

FCEI-2

- (3) If subsection (2) applies, the commission may
 - (a) by order, declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
 - (b) make any other order it considers advisable in the circumstances.
- (4) If an energy supply contract is, under subsection (3) (a), declared unenforceable either wholly or in part, the commission may order that rights accrued before the date of the order under that subsection be preserved, and those rights may then be enforced as fully as if no proceedings had been taken under this section.
- (5) An energy supply contract or other information filed with the commission under this section must be made available to the public unless the commission considers that disclosure is not in the public interest.

Régie de l'énergie
 DOSSIER: R-3515-3613
 DEPOSEE EN AUDIENCE
 Date: 7 juillet 2003
 Procès n°: FCEI-2

PART 6 – COMMISSION JURISDICTION

Jurisdiction of commission to deal with applications

- 72 (1) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, complaining that a person constructing, maintaining, operating or controlling a public utility service or charged with a duty or power relating to that service, has done, is doing or has failed to do anything required by this Act or another general or special Act, or by a regulation, order, bylaw or direction made under any of them.
- (2) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, requesting the commission to
 - (a) give a direction or approval which by law it may give, or
 - (b) approve, prohibit or require anything to which by any general or special Act, the commission's jurisdiction extends.

Mandatory and restraining orders

- 73 (1) The commission may order and require a person to do immediately or by a specified time and in the way ordered, so far as is not inconsistent with this Act, the regulations or another Act, anything that the person is or may be required or authorized to do under this Act or any other general or special Act and to which the commission's jurisdiction extends.
- (2) The commission may forbid and restrain the doing or continuing of anything contrary to or which may be forbidden or restrained under any Act, general or special, to which the commission's jurisdiction extends.

Section 70

Use of electricity transmission facilities

- 70 (1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a public utility, to use the electricity transmission facilities of the public utility if the commission finds that
- (a) the person and the public utility have failed to agree on the use of the facilities or on the conditions or compensation for their use,
 - (b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and
 - (c) the public interest requires the use of the facilities by the person.
- (2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.
- (3) After a hearing, the commission may, by order, vary or rescind an order made under this section.
- (4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies.

Energy supply contracts

- 71 (1) A person who, after this section comes into force, enters into an energy supply contract must
- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
 - (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.
- (2) The commission may make an order under subsection (3) if the commission, after a hearing, finds that a contract to which subsection (1) applies is not in the public interest by reason of
- (a) the quantity of the energy to be supplied under the contract,
 - (b) the availability of supplies of the energy referred to in paragraph (a),
 - (c) the price and availability of any other form of energy, including but not limited to petroleum products, coal or biomass, that could be used instead of the energy referred to in paragraph (a),
 - (d) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (a), or
 - (e) any other factor that the commission considers relevant to the public interest.

B.C. HYDRO
EX 4 QQ

Draft For Discussion
Schedule A
to Call for Tender Proposal
July 2, 2003

RFQ/CFT EVALUATION PROCESS

VANCOUVER ISLAND CAPACITY SHORTFALL

• **RFQ/CFT Preliminary Schedule:**

- *September 15, 2003:* BC Hydro to appoint independent reviewer and issue RFQ/CFT, including preliminary Electricity Purchase Agreement ("EPA") and VIGP Sales Agreement;
- *September 22, 2003:* BC Hydro to open data room for access to VIGP documents relative to sale of VIGP;
- *October 15, 2003:* Bidders to file RFQ response, preliminary project data, input on EPA and VIGP Sale Agreement, and notice of intention to bid;
- *October 30, 2003:* BC Hydro to notify short-listed pre-qualified bidders and publish the list;
- *November 15, 2003:* Bidders' workshop;
- *December 1, 2003:* BC Hydro to issue final form of EPA and VIGP Sale Agreements;
- *February 1, 2004:* due date for submission of tenders and bid security;
- *February 1, 2004 to March 23, 2004:* BC Hydro to conduct tender evaluations;
- *April 1, 2004:* Independent reviewer to file final report with the Commission;
- *April 15, 2004:* BC Hydro to announce results of RFQ/CFT evaluation;
- *May 15, 2004:* Execution of EPA (and VIGP Sale Agreement, if required).

• **RFQ/CFT Outline Terms:**

- **Pre-qualification:** In order to avoid unnecessary expenditures by unqualified bidders, BC Hydro will pre-qualify and short-list bidders. Bidders may be single firms or joint ventures or consortiums meeting required criteria. Pre-qualification will be based on:
 - Financial strength and creditworthiness;
 - Experience in developing comparable electrical generation projects;

- Experience in operating comparable electrical generation plants;
 - Commitment to Mandatory Criteria for the project (see below).
- **Mandatory Criteria For the Project:** Mandatory Criteria will reflect key requirements for delivery of the proven dependable capacity prior to November 2007 at latest. Mandatory criteria will include:
- Minimum project capacity of [25]MW of dependable capacity (as defined by the RFQ/CFT) to be located on Vancouver Island;
 - Commercial Operation Date ("COD") not later than November 2006, this provides one year time frame to test and prove the capacity;
 - Proven generating technology (i.e. selected technology and equipment in successful commercial operation in other projects, whether or not developed, owned or operated by bidder);
 - Load displacement proposals, if any, will be submitted in accordance with BC Hydro's existing Power Smart program terms, but will be evaluated under this RFQ/CFT;
 - Reasonable expectation that permitting can be completed by scheduled date for signing final contracts (May 15, 2004).
- **Desirable Criteria:** Desirable Criteria will reflect BC Hydro's preferred project characteristics, having regard to its objective of securing economic and low cost, long-term reliable capacity and energy on Vancouver Island and for the BC Hydro system. Pre-qualified tenders meeting the Mandatory Criteria will be evaluated as outlined below under "Evaluation Criteria".
- **Minimum required aggregate capacity:** BC Hydro has determined that a project or portfolio having a minimum aggregate capacity is essential to meet its needs on Vancouver Island and for the BC Hydro system. The RFQ/CFT will stipulate [200MW] of economic, reliable capacity.
- **Tender Form:** A standardized tender form will be provided to ensure compliant and readily comparable tenders. Tenders must be submitted by the latest date for tender submission (February 1, 2004) in prescribed form, and accompanied by pricing, technical, financial and other information called for by the RFQ/CFT.
- **Bid Security:** Bid security will ensure that successful bidders follow through on their obligation to sign an EPA (and the VIGP Sale Agreement if applicable) and furnish performance securities required under those agreements. Each tender must be accompanied by a significant bid security in prescribed form in an amount determined by reference to the tendered capacity.
- **Pricing:** Tendered pricing shall be firm and all-in. It will include a capacity charge (expressed in \$/MW) and energy charge (expressed in \$/MWh) for delivery at the point of interconnection with the transmission or distribution system. Tenders must include

verifiable information (e.g. cash flow or financial model) sufficient to demonstrate that the bidder's expected rate of return does not exceed a specified threshold.

- o **Fuel Supply:** In order to accommodate differing technologies and fuel sourcing requirements, the RFQ/CFT will offer options on treatment of fuel risk for gas fired generators; bidders proposing gas-fired generation may accept any or all risks of fuel supply, delivery and price; alternatively, those risks, other than non-GSX gas transportation alternatives, may be allocated to BC Hydro under a tolling-type arrangement (not pass-through); fuel risks allocated to BC Hydro will be reflected in the tender evaluation. For non-gas generation, all fuel costs and risks will be accepted by the bidder.
- o **Interconnection:** Bidders will be required to apply for the required interconnection studies; however, study costs, system upgrade costs and direct assignment costs associated with interconnection will be funded by BC Hydro, and will be reflected in tender evaluation. BC Hydro will furnish information on potential transmission and/or interconnection constraints, which may affect project interconnection costs and tender evaluation, so bidders can take that in to account in siting projects to best advantage.
- o **Term:** BC Hydro is seeking a long-term solution to its Vancouver Island and BC Hydro system needs; EPA term will be [20 to 25] years from COD.
- o **EPA:** In order to ensure fairness and comparability of tenders, a standard contract form will be specified. The successful bidder(s) will be required to sign an EPA in the prescribed form, which will be non-negotiable, other than with respect to non-substantive adjustments required to accommodate specific project requirements; the EPA will reflect terms and conditions, including limited liquidated damages, and other remedies, such as step-in and plant purchase rights, for non performance, which are consistent with comparable contracts for capacity and energy supply in North America, taking into account the imperative of secure, reliable, long-term service to BC Hydro's loads on Vancouver Island and for the BC Hydro system; the EPA will be an unconditional commitment of the successful bidder to proceed with the development of its project.
- o **VIGP Option:** In order that all options, including development of the VIGP by an IPP may be considered and fairly compared, bidders may elect to include in their tender an offer to acquire some or all of the existing project assets associated with the VIGP.
- o **Private Clause:** BC Hydro will have the right to reject any or all bids if the evaluation determines that to be the best course based on the lowest cost, reliable capacity and energy supply.
- o **Disclosure:** BC Hydro supports full public disclosure of all tenders, excluding only proprietary information, the disclosure of which would be demonstrably harmful to a bidder. In detailing the process, the emphasis throughout will be on transparency and fairness.

- Evaluation Criteria:

Pre-qualified bidders whose projects meet the Mandatory Criteria and submit tenders on time, will be evaluated on the following Desirable Criteria.

- o **Desirable Criteria:** BC Hydro will evaluate all tenders, including VIGP and non-VIGP tenders, by reference to the BC Hydro "build-own-operate" option in accordance with BC Hydro's net present value portfolio analysis. The evaluation will determine the relative cost-effectiveness and reliability of each tender and/or portfolio consistent with BC Hydro's obligation to serve load on a system-wide basis. The evaluation will monetize differences between tenders where it is practicable and fair to do so. The RFQ/CFT will provide bidders with guidance as to the relative weight to be given to various Desirable Criteria. Relevant differences considered in the evaluation will include but are not necessarily limited to:
 - location, including transmission costs;
 - interconnection costs;
 - fuel supply, delivery and price risk;
 - term;
 - COD;
 - operational flexibility;
 - energy shape, profile, volume;
 - availability and firmness of energy associated with tendered capacity;
 - year-round dependability of capacity;
 - community acceptance;
 - social and environmental impacts, including GHG emissions and "greenness."
- o **Objective:** The evaluation objective will be to put ratepayer interests first and foremost in determining the best option or portfolio for secure, reliable, low cost supply of capacity and energy to meet anticipated Vancouver Island and BC Hydro system needs. As such, tenders will be evaluated on the basis of net incremental costs to BC Hydro and will be tested against key sensitivities such as alternative future market conditions for gas price and electricity price scenarios.

- **The Independent Reviewer**

- **Selection:** BC Hydro will select an independent reviewer from among well-recognized consulting firms with subject matter expertise. Great care will be taken in the selection to avoid conflicts of interest or perceptions of such conflicts.
- **Process Development:** BC Hydro recognizes the value of independent input on finalizing the design of the RFQ/CFT process. Therefore the independent reviewer will assess the process at an early stage.
- **Monitoring:** The independent reviewer will monitor the development and implementation of the RFQ/CFT and render regular interim progress reports to the Commission as it may direct.
- **Final Report:** The independent reviewer will complete an audit of the RFQ/CFT process and render a final report to the Commission. The report will opine on compliance with the process, fairness and impartiality of the tender evaluations.
- **Disclosure:** [BC Hydro supports all reports to the Commission by the independent reviewer being made public.]

- **BCUC Filing**

- The detailed RFQ/CFT will be filed with the Commission before issue to bidders.

- **CPCN Condition** –The CPCN for the VIGP to be granted on condition that:

- BC Hydro carries out an RFQ/CFT process substantially as outlined above;
- BC Hydro retains an independent reviewer as outlined above;
- The independent reviewer files a final report in a form satisfactory to the Commission confirming that:
 - The RFQ/CFT has been conducted substantially in accordance with its terms;
 - The RFQ/CFT process has been conducted fairly;
 - BC Hydro has carried out an evaluation in an impartial manner, substantially in accordance with the criteria set out in the RFQ/CFT;
 - BC Hydro has determined that the construction of the VIGP by BC Hydro is the preferred option.

1 MR. ELTON: A: Thank you for the suggestion.

2 MR. R.B. WALLACE: Q: Disclosure.

3 "B.C. Hydro supports full disclosure of all
4 tenders, excluding only proprietary
5 information the disclosure of which would be
6 demonstrably harmful to a bidder. In
7 detailing the process the emphasis throughout
8 will be on transparency and fairness. "

9 Does the CBG process disclose all tenders?

10 Proceeding Time 9:57 a.m. T18

11 MS. HEMMINGSEN: A: I don't think it disclosed all of the
12 details of the tenders.

13 MR. R.B. WALLACE: Q: It doesn't disclose the price.

→ [14 MS. HEMMINGSEN: A: It has the ceiling price so it's a bit
15 of a different process. And really our thoughts here
16 are motivated by the fact that we have been open and
17 transparent about all of our costs and we think that
18 it's appropriate to ensure fairness and transparency
19 that that openness continues.

20 MR. R.B. WALLACE: Q: Okay, let me come back to that.

21 MR. ELTON: A: I'd just like to add to that if I can. I
22 think there's a general philosophical challenge here for
23 bidders which is that we are in the public domain and
24 that, you know, if you combine freedom of information in
25 the general arena in which we operate, we like people
26 that are involved with us in potential commercial

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1 transactions to understand that, you know, they may
2 think things will be kept secret and they may not be.

3 MR. R.B. WALLACE: Q: Okay. Did you apply that philosophy
4 to the customer based generation program, yes or no?

5 MS. HEMMINGSEN: A: I am not versed on the specifics of
6 the customer base generation program and its disclosure
7 requirements.

8 **UNDERTAKING**

9 MR. R.B. WALLACE: Q: Will you please enquire and see if
10 the customer base generation program includes this
11 disclosure.

12 MR. ELTON: A: We will, and I should add that when we are
13 talking about consultation earlier, this is an area that
14 I know that we will need to -- it will be helpful to
15 consult with potential bidders about because I know
16 there will be a lot of sensitivities about this.

17 MR. R.B. WALLACE: Q: Yeah, and I'm going to come to those
18 sensitivities, and I also want you to enquire whether
19 you have full public disclosure of all tenders, and I
20 suggest to you you don't, under the Green Power
21 generation program.

22 MS. HEMMINGSEN: A: As I said, I'd have to give the same
23 comment about the Green.

24 MR. R.B. WALLACE: Q: Okay, you will enquire and provide
25 that back.

26 MS. HEMMINGSEN: A: I will

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1 MR. R.B. WALLACE: Q: And now I want to ask you about this
2 detrimental or demonstrably harmful. Wouldn't
3 disclosure of bids in this process be demonstrably
4 harmful to an unsuccessful applicant who may well want
5 to bid into your general request for proposals that is
6 supposed to be going forward in 2004 on a province-wide
7 basis. If they go and disclose all their information in
8 this process, won't it harm them if you put that out in
9 the public for the next process?

10 MS. FARRELL: A: I think that would be true. But I also
11 just want to comment on this disclosure. As an ex-
12 member of the IPP community, we have been into a number
13 of processes where there is full disclosure of the bid
14 price and as well the actual bidders have the formula
15 that is being used by the utility to evaluate the bids
16 and can evaluate the bids on the same day as the utility
17 does.

18 So there are processes where it's very open
19 in terms of who has bid, what the prices were that they
20 bid, and everybody can calculate on the same day who the
21 winner was. So that is something that people are used
22 to doing in the IPP community.

23 MR. R.B. WALLACE: Q: Okay, and is it your target that you
24 will have the actual formula in place on this so that
25 people can do that?

26 MS. FARRELL: A: We have not thought about that at this

CAAKS

1 point.

2 MR. R.B. WALLACE: Q: But no, in principle, will you
3 endeavour to have the actual formula in place so that
4 transparency will exist?

5 MS. HEMMINGSEN: A: I think the transparency that we've
6 talked about is with respect to the model, the
7 evaluation criteria and having the independent reviewer.
8 As we've outlined, we have a very flexible system and
9 different projects create different values for us to our
10 system. So it's very challenging to reduce that to a
11 simple formula.

12 So I think that would be a real challenge.

13 MS. FARRELL: A: The projects I am thinking of are where
14 the utility has already determined a site and a location
15 and they are looking for a combined cycle plant, and
16 they are evaluating a combined cycle plant against a --
17 they are evaluating bidders against other bidders at a
18 particular site.

19 MR. R.B. WALLACE: Q: So bidding on that disclosure might
20 not be as harmful as it is here where you are going to
21 have the wide range of projects and characteristics.

22 MS. FARRELL: A: That may be the case, yeah.

23 MS. HEMMINGSEN: A: We definitely have to explore the
24 dimensions of the disclosure requirement but it's with
25 transparency and openness.

26 MR. R.B. WALLACE: Q: Okay, are you willing to --

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1 MR. ELTON: A: Can I add something actually? I'm just
2 responding to your questions there.

3 I think that there's -- I mean first of all,
4 as I said, we need to discuss with the various bidders
5 what some of the issues are, and I understand the point
6 you are making, I can see that it would be harmful for
7 that successful bidder. But I would also add --

8 MR. R.B. WALLACE: Q: Would you reconsider your position
9 here?

10 MR. ELTON: A: No, of course. I would add though that one
11 of the challenges here is that we think that in the end
12 the independent reviewers report -- and the question is
13 will it just say, "We looked at the process, the process
14 was fine, the selection of the bidder was fine." Or
15 will it say, "There were these bids" and will it give
16 some chapter and verse as to what the bids were. That's
17 an interesting question because that might also
18 influence the perception of fairness on the part of the
19 public. So we have to weight that.

20 But I think it's important that we respect
21 commercial sensitivities, but also the need to ensure
22 the process is transparent. But we will reconsider
23 what's written here.

24 Proceeding Time 10:03 a.m. T19

25 MR. R.B. WALLACE: Q: Thank you.

26 Turning then to the next page, page 4, under

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