

**ORDER NUMBER
G-15-16**

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

and

British Columbia Hydro and Power Authority
W.A.C. Bennett Dam Riprap Upgrade Project

BEFORE:

D. M. Morton, Panel Chair/Commissioner
N. E. MacMurchy, Commissioner
H. G. Harowitz, Commissioner

on February 4, 2016

ORDER

WHEREAS:

- A. On November 13, 2015, the British Columbia Hydro and Power Authority (BC Hydro) filed the W.A.C. Bennett Dam Riprap Upgrade Project application and statement of capital expenditures with the British Columbia Utilities Commission (Commission) under section 44.2(1)(b) of the *Utilities Commission Act* (UCA) and requests acceptance pursuant to section 44.2(3)(a) of the UCA (Application);
- B. On November 24, 2015, the Commission issued Order G-182-15 which established the preliminary Regulatory Timetable for the review of the Application which included one round of information requests and a procedural conference;
- C. The Procedural Conference was held on January 27, 2016, in which participants made submissions on the completeness of the evidentiary record and further regulatory process;
- D. The Saulteau First Nation (Saulteau) submitted a proposed regulatory schedule for the proceeding which would allow consideration of the Saulteau traditional use study (Saulteau TUS) and the joint First Nations' Independent Technical Review (joint ITR) before the close of evidence in the proceeding. The Saulteau proposed that it would undertake an expedited process to complete the ITR so that it would be submitted as evidence in the proceeding on April 15, 2016;
- E. BC Hydro opposed the timetable proposed by the Saulteau and submitted that the practical implications of the Commission rendering a decision after May 15, 2016 would be to delay the project by one year;
- F. BC Hydro agreed to approve its capacity funding agreement with the Saulteau in an expedited manner to allow the Saulteau TUS to be completed by April 15, 2016; and
- G. The Panel finds it is in the public interest to allow for the completion and submission of the Saulteau TUS and joint ITR by April 15, 2016.

NOW THEREFORE, for the reasons attached as Appendix A, the British Columbia Utilities Commission orders that the Regulatory Timetable for the review of the W.A.C. Bennett Dam Riprap Upgrade Project application is revised, as set out in Appendix B to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of February 2016.

BY ORDER

Original Signed By:

D. M. Morton
Commissioner

Attachment

British Columbia Hydro and Power Authority
W.A.C. Bennett Dam Riprap Upgrade Project

REASONS FOR DECISION

1.0 TRADITIONAL USE STUDY AND JOINT INDEPENDENT TECHNICAL REVIEW

In the context of public interest, the British Columbia Utilities Commission (Commission) has the authority to determine the process undertaken to review applications. The British Columbia Hydro and Power Authority (BC Hydro) and the Saulteau First Nation (Saulteau) submitted differing review processes and consensus on a review process was not reached during the Procedural Conference. Thus, the Panel must determine which process best serves the public interest.

The Panel agrees with BC Hydro's submission that the determination of adequacy of consultation is a substantive issue that merits full legal argument and should be determined as part of the overall public interest¹ and the Panel reserves its determination on this matter until the final decision.

As submitted by BC Hydro, there is no legal requirement for a traditional use study (TUS) to be completed or undertaken as part of the consultation process and that consultation will continue after the Commission's decision until the project is completed.²

In reaching a determination on the proceeding process, the Panel has given consideration to the Crown's obligation to engage in a meaningful process of consultation. The Panel has given consideration to the following specifics of this case:

- BC Hydro agreed to fund a TUS for the Saulteau First Nation (Saulteau);
- the scope of the Saulteau TUS appears to have been agreed to by BC Hydro and the Saulteau at the end of October 2015;³
- it does not appear the Saulteau TUS delay is attributable to the Saulteau;
- the Saulteau have agreed to shorten their TUS schedule to accommodate BC Hydro's schedule and have committed to filing their TUS and joint First Nations' Independent Technical Review (joint ITR) by April 15, 2016;⁴ and
- the inclusion of the Saulteau TUS and joint ITR in the evidentiary record would allow a more comprehensive assessment of the scope of duty to consult.

2.0 PROJECT SCHEDULE CONSIDERATIONS

There are options to be discussed during the Procedural Conference that will allow for inclusion of the Saulteau TUS and joint ITR in the evidentiary record and result in a decision being issued by May 15, 2016 or shortly thereafter. The Panel acknowledges a delay in the start of the project would cause inefficiency and hardship to

¹ Procedural Conference, Transcript Volume 1, p. 27.

² Ibid., pp. 90–92.

³ Exhibit B-6, p. 49.

⁴ Procedural Conference, Transcript Volume 1, p. 80.

BC Hydro and their potential contractors. The Commission will endeavour to render its decision on the application in an expeditious manner.

As stated by BC Hydro, a decision issued after May 15, 2016 would have the practical implication of delaying the project by one year⁵; yet, the Panel acknowledges that the work planned for the summer of 2016 is the quarrying and stockpiling of the riprap and that the dam work during the critical low water construction window is not planned to start until 2017.⁶ As well, BC Hydro has treatment plans that consider the risk of varying yield at the quarry site.⁷

2.1 Dam integrity

With respect to the impact a delay may have on dam safety, the Panel notes BC Hydro's submission that the condition of the riprap has not significantly changed since 1998.⁸ Furthermore, the riprap condition is not characterized as a safety hazard⁹ and BC Hydro has not received an order from the Comptroller of Water Rights regarding the timing or completion of the riprap project.¹⁰

2.2 Financial considerations

With respect to the financial impact a delay may have on ratepayers, BC Hydro submits that a delay of the project would add from \$3.5 million to \$5.5 million to the project costs and, in its view, a delay would not result in any savings to the ratepayer.¹¹ However, BC Hydro also states that the costs recovered from ratepayers in 2021 when the project will fully be in service is \$9 million¹² and that the installed riprap will have a life expectancy of over 50 years.¹³ A comparative analysis of net present value of the costs recovered from ratepayers with and without a one-year delay would be expected to vary by an amount approaching \$9 million. Therefore, any additional project costs due to delay will be more than offset by a reduction in ratepayer cost recovery as a result of the corresponding delay to the project in-service dates.

3.0 DETERMINATION

The Panel finds it is in the public interest to allow for the completion and submission of the Saulteau TUS and joint ITR by April 15, 2016.

⁵ Ibid., p. 96.

⁶ Exhibit B-1, Appendix C.

⁷ Ibid., Section 5.3.1.1.

⁸ Exhibit B-3, BCUC IR 1.2.1.

⁹ Ibid., BCUC IR 1.1.2.

¹⁰ Ibid., BCUC IR 1.1.3.

¹¹ Ibid., BCUC IR 1.7.2.1.

¹² Exhibit B-1, Appendix B-3, tab 1.0, cell N45.

¹³ Exhibit B-3, BCUC IR 1.9.2.2.

British Columbia Hydro and Power Authority
W.A.C. Bennett Dam Riprap Upgrade Project

REGULATORY TIMETABLE

ACTION	DATE (2016)
Saulteau First Nation submits its Traditional Use Study and joint Independent Technical Report	Friday, April 15
Procedural Conference *	1:00 PM Monday, April 18

*Location: Commission Hearing Room
12th Floor, 1125 Howe Street
Vancouver, BC V6Z 2K8