, at a minimum:

- ensures that related projects are aggregated according to BC Hydro's existing financial policies and procedures, that they are aggregated to the highest reasonable level, and that strategies with financial implications have all their costs aggregated into a program for review and approval;
- ensures that both aggregated programs and their component projects are appropriately reviewed and approved; and

⁴²⁶ Exhibit B-24, Tab 95, PDF p. 645.

- precludes breaking apart a project into component parts that fall below review threshold levels.

BC Hydro should ensure that its 2018 Capital Filing Guidelines, currently the subject of another proceeding with the BCUC, clearly meet or exceed the expectations set out above.

9.2.3 Documentation and communication

The evidentiary record provides examples where the status of an approval and/or the documentation thereof was unclear. For example, as it relates to the SAP Decision, it is clear that managers at BC Hydro at the time had disparate views on precisely when, how, by whom, and by what authority the SAP Decision was actually approved, and the implications thereof. Contributing to the problem, the documentation (meeting minutes, *et al.*) was sufficiently ambiguous and/or in some cases sparse or absent altogether. By way of example, the SAP Strategy was presented to the ARMC on May 22, 2008 but no minutes exist from that meeting that document the ARMC's review of the strategy. However, the July 28, 2008 EAR for the SAP Financials – Blueprint Phase states that the strategy was approved by ARMC.⁴²⁷

Recommendation: BC Hydro should ensure that its approvals/decision framework:

- provides clarity on the distinction between formal approvals/decisions and information briefings;
- ensures complete and accurate documentation of all formal approvals/decisions;
- communicates the approvals/decisions to all parties that need to know; and
- ensures a shared and common understanding of the specific nature (including limitations and follow-up obligations) of each approval granted.

9.3 The EAR/Business Case framework

9.3.1 Analysis of alternatives

The BC Hydro EAR/Business Case framework articulates the need for an analysis of alternatives as an important part of the framework. That said, the Panel is concerned that in some cases the value of the process was diminished due to either superficial analysis of alternatives, or a misplacement of the focus of "alternatives."

The Panel has previously found in this Report that the decisions to move from "best of breed" strategy to a single software vendor, and the choice of SAP as the default platform were justified on a superficial analysis of alternatives.

At the specific project level, the Panel found that the SAP Financials business case failed to meaningfully assess alternative software platform solutions, on the one hand arguing that the SAP Decision provided high level strategic direction only and that each module/project was to be subjected to rigorous analysis when the time came, but on the other hand relying on the SAP Decision as having already dealt with that issue. Instead, the requirement for a business case to provide an analysis of alternatives was "satisfied" by the presentation of a review of how the implementation of the SAP software would be accomplished. The Panel considers this to be a misapplication of the requirement to evaluate alternatives, focusing on how to implement the decision rather than alternatives to the decision itself (i.e. whether to go with SAP Financials to meet the software needs of the BC Hydro finance group).

Recommendation: BC Hydro should ensure that EAR/Business Case submissions contain a thorough and meaningful evaluation of alternatives when considering different courses of action.

⁴²⁷ Exhibit A2-2, Tab J, PDF p.124.