



The Regulatory Issue

BC Hydro Duke Point Power Project

This case showed that a lot of things are not working properly when it comes to BC Hydro and the way it is regulated....

In 2004 BC Hydro made a highly controversial proposal to enter into a 25-year contract with a private consortium to build and operate a natural gas-fired thermal electrical generating station at Duke Point, near the ferry terminal south of Nanaimo. The proposal was opposed by all parties representing electrical consumer groups: industrial, commercial and residential.

BCPIAC was highly critical of the project as a high-cost, high-risk solution to a very limited one-year problem: the gap between the date when some of the older transmission cables linking the Island to the mainland are technically deemed unreliable, and the completion date for replacement cables. Jim Quail was interviewed on the radio about our objections on CBC, Vancouver's CKNW and Victoria's CFAX.

While the proceedings were originally billed as "expedited," they ballooned into a marathon hearing with numerous hotly-contested issues concerning the conduct of the proceedings by the BCUC. Most of the contentious issues were about the refusal of Hydro and the Commis-

sion to give participants access to financial information that was needed to assess the project. One Commissioner removed himself from the hearing at an early stage when intervenor groups challenged him for an apparent conflict of interest. The other two members of the Panel rejected a later bias challenge based on in-camera comments they made, which we and others said could indicate they had pre-judged the outcome.

Once the long, rancorous hearing was over, the Commission approved the deal. The big industrial electrical customers and a coalition of environmentalists applied to the BC Court of Appeal for leave to appeal the Commission's decision. We worked closely with these groups, and when the Court gave the go-ahead

to hear the case, we prepared to intervene in the court proceedings alongside the other opponents of the project.

But in a surprise move, BC Hydro's Board of Directors announced they were cancelling the deal, using an escape clause that was triggered by the delay from the appeal. They said Hydro would instead put in place the same low-cost alternatives that we and the other critics of Duke Point had advocated from the start.

This case showed that a lot of things are not working properly when it comes to BC Hydro and the way it is regulated, including an avoidance of openness and accountability, and a lack of co-operation with customer groups and other interested parties. While the right decision was finally made in the end, it was a very expensive process getting there, with many millions wasted by BC Hydro.

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Electricity

Transporting electricity:

In 2003, the responsibility for transporting electricity through the transmission grid was transferred from BC Hydro to a newly created non-profit entity, the British Columbia Transmission Corporation (“BCTC”).

In its first year of operation, BCTC administered the transmission grid using the existing rules, contained in BC Hydro’s Wholesale Transmission Tariff. In August, 2004, BCUC filed an application with the BCUC proposing several changes to this tariff.

Under the proposed tariff (the “Open Access Transmission Service”), BC Hydro would continue to be BCTC’s main customer, but other parties (“Independent Power Producers”) would also require access to the transmission grid. The main issues from our clients’ perspective are determining the responsibility for paying for future transmission upgrades, and the relationship between BC Hydro and BCTC.

Building a natural gas storage facility in Nanaimo

Terasen Gas (Vancouver Island) Inc. (“TGVI”) provides natural gas service to Vancouver Island and the Squamish area. All BCUC regulated utilities are now required to file a long-term resource acquisition plan to be approved by the BCUC. TGVI filed its plan with the Commission in June, 2004. At the same time, it applied for a Cer-

Application to recapitalize as an income trust

PNG has applied to change its capital structure from a normal investor-owned utility to an income trust. Income trusts have been an increasingly popular method of financing for a number of companies, including many in the energy sector. However, to date, there has not been an approved income trust for a distribution utility such as PNG. Therefore, this application has significance for other utilities in Canada and utility regulation in general.

In its application, PNG takes the position that without the recapitalization, its financial position will continue to be tenuous. Our clients assert that the current proposal will not improve the business risk of the utility, will not benefit ratepayers, and will result in PNG’s shareholders benefiting significantly from a major cash withdrawal from the utility.

The hearing into this application took place in early May, 2005. BC PIAC was the only major intervenor, and presented expert evidence to counter the application.

Natural gas rates

Pacific Northern Gas provides natural gas service to the northwest portion of British Columbia including Smithers, Terrace, Kitimat and Price Rupert. This utility is in a very tenuous financial situation in part because of the economy in the northwest, but mainly because its two major customers are industrial companies, both of which pay special discounted rates negotiated with PNG to keep them on the system.

This has resulted in residential and small commercial customers becoming primarily responsible for any increases in PNG’s revenue requirement. As well, these industrial customers no longer take an active role in relation to PNG’s applications before the BCUC, because there is no reason for them to do so. Accordingly, BC PIAC’s clients have become the only major intervenor in PNG’s applications.

In its 2005 Revenue Requirement application, PNG has asked for a significant rate increase. However, consideration of this application has been delayed until after the BCUC makes a decision about whether or not PNG will be permitted to recapitalize as an income trust.

tificate of Public Convenience and Necessity to build a liquefied natural gas (LNG) storage facility near Nanaimo on Vancouver Island.

The major drive behind this storage facility is to provide natural gas for the proposed BC Hydro electricity generation plant at Duke Point in Nanaimo (*see article on page 1*). At the hearing, our sub-

missions focused on the premature nature of TGVI’s application, given that the Duke Point plant had not yet been approved.

The BCUC approved the application to build the storage facility, but placed a number of conditions on TGVI to protect residential customers. A number of these conditions were advocated by BCPIAC.

Electricity Rates

BC Hydro Revenue Requirement Hearing

In 2004, BC Hydro applied to the BCUC to increase its rates. The rates had been frozen since 1994, so this hearing was an important one. It took place over four weeks in the spring of 2004. The BCUC released its decision on October 29, 2004.

In its application, BC Hydro asked for an 8.9% rate increase for 2004/2005, with no increase the following year. The Commission had already approved a 7.2% interim rate increase effective April 1, 2004, which will remain in place. In its decision, the Commission also directed BC Hydro to take certain actions which will result in a recalculation of the applied-for revenue requirement, though we do not expect significant change from the interim rate increase.

The decision was a positive one from our clients' point of view. The Commission did not reject any of our submissions on issues of significant concern to our clients, and specifically adopted a number of our submissions. In particular, called expert evidence regarding BC Hydro's Industrial Load Displacement program, which encourages industrial customers to develop their own electricity generation facilities. Our clients' position was that BC Hydro's investment in this program (\$103 million) was an unnecessary subsidy of industrial customers at the expense of other customers. The Commission agreed, determining that there should be no further load displacement programs without its review and approval.

Telecommunications

Internet-based Phone Networks

In September 2004, the Canadian Radio-television and telecommunications Commission ("CRTC") conducted a proceeding about the emergence of a new technology that uses the Internet network for routing telephone calls, called the "voice over internet protocol", or "VoIP".

The main point we advanced on behalf of our clients is that despite promises of improved service & cost savings, VoIP has serious drawbacks not yet solved by the industry, including:

- incompatibility with full-featured "Extended 9-1-1" service (which directs 9-1-1 calls to the nearest emergency call centre and relays detailed information about the source of an emergency call)
- failure to provide Message Relay Service and other disability-access features
- privacy and security shortcomings – including lack of caller-ID, caller-ID blocking, protection from interception and protection from hacking and viruses
- reliability shortcomings: the Internet is far less reliable than the established telephone networks, and is apt to fail in emergency situations where access to telephone service may be particularly urgent (power outages, major fires, earthquakes, etc.)
- potential degradation of sound quality (a problem especially for the hearing-impaired or persons whose first language is not English or French)

We urged the CRTC to impose licensing preconditions upon companies proposing to offer VoIP service, with strict deadlines to resolve these shortcomings.

The CRTC ruled that VoIP service providers must make their systems compatible with 9-1-1 emergency calling, and that VoIP-based service should be regulated on the same basis as regular phone service, with the big telephone companies covered by the same rules and restrictions to foster competition.

Telcos Make Grab for Consumer Surcharges

In this proceeding, the CRTC will determine what to do with accumulated "deferral accounts" containing hundreds of millions of dollars surcharged onto consumers' phone bills in a failed effort to induce competitors into the local residential market. The telephone companies have shopping-lists of ways to spend the money for their own benefit. Along with participating Central Canadian consumer groups represented by Michael Janigan of PIAC (Ottawa), we have urged the Commission to regard the deferral accounts as the consumers' money, and to order it refunded to them. We have also supported two proposals by Telus that would direct small portions of the money to assist low-income consumers in particular.

Insurance

Insurance Corporation of British Columbia

BC PIAC participated in the first full-scale regulatory hearing into ICBC before the BC Utilities Commission in the fall of 2004. The hearing involved a number of important issues.

Regulating optional insurance. ICBC has operated from the beginning as a single, integrated business that provides both the Compulsory auto insurance package, and the Optional extra coverages. Because only the cost of Compulsory insurance is to be regulated by the Commission, one of the key issues in this hearing is how to divide up the operating expenses of the Corporation between the regulated and unregulated lines of business.

Personal information. One issue at the hearing was whether the BCUC should require ICBC to collect certain personal information about its customers. BC PIAC took the position that the collection of the demographic data would violate customers' privacy rights. We had discussions with the BC Information and Privacy Commissioner's Office prior to the hearing. This led to the Commissioner intervening and filing a submission, taking a position essentially the same as our clients' and effectively, removing the issue from the agenda.

Validity of the Special Direction. We also challenged the validity of portions of a Cabinet order (a "Special Direction") that tell the Commission to enforce capital targets related to the unregulated "optional coverage" aspect of ICBC's business. The Special Direction would divert virtually all of the re-

tained earnings that ICBC has accumulated over the years, from both the Compulsory and Optional lines of business, into the Optional line.

This would amount to a huge "subsidy" of the competitive, Optional business at the expense of Compulsory basic insurance that all drivers are obliged to purchase, because of the way it moves profits earned from the one to the other. It would also seriously distort the Corporation's finances and likely force future Compulsory insurance increases over the next several years, in order to replenish the capital base for the regulated, Compulsory business.

The BC Attorney General intervened in opposition our challenge. The private insurance industry and ICBC also supported the government's position. However, on the week-day immediately prior to our filing our final argument on this point, cabinet proclaimed certain parts of the Administrative Tribunals Act in force. This had the effect of depriving the BCUC of the jurisdiction to rule on our motion.

Decision. In its decision of January 2005, the BCUC addressed a range of issues, including the effectiveness of ICBC's road safety program and the collection and use of personal information about customers. BC PIAC succeeded in persuading the BCUC to confirm its lack of jurisdiction to intervene in ICBC's optional insurance business, as it was urged to do by the private insurance industry to assist them to cream away profitable segments of the business. Relying on privacy protection legislation, we also succeeded in preventing the Commission from ordering ICBC to gather

personal information about customers' age, gender and marital status.

In Memory

Two tremendous and invaluable members of the disability and anti-poverty communities passed away this year. They may be gone but they have left legacies for all of us in BC.

Cecile Guay passed away peacefully in March 2005. As an advocate and leader, Cecile played an important role in social justice organizations in British Columbia, including disability rights and anti-poverty groups. Cecile Guay lived according to her famous quote: "We can all retire when our phones quit ringing and people quit needing help." Cecile was recognized for her work in many ways, including receiving the Governor General's Caring Canadian Award in 1999. Cecile served on the Board of Directors of BCPIAC and was president from 1999 to 2004.

We will all miss her very much.

Natasha Edgar died suddenly on December 31, 2004. She articulated at BCPIAC in 2002-2003. As part of her legal work, Natasha served on the Law Society's Disability Research Working Group for two years, and helped steer the project that resulted in the Lawyers with Disabilities: Overcoming Barriers to Equality report, published in 2004. Natasha was a founding member and president of the Tetra Development Society. We are grateful to have had the opportunity to work with Natasha.

BC Utilities Commission Fact Sheet

The British Columbia Utilities Commission (“BCUC”) is an independent regulatory agency of the Provincial Government that operates under and administers the Utilities Commission Act.

The BCUC states its mission as follows:

The Commission’s mission is to ensure that ratepayers receive safe, reliable, and non-discriminatory energy services at fair rates from the utilities it regulates, and that shareholders of those utilities are afforded a reasonable opportunity to earn a fair return on their invested capital.

In regulating utilities, the BCUC makes several kinds of decisions, including about:

- the level and structure of rates
- construction of new facilities
- the issuance of securities

For more information, see www.bcuc.com.

Who can participate in hearings at the BCUC?

When a utility wants to take certain actions, such as building a new facility, it must make an application to the BCUC. The BCUC will hold a hearing on that application, which provides the opportunity for interested parties or members of the public to intervene and make submissions on how the BCUC should respond to the application. Regular intervenors include consumer groups (industrial, commercial and residential), environmental groups, business associations, and municipalities

What utilities are regulated by the BCUC?

- Insurance Corporation of British Columbia
- British Columbia Hydro and Power Authority
- BC Transmission Corporation
- FortisBC Inc.
- Hemlock Valley Electrical Services Limited
- Princeton Light and Power Company, Limited
- Silversmith Power & Light Corporation
- The Yukon Electrical Company Limited
- Cal-Gas Inc.
- Pacific Northern Gas (N.E.) Ltd.
- Pacific Northern Gas Ltd.
- Port Alice Gas Inc
- Stargas Utilities Ltd.
- Sun Peaks Utilities Co., Ltd.
- Terasen Gas (Squamish) Inc.
- Terasen Gas (Vancouver Island) Inc.
- Terasen Gas (Whistler) Inc.
- Terasen Gas Inc.
- Terasen Multi-Utility Services Inc.
- Central Heat Distribution Limited
- City of Grand Forks
- City of Kelowna
- City of Nelson
- City of New Westminster
- City of Penticton
- District of Summerland

Who does BC PIAC represent at the BCUC?

Since its creation in 1981, BC PIAC has represented a coalition of low income British Columbians in relation to the regulation of utilities. Our clients include anti-poverty groups, seniors groups, and consumer groups. In many regulatory hearings, we are the only voice speaking for the interests of residential consumers, and almost always the only voice speaking for low income people. Our clients’ priorities usually include support for keeping utilities public, fair rates for residential consumers, and measures that benefit everyone such as sustainable practices and safety programs.

BCUC Glossary see page 6

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BCUC Glossary

Certificate of Public Convenience and Necessity ("CPCN"): a formal approval from the Commission for a utility to make a capital investment at the expense of its customers.

revenue requirement application: an application made by a utility seeking approval for its financial plan. The utility must show how much revenue it will require to provide services, and where that revenue will come from.

tariff: a document produced with legislative authority, similar to a regulation, governing how a utility must conduct itself. For example, BC Hydro is bound by the terms of the Electric Tariff.

investor-owned utility: a utility that is owned by shareholders. In the case of publicly owned utilities such as ICBC and BC Hydro, the "investor" or the "shareholder" is the Province of British Columbia.

rate payer: a customer of a utility, (either an individual or a business), who pays a certain rate to access energy such as electricity.

special direction: an order issued by the provincial cabinet, instructing the BCUC how to regulate a certain aspect of a utility.

transmission grid: an interconnected system of energy transportation lines and associated facilities, used for bulk transfers of energy products.

OUR MANDATE

The British Columbia Public Interest Advocacy Centre (BC PIAC) is a general public interest law centre established in 1981 to help strengthen the voices of those affected by the actions of regulated utilities, large business interests and government. BC PIAC provides representation to groups which do not have the resources to effectively assert their interests.

Our largest area of concentration is utility regulation, in which we represent the interests of residential consumers, organizations before tribunals like the Canadian Radio-television and telecommunications Commission (CRTC) or the British Columbia Utilities Commission (BCUC). A second area of concentration is social justice litigation, which has included litigation on behalf of the rights of women, racial minorities, the poor and other under-represented groups.

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