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November 19, 2020

Sent via email/eFile

BC HYDRO WALDEN NORTH FORBEARANCE AGREEMENT	EXHIBIT A-3
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Mr. Fred James
Chief Regulatory Officer
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16th Floor – 333 Dunsmuir Street
Vancouver, BC V6B 5R3
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**Re: British Columbia Hydro and Power Authority – Walden North Hydro Forbearance Agreement
Application – Project Number 1599133 – Information Request No. 1**

Dear Mr. James:

Further to your June 25, 2020 filing with respect to the above noted matter, enclosed please find British Columbia Utilities Commission Information Request No. 1. In accordance with Order G-268-20 setting out the regulatory timetable for this proceeding, please file your responses on or before **Thursday, December 10, 2020**.

Sincerely,

Original signed by:

Marija Tresoglavic
Acting Commission Secretary

/dg
Enclosure



British Columbia Hydro and Power Authority
Walden North Hydro Forbearance Agreement

INFORMATION REQUEST NO. 1 TO BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

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A. FRAMEWORK FOR EVALUATION

- 1.0 Reference: FRAMEWORK FOR EVALUATION
Exhibit B-1 (Filing), pp. 1-2, 5; Order G-148-20, Appendix A, p. 6; Ministerial Order M-22-9801; Amending Ministerial Order M-22-9801-A
Electricity Purchase Agreement (EPA) Amendments**

On page 6 of the Reasons for Decision, attached as Appendix A to Order G-148-20, the British Columbia Utilities Commission (BCUC) states that:

The Panel finds that the Forbearance Agreement is an amendment to the Original EPA [or Walden North EPA] and should have been filed with the BCUC under section 71 of the [*Utilities Commission Act (UCA)*].

The Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price.

The BCUC also states that “While the Original EPA and the Forbearance Agreement are indeed two separate agreements, the practical effect when considering the two of them together is that BC Hydro has amended the termination provisions of the Original EPA.”

On pages 1-2 of the Filing, British Columbia Hydro and Power Authority (BC Hydro) states that:

BC Hydro has concerns with the BCUC’s reasoning in the Order No. G-148-20 Decision and the resulting directives. BC Hydro believes that the BCUC’s Rules for Energy Supply Contracts for Electricity (the Rules), as established pursuant to BCUC Order No. G-61-12, provide appropriate guidance as to whether a document or action is an amendment of an energy supply contract that is to be filed under section 71 of the UCA or a “contractual development” that is not filed under section 71. Parties to an agreement or action related to an energy supply contract should be able to rely on the Rules to ascertain their filing requirements.

BC Hydro further states that:

Additionally, we remain of the view that a forbearance agreement is a common form of commercial agreement where one party agrees to forbear from exercising a right in an underlying agreement for a period of time in exchange for consideration from the other party without amending the underlying contract. There is nothing improper about a forbearance agreement.

- 1.1 Please identify the terms in an EPA that British Columbia Hydro and Power Authority (BC Hydro) considers to be fundamental terms, such that modification of any one or more of these terms would constitute an “amendment” to the EPA.
- 1.2 If BC Hydro were to file an amended EPA with the BCUC pursuant to section 71 of the UCA, would BC Hydro expect the BCUC’s review to be: (i) limited to only the specific provisions of the EPA that had been modified; (ii) to encompass the entirety of the amended EPA; or (iii) some other alternative.
- 1.3 Please explain why BC Hydro elected to enter into the Forbearance Agreement rather than to modify the terms of the Walden North EPA.

On page 5 of the Filing, BC Hydro states the following:

- The Walden North EPA is exempt from the UCA section 71 filing requirement pursuant to Minister's Order M-22-9801-A1.
- Section 4(1)(b) of Direction No. 8 to the BCUC provides that in setting rates for BC Hydro, the BCUC must not disallow for any reason the recovery in rates of the costs incurred by BC Hydro with respect to energy supply contracts entered into before April 1, 2016, which includes the Walden North EPA.

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, are 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.

- 1.4 If, rather than entering into the Forbearance Agreement, BC Hydro had amended the Walden North EPA to reflect the same price and termination provisions as those agreed to under the Forbearance Agreement, would the amended agreement remain exempt from the UCA section 71 filing requirement pursuant to Amending Ministerial Order M-22-9801-A1? Please explain.
- 1.5 Does section 4(1)(b) of Direction No. 8 provide that the BCUC must not disallow for any reason the recovery in rates of the costs incurred by BC Hydro with respect an energy supply contract entered into before April 1, 2016, if that energy supply contract is subsequently amended (i) prior to April 1, 2016 or (ii) after April 1, 2016? Please explain.

**2.0 Reference: FRAMEWORK FOR EVALUATION
 Exhibit B-1, pp. 4-6
 Stand-alone Evaluation**

On pages 4 to 5 of the Filing, BC Hydro states that:

Under the Forbearance Agreement, BC Hydro agreed to forbear from exercising its termination rights under the evergreen Walden North 1990 EPA in consideration for a forbearance payment. For administrative convenience, we agreed that the forbearance payment would simply be set-off against the EPA payments. The Forbearance

Agreement did not change the term of the EPA, which is evergreen, nor did it change the quantity of energy or price under the EPA.

On page 6 of the Filing, BC Hydro states that:

In BC Hydro's view, the factors and criteria specified under section 71(2.21) overall do not contemplate evaluation of an agreement like the Forbearance Agreement. Rather, the factors and criteria contemplate evaluation of a contract for the supply of a quantity of energy to BC Hydro at a specified price against other forms of energy that are available and could be used instead of the energy to be supplied under the contract, in the context of the drivers and policies set out in the IRP and B.C.'s energy objectives.

In this proceeding, BC Hydro has filed the Forbearance Agreement as a standalone document.

- 2.1 Please provide any examples where the BCUC or a similar regulatory body reviewed an amendment to a contract on a standalone basis rather than in concert with all of the terms and provisions of original agreement.
- 2.2 Please provide a copy of the Walden North EPA.
- 2.3 Please provide a copy of the Diversion Agreement relating to the Walden North EPA.
- 2.4 Explain how the "factors and criteria specified under section 71(2.21) overall do not contemplate evaluation of an agreement like the Forbearance Agreement." In your response please explain why set-off payments that reduce the cost of energy in an EPA should be evaluated separately from its effect on the underlying EPA.

**3.0 Reference: FRAMEWORK FOR EVALUATION
 Exhibit B-1, p. 1; Order G-148-20
 Delayed regulatory review**

In footnote 1 on page 1 of the Filing, BC Hydro states that:

The Forbearance Agreement was entered into with an effective of April 1, 2014 between BC Hydro and the owner of the Walden North facility at that time, ESI Power-Walden Corporation Ltd. In February 2016, the Walden North facility was acquired by CCPLP, and the Forbearance Agreement was assigned to CCPLP at that time.

BC Hydro filed the Forbearance Agreement on June 25, 2020, in accordance with Directive 1 of Order G-148-20.

- 3.1 Please discuss whether evaluation of the Forbearance Agreement should take into consideration the information available at the time the agreement became effective in 2014 or whether the Forbearance Agreement should be evaluated based on the information available at the time of filing in 2020.

B. NEED FOR THE FORBEARANCE AGREEMENT

4.0 Reference: NEED FOR THE FORBEARANCE AGREEMENT Exhibit B-1, p. 4; Order G-278-19, Appendix A, p. 9 Load/Resource Balance – Need for Energy

On page 4 of the Filing, BC Hydro states that the effective date of the Forbearance Agreement was April 1, 2014.

On page 9 of the Reasons for Decision, attached as Appendix A to Order G-278-19 the BCUC states that “On February 14, 2019, the BC Government released its Comprehensive Review of BC Hydro Phase 1 Final Report...” and that the Phase 1 report states that “BC Hydro is currently forecast to be in energy surplus into the 2030s.”

- 4.1 Please provide BC Hydro’s forecast of the load/resource balance for the BC Hydro system as it existed at the time the Forbearance Agreement was executed. Clearly identify the year(s) in which BC Hydro anticipated a need for incremental energy resources and the magnitude of the yearly energy deficits forecast.
- 4.2 Has BC Hydro updated its assessment of the need for energy since the Phase 1 Report?
 - 4.2.1 If yes, please provide a copy of BC Hydro’s latest assessment of the load/resource balance for the BC Hydro system and an estimate of when additional energy resources will be necessary.
 - 4.2.2 If no, please indicate when BC Hydro expects to undertake an updated assessment of the load/resource balance for the BC Hydro system and when an updated estimate that indicates the need for additional energy resources will be available.
- 4.3 Please discuss the value energy purchases from the Walden North hydroelectric facility provide to BC Hydro in the context of (i) BC Hydro’s forecast load/resource balance as it existed at the time the Forbearance Agreement was executed; and (ii) BC Hydro’s most recent load resource balance forecast. Provide the market price of energy and any other assumptions used in the response.

5.0 Reference: NEED FOR THE FORBEARANCE AGREEMENT Exhibit B-1, p. 4 Termination Rights

On page 4 of the Filing, BC Hydro states that the Walden North EPA “...had an initial 20-year term with an evergreen provision allowing the contract to continue from year-to-year unless terminated by either party after providing six months’ notice.”

BC Hydro further states that “Under the Forbearance Agreement, BC Hydro agreed to forbear from exercising its termination rights under the evergreen [Walden North EPA] in consideration for a forbearance payment.”

- 5.1 Please discuss the factors BC Hydro considers when determining whether to exercise termination rights like those provided under the Walden North EPA.
 - 5.1.1 Please provide a detailed explanation of how each of the factors identified above would apply to the Walden North EPA, absent the Forbearance Agreement.
- 5.2 Please discuss the opportunity cost associated with BC Hydro’s decision to waive its termination rights for the period of time prescribed in the Forbearance Agreement.

C. QUALITATIVE ASSESSMENT

**6.0 Reference: QUALITATIVE ASSESSMENT
Exhibit B-1, pp. 6-7, UCA section 71(2)
Consistency with section 71(2)**

On page 6 of the Filing, BC Hydro states that:

Section 71(2) of the UCA provides that the BCUC may determine whether or not a filed energy supply contract is in the public interest. Section 71(2.21) of the UCA describes the factors and criteria that the BCUC is to consider when assessing whether or not an energy supply contract filed by BC Hydro, in this case the Forbearance Agreement, is in the public interest. The BCUC is to consider:

- The interests of both current and future BC Hydro customers;
- British Columbia's energy objectives as set out in section 2 of the Clean Energy Act (CEA);
- The most recent Integrated Resource Plan (IRP);
- The quantity, availability and price of the energy to be supplied under the contract; and
- The quantity, availability and price of any other form of energy that could be used instead of the energy to be supplied under the contract.

BC Hydro further submits that:

...of the factors and criteria to be considered under section 71(2.21), the only ones that could be viewed as applicable to consideration of the Forbearance Agreement are... The interests of both current and future BC Hydro customers; and British Columbia's energy objective (f), "to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America"...

6.1 Please provide an analysis of whether the Forbearance Agreement, considered in concert with the provisions of the Walden North EPA, is consistent with the public interest considerations outlined in section 71(2) of the UCA.

**7.0 Reference: QUALITATIVE ASSESSMENT
Exhibit B-1, p. 5; *Clean Energy Act*, Section 2(l); Order G-278-19, Appendix A, p. 11
BC Energy Objectives Consideration**

On page 5 of the Filing, BC Hydro states that:

In February 2016, the Walden North project was acquired by CCPLP, which is comprised of Cayoose Creek Development Corporation and Innergex. The Sekw'el'was Cayoose Creek Indian Band (Cayoose Creek Indian Band) is the sole beneficial shareholder of Cayoose Creek Development Corporation [(CDCC)]. Cayoose Creek Indian Band is part of the St'at'imc Nation. The original Walden North EPA, Forbearance Agreement and Diversion Agreement were assigned to CCPLP at that time.

Section (2)(l) of the Clean Energy Act (CEA) states that one of BC's energy objectives is "to foster the development of first nation and rural communities through the use and development of clean or renewable resources".

On page 11 of the Reasons for Decision, attached as Appendix A to Order G-278-19, the BCUC references a previously proposed EPA renewal with the Walden North independent power producer (IPP) and states that:

The Limited Partnership Agreement between CCDC and Innergex provides the CCIB and the TA with a number of benefits related to contracting, jobs and training,⁴⁹ as well as a share of net income or loss earned by the CCPLP over the term of the 40-year EPA renewal.⁵⁰

Salmon migration is facilitated by the Cayoosh Diversion Tunnel, and the Walden North IPP states that the salmon population "...is of great natural importance to the CCIB." Several elements of the Walden North IPP operations provide specific protection and enhancement of the salmon population native to the Cayoosh and Seton areas, and the salmon and other fish species are a source of food for the local and downstream communities. Additionally, the IPP provides indirect employment for many members of the CCIB, as well as other indigenous and neighbouring communities.⁵¹

- 7.1 Please describe any material differences between the environmental and indigenous and neighbouring community benefits associated with the Walden North EPA and the Forbearance Agreement versus the benefits associated with the Walden North EPA renewal filed with the BCUC in 2018.
- 7.2 Please describe any changes to the environmental and/or indigenous and neighbouring community benefits associated with the Walden North hydroelectric facility that have taken place since issuance of Order G-278-19.
- 7.3 Please estimate the net present value (NPV) of the income the Cayoose Creek Indian Band would earn under the Walden North EPA and Forbearance Agreement beginning in 2021 assuming (i) the Walden North EPA and Forbearance Agreement remain in effect; (ii) the Forbearance Agreement is declared unenforceable and the Walden North EPA remains in effect; and (iii) the Forbearance Agreement is declared unenforceable and the Walden North EPA is terminated. Please provide supporting calculations and describe all key assumptions used.

**8.0 Reference: QUALITATIVE ASSESSMENT
Exhibit B-1, p. 4
BC Energy Objectives Consideration – Diversion Agreement**

On page 4 of the Filing, BC Hydro states that:

BC Hydro wanted to maintain the incremental generation and environmental benefits it received as a result of the Diversion Agreement and without the EPA the Diversion Agreement would terminate... therefore [BC Hydro] entered into the Forbearance Agreement with an effective date of April 1, 2014.

- 8.1 Please discuss any impacts to the Diversion Agreement that would be likely to result if the Forbearance Agreement was declared unenforceable, either wholly or in part.

**9.0 Reference: QUALITATIVE ASSESSMENT
Exhibit B-1, p. 3
BC Energy Objectives Consideration – Transmission System Capability**

On page 3 of the Filing, BC Hydro states that “The Walden North project is a run-of-river hydroelectric facility on Cayoosh Creek about five kilometers west of Lillooet, British Columbia.”

- 9.1 Please describe any reliability benefits the Walden North hydroelectric facility provides to (i) the local transmission system serving Lillooet and surrounding communities; and/or (ii) the bulk electric system.
- 9.2 Please describe any limitations on the transmission system in the Lillooet area that restrict BC Hydro’s ability to deliver electricity generated in the region to customers and whether these are year-round limitations, or limitations that are restricted a certain portion of the year.
- 9.2.1 Please describe how electricity generated at the Walden North hydroelectric facility may contribute to and/or exacerbate any transmission system limitations identified in the area. Include the magnitude of any impacts.
- 9.2.2 Please provide an estimate of any congestion costs associated with the Walden North hydroelectric facility.

D. ECONOMIC ASSESSMENT

**10.0 Reference: ECONOMIC ASSESSMENT
Exhibit B-1, p. 4
Forbearance Payments**

On page 4 of the Filing, BC Hydro states the following:

- In anticipation of the expiry of the initial 20-year term, BC Hydro and the Walden North IPP began discussions in 2012 to explore the potential for an EPA renewal. At the time, a 10-year extension of the project was being proposed by the Walden North IPP. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with the Walden North IPP because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by the IPP, adequate to recover its costs at that time.
 - BC Hydro wanted to maintain the incremental generation and environmental benefits it received as a result of the Diversion Agreement and without the EPA the Diversion Agreement would terminate. However, BC Hydro also wanted to reduce the cost of the EPA.
- 10.1 Please confirm, or otherwise explain, that the net payments under the Walden North EPA and the Forbearance Agreement are sufficient for the Walden North IPP to recover its costs.
- 10.1.1 Please provide the maximum forbearance payment the Walden North IPP could pay BC Hydro while continuing to recover its costs.
- 10.2 Please explain whether forbearance payments represented the best available alternative for BC Hydro to reduce the cost of the Walden North EPA at the time the Forbearance Agreement was executed.

**11.0 Reference: ECONOMIC ASSESSMENT
Exhibit B-1, p. 6; Order G-278-19, Appendix 1, p. 15
NPV Calculations and Scenario Analysis**

On page 6 of the Filing, BC Hydro states that

BC Hydro believes that the Forbearance Agreement is in the interests of both current and future BC Hydro customers because BC Hydro does not incur any costs under the Forbearance Agreement, and the agreement reduces the total costs otherwise payable to CCPLP by BC Hydro and its ratepayers by way of an offset against amounts invoiced to BC Hydro under the Walden North 1990 EPA.

- 11.1 Please calculate the net present value (NPV) of (i) energy purchases under the Walden North EPA and (ii) payments received under the Forbearance Agreement, over the period when the Forbearance Agreement first became effective until January 1, 2021.
- 11.1.1 Please provide the impact to ratepayers of the two NPV calculations provided in response to the above.
- 11.2 In each of the following scenarios, please provide the NPV and ratepayer impact for each of the Walden North EPA and the Forbearance Agreement beginning January 1, 2021:
- i) The Forbearance Agreement is determined to be in the public interest and therefore the Walden North EPA and the Forbearance Agreement remain in effect;
 - ii) The Forbearance Agreement is determined to not be in the public interest and is declared unenforceable as of January 1, 2021, at which point BC Hydro chooses to terminate the Walden North EPA.
 - iii) The Forbearance Agreement is determined to not be in the public interest and is declared unenforceable as of January 1, 2021, at which point BC Hydro chooses not to terminate the Walden North EPA.

In your response, please provide an Excel file that includes all assumptions and calculations to support these estimates.

On page 15 of the Reasons for Decision, attached as Appendix 1 to Order G-278-19, the BCUC states:

[T]he Panel is prepared to consider accepting the subject EPA renewals for periods shorter than 40 years to allow for the conclusion of BC Hydro's next [Integrated Resource Plan (IRP)] proceeding, at which time there may be further clarity on BC Hydro's long term energy needs and supply alternatives to meet demand. While accepting these EPA renewals as being in the public interest for even a shorter period than 40 years will likely result in some economic harm to ratepayers, the Panel considers this economic harm to be minimal.

- 11.3 Please provide BC Hydro's best estimate of the date when the next IRP will be complete.
- 11.4 Please calculate the NPV and the ratepayer impact for each of the Walden North EPA and the Forbearance Agreement over the period beginning January 1, 2021 and ending on the IRP completion date provided in response to the above. In your response, please provide an Excel file that includes all assumptions and calculations to support these estimates.

**12.0 Reference: ECONOMIC ASSESSMENT
Exhibit B-1, p. 3; Exhibit A2-1, p. 11; Order G-148-20, p. 2
Capital Costs – Walden North Tailrace Culvert Upgrade**

On page 3 of the Filing, BC Hydro states that “The Walden North tailrace, owned by the IPP, was designed to channel flows from the Walden North powerhouse directly to BC Hydro’s Cayoosh Diversion Tunnel, with flows in excess of 1400 cubic feet per second diverted by a culvert back to Cayoosh Creek.”

Page 11 of Exhibit A2-1 states that “...the Walden North tailrace culverts need to be upgraded” and that BC Hydro intended to contribute towards to the cost of such work under a renewed EPA. Page 11 further states that if the Walden North EPA renewal did not proceed, BC Hydro would have no obligations to contribute to the tailrace upgrade project and that “In such circumstance, contributions from BC Hydro towards a Walden North tailrace upgrade project may be the subject of any new negotiations with the Walden North IPP.”

On page 2 of Appendix A to Order G-148-20, the BCUC states that the Walden North EPA renewal was terminated effective March 22, 2020.

- 12.1 Please explain why the Walden North tailrace culverts needed to be upgraded and the urgency of the upgrade project.
- 12.2 Please provide a copy of any agreement(s) between BC Hydro and the Walden North IPP regarding the Walden North tailrace upgrade project, excepting the 2018 Walden North EPA renewal.
- 12.3 To the best of BC Hydro’s knowledge, has the tailrace upgrade project been completed?
 - 12.3.1 If yes, please provide: (i) the date the tailrace upgrade project was completed; (ii) the total cost of the tailrace upgrade project; (iii) BC Hydro’s contribution (if any) to the cost of the tailrace upgrade project; and (iv) any reliability and/or performance benefits achieved as a result of the upgrade.
 - 12.3.2 If the tailrace upgrade project has not been completed, but BC Hydro is aware of plans to undertake the work, please provide: (i) the expected completion date of the upgrade project; (ii) the estimated cost of the upgrade project; (iii) BC Hydro’s expected contribution (if any) to the cost of the upgrade project; and (iv) any risks to the reliability and/or performance of the Walden North hydroelectric facility prior to completion of the upgrade project.
 - 12.3.3 If the tailrace upgrade project has not been completed and BC Hydro is not aware of any plans to undertake the upgrade work, please describe any resulting risks to the reliability and/or performance of the Walden North hydroelectric facility.

**13.0 Reference: ECONOMIC ASSESSMENT
Exhibit B-1, p. 3; Exhibit A2-1, p. 14
Capital Costs – Other Walden North Upgrades**

On page 3 of the Filing, BC Hydro states that the Diversion Agreement

... sets out the rights and obligations of BC Hydro and the Walden North IPP with respect to the design, construction, operation and maintenance of the “Walden North Diversion” and enabled the diversion of Cayoosh Creek water into the Cayoosh Diversion Tunnel. Pursuant to the Diversion Agreement, the Walden North IPP maintains and operates the works that are used to divert water from the Walden North tailrace

into BC Hydro's Cayoosh Diversion Tunnel and the culverts that return excess water to Cayoosh Creek and a fish spawning area.

Page 14 of Exhibit A2-1 states that:

The IPP is planning to undertake certain refurbishments of the Walden North facilities once the Walden North EPA renewal has received Commission acceptance. The refurbishment includes a new sluice gate to manage gravel at the intake and associated work, penstock/manifold recoating, civil upgrades for the powerhouse and tailrace area and the decommissioning of an old penstock. The purpose of the refurbishment is to restore the facility to its original condition, and bring other aspects of the facility to current standards, but not to increase the generating capacity.

Page 14 further states that:

[the Walden North IPP] planned to complete the refurbishments during the period between August 2019 and November 2019. However, due to the delay of the regulatory review of the EPA, these dates will not be achieved. Depending upon the timing of the EPA approval, the refurbishments will likely be completed during the period between August 2020 and November 2020.

13.1 To the best of BC Hydro's knowledge, have the refurbishments at the Walden North hydroelectric facility described above been completed?

13.1.1 If yes, please provide: (i) the date the refurbishments were completed; (ii) the total cost of the refurbishments; (iii) BC Hydro's contribution (if any) to the cost of the refurbishments; and (iv) any reliability and/or performance benefits achieved as a result of the refurbishments.

13.1.2 If the refurbishments have not been completed, but BC Hydro is aware of plans to undertake the work, please provide: the expected completion date of the refurbishments; (ii) the estimated cost of the refurbishments; (iii) BC Hydro's contribution (if any) to the cost of the refurbishments; and (iv) any reliability and/or performance benefits achieved due to the refurbishments.

13.1.3 If the refurbishments have not been completed and BC Hydro is not aware of any plans to undertake the work, please describe any resulting risks to the reliability and/or performance of the Walden North hydroelectric facility.

**14.0 Reference: ECONOMIC ASSESSMENT
Exhibit A2-1, p. 18
Decommissioning Costs**

Page 18 of Exhibit A2-1 states that "BC Hydro has not assessed whether it might bear some legal responsibility in relation to the decommissioning of the Walden North IPP and potential impacts in relation to the diversion tunnel."

14.1 Please provide any updates respecting BC Hydro's legal responsibility relating to any future decommissioning of the Walden North IPP and the costs associated with such responsibilities.

E. ALTERNATIVES TO THE FORBEARANCE AGREEMENT

**15.0 Reference: ALTERNATIVES TO THE FORBEARANCE AGREEMENT
Exhibit B-1, p. 3-4; Exhibit A2-1, pp. 9-10, 12-13
Diversion Agreement**

On page 3 of the Filing, BC Hydro states:

The Walden North tailrace, owned by the IPP, was designed to channel flows from the Walden North powerhouse directly to BC Hydro's Cayoosh Diversion Tunnel, with flows in excess of 1400 cubic feet per second diverted by a culvert back to Cayoosh Creek. A Diversion Agreement dated November 14, 1990 (the Diversion Agreement) sets out the rights and obligations of BC Hydro and the Walden North IPP with respect to the design, construction, operation and maintenance of the "Walden North Diversion" and enabled the diversion of Cayoosh Creek water into the Cayoosh Diversion Tunnel. Pursuant to the Diversion Agreement, the Walden North IPP maintains and operates the works that are used to divert water from the Walden North tailrace into BC Hydro's Cayoosh Diversion Tunnel and the culverts that return excess water to Cayoosh Creek and a fish spawning area.

On pages 3 and 4 of the Filing, BC Hydro states that:

In 2001, the Department of Fisheries and Ocean provided guidance for BC Hydro and the Walden North IPP on the minimum discharges for Seton River and the prescribed Cayoosh Creek flows in order to support the dilution ratio of Cayoosh Creek to Seton Creek water below the Cayoosh confluence. This guidance was provided to facilitate salmon migration to spawning areas in the Bridge River system during the salmon migration period. In 2017, BC Hydro commissioned a study to assess the impact of the dilution ratio on salmon migration, and it was confirmed that maintaining the dilution ratio facilitates salmon migration during spawning.

Page 13 of Exhibit A2-1 states that:

The Cayoosh Diversion Tunnel was built by BC Hydro in approximately 1957 as part of the construction of the Seton Dam and generating station works. When the diversion tunnel was closed after that construction was completed, the salmon were observed delaying at Seton Generating Station's tailrace. Subsequently, studies found that salmon migration delays were caused by the closure of the Cayoosh Diversion Tunnel and the dilution of Seton River by Cayoosh Creek. These studies established dilution ratio targets for the Seton River that would allow for successful salmon migration. In the early 1980s, the diversion tunnel was re-activated to help maintain dilution ratios.

- 15.1 Please explain what actions were taken to maintain dilution ratios in the early 1980s when the Cayoosh Diversion Tunnel was re-activated. In your response, please provide an estimate of the financial cost required to implement these actions, and whether such actions ultimately improved the dilution ratios.
- 15.2 Please explain what changed between the early 1980s and the execution of the Walden North EPA that required BC Hydro to enter into the Diversion Agreement to maintain adequate dilution ratios. Identify any improvement to or deterioration to the dilution levels achieved that resulted from execution of the Diversion Agreement.

- 15.3 Please explain whether the actions taken to maintain dilution ratios in the early 1980s could be used to substitute for the absence of a Diversion Agreement. In your response, please include a summary of the guidance provided by the Department of Fisheries and Ocean for BC Hydro and the Walden North IPP on the minimum discharges for Seton River and the prescribed Cayoosh Creek flows in order to support the dilution ratio of Cayoosh Creek to Seton Creek water below the Cayoosh confluence.

Pages 9-10 of Exhibit A2-1 state the following:

- Without an EPA and Diversion Agreement, there are uncertainties regarding how the parties will manage water flows in relation to the diversion tunnel.
- The continuation of the Diversion Agreement enables BC Hydro to avoid the cost of an alternative diversion structure (in order to feed water into BC Hydro's diversion tunnel) if such a structure is required sometime in the future.
- Given the existing diversion structure is already in place and owned by the IPP, BC Hydro has not carried out an assessment of available options for building an alternative diversion structure at this time.
- BC Hydro has also not considered the alternative of negotiating a new diversion agreement in the absence of an EPA and BC Hydro does not have an estimate of what such an agreement might cost.

- 15.4 Please explain whether the costs and benefits of an alternative diversion structure were compared to the costs and benefits of extending the Walden North EPA and Diversion Agreement when the Forbearance Agreement was negotiated. In your response, provide any historical analyses or business cases that support this assessment.

15.4.1 Please identify the criteria used to determine that the Forbearance Agreement was the best alternative available at that time.

- 15.5 Please compare the costs and benefits of building an alternative diversion structure today against the costs and benefits provided by the existing works that are used to divert water from the Walden North tailrace into BC Hydro's Cayoosh Diversion Tunnel and the culverts that return excess water to Cayoosh Creek. In your response, include quantitative and qualitative costs and benefits of these alternatives as they relate to the environment, local economy, and Indigenous Communities.
- 15.6 Please estimate the amount of time that would be required to build an alternative diversion structure.