BC Hydro
Power smart

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December 10, 2020

Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

RE: British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Walden North Hydro Forbearance Agreement (2020)
BC Hydro Responses to BCUC and Intervener IRs No.1

BC Hydro writes in compliance with Commission Order No. G-268-20 to provide its responses to Round 1 information requests as follows:

Exhibit B-3	Responses to Commission IRs (Public Version)
Exhibit B-3-1	Responses to Commission IRs (Confidential Version)
Exhibit B-4	Responses to Commission Confidential IRs (Confidential)
Exhibit B-5	Responses to Interveners IRs
Exhibit B-5-1	Responses to Interveners IRs (Confidential Version)
Exhibit B-6	Responses to Interveners Confidential IRs (Confidential)

BC Hydro is filing a number of IR responses and/or attachments to responses confidentially with the Commission. BC Hydro confirms that in each instance, an explanation for the request for confidential treatment is provided in the public version of the IR response. BC Hydro seeks this confidential treatment pursuant to section 42 of the *Administrative Tribunals Act* and Part 4 of the Commission's Rules of Practice and Procedure.

For further information, please contact Chris Sandve at 604-974-4641 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,

Fred James
Chief Regulatory Officer

df/tl

Enclosure

1.0 Reference: Exhibit B-1, pages 4-5

At pages 4-5, BCH states:

> "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.
>
> At the same pages BCH also states:
>
> "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".

1.1.1 Based on the first reference noted in the Preamble, please confirm that the Forbearance Agreement changed the actual price per kWh received by the owners of the Walden North project and similarly changed the actual cost to BCH for each kWh purchased.

RESPONSE:

BC Hydro's view has been that the Forbearance Agreement did not amend the actual price per kWh paid by BC Hydro and received by the owners of the Walden North IPP project under the Walden North EPA. BC Hydro's view has been that the Forbearance Agreement is a stand-alone commercial agreement under which the parties agreed not to exercise certain termination rights under the Walden North EPA in consideration of a forbearance fee being paid. It represents a commitment of the parties, incremental to the Walden North EPA. However, the BCUC has determined that BC Hydro effectively amended the price and consequently the Forbearance Agreement should have been filed pursuant to section 71 of the Utilities Commission Act.

Please also refer to BC Hydro's response to BCUC IR 1.1.3 which explains why BC Hydro entered into the Forbearance Agreement instead of amending the Walden North EPA.

1.0 Reference: Exhibit B-1, pages 4-5

At pages 4-5, BCH states:

> "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.
>
> At the same pages BCH also states:
>
> "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".

1.1.2 Did the Forbearance Agreement change the ability of BCH to terminate the Walden North 1990 EPA?

RESPONSE:

This also responds to BCOAPO IR 1.1.2.1.

The Forbearance Agreement does change the ability of BC Hydro to exercise its termination rights.

BC Hydro's view is that the Forbearance Agreement did not amend BC Hydro's termination rights under the Walden North EPA. Further, BC Hydro's view has been that the Forbearance Agreement is a stand-alone commercial agreement under which the parties agreed to not exercise their termination rights in exchange for consideration. However, the underlying termination rights remain intact, unamended. However, the BCUC has determined that BC Hydro effectively amended the termination provision of the Walden North EPA and consequently the Forbearance Agreement should have been filed pursuant to section 71 of the *Utilities Commission Act*.

1.0 Reference: Exhibit B-1, pages 4-5

At pages 4-5, BCH states:

> "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.
>
> At the same pages BCH also states:
>
> "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".

1.1.2 Did the Forbearance Agreement change the ability of BCH to terminate the Walden North 1990 EPA?

1.1.2.1 If yes, why isn't this "change" considered to be a change in the term of the EPA?

RESPONSE:

Please refer to BC Hydro's response to BCOAPO IR 1.1.2.

2.0 Reference: Exhibit B-1, page 4
Exhibit A-3, BCUC IR #4

At page 4, BCH states:

> "Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014".

1.2.1 At what level in BCH's organization was approval given to enter into the Forbearance Agreement?

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.3.

2.0 Reference: Exhibit B-1, page 4
Exhibit A-3, BCUC IR #4

At page 4, BCH states:

> "Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014".

1.2.2 On what date was this decision made?

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.3.

2.0 Reference: Exhibit B-1, page 4
Exhibit A-3, BCUC IR #4

At page 4, BCH states:

> "Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014".

1.2.3 Please provide copies of any business case or cost/benefit analysis that was undertaken in support of this decision.

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.3.

2.0 Reference: Exhibit B-1, page 4
Exhibit A-3, BCUC IR #4

At page 4, BCH states:

> "Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014".

1.2.4 BCUC Staff IR #4.1 requests "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." If different from that provided in response to BCUC IR 4.1, please provide the load/resource balance for the BC Hydro system as it existed at the time the decision to enter the Forbearance Agreement was made by BC Hydro.

RESPONSE:

Final approvals to enter into the Forbearance Agreement were obtained several days prior to the execution of the Forbearance Agreement on January 8, 2015. The load/response balance at the time approvals were obtained was not different than that provided in BC Hydro's response to BCUC IR 1.4.1.

2.0 Reference: Exhibit B-1, page 4
Exhibit A-3, BCUC IR #4

At page 4, BCH states:

> "Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014".

1.2.5 BCUC Staff IR #4.3 requests a discussion of "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; … . Provide the market price of energy and any other assumptions used in the response". If different from that provided in response to BCUC IR 4.3, please provide a discussion of the value energy purchases from the Walden North hydroelectric facility provide to BC Hydro in the context of BC Hydro's forecast load/resource balance as it existed at the time the decision to enter the Forbearance Agreement was made by BC Hydro.

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.4.3.

3.0 Reference: Exhibit B-1, pages 4-5
Exhibit A-3, BCUC IR#4
BC Hydro Application - Electricity Purchase Agreement (EPA) Renewals - Sechelt Creek Hydro, Brown Lake Hydro, and Walden North Hydro, Exhibit B-1, page 31

BC Hydro's Application for EPA Renewals contained the following comparison of cost-effectiveness benchmark regarding the Walden North renewal.

Table 7 Walden North EPA Renewal Cost-Effectiveness Benchmarks

	Levelized Energy Price ($2017/MWh)[25]
Original EPA applied to the renewal term	[redacted]
Original EPA offset by the Forbearance fee applied for the renewal term	[redacted]
IPP's Opportunity Cost (based on BC Border Sell Price)[26]	[redacted]
BC Hydro's Opportunity Cost[27] [redacted]	[redacted]
Renewed EPA	[redacted]

1.3.1 Please provide a similar schedule that sets out the values for all rows (except the Renewed EPA) based on the forecast value of energy to BC Hydro at the time the decision to enter into the Forbearance Agreement was made and based on the term of the forbearance agreement.

RESPONSE:

BC Hydro is providing the requested schedule in confidence to the BCUC, in order to protect the IPP's commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

	Levelized Energy Price ($2014/MWh)[1]
Original EPA	[redacted]
Original EPA offset by the Forbearance fee	[redacted]
IPP's Opportunity Cost (based on BC Border Sell Price)	[redacted]
BC Hydro's Opportunity Cost [redacted]	[redacted]

[1] **Levelized Energy Price calculated using a discount rate of 7% which was effective at the time.**

4.0 Reference: Exhibit B-1, page 6

At page 6, BCH lists the factors and criteria that the BCUC is to consider when assessing whether or not an energy supply contract filed by BC Hydro is in the public interest. One of the factors noted is "The quantity, availability and price of the energy to be supplied under the contract".

At page 6, BCH also notes that "There is no energy supplied under the Forbearance Agreement nor does the Forbearance Agreement increase or otherwise change the quantity or form of energy supplied to BC Hydro under the Walden North 1990 EPA."

1.4.1 The statement in the second reference does not mention price, please explain why.

RESPONSE:

Price is not mentioned in the second reference because there is no energy supplied to BC Hydro under the Forbearance Agreement. However, as noted on page 2 of Exhibit B-1, "…the consideration provided by CCPLP pursuant to the [forbearance] agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA."

4.0 Reference: Exhibit B-1, page 6

At page 6, BCH lists the factors and criteria that the BCUC is to consider when assessing whether or not an energy supply contract filed by BC Hydro is in the public interest. One of the factors noted is "The quantity, availability and price of the energy to be supplied under the contract".

At page 6, BCH also notes that "There is no energy supplied under the Forbearance Agreement nor does the Forbearance Agreement increase or otherwise change the quantity or form of energy supplied to BC Hydro under the Walden North 1990 EPA."

1.4.2 Also, with respect to the second reference, please confirm that the Forbearance Agreement does not change the quantity of energy that Walden North can supply or is required to supply to BC Hydro on an annual basis. If not confirmed, please explain.

RESPONSE:

BC Hydro is providing part of this response in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

BC Hydro confirms that on annual basis the quantity of energy supplied to BC Hydro and the quantity of energy required to be supplied to BC Hydro was not changed. [redacted]

1.0 Topic **Background**

Reference **BCUC Decision and Order G-278-19; BCUC Order G-39-20; Decision and Order G-148-20; Exhibit B-1, Compliance Filing of Forbearance Agreement between BC Hydro and Cayoose Creek Power Limited Partnership (CCPLP) pursuant to section 71 of the Utilities Commission Act (UCA)**

In May 2018, BC Hydro filed with the BCUC three EPAs for acceptance under section 71 of the UCA: Sechelt Creek EPA Renewal, Brown Lake EPA Renewal, and Walden North EPA Renewal. Each EPA Renewal was for a 40-year term. The BCUC held a proceeding titled "British Columbia Hydro and Power Authority Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro ~ Project No. 1598969."[1] For convenience, this will be referred to here as the Three EPA Renewals Proceeding.

In the Three EPA Renewals Proceeding, by Decision and Order G-278-19, the Panel expressed the view that the 40-year term of the EPA Renewals "exposes ratepayers to a significant level of risk due to uncertainty in market prices and changes in the energy industry in general" and that "if the EPA renewals were restructured to have shorter terms ... the level of market and price risks would be reduced, and the other benefits provided by each project would outweigh the lack of cost-effectiveness of each EPA renewal." The Panel adjourned the proceeding to allow BC Hydro and the counterparties, should they so choose, to restructure and resubmit the EPA renewals with a term not to exceed three years.

Regarding Walden North, the Panel stated on page 6 of the Reasons for Order G-278-19:

> "BC Hydro signed a Diversion Agreement with the Walden North IPP in 1990, which set out the rights and obligations of each party, enabled the diversion of water from Cayoosh Creek through the Cayoosh Diversion Tunnel, and provided BC Hydro with incremental generation and environmental benefits. To preserve this value, BC Hydro entered into a Forbearance Agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a number of years.
>
> The original EPA and related Forbearance Agreement will continue in accordance with their respective terms unless the [Walden North] EPA renewal is accepted."

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=642

BC Hydro and the counterparties amended the Sechelt Creek Hydro and Brown Lake Hydro to three-year terms. BC Hydro issued a notice of termination for the Walden North EPA Renewal.

By Order G-39-20 dated March 4, 2020,[2] the BCUC accepted for filing under s.71 the amended versions of the Sechelt Creek Hydro and Brown Lake Hydro. The Three EPA Renewals Proceeding continued.

By letter of March 4, 2020 [Exhibit A-21 in the Three EPA Renewals Proceeding] the BCUC noted that the Walden North EPA Renewal will be terminated as of March 22, 2020 and invited submissions "on whether costs accrued under the term of the Walden North EPA Renewal are recoverable from ratepayers and why."

In a March 17, 2020 letter to the Commission [Exhibit B-21[3]], BC Hydro stated that there have been no costs accrued by BC Hydro under the Walden North EPA Renewal. Regarding the Original Walden North EPA and the Forbearance Agreement, BC Hydro stated:

"BC Hydro further submits that all energy purchase payments which have been made to Cayoose LP, to date, have all been under the Original Walden North EPA. In addition, consideration provided by Cayoose LP to BC Hydro under the Forbearance Agreement has also continued during this period. BC Hydro notes that any Walden North EPA costs that BC Hydro has incurred, or will be incurring, pursuant to the Original Walden North EPA (whether or not the Forbearance Agreement is in effect) are recoverable pursuant to section 4(1)(b) of Direction No. 8 to the BCUC.[1]"

BC Hydro's Footnote 1 refers to paragraphs 41 to 43 of BC Hydro's July 5, 2019 final argument in the Three EPA Renewals Proceeding,[4] which in Footnote 34 states that "The original [Walden North] EPA remains exempt from the UCA section 71 filing requirement pursuant to Minister's Order M-22-9801-A1."

After receiving submissions from the parties, the BCUC issued Decision and Order G-148-20, Direction 1 of which directs BC Hydro to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA. Direction 1 is the genesis of the current proceeding.

The Panel in G-148-20 described the Forbearance Agreement as follows:

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2 https://www.bcuc.com/Documents/Other/2020/DOC_57918_G-39-20-BCH-Sechelt-Brown-Walden-Final-Order.pdf

3 https://www.bcuc.com/Documents/Proceedings/2020/DOC_57593_B-21-BCH-response-on-recoverability.pdf

4 https://www.bcuc.com/Documents/Arguments/2019/DOC_54469_2019-07-05-BCH-Final-Argument.pdf

> "BC Hydro entered into an agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a period of time (Forbearance Agreement). In consideration of BC Hydro forbearing to exercise its right to terminate the Original EPA, BC Hydro receives payments under the Forbearance Agreement that offsets the levelized energy price as set out in the Original EPA during the proposed renewal term." [p.3, footnote omitted]

Under the heading "Regulatory Framework and Legislation," the G-148-20 Panel acknowledged Ministerial Orders M-22-9801 and M-22-9801-A1 as follows:

> 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, were 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. [p.3]

The Panel in G-148-20 found that "the [Walden North] Forbearance Agreement is an amendment to the Original EPA and should have been filed with the BCUC under section 71 of the UCA." The Panel said: "The Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price." [p.6] The Panel found that "the Forbearance Agreement is an energy supply contract under the UCA and must be filed accordingly." It concluded:

> "In the Panel's view, the intent of the UCA is clear. <u>Unless otherwise exempted, any amendment to an energy supply agreement must be filed with the BCUC</u>. To interpret the legislation otherwise would lead to the absurd and unintended result that almost any aspect of an EPA could be changed by a carefully constructed agreement with no oversight from the BCUC." [underline added]

By letter of June 25, 2020 [Exhibit B-1 in the current proceeding], BC Hydro filed the Walden North Forbearance Agreement under section 71, in compliance with Direction 1 of Order G-148-20. Among other things, BC Hydro states:

> "The Walden North 1990 EPA and Diversion Agreement remain in effect at this time in accordance with their respective terms. In addition, the Forbearance Agreement also remains in effect at this time...
>
> The Walden North 1990 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 1990 EPA. Therefore, the costs that BC Hydro incurs pursuant to the Walden North 1990 EPA are recoverable in rates pursuant to Direction No. 8....
>
> BC Hydro does not incur any costs pursuant to the Forbearance Agreement, however, the consideration provided by CCPLP pursuant to the agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA."

Under the heading "Energy Supply Contract Considerations," BC Hydro acknowledges that the Forbearance Agreement is an "energy supply contract" as defined in section 68 of the UCA. It states:

> "The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement pursuant to section 71 of the UCA. The BCUC's finding that the Forbearance Agreement is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the UCA." [Exhibit B-1, pp.6-7]

1.1.1 Does BC Hydro have any corrections or additions regarding the Preamble above?

RESPONSE:

BC Hydro confirms that it has no corrections to its previous submissions in the proceedings referenced above.

1.0 Topic **Background**

Reference **BCUC Decision and Order G-278-19; BCUC Order G-39-20; Decision and Order G-148-20; Exhibit B-1, Compliance Filing of Forbearance Agreement between BC Hydro and Cayoose Creek Power Limited Partnership (CCPLP) pursuant to section 71 of the Utilities Commission Act (UCA)**

In May 2018, BC Hydro filed with the BCUC three EPAs for acceptance under section 71 of the UCA: Sechelt Creek EPA Renewal, Brown Lake EPA Renewal, and Walden North EPA Renewal. Each EPA Renewal was for a 40-year term. The BCUC held a proceeding titled "British Columbia Hydro and Power Authority Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro ~ Project No. 1598969."[1] For convenience, this will be referred to here as the Three EPA Renewals Proceeding.

In the Three EPA Renewals Proceeding, by Decision and Order G-278-19, the Panel expressed the view that the 40-year term of the EPA Renewals "exposes ratepayers to a significant level of risk due to uncertainty in market prices and changes in the energy industry in general" and that "if the EPA renewals were restructured to have shorter terms ... the level of market and price risks would be reduced, and the other benefits provided by each project would outweigh the lack of cost-effectiveness of each EPA renewal." The Panel adjourned the proceeding to allow BC Hydro and the counterparties, should they so choose, to restructure and resubmit the EPA renewals with a term not to exceed three years.

Regarding Walden North, the Panel stated on page 6 of the Reasons for Order G-278-19:

> "BC Hydro signed a Diversion Agreement with the Walden North IPP in 1990, which set out the rights and obligations of each party, enabled the diversion of water from Cayoosh Creek through the Cayoosh Diversion Tunnel, and provided BC Hydro with incremental generation and environmental benefits. To preserve this value, BC Hydro entered into a Forbearance Agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a number of years.
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> The original EPA and related Forbearance Agreement will continue in accordance with their respective terms unless the [Walden North] EPA renewal is accepted."

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By letter of March 4, 2020 [Exhibit A-21 in the Three EPA Renewals Proceeding] the BCUC noted that the Walden North EPA Renewal will be terminated as of March 22, 2020 and invited submissions "on whether costs accrued under the term of the Walden North EPA Renewal are recoverable from ratepayers and why."

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"BC Hydro further submits that all energy purchase payments which have been made to Cayoose LP, to date, have all been under the Original Walden North EPA. In addition, consideration provided by Cayoose LP to BC Hydro under the Forbearance Agreement has also continued during this period. BC Hydro notes that any Walden North EPA costs that BC Hydro has incurred, or will be incurring, pursuant to the Original Walden North EPA (whether or not the Forbearance Agreement is in effect) are recoverable pursuant to section 4(1)(b) of Direction No. 8 to the BCUC.[1]"

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The Panel in G-148-20 described the Forbearance Agreement as follows:

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2 https://www.bcuc.com/Documents/Other/2020/DOC_57918_G-39-20-BCH-Sechelt-Brown-Walden-Final-Order.pdf

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4 https://www.bcuc.com/Documents/Arguments/2019/DOC_54469_2019-07-05-BCH-Final-Argument.pdf

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Under the heading "Regulatory Framework and Legislation," the G-148-20 Panel acknowledged Ministerial Orders M-22-9801 and M-22-9801-A1 as follows:

> 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, were 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. [p.3]

The Panel in G-148-20 found that "the [Walden North] Forbearance Agreement is an amendment to the Original EPA and should have been filed with the BCUC under section 71 of the UCA." The Panel said: "The Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price." [p.6] The Panel found that "the Forbearance Agreement is an energy supply contract under the UCA and must be filed accordingly." It concluded:

> "In the Panel's view, the intent of the UCA is clear. <u>Unless otherwise exempted, any amendment to an energy supply agreement must be filed with the BCUC</u>. To interpret the legislation otherwise would lead to the absurd and unintended result that almost any aspect of an EPA could be changed by a carefully constructed agreement with no oversight from the BCUC." [underline added]

By letter of June 25, 2020 [Exhibit B-1 in the current proceeding], BC Hydro filed the Walden North Forbearance Agreement under section 71, in compliance with Direction 1 of Order G-148-20. Among other things, BC Hydro states:

> "The Walden North 1990 EPA and Diversion Agreement remain in effect at this time in accordance with their respective terms. In addition, the Forbearance Agreement also remains in effect at this time...
>
> The Walden North 1990 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 1990 EPA. Therefore, the costs that BC Hydro incurs pursuant to the Walden North 1990 EPA are recoverable in rates pursuant to Direction No. 8....
>
> BC Hydro does not incur any costs pursuant to the Forbearance Agreement, however, the consideration provided by CCPLP pursuant to the agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA."

Under the heading "Energy Supply Contract Considerations," BC Hydro acknowledges that the Forbearance Agreement is an "energy supply contract" as defined in section 68 of the UCA. It states:

> "The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement pursuant to section 71 of the UCA. The BCUC's finding that the Forbearance Agreement is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the UCA." [Exhibit B-1, pp.6-7]

1.1.2 In BC Hydro's view, does the Forbearance Agreement - filed as an energy supply contract under section 71 pursuant to Direction 1 of Order G-148-20 – stand alone, or does it include the Original Walden North EPA amended by the Forbearance Agreement?

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.2 where we discuss that the BCUC should review the Forbearance Agreement as a stand-alone energy supply contract.

1.0 Topic **Background**

Reference **BCUC Decision and Order G-278-19; BCUC Order G-39-20; Decision and Order G-148-20; Exhibit B-1, Compliance Filing of Forbearance Agreement between BC Hydro and Cayoose Creek Power Limited Partnership (CCPLP) pursuant to section 71 of the Utilities Commission Act (UCA)**

In May 2018, BC Hydro filed with the BCUC three EPAs for acceptance under section 71 of the UCA: Sechelt Creek EPA Renewal, Brown Lake EPA Renewal, and Walden North EPA Renewal. Each EPA Renewal was for a 40-year term. The BCUC held a proceeding titled "British Columbia Hydro and Power Authority Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro ~ Project No. 1598969."[1] For convenience, this will be referred to here as the Three EPA Renewals Proceeding.

In the Three EPA Renewals Proceeding, by Decision and Order G-278-19, the Panel expressed the view that the 40-year term of the EPA Renewals "exposes ratepayers to a significant level of risk due to uncertainty in market prices and changes in the energy industry in general" and that "if the EPA renewals were restructured to have shorter terms ... the level of market and price risks would be reduced, and the other benefits provided by each project would outweigh the lack of cost-effectiveness of each EPA renewal." The Panel adjourned the proceeding to allow BC Hydro and the counterparties, should they so choose, to restructure and resubmit the EPA renewals with a term not to exceed three years.

Regarding Walden North, the Panel stated on page 6 of the Reasons for Order G-278-19:

> "BC Hydro signed a Diversion Agreement with the Walden North IPP in 1990, which set out the rights and obligations of each party, enabled the diversion of water from Cayoosh Creek through the Cayoosh Diversion Tunnel, and provided BC Hydro with incremental generation and environmental benefits. To preserve this value, BC Hydro entered into a Forbearance Agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a number of years.
>
> The original EPA and related Forbearance Agreement will continue in accordance with their respective terms unless the [Walden North] EPA renewal is accepted."

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=642

BC Hydro and the counterparties amended the Sechelt Creek Hydro and Brown Lake Hydro to three-year terms. BC Hydro issued a notice of termination for the Walden North EPA Renewal.

By Order G-39-20 dated March 4, 2020,[2] the BCUC accepted for filing under s.71 the amended versions of the Sechelt Creek Hydro and Brown Lake Hydro. The Three EPA Renewals Proceeding continued.

By letter of March 4, 2020 [Exhibit A-21 in the Three EPA Renewals Proceeding] the BCUC noted that the Walden North EPA Renewal will be terminated as of March 22, 2020 and invited submissions "on whether costs accrued under the term of the Walden North EPA Renewal are recoverable from ratepayers and why."

In a March 17, 2020 letter to the Commission [Exhibit B-21[3]], BC Hydro stated that there have been no costs accrued by BC Hydro under the Walden North EPA Renewal. Regarding the Original Walden North EPA and the Forbearance Agreement, BC Hydro stated:

"BC Hydro further submits that all energy purchase payments which have been made to Cayoose LP, to date, have all been under the Original Walden North EPA. In addition, consideration provided by Cayoose LP to BC Hydro under the Forbearance Agreement has also continued during this period. BC Hydro notes that any Walden North EPA costs that BC Hydro has incurred, or will be incurring, pursuant to the Original Walden North EPA (whether or not the Forbearance Agreement is in effect) are recoverable pursuant to section 4(1)(b) of Direction No. 8 to the BCUC.[1]"

BC Hydro's Footnote 1 refers to paragraphs 41 to 43 of BC Hydro's July 5, 2019 final argument in the Three EPA Renewals Proceeding,[4] which in Footnote 34 states that "The original [Walden North] EPA remains exempt from the UCA section 71 filing requirement pursuant to Minister's Order M-22-9801-A1."

After receiving submissions from the parties, the BCUC issued Decision and Order G-148-20, Direction 1 of which directs BC Hydro to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA. Direction 1 is the genesis of the current proceeding.

The Panel in G-148-20 described the Forbearance Agreement as follows:

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2 https://www.bcuc.com/Documents/Other/2020/DOC_57918_G-39-20-BCH-Sechelt-Brown-Walden-Final-Order.pdf

3 https://www.bcuc.com/Documents/Proceedings/2020/DOC_57593_B-21-BCH-response-on-recoverability.pdf

4 https://www.bcuc.com/Documents/Arguments/2019/DOC_54469_2019-07-05-BCH-Final-Argument.pdf

> "BC Hydro entered into an agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a period of time (Forbearance Agreement). In consideration of BC Hydro forbearing to exercise its right to terminate the Original EPA, BC Hydro receives payments under the Forbearance Agreement that offsets the levelized energy price as set out in the Original EPA during the proposed renewal term." [p.3, footnote omitted]

Under the heading "Regulatory Framework and Legislation," the G-148-20 Panel acknowledged Ministerial Orders M-22-9801 and M-22-9801-A1 as follows:

> 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, were 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. [p.3]

The Panel in G-148-20 found that "the [Walden North] Forbearance Agreement is an amendment to the Original EPA and should have been filed with the BCUC under section 71 of the UCA." The Panel said: "The Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price." [p.6] The Panel found that "the Forbearance Agreement is an energy supply contract under the UCA and must be filed accordingly." It concluded:

> "In the Panel's view, the intent of the UCA is clear. <u>Unless otherwise exempted, any amendment to an energy supply agreement must be filed with the BCUC</u>. To interpret the legislation otherwise would lead to the absurd and unintended result that almost any aspect of an EPA could be changed by a carefully constructed agreement with no oversight from the BCUC." [underline added]

By letter of June 25, 2020 [Exhibit B-1 in the current proceeding], BC Hydro filed the Walden North Forbearance Agreement under section 71, in compliance with Direction 1 of Order G-148-20. Among other things, BC Hydro states:

> "The Walden North 1990 EPA and Diversion Agreement remain in effect at this time in accordance with their respective terms. In addition, the Forbearance Agreement also remains in effect at this time...
>
> The Walden North 1990 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 1990 EPA. Therefore, the costs that BC Hydro incurs pursuant to the Walden North 1990 EPA are recoverable in rates pursuant to Direction No. 8....
>
> BC Hydro does not incur any costs pursuant to the Forbearance Agreement, however, the consideration provided by CCPLP pursuant to the agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA."

Under the heading "Energy Supply Contract Considerations," BC Hydro acknowledges that the Forbearance Agreement is an "energy supply contract" as defined in section 68 of the UCA. It states:

> "The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement pursuant to section 71 of the UCA. The BCUC's finding that the Forbearance Agreement is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the UCA." [Exhibit B-1, pp.6-7]

1.1.3 What is the term (duration) of the Walden North Forbearance Agreement? Can the Forbearance Agreement be described as an evergreen agreement?

RESPONSE:

This also responds to CEC IR 1.6.1 and BCUC CONF IR 1.4.1.

BC Hydro is providing this response in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

[redacted]

[redacted]

[redacted]

1.0 Topic **Background**

Reference **BCUC Decision and Order G-278-19; BCUC Order G-39-20; Decision and Order G-148-20; Exhibit B-1, Compliance Filing of Forbearance Agreement between BC Hydro and Cayoose Creek Power Limited Partnership (CCPLP) pursuant to section 71 of the Utilities Commission Act (UCA)**

In May 2018, BC Hydro filed with the BCUC three EPAs for acceptance under section 71 of the UCA: Sechelt Creek EPA Renewal, Brown Lake EPA Renewal, and Walden North EPA Renewal. Each EPA Renewal was for a 40-year term. The BCUC held a proceeding titled "British Columbia Hydro and Power Authority Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro ~ Project No. 1598969."[1] For convenience, this will be referred to here as the Three EPA Renewals Proceeding.

In the Three EPA Renewals Proceeding, by Decision and Order G-278-19, the Panel expressed the view that the 40-year term of the EPA Renewals "exposes ratepayers to a significant level of risk due to uncertainty in market prices and changes in the energy industry in general" and that "if the EPA renewals were restructured to have shorter terms ... the level of market and price risks would be reduced, and the other benefits provided by each project would outweigh the lack of cost-effectiveness of each EPA renewal." The Panel adjourned the proceeding to allow BC Hydro and the counterparties, should they so choose, to restructure and resubmit the EPA renewals with a term not to exceed three years.

Regarding Walden North, the Panel stated on page 6 of the Reasons for Order G-278-19:

> "BC Hydro signed a Diversion Agreement with the Walden North IPP in 1990, which set out the rights and obligations of each party, enabled the diversion of water from Cayoosh Creek through the Cayoosh Diversion Tunnel, and provided BC Hydro with incremental generation and environmental benefits. To preserve this value, BC Hydro entered into a Forbearance Agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a number of years.
>
> The original EPA and related Forbearance Agreement will continue in accordance with their respective terms unless the [Walden North] EPA renewal is accepted."

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=642

BC Hydro and the counterparties amended the Sechelt Creek Hydro and Brown Lake Hydro to three-year terms. BC Hydro issued a notice of termination for the Walden North EPA Renewal.

By Order G-39-20 dated March 4, 2020,[2] the BCUC accepted for filing under s.71 the amended versions of the Sechelt Creek Hydro and Brown Lake Hydro. The Three EPA Renewals Proceeding continued.

By letter of March 4, 2020 [Exhibit A-21 in the Three EPA Renewals Proceeding] the BCUC noted that the Walden North EPA Renewal will be terminated as of March 22, 2020 and invited submissions "on whether costs accrued under the term of the Walden North EPA Renewal are recoverable from ratepayers and why."

In a March 17, 2020 letter to the Commission [Exhibit B-21[3]], BC Hydro stated that there have been no costs accrued by BC Hydro under the Walden North EPA Renewal. Regarding the Original Walden North EPA and the Forbearance Agreement, BC Hydro stated:

"BC Hydro further submits that all energy purchase payments which have been made to Cayoose LP, to date, have all been under the Original Walden North EPA. In addition, consideration provided by Cayoose LP to BC Hydro under the Forbearance Agreement has also continued during this period. BC Hydro notes that any Walden North EPA costs that BC Hydro has incurred, or will be incurring, pursuant to the Original Walden North EPA (whether or not the Forbearance Agreement is in effect) are recoverable pursuant to section 4(1)(b) of Direction No. 8 to the BCUC.[1]"

BC Hydro's Footnote 1 refers to paragraphs 41 to 43 of BC Hydro's July 5, 2019 final argument in the Three EPA Renewals Proceeding,[4] which in Footnote 34 states that "The original [Walden North] EPA remains exempt from the UCA section 71 filing requirement pursuant to Minister's Order M-22-9801-A1."

After receiving submissions from the parties, the BCUC issued Decision and Order G-148-20, Direction 1 of which directs BC Hydro to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA. Direction 1 is the genesis of the current proceeding.

The Panel in G-148-20 described the Forbearance Agreement as follows:

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2 https://www.bcuc.com/Documents/Other/2020/DOC_57918_G-39-20-BCH-Sechelt-Brown-Walden-Final-Order.pdf

3 https://www.bcuc.com/Documents/Proceedings/2020/DOC_57593_B-21-BCH-response-on-recoverability.pdf

4 https://www.bcuc.com/Documents/Arguments/2019/DOC_54469_2019-07-05-BCH-Final-Argument.pdf

> "BC Hydro entered into an agreement, effective November 1, 2014, where BC Hydro agreed to forbear from exercising its rights to terminate the original EPA for a period of time (Forbearance Agreement). In consideration of BC Hydro forbearing to exercise its right to terminate the Original EPA, BC Hydro receives payments under the Forbearance Agreement that offsets the levelized energy price as set out in the Original EPA during the proposed renewal term." [p.3, footnote omitted]

Under the heading "Regulatory Framework and Legislation," the G-148-20 Panel acknowledged Ministerial Orders M-22-9801 and M-22-9801-A1 as follows:

> 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, were 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. [p.3]

The Panel in G-148-20 found that "the [Walden North] Forbearance Agreement is an amendment to the Original EPA and should have been filed with the BCUC under section 71 of the UCA." The Panel said: "The Forbearance Agreement has the effect of changing at least two material aspects of the Original EPA: the termination provisions and the price." [p.6] The Panel found that "the Forbearance Agreement is an energy supply contract under the UCA and must be filed accordingly." It concluded:

> "In the Panel's view, the intent of the UCA is clear. <u>Unless otherwise exempted, any amendment to an energy supply agreement must be filed with the BCUC</u>. To interpret the legislation otherwise would lead to the absurd and unintended result that almost any aspect of an EPA could be changed by a carefully constructed agreement with no oversight from the BCUC." [underline added]

By letter of June 25, 2020 [Exhibit B-1 in the current proceeding], BC Hydro filed the Walden North Forbearance Agreement under section 71, in compliance with Direction 1 of Order G-148-20. Among other things, BC Hydro states:

> "The Walden North 1990 EPA and Diversion Agreement remain in effect at this time in accordance with their respective terms. In addition, the Forbearance Agreement also remains in effect at this time...
>
> The Walden North 1990 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 1990 EPA. Therefore, the costs that BC Hydro incurs pursuant to the Walden North 1990 EPA are recoverable in rates pursuant to Direction No. 8....
>
> BC Hydro does not incur any costs pursuant to the Forbearance Agreement, however, the consideration provided by CCPLP pursuant to the agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA."

Under the heading "Energy Supply Contract Considerations," BC Hydro acknowledges that the Forbearance Agreement is an "energy supply contract" as defined in section 68 of the UCA. It states:

> "The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement pursuant to section 71 of the UCA. The BCUC's finding that the Forbearance Agreement is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the UCA." [Exhibit B-1, pp.6-7]

1.1.4 In BC Hydro's view, does the reasoning in the BCUC Panel's decisions in Orders G-278-19 and G-39-20 – that the Sechelt Creek EPA Renewal and Brown Lake EPA Renewal are not in the public interest under section 71 with 40-year terms but are in the public interest under section 71 with three-year terms – apply to whether the Forbearance Agreement is in the public interest under section 71? Why, or why not?

RESPONSE:

BC Hydro is providing parts of this response in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

In BC Hydro's view, the BCUC's reasoning set out in Order No. G-278-19 regarding the Walden North, Sechelt Creek and Brown Lake EPA Renewals does not apply to the Forbearance Agreement.

In Order No. G-278-19, the Commission determined that it did not have sufficient information to determine whether EPAs with a 40 year term were in the public interest. As a result, the Commission recommended that the terms of the Sechelt Creek, Brown Lake and Walden North EPAs be amended to three years. This would allow time for BC Hydro to complete its next Integrated Resource Plan

which would be expected to provide further clarity on BC Hydro's long term energy needs and supply alternatives to meet demand. The Forbearance Agreement is not a 40 year energy supply contract. It became effective in 2014 and does not commit BC Hydro to continue purchasing energy beyond [redacted].

Order No. G-39-20 approved the amended Sechelt Creek and Brown Lake EPAs and is therefore not relevant to this question.

2.0 Topic Diversion Agreement

Reference Exhibit B-1

BC Hydro states that "The contract term of the [1990] Diversion Agreement is tied to the term of the Walden North 1990 EPA such that if the EPA terminates the Diversion Agreement also terminates."

BC Hydro describes the benefits of the Diversion Agreement as follows:

> "The Diversion Agreement provides the following benefits to BC Hydro:
>
> • About 24.4 GWh per year of additional heritage generation from the water diverted by the Cayoosh Diversion Tunnel into Seton Lake, approximately 91 per cent of which is outside the freshet season; and
>
> • Diversion of Cayoosh Creek water facilitates maintenance of the dilution ratio of Seton River water to Cayoosh Creek water below the Cayoosh confluence which is critical for salmon migration to spawning areas in the Bridge River system, via Seton River and Seton Lake. 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."

BC Hydro states that under the 2014 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."

1.2.1 In BC Hydro's view, is continuation of the 1990 Walden North Diversion Agreement consistent with BC Hydro's most recent Integrated Resource Plan?

RESPONSE:

Yes. To the best of BC Hydro's knowledge, the flows diverted from the Walden IPP, as a result of BC Hydro's diversion tunnel, were included as part of the Seton inflow (and thus correspondingly in generation values) in studies for the 2013 IRP.

2.0 Topic Diversion Agreement

Reference Exhibit B-1

BC Hydro states that "The contract term of the [1990] Diversion Agreement is tied to the term of the Walden North 1990 EPA such that if the EPA terminates the Diversion Agreement also terminates."

BC Hydro describes the benefits of the Diversion Agreement as follows:

> "The Diversion Agreement provides the following benefits to BC Hydro:
>
> • About 24.4 GWh per year of additional heritage generation from the water diverted by the Cayoosh Diversion Tunnel into Seton Lake, approximately 91 per cent of which is outside the freshet season; and
>
> • Diversion of Cayoosh Creek water facilitates maintenance of the dilution ratio of Seton River water to Cayoosh Creek water below the Cayoosh confluence which is critical for salmon migration to spawning areas in the Bridge River system, via Seton River and Seton Lake. 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."

BC Hydro states that under the 2014 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."

1.2.2 As the Forbearance Agreement entails continuation of the Diversion Agreement, in BC Hydro's view is the Forbearance Agreement consistent with BC Hydro's most recent Integrated Resource Plan?

RESPONSE:

To the extent that the Forbearance Agreement allows for the continuation of the Diversion Agreement, which supports the diversion of water flows from the Walden IPP facility to the Seton Lake, the Forbearance Agreement is not inconsistent with the 2013 IRP. Please also refer to BC Hydro's response to BCSEA IR 1.2.1.

3.0 Topic Cost of the Forbearance Agreement

Reference Exhibit B-1

On Page 6 of Exhibit B-1, BC Hydro cites two factors from section 71(2.21) of the UCA that BC Hydro says support a conclusion that the Forbearance Agreement is in the public interest under section 71:

> "The interests of both current and future BC Hydro customers - 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; 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" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above."

1.3.1 In BC Hydro's view, is continuation of the 1990 Walden North EPA a cost of the Forbearance Agreement? Why, or why not?

RESPONSE:

No, in BC Hydro's view the existing Walden North EPA is not a cost of the Forbearance Agreement. BC Hydro was not obligated to exercise its termination rights under the Walden North EPA. Further, agreeing to forbear from exercising these rights cannot be implied to mean that BC Hydro would have terminated the Walden North EPA absent the Forbearance Agreement.

3.0 Topic Cost of the Forbearance Agreement

Reference Exhibit B-1

On Page 6 of Exhibit B-1, BC Hydro cites two factors from section 71(2.21) of the UCA that BC Hydro says support a conclusion that the Forbearance Agreement is in the public interest under section 71:

> "The interests of both current and future BC Hydro customers - 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; 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" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above."

1.3.1 In BC Hydro's view, is continuation of the 1990 Walden North EPA a cost of the Forbearance Agreement? Why, or why not?

1.3.1.1 If continuation of the Walden North EPA is a cost of the Forbearance Agreement, is the Commission required by Direction No. 8 to allow BC Hydro to recover such costs in rates?

RESPONSE:

The costs BC Hydro incurs pursuant to the Walden North EPA (whether or not the Forbearance Agreement is in effect) are recoverable pursuant to section 4(1)(b) of Direction No. 8 to the BCUC. Please also refer to BC Hydro's response to BCUC IR 1.1.5.

3.0 Topic Cost of the Forbearance Agreement

Reference Exhibit B-1

On Page 6 of Exhibit B-1, BC Hydro cites two factors from section 71(2.21) of the UCA that BC Hydro says support a conclusion that the Forbearance Agreement is in the public interest under section 71:

> "The interests of both current and future BC Hydro customers - 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; 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" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above."

1.3.2 If the Diversion Agreement was no longer continued by the Forbearance Agreement would BC Hydro incur costs to achieve the objectives otherwise met by the Diversion Agreement?

RESPONSE:

This also responds to BCSEA IR 1.3.2.1.

BC Hydro is providing part of this response in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

The contract term of the Diversion Agreement is tied to the term of the Walden North EPA such that if the EPA terminates, the Diversion Agreement also terminates. Under the Forbearance Agreement, the parties agreed to forebear for a minimum of [redacted] from exercising their respective rights to terminate the Walden North EPA which allows the continuation of the Diversion Agreement.

Without an EPA and Diversion Agreement, there are uncertainties regarding how the parties will manage water flows in relation to the diversion tunnel and BC Hydro would likely incur costs to achieve the objectives otherwise met by the Diversion Agreement.

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 have also not considered the alternative of negotiating a new diversion agreement in the absence of an EPA and we do not have an estimate of what such an agreement might cost.

3.0 Topic Cost of the Forbearance Agreement

Reference Exhibit B-1

On Page 6 of Exhibit B-1, BC Hydro cites two factors from section 71(2.21) of the UCA that BC Hydro says support a conclusion that the Forbearance Agreement is in the public interest under section 71:

> "The interests of both current and future BC Hydro customers - 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; 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" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above."

1.3.2 If the Diversion Agreement was no longer continued by the Forbearance Agreement would BC Hydro incur costs to achieve the objectives otherwise met by the Diversion Agreement?

1.3.2.1 In BC Hydro's view, is the Forbearance Agreement a cost-effective way to achieve the objectives of the Diversion Agreement?

RESPONSE:

Please refer to BC Hydro's response to BCSEA IR 1.3.2.

4.0 Topic **Forbearance Agreement and Section 71**

Reference **Order G-148-20; BC Hydro Application for Reconsideration and Variance of Order No. G-148-20 in the matter of the BC Hydro Application for Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro; Decision and Order G-279-20**

Order G-148-20 in the Three EPA Renewals Proceeding contains four directives:

> "1. BC Hydro is directed to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA, within 15 days of the date of this order.
>
> 2. BC Hydro is directed to file with the BCUC all existing, but unfiled agreements entered after and including October 1, 2001, that are associated with and materially affect existing EPAs, within 30 days of the date of this order;
>
> 3. BC Hydro is directed to file with the BCUC future agreements that are associated with and materially affect existing EPAs as separate amending agreements, pursuant to section 71 of the UCA;
>
> 4. The BCUC will hold confidential the un-redacted version of the Application, including the Forbearance Agreement, due to its commercially sensitive nature."

By letter of August 6, 2020, BC Hydro applied to the Commission for clarification of Directive 2 and reconsideration of Directive 3 of Order G-148-20. BC Hydro did not challenge Directives 1 and 4 of Order G-148-20. The Commission initiated a proceeding.[1]

Regarding Directive 2, by letter of August 28, 2020 [Exhibit A-2 in the Reconsideration Proceeding], the Reconsideration Panel confirmed BC Hydro's stated understanding of Directive 2 as follows:

> "In the Reconsideration Application, BC Hydro indicates that given Directive 2 does not make reference to section 71 of the UCA, it understands that the BCUC intended for the materials submitted in response to Directive 2 to be <u>filed for information purposes only</u> to support the BCUC keeping itself informed about the conduct of BC Hydro. Further, BC Hydro understands that the BCUC did not intend for the materials to be filed or reviewed pursuant to section 71<u>, nor for materials related to EPAs</u>

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=798

> that are exempt from section 71 to be filed or reviewed pursuant to section 71.1."[2] [underline added]

On November 2, 2020, the BCUC issued Decision and Order G-279-20, varying Directive 3 of Order G-148-20 to state "BC Hydro is directed to file with the BCUC all future agreements that are associated with and materially affect existing EPAs," thereby removing the phrase "as separate amending agreements, pursuant to section 71."[3] The Reconsideration Panel explained that the revised wording does not indicate a presumption that agreements associated with and materially affect existing EPAs are filed, or are required to be filed, under section 71. The Panel states:

> "Directive 3, revised as set out immediately above, becomes complementary to Directive 2 by requiring all existing and future contracts associated with existing EPAs to be filed with the BCUC. The BCUC can keep itself informed about the conduct of BC Hydro's business in accordance with the responsibility afforded to the BCUC under section 23 of the UCA. Because the BCUC relies on its authority under section 23 of the UCA, neither Directive 2 nor Directive 3 revised as set out immediately above presumes an agreement is an EPA. Such an approach makes moot the objections raised by BC Hydro and the CEC in this proceeding, as their concerns relate specifically to the propriety of Directive 3 in relation to section 71 of the UCA and the ESC Rules relating thereto.

1.4.1 In BC Hydro's view, is Directive 1 of Order G-148-20 inconsistent with Directives 2 and 3 as clarified and revised in Order G-279-20, in that Directive 1 presumes that as an amendment to the Original Walden North EPA the Forbearance Agreement must be filed under section 71 without taking into account that the Original Walden North EPA was exempt from section 71 by Minister's Order M-22-9801-A1?

RESPONSE:

Directive 1 of Order No. G-148-20 is not inconsistent with Directives 2 and 3 as clarified and revised. Please refer to BC Hydro's responses to BCUC IRs 1.1.2 and 1.1.4.

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2 https://www.bcuc.com/Documents/Proceedings/2020/DOC_59071_A-2-Directive2-Clarification-Letter.pdf

3 https://www.bcuc.com/Documents/Other/2020/DOC_59698_G-279-20-BCH-Reconsideration-G-148-20-Final-Reasons.pdf

4.0 Topic **Forbearance Agreement and Section 71**

Reference **Order G-148-20; BC Hydro Application for Reconsideration and Variance of Order No. G-148-20 in the matter of the BC Hydro Application for Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro; Decision and Order G-279-20**

Order G-148-20 in the Three EPA Renewals Proceeding contains four directives:

> "1. BC Hydro is directed to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA, within 15 days of the date of this order.
>
> 2. BC Hydro is directed to file with the BCUC all existing, but unfiled agreements entered after and including October 1, 2001, that are associated with and materially affect existing EPAs, within 30 days of the date of this order;
>
> 3. BC Hydro is directed to file with the BCUC future agreements that are associated with and materially affect existing EPAs as separate amending agreements, pursuant to section 71 of the UCA;
>
> 4. The BCUC will hold confidential the un-redacted version of the Application, including the Forbearance Agreement, due to its commercially sensitive nature."

By letter of August 6, 2020, BC Hydro applied to the Commission for clarification of Directive 2 and reconsideration of Directive 3 of Order G-148-20. BC Hydro did not challenge Directives 1 and 4 of Order G-148-20. The Commission initiated a proceeding.[1]

Regarding Directive 2, by letter of August 28, 2020 [Exhibit A-2 in the Reconsideration Proceeding], the Reconsideration Panel confirmed BC Hydro's stated understanding of Directive 2 as follows:

> "In the Reconsideration Application, BC Hydro indicates that given Directive 2 does not make reference to section 71 of the UCA, it understands that the BCUC intended for the materials submitted in response to Directive 2 to be <u>filed for information purposes only</u> to support the BCUC keeping itself informed about the conduct of BC Hydro. Further, BC Hydro understands that the BCUC did not intend for the materials to be filed or reviewed pursuant to section 71<u>, nor for materials related to EPAs</u>

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=798

> that are exempt from section 71 to be filed or reviewed pursuant to section 71.1."[2] [underline added]

On November 2, 2020, the BCUC issued Decision and Order G-279-20, varying Directive 3 of Order G-148-20 to state "BC Hydro is directed to file with the BCUC all future agreements that are associated with and materially affect existing EPAs," thereby removing the phrase "as separate amending agreements, pursuant to section 71."[3] The Reconsideration Panel explained that the revised wording does not indicate a presumption that agreements associated with and materially affect existing EPAs are filed, or are required to be filed, under section 71. The Panel states:

> "Directive 3, revised as set out immediately above, becomes complementary to Directive 2 by requiring all existing and future contracts associated with existing EPAs to be filed with the BCUC. The BCUC can keep itself informed about the conduct of BC Hydro's business in accordance with the responsibility afforded to the BCUC under section 23 of the UCA. Because the BCUC relies on its authority under section 23 of the UCA, neither Directive 2 nor Directive 3 revised as set out immediately above presumes an agreement is an EPA. Such an approach makes moot the objections raised by BC Hydro and the CEC in this proceeding, as their concerns relate specifically to the propriety of Directive 3 in relation to section 71 of the UCA and the ESC Rules relating thereto.

1.4.2 In BC Hydro's view, to the extent that the Forbearance Agreement is an energy supply contract because it amends the Original Walden North EPA, is the Forbearance Agreement exempt from section 71 by Minister's Order M-22-9801-A1?

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.4.

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2 https://www.bcuc.com/Documents/Proceedings/2020/DOC_59071_A-2-Directive2-Clarification-Letter.pdf

3 https://www.bcuc.com/Documents/Other/2020/DOC_59698_G-279-20-BCH-Reconsideration-G-148-20-Final-Reasons.pdf

4.0 Topic **Forbearance Agreement and Section 71**

Reference **Order G-148-20; BC Hydro Application for Reconsideration and Variance of Order No. G-148-20 in the matter of the BC Hydro Application for Electricity Purchase Agreement Renewals for Sechelt Creek Hydro, Brown Lake Hydro and Walden North Hydro; Decision and Order G-279-20**

Order G-148-20 in the Three EPA Renewals Proceeding contains four directives:

> "1. BC Hydro is directed to file the Forbearance Agreement with the BCUC, pursuant to section 71 of the UCA, within 15 days of the date of this order.
>
> 2. BC Hydro is directed to file with the BCUC all existing, but unfiled agreements entered after and including October 1, 2001, that are associated with and materially affect existing EPAs, within 30 days of the date of this order;
>
> 3. BC Hydro is directed to file with the BCUC future agreements that are associated with and materially affect existing EPAs as separate amending agreements, pursuant to section 71 of the UCA;
>
> 4. The BCUC will hold confidential the un-redacted version of the Application, including the Forbearance Agreement, due to its commercially sensitive nature."

By letter of August 6, 2020, BC Hydro applied to the Commission for clarification of Directive 2 and reconsideration of Directive 3 of Order G-148-20. BC Hydro did not challenge Directives 1 and 4 of Order G-148-20. The Commission initiated a proceeding.[1]

Regarding Directive 2, by letter of August 28, 2020 [Exhibit A-2 in the Reconsideration Proceeding], the Reconsideration Panel confirmed BC Hydro's stated understanding of Directive 2 as follows:

> "In the Reconsideration Application, BC Hydro indicates that given Directive 2 does not make reference to section 71 of the UCA, it understands that the BCUC intended for the materials submitted in response to Directive 2 to be <u>filed for information purposes only</u> to support the BCUC keeping itself informed about the conduct of BC Hydro. Further, BC Hydro understands that the BCUC did not intend for the materials to be filed or reviewed pursuant to section 71<u>, nor for materials related to EPAs</u>

[1] https://www.bcuc.com/ApplicationView.aspx?ApplicationId=798

> that are exempt from section 71 to be filed or reviewed pursuant to section 71.1."[2] [underline added]

On November 2, 2020, the BCUC issued Decision and Order G-279-20, varying Directive 3 of Order G-148-20 to state "BC Hydro is directed to file with the BCUC all future agreements that are associated with and materially affect existing EPAs," thereby removing the phrase "as separate amending agreements, pursuant to section 71."[3] The Reconsideration Panel explained that the revised wording does not indicate a presumption that agreements associated with and materially affect existing EPAs are filed, or are required to be filed, under section 71. The Panel states:

> "Directive 3, revised as set out immediately above, becomes complementary to Directive 2 by requiring all existing and future contracts associated with existing EPAs to be filed with the BCUC. The BCUC can keep itself informed about the conduct of BC Hydro's business in accordance with the responsibility afforded to the BCUC under section 23 of the UCA. Because the BCUC relies on its authority under section 23 of the UCA, neither Directive 2 nor Directive 3 revised as set out immediately above presumes an agreement is an EPA. Such an approach makes moot the objections raised by BC Hydro and the CEC in this proceeding, as their concerns relate specifically to the propriety of Directive 3 in relation to section 71 of the UCA and the ESC Rules relating thereto.

1.4.3 In BC Hydro's view, does the Forbearance Agreement fall within Directive 2 - being an agreement associated with and materially affect an existing EPA - required to be filed for information purposes only to support the BCUC keeping itself informed about the conduct of BC Hydro and not under section 71?

RESPONSE:

BC Hydro filed the Forbearance Agreement in accordance with Directive 2, as discussed in that submission. BC Hydro's position has been that the Forbearance Agreement is not an energy supply contract that is required to be filed pursuant to section 71 of the *Utilities Commission Act*; however, BC Hydro was directed to file the Forbearance Agreement as an energy supply contract pursuant to section 71 pursuant to BCUC Order No. G-148-20 and BC Hydro has complied with that order.

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2 https://www.bcuc.com/Documents/Proceedings/2020/DOC_59071_A-2-Directive2-Clarification-Letter.pdf

3 https://www.bcuc.com/Documents/Other/2020/DOC_59698_G-279-20-BCH-Reconsideration-G-148-20-Final-Reasons.pdf

The requirement to file energy supply contracts under section 71 and agreements that meet the conditions of Directive 2 for information are not mutually exclusive.

1.0 REFERENCE: Exhibit B-1, page 1-2

> 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.

1.1.1 Please provide the meaning of a 'contractual development', outlining the boundaries that define it such as financial thresholds or other factors.

RESPONSE:

This also responds to CEC IRs 1.1.2 and 1.1.2.1.

Please refer to BC Hydro's response to BCUC IR 1.1.1 which provides the definition of "Contractual Developments" as provided in section 2.1 of the BCUC Rules for Energy Supply Contracts for Electricity (Rules).

Contractual Developments, as defined by the Rules, are a common occurrence during the term of an energy supply contract because issues will arise that need to be addressed by the parties. Examples of Contractual Developments are assignments, consents, operational and implementation agreements, dispatch/turn-down agreements, curtailment agreements, etc. BC Hydro's agreements with its IPPs are generally confidential documents.

1.0 REFERENCE: Exhibit B-1, page 1-2

> 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.

1.1.2 Are 'contractual developments' common in BC Hydro's EPAs or other contracts?

RESPONSE:

Please refer to BC Hydro's response to CEC IR 1.1.1.

1.0 REFERENCE: Exhibit B-1, page 1-2

> 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.

1.1.2 Are 'contractual developments' common in BC Hydro's EPAs or other contracts?

1.1.2.1 If yes, please provide non-confidential examples of those in EPAs and/or other contracts.

RESPONSE:

Please refer to BC Hydro's response to CEC IR 1.1.1.

2.0 REFERENCE: Exhibit B-1, page 2

> We note also that the Rules were developed and revised over the years in consultation with utilities and other stakeholders. Both parties to energy supply contracts are subject to the filing requirements, and therefore have an interest in the Rules. As we interpret the Order No. G-148-20 Decision, the BCUC appears to provide a new definition of "amendment" that includes an agreement that materially affects the terms of an energy supply contract, and this definition determines the section 71 filing requirement. This may not have been the BCUC's intention and it would be helpful if this was clarified. Also, since the Order requires the filing of agreements entered into since 2001, this change is effectively retroactive and did not follow the BCUC's historical practice of first consulting with utilities and other stakeholders before changing the Rules. We submit this was not procedurally fair and is not consistent with the expectations of utilities and other stakeholders.

1.2.1 Is the implication of the statement that 'both parties to energy supply contracts are subject to the filing requirements…' that the other party to the Forbearance Agreement presumably had a similar understanding of whether or not BCUC approval was required?

RESPONSE:

This also responds to CEC IR 1.2.1.1.

BC Hydro is providing the requested information in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

[redacted]

2.0 REFERENCE: Exhibit B-1, page 2

> We note also that the Rules were developed and revised over the years in consultation with utilities and other stakeholders. Both parties to energy supply contracts are subject to the filing requirements, and therefore have an interest in the Rules. As we interpret the Order No. G-148-20 Decision, the BCUC appears to provide a new definition of "amendment" that includes an agreement that materially affects the terms of an energy supply contract, and this definition determines the section 71 filing requirement. This may not have been the BCUC's intention and it would be helpful if this was clarified. Also, since the Order requires the filing of agreements entered into since 2001, this change is effectively retroactive and did not follow the BCUC's historical practice of first consulting with utilities and other stakeholders before changing the Rules. We submit this was not procedurally fair and is not consistent with the expectations of utilities and other stakeholders.

1.2.1 Is the implication of the statement that 'both parties to energy supply contracts are subject to the filing requirements…' that the other party to the Forbearance Agreement presumably had a similar understanding of whether or not BCUC approval was required?

1.2.1.1 If not, please explain how the other party's interest in the Rules relates to the agreement.

RESPONSE:

Please refer to BC Hydro's response to CEC IR 1.2.1.

3.0 REFERENCE: Exhibit B-1, page 2

> 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.

1.3.1 Please provide general, non-confidential examples of other Forbearance Agreements or similar agreements that BC Hydro has entered into. Company names are not required.

RESPONSE:

BC Hydro's agreements with IPPs are generally confidential. As such, non-confidential examples of other forbearance agreements are not available.

However, BC Hydro's response to BCUC IR 1.1.3 provides generic examples of when forbearance or similar agreements have been entered into by BC Hydro.

4.0 REFERENCE: Exhibit B-1, page 3

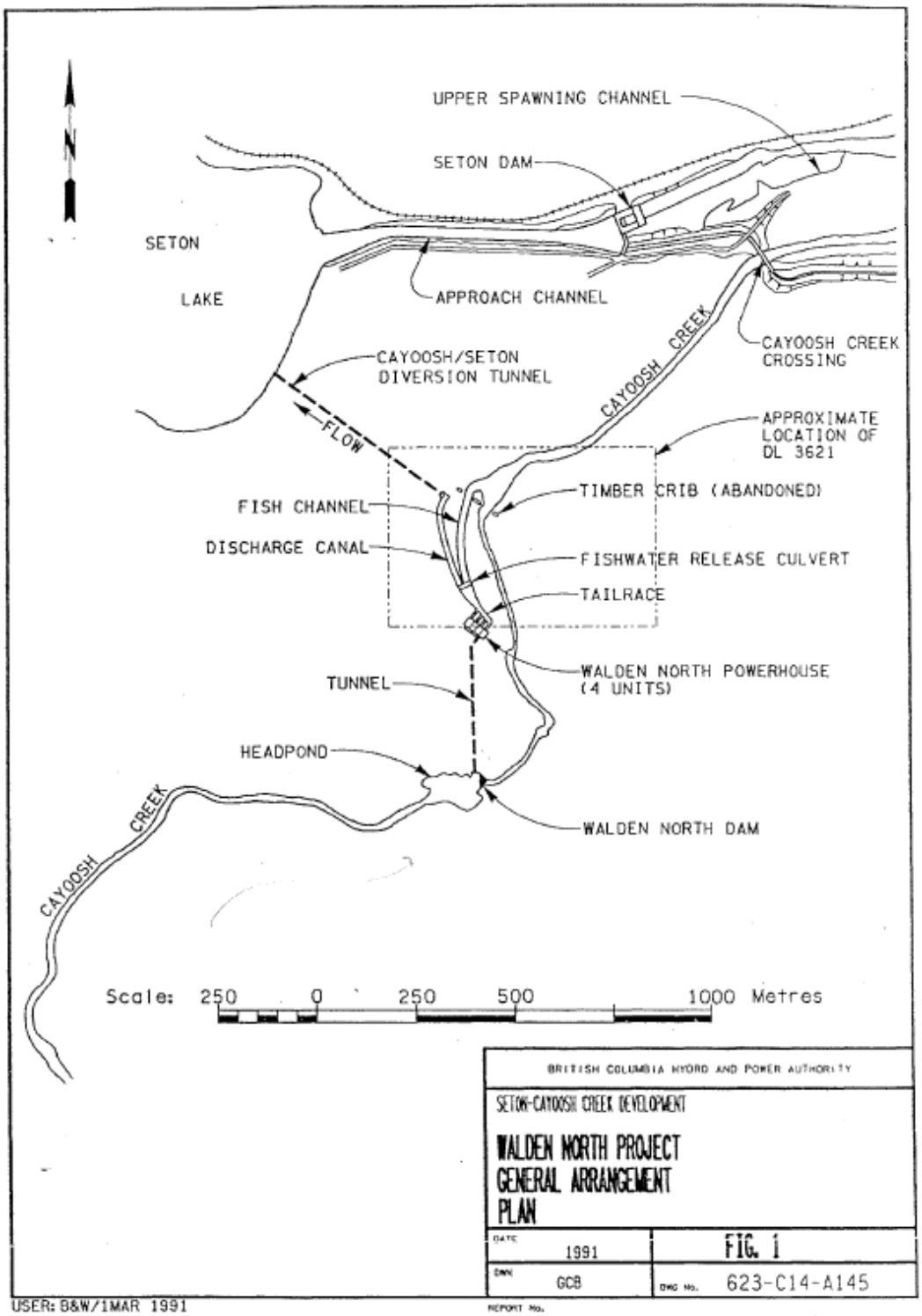
The Walden North project provides support to nearby BC Hydro facilities in relation to generation and water flow. BC Hydro's Seton Dam was completed in 1956 and is the final dam of the Bridge River hydroelectric system. As part of the Seton Dam project, BC Hydro built a tunnel (**Cayoosh Diversion Tunnel**) to divert water from Cayoosh Creek to Seton Lake for BC Hydro generation purposes at Seton GS. It is also BC Hydro's understanding that diverting Cayoosh Creek flows into Seton Lake facilitates salmon migration to spawning areas in the Bridge River system, via Seton River and Seton Lake, during the sockeye salmon migration period.

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. The Diversion Agreement provides the following benefits to BC Hydro:

1.4.1 Please provide a map showing the various facilities.

RESPONSE:

A map of the general layout of the Walden North Project is provided below.


N
UPPER SPAWNING CHANNEL
SETON DAM
SETON
LAKE
APPROACH CHANNEL
CAYOOSH CREEK
CAYOOSH CREEK CROSSING
CAYOOSH/SETON DIVERSION TUNNEL
FLOW
APPROXIMATE LOCATION OF DL 3621
TIMBER CRIB (ABANDONED)
FISH CHANNEL
DISCHARGE CANAL
FISHWATER RELEASE CULVERT
TAILRACE
WALDEN NORTH POWERHOUSE (4 UNITS)
TUNNEL
HEADPOND
WALDEN NORTH DAM
CAYOOSH CREEK
Scale: 250 0 250 500 1000 Metres
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
SETON-CAYOOSH CREEK DEVELOPMENT
WALDEN NORTH PROJECT
GENERAL ARRANGEMENT
PLAN
DATE 1991
FIG. 1
DWN GCB
DWG No. 623-C14-A145
USER: B&W/1MAR 1991
REPORT No.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.1 Please confirm, or otherwise explain, that there is no relevant linkage between the discussions regarding the gas arrangements and the Forbearance Agreement. Please provide the information confidentially if necessary

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.3.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.2 Could BC Hydro have renegotiated the Diversion Agreement such that it could operate in the absence of the 1990 EPA?

RESPONSE:

This also responds to CEC IR 1.5.2.1.

BC Hydro is providing parts of this response in confidence to the BCUC, in order to protect the IPPs' commercial interests. The public disclosure of the redacted information could also impact BC Hydro's commercial interests and ongoing negotiations related to the Electricity Purchase Agreements (EPAs).

It may be possible to negotiate a diversion agreement in the absence of an EPA, but any diversion agreement with the Walden North IPP will need to take into consideration the operation of the Walden IPP generating facility because the facility's tailrace channels flows from the Walden North powerhouse directly to

BC Hydro's Cayoosh Diversion Tunnel. The feasibility of this option has not been explored with the IPP.

As alluded to in the preamble above, so long as the existing Walden North EPA continues, the Diversion Agreement continues. Under the Forbearance Agreement, the parties agreed to forbear from exercising their termination rights under the Walden North EPA until [redacted] and, as such, in 2014 there was no need to consider a renegotiation of the Diversion Agreement.

Please refer to BC Hydro response to BCUC IR 1.1.3 for a discussion of why BC Hydro elected to enter into the Forbearance Agreement.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.2 Could BC Hydro have renegotiated the Diversion Agreement such that it could operate in the absence of the 1990 EPA?

1.5.2.1 If yes, why did BC Hydro not pursue such a course of action?

RESPONSE:

Please refer to BC Hydro's response CEC IR 1.5.2.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.3 Please confirm, or otherwise explain, that the net effect of the Forbearance Agreement is that BC Hydro outlays less money overall for the energy it receives than it did without the Forbearance Agreement?

RESPONSE:

Confirmed.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.3 Please confirm, or otherwise explain, that the net effect of the Forbearance Agreement is that BC Hydro outlays less money overall for the energy it receives than it did without the Forbearance Agreement?

1.5.3.1 If yes, what is the value to ESI (or FortisBC Energy Inc.) of the Forbearance Agreement?

RESPONSE:

Neither ESI nor FortisBC Energy Inc. currently have an interest in the Walden North IPP project. In February 2016, the Walden North project was acquired by Cayoose Creek Power Limited Partnership (CCPLP). BC Hydro has no knowledge as to what the value of the Forbearance Agreement is to CCPLP.

5.0 REFERENCE: Exhibit B-1, page 4-5

In anticipation of the expiry of the initial 20-year term, BC Hydro and ESI 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 ESI. With respect to the EPA renewal, BC Hydro was unable to reach an agreement with ESI because the upper limit of pricing BC Hydro was able to offer for a 10-year extension was not, as indicated by ESI, 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. Parallel to these EPA renewal discussions, BC Hydro and FortisBC Energy Inc. (an affiliate of ESI) were engaged in confidential negotiations in relation to a suite of agreements, including the gas arrangements in relation to the Burrard Generating Station. The gas-related issues were resolved by Order in Council 749 issued in December 2014.

Around this same time period, BC Hydro also wished to resolve the outstanding Walden North 1990 EPA and Diversion Agreement issues, and therefore entered into the Forbearance Agreement with an effective date of April 1, 2014. 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.

1.5.4 Would FEI, as an affiliate of ESI, have been required to disclose the Forbearance Agreement to the Commission under its own regulatory regime? Please explain.

RESPONSE:

To the extent that the Forbearance Agreement had been determined to be an amendment to an energy supply contract, the counterparty under that Forbearance Agreement, being ESI Power-Walden Corporation, would have been obligated to file the Forbearance Agreement with the Commission at that time. BC Hydro does not have knowledge with respect to the regulatory regime of FEI and its disclosure requirements to the BCUC.

6.0 REFERENCE: Exhibit B-1, page 5

Present Situation

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. 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.

The Walden North 1990 EPA and Diversion Agreement remain in effect at this time in accordance with their respective terms. In addition, the Forbearance Agreement also remains in effect at this time.

All energy supplied to BC Hydro by the Walden North project and all payments for such energy purchased by BC Hydro continue to be under the Walden North 1990 EPA. The rights and obligations of the parties in respect of the Cayoosh Diversion Tunnel and related works continue to be under the Diversion Agreement. Consideration provided by CCPLP to BC Hydro under the Forbearance Agreement also continues at this time in accordance with that agreement.

1.6.1 If not confidential, please provide the term of the Forbearance Agreement, or alternatively provide the information confidentially.

RESPONSE:

Please refer to BC Hydro's confidential response to BCSEA IR 1.1.3.

7.0 REFERENCE: Exhibit B-1, page 5 and 6

Energy Supply Contract Considerations

The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement

pursuant to section 71 of the *UCA*. The BCUC's finding that the Forbearance Agreemer is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the *UCA*.

1.7.1 Please elaborate on why the finding that the Forbearance Agreement is an amendment to the Walden North 1990 EPA means that the Forbearance Agreement is itself an energy supply contract.

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.2 where BC Hydro notes that under section 68 of the *Utilities Commission Act* an amendment to an energy supply contract is also an energy supply contract under that definition.

7.0 REFERENCE: Exhibit B-1, page 5 and 6

Energy Supply Contract Considerations

The BCUC determined that the Forbearance Agreement is an amendment of the Walden North 1990 EPA and directed BC Hydro to file the Forbearance Agreement

pursuant to section 71 of the *UCA*. The BCUC's finding that the Forbearance Agreemer is an amendment of the Walden North 1990 EPA means that the Forbearance Agreement is an "energy supply contract" as that term is defined in section 68 of the *UCA*.

1.7.2 Does the UCA contemplate 'amendments' to energy supply contracts? If so, please identify where.

RESPONSE:

Please refer to BC Hydro's response to BCUC IR 1.1.2 where BC Hydro confirms that the definition of "energy supply contract" in section 68 of the *Utilities Commission Act* includes an amendment to an energy supply contract.

8.0 REFERENCE: Exhibit B-1, page 6 and 7 and page 5

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.

There is no energy supplied under the Forbearance Agreement nor does the Forbearance Agreement increase or otherwise change the quantity or form of energy supplied to BC Hydro under the Walden North 1990 EPA. In BC Hydro's view, 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 - 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; 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" - BC Hydro believes that the Forbearance Agreement supports this energy objective for the same reasons as the point above.

The Walden North 1990 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 1990 EPA. Therefore, the costs that BC Hydro incurs pursuant to the Walden North 1990 EPA are recoverable in rates pursuant to Direction No. 8.

BC Hydro does not incur any costs pursuant to the Forbearance Agreement, however, the consideration provided by CCPLP pursuant to the agreement is an offset against the costs BC Hydro incurs pursuant to the Walden North 1990 EPA.

1.8.1 Does the 1990 EPA exemption from the UCA section 71 carry the implication that the EPA is in the public interest? Please explain why or why not.

RESPONSE:

Yes. Exemptions from section 71 of the *Utilities Commission Act* may be issued, by regulation, by the Lieutenant Governor in Council (pursuant to section 3 of the

Act) or by the responsible Minister (pursuant to section 22 of the Act). As set forth in section 41 of the *Interpretation Act*, these powers to make regulations empower the Lieutenant Governor in Council and Minister to make regulations as are considered necessary and advisable. An exemption therefore represents the determination of the Government of B.C. that it is advisable for the subject EPA to proceed and without BCUC oversight.