

**BC HYDRO
Revenue Requirements
2004/05 and 2005/06**

**Final Argument of
The Sierra Club of Canada (BC Chapter)**

July 21, 2004

Demand Side Management

Summary

1. The evidence presented in this proceeding clearly demonstrates that the energy efficiency programs¹ within BC Hydro's Power Smart program are very cost-effective and will significantly reduce BC Hydro's revenue requirements and customers' bills.
2. The Rate Impact Measure ("RIM") test should not be used as the primary means of evaluating and screening energy efficiency programs in British Columbia, as this test ignores many benefits of energy efficiency, including reduced revenue requirements, lower average bills, improved reliability, reduced risk, and reduced environmental impacts.
3. If rate impacts are to be considered when evaluating energy efficiency programs, they should only be secondary to the Total Resource Cost ("TRC") test, and they must be properly accounted for and presented. Rate impact calculations must take into account all the economic benefits of the efficiency programs, including avoided energy costs, avoided capacity costs, avoided transmission and distribution costs, and the effects of increased off-system sales. Rate impacts must be presented in terms of the actual percent increase in rates that would result from the entire portfolio of BC Hydro's Power Smart programs.
4. The rate impacts of the Power Smart programs are expected to be very small. BC Hydro estimates that their Power Smart programs in total will result in a residential rate increase of 0.26% on average over the course of the programs. In its IEP, BC Hydro estimates that under several future scenarios Power Smart programs could result in rate decreases.

¹The Sierra Club takes no position with respect to the load displacement aspects of the Power Smart program, other than to say that it should not take precedence over those aspects of the program which promote energy efficiency. In this argument "energy efficiency programs" or "efficiency programs" refers to those aspects of the Power Smart portfolio excepting load displacement.

5. In sum, BC Hydro's energy efficiency programs offer many significant benefits to BC Hydro, its ratepayers, and to society in general – with little or no downside. The Commission should allow BC Hydro to recover its energy efficiency expenditures for period requested, and should encourage it to investigate and pursue additional efficiency opportunities in the future.

Power Smart Programs are Very Cost Effective

6. In its argument, BC Hydro has set out the basis for approving its efficiency programs for the next two years. The Sierra Club submits that the evidence presented in this proceeding clearly demonstrates that these programs are cost-effective means of providing electricity to British Columbian ratepayers. BC Hydro's efficiency programs, with few exceptions, have a Total Resource Cost ("TRC") benefit/cost ratio of more than one.² Those programs having a TRC benefit/cost ratio of .9 are projected to reach a ratio of 1 or greater once non-electrical benefits are included.³ In addition, the programs within the Power Smart 10-Year Plan combined have a Utility benefit/cost ratio of 2.9 (including 2.7 in the Commercial and Governmental Sector and 3.4 in the Residential Sector).⁴ This represents a "remarkable opportunity to reduce revenue requirements".⁵ Every dollar spent on Power Smart will reduce revenue requirements by \$2.90 (\$2.70 in the Commercial and Governmental Sector and \$3.40 in the Residential Sector). To put this in more tangible terms, BC Hydro plans to spend some \$690 million on Power Smart over

²Application, Vol. 2, App. I, Power Smart 10-Year Plan, Table 4.9, p. 28.

³Ex B1-07, BC Hydro response to BCUC IR No. 1, question 59.1; T 13:2044-45, 2147.

⁴*Ibid*

⁵Direct Testimony of Tim Woolf, Ex. C 27-5, p. 13

the next ten years,⁶ but will be able to reduce revenue requirements by \$2,280 million.⁷

7. During the course of this proceeding, BC Hydro's efficiency programs were tested under a number of assumptions. BC Hydro was asked to re-calculate Table 4.9 from its 10-Year Plan based on the October 2003 price forecast. The difference was minimal on either a program or portfolio basis. The overall TRC benefit/cost ratio did not change, and the Utility benefit/cost ratio improved marginally.⁸ Similarly, when BC Hydro was asked to allocate the costs of the Power Smart portfolio to the program level, there was again little significant change on a program or portfolio basis. The Utility benefit/cost ratio remained high for all sectors, and the TRC benefit/cost ratio remained at 1 or above for all sectors.⁹
8. In addition, as the Sierra Club submitted through its evidence in this proceeding, and as BC Hydro has admitted in its argument, the efficiency programs in the 10-Year Plan are in fact *more* cost effective than stated in that plan. This is because the 10-Year Plan does not account for transmission and generation capacity savings, non-energy benefits, and the potential for export revenues resulting from electricity freed-up by efficiency savings.¹⁰
9. BC Hydro's Integrated Electricity Plan ("IEP") also supports the conclusion that the Power Smart program is cost-effective. In the IEP, BC Hydro compares the current Power Smart program (called Power Smart 2) with the reference case scenario (CCGT at Remote Location). These are designated Portfolios P1a and P1b. Portfolio P1b "examines

⁶Application, Vol. 2, App. I, Power Smart 10-Year Plan, Table 4.5, p. 22

⁷Application, Vol. 2, App. I, Power Smart 10-Year Plan, Table 4.8, p. 27

⁸Ex. B1-100; T 13:2154.

⁹Ex. B1-81

¹⁰BC Hydro Argument, pp. 112-113; BC Hydro response to Sierra IR 2.3

the benefits of continuing the Power Smart 10-year Plan initiated in F2003.”¹¹ The Portfolio Attribute Results (which were distributed at the hearing on May 27¹²) are attached as an appendix to Part 6 of the IEP.¹³ These results show that the Power Smart 2 portfolio results in net present value (NPV) savings of between \$390M and \$978M depending on the electricity and gas price scenario adopted.¹⁴ The IEP also estimates that Power Smart 2 will increase rates by only 0.3% in only one future scenario of electricity and gas prices. For one scenario Power Smart 2 is estimated to have no rate impact at all, and for the remainder of the scenarios Power Smart 2 is estimated to *reduce* electricity rates by roughly 0.3% to 1.3% relative to the reference case.¹⁵ Thus, according to the IEP, the Power Smart 2 programs will significantly reduce the cost of electricity services, and could very easily result in reduced electricity rates. Any rate increases that might occur from Power smart 2 would be very small.

10. As a result, the Sierra Club submits that BC Hydro’s Power Smart efficiency programs are highly cost effective.

The RIM Test Should Not be Used as the Primary Criterion for Screening Efficiency Programs

11. As noted by BC Hydro in its argument, there was a great deal of focus in these proceedings on the Rate Impact Measure (“RIM”). As BC Hydro states, the RIM net benefit is the avoided cost of supply minus the sum of the utility’s expenditures on Demand Side Management (“DSM”) and the lost revenues from DSM. Some parties in

¹¹Ex. B1-24, Part 6, p. 19

¹²T 11:1685

¹³Ex. B1-24, Part 6, App. C

¹⁴Ex. B1-24, Part 6, App. C, p. 1

¹⁵*Ibid*

this proceeding have suggested that the RIM should form the primary basis on which to assess the merits of a given efficiency program. In our submission, the Commission should reject this simplistic approach.

12. In the Sierra Club's submission, the RIM should not form the principal basis on which DSM programs are evaluated. The RIM test does not properly capture the primary benefits of energy efficiency: the significant reduction in revenue requirements and the reduction in average customer bills. Those benefits are more properly presented in the TRC and the Utility Cost test. Furthermore, the RIM test does not capture other important benefits of efficiency programs, such as improved reliability and environmental benefits.

13. As Mr. Woolf testified on cross-examination by Mr. Wallace:

MR. WALLACE: Q: Why...should one set of ratepayers pay higher rates to subsidize the rate reduction of other ratepayers?

MR. WOOLF: A: Well, the issue really comes down to the fact that B.C. Hydro as a regulated utility has several obligations and several criteria by which it plans its resources, and several criteria by which it meets the needs of its customers. *Those criteria include a reliable service, a low cost service, low rates, and consideration of environmental impacts as well. And so the rate impacts is really just one consideration among all those others, and energy efficiency provides benefits in terms of all the other considerations.* So the rate impact should be weighed against the benefits.¹⁶

14. Ms. Van Ruyven also testified that:

...just to step back and look at it from a higher level perspective, PowerSmart is very cost effective, and you see that in the integrated electricity plan, and in the absence of not having PowerSmart there, producing 3,600 gigawatt hours over the next ten years, you would have to replace that with something else, and that potentially could be a greater cost of supply source for our customers. So

¹⁶T 21:3763

customers could be worse off overall having to pay a higher cost of new supply in the absence of PowerSmart being there. So from a broader perspective, *all customers are benefiting from having that as part of our resource mix, a very cost effective price.*¹⁷

15. Indeed, in the current context where it has been clearly demonstrated that BC Hydro's efficiency programs are cost-effective, the RIM is inconsequential. Notably, Mr. Woolf testified that he was not aware of any Utilities Commissions that use the RIM test as the primary test for evaluating DSM programs. Rather, in states having greater experience with DSM programs, (and thus more empirical data to guide their evaluations) RIM tests are not even calculated. "They've come to realize that the rate impacts are so small compared to the benefits of the energy efficiency program, it's no longer an issue."¹⁸
16. If rate impacts are to be evaluated at all, they should be properly calculated and properly presented. In order to be properly calculated, rate impact estimates must account for all the benefits of energy efficiency programs, including avoided costs of generation capacity, and avoided costs of transmission and distribution capacity. They must also account for revenues earned by BC Hydro from off-system sales that can be increased as a result of generation freed-up by the energy efficiency savings. Particularly where marginal generation costs are low and marginal prices for off-system sales are high, the revenue from off-system sales could reduce any rate impacts from energy efficiency programs. BC Hydro's 10-Year Plan does not include any of these benefits and therefore overstates the likely rate impacts of the Power Smart programs.
17. In order to be properly presented, rate impacts must be calculated for the total portfolio of programs offered (as opposed to program-by-program), and they should be calculated in terms of the actual percent increase in electric rates (as opposed to RIM benefit-cost

¹⁷T: 12:1958-9

¹⁸T 21:3778-9

ratios). After all, what really matters to consumers is what shows up on their bill. In other words, if rate impacts are to be used to evaluate and screen efficiency programs, the actual percent increase in rates is a far better measure to choose than the RIM. As Mr. Woolf testified:

If the Commission decides that rate impacts are an important factor to weigh against the other criteria when you are looking at DSM programs, I recommend that they use a measure that provides *a realistic indication of what actually happens in practice.*

The problem with the RIM test proposed by the company and used elsewhere – you know, you get a RIM BCR of .8, .6, .1, and there's no indication of what that means, no indication of what does that mean to customers. Does it mean rates that go up by .1 percent? 1 percent? And so it doesn't really give an indication of what happens in practice.

So I recommend that, first of all, the rate impacts be looked at as a whole because -- that is the whole portfolio of programs, because that's how customers will actually see the effects on their rates. They're going to see the effects of the combined effect of all DSM programs.

So first of all you start with, you know, looking at the portfolio as a whole, and secondly, you make a calculation to estimate what percent impact on rates will come out of these DSM programs. *What are customers going to actually see on their bills in any one year, or as an average over the whole planning period. Then you can compare that percent increase in rates to all the other benefits you get from your DSM, your lower revenue requirements, your reliability, your risk and so forth. That's a criterion I think would be much more meaningful and could be used here if it's enough of a priority.*¹⁹

18. At the request of the Sierra Club, BC Hydro made a calculation that presents the rate impacts of the Power Smart programs. In Exhibit B1-166, BC Hydro calculated that the

¹⁹T 21: 3780-81

residential rate impact of the entire portfolio of Power Smart programs would be 0.26% on average over the course of the programs. In other words, a typical residential consumer will pay 26 cents for every \$100 on his or her bill to fund the Power Smart program. But it is important to note that only non-participants would see any increases in their electric bills; participants in efficiency programs will see their bills go down as a result of efficiency savings.²⁰ Furthermore, as detailed in para. 16 above, the Power Smart 10-Year Plan overstates the rate impacts of the efficiency programs. Therefore, the actual rate impact would in fact be less than the 0.26% estimated by BC Hydro. The Sierra Club submits that, given the extensive benefits of BC Hydro's efficiency programs, including their cost-effectiveness, and their obvious environmental benefits, the case for approving the expenditures necessary to fund these programs in the next two years is self-evident.

19. Finally, if BC Hydro and the Commission were to focus solely on the RIM benefit/cost ratio when evaluating efficiency programs, then there would be dramatically less efficiency programs and savings, and little or no residential efficiency programs.²¹ The Sierra Club supports the choice BC Hydro has made to use the TRC test to screen efficiency programs, and to have residential efficiency programs. Ms. Van Ruyven effectively stated the case for having such programs in her evidence before the Commission:

We didn't pick a specific sector. We could have. We could have said, let's just do industrial PowerSmart. There are other jurisdictions that do that.

We wanted to have an all inclusive, all encompassing program that everyone had the opportunity to participate in, and therefore we developed programs to meet that objective. You can see that we didn't simply take the revenue we get from each of those sectors, which would be like a third, a third, a third, and then apply the PowerSmart investment based on the revenue that we collect from those customers. We did it based on the conservation potential

²⁰See T 11:1729, lines 18-21

²¹T 14:2314, lines 9-16

review, and what cost effective energy we could get from all of the customers with this underpinning strategy in mind, that we wanted to develop a program that had something in it for everyone.

We think that's a good thing to do at B.C. Hydro. *We think building an ethic across all of our customer classes around efficiency is a very smart thing to do in the long term.* We think we will be much better off if we can do that across all customer classes going forward. *If we were to just do the industrial sector, for example, I believe that's about 1700 gigawatt hours of the 3600 gigawatt hours, which means we have to go out and acquire the other gigawatt hours perhaps from a more expensive resource, supply resource. That would make our customers, all of them, worse off in the long run.*

So we think doing it across all customer segments, because it is cost effective at the portfolio level and it stands up very well on the IEP, that it's the right thing to do. It drives customer satisfaction, it drives an ethic that we support around energy efficiency, and we feel it's an underpinning of our plan going forward that we're able to offer those programs to all of our customers to participate in. [Emphasis added.]²²

20. For the reasons set out by Ms. Van Ruyven, the Sierra Club supports BC Hydro's choice to develop a broadly-based DSM program with efficiency programs in each customer class.

Rate Incentives Are Not a Substitute for Power Smart Programs

21. Some in this proceeding, including Dr. Shaffer, have suggested that energy efficiency programs will be largely unnecessary if industrial customers were provided with sufficient incentives in the form of higher rates. However, even Dr. Shaffer appears to accept that there can be market barriers hindering the adoption of efficiency measures, beyond the "fundamental barrier of price". For example, he suggested that BC Hydro could consider providing financing to industries, which, because of capital constraints, could not invest in

²²T 14:2325-6

efficiency measures.²³

22. The Sierra Club does agree that appropriately structured rates are an important means of incenting consumers to make efficient use of energy. However, rates in and of themselves are not sufficient. The following passage from the transcript illustrates this point:

THE CHAIRPERSON: Is it your view that rate design is a more effective means of accomplishing conservation than incentives?

MR. WOOLF: A: No, I don't. *I think rate design is important and I think stepped rates, is probably what you are referring to, is an important way to give customers a better signal for what is efficient and what their actions might -- how their actions might improve efficiency.*

By no means is it sufficient to address anywhere near all the market barriers that prevent customers from adopting efficiency measures, especially in the residential commercial sector but even so in the industrial sector.

THE CHAIRPERSON: So you're thinking about liquidity of capital markets in that context for the industrial customers, and some pricing elasticities, if you will, with respect to residential customers and some commercial customers.

MR. WOOLF: A: Yes. I would add there are many jurisdictions in the United States with industrial prices and residential commercial prices much higher than you see here, much higher, and much higher than the long run marginal cost of energy that you see here. And yet there's many many studies showing, and utility experience showing, *even then the customers still don't adopt the measures. So there's again empirical evidence of how you need to do more than just get the right pricing going there.*²⁴

The Power Smart Programs are Compatible with the Energy Plan

²³T 20:3660-61

²⁴T 21:3791-92

23. Some in this proceeding have suggested that the Power Smart program might be inconsistent with the provincial Energy Plan.²⁵ The Sierra Club does not accept this position. Indeed, Policy Action #23 includes the “goal of encouraging further utility investment in conservation and energy efficiency.”²⁶ In addition, in a letter to Steve Davis of the IPPABC, the Minister of Energy and Mines, the Hon. Richard Neufeld (the same Minister under whose signature the Energy Plan was issued) stated that:

As demand for new resources increases, Power Smart will play a significant role in BC Hydro’s electricity acquisition strategy. It is a key component for providing British Columbians with the lowest-cost energy possible.²⁷

The Commission Should Encourage More Demand Side Management

24. As set out above, the Sierra Club submits that BC Hydro has clearly demonstrated the cost-effectiveness of its efficiency program. Indeed, it is clear to the Sierra Club that the Power Smart program is conservative, in that it does not capture all of the efficiency savings that are available from BC Hydro’s customers.
25. In addition, Mr. Woolf has testified that there remains a tremendous amount of cost-effective efficiency savings, as indicated by the Economic Potential identified in the Conservation Potential Review²⁸ (“CPR”) study. The Power Smart programs do not come close to capturing the full amount of Achievable Potential for energy efficiency savings

²⁵Ex. C4-6

²⁶*Ibid*, at p. 34

²⁷Ex. C4-8, p. 2

²⁸Application, Vol. 2, App. H, BC Hydro Conservation Potential Review 2002, Summary Report

identified in the CPR.²⁹

26. Further, the IEP shows that the follow on programs to Power Smart 2, namely Power Smart 3 and 4, reduce the net present value of the portfolio electricity costs, relative to the P2 Base Case, and thus are cost-effective.³⁰ In fact, BC Hydro states that “the combination of Power Smart 3 and Power Smart 4 has the lowest NPV (net present value) across all gas and electricity price forecasts.”³¹ This confirms that additional energy efficiency activities and savings will result in additional benefits in terms of reduced costs and therefore reduced revenue requirements.
27. The Sierra Club submits that the evidence is clear that there remains very extensive, cost-effective, energy savings which are not captured by the Power Smart program. This is why Mr. Woolf has recommended that:

At a minimum, the Company should pursue all of the savings identified in the CPR as the Most Likely Achievable potential...However, the Power Smart programs should not stop there. They should seek to achieve at least a portion of the savings identified in the CPR as the Upper Achievable potential.³²

28. The Sierra Club supports BC Hydro’s request for approval of energy efficiency expenditures for the next two years. However, the Sierra Club would encourage the Commission to send a strong signal to BC Hydro that it should aggressively pursue cost-effective efficiency savings in the future. The Sierra Club reserves its right to take appropriate steps in future proceedings to ensure that BC Hydro is fully exploiting cost-

²⁹Ex. C 27-5, Direct Testimony of Tim Woolf, pp. 6-12; Ex. C27-6, Sierra Club Response to BCUC IR No. 1, responses 3.2 and 3.3

³⁰Ex. B1-24, Part 6, App. C (Portfolio Attribute Results), p. 6; T 11:1691-93

³¹Ex. B1-24, Part 6, p. 47

³²Ex. C 27-5, Direct Testimony of Tim Woolf, pp. 9-10

effective energy efficiencies, including urging the Commission to deny recovery for expenditures (for example on new generation capacity) which are not as cost-effective as efficiency savings, or cannot otherwise be justified as being in the interest of BC Hydro ratepayers.

29. With respect to process, under BC Hydro's current proposal, BC Hydro proposes to file both IEPs and REAPs in future years. Depending on what the Commission determines with respect to the appropriate process in which to review and approve efficiency expenditures in the future, the Sierra Club reserves its right to argue, in such process, for increased expenditures on energy efficiencies in order to capture cost-effective energy savings. In this regard, the Sierra Club understands BC Hydro's current request is for expenditures over the next two years, and that the 10-Year Plan is a contextual document in that regard.³³

Site C

30. As the Sierra Club understands it, in the current proceeding BC Hydro is seeking approval for the expenditure of \$1.9M for preliminary expenditure related to Site C (referred to by BC Hydro as "stage one" of some three to five stages). BC Hydro intends to seek approval for an additional amount in the next REAP, assuming Cabinet or government approval is obtained to proceed to this second stage.³⁴ The amount to be sought at the second stage does not appear, at this time, to have been determined. BC Hydro witnesses referred to figures ranging from \$5.5M to \$8M.³⁵
31. First, the Sierra Club questions the need for any of the expenditures for which approval is

³³T 14:2305-6

³⁴T 19:3397, lines 5-22 and 3398, lines 5-26

³⁵T 7:932, line 16; T 19:3292, lines 5-7; 19:3397 lines 1-4; 19:3398 lines 1-3, 25-6;

sought under stage one. In testimony, Ms. Farrell described the activities under stage one:

...what we want to do in stage one is really *consult with our stakeholders as to how they would like to be consulted with*. So it's really getting some preliminary discussions with both stakeholders and First Nations, to get some input as to how we will do the consultations.³⁶

32. With respect, the Sierra Club is of the view that BC Hydro has not justified an expenditure of \$1.9M for the purpose of consulting with interested persons as to how they would like to be consulted.
33. Further, the expenditure of any funds on Site C at this time would be contrary to the terms of the Energy Plan. Whether or not this document is binding on the Commission, BC Hydro recognizes the necessity of receiving cabinet approval before proceeding with Site C, and has, indeed, proposed an iterative process in which approval would be sought at a number of stages in advance of seeking a CPCN from the Commission. The Energy Plan states that:

...any proposed new BC Hydro hydroelectric facility, such as Peace Site C, must be brought to Cabinet for approval *before being considered by the Utilities Commission* as a source of supply. Cabinet will then decide whether the project should be developed by BC Hydro or the private sector. [Emphasis added.]³⁷

34. Therefore, BC Hydro is obliged to seek cabinet approval before Site C is even considered by the Commission, let alone approved by it. The Sierra Club submits that until cabinet approval is obtained, the Commission should not approve any funding for Site C. As Commissioner Birch commented on May 20:

³⁶T 19:3399

³⁷Ex. C4-6, p. 30

I may need to refer to the Chairman or to counsel, but it says that Site C must be brought to cabinet for approval before being considered by the Utility Commission as a source of supply, and the Cabinet will decide whether the project should be developed by Hydro or a private developer. Do those words imply that we can approve that 10 million now? It doesn't sound like it to me.³⁸

35. In addition, it is important to note that BC Hydro has chosen to develop Site C using a staged process, whereby cabinet approval and funding would be sought at each stage. In such a process costs can accumulate in seemingly small increments until, one day, it is realized that a lot of money has been spent. The risk is that, if the project is not approved, all of the developmental expenditures will be thrown away. Indeed, Ms. Farrell acknowledged the potential for this to occur when she noted that “in an incremental approach you incrementally can work your way up to a lot of money.”³⁹ Similarly, Commissioner Birch noted that “The only trouble is, before you blink all of a sudden a hundred million is into it and you wonder where it went.”⁴⁰

Review of the IEP

36. In its argument, BC Hydro argues that the the *Utilities Commission Act* (the “Act”) does not require approval of its Integrated Electricity Plan (“IEP”), nor is there anything in the IEP requiring approval.
37. With respect, the Sierra Club submits that the Commission has already decided this issue. In its letter dated April 8, 2004 (L-25-04), the Commission stated that the REAP would be reviewed as part of this proceeding. However, it also held that “...the section 45(6.2) review of the IEP will not be heard as part of this proceeding...The Commission expects

³⁸T 7:933-4

³⁹T 19:3386

⁴⁰T 7:936, lines 10-11

to commence the review of the IEP during the current calendar year.”

38. BC Hydro has not sought reconsideration of this determination, neither has it sought leave to appeal. Therefore, in the Sierra Club’s view, the Commission has already decided that it has jurisdiction pursuant to s. 45(6.2) of the Act to review the IEP, and that it will be doing so this year. This, the Sierra Club submits, is entirely consistent with s. 11 of the Commission’s *Resource Planning Guidelines*,⁴¹ which provides for a process for review resource plans, including opportunities for written and/or public comment.
39. In the alternative, if this remains an open issue, which the Sierra Club does not admit, then it submits that the Commission should conduct a full review of the IEP.
40. First, as the Commission has already determined, it has clear jurisdiction to review the IEP pursuant to s. 45(6.1) and (6.2) of the Act. These subsections section provides that:

(6.1) A public utility must file the following plans with the commission in the form and at the times required by the commission:

- (a) a plan of the capital expenditures the public utility anticipates making over the period specified by the commission;
- (b) a plan of how the public utility intends to meet the demand for energy by acquiring energy from other persons, and the expenditures required for that purpose;
- (c) a plan of how the public utility intends to reduce the demand for energy, and the expenditures required for that purpose.

(6.2) After receipt of a plan filed under subsection (6.1), the commission may

- (a) establish a process to review all or part of the plan and to consider the proposed expenditures referred to in that plan,
- (b) determine that any expenditure referred to in the plan is, or is

⁴¹Ex. C27-09

not at that time, in the interests of persons within British Columbia who receive, or who may receive, service from the public utility, and

(c) determine the manner in which any expenditures referred to in the plan can be recovered in rates. [Emphasis added.]

41. These sections were clearly enacted to permit consideration and review of integrated electricity or resource plans. In introducing the Bill which incorporated these sections into the Act, Minister Neufeld stated as follows:

To enhance the effectiveness of the Utilities Commission, *all public utilities will be required to file resource plans. Resource plans give the commission the ability to review a utilities resource acquisition in advance of capital expenditures.* The intent of the resource-planning requirement is to protect ratepayers from poor utility expenditure decisions, to ensure that utilities have adequate supply to meet demand, and to protect utilities and its shareholders from costs that may have otherwise been disallowed.⁴²

42. The admissibility of statements of this kind, made by Ministers introducing Bills in the Legislature, is no longer in question. As Ruth Sullivan asserts in *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002) at p. 492:

In *R. v. Morgentaler* the Supreme Court of Canada appears to have eliminated the last vestige of the exclusionary rule. Sopinka J. wrote:

The former exclusionary rule regarding evidence of legislative history has gradually been relaxed....Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

43. Similarly, in *Reference re: Firearms Act (Can.)*, [2000] 1 S.C.R. 783, the Supreme Court recently held, at para. 17, that:

⁴²Ex A-28, p. 2

A law's purpose is often stated in the legislation, but it may also be ascertained by reference to extrinsic material such as Hansard and government publications: see *Morgentaler, supra*, at pp. 483-84. While such extrinsic material was at one time inadmissible to facilitate the determination of Parliament's purpose, it is now well accepted that the legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight...

44. The Sierra Club submits that Ministerial statements, made while introducing a Bill, are of particular relevance, as they are statements of policy by the government which introduced the Bill, and should therefore be accorded considerable weight. See *Neill v. Calgary Remand Centre*, [1990] A.J. No. 690 (C.A.), a case which pre-dates the Supreme Court decisions noted above, which eliminated the previous exclusionary rule.
45. The Sierra Club submits that not only does the Commission have the jurisdiction to review the IEP, it is appropriate to do so. BC Hydro argues that since the IEP “makes no commitment to specific capital expenditures, resource acquisitions or DSM expenditures, there is nothing in it requiring approval, nor does the Act require such approval.”⁴³ Rather, BC Hydro argues that the filing and approval of an annual REAP will provide sufficient opportunity for the Commission to review BC Hydro’s proposed expenditures before a long-term commitment has been made.⁴⁴
46. The problem with BC Hydro’s approach is that it severely hinders the ability of the Commission, and BC Hydro’s stakeholders, to conduct a comprehensive and timely review of its resource plans. Logically, a review of the IEP would start the process for review of potential demand-side and supply-side resource options. After all, it seems most logical to (1) evaluate potential resource options, (2) decide which are to be pursued, and then (3) seek approval in rates for those expenditures. The current state of affairs has this

⁴³BC Hydro Argument, p. 85.

⁴⁴BC Hydro Argument, p. 86

order reversed, and we have a revenue requirements application filed first, with a review of a REAP subsequently added on, and the status of the IEP reserved for argument. BC Hydro itself has apparently recognized that the current situation does not represent the most logical approach.⁴⁵ This situation is, from the Sierra Club's point view, unfortunate, and has led to confusion as to an appropriate regulatory process.

47. Under its proposed approach, BC Hydro would prevent the Commission and other stakeholders from meaningfully participating in the IEP process. It would preclude those parties from the critical process of determining which demand-side and supply-side resource options are to be investigated by BC Hydro. In other words, rather than having an opportunity to review and participate in the selection of resources required to meet BC Hydro's obligation to serve, the Commission and stakeholders are left only to consider and debate only those options which BC Hydro has deemed, through its own internal processes, as worthy of inclusion in a REAP.
48. Thus BC Hydro has, in effect, without direction from the Commission, or legislative authority, cut the resource planning process in two. BC Hydro will decide which options will be selected for consideration through preparation of the IEP. Only then - once the crucial decisions respecting the options to be considered, and the means by which those options are to be evaluated, have already been made - is the Commission invited to approve or disapprove of the option selected, and stakeholders are permitted to meaningfully participate.
49. We submit that this is not what the Legislature intended in enacting ss. 45(6.1) and (6.2). In the Sierra Club's view, nothing in the amendments to the Act suggest a bifurcated process. Rather, they contemplate a single process for review of BC Hydro's resource planning, including a review of the potential supply and demand side options, *and* the

⁴⁵T 7:992, lines 16-19

proposed acquisition of those resources. Without such a single review, the ability of the Commission and other stakeholders to have meaningful input to the REAP process will be severely restricted, and the Legislature's intention will have been thwarted.

50. BC Hydro suggests that stakeholder input can be accommodated through a stakeholder participation process. However, BC Hydro has acknowledged that there was only very limited stakeholder participation leading up to the current IEP.⁴⁶ While it promises greater participation in advance of future IEPs, this would remain within the discretion of BC Hydro. Certainly, BC Hydro does not argue that it is obliged to conduct public consultation, nor does it spell out in any detail what form this participation would take.
51. Further, the Sierra Club submits that an informal stakeholder consultation process will simply not be the appropriate forum to discuss and debate the larger issues which do not fit well into a revenue requirements review, or a review of the REAP. The method by which broader issues should be addressed was raised in discussions between the Chair and BC Hydro's first panel in this proceeding. In those discussions, it appeared that BC Hydro recognized that certain issues would fall outside the scope of the REAP review, and that discussion and debate in respect of them would properly take place in the context of the IEP:

THE CHAIRPERSON:...there is an issue here with respect to how much we purchase to meet the load in British Columbia from outside of British Columbia and how much we purchase from within British Columbia. When do we have that debate? And I guess my -- it doesn't immediately jump out at me when I look at the REAP document that it lends itself very well to having that kind of debate....

[D]o we rely on market purchases or do we build in British Columbia? I see that kind of debate falling outside, always falling outside the scope of the four year.

MS. VAN RUYVEN: A: Yes, and *that's really the debate you have in the Integrated Electricity Plan*, and that is exactly the debate we heard from

⁴⁶T 7:986; 7:990, lines 19-21

stakeholders when we went out and did consultation.⁴⁷

52. The Sierra Club submits that the following comments made by the Chair during his discussion with Mr. Elton concerning the relationship between the IEP and the REAP are particularly apt with respect to a review of the IEP:

Our processes, I think, are excellent opportunities for testing different views, and then a panel as adjudicators can, after hearing from all of the participants in a more rigorous way, reach certain conclusions with respect to those. And then if it's within our jurisdiction it has the force of law....⁴⁸

53. Through this proceeding, the Sierra Club, and likely other parties, have struggled with the problem of how to deal with the broader issues implied by BC Hydro's application for higher rates. Many of the issues that arose through the hearing - and took up a considerable amount of the Commission's time - should be dealt with in the context of the IEP. For example, the appropriate tests to be used to evaluate DSM programs, the comparison of DSM with supply-side resources, the appropriate way to assess rate impacts, and the role of stepped rates in relation to energy efficiency programs. In our submission, the appropriate context for addressing these issues is through the resource planning process, where the Commission and other stakeholders will have the opportunity to meaningfully provide input into the potential supply and demand side resource options, and the means by which those will be evaluated and selected.

54. As a result, the Sierra Club urges the Commission to follow through with the process it announced on April 8, 2004, and conduct a review of the current IEP, and to conduct full public reviews of IEPs filed in the future, including therein a review of BC Hydro's proposed resource acquisitions, in advance of any revenue requirements application. The

⁴⁷T 7:993, lines 2-9 and T 7:986, lines 6-14

⁴⁸T 8:1008, lines 20-25

precise form of such reviews should, it is submitted, be determined in the context of those proceedings.

Conclusion

55. In conclusion, the Sierra Club submits that:

- The expenditures contemplated in 2005 and 2006 for energy efficiency programs are cost-effective, and should be approved by the Commission.

- The Commission should encourage BC Hydro to aggressively pursue cost-effective efficiency savings in the future.

- The proposed expenditures for “stage one” of Site C, as contemplated in the REAP are not in the interests of BC Hydro’s ratepayers and should be denied.

- There should be public reviews of the current and future IEPs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

DATED: July 21, 2004

Christopher Jones
Counsel for the Sierra Club, BC Chapter