



October 31, 2017

Sent via email

Letter L-28-17

Mr. William J. Andrews
Barrister & Solicitor
1958 Parkside Lane
North Vancouver, BC V7G 1X5
wjandrews@shaw.ca

Re: British Columbia Hydro and Power Authority – Electricity Purchase Agreement with Atlantic Power Preferred Equity Ltd., Williams Lake Biomass Generating Facility – Contaminated Rail Ties complaint and Request for a Hearing or Inquiry under the *Utilities Commission Act*

Dear Mr. Andrews:

On June 9, 2017, you filed a complaint on behalf of Williams Lake and area residents Patricia Weber, Jennifer Noble, Rodger Hamilton and Frances McCoubrey, Rail Ties Be Wise, the BC Sustainable Energy Association, and the Sierra Club BC (the Complainants). The Complainants ask for a hearing or inquiry in which the Commission receives evidence and argument and makes determinations concerning whether retired rail ties treated with creosote or pentachlorophenol is a clean or renewable resource (the Complaint), which originated from BC Hydro's long-term electricity purchase agreement with Atlantic Power Preferred Equity Ltd. (Atlantic Power) for electricity from Atlantic Power's biomass generation facility in Williams Lake, BC (Williams Lake EPA). On July 31, 2017, British Columbia Hydro and Power Authority (BC Hydro) filed its response to the Complaint. On August 18, 2017 the Complainant filed follow-up comments and further questions.

By Order M-22-9801-A1, persons who sell power service to BC Hydro under BC Hydro's electricity purchase agreement with Atlantic Power Preferred Equity Ltd is exempted from provisions of Part 3 and section 71 of the *Utilities Commission Act* (UCA) by the Provincial Government. In addition, the Commission acknowledges that BC Hydro "agrees that discarded coal-tar creosote treated railway ties as a whole are not a clean or renewable resource within the meaning of the [*Clean Energy Act*]." BC Hydro also states that "the Williams Lake EPA does not require the seller to generate electricity from clean or renewable resources," and the Complainant "accept BC Hydro's point ... that an EPA signed before the 2010 Clean Energy Act (such as the Williams Lake EPA signed in 1990) likely does not have a reference to 'clean or renewable'." After reviewing the Complaint and associated correspondence, the Commission is of the view that matters in relation to the terms of the exempted Williams Lake EPA are not within the Commission's jurisdiction in accordance with section 88(4) of the UCA, and therefore the Complainants' request for a hearing or inquiry to determine whether retired rail ties treated with creosote or pentachlorophenol is a clean or renewal resource, is dismissed.

In your comments dated August 18, 2017, you raised a number of questions relating to the terms of the existing Williams Lake EPA and the Commission's jurisdiction under section 71 of the UCA. The Commission considers that these questions are best addressed outside of the Commission's complaint process. Should you require further dialogue on this matter, the Commission encourages you to contact BC Hydro directly.

Therefore, pursuant to Section 83 of the UCA, and for the reasons outlined above, the Commission has determined that the Complaint is closed. If you require further assistance, please contact the undersigned.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

HC/yl

cc: bchydroregulatorygroup@bchydro.com