bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER
G-170-17

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 November 24, 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, 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);

C. The regulatory process, established by Orders G-62-16, G-81-16, G-146-16, G-168-16 and G-26-17, included intervener registration, submissions by interveners on the scope of the SAP Inquiry, two procedural conferences, BC Hydro's filing of consolidated information, one round of Commission and intervener 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;

D. On March 20, 2017, the Commission received a letter from the law 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;

E. Subsequent to submissions received from Mr. Dix and BC Hydro on whether the 2010 Complaint should be filed as evidence in the SAP Inquiry, the Commission issued Order G-86-17 directing BC Hydro to file, among other things, the 2010 Complaint. The Commission also established a regulatory timetable that included a deadline for BC Hydro's filing of the requested documents and one round of Commission and intervener IRs on the documents. The regulatory timetable was subsequently extended by Order G-92-17;

F. On June 28, 2017, BC Hydro submitted a confidential filing to the Commission in hard copy only. The confidential filing included the 2010 Complaint, approximately 100 documents related to the resolution of the 2010 Complaint, and documents related to a review of the 2010 Complaint, which was undertaken by BC Hydro in 2016 (Code of Conduct Filing). In a separate, non-confidential cover letter to the Code of Conduct Filing, BC Hydro requested confidential treatment of all the information contained in the Code of Conduct Filing;

G. Counsel for British Columbia Old Age Pensioners' Organization *et al.*(BCOAPO), Commercial Energy Consumers Association of BC (CEC), and Mr. Dix signed the Commission's Confidentiality Declaration and Undertaking Form to obtain access to the Code of Conduct Filing;

H. By letter dated July 11, 2017, the Commission suspended the regulatory timetable established by Order G-92-17 and stated that it would come forth with a proposal for what information in the Code of Conduct Filing should be redacted and that BC Hydro and interveners' counsel who had signed the Confidentiality Declaration and Undertaking Form would have the opportunity to comment on the Commission's proposals;

I. On July 26, 2017, the Commission filed its proposal for redactions to the Code of Conduct Filing and stated that the underlying premise of the Commission's approach is that no information should be kept confidential without a fully substantiated justification of the need for confidentiality;

J. On July 31, 2017, counsel for Mr. Dix filed a letter informing the Commission that Mr. Dix will not be making any further submissions in the SAP Inquiry due to his appointment as Minister of Health in the BC Provincial Government on July 18, 2017;

K. By letters dated July 31, 2017 and August 13, 2017, the Commission granted filing extensions to BC Hydro and interveners;

L. On September 6, 2017 and September 8, 2017, CEC and BCOAPO, respectively, filed submissions on the Commission's proposal for redactions. Both interveners supported the Commission's proposal for redactions;

M. By letter dated September 7, 2017, BC Hydro requested a further filing extension to September 13, 2017 due to resourcing constraints, which the Commission granted by letter dated September 11, 2017;

N. On September 13, 2017, BC Hydro filed a confidential and a redacted submission with the Commission which provides BC Hydro's proposed redactions to the Code of Conduct Filing. In its cover letter, BC Hydro describes the types of information that it has redacted and submits that the redacted information, in BC Hydro's view, must not be disclosed pursuant to obligations under the *Freedom of Information and Protection of Privacy Act* (FOIPPA) in order to protect personal information;

O. By letter dated September 26, 2017, the Commission provided interveners' counsel who had signed the Confidentiality Declaration and Undertaking Form an opportunity to comment on BC Hydro's proposal;

P. CEC stated in its letter dated October 19, 2017 that it continued to support the Commission's proposal for redactions and that public interest objectives outweigh any third party privacy concerns. However, CEC agreed with BC Hydro that the Notice of Third Parties provisions set out in section 23 of the FOIPPA are applicable and thus the Commission should give notice to the affected third parties. BCOAPO stated in its letter dated October 20, 2017 that it agrees with and endorses CEC's comments;

Q. BC Hydro responded to BCOAPO and CEC's comments by letter dated November 10, 2017. BC Hydro stated that CEC's argument is not legally correct and that BC Hydro affirms its view that although the Commission has the power to order BC Hydro to disclose personal information, the Commission ought to carefully consider whether the disclosure would be an unreasonable invasion of a third party's personal privacy per section 22 of the FOIPPA; and

R. The Commission has reviewed the evidence and submissions in the proceeding and makes the following determinations.

NOW THEREFORE for the reasons attached as Appendix B, the Commission orders as follows:

1. BC Hydro's proposal for redactions to the Code of Conduct Filing, as provided in its September 13, 2017 submission, is temporarily approved.

2. A regulatory timetable, attached as Appendix A to this order, is established.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of November 2017.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachments

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

REGULATORY TIMETABLE

Action	Date (2017)
BC Hydro submission on proposed process	Wednesday, November 29
Intervener submissions on proposed process	Friday, December 1
BC Hydro reply submission on proposed process	Wednesday, December 6

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

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, established by Orders G-62-16, G-81-16, G-146-16, G-168-16 and G-26-17, included intervener registration, submissions by interveners on the scope of the SAP Inquiry, two procedural conferences, BC Hydro's filing of consolidated information, one round of Commission and intervener 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 May 31, 2017, the Commission issued Order G-86-17 directing BC Hydro to file, among other things, the 2010 Complaint. The Commission also established a regulatory timetable that included a deadline for BC Hydro's filing of the requested documents and one round of Commission and intervener IRs on the documents. The regulatory timetable was subsequently extended by Order G-92-17.

On June 28, 2017, BC Hydro submitted a confidential filing to the Commission in hard copy only. The confidential filing included the 2010 Complaint, approximately 100 documents related to the resolution of the 2010 Complaint, and documents related to a review of the 2010 Complaint which was undertaken by BC Hydro in 2016 (Code of Conduct Filing). In a separate, non-confidential cover letter to the Code of Conduct Filing, BC Hydro requested confidential treatment of all the information contained in the Code of Conduct Filing.

By letter dated July 11, 2017, the Commission suspended the regulatory timetable established by Order G-92-17 and stated that it would come forth with a proposal for what information in the Code of Conduct Filing should be redacted and that BC Hydro and interveners' counsel who had signed the Commission's Confidentiality Declaration and Undertaking Form would have the opportunity to comment on the Commission's proposals.

On July 26, 2017, the Commission filed its proposal for redactions to the Code of Conduct Filing.

Subsequent to a number of filing extensions requested by BC Hydro and granted by the Commission, BC Hydro, the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), and the Commercial Energy Consumers Association of BC (CEC) submitted comments on the Commission's proposal for redactions.

CEC and BCOAPO, in letters dated September 6, 2017 and September 8, 2017, respectively, supported the Commission's proposal for redactions to the Code of Conduct Filing.

In response to the Commission's proposal for redactions, BC Hydro, on September 13, 2017, filed a confidential and a redacted submission with the Commission which provides BC Hydro's proposed redactions to the Code of Conduct Filing.

CEC and BCOAPO filed comments on October 19, 2017 and October 20, 2017, respectively, and BC Hydro responded to BCOAPO and CEC's comments on November 10, 2017.

2.0 Code of Conduct Filing

Commission's proposal for redactions

The Commission in its letter dated July 26, 2017 made a proposal for what information in the Code of Conduct Filing should be redacted. The Commission stated that the underlying premise of its approach is that no information should be kept confidential without a fully substantiated justification of the need for confidentiality and it listed a number of factors which it considered when assessing the need for confidentiality. Based on these considerations and factors, the Commission proposed limited redactions to the Code of Conduct Filing, including:

- Personal contact information, including personal email addresses and phone numbers, but not including individuals' names;
- Personal details of individuals' and individuals' families' private lives;
- Commercially sensitive or proprietary information, such as financial or other contract information which is not publicly available; and
- Information which may pose a security risk to BC Hydro.[1]

BC Hydro's proposal for redactions

In response to the Commission's proposal, BC Hydro provided a proposal for redactions confidentially on September 13, 2017, which provided for the public release of some information contained in the Code of Conduct Filing, but with significantly greater redactions than proposed by the Commission.

In its non-confidential cover letter to the proposal, BC Hydro re-iterated the process it had previously proposed when it submitted confidentially the Code of Conduct Filing, which is as follows:

- Interveners' counsel may have access to the documents by signing the Commission's Confidentiality Declaration and Undertaking form;
- The IR process with respect to the Code of Conduct Filing would also be confidential; and
- Following the IR process if the Commission or an intervener counsel believes that any of the information (either a document with the Code of Conduct Filing or an IR response) is important to the SAP Inquiry and should be placed on the public record, disclosure and redaction of the specific document(s) could be considered at that time.

[1] Exhibit A-20.

BC Hydro stated that the Commission's proposed approach, which presumes all information with minor redactions should be disclosed on the public record, may be appropriate for the types of information that are typically submitted in rate-setting or Certificate of Public Convenience and Necessity (CPCN) proceedings, but such an approach is not appropriate when considering disclosure of personal information protected under the *Freedom of Information and Protection of Privacy Act* (FOIPPA) or under the *Personal Information Protection Act*.[2]

BC Hydro refers to section 22(1) of the FOIPPA, which states that a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy, and to section 22(3) of the FOIPPA, which outlines when a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

BC Hydro submits that although the Commission has the power to order BC Hydro to disclose personal information, the Commission "ought to carefully consider whether the disclosure would be an unreasonable invasion of a third party's personal privacy" and the Commission should "consider appropriate limitations on the release to ensure that the information is disclosed only to those that need to know it." BC Hydro paraphrases the factors to be considered, prescribed by section 22(2) of the FOIPPA, as follows:

> In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, a public body must consider all the relevant circumstances, including among things whether
>
> - the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny
> - the third party will be exposed unfairly to financial or other harm
> - the personal information has been supplied in confidence
> - the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant[3]

BC Hydro states that it consents to the Commission placing the proposed redacted version of the Code of Conduct Filing on the public record but it does not consent to public disclosure of the redacted information. BC Hydro also points out that if the Commission determines that the redacted information should be made public, the Commission is required under section 23 of the FOIPPA to give the third party written notice. Thus, BC Hydro states that if the Commission "intends to disclose the redacted information or order BC Hydro to do so, BC Hydro believes that prior notice should be given to the affected individuals and such individuals should be given the opportunity to represent their interests."[4]

Position of the parties

CEC acknowledges the objective of the FOIPPA to protect privacy but submits that "in these circumstances primacy should be given to the 'relevant circumstances' identified in Section 22(2)(a) of FOIPPA in considering whether the disclosure of information which may invade third party personal privacy." CEC points in particular to the following circumstance described in section 22(2)(a) of the FOIPPA: "disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny."

[2] Exhibit B-21, pp. 3-4.
[3] Exhibit B-21, pp. 6-7.
[4] Exhibit B-21, pp. 7-8.

CEC submits that BC Hydro is a public body pursuant to section 2 of FOIPPA and the "entire purpose of the Commission Inquiry is essentially duplicative of the same activities BC Hydro reviewed in the Code of Conduct Filing which are in issue in this redaction review."[5]

CEC further submits that "the public interest is served by public availability of the Code of Conduct Inquiry materials consistent with the approach identified by the Commission in Exhibit A-20 and that public interest objective outweighs any third party privacy concerns." [6]

CEC agrees with BC Hydro that the Notice to Third Parties provisions set out in section 23 of the FOIPPA are applicable and thus the Commission should give notice to the affected third parties prior to the confidential information being made public.[7]

BCOAPO submits that it agrees with and endorses CEC's comments regarding BC Hydro's proposal for redactions.[8]

BC Hydro responds that CEC's argument is "not legally correct." BC Hydro submits that the "consideration specified in 22(2)(a) of the *FOIPPA*, as referenced by the CEC, is a relevant consideration but it is not the only consideration and it does not outweigh all other considerations. All relevant circumstances must be considered."[9]

Commission determination

At the heart of the matter, the Panel seeks to exercise utmost care in finding the appropriate balance between the privacy rights typically afforded to individuals under the FOIPPA on the one hand, and transparency of these proceedings on the other.

Upon review of the information contained in the Code of Conduct Filing, it is clear to the Panel that both the 2010 Complaint and the resolution of the complaint, including the investigation conducted by BC Hydro in 2016, have direct relevance and bearing on the scope of the SAP Inquiry, particularly Scope Item 5, which asks: "Were all SAP-related disclosures to the Commission appropriate, reasonable and in accordance with the *Utilities Commission Act*?"[10] Further, the Panel is of the view that there is a reasonable possibility that at least some of the material that BC Hydro argues should be redacted will be important evidence in support of the final conclusions reached by the Panel and may need to be disclosed to the public.

The Panel also acknowledges BC Hydro's statement that: "Following the IR process if the Commission or an intervener counsel believes that any of the information (either a document with the Code of Conduct Filing or an IR response) is important to the SAP Inquiry and should be placed on the public record, disclosure and redaction of the specific document(s) could be considered at that time."

Accordingly, the Panel determines that:

- **BC Hydro's proposal for redactions to the Code of Conduct Filing is accepted for the time being as the version of the document posted on the public record;**

[5] Exhibit C2-9, p. 1.
[6] Exhibit C2-9, p. 1.
[7] Exhibit C2-9, p. 2.
[8] Exhibit C1-9, p. 1.
[9] Exhibit B-22, pp. 1-2.
[10] Appendix B to Order G-62-16.

- **If, in the course of the Panel's deliberations, we find that information contained in the confidential Code of Conduct Filing should be made public to ensure clarity and transparency regarding the Panel's final determinations, we will pursue releasing the information publicly, including adhering to the Notice to Third Parties provisions prescribed in section 23 of the FOIPPA.**

3.0 Further process

As previously outlined in Section 1 of these reasons for decision, the regulatory process for the SAP Inquiry has thus far been extensive and lengthy.

The regulatory timetable established by Order G-86-17 contemplated a round of IRs on the 2010 Complaint and associated documents; however, the Commission established this regulatory timetable prior to being provided with the Code of Conduct Filing.

The Panel believes the evidentiary record, including the information contained in the Code of Conduct Filing, is extensive, comprehensive and sufficiently rigorous to proceed to arguments and deliberations. Further, the Panel takes into account that parties who have entered into a confidentiality undertaking for this proceeding have access to the unredacted Code of Conduct Filing, and if they rely on material contained therein, they can file a confidential version of their argument.

In the Panel's view, the relevant evidence to address the five scope items established in Order G-62-16 has been collected and examined. Further, when considering the length of the proceeding and the cost incurred as a result of this regulatory process, we believe it is in the best interest of ratepayers to avoid unnecessarily extending this inquiry.

The Panel therefore proposes that the SAP Inquiry move to written final arguments and provides a proposed regulatory timetable below.

Action	Date (2018)
BC Hydro written final argument	Wednesday, January 17
Interveners written final argument	Friday, February 16
BC Hydro written reply argument	Friday, March 16

Parties are requested to provide comments on the proposed process, as established by the regulatory timetable attached as Appendix A to this order.