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VIA E-FILING

Marija Tresoglavic
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BC Utilities Commission
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Reply to: Leigha Worth
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Dear Ms. Tresoglavic,

Re: British Columbia Utilities Commission Review of British Columbia Hydro and Power Authority's Performance Based Regulation Report ~ Project No. 1599045

Please note that Ms. Mis and I make the following submissions in response to the Commission's September 17th letter (Exhibit A-9) on behalf of our clients, the group of community-based organizations serving a very large and diverse population of British Columbians known collectively in BC Hydro regulatory proceedings as BCOAPO or BCOAPO et al.

Introduction

During the process associated with the BC Hydro F2017-F2019 Revenue Requirement Application (RRA), the BCUC directed BC Hydro to provide a PBR report that discussed the opportunities and challenges associated with the adoption of Performance Based Regulation (PBR) at BC Hydro and a possible approach to adopting this alternate form of rate setting. BC Hydro provided the PBR Report as part of its recent F2020-F2021 RRA. Subsequently, the Commission established a separate regulatory timetable for the review of the PBR Report and related materials. As part of the current process, BCUC staff submitted the consultant report *Performance-Based Regulation: Basic Features and Possible Applications to BC Hydro* by Mark Newton Lowry, PhD (Exhibit A2-5), and on September 8, 2020 the BCUC facilitated a workshop where Dr. Lowry discussed some high level PBR-related topics.

BCOAPO supports the Commission's initiative of taking a fresh look at BC Hydro's traditional cost-of-service regulation: exploring whether a system of performance-based incentives could improve BC Hydro's performance in the areas of regulatory concern is a prudent idea. However, BCOAPO is cognizant of the dangers and costs associated with a decision to change such a fundamental aspect of BC Hydro's operations as its this without having first engaged in a thorough examination of the associated issues, challenges, and possible benefits. While admittedly hindsight is 20/20, one need only look back a decade or two to see the industry-wide move to outsource customer service and the systemic increases in utility costs that resulted before another industry trend emerged: bringing those customer service positions back in house. If nothing else, this one example of many is a warning that everyone involved in utility regulation should not take positions or make decisions to accommodate industry trends without first doing what is reasonably necessary to thoroughly kick the metaphorical tires.

The utility at the centre of this Review is BC Hydro - a Crown corporation, owned by the government and people of British Columbia - so we as intervenors all owe a duty to our respective

clients to ensure there is a robust enough process that allows careful examination of whether any aspects of PBR are in fact practical and applicable to BC Hydro and will ultimately be in the public interest.

BCOAPO's position on the process for this Review is that it should be broken into two phases to ensure we both protect ratepayer interests and respect the goal of regulatory efficiency. In our submission, the scope of the first phase should be limited to issues related to the question of whether any form of PBR could be prudently applicable and practical for BC Hydro. It is only if the responses to those questions are both affirmative that the Commission should proceed to a second phase where questions regarding specific aspects of PBR, appropriate approaches, process, and timing of PBR implementation should be dealt with.

1. Scope of the Review – BCOAPO's Submissions on the BCUC List of Issues

The Commission suggested the initial list of issues in questions 1 (a) through (g) of Exhibit A-9. Below are BCOAPO's comments with respect to each question.

- a. *To what extent does the BCUC have jurisdiction to approve or direct PBR or incentive-based mechanisms for BC Hydro?*

As mentioned in our introduction, after careful consideration we have come to the position that this review process should be broken into two phases with the first scoped to include the materials and evidence already on the record in addition to those seen as foundational – ones that, depending on how they are decided could potentially render further considerations or submissions moot.

In our submission, given that ratepayers are required to pay for regulatory processes, it is indefensible to fail to adequately address jurisdictional questions at the earliest possible opportunity in any regulatory process. Because jurisdiction has emerged as a live issue early in the process - whether the Commission as regulator has the jurisdiction to order or approve a PBR or other specific ratemaking format for BC Hydro - BCOAPO submits it is incumbent upon all involved to ensure that is dealt with early in the process and in a manner that avoids incurring unnecessary regulatory costs. If, by way of example, after hearing submissions on this issue the Commission determines it does not have the jurisdiction described above, then there is little point in spending the time and ratepayer dollars discussing or debating more specific or detailed PBR-related issues.

As a result, we submit that this is an item properly in scope in this Review and would be best dealt with in phase one.

- b. *What should be the goals of BCUC regulation with respect to BC Hydro (e.g. regulatory efficiency, cost control, and/or balancing risk between ratepayers and BC Hydro)?*

BCOAPO agrees with the suggestion that establishing the critical regulatory goals relating to the appropriate approach to rate setting is a crucial initial step of this Review and as such should be included within the process' scope of a phase one.

We expect that this conceptual topic would spark a great deal of constructive dialogue. Holistic consideration should be given to all of Bonbright's principals and goals as well as any fundamental goals relating to BC Hydro, including well-established areas of regulatory

concern (such as, service quality, affordability, and reliability), as well as emerging and innovative goals (such as, grid modernization, distributed energy resources (DER), or social equity).

c. *What aspects of PBR would help in achieving the above goals?*

Before putting on the record our position on scope, we wish to flag for the Commission some concern about how item 1. c is worded. If nothing else, the political drama in the United States has brought to the fore concerns that how questions or issues are couched can influence the responses gathered – skewing the results in one direction or another rather than gathering responses that reflect the full spectrum of the thoughts or positions of those being polled. As a result, BCOAPO is recommending the Commission modify how this issue is couched to a more generalized formulation that opens the floor to discussions of what possible aspects of PBR (i.e. characteristics and details of a PBR for BC Hydro that parties may reasonably expect the Commission as a regulator to consider should the process proceed beyond the fundamentals of phase one) might enhance or interfere with the achievement of the goals identified in response to 1. b. in our submission, a more neutral wording would expressly signal to parties that their views on how both any potential synchronicities and clashes between PBR and all applicable BCUC goals are within scope and will be given due consideration.

We do not have any concerns about the inclusion in the scope of this process of a consideration of how a possible PBR might affect the achievement of any goals identified in 1 b. However, because it is first necessary to define the BCUC's goals in considering whether to proceed with a PBR application and process, we submit this is an issue best left to phase two.

d. *Are there unique aspects of BC Hydro regulation that affect the application of PBR to BC Hydro?*

BCOAPO supports the position that this issue should be included in the scope of a phase one of the Review and, in our view it merits thorough examination. Given that Dr. Lowry, in his Report (Exhibit A2-5) and at the September 8, 2020 workshop session, expressly acknowledged he did not have the knowledge necessary to comment on how BC Hydro's operations, legal and regulatory regime might interact with any known form of pure PBR, further discovery of this issue is required if we are to discharge our duty to our clients and serve the public interest.

e. *Are there unique aspects of BC Hydro business conditions that affect the application of PBR to BC Hydro?*

We appreciate the careful wording of this scoping item: “business conditions” is a phrase we interpret as including consideration of, for example, the political sensitivities linked to BC Hydro’s status as a Crown Corporation in addition to the operational or other issues that that this Review might reveal will help or hinder the application of PBR or PBR-like mechanisms to BC Hydro.

As such, we view this as an item properly within the scope of this review and, more specifically, an issue that should be examined early on as part of phase one.

- f. *Should some form of PBR be implemented for BC Hydro? If PBR were to be implemented, is an incremental approach necessary? What is the process and timing to implement that form of PBR?*

BCOAPO submits that the question whether BC Hydro should be subject to some form of PBR is, in our submission, appropriately included in the scope of a phase one of this Review. However, it is our position that, if we are to maintain allegiance to the goal of regulatory efficiency, the two questions posed after that must be addressed at a later date, and then only if the BCUC decides some form of PBR is practical and desirable for BC Hydro. As counsel for residential ratepayers, we must point out that if the answer to the first question posed in 1. (f) is negative, it would be premature and imprudent to spend time, effort and ratepayer dollars engaging in any substantive consideration of the subsequent ones.

- g. *What elements of PBR could be added to a more traditional form of rate regulation (i.e. Cost-of Service) to achieve the BCUC's regulatory goals, and what is the process and timing for implementing those elements?*

Again, as was the case in 1 (f), this proposed scoping item includes inquiries regarding 3 separate and distinct considerations. In our view, the first is (i) can we add elements of PBR to a COS form of rate regulation to create a hybrid model better able to achieve the prioritized regulatory goals (and, presumably to avoid PBR's possible detrimental effects on those goals, if any)?

Then, provided the answer to the first question listed in scoping item 1. g is affirmative, we would expect to proceed to a consideration of (ii) the appropriate process to consider the details of such a possibility and, (iii) either on what timeline that consideration process would or should take place or what timeline those PBR elements should be grafted on to BC Hydro's existing Cost of Service rate making format.

Because scoping item 1. g (i) is a foundational question, we submit that it properly belongs in phase one and that 1. g (ii) and (iii) should be allocated to phase 2 of this process. Our clients view the value of work done and regulatory costs incurred addressing scoping items 1. g (ii) and (iii) as entirely dependent upon the answer to scoping item 1. g (i).

In addition to issues put forward by the Commission, BCOAPO suggests including in the scope of a phase one of the Review the following items:

- h. How well does the existing regulatory framework help achieving the regulatory goals identified in item 1. b.? Are there goals that cannot be achieved under existing framework but can be achieved under PBR or modified Cost-of Service regulation?
- i. Identify and discuss the extent to which BC Hydro performance with respect to specific regulatory goals outlined in item 1 b. are currently measured or evaluated and whether the current measurements or evaluations are sufficient to adequately evaluate the utility's performance in those areas.

BCOAPO submits that in order to decide whether the exiting regulatory framework is sufficient to achieve the BCUC's regulatory goals, or whether additional regulatory tools

are necessary, it is important to examine whether existing metrics are adequate to measure BC Hydro performance in achieving a particular goal. For example, SAIDI and SAIFI are performance metrics available under the existing framework to measure performance toward the regulatory goal of reliability. If the current metrics are not adequate to determine how well BC Hydro is performing in certain areas of interest, it will be necessary to examine how BC Hydro performance should be measured with respect to these specific regulatory goals.

In our opinion, without this assessment it is problematic to choose regulatory tools best suited to help BC Hydro in achieving the regulatory goals.

2. Remaining Review Procedure For Current Proceeding – BCOAPO's Submissions

- a. *Are parties seeking an opportunity for further evidentiary submissions? If yes, in what format?*

At this early stage, we cannot with any degree of certainty represent that we would be prepared to present intervenor evidence in this process but we can confirm that it is a possibility we will explore should there be room within the process set by the Commission to do so. Should other intervenors or BC Hydro express a desire or intention to present further evidence, our clients support their application(s) on the understanding that parties to this process will only seek to do so if their intended evidence is on point and they reasonably expect it to flesh out the BCUC's, BC Hydro's, and intervenors' understanding of their position on this matter.

- b. *Are parties seeking an opportunity for a round of information requests for either of the following?*

- i. *Participant information requests to BCUC Staff Consultant*

BCOAPO is actively seeking the opportunity to submit information requests to the BCUC Staff Consultant (Dr. Lowry) to test some of the concepts covered in his report and at the workshop, as well as their applicability to BC Hydro. We can advise that we are currently considering the retention of an additional expert whose bailiwick is PBR to assist in this discovery process.

- ii. *Participant information requests to BC Hydro*

Building on the reasoning provided in the answer we gave to Commission question 2 b. (i), we can confirm that we would indeed seek to submit participant information requests to BC Hydro as well and that we are considering whether there is sufficient potential value brought to the process of doing so with the assistance of a PBR subject matter expert. Our intention in doing so would be to either bring forward evidence specific to the application of PBR to BC Hydro that will allay any potential concerns or to elicit evidence showing there are significant concerns with that possibility. Our clients see significant value in either result because it will allow them to formulate an informed position either for or against PBR in Final Argument.

- c. Do parties see value in a Streamlined Review Process or an Oral Hearing to review the record further?

At this stage, BCOAPO does not see value in committing to either a Streamlined Review Process or an Oral Hearing. At this time, there is nothing on the record indicating the need for the expediency provided by an SRP. On the contrary, because the Review involves examining any number of complex issues and how they would react if applied to BC Hydro, including the possibility of adopting new regulatory tools, the process should not be rushed. On the other hand, oral hearings are typically time intensive and expensive, and we cannot say at this time whether that particular format would add real and material value.

BCOAPO suggests that any determination of this kind of process be left to a date after discovery is complete, allowing all parties to examine the record and formulate their positions taking into account the quality of the evidence garnered in IR's and how contentious they expect any further process might be.

- d. Would parties prefer final arguments to be written or oral?

Because in our opinion, further discovery from the Commission expert and BC Hydro is necessary to adequately flesh out the evidentiary record and that evidence from interveners on the issues raised by this Review is reasonably possible, we cannot yet take an informed position on whether final arguments would more appropriately be presented in written or oral form.

We recommend to the Commission that, rather than defining the format of the entire process at this early stage, there be a placeholder in the schedule for either a procedural conference or written submissions on further process once intervenor evidence and further discovery are complete.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Original on file signed by:

Leigha Worth, Executive Director

BC Public Interest Advocacy Centre

Irina Mis, Staff Lawyer

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