



**ORDER NUMBER
G-333-22**

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

and

British Columbia Hydro and Power Authority
2021 Integrated Resource Plan

BEFORE:

D. M. Morton, Panel Chair
C. M. Brewer, Commissioner
T. A. Loski, Commissioner
R. I. Mason, Commissioner

November 23, 2022

ORDER

WHEREAS:

- A. On December 21, 2021, British Columbia Hydro and Power Authority (BC Hydro) filed its 2021 Integrated Resource Plan (IRP) Application with the British Columbia Utilities Commission (BCUC), pursuant to section 44.1 of the *Utilities Commission Act* (UCA) and in accordance with Order G-28-21 dated January 27, 2021;
- B. By Order G-227-22 dated August 12, 2022, the BCUC established a further regulatory timetable, which included a process for intervenor and BC Hydro submissions on unanswered Information Requests (IRs);
- C. By letters dated August 19, 2022 and September 1, 2022, the BCUC determined that BC Hydro must file updated responses to certain intervenor IRs by September 29, 2022;
- D. On September 29, 2022, BC Hydro provided its supplemental responses to intervenor IRs. BC Hydro filed the following responses with the BCUC only on the basis that the public disclosure of the information would be harmful to BC Hydro's commercial interests in relation to the operation of its system:
 - i. Capital Power Corporation (Capital Power) IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1; and
 - ii. Commercial Energy Consumers of BC (CEC) IR 1.90.1.
- E. By letter dated October 3, 2022, Capital Power filed a request to access BC Hydro's responses to Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1;
- F. By letters dated October 3 and 4, 2022, the BCUC requested submissions from BC Hydro regarding the confidentiality of certain IR responses;

- G. By Order G-280-22 dated October 7, 2022, the BCUC ordered, among other things, that:
1. BC Hydro's responses to Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1, and CEC IR 1.90.1 be held as confidential.
 2. Under the terms outlined further in the reasons set out in Appendix A of this order, by no later than October 13, 2022, BC Hydro must provide the responses to those interveners who:
 - a. Request access to the confidential Capital Power IR responses and/or CEC IR 1.90.1;
 - b. Have executed the appropriate BCUC confidentiality declaration and undertakings; and
 - c. Do not have current or potential commercial interests which may conflict with BC Hydro.
- H. By letter dated October 12, 2022, Capital Power filed a request for a Reconsideration of BCUC Order G-280-22 on procedural fairness grounds (Reconsideration Application). Capital Power requested, among other things, that the BCUC grant Capital Power's request for reconsideration of Order G-280-22 and suspend the application of directive 2 of Order G-280-22 to Capital Power in the manner contemplated by the reasons attached to said Order, pending an opportunity for Capital Power to reply to BC Hydro's access request objection of October 6, 2022, prior to the BCUC's redetermination of Capital Power's access request of October 3, 2022;
- I. By Order G-291-22 dated October 20, 2022, the BCUC established an expedited written hearing process for the review of the Reconsideration Application;
- J. By Order G-315-22 dated November 3, 2022, the BCUC made its determination on the Reconsideration Application. The BCUC ordered that the application of directive 2 of Order G-280-22 to Capital Power in the manner contemplated by the reasons attached to Order G-280-22 is rescinded and the matter is remitted back to the BCUC panel that made Order G-280-22, pending an opportunity for Capital Power to reply to BC Hydro's access request objection of October 6, 2022;
- K. By Order G-316-22 dated November 4, 2022, the BCUC established an amended regulatory timetable, which included a deadline for Capital Power to file a reply submission regarding its request to access the confidential Capital Power IR responses; and
- L. The BCUC considers that a determination regarding access to the confidential Capital Power IR responses and an amendment to the regulatory timetable are warranted.

NOW THEREFORE for the reasons set out in Appendix B of this order, the BCUC orders as follows:

1. BC Hydro must provide Capital Power's consultant Mr. Dragan Brankovich of PowerEN Corporation the BC Hydro responses to Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1, by no later than Friday, November 25, 2022, subject to the following conditions:
 - a. Access to the Confidential Responses is limited to Capital Power's consultant Mr. Dragan Brankovich of PowerEN Corporation, and the information contained shall not be disclosed to any Capital Power personnel; and

- b. Execution by Dragan Brankovich of the appropriate BCUC confidentiality declaration and undertakings, inclusive of the following additional undertaking terms:
- i. Receipt of the Confidential Responses on a labelled, password-protected memory stick;
 - ii. Disabling of any automatic back-up function on the PC with regard to the information contained in the Confidential Responses;
 - iii. Return of the memory stick (including any notes or memoranda containing or referencing the confidential information contained on the memory stick) to BC Hydro upon the conclusion of the proceeding; and
 - iv. Individuals who receive the Confidential Responses undertake to not participate, directly or indirectly, in any commercial activities with BC Hydro respecting electricity trading or marketing or a future electricity purchase agreement negotiation.
2. An amended regulatory timetable is established, as outlined in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of November 2022.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

British Columbia Hydro and Power Authority
2021 Integrated Resource Plan

REGULATORY TIMETABLE

Action	Date (2022)
BC Hydro to provide the responses to Capital Power Information Requests (IRs) 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1 subject to the specified conditions	Friday, November 25
Capital Power to file IR No. 2, if any, regarding Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1 only	Friday, December 2
BC Hydro responses to IR No. 2	Thursday, December 8
Action	Date (2023)
Filing of Intervener Evidence	Thursday, January 19
IRs on Intervener Evidence	Thursday, February 9
Responses to IRs on Intervener Evidence	Thursday, March 2
Filing of Rebuttal Evidence	Thursday, March 9
Written submissions by BC Hydro and Interveners regarding scope of Oral Hearing	Thursday, March 16
IRs on Rebuttal Evidence	Thursday, March 30
Reply submissions by BC Hydro and Interveners regarding scope of Oral Hearing	Thursday, March 30
Responses to IRs on Rebuttal Evidence	Thursday, April 20
Placeholder Oral Hearing Dates	Monday, April 24 to Friday, May 5

British Columbia Hydro and Power Authority
2021 Integrated Resource Plan

REASONS FOR DECISION

1.0 Introduction

On December 21, 2021, British Columbia Hydro and Power Authority (BC Hydro) filed its 2021 Integrated Resource Plan (IRP) Application, pursuant to section 44.1 of the *Utilities Commission Act* (UCA) and in accordance with Order G-28-21 dated January 27, 2021.

By Order G-280-22 dated October 7, 2022, the BCUC determined, among other things, that BC Hydro's responses to Capital Power Corporation (Capital Power) Information Requests (IRs) 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1 would be held confidential.

Capital Power has requested access to these confidential IR responses. In these reasons for decision, the Panel summarizes Capital Power's request, BC Hydro's objection thereto, and Capital Power's reply. The Panel then makes its determinations on Capital Power's access request.

2.0 Capital Power Request for Access to Certain Confidential IR Responses

2.1 Capital Power

By letter dated October 3, 2022, Capital Power requests access to BC Hydro's responses to Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1 (the Confidential Responses). Capital Power submits that it is requesting access to this information to enable it to analyze considerations of regional reliability relevant to the BCUC's evaluation of the IRP and its assumptions regarding transmission and generation resources, including by allowing Capital Power and its expert witness to contribute evidence to the record that would provide a more thorough understanding of Island Generation's role in meeting Vancouver Island's reliability requirements.¹

2.2 BC Hydro

BC Hydro submits the information contained in the Confidential Responses is commercially sensitive to BC Hydro and is confidential because detailed hourly generation, hourly load, generation levels of each supply resource and hourly generation profiles used in the supply adequacy assessment would enable Capital Power and/or other third parties to model the Vancouver Island system needs and would provide insight with respect to BC Hydro's future opportunity costs. The information requested can be used to estimate future opportunity costs relative to other alternatives and would allow a third-party to have an advantage in any future commercial negotiations, which would result in higher costs to BC Hydro and higher rates to BC Hydro's ratepayers. BC Hydro submits that Capital Power may potentially compete with other independent power producers and be in future negotiations with BC Hydro in relation to the sale of electricity, and therefore its request to access the IR responses should be denied.²

Further, BC Hydro states that, in its experience, electronic copies of information cannot be easily returned due to the nature of distribution, or destroyed, due to the automatic back-up protocols employed by many

¹ Exhibit C10-4.

² Exhibit B-20, p. 2.

organizations. BC Hydro request that, if the BCUC grants Capital Power's access request the BCUC include the following additional terms in the undertaking:

- Receipt of the Confidential Responses on a labelled, password-protected memory stick;
- Disabling of any automatic back-up function on the PC with regard to the information contained in the Confidential Responses; and
- Return of the memory stick (including any notes or memoranda based on the confidential information contained on the memory stick) to BC Hydro upon the conclusion of the proceeding.³

In addition, BC Hydro requests that individuals who receive the Confidential Responses be required to undertake to not participate, directly or indirectly, in any commercial matters related to BC Hydro, including, but not limited to, electricity trading or marketing or a future electricity purchase agreement negotiation with BC Hydro. BC Hydro submits that this further undertaking is warranted to address the risk that the confidential information could be inadvertently released to the public, or used for purposes outside of this proceeding, such as a future electricity purchase agreement negotiation with BC Hydro or electricity trading or marketing.⁴

2.3. Capital Power Reply

In its reply, Capital Power submits that an accurate picture of the reliability of Vancouver Island is of importance to the BCUC's review of the IRP and that granting its access request would enable Capital Power's consultant, Dragan Brankovich of PowerEN Corporation, to prepare evidence that would meaningfully contribute to the information available to the BCUC on this issue.⁵

Capital Power does not dispute that it may be involved in negotiations with BC Hydro in the future regarding its generating assets, however Capital Power considers the BCUC's Rules of Practice and Procedure (Rules) to effectively address any disclosure concerns raised by BC Hydro. Capital Power notes that the Rules require it to accept a binding commitment to use the confidential information "exclusively for purposes related to the proceeding" and to hold the information confidential, not reproduce documents disclosed and return or destroy such documents following a BCUC decision. In Capital Power's view, except in relation to certain issues specific to electronic documents, BC Hydro has not explained how requiring compliance with the Rules' undertakings would fail to protect the interests of BC Hydro and its customers.

Further, Capital Power states that the data in the Confidential Responses would serve as inputs into Mr. Brankovich's Loss of Load Expectation modelling, and that it is not necessary for Capital Power's own personnel to access such data. Rather, the results of Mr. Brankovich's modelling could be incorporated into his evidence without disclosing or otherwise revealing the underlying data inputs to Capital Power. As such, Capital Power submits that a more limited grant of access to Mr. Brankovich, alone, would further address the concerns BC Hydro raises in its objection, without compromising Capital Power's ability to test the IRP.⁶

Capital Power states that Mr. Brankovich would be amenable to the additional undertaking terms proposed by BC Hydro for electronic copies; although, Capital Power submits that it would be more consistent with the purposes of BCUC undertakings for Mr. Brankovich to release notes or memoranda "containing or referencing"

³ Exhibit B-20, p. 3.

⁴ Ibid., p. 4.

⁵ Exhibit C10-6, p. 1.

⁶ Ibid., p. 2.

the confidential information itself, rather than any notes or memoranda “based on” the confidential information, as proposed by BC Hydro.⁷

Finally, Capital Power confirms that, if required by the BCUC, Mr. Brankovich would agree to the requirement that “individuals who receive the Confidential Responses also undertake to not participate, directly or indirectly, in any commercial matters related to BC Hydro, including, but not limited to, electricity trading or marketing or a future electricity purchase agreement negotiation with BC Hydro.” However, it is Capital Power’s view that the BCUC should reject this proposed term, as BC Hydro has provided insufficient evidence to support such a broad and everlasting condition.⁸

Panel Determination

For the reasons below, the Panel grants Capital Power’s request for access to BC Hydro’s confidential responses to Capital Power IRs 1.2.1.1, 1.2.1.2, 1.2.1.3, and 1.2.2.1, subject to the following:

- 1. Access to the Confidential Responses is limited to Capital Power’s consultant Mr. Dragan Brankovich of PowerEN Corporation, and the information contained shall not be disclosed to any Capital Power personnel; and**
- 2. Execution by Dragan Brankovich of the appropriate BCUC confidentiality declaration and undertakings, inclusive of the following additional undertaking terms:**
 - i. Receipt of the Confidential Responses on a labelled, password-protected memory stick;**
 - ii. Disabling of any automatic back-up function on the PC with regard to the information contained in the Confidential Responses;**
 - iii. Return of the memory stick (including any notes or memoranda containing or referencing the confidential information contained on the memory stick) to BC Hydro upon the conclusion of the proceeding; and**
 - iv. Individuals who receive the Confidential Responses undertake to not participate, directly or indirectly, in any commercial activities with BC Hydro respecting electricity trading or marketing or a future electricity purchase agreement negotiation.**

The Panel finds that a limited grant of access to the Confidential Responses to Capital Power’s consultant, Mr. Brankovich, would support effective regulatory review of the IRP and protect the commercially sensitive information contained therein.

Review of the Confidential Responses by Mr. Brankovich would facilitate the preparation of evidence on the reliability of electricity supply to Vancouver Island. Precluding Mr. Brankovich from (i) participating, directly or indirectly, in any electricity trading or marketing or a future electricity purchase agreement negotiations with BC Hydro; and (ii) from disclosing the commercially sensitive data inputs underlying his evidence to Capital Power personnel, protects the integrity of future negotiations. There is insufficient evidence that broader restrictions on Mr. Brankovich’s commercial activities in relation to BC Hydro are warranted to protect BC Hydro’s commercial interests and its ratepayers from harm.

⁷ Exhibit C10-6, p. 3.

⁸ Ibid.

Further, the Panel considers that additional safeguards are warranted to protect the confidentiality of the commercially sensitive information contained in electronic copies of the Confidential Responses. It is the Panel's view that requiring Mr. Brankovich to release notes or memoranda "containing or referencing" the confidential information, rather than any notes or memoranda "based on" the confidential information, as proposed by BC Hydro, provides an appropriate level of protection to BC Hydro's commercially sensitive information.

Finally, the Panel considers that an amendment to the regulatory timetable to permit Capital Power to file, by December 2, 2022, IR No. 2 regarding the Confidential Responses only would support efficient regulatory review of the IRP.