



ORDER NUMBER
G-168-16

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

November 23, 2016

ORDER

WHEREAS:

- A. On May 9, 2016 by Order G-62-16, the British Columbia Utilities Commission (Commission) established a regulatory timetable for this proceeding which included the first procedural conference;
- B. An amended regulatory timetable was issued on September 16, 2016 by Order G-146-16, which included a second procedural conference for October 28, 2016;
- C. On October 25, 2016, the Commission issued a letter to British Columbia Hydro and Power Authority (BC Hydro) and registered interveners describing items to be addressed at the procedural conference; and
- D. On Friday, October 28, 2016, a procedural conference was held to determine further process for the proceeding with BC Hydro and registered interveners in attendance.

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

- 1. The regulatory timetable for the Inquiry of Expenditures related to the adoption of the SAP Platform is established, as set out in Appendix A to this order.
- 2. British Columbia Hydro and Power Authority is directed to provide witness statements from Nenn Kiudorf, Chris O'Riley and Cheryl Yarmenko in accordance with the regulatory timetable as set out in Appendix A.
- 3. British Columbia Hydro and Power Authority is directed to identify other members of the executive team and the BC Hydro board audit committee during the period from February 2008 through 2009 who might

provide additional relevant information, and to the extent that they are current employees, provide witness statements from these individuals in accordance with the regulatory timetable as set out in Appendix A.

4. British Columbia Hydro and Power Authority is requested to attempt to gather statements from Don Stuckert, George Koyangi and Charles Reid, as well as other former employees identified in the step described in directive 3 above, in accordance with the regulatory timetable as set out in Appendix A.
5. Witness statements must address scope items 2 and 5, as outlined in Appendix B to Order G-62-16, including, but not limited to the following questions:
 - Who at BC Hydro approved the SAP strategy? Please provide an explanation and justification for answers.
 - Why did BC Hydro not update the 2008 revenue requirement application information regarding the choice of Peoplesoft versus SAP? Which individuals were involved in that decision process?
 - With regard to Mr. Stuckert's alleged failure to disclose BC Hydro's decision to adopt SAP, what were the reasons or considerations leading to this failure? Who reviewed and/or approved his proposed response to Undertaking 62? What did those who reviewed and/or approved the proposed response tell him and how did he respond to their comments on his proposed response?
 - What factors went into the consideration to characterize SAP as a series of projects? Was there any discussion or consideration given to characterizing SAP as a series of projects to avoid certain dollar thresholds and/or Commission oversight? Please explain in detail.
 - Why was the "Plan and schedule work project" determined to cost \$33.6 million, broken up into smaller projects?
 - Was there a conscious and deliberate decision not to publish the five-year IT plan? If so, what were the reasons for this decision and which individuals were involved in that decision process?

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of November 2016.

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 files witness list and witness statements	Thursday, January 26
BC Hydro and Intervener submissions on further process	Thursday, February 9
Further process to be determined	

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

REASONS FOR DECISION

1.0 SUMMARY

After considering the submissions made by the parties at the procedural conference, the Panel finds that it is not yet able to determine whether an oral hearing is warranted, given the associated cost, time and effort involved in an oral hearing. Consequently, the Panel is seeking statements from witnesses most closely involved in the decision to move to SAP in an attempt to more fully complete the evidentiary record before making a determination on the need for an oral hearing.

2.0 INTRODUCTION

On October 28, 2016, a procedural conference was held to hear submissions and determine further process for this proceeding. Written submissions on further process were provided by all registered interveners in advance of the procedural conference. British Columbia Hydro and Power Authority (BC Hydro) distributed additional written submissions which were read at the procedural conference and entered as Exhibit B-10. A full transcript of the procedural conference is available on the proceeding webpage and includes a list of appearances and the submissions of all parties.

The following Issues were addressed at the procedural conference:

1. Whether an oral hearing is necessary and why.
2. If an oral hearing is considered necessary, what issues should be in scope? Please make specific reference to the five scope items established by the British Columbia Utilities Commission (Commission) in Appendix B to Order G-62-16.
3. The proposed timing for the remainder of the regulatory timetable, including proposed dates for an oral hearing in the event that the Panel determines an oral hearing is warranted.
4. Comments on the following requests made by counsel for Adrian Dix in the October 24, 2016 submission:
 - a. Request for the Commission to direct BC Hydro to disclose certain SAP agreements;
 - b. Request that parties and Commission counsel work toward a written Agreed Statement of Facts in advance of the proposed oral hearing; and
 - c. Identification of controversial documents in advance of the proposed oral hearing.
5. Any other relevant matters that the participants want to bring to the attention of the Panel.

3.0 IS AN ORAL HEARING NECESSARY AND WHY?

The primary purpose of a procedural conference is to hear from parties and gather information necessary to establish the most appropriate review process for the proceeding. Two main options were proposed: 1) move to final written argument¹ and 2) hold an oral hearing for cross-examination of witnesses on certain scope items.²

BC Hydro submits that an oral hearing is not necessary for the stated purpose of fact finding in this inquiry. In support BC Hydro states that the existing record is sufficiently robust and complete with approximately 9,800 pages of information covering all five scope items submitted by BC Hydro and that the information on the record is sufficient for the Commission to make any judgments.³ BC Hydro submits that the Commission should consider the potential value of oral testimony and the time and complexity of convening an oral hearing given the passage of time, potential unavailability of witnesses, and a vast scope of materials.⁴

However, BC Hydro also stated that “[w]hile it would be easy and convenient to develop a leading theory based on the correspondence contained in the 26 documents that are attached, our review did uncover gaps in the records still available and through extensive internal interviews, partly guided by external professional assistance, to attempt to gain further insight into the thinking that led to the response to Undertaking 62, it has become clear that written statements, without their full context, can be misinterpreted. For these reasons, BC Hydro believes it is not possible to resolve who made the final determination of which document should be filed in response to Undertaking 62, how they made that determination and who reviewed it before it was filed.”⁵

BC Hydro adds that if the Commission were to determine that an oral hearing is required, it would need clear and specific direction with respect to what issues and time period so it could identify witnesses.⁶

The Commercial Energy Consumers Association of British Columbia (CEC) submits that an oral hearing is not required with the caveat that it plans to pursue the reasonableness of IT expenditures resulting from the one-source SAP contract in the ongoing BC Hydro F2017-19 revenue requirement proceeding.⁷

Adrian Dix and the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO) both identify credibility issues that can only be pursued by cross-examination. Both Mr. Dix and BCOAPO submit that scope items 2 and 5 require an oral hearing, while Mr. Dix submits that scope item 3 should also be included in an oral hearing, “but mainly 2 and 5.”⁸ He suggests that the evidentiary record may not be sufficient to answer the question posed in scope item 3, submitting the rhetorical question “are you in a position, I should say, that you can determine the answer to this question just based on the materials, when there may be elements relating to the

¹ BC Hydro, CEC.

² Mr. Dix and BCOAPO.

³ Transcript Volume 2, pp. 46–48.

⁴ *Ibid.*, pp. 51-52.

⁵ Exhibit B-8, Dix IR 1.24.0.

⁶ Transcript Volume 2, p. 53.

⁷ *Ibid.*, pp. 58-60.

⁸ *Ibid.*, p. 81.

other scope items that have a bearing on this.”⁹ BCOAPO submits that cross-examination will help to understand whether and how any misrepresentations occurred and whether they could occur in the future, i.e. is it a systemic problem or a one-off.¹⁰

Mr. Dix identified a need for an oral hearing to understand if the lack of transparency in disclosing information during the 2008 revenue requirements proceeding and Undertaking 62 was an isolated event by an individual, or a more intentional attempt to mislead,¹¹ which may have also included how BC Hydro scoped SAP projects to dollar thresholds that avoided Commission oversight.¹² Mr. Dix submits that those involved at the time should be cross-examined to test the credibility of the written record and of other witnesses¹³ and that credibility can only be adequately assessed through an in-person process.¹⁴ Mr. Dix identifies the names of certain people, some of which are still with BC Hydro and some who are not, as people that should be called for cross-examination.

Commission determination

The Panel determines that witness statements should be gathered before deciding whether an oral hearing should be held.

The Panel acknowledges BC Hydro’s January 8, 2016 letter to the Commission where BC Hydro’s chief executive officer openly acknowledged that BC Hydro’s performance during the 2008 revenue requirement proceeding with respect to testimony given and a certain undertaking did not meet BC Hydro’s standards of transparency, for which she has apologized.¹⁵ BC Hydro further states that through the process of gathering information for the SAP Inquiry it has not been able to obtain full insight into the thinking that led to the two issues of certain testimony given and response to a certain undertaking.¹⁶ The Panel is of the view that further evidence is still required.

The Panel agrees with BC Hydro that there is a large volume of information on the record. The Panel acknowledges BC Hydro’s statement that it “may not be possible to resolve who made the final determination of which document should be filed in response to Undertaking 62, how they made that determination and who reviewed it before it was filed.” However, we also note BC Hydro’s statement that its “review did uncover gaps in the records still available.”¹⁷ Accordingly, we are persuaded that an attempt to fill these gaps by soliciting further evidence from current and former BC Hydro employees is warranted.

⁹ Ibid., p. 80.

¹⁰ Ibid., 64.

¹¹ Ibid., p. 69.

¹² Ibid., p. 71.

¹³ Ibid., p. 67.

¹⁴ Ibid.

¹⁵ Ibid., p. 50.

¹⁶ Ibid.

¹⁷ Ibid.

The cost of an oral hearing is significant and the events concerned took place many years ago. Therefore, before deciding whether an oral hearing is justified, the Panel finds that an attempt should first be made to gather the missing information in the form of witness statements from the employees and former employees concerned. In making this decision we recognize there may be challenges for witnesses in recalling events and conversations and there may be challenges in having the most directly involved witnesses participate, but that these challenges, including the time and cost of doing so, are justified in this fact-finding inquiry.

4.0 PARTICIPANTS AND SCOPE OF WITNESS STATEMENTS

Certain individuals were identified at the procedural conference as close to the events during the 2008/2009 period. Mr. Dix identified Don Stuckert, George Koyangi, Nenn Kiudorf, Charles Reid, Chris O’Riley and Cheryl Yaremko plus potentially others not named that were part of the executive team and the BC Hydro board audit committee at the time.¹⁸ BC Hydro stated that, of the names mentioned, only Nenn Kiudorf, Chris O’Riley and Cheryl Yarmenko are currently with BC Hydro.

Mr. Dix suggests that BC Hydro would be in the best position to identify who would have the most information about the issues and that BC Hydro should be the first to identify witnesses to speak to the evidence, noting that BC Hydro has already spoken to some people internally about the events.¹⁹

As noted above, BC Hydro believes that the evidentiary record is “comprehensive and robust.”²⁰ However, Mr. Dix suggests that the evidentiary record may not be sufficient to answer the question posed in scope item 3, and that oral testimony is required on scope items 2 and 5. Mr. Dix further identified areas that require more information, specifically:

- Why did BC Hydro not update the 2008 revenue requirement application information regarding the choice of Peoplesoft versus SAP?²¹
- Was Don Stuckert’s failure to disclose the move to SAP “an intentional attempt to mislead, or just an innocent, if egregious, oversight?”²²
- Was there a “conscious and deliberate” decision not to publish the five-year IT plan in order to mislead the Commission?²³
- Who at BC Hydro approved the SAP strategy, costing over \$100 million when investments over \$50 million required Board and Commission approval?²⁴

¹⁸ Ibid., pp. 73–75.

¹⁹ Ibid., pp. 93, 97.

²⁰ Ibid., p. 47

²¹ Ibid., p. 68

²² Ibid., p. 69

²³ Ibid.

²⁴ Ibid., p. 70

- “Why was the SAP strategy characterized as a series of separate projects? And was that characterization made in good faith? Or was it intended to avoid Board or Commission oversight of spending.”²⁵
- Why was the “plan and schedule work project,” determined to cost \$33.6M, broken up into smaller projects? (projects in excess of \$20M were “major capital projects,” and would have had to be reported to the Commission.)²⁶

Commission determination

The Panel is persuaded that only by additional evidence from those directly involved during the period from February 2008 through 2009 can the Commission establish facts related to the governance, decision making process and authorizations to proceed with SAP as a platform (Scope 2) and whether the disclosures to the Commission, or lack thereof, were isolated, individual actions or a more deliberate action in its corporate decision making for dealing with the Commission (Scope 2 and 5).

The Commission directs BC Hydro to provide witness statements from Nenn Kiudorf, Chris O’Riley and Cheryl Yarmenko.

The Panel agrees with Mr. Dix that BC Hydro should be provided the opportunity to propose additional BC Hydro employees to provide further evidence. **Therefore, the Panel directs BC Hydro to identify other members of the executive team and the BC Hydro board audit committee during the period from February 2008 through 2009 who might provide additional relevant information, and to the extent that they are current employees, provide witness statements from these individuals as well.**

The Panel finds that for the purposes of fact finding in this inquiry it would also be beneficial for Mr. Stuckert, Mr. Koyangi and Mr. Reid to provide statements. Since they are no longer employees of BC Hydro, **the Panel requests BC Hydro to attempt to gather statements from these former employees, as well as other former employees identified in the step described in the previous paragraph.**

Should the Panel later determine that an oral hearing is required the list of witnesses will include but will not be limited to those who have provided witness statements at this stage.

The Panel is mindful that there is a large quantity of written evidence already on the record. The Panel’s objective for the witness statements is to more fully fill gaps, not to confirm what is already known. No-one has requested additional information on scope items 1 and 4, and in our view, there is sufficient evidence on the written record to address scope item 3 for the purposes of this inquiry. The witness statements shall concentrate on scope items 2 and 5.

²⁵ Ibid., p. 71

²⁶ Ibid.

The Panel directs witness statements to address scope items 2 and 5, as outlined in Appendix B to Order G-62-16, including, but not limited to the following questions:

- **Who at BC Hydro approved the SAP strategy? Please provide an explanation and justification for answers.**
- **Why did BC Hydro not update the 2008 revenue requirement application information regarding the choice of Peoplesoft versus SAP? Which individuals were involved in that decision process?**
- **With regard to Mr. Stuckert's alleged failure to disclose BC Hydro's decision to adopt SAP, what were the reasons or considerations leading to this failure? Who reviewed and/or approved his proposed response to Undertaking 62? What did those who reviewed and/or approved the proposed response tell him and how did he respond to their comments on his proposed response?**
- **What factors went into the consideration to characterize SAP as a series of projects? Was there any discussion or consideration given to characterizing SAP as a series of projects to avoid certain dollar thresholds and/or Commission oversight? Please explain in detail.**
- **Why was the "Plan and schedule work project" determined to cost \$33.6 million, broken up into smaller projects?**
- **Was there a conscious and deliberate decision not to publish the five-year IT plan? If so, what were the reasons for this decision and which individuals were involved in that decision process?**

5.0 AGREED STATEMENT OF FACTS

Mr. Dix suggested that for the purpose of efficiency the parties could work toward a written Agreed Statement of Facts if the Commission approves.²⁷ Other parties either took no position or the position that this is a fact-finding inquiry established by the Commission and it is up to the Panel to determine the facts not the parities.

Panel discussion

The Panel finds that an Agreed Statement of Facts, though helpful in some judicial contexts, would be inappropriate in this case where this is a fact-finding inquiry and it is the Commission's sole jurisdiction to make findings of fact.

²⁷ Exhibit C3-6, p. 23.