

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-41-12**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**British Columbia Hydro and Power Authority
F2012 to F2014 Revenue Requirements Application**

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
D. Morton, Commissioner March 30, 2012
A.A. Rhodes, Commissioner

O R D E R

WHEREAS:

- A. On March 1, 2011, British Columbia Hydro and Power Authority (BC Hydro) filed its F2012 to F2014 Revenue Requirements Application (the Application or F2012 to F2014 RRA) with the British Columbia Utilities Commission (Commission) pursuant to sections 56, and 58 to 61 of the *Utilities Commission Act* (the Act) seeking, among other things, the determination of just, reasonable and sufficient rates for its fiscal years 2012, 2013 and 2014 (F2012, F2013 and F2014);
- B. BC Hydro also sought an order, on an interim and refundable basis, pending determination of the Application to:
(i) increase rates by an average of 9.73 percent, (ii) retain the Deferral Account Rate Rider (DARR) at 2.5 percent, and
(iii) increase the Open Access Transmission Tariff (OATT) pursuant to sections 58 to 61, 89 and 90 of the Act and section 15 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45;
- C. By Order G-40-11 dated March 8, 2011, the Commission established an Initial Regulatory Timetable for the Application;
- D. By Order G-41-11 dated March 14, 2011, the Commission approved the interim rate relief as requested;
- E. At a Procedural Conference on March 25, 2011, BC Hydro sought an adjournment of the proceeding and an extension of the Initial Regulatory Timetable;
- F. By Order G-61-11 dated March 28, 2011, the Commission adjourned the Procedural Conference to April 8, 2011, amended the Initial Regulatory Timetable and, among other things, suspended Order G-41-11, which resulted in the suspension of the interim rate relief;
- G. By Letter L-25-11 dated March 31, 2011, the Commission further amended the Initial Regulatory Timetable and, among other things, rescheduled the Procedural Conference previously scheduled for April 8, 2011 to April 20, 2011;
- H. On April 7, 2011, the Premier and the Minister of Energy and Mines on behalf of the Province of British Columbia, as the sole shareholder of BC Hydro, announced that the Provincial Government would conduct a review of BC Hydro (Provincial Government Review) in order to provide recommendations and options for minimizing the rate increase;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-41-12**

2

- I. By letter dated April 8, 2011, BC Hydro filed a submission including, among other things, clarification in respect of the Provincial Government Review, BC Hydro's position on the process going forward, and a request to establish an average interim rate increase of 8.23 percent, effective May 1, 2011;
- J. Following a Procedural Conference on April 20, 2011, the Commission issued Order G-72-11 on April 21, 2011, directing, among other things, an across-the-board interim rate increase of 8.0 percent effective May 1, 2011, on a refundable basis pending the determination of the Application and suspended the Amended Regulatory Timetable established by Letter L-25-11 subject to further Order;
- K. The Provincial Government Review was made public on August 11, 2011;
- L. By letter dated September 27, 2011, BC Hydro filed a submission addressing: (i) BC Hydro's plan to reduce the F2012 to F2014 revenue deficiency by \$800 million; (ii) the proposed form and content of the Amended F2012 to F2014 RRA; (iii) a proposed Revised Initial Regulatory Timetable; and (iv) an extension request for the filing of the expenditures BC Hydro plans to make on demand-side measures (DSM) during F2012 and F2013 (F12/F13 DSM Expenditure Application) to coincide with the filing of the F2012 to F2014 RRA;
- M. By Order G-173-11 dated October 13, 2011, the Commission, among other things, established a Revised Initial Regulatory Timetable which included a Procedural Conference to take place on December 6, 2011, and directed BC Hydro to file the DSM Expenditure Application for consideration as part of the Amended F2012 to 2014 RRA and not as a standalone Application;
- N. On November 24, 2011, BC Hydro filed its amendments to the Application (Amended Application or Amended F2012 to F2014 RRA);
- O. A Procedural Conference took place on December 6, 2011;
- P. On December 7, 2011, the Commission issued Order G-206-11 which determined that the Amended F2012 to F2014 RRA is to be reviewed by way of an Oral Public Hearing and set the Regulatory Timetable for the review of the Amended Application. The Regulatory Timetable included a date of May 28, 2012, as a placeholder for commencement of a possible Negotiated Settlement Process (NSP) and a placeholder for a fourth Procedural Conference on May 18, 2012, if determined necessary;
- Q. On January 10, 2012, the Canadian Office of Professional Employees Union Local 378 (COPE) wrote to the Commission requesting a Regulatory Timetable for a process to consider the F2013 interim rate increase to be effective April 1, 2012;
- R. On January 19, 2012, the Commission invited Interveners to make submissions on the level of the interim rate increase and the DARR for F2013, along with any comments on a further process;
- S. On January 27, 2012, submissions were provided to the Commission by the following Interveners: the Association of Major Power Customers of British Columbia, Commercial Energy Consumers Association of British Columbia, British Columbia Old Age Pensioners Organization *et al.*, B.C. Sustainable Energy Association and the Sierra Club of British Columbia, Vanport Sterilizers Inc. and COPE;
- T. On February 1, 2012, BC Hydro provided a reply submission to the Commission;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-41-12**

3

- U. On February 15, 2012, pursuant to Order G-17-12 the Commission approved the applied-for across-the-board F2013 interim rate increase of 3.91 percent effective April 1, 2012, on a refundable basis pending determination of the Amended Application. The Commission rejected the applied for continuation of the DARR at 2.5 percent and set it at 5.0 percent effective April 1, 2012, on an interim and refundable basis, pending determination of the Amended Application;
- V. On March 13, 2012, the Commission received an Application from BC Hydro requesting a Negotiated Settlement Process (NSP Application) for the purpose of resolving the Amended Application in its entirety and requested that the proposed NSP should commence the week of April 30, 2012, in order to allow for any final settlement to be reflected in its F2012 financial statements;
- W. On March 14, 2012, the Commission issued a letter which, among other things, invited Interveners to make submissions on BC Hydro's NSP Application and the timing regarding the filing of Intervener Evidence and the subsequent exchange of IRs and IR responses as set out in the Regulatory Timetable;
- X. Submissions were provided to the Commission by the following Interveners who were in support of BC Hydro's NSP Application: the Association of Major Power Customers of British Columbia, Commercial Energy Consumers Association of British Columbia, British Columbia Old Age Pensioners Organization *et al.*, B.C. Sustainable Energy Association and the Sierra Club of British Columbia, Fortis Energy Utilities, and Energy Services Vancouver Island;
- Y. Submissions were provided to the Commission by the following Interveners who were not in support of BC Hydro's NSP Application: COPE, Clean Energy Association of BC (except for International Financial Reporting Standards), Ilsa Leis, Terry Vulcano, Alan Wait, and V.W. Ruskin & Assoc.;
- Z. The Commission also received a submission from Vanport Sterilizers (Vanport) stating that the "... Commission must first reconsider its ruling that Vanport 'did not directly address' the Interim RRA issues of cash flow, power marketing and deferral accounts that are central to the RRA". It also requests a Commission Order that the identified merchant power development-related options be considered to be within the scope of any NSP including an Order for the award of the requested feasibility study which Vanport believes the net result of which could "substantially offset a significant portion of the RRA.";
- AA. On March 26, 2012, BC Hydro provided a reply submission to the Commission;
- BB. A number of Interveners proposed changes to the regulatory timetable as set out in Order G-206-11, regarding the filing of Intervener evidence, and the subsequent exchange of IRs and IR responses. In BC Hydro's reply submission dated March 26, 2012, it accepted that the filing date for intervener evidence should be extended by one week, to April 17, 2012.

NOW THEREFORE the Commission orders that:

1. For the Reasons attached as Appendix A to this Order, BC Hydro's Application for an NSP is denied.
2. The Regulatory Timetable as set out in Order G-206-11 is amended to extend the filing of Intervener evidence and subsequent exchange of IRs and IR responses by one week. The Amended Regulatory Timetable is attached as Appendix B to this Order.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-41-12**

4

3. The Commission Panel considers that all outstanding procedural issues have been addressed and therefore a fourth Procedural Conference will not be necessary. The Amended Regulatory Timetable reflects this determination.
4. With respect to Vanport's request, the Panel notes that since there will be no NSP, this request is moot and therefore makes no determination on this issue.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of March 2012.

BY ORDER

Original signed by:

A.A. Rhodes
Commissioner

Attachment

British Columbia Hydro and Power Authority
F2012 to F2014 Revenue Requirements

Application for Negotiated Settlement Process

REASONS FOR DECISION

1.0 BACKGROUND

On March 1, 2011, BC Hydro submitted its original Revenue Requirements Application (RRA) for F2012-F2014 seeking rate increases of 9.73 percent for each of the three years. By Order G-41-11 dated March 14, 2011, the Commission approved the rate increase for F2012 on an interim basis, effective April 1, 2011. By Order G-61-11 dated March 28, 2011 the increase was suspended at the request of BC Hydro, due to the announcement of a Government Review into its operations, which was expected to affect the requested rate increases in a downward direction. By Order G-72-11 dated April 21, 2011, the Commission approved a reduced interim rate increase in the amount of 8.0 percent effective May 1, 2011 and the continuation of the Deferral Account Rate Rider (DARR) at 2.5 percent for F2012.

Following the Government Review, on September 27, 2011, BC Hydro filed an Amended RRA (ARRA), which contained a plan to reduce the revenue requirement.

Following a Procedural Conference held on December 6, 2011, by Order G-206-11 dated December 11, 2011, the Commission Panel determined that the ARRA would be reviewed by way of an Oral Public Hearing to take place commencing Monday, June 18, 2012. The attached Regulatory Timetable included a placeholder for a potential NSP to commence on May 28, 2012. (Exhibit A-18)

By letter dated January 19, 2012, in response to a request from the Canadian Office and Professional Employees Union Local 378 (COPE), the Commission Panel invited submissions from Interveners and BC Hydro on, among other things, the level of interim rate increase and the DARR for F2013. (Exhibit A-22)

By Order G-17-12 dated February 15, 2012 the Commission Panel approved, among other things, an interim rate increase of 3.91 percent for F2013 and a resetting of the DARR to 5 percent, to be effective April 1, 2012, on an interim and refundable basis, pending determination of the ARRA. (Exhibit A-27)

On March 13, 2012, the Commission received an Application from BC Hydro requesting a Negotiated Settlement Process (NSP Application) for the purpose of resolving the ARRA in its entirety. BC Hydro submitted that the proposed NSP should commence the week of April 30, 2012, in order to allow for any final settlement to be reflected in BC Hydro's final F2012 financial statements. (Exhibit B-19)

As part of the Negotiated Settlement Agreement with respect to BC Hydro's F2011 RRA, the parties agreed that the next RRA would be reviewed in an oral public hearing and BC Hydro agreed at that time that "... it will not support a NSP if one or more of the BCOAPO, CEC, JIESC [now AMPC], or BCSEA are opposed to an NSP." In the NSP Application (Exhibit B-19), BC Hydro now submits that it has had discussions with each of these parties and none of them oppose an NSP for the purpose of resolving the ARRA. Further, BC Hydro submits that each of them supports the use of an NSP to resolve the entirety of the ARRA.

2.0 INTERVENER SUBMISSIONS

The following Table generally summarizes the position of Interveners on the proposed NSP:

Intervener	Acronym	NSP Support	Intervener	Acronym	NSP Support
BC Old Age Pensioners' Association <i>et al</i>	BCOAPO	Yes	Energy Services Vancouver Island	ESVI	Yes
Canadian Office and Professional Employees Union Local 378	COPE	No	Terry Vulcano	Mr. Vulcano	No
Fortis Energy Utilities	FEU	Yes	Association of Major Power Consumers	AMPC	Yes
Commercial Energy Consumers	CEC	Yes	Alan Wait	Mr. Wait	No
Ilsa Leis	Ms. Leis	No	V.W. Ruskin & Assoc.	Mr. Ruskin	No
BC Sustainable Energy Association	BCSEA	Yes	Vanport Sterilizers Inc.	Vanport	-
Clean Energy Association of BC	CEABC	No - except for IFRS			

2.1 Interveners Supporting an NSP

The BCOAPO states that it strongly supports an NSP to resolve the ARRA in its entirety; however, it provides no argument in support of this position. (Exhibit C1-12, p. 1)

AMPC is also strongly supportive, but believes that a settlement will be difficult and it will take a number of factors to come together at the right time. (Exhibit C18-8, p.1)

The BCSEA and ESVI also support an NSP, but provide no reasons. (Exhibit C10-11, p. 1, Exhibit C16-8, p. 1)

FEU supports an NSP because "...an NSP is an efficient and fair means of resolving applications before the Commission." (Exhibit C4-4, p. 1)

The CEC also supports an NSP and submits that "...BC Hydro's interest in an accelerated process is worth accommodating because it may have the potential to facilitate significant benefits for BC Hydro's customers and would therefore appear to be in the public interest to make this possible." (Exhibit C5-8, p. 2)

A letter of comment was also received from the Ministry of Energy and Mines in support of the request for an NSP. (Exhibit E-20)

2.2 Interveners Not Supporting an NSP

COPE submits that while an NSP is an excellent mechanism to find best-fit resolutions of bottom-line issues between diverse competing interests, because of the natural dynamic of the NSP, in this case it is "...the wrong tool for the job". In COPE's view, in an NSP, stakeholders conduct themselves according to the constraints arising from the interests they represent and the commitments to which they are subject. They may be given the capacity to determine the outcome, but accountability for that outcome will continue to reside with the Commission. (Exhibit C2-15, pp. 4 -5)

In this regard, COPE submits that the Commission has a role which demands a wider and longer-term perspective and that the problem presented by the deferral accounts can only be tackled from that vantage-point. It maintains that delegating the disposition of the Application to the competing interests of the stakeholders cannot be expected to provide the solution. (Exhibit C2-15, p. 5)

COPE further submits that BC Hydro and the customer groups cannot realistically be expected to seek higher rates and following the DARR Interim Rate set by the Panel it appears that the customer groups are trying to 'cut their losses' by removing the "remaining part of the job" - the forward-looking RRA from the active purview of the Commission. It further submits that "...one particular group will not be represented at the NSP – namely BC Hydro's future customers. BC Hydro refers to them as 'persons within British Columbia who [receive, or who] may receive, service from BC Hydro', whenever it addresses and defines the public interest." (Exhibit 2-15, p. 4)

CEABC submits that an NSP is appropriate when a regulated utility is in a relatively static state, but that this is definitely not the case with BC Hydro at this time. It cites BC Hydro's "massive capital spending program to rebuild and renew its distribution, transmission and generating assets while preparing to meet an increase in the demand for electricity the likes of which haven't been experienced since the 1970s." It further submits that this is a very dynamic state that requires a large measure of oversight by its regulator, the BCUC, which represents the public interest through open and transparent processes. It considers an NSP as essentially a delegation of the BCUC's oversight authority to a group of participants that are bound by confidentiality agreements. It maintains that even though the BCUC has the ultimate authority to approve or disapprove the terms of an NSP it does not have direct access to the discussions and information that underpin any settlement and that BCUC staff that are present at a NSP are not a substitute for decision making BCUC Commissioners. (Exhibit C13-7, p. 1-2)

The CEABC also expresses a concern about the length of the test period. It states that "... unlike its predecessors, it covers a three year time period and a number of issues to be dealt with have already been postponed a number of times because they were to be dealt with as part of the Application." (Exhibit C13-7, p. 1)

Ms Leis has "serious objections" to the NSP process. She submits that it will prevent a rigorous examination of the Application and hence is "completely unacceptable." She further submits that with the exception of those residential customers represented by the BCOAPO most of the Residential Customers are complete unaware of the increases in cost BC Hydro is incurring year after year and that these costs will have to be paid by the young adults in the future and future generations. (Exhibit C9-4, p. 1; Exhibit C9-6, p. 1)

Mr. Wait, Mr. Vulcano and Mr. Ruskin would all prefer an Oral Public Hearing. (Exhibit C23-4, p. 1; Exhibit B26-3, Exhibit C17-10, p. 1)

2.3 Other Interveners

Vanport submits that the "... Commission must first reconsider its ruling that Vanport 'did not directly address' the Interim RRA issues of cash flow, power marketing and deferral accounts that are central to the RRA". It also requests a Commission Order that the identified merchant power development-related options be considered to be within the scope of any NSP including an Order for the award of the requested feasibility study which Vanport believes the net result of which could "substantially offset a significant portion of the RRA."

3.0 BC HYDRO REPLY SUBMISSION

BC Hydro submits that "[t]ension between current and future rates, and consideration of the means available to resolve those tensions, are not matters of grand, rarefied public policy in the manner COPE suggests. Instead, they are essentially matters of rate design: a core BCUC responsibility to be sure, and an area within which the BCUC may exercise a great deal of discretion, but also an area in which there is never a single objectively correct solution." (Exhibit B-22, p. 3)

BC Hydro maintains that the majority of Interveners support the establishment of an NSP and, further, all those interveners who represent major BC Hydro customer segments support an NSP, namely the BCOAPO, AMPC, BCSEA and the CEC. In BC Hydro's view, each of these four organizations has a long history of participation in BCUC proceedings and has been recognized as representative of broad customer interests. With regard to the interests represented by those opposing an NSP, BC Hydro submits that none of these Interveners represent broad customer interests. It further maintains that although Ms. Leis and Mr. Ruskin made submissions in the name of BC Hydro customers, and while both are individual residential customers, neither has any basis to claim a broader representative status. (Exhibit B-22, p. 1)

Commission Determination

In order to assess the suitability of an NSP in this matter, the Panel turns its attention to the Commission's NSP Guidelines. Of the four considerations used to assist the Commission in determining whether an NSP is appropriate, three are in the form of questions. The first consideration is: "Will customer classes or other groups that are likely to be affected by the agreement be participants in the negotiating sessions?" A key issue in this hearing is that of deferred expenses and the consideration of intergenerational inequity to which these deferrals can give rise. BC Hydro characterizes this issue as similar to those that are routinely dealt with in a rate design hearing. The Panel disagrees with this characterization. We do not consider intergenerational equity to be a rate design issue. Further, given the current size and projected growth rates of the deferral and regulatory accounts, this is not a routine issue—whether it is characterized as rate design or not. In the Panel's view, this underlines the need for robust representation for future ratepayers.

All of the Interveners that are in support of the NSP process represent, in the words of BC Hydro, "major BC Hydro customer segments." However, the Panel does not agree with BC Hydro that any of these groups necessarily are representative of broad customer interests. While it may be true that, taken as a whole, they do represent a large number of existing customers, each group has its own particular interests, which they will presumably actively promote in any NSP process. However, there is no broad representation of the existing ratepayers. Further, there is no representation of potentially affected future ratepayers. The Panel considers this a public interest issue and one that is of significant concern.

The second consideration is: "Will the application pose policy issues about which there is no established Commission precedent?" There are a number of significant issues in this ARRA proceeding, including: the deferral of significant expenditures, for some of which there is no specific plan for recovery; the rate at which the DARR is set; the amortization period for some of the regulatory accounts including allowable DSM expenditures; the deferral of a significant portion of

the forecast cost of energy to the Non Heritage Deferral Account; the transition to International Financial Reporting Standards; the magnitude of capital projects, and the prudence of various expenditures. Many of these are public policy and/or public interest related issues, and as such, in the Panel's view, require an open and transparent review. The Panel is not satisfied that these issues can be adequately addressed in an NSP process. Rather, the Panel finds these issues are better suited to an Oral Public Hearing process.

The third consideration is: "Has the set of issues posed by the application been subject to a public hearing within a reasonable interval?" In this regard, the Panel notes that the F2011 RRA was resolved in an NSP and that was preceded by an oral hearing for the F2009-2010 RRA. The F2012-F2014 ARRA covers an unusually long test period – three years. If this proceeding is resolved by an NSP, that will mean four years without a public hearing. Further, decisions made in NSPs tend to be in the nature of trade-offs among the parties, each of which has its own particular interest. This is the nature of the NSP process. However, it will often only resolve the issues for the test period and will not leave the Applicant with any sense of strategic direction to guide it on how to deal with the issues going forward. The Panel is of the opinion that given the seriousness of the issues in the F2012-F2014 ARRA, four years is too long a time period to go before such issues are canvassed by way of a full, open transparent regulatory process.

The fourth consideration states that an NSP may not be appropriate if there are a large number of participants. It further suggests dividing the application into sub-issues to reduce the number of Participants at any one negotiation session. This consideration will not be addressed as the Panel concludes that the NSP process is not appropriate in this matter based on the first three considerations.

Accordingly, BC Hydro's Application for an NSP is denied.

With respect to Vanport's request, the Panel notes that since there will be no NSP, this request is moot and therefore **makes no decision on this issue.**

British Columbia Hydro and Power Authority
Project No. 3698622/Order G-40-11
F2012 to F2014 Revenue Requirements Application

AMENDED REGULATORY TIMETABLE

ACTION	DATE (2012)
BC Hydro Information Request No. 2 Responses	Thursday, April 5
Intervener Evidence	Tuesday, April 17
Commission and Participants Information Request No. 1 on Intervener Evidence	Tuesday, May 1
Intervener Evidence Information Request No. 1 Responses	Tuesday, May 15
BC Hydro Rebuttal Evidence (if any)	Tuesday, May 22
Commencement of Oral Public Hearing (anticipated duration: two to three weeks)	Monday, June 18