

ORDER NUMBER
G-86-17

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

BEFORE:

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

on May 31, 2017

ORDER

WHEREAS:

- A. On December 10, 2015, the British Columbia Utilities Commission (Commission) received a letter dated December 8, 2015 from Mr. Adrian Dix, MLA (Mr. Dix), which makes a number of statements and allegations against British Columbia Hydro and Power Authority (BC Hydro) pertaining to its conversion to SAP as its Information Technology platform;
- B. On May 3, 2016, the Commission issued Order G-58-16 establishing an inquiry to review BC Hydro's expenditures related to the adoption of the SAP platform (SAP Inquiry) and on May 9, 2016, the Commission issued Order G-62-16, which set out a proposed scope of inquiry and a preliminary regulatory timetable, including written submissions on scope and procedure followed by a procedural conference to be held on June 1, 2016;
- C. Subsequent to the procedural conference held on June 1, 2016, the Commission issued Order G-81-16 which, among other things, established a regulatory timetable for the SAP Inquiry. The regulatory timetable included BC Hydro's filing of consolidated information, one round of Commission and intervener information requests, submissions on further process, and a second procedural conference which was held on October 28, 2016;
- D. By Order G-168-16 dated November 23, 2016, with accompanying reasons for decision, the Commission, among other things, established a further regulatory timetable which included a date for BC Hydro to file a witness list and witness statements and a date for BC Hydro and interveners to file submissions on further process;
- E. On January 26, 2017, BC Hydro submitted witness statements from six of its current employees;
- F. By Order G-26-17 dated February 28, 2017, with accompanying reasons for decision, the Commission established a regulatory timetable which provided for one round of information requests on the six witness statements filed by BC Hydro;
- G. On March 20, 2017, the Commission received a letter from the legal firm Hamilton Howell Bain & Gould informing the Commission that on April 1, 2010, its client filed a code of conduct complaint (2010 Complaint) with BC Hydro's Code of Conduct Advisor, which has relevancy to the issues under consideration in the SAP Inquiry;

- H. On March 28, 2017, counsel for Mr. Dix filed a letter with the Commission requesting that the Commission direct BC Hydro to release the 2010 Complaint and provide further witness statements in connection with the 2010 Complaint. Counsel for Mr. Dix filed an additional submission on May 5, 2017 reiterating the requests made in the March 28, 2017 letter;
- I. By letter dated May 11, 2017, the Commission requested submissions from BC Hydro and interveners on whether the 2010 Complaint, with redactions to confidential information if necessary, should be filed by BC Hydro as evidence in the SAP Inquiry. Mr. Dix was also provided with a right of reply;
- J. BC Hydro, in its May 17, 2017 submission, confirmed that the 2010 Complaint raised concerns of a “virtually identical” nature to those identified by Mr. Dix in his December 8, 2015 filing to the Commission but BC Hydro does not support filing a copy of the 2010 Complaint as evidence in the SAP Inquiry. BC Hydro submitted that the 2010 Complaint would not provide additional value to the information already filed in the proceeding and may compromise the confidentiality of private personal information;
- K. Counsel for Mr. Dix replied on May 19, 2017 that the 2010 Complaint is within the scope of the SAP Inquiry and is therefore relevant and that steps such as redaction of information are available to protect the privacy of personal information; and
- L. The Commission has reviewed all parties’ submissions regarding the 2010 Complaint and considers that disclosure of the 2010 Complaint is warranted.

NOW THEREFORE for the reasons attached as Appendix B to this order, the British Columbia Utilities Commission orders as follows:

1. British Columbia Hydro and Power Authority (BC Hydro) is directed to file the following documents:
 - The April 2010 Code of Conduct complaint received by BC Hydro’s Code of Conduct Advisor; and
 - Documentation relating to the resolution of the Code of Conduct complaint, including any internal report(s) prepared by BC Hydro, as well as any letter(s) or documentation provided to the complainant at the conclusion of the investigation.
2. BC Hydro is directed to redact the complainant’s name and personal information from all applicable documents as well as any other information which BC Hydro considers necessary to protect the privacy of personal information of the individuals who are referenced in the requested documents.
3. The regulatory timetable is amended as outlined in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of May 2017.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachments

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

REGULATORY TIMETABLE

Action	Date (2017)
BC Hydro filing of evidence	Wednesday, June 14
Commission and Intervener Information Requests No. 1 on evidence	Thursday, June 29
BC Hydro response to Commission and Intervener Information Requests No. 1	Friday, July 14

British Columbia Hydro and Power Authority
Inquiry of Expenditures related to the adoption of the SAP Platform
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REASONS FOR DECISION

1.0 Background

On December 10, 2015, the British Columbia Utilities Commission (Commission) received a letter of complaint dated December 8, 2015 from Mr. Adrian Dix, MLA (Mr. Dix), which makes a number of statements and allegations against British Columbia Hydro and Power Authority (BC Hydro) pertaining to its conversion to SAP as its information technology platform.

By Order G-58-16 dated May 3, 2016, the Commission established an inquiry to review BC Hydro's expenditures related to the adoption of the SAP platform (SAP Inquiry). The regulatory process to-date, established by Orders G-62-16, G-81-16, G-146-16, G-168-16 and G-26-17, has included intervenor registration, submissions by intervenors on the scope of the SAP Inquiry, two procedural conferences, BC Hydro's filing of consolidated information, one round of Commission and intervenor information requests (IRs), BC Hydro's filing of witness statements from six of its current employees, and one round of IRs on the six witness statements.

On March 20, 2017, the Commission received a letter from counsel at Hamilton Howell Bain & Gould informing the Commission that on April 1, 2010, its client filed a code of conduct complaint with BC Hydro's Code of Conduct Advisor (2010 Complaint). Counsel submitted that the 2010 Complaint is directly relevant to the issues under consideration in the SAP Inquiry and therefore ought to be disclosed as evidence in the proceeding.

On March 28, 2017, counsel for Mr. Dix filed a letter with the Commission requesting that the Commission direct BC Hydro to release the 2010 Complaint and provide further witness statements in connection with the 2010 Complaint. Counsel for Mr. Dix submitted an additional letter on May 5, 2017 reiterating the requests made in the March 28, 2017 letter.

By letter dated May 11, 2017, the Commission requested submissions from BC Hydro and intervenors on whether the 2010 Complaint, with redactions to confidential information if necessary, should be filed by BC Hydro as evidence in the proceeding. Mr. Dix was also provided an opportunity to file a right of reply.

2.0 Submissions on the 2010 Complaint

BC Hydro and Mr. Dix were the only parties to file submissions in accordance with the Commission's May 11, 2017 letter.

BC Hydro submission

BC Hydro confirms that in April 2010 a BC Hydro employee submitted a complaint to the company's Code of Conduct Advisor in relation to concerns that are "virtually identical" to the issues raised by Mr. Dix in his December 8, 2015 letter of complaint to the Commission. However, BC Hydro does not support filing a copy of the 2010 Complaint as evidence in the SAP Inquiry for the following reasons:

- BC Hydro remains of the view that all Code of Conduct human resource matters, including the 2010 Complaint, must be treated with a high degree of confidentiality to ensure all parties involved are provided with a confidential environment to report and address sensitive and confidential Code of Conduct questions or concerns. Further, disclosure of the 2010 Complaint could discourage future Code of Conduct reporting.
- BC Hydro is mindful of its privacy obligations under the *Freedom of Information and Protection of Privacy Act* (FOIPPA), which include responsibility to prevent the unauthorized disclosure of personal information in BC Hydro's custody and extends to all personal information within the 2010 Complaint including, but not limited to,

that of the complainant. BC Hydro submits that when more than one party is affected by a Code of Conduct complaint, disclosure of complaint-related personal information is not permitted by FOIPPA on the strength of one party's consent alone.

- BC Hydro is of the view that the information contained in the 2010 Complaint provides minimal, if any, additional value to the SAP Inquiry; thus, the benefit of disclosure does not justify compromising confidentiality of private personal information.
- Counsel for Mr. Dix's letters dated March 28, 2017 and May 5, 2017, show that the purpose of putting the 2010 Complaint on the record would be to scrutinize BC Hydro's handling of the 2010 Complaint, which is not a scope item being addressed in the SAP Inquiry.

Mr. Dix reply submission

Counsel for Mr. Dix, in the May 19, 2017 reply submission, characterizes BC Hydro's submission as making two broad points:

- Considerations relating to confidentiality and FOIPPA prevent BC Hydro from disclosing the 2010 Complaint; and
- BC Hydro's handling of the 2010 Complaint is outside the scope of the SAP Inquiry.

With regard to the first point, counsel for Mr. Dix submits that any concerns BC Hydro may have had about confidentiality and the disclosure of personal information could have been "easily assuaged by redacting or otherwise anonymizing" the 2010 Complaint before providing a copy to the Commission.

Counsel for Mr. Dix also submits that FOIPPA does not impose an "absolute bar" on the disclosure of personal information and that FOIPPA contains a number of provisions which would allow BC Hydro to fulfill its disclosure obligation, including section 33.1(1)(b) which allows for the disclosure of personal information if consent is obtained. Counsel for Mr. Dix states that BC Hydro's submission does not indicate that any efforts were made to obtain consent from: (i) the complainant; or (ii) the sole individual identified in the 2010 Complaint.

Counsel for Mr. Dix also points to section 25(1)(b) of FOIPPA submitting that this section contains a "blanket exception for disclosure of information that is 'clearly in the public interest'", as well as section 33.1(t), which permits disclosure to comply with an order issued by a body in Canada with jurisdiction to compel the production of information, such as the Commission.

With regard to the second point, counsel for Mr. Dix "categorically reject[s] BC Hydro's assertion that its handling of the [2010] Complaint falls outside the scope of this Inquiry" and submits the following:

...the [2010] Complaint is undoubtedly "SAP-related" and thus the question of whether BC Hydro's non-disclosure of the Complaint was "appropriate, reasonable and in accordance with the *Utilities Commission Act*" is a question that falls squarely within Scope Item 5. As Scope Item 5 is not restricted to any particular timeframe, BC Hydro's handling of the Complaint in 2010 and subsequently – including throughout the early stages of the present Inquiry – is plainly at issue.

Commission determination

The Panel directs BC Hydro to file the following documents:

- The April 2010 Code of Conduct complaint received by BC Hydro's Code of Conduct Advisor; and
- Documentation relating to the resolution of the 2010 Code of Conduct complaint, including any internal report(s) prepared by BC Hydro, as well as any letter(s) or documentation provided to the complainant at the conclusion of the investigation.

The Panel directs BC Hydro to redact the complainant's name and personal information from all applicable documents as well as any other information which BC Hydro considers necessary to protect the privacy of personal information of the individuals who are referenced in the requested documents.

The Panel agrees with counsel for Mr. Dix that the 2010 Complaint appears to have direct relevance to Scope Item No. 5 in the SAP Inquiry. The filing of the 2010 Complaint with BC Hydro's Code of Conduct Advisor clearly indicates that concerns were raised internally related to SAP and the adequacy of information being provided to the Commission. Thus, the Panel considers the 2010 Complaint and the resolution of the complaint to have probative value to this inquiry. The Panel also notes that the complainant's counsel, Hamilton Howell Bain & Gould, submitted in its letter to the Commission that the 2010 Complaint is directly relevant to the issues under consideration in the SAP Inquiry and ought to be disclosed on the record of the proceeding.

The Panel acknowledges BC Hydro's concerns regarding protection of private personal information and is sensitive to BC Hydro's concerns that disclosure of the 2010 Complaint could discourage future Code of Conduct reporting. However, the Panel finds that disclosure of this information is clearly in the public interest. Further, the Panel agrees with counsel for Mr. Dix that the safeguarding of private personal information can be achieved through redaction of this information and we expect that BC Hydro will redact the necessary information from all requested documents.

Contrary to BC Hydro's May 17, 2017 submission, the Panel does consider the 2010 Complaint to be of critical significance to the SAP Inquiry, and in particular to Scope Item No. 5 of the SAP Inquiry, and that the evidentiary record would not be sufficiently rounded out without this information. As originally outlined in Order G-62-16, the SAP Inquiry is a fact-finding exercise, and it is incumbent on the Panel to ensure that relevant evidence has been adequately examined. Further, while BC Hydro's handling of the 2010 Complaint from a human resources perspective may not be relevant to the SAP Inquiry, the information contained in the 2010 Complaint and the results of BC Hydro's investigations into the complaint is also relevant to Scope Item No. 2 – BC Hydro's oversight controls and processes related to the authorization and governance of SAP-related expenditures and projects.

The Panel notes that counsel for Mr. Dix requested in the March 28, 2017 and May 5, 2017 letters that the Commission direct BC Hydro to respond to specific additional information requests contained in those letters. The Panel will not make any determinations on these requests until we have examined the 2010 Complaint. However, parties may ask information requests on the documents BC Hydro is directed to file in these reasons for decision. Accordingly, **the Panel amends the regulatory timetable, attached as Appendix A, which provides a deadline for BC Hydro to file the documents described above, and provides for one round of information requests on these documents.** Once the Panel has reviewed this additional evidence, we will determine what, if any, additional process or information is required.