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### **British Columbia Industrial Electricity Policy Review**

#### **Written Submission**

**May 2013**

The Doig River First Nation, Halfway River First Nation, Prophet River First Nation and West Moberly First Nations (collectively the “Treaty 8 First Nations” or “T8FNs”) appreciate this opportunity to comment on the documents produced by the Industrial Electricity Policy Review (IEPR) Task Force, including the draft Consultation Summary, and those submitted to date by other stakeholders to this important policy review process. This submission was prepared on behalf of and in consultation with the T8FNs by Philip Raphals of Raphals Energy Consulting Ltd. and Rick Hendriks of Camerado Energy Consulting Inc.

#### **A. Comments on the process**

When the T8FNs first became aware of this Task Force, we understood that its work was focussed on a single element of BC energy policy, namely industrial transmission service electricity rates. However, upon reviewing the Terms of Reference, the Ministry Discussion Paper and the Issue Papers produced by the Task Force, it is clear that the mandate of the Task Force is in fact exceedingly broad. While the explicit focus is on Transmission Service Rate customers (a term that is undoubtedly not even understood by the vast majority of the BC public), the recommendations concerning “potential changes to the current policy and regulatory framework” which the Task Force has been asked to make to the Minister may affect the very essence of BC energy policy.

This becomes clear in the concluding paragraph to the Ministry Discussion Paper, which reads as follows:

Government policy decisions are, and will continue to be, based on some combination of economic, environmental and social considerations. The balance of the three is driven by the circumstances at the time. Ultimately, the goal of the Industrial Electricity Policy Review is to engage with stakeholders and analyze relevant technical information in order to provide government with advice on the different options available to implement a provincial policy framework that meets B.C.'s needs in the near, medium and long term.

Essentially, the Task Force is advising government on the appropriate balance between economic, environmental and social concerns, which raises policy issues that have broad implications for other ratepayers and British Columbians generally, not only Transmission Service Rate customers. Indeed, the questions raised in the mandate touch many broad issues that go to the heart of provincial energy policy, such as:

- the province's conservation, environmental and economic development objectives, and the balance between them;
- the regulatory framework in place to achieve these objectives;
- the ratemaking regime, including the allocation of the benefits of BC Hydro's heritage assets; and
- the roles and powers of the government and of the BC Utilities Commission, with respect to BC Hydro.

With respect, the T8FNs consider the process put in place to review these questions to be profoundly inadequate – given their depth, complexity and importance – with respect to:

- the timetable: just 6 months, from creation (January 2013) to final report (July 31);
- the supporting documentation provided: an 11-page historical review, and nine (9) two-page issue papers, which barely scratch the surface of the complex issues presented; and
- the consultation process itself.

Not surprisingly, the vast majority of submissions to the Task Force come from companies and industry associations with direct interests in the outcome. The wider society, including commercial and residential ratepayers, largely remains blissfully unaware that the underpinnings of provincial energy policy are under review and potentially subject to significant changes.

## **B. Overview of submissions by other parties**

The submissions provided to date by other parties appear to fall into two categories:

- BC Hydro, which urges caution throughout; and
- Companies and associations who would benefit directly from changes to certain aspects of provincial energy policy and who, not surprisingly, encourage the Task Force to recommend such changes.

Notably absent or limited in their participation are consumer associations (other than industrial consumers),<sup>1</sup> environmental organizations,<sup>2</sup> First Nations and other Aboriginal groups, and the many other stakeholders that are directly affected by provincial energy policy.

BC Hydro's 27-page submission provides important background to the issues raised by the Task Force in its Issue Papers, and demonstrates the complex interactions between these issues. Thus, the following elements all contribute to defining current industrial electricity rate policy:

- **The existing TSR stepped rate tariff (RS 1823).** Implemented to create incentives for conservation, the rate design is based on two tiers, with the Tier 2 rate (set, in theory, at BC Hydro's avoided cost) applying to 10% of the Customer Baseline Load, and the Tier 1 rate applicable to the remaining 90% of the Customer Baseline load set as a residual to maintain revenue neutrality based on historic consumption.
- **Tariff Supplement 6 (TS6).** Determines a customer's contribution for generation and transmission upgrades needed to provide additional service. Under TS6, new loads greater than 150 kVA must contribute to incremental generation costs, in order to avoid the across-the-board rate increases that they would otherwise cause.
- **Heritage Special Direction No. HC2 (HSD#2).** This is a government directive to the BCUC that arose from the Heritage Contract Enquiry, which attributed the economic benefit of the Heritage Assets to existing and new small customers, but not to new large customers. HSD#2 prohibits the BCUC from modifying TS6.
- **Uniform rates.** Rate uniformity without regard to geographic location (postage stamp rates), to "vintage" (except with regard to new large loads, as covered by TS6), or to end use.
- **Retail access conditions.** These govern industrial customers wishing to depart from utility service in favour of retail access, or to return to utility service, to ensure that the public is not adversely affected.

Each one of these components affects the others; furthermore, each one also affects non-industrial customers as well as those (like the T8FNs and other First Nations) deeply affected by electricity industry infrastructure. Generally speaking, BC Hydro cautions the Task Force not to "tinker" with this equilibrium.

Underlying all these issues is the overarching question of the regulatory approach for BC Hydro. As the relevant Task Force Issue Paper points out, there is a potential conflict between government's role as BC Hydro's only shareholder and its role in defining the legislative framework for BC Hydro before the BCUC. It states, "Government must strike a very fine balance between ratepayer and taxpayer interests under the current model."

As is made clear both in the Ministry Discussion Paper and in the BC Hydro Submission, government has interfered repeatedly with the arm's-length regulation of BC Hydro by the BCUC. The Association of Major Power Consumers of BC (AMPC) takes issue with this interference, stating (at p. 11) that it "broadly supports a return to 'standard' or traditional independent rate regulation by the BCUC".

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<sup>1</sup> The Commercial Energy Consumers Association of BC apparently submitted comments, but they are not available on the Task Force website.

<sup>2</sup> The BC Sustainable Energy Association and Sierra Club were alone among environmental organizations submitting comments.

## C. General comments

**1. Caution.** Generally speaking, the T8FNs agree with BC Hydro that the Task Force should exercise extreme caution before making recommendations that, if implemented, would upset the finely tuned balance of interests in existing policy. It should in particular be wary of siding with the industrial interests that constitute the vast majority of the stakeholders who have participated in these very limited consultations, given that other sides of the debate have been essentially absent.

**2. Integrated Resource Plan.** Echoing the comments of BC Hydro (page 5 of its submission), the T8FNs are concerned that the Task Force does not have access to a completed IRP or to an in-depth analysis that each of the many issues raised by this policy review requires. We therefore support this recommendation by BC Hydro (p. 5):

In particular, BC Hydro believes that the Task Force should only make recommendations to government that emphasise the relationships between conservation, economic development, and current environmental policy in respect of the issues it is exploring. Those recommendations should emphasise how government might wish to think about the subject relationships under various load-resource balances.

**3. Rate setting.** The T8FNs also support BC Hydro's recommendation to the Task Force (p. 6) that it should "resist recommendations that contemplate specific rate outcomes," but rather should reserve rate-setting matters for the BCUC.

**4. TS 6.** The T8FNs concur with BC Hydro that at minimum "any recommendations to the Province with regard to TS 6 should include a recommendation that a threshold be maintained above which large loads would not necessarily benefit from the Heritage Assets to the extent that smaller loads would". More specifically, we request that the Task Force recommend replacement of the threshold with a sliding scale of blended marginal and embedded rates commencing at a lower level than 150 MVA with an increasing proportion based on marginal rates (as opposed to embedded rates) with increasing apparent power (i.e. increasing MVA). The precise details of this new policy should be the subject of further and broader consultation with stakeholders prior to its implementation so that its economic, environmental and social implications are fully understood.

**5. Retail access.** Again, we concur with BC Hydro that "retail access policies, and associated policies related to bypass (of the utility), should be informed by clear principles, of which perhaps the most fundamental is to not harm non-participating ratepayers". Considering the three potential approaches to retail access, the T8FNs believe that **retail access within BC only**, based on long-term supply agreements, provides numerous advantages:

- industrial customers would be able to acquire energy and/or capacity from new or existing IPPs;
- load forecasting, demand forecasting and resource planning more generally could still occur on a province-wide basis without concern for unpredictable resource supply (and demand) alternatives outside of the Province;
- transmission planning could still occur within the Province without the need for increased complexity inherent in transboundary transmission planning; and

- environmental planning, including in relation to greenhouse gas emissions, could still be influenced through policy, taxation, technology standards and other means within the regulatory purview of the Province.

To our understanding, BC Hydro's comment that "when retail access or bypass is appropriately cloaked in rules to prevent the unfair shifting of value, the economic development advantages for the departing customer can tend to disappear," does not apply to this type of retail access. By removing itself from future utility load growth over the long term, the departing customer does BC Hydro and its other customers a favour; the perceived benefit for the departing customer comes from its judgement that its contracted power supply costs will be lower than future BC Hydro rates.

**6. Economic development (load shifting and curtailment).** Several industrial stakeholders indicated support for load shifting and curtailment as a more affordable means of addressing capacity requirements. The T8FNs concur, and recommend that the Task Force set out a framework for further consideration and consultation respecting options for load shifting and curtailment following completion of the IRP when capacity requirements within the Province are more certain.

**7. Economic development (transmission planning).** Though the T8FNs remain concerned about the proliferation of transmission infrastructure, particularly in Treaty 8 territory, in order for new transmission to be both necessary and acceptable it must proceed with meaningful involvement of First Nations. The T8FNs request that the Task Force recommend further study of competitive development of transmission infrastructure, similar to that in other jurisdictions, including Ontario.<sup>3</sup> Currently, First Nations are shut out from equity participation and meaningful economic benefits from the development of transmission infrastructure, which to date has been carried out solely by BC Hydro. A more meaningful participation process for First Nations would also promote development certainty and timely development of infrastructure, concerns raised by industrial participants to this policy review.

**8. BC Hydro Deferral Accounts.** The T8FNs concur with the concerns of other stakeholders that BC Hydro is making inappropriate use of deferral accounts. In addition to the rate impacts associated with retiring these accounts, the T8FNs are also concerned about the cumulative rate impacts associated with retiring BC Hydro's debt, which has been rising at greater than 10% per year for over a decade and will exceed \$18 billion by 2015. This transfer of costs to future generations of ratepayers artificially depresses rates, reducing the economic conservation potential within the Province by effectively subsidizing electricity consumption to the detriment of environmental and other values – including Aboriginal land use and exercise of protected Aboriginal and Treaty rights – that would be better protected through reduced electricity consumption.

**9. Energy policy revisions.** The release of the final IRP in August 2013 will provide the information and opportunity for revisions to key aspects of energy policy within the Province, in order to address changing economic, social and environmental conditions. The T8FNs request that the Task Force

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<sup>3</sup> [www.ontarioenergyboard.ca/OEB/Industry/Regulatory%20Proceedings/Policy%20Initiatives%20and%20Consultations/East-West%20Transmission%20Tie%20Line](http://www.ontarioenergyboard.ca/OEB/Industry/Regulatory%20Proceedings/Policy%20Initiatives%20and%20Consultations/East-West%20Transmission%20Tie%20Line)

recommend that a broad process for revising Provincial energy policy be initiated following release of the final IRP.

**10. Rate regulation.** The T8FNs also support the position taken by AMPC, favouring a return to traditional independent rate regulation by the BCUC.

#### **D. Comments on Aboriginal policy**

Like many other First Nations, the T8FNs have been profoundly affected by the infrastructure built to support the electric industry in British Columbia. More than most others, the livelihood and way of life of our members is also threatened by BC Hydro's current generation and transmission expansion plans — namely, Site C and related transmission, the Dawson Creek/Chetwynd Area Transmission, the proposed Northeast Transmission Line, and the potential for further electrification of oil, gas and mining infrastructure throughout Treaty 8 and the Province more generally since the most economically viable wind resources are also within Treaty 8 territory, immediately north of the Peace River.

In many ways, the T8FNs are experiencing the consequences of what on their face were high-level policy decisions — like those perhaps contemplated by the Task Force — but which in fact made inevitable specific infrastructure commitments that should instead have been judged on their merits. For example, the T8FNs were not consulted on the development of the *Clean Energy Act* (the *Act*). This fact is relevant because of the severe restrictions put in place by the *Act* that limit the consideration or development of feasible alternatives to BC Hydro's proposed Site C Project. The *Act* is designed such that inclusion of Site C within the preferred portfolio of the IRP to meet the potential future electricity needs of the Province is almost inevitable.

We note, for example, the following:

- all large-scale hydro-electric projects contemplated in the 2008 Long-Term Acquisition Plan, other than Site C, have been excluded from further consideration in Schedule 2 of the *Act*;
- section 3(5) of the *Act* requires that BC Hydro must plan to rely on no energy and no capacity from the existing Burrard natural gas facility, except in the case of emergency or as authorized by regulation;
- “non-clean” energy sources are limited to 7% of generation, effectively eliminating all fossil-fuel alternatives;
- nuclear electricity alternatives are banned; and
- most importantly, the Site C Project is exempted from review by the British Columbia Utilities Commission.

In addition to the *Act*, “the Province, in its news release concerning Direction No. 2 to the British Columbia Utilities Commission provided that for planning purposes Burrard Thermal Generating Station (Burrard) cannot be relied on for any firm energy, citing concerns with Burrard air emissions in the LFV airshed.”<sup>4</sup> As a result, the most affordable alternative to Site C, namely natural gas located in the Lower

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<sup>4</sup> See BC Hydro. 2011 IRP Technical Advisory Summary Brief: Role of Gas Fired Generation.

Mainland, is very difficult to develop within the Province without the construction (and costs) of additional transmission lines.

The danger of a high-level task force making high-level recommendations that lead to high-level government policy is that, consciously or not, this policy may well determine the outcome of specific issues that imply profound tradeoffs between the rights and interests of various parties, and therefore need to be the object of detailed and impartial analysis.

In its submission, Clean Energy BC states that “respect for BC’s First Nation requirement for consultation and accommodation has become a cornerstone today for resource development throughout the province.” **We fundamentally disagree.** The inadequacies in the consultation related to energy policy ultimately supporting development of Site C and the lack of any meaningful opportunity for First Nations to participate as partners in transmission development in the Province are but two examples.

#### **E. Comments on environmental policy**

In discussing RS 1823, BC Hydro states that it sends an efficient price signal, “assum[ing] that the price signal captures environmental externalities, such as the cost of carbon.” (emphasis added) BCH goes on to state that, “In general, in B.C., this is the case, as current policies compel BC Hydro to mitigate its carbon footprint and to pass on the costs of doing so in its rates.”

It is quite true that environmental externalities relating to carbon emissions are internalized in BC Hydro’s rates and investment decisions. But, by the same token, all other environmental externalities are effectively given zero value. The words “such as” in the citation above are thus entirely misleading. Though the cost of carbon has been internalized; the cost of other environmental impacts, including to fish, wildlife, land use, species at risk, heritage resources and many other values have been eliminated from the decision-making process. That the lowering of greenhouse gas emissions has become synonymous with environmental policy in British Columbia is evident in the definition of “clean energy” in the Clean Energy Act, and by the following comments in BC Hydro’s submission<sup>5</sup> to this review:

In the case of the [environmental policy objective], BC Hydro considers that the environmental objective referred to is the Greenhouse Gas (GHG) reduction policies as manifest in, among other things, subsection 2(g) of the B.C. *Clean Energy Act (CEA)* which references the legislated GHG reduction targets in the *Greenhouse Gas Reduction Targets Act*, and Provincial Government policy documents such as the Climate Action Plan.

That the Province has jurisdiction for the establishment of policy in relation to many other aspects of environmental protection and management goes unmentioned by BC Hydro and goes unnoticed by almost all other participants in this review process. For example, a Google search for the word “sustainability” yields 419,000 hits on British Columbia government webpages. But sustainability is about more than greenhouse gas emissions. At the most fundamental level, sustainability is based on the principle of fairness, and no geographical region and — *a fortiori*, no First Nation — “should bear an

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<sup>5</sup> The T8FNs note that BC Hydro uses the phrase “current environmental policy” in its submission; however, the Task Force is nowhere restricted in its terms of reference to the consideration of only “current” environmental policy any more than it is restricted to consideration of “current” policy respecting electricity conservation objectives or economic development objectives.

unreasonable share of the adverse effects, risks or costs, or be denied a reasonable share of the benefits” of a project.<sup>6</sup>

If the Task Force is to make recommendations that touch on environmental and aboriginal policy, the T8FNs urge it to recommend that the government adopt a broad enough view of sustainability to encompass ecosystem and aboriginal impacts as well as greenhouse gas emissions.

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<sup>6</sup> Sustainable criteria adopted by the Joint Review Panel for the Lower Churchill Generation Project. JRP Report, p. 355.