



CITY OF NELSON EVIDENCE

**BCUC Project No. 3698531:
British Columbia Hydro and Power Authority (“BC Hydro”)
Application to Amend Section 2.1 of Rate Schedule 3808 Power Purchase
Agreement (the “Application”)**

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The City of Nelson

Nelson is surrounded by the Selkirk Mountains, set on the shores of Kootenay Lake, and clustered with some 350 heritage buildings, Nelson's storybook charm and stunning scenery create the quintessential small town setting. With a population 9,800, the City with a unique mix of urban sophistication and rural ambiance.



Community Charter

Under the terms of the Community Charter, municipalities such as the City of Nelson are charged with the responsibility to foster the economic, social and environmental welfare of the community and to safeguard and promote the public interest of the community. Please see Community Charter attached.

Climate Action Charter

The City of Nelson is a signatory to Climate Action Charter and has pledged to achieve carbon neutrality. Revenues from the export of power by the City will assist the City in achieving its objectives related to this commitment. Please see News Release attached.

Nelson Hydro

Overview

Nelson Hydro provides electricity and related services to customers both within in the City of Nelson and the surrounding rural area including Blewett, Taghum, the North Shore, Harrop, Procter, Balfour and Queen’s Bay (see table of Electrical Utility Profile – Rural Customers). The Rural Customers are within the FortisBC service area. Significantly more energy is utilized by the City of Nelson to provide service to these Rural Customers than is currently being exported by the City. If Nelson Hydro’s service was strictly confined to customers within the municipality, it would have a larger surplus of self-generated energy available for export for the benefit of the City.

Because Nelson Hydro has a service both inside and outside the municipal boundaries two regulatory bodies have jurisdiction over its operations. For operations within the City of Nelson which include distribution, transmission and generation, the Community Charter administered by the Ministry of Community Development provides governance, and for the facilities and services outside of the municipal boundaries the BC Utilities Commission has jurisdiction.

Nelson Hydro is unique from most municipally owned utilities in that it is fully vertically integrated – that is, the utility operates generation, transmission, substation and distribution facilities. By contrast, the other four municipal utilities in the interior of British Columbia are limited to operation of distribution facilities only. Nelson has invested in and operated generating facilities on the Kootenay River for over a century.

Nelson Hydro has revenues from electricity sales of approximately \$11M, and power purchase costs from FortisBC of approximately \$4M annually.

Generation

Nelson Hydro owns and operates a 16 MW hydroelectric generation facility located at Bonnington Falls on the Kootenay River 16 km southwest of Nelson. The current water license allows a year-round output of 9.1 MW, which represents about 55% of the City’s annual energy requirements – both for its customers within the City boundary and for those Rural Customers outside the municipality who are served by Nelson Hydro but who are in the FortisBC service area. Operating costs for generation includes maintenance of the four generating units and of the buildings and property, water license fees and insurance. The power plant serves an important function in that it tempers the rate impacts that FortisBC rate increases would otherwise have on our customers. In 1999, Nelson Hydro set a production record at Bonnington Falls, generating 89 million kWh.

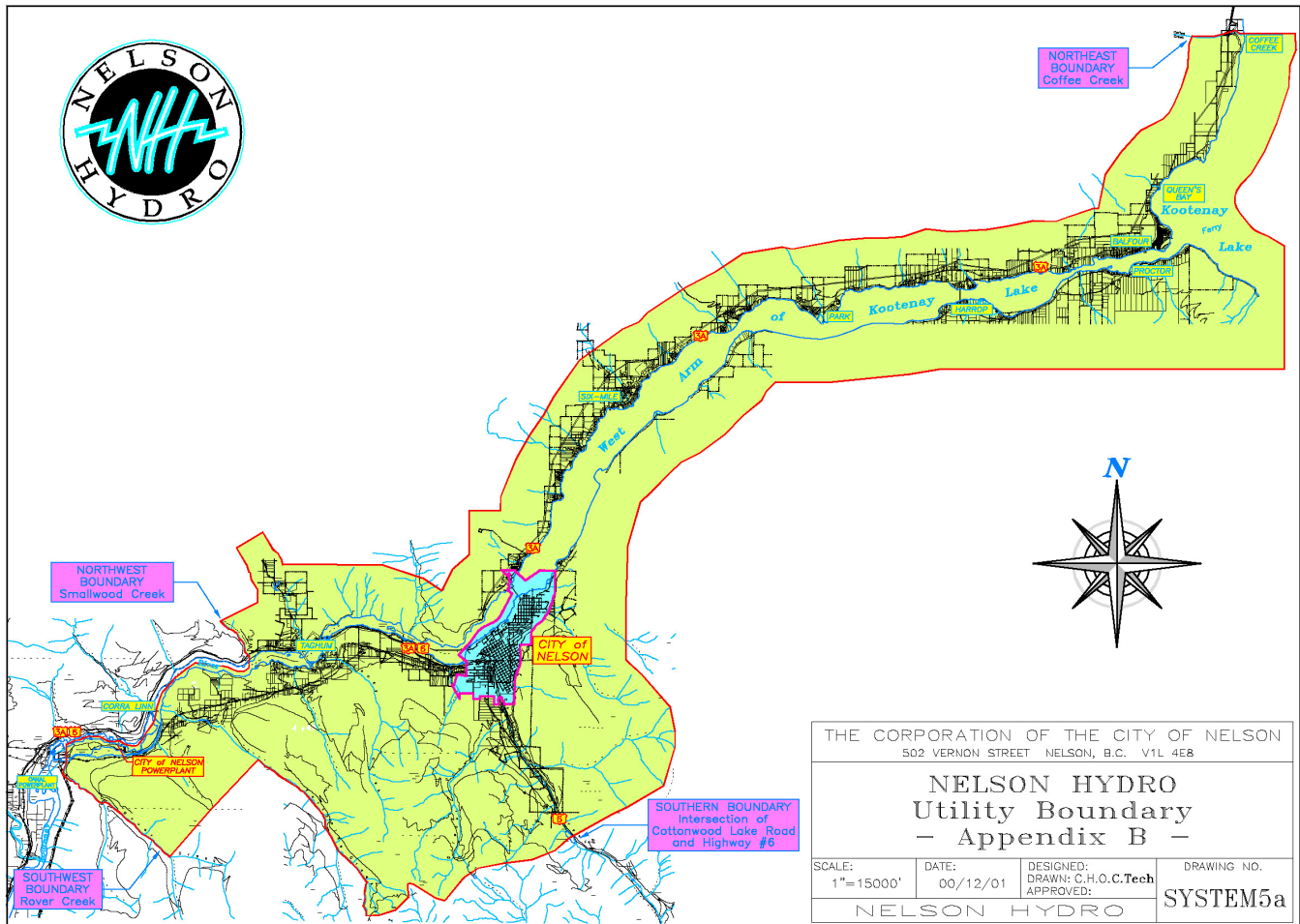
Transmission

Nelson Hydro owns and operates about 20 km of 63 kV transmission line that links the power plant and its supply points from FortisBC to Nelson Hydro’s substation facilities in the City. Nelson Hydro also manages seven substation facilities – five within the City, one on the North Shore and one at the power plant. The facilities serve to convert transmission supply at 63 kV to distribution supply, primarily at 25 kV.

Distribution

The most extensive portion of the Nelson Hydro system involves delivery of the electricity commodity to individual customers. This includes the medium (between 750 and 63,000 volts) and low (less than 750 volts) voltage facilities of Nelson Hydro, including transformation.

Service Area

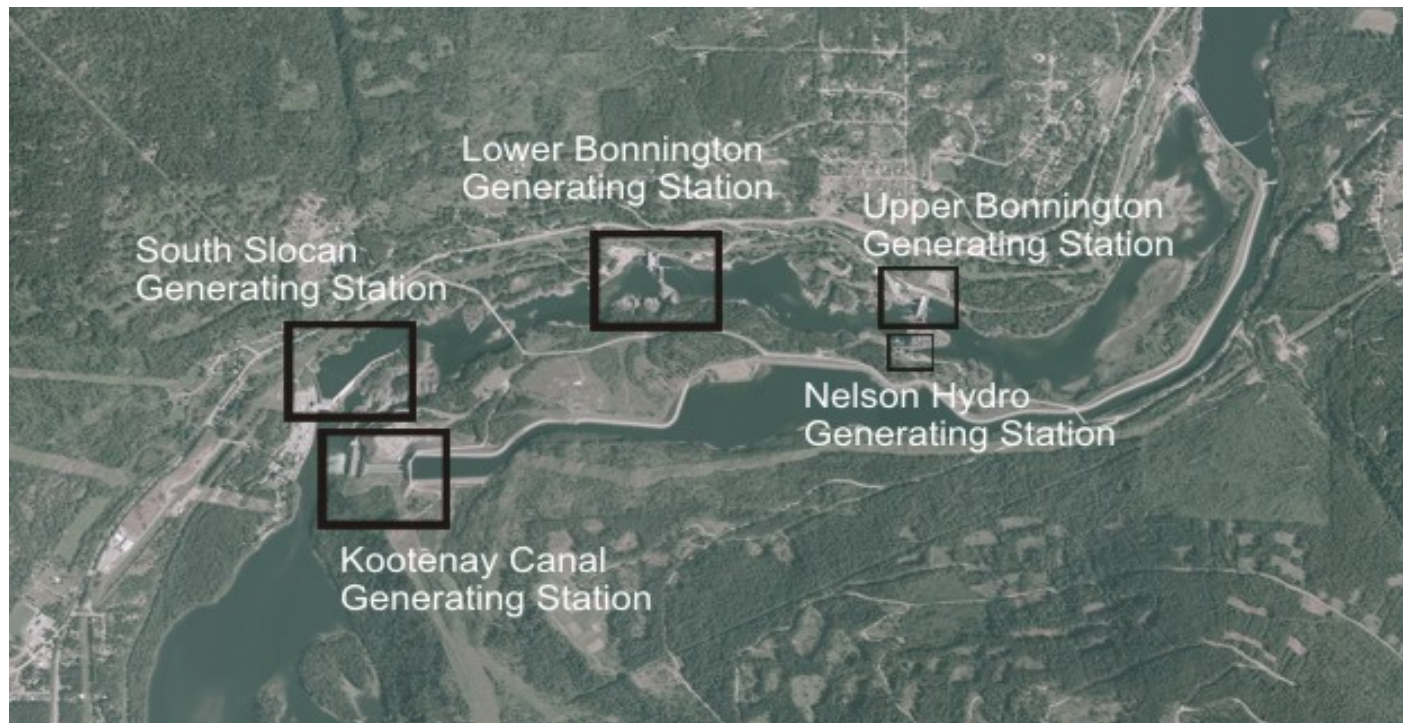


Electric Utility Profile

	City	Rural	Total
2008 Residential Customers	4,552	3,820	8,372
2008 Commercial Customers	1,148	365	1,513
2008 Total Customers	5,700	4,185	9,885
% of Customer Base	57%	43%	
2007 Energy Sales (kWh)	93,791,406	61,773,600	155,565,006
2007 Energy Sales (%)	60%	40%	

History of Generation on Kootenay River:

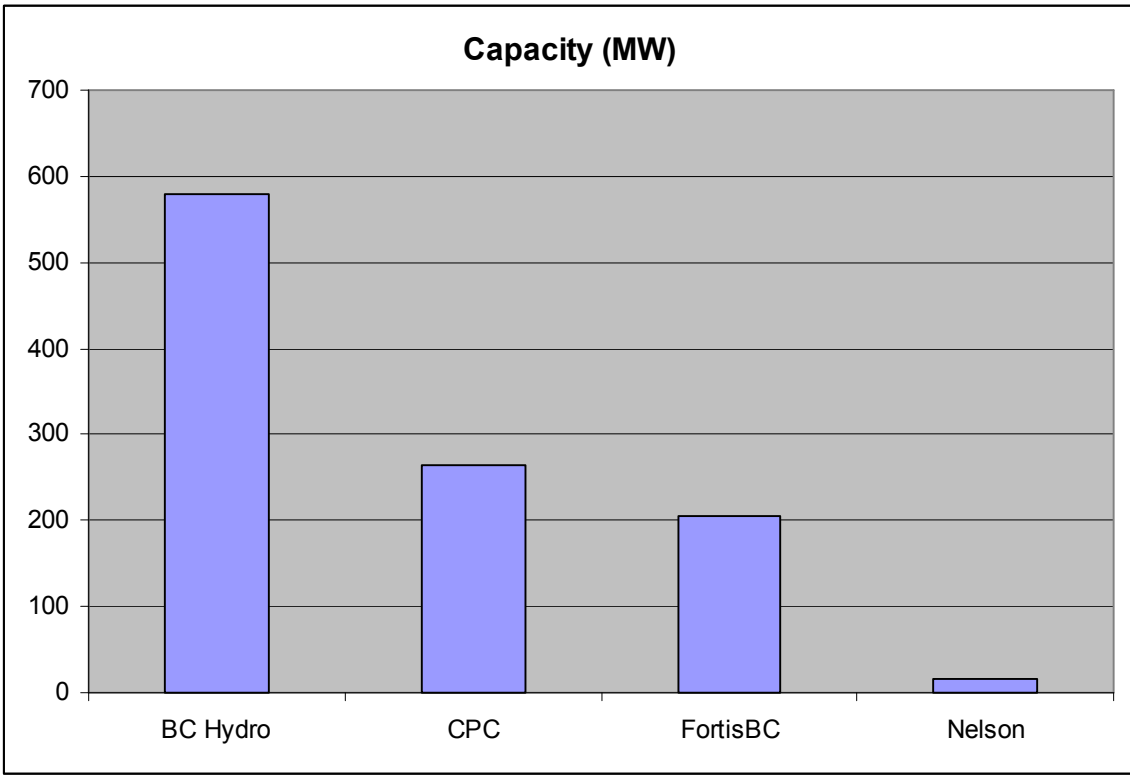
Aerial View of River and Plants:



Generation Development on the Kootenay River:

The following table shows the historical development of generation on the Kootenay River over the last 100 years (the table does not include recent upgrades to FortisBC plants), and the chart provides the same information up to 2008. As will be apparent, the City of Nelson established generating operations on the river long before BC Hydro came into being.

Year	Plant	Plant Capacity			Nelson Hydro (kW)	Columbia Power Corp. (kW)
		Addition (kW)	BC Hydro (kW)	FortisBC (kW)		
1897	Lower Bonnington	50,000	0	50,000	0	0
1906	Bonnington Falls G1	850	0	50,000	850	0
1907	Upper Bonnington	53,000	0	103,000	850	0
1910	Bonnington Falls G2	1,150	0	103,000	2,000	0
1928	South Slokan	57,000	0	160,000	2,000	0
1929	Bonnington Falls G3	2,250	0	160,000	4,250	0
1932	Corra Linn	45,000	0	205,000	4,250	0
1944	Brilliant	145,000	0	205,000	4,250	145,000
1950	Bonnington Falls G4	5,800	0	205,000	10,050	145,000
1973	Bonnington Falls G1	-850	0	205,000	9,200	145,000
1976	Kootenay Canal	580,000	580,000	205,000	9,200	145,000
1995	Bonnington Falls G5	6,800	580,000	205,000	16,000	145,000
2007	Brilliant Expansion	120,000	580,000	205,000	16,000	265,000



Power Purchases, Generation and Sales

Load Factor

The Nelson Hydro load factor on purchases from, FortisBC, is quite low. This is due to effect of the Nelson Hydro plant removing the base 9.1 MW from the Nelson load as viewed by FortisBC.

The following table of data shows the Nelson Hydro load factor on purchase from FortisBC under three scenarios;

1. the actual load factor based on energy purchase and demand charges,
2. the load factor that would have occurred if Nelson did not have it's own plant, and
3. the load factor that will occur from Nelson exporting 28 GWh per year.

Year	FortisBC Demand Purchase (kVA)	FortisBC Energy Purchase (MWh)	Nelson Generation (MWh)	Forecast Nelson Energy Sales (MWh)	Load Factor Assuming No Sales and Current Generation	Load Factor Assuming No Nelson Generation	Load Factor Assuming Energy Sales
2009	26,500	89,000	79,000	28,000	38%	54%	50%

Cost of Purchase Power

FortisBC supplies wholesale service to six other locations. For 2008 the average rate to supply all of FortisBC's wholesale customers, including Nelson, is estimated to be \$50.6 per MWh, vs. FortisBC's average rate to Nelson of \$53.7 per MWh. If Nelson were supplied by BC Hydro on RS 1823 Nelson's cost would be \$44.6. per MWh.

Generation Expansion Impacting Nelson

1. In 1988 Nelson Hydro held a firm water license of 1,428 CFS.
2. Nelson Hydro petitioned Water Management Branch regarding the restricted water license issued previous to BC Hydro Kootenay Canal commissioning in 1974. Before the Kootenay Canal Development, Nelson Hydro was permitted to generate to maximum (10MW) when water was available. This water use scenario was in effect from 1950 when City of Nelson installed their G4 generating unit. Repeated requests for additional firm water were denied in favour of Teck (FortisBC) intervention, up to 1962.
3. City of Nelson was promised “that their needs would be met, with the creation of the new provincially owned utility, BC Hydro”. With the signing of the Columbia River Treaty in 1961, all available water was now directed to BC Hydro. Nelson Hydro received no increase of firm water, but was encouraged to generate to maximum when water was available.
4. The Libby Dam was built in Montana, as part of the Columbia River Treaty, and provided storage for the operation of the Kootenay Canal Plant.
5. BC Hydro, Teck, and FortisBC entered into the “Canal Agreement” where up to 80% of the Kootenay flow at Cora Linn Dam would be diverted into the Kootenay Canal. This agreement was sanctioned by the Water Management Branch. BC Hydro would take licensed water from FortisBC and Teck licenses, and generate for them at a more efficient plant. Generation was returned less a generation fee, and benefited FortisBC. A minimum 5,000 CFS would remain in the river channel for FortisBC / Teck Plants and the City of Nelson.
6. In 1970, BC Hydro began construction of the Kootenay Canal Generating Station. This plant would be capable of 500MW generation, at 30,000 CFS maximum, on a conditional license only. Nelson Hydro’s firm license of 1,428 CFS took precedence before BC Hydro water rights.
7. That generation service was returned to FortisBC / Teck as a base entitlement (200MW). FortisBC / Teck plants were throttled to “spinning reserve” and would only increase generation at the request of BC Hydro.
8. City of Nelson/Nelson Hydro was not invited to enter into the Canal Agreement. City of Nelson maintained that its contribution would be in upstream storage facilities to further establish their position on the Kootenay River system. This did not happen.
9. In 1972, BC Hydro approached City of Nelson with an offer of \$40,000 to expropriate about 20 acres of land above the Nelson Hydro generating station, as part of the Canal project. This claim was disputed in court, and City of Nelson was awarded \$400,000 for the property, based on a proposed pumped storage generating project utilizing the same land. This dispute was carried on in the courts for an extended time, when the Minister of Energy directed City of Nelson to settle or “they would out of the generating business”.
10. The rights and interests of City of Nelson in relation to its generating facilities have been consistently subverted to the interests of BC Hydro.

11. In 1973, BC Hydro Kootenay Canal began operations and City of Nelson was restricted to 1,428 CFS. At that time, there were four generating units operational at the Nelson Hydro plant:
G1 = 850kW
G2 = 1,000kW
G3 = 2,250kW
G4 = 6,000kW
Total Maximum = 10,000kW
The restricted final license provided enough water for the following operation:
G1 = 0kW
G2 = 0kW
G3 = 2,250kW
G4 = 4,650kW
Total Allowable = 6,900kW
These outputs were based on runner curve data approved by Water Management Branch.
12. In 1983, Nelson Hydro proceeded to replace the water wheels on G3 & G4 units to increase the efficiency by 12%. This successful project increased the plant output from 6,900kW to 7,750kW, output approved by Water Management Branch.
13. In 1984, Nelson Hydro upgraded and rebuilt generating unit G2 as an auto-controlled standby generating unit. This unit was placed in serviced when G3 or G4 were shutdown for maintenance, or when spill water was available at Upper Bonnington Falls. Generating unit G1 was deemed not available for service, considering the cost to rehabilitate and the available water resource.
14. Discussions with Water Management Branch, BC Hydro, FortisBC and the City of Nelson continued from 1985 to 1989 regarding water availability to Nelson Hydro plant. No agreement was reached for additional water for City of Nelson.
15. In 1988 the MLA representative for the Kootenay West Provincial riding was asked to get involved in the water rights dispute. A final political solution was established where City of Nelson was granted an additional 265 CFS conditional water, continuous, until 2005. The signed agreement prevented City of Nelson from any further claims on water issues.
16. In 1989 the City of Nelson was officially granted an additional water “grant” of 265 CFS. Nelson Hydro available water at the Upper Bonnington plant was now established at:
1,428 CFS firm
265 CFS granted
Total – 1,693 CFS
Generation Configuration:
G1 = 0kW
G2 = 1,100kW
G3 = 2,350kW
G4 = 5,400kW
Total plant output = 8,850kW
17. Water Management Branch challenged the plant efficiency data, since G2 curve data was not available (bronze runner – 1908). No back-up generation was available to the Nelson Hydro plant.

18. In 1991, a consultant was hired to assess the water use efficiency of the Nelson Hydro power plant. The options were to upgrade existing facilities or expand to new plant.
19. An agreement was reached with FortisBC to install a new generating unit that would accommodate a new peak shaving proposal. The new unit would run at low output at non peak periods and accelerate to full load at system peak.
20. A new 7,000kW Kaplan unit, with high efficiency runner (Kaplan runner) was installed with the intention to operate at minimum loading and operate at maximum during winter peak loads.
21. FortisBC advised the City of Nelson that the peak shaving agreement would not take effect because load reduction in the West Kootenay Region would have no effect on FortisBC's purchase in the Okanagan region. The agreement was terminated.
22. 2006 Nelson and BC Hydro negotiate a renewal to the Water Rights Agreement. BC Hydro supports Nelson in obtaining water license rights to the 265 cfs. The renewed WRA is in effect until 2035.
23. Since construction of the G5 generating unit, Nelson Hydro has established the following plant output at normal river flows (1,693 CFS):
 - G1 = 0kW
 - G2 = 0kW
 - G3 = 0kW
 - G4 = 5,200kW
 - G5 = 3,900kW
 - Total plant output = 9,100kW @ 1,693 CFS
24. During freshet, the plant output is increased to the following maximum output:
 - G1 = 0kW
 - G2 = 1,150kW
 - G3 = 2,250kW
 - G4 = 5,800kW
 - G5 = 6,800kW
 - Total plant output = 16,000kW

Freshet Generation

In most years during the spring freshet Nelson Hydro generates energy for BC Hydro under the Water Rights Agreement, and also for FortisBC. Below is a summary of the freshet generation for the last 12 years.

Year	FortisBC Generation (kWh)	FortisBC Energy Sales Rate (\$/kWh)	FortisBC Sales (\$)	BC Hydro Generation (kWh)	BC Hydro Energy Sales Rate (\$/kWh)	BC Hydro Sales (\$)
1997	0		\$0	0		\$0
1998	955,100	\$0.0130	\$12,416	4,142,600	\$0.0060	\$24,856
1999	1,588,300	\$0.0130	\$20,648	4,789,200	\$0.0060	\$28,735
2000	443,100	\$0.0130	\$5,760	2,116,700	\$0.0060	\$12,700
2001	46,265	\$0.0260	\$1,203	0	\$0.0060	\$0
2002	375,100	\$0.0260	\$9,753	5,686,700	\$0.0060	\$34,120
2003	220,300	\$0.0260	\$5,728	2,100,800	\$0.0060	\$12,605
2004	0	\$0.0260	\$0	0	\$0.0060	\$0
2005	0	\$0.0260	\$0	0	\$0.0060	\$0
2006	81,600	\$0.0260	\$2,122	5,364,900	\$0.0060	\$32,189
2007	117,700	\$0.0276	\$3,250	5,544,600	\$0.0070	\$38,812
2008	569,105	\$0.0285	\$16,225	4,855,605	\$0.0070	\$33,989
Grand Total	4,396,570	\$0.0228	\$77,104	34,601,105	\$0.0062	\$218,007

The Water Rights Agreement was entered into at a time when it was not contemplated that Nelson Hydro's self-generated energy could be readily exported. The circumstances underlying the Water Rights Agreement and the assumptions made by the City of Nelson at the time the agreement was negotiated have changed significantly, yet this agreement remains in effect for the benefit of BC Hydro's rate payers.

Energy Exports

Anticipated Exports and Income:

Nelson continues to expect annual sales under the PCA of 28 GWh with well over half of the sales occurring in light load hours.

Nelson intends to use the export income substantially in following manner:

- to finance project that assist the City of Nelson in achieving its Climate Change Action Plan Objectives. These projects include reducing Green House Gas Emissions, and Demand Side Management. A specific key project for 2009 is to investigate the feasibility of a district heat plant using lake water as the heat source and heat pumps to raise the temperature for building heat;
- to reduce power purchase costs for Nelson Hydro ratepayers. Specifically the export income can be used to mitigate a portion of the energy purchase demand charges; and
- to provide funding for city projects such as in the public works and parks departments.

If BC Hydro is successful in this Application, the City of Nelson will be forced to re-examine these important initiatives and to consider all available options, including the transfer of its generating assets.

Other Jurisdictions

Nelson understands that while simultaneous buy/sell transactions such as contemplated by the PCA may not be the norm, they are permitted within the Pacific Northwest area in which Nelson is located. Please see letter from Regulatory & Cogeneration Services, Inc. attached.

Surplus Sales Background

The ongoing development of two strategic initiatives in Nelson brought us to the current arrangements with Northpoint and FortisBC, namely:

- to maximize the value of the utility and its assets to the shareholder, the residents of the City of Nelson; and
- to protect Nelson Hydro's customers by mitigating any risk around exposure to power purchase costs.

Maximizing Value

We had been working on maximizing the value of Nelson Hydro's generation in Nelson. This was the prime consideration behind obtaining Ecologo certification for Bonnington Falls – the information that we had at the time was that we may have been able to extract a “green” premium for the output of the plant, and then replace that output with another resource that would allow us to realize the premium. Unfortunately, any kind of open market for “green” (or any other kind of) electricity had not yet materialized in BC. As well, any discussions about granting credits or premiums for “green” resources centred on new generation only. As a result, our efforts to market our generation as “green” were shelved for a later time. In 2007 we were starting get some interest from some NWPPA utilities, as most jurisdictions in the US are beginning to mandate green suppliers in utility resource portfolios – that option appears to show some promise once again and was part of what drove the Northpoint initiative forward.

Mitigating Risk

What really brought the initial idea for the current Northpoint arrangement forward was a concern in late 2006 about FortisBC's upcoming rate re-design and its potential impact on Nelson Hydro's power purchase costs. The fact that Nelson has a 9 megawatt flat resource in its portfolio has the effect of making the load factor of its purchased electricity extremely poor. Historically, Nelson had taken many initiatives to reduce peak power purchases from FortisBC and its predecessors: Running sewage lift backup generators on peak hours, implementing voltage control schemes and running peak power alerts on local radio to appeal for conservation were the most prominent projects. All of these had limited success.

Initiatives Converge

From the mass of spreadsheet analyses, an idea percolated: Instead of focussing on shaving the peaks, the City of Nelson began to examine means by which to fill the valleys. If we treated the FortisBC power purchase contract as a resource and maximized the use of that resource, particularly in the summer months when the City was contracted for more capacity than it was using under the ratchet clause in the tariff, the City could significantly increase its energy purchases without impacting its peak. This would bring the City of Nelson's load factor from the worst on FortisBC's system to among the best. The key question that fell out of such strategy like that was how to dispose of the now-surplus City of Nelson generation during the times that it would increase power purchases. The City of Nelson was aware that market prices in Alberta and at Mid-C in the US were often very favourable during the times it would be in a position to market surplus energy and it was recognized that there was an opportunity to advance both of the strategic initiatives we had been working on for all these years. The recent creation of BCTC and related

establishment of an open access transmission market certainly made moving surplus resource to another more lucrative market possible – it was a matter of finding some expertise to help us execute the transactions.

Arrangements Made

The City of Nelson was aware that the pulp mill in Castlegar had been marketing surplus energy from their operations for a number of years. The mill graciously provided Northpoint's contact information. Nelson Hydro subsequently met with Northpoint early in 2007 and over a period of five or six months developed the agreement that exists today. In parallel with that process, Nelson Hydro met with FortisBC management to determine if there would be issues with us increasing our use of our tariff resource, and to start the process of arranging transmission access from Nelson to the BCTC system. At that time, there was no FortisBC opposition to our initiative, only the caveat that FortisBC's customers should be, as a minimum, held harmless as a result of our activities. As a FortisBC customer, the City of Nelson was certainly supportive of that position, and our subsequent agreement with FortisBC reflects that key principle.

Nelson Hydro also held an informal discussion with BCUC staff while the negotiations with both parties were taking place, and the advice we received at that time was that if we had the agreement of our supplier and were within the terms of our tariff, anything we could do to improve that financial position of our utility was acceptable. We reviewed our wholesale agreement with FortisBC and we saw no impediments. We also had legal reviews of the new agreements done.

The City of Nelson relied on the circumstances as they found them under R3808 and has invested significant time, effort and resources in negotiating a supply agreement with FortisBC based on what BC Hydro had already agreed with FortisBC and submitted for approval with the Utilities Commission as being fair, just and reasonable and otherwise in the public interest.

Other Observations

It is important to note that the City of Nelson negotiated a renewal of its Wholesale Supply Contract with West Kootenay Power in 1999-2000 and that it was subsequently renewed in 2004 on substantially the same terms. In both cases, the agreements were submitted to the BCUC for approval, and the City of Nelson has no information that BC Hydro objected to the content of the agreements in either case. Neither version of the Wholesale Supply Contract contains any term that precludes the City of Nelson from exporting power. If, as BC Hydro now alleges, the 'spirit and intent' of the Power Purchase Agreement with FortisBC was to preclude the export of power, two things ought to have happened. First, FortisBC would not have agreed to those terms in the Wholesale Supply Contract. Second, BC Hydro would have objected previously. Both FortisBC and the City of Nelson relied on the terms of the Power Purchase Agreement as they were.

Attachments

A) RCS letter, dated Dec 11, 2008

COMMUNITY CHARTER**[SBC 2003] CHAPTER 26****Part 1 — Principles, Purposes and Interpretation****Principles of municipal governance**

1 (1) Municipalities and their councils are recognized as an order of government within their jurisdiction that

- (a) is democratically elected, autonomous, responsible and accountable,
- (b) is established and continued by the will of the residents of their communities, and
- (c) provides for the municipal purposes of their communities.

(2) In relation to subsection (1), the Provincial government recognizes that municipalities require

- (a) adequate powers and discretion to address existing and future community needs,
- (b) authority to determine the public interest of their communities, within a legislative framework that supports balance and certainty in relation to the differing interests of their communities,
- (c) the ability to draw on financial and other resources that are adequate to support community needs,
- (d) authority to determine the levels of municipal expenditures and taxation that are appropriate for their purposes, and
- (e) authority to provide effective management and delivery of services in a manner that is responsive to community needs.

Principles of municipal-provincial relations

2 (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government

- (a) acknowledge and respect the jurisdiction of each,
- (b) work towards harmonization of Provincial and municipal enactments, policies and programs,

and

(c) foster cooperative approaches to matters of mutual interest.

(2) The relationship between municipalities and the Provincial government is based on the following principles:

(a) the Provincial government respects municipal authority and municipalities respect Provincial authority;

(b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;

(c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on

(i) proposed changes to local government legislation,

(ii) proposed changes to revenue transfers to municipalities, and

(iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;

(d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;

(e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;

(f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;

(g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.

Purposes of Act

3 The purposes of this Act are to provide municipalities and their councils with

(a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,

(b) the authority and discretion to address existing and future community needs, and

(c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

Broad interpretation

4 (1) The powers conferred on municipalities and their councils under this Act or the *Local*

Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

(2) If

(a) an enactment confers a specific power on a municipality or council in relation to a matter, and

(b) the specific power can be read as coming within a general power conferred under this Act or the *Local Government Act*,

the general power must not be interpreted as being limited by that specific power, but that aspect of the general power that encompasses the specific power may only be exercised subject to any conditions and restrictions established in relation to the specific power.

Definitions and other interpretation rules

5 The Schedule to this Act establishes definitions of terms used in this Act and rules of interpretation that apply to this Act.

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IMPORTANT INFORMATION

COMMUNITY CHARTER

[SBC 2003] CHAPTER 26

Part 2 — Municipal Purposes and Powers

Division 1 — Purposes and Fundamental Powers

Municipalities and their councils

- 6 (1) A municipality is a corporation of the residents of its area.
- (2) The governing body of a municipality is its council.
- (3) New municipalities may be established, and the boundaries of existing municipalities may be altered, in accordance with Part 2 [*Incorporation*] of the *Local Government Act*.

Municipal purposes

- 7 The purposes of a municipality include
 - (a) providing for good government of its community,
 - (b) providing for services, laws and other matters for community benefit,
 - (c) providing for stewardship of the public assets of its community, and
 - (d) fostering the economic, social and environmental well-being of its community.

Fundamental powers

- 8 (1) A municipality has the capacity, rights, powers and privileges of a natural person of full capacity.
- (2) A municipality may provide any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.
- (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:
 - (a) municipal services;
 - (b) public places;
 - (c) trees;

- (a) in accordance with a regulation under subsection (4),
 - (b) in accordance with an agreement under subsection (5), or
 - (c) approved by the minister responsible.
- (4) The minister responsible may, by regulation, do the following:
- (a) establish matters in relation to which municipalities may exercise authority as contemplated by subsection (3) (a), either
 - (i) by specifying the matters in relation to which they may exercise authority, or
 - (ii) by providing that the restriction under subsection (3) only applies in relation to specified matters;
 - (b) provide that the exercise of that authority is subject to the restrictions and conditions established by the regulation;
 - (c) provide that the exercise of that authority may be made subject to restrictions and conditions specified by the minister responsible or by a person designated by name or title in the regulation.
- (5) The minister responsible may enter into an agreement with one or more municipalities that has the same effect in relation to the municipalities as a regulation that could be made under subsection (4).
- (6) If
- (a) a regulation or agreement under this section is amended or repealed, and
 - (b) the effect of the amendment or repeal is that bylaws that previously did not require authorization under subsection (3) would now require that authorization,
- those bylaws affected that were validly in force at the time of the amendment or repeal continue in force as if they had been approved by that minister.

Division 2 — Scope of Jurisdiction

Relationship with Provincial laws

- 10 (1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.
- (2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.

Area of jurisdiction

11 (1) A municipality and its council may only exercise or perform their powers, duties and functions within the boundaries of the municipality, unless authorized under this or another Act.

(2) The natural person powers of a municipality may be exercised outside the boundaries of the municipality.

(3) If a municipality has established works or facilities outside the boundaries of the municipality for the purposes of a municipal service, the council's power to regulate, prohibit and impose requirements in relation to the use of those works and facilities may be exercised outside the boundaries of the municipality.

Division 3 — Ancillary Powers

Authority to establish variations, terms and conditions

12 (1) A municipal bylaw under this Act may do one or more of the following:

(a) make different provisions for different areas, times, conditions or circumstances as described by bylaw;

(b) establish different classes of persons, places, activities, property or things;

(c) make different provisions, including exceptions, for different classes established under paragraph (b).

(2) A council may, in exercising its powers under section 8 (1) [*natural person powers*], establish any terms and conditions it considers appropriate.

Services outside municipality

13 (1) A municipality may provide a service in an area outside the municipality, but it must first obtain consent as follows:

(a) if the area is in another municipality, the council must obtain the consent of the council of the other municipality;

(b) if the area is not in another municipality, the council must obtain the consent of the regional district board for the area.

(2) In giving consent under subsection (1), the other local government may establish terms and conditions, including terms and conditions respecting

(a) limits on the service to be provided in its area, and

(b) the process for terminating provision of the service in its area.

(3) If consent is given as referred to in subsection (1), the municipal powers, duties and functions provided under this or any other Act in relation to the service may be exercised in the area referred to in that subsection, subject to any applicable terms and conditions established under subsection (2).

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IMPORTANT INFORMATION**COMMUNITY CHARTER****[SBC 2003] CHAPTER 26****Part 6 — Financial Management****Division 1 — Financial Planning and Accountability****Fiscal year**

164 The fiscal year for a municipality is the calendar year.

Financial plan

165 (1) A municipality must have a financial plan that is adopted annually, by bylaw, before the annual property tax bylaw is adopted.

(2) For certainty, the financial plan may be amended by bylaw at any time.

(3) The planning period for a financial plan is 5 years, that period being the year in which the plan is specified to come into force and the following 4 years.

(3.1) The financial plan must set out the objectives and policies of the municipality for the planning period in relation to the following:

(a) for each of the funding sources described in subsection (7), the proportion of total revenue that is proposed to come from that funding source;

(b) the distribution of property value taxes among the property classes that may be subject to the taxes;

(c) the use of permissive tax exemptions.

(4) The financial plan must set out the following for each year of the planning period:

(a) the proposed expenditures by the municipality;

(b) the proposed funding sources;

(c) the proposed transfers to or between funds.

(5) The total of the proposed expenditures and transfers to other funds for a year must not exceed the total of the proposed funding sources and transfers from other funds for the year.

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IMPORTANT INFORMATION**COMMUNITY CHARTER****[SBC 2003] CHAPTER 26****Part 7 — Municipal Revenue****Division 1 — General****General revenue sources**

192 Municipalities have the following revenue sources:

- (a) fees under Division 2 [Fees];
- (b) taxes under Division 3 [*Property Value Taxes*];
- (c) taxes under Division 4 [*Parcel Taxes*];
- (d) taxes under Division 5 [*Local Service Taxes*];
- (e) taxes under section 353 [*taxation of utility company property*] of the *Local Government Act*;
- (f) fines and other penalties referred to in section 261 [*payment of fines and other penalties to municipality*];
- (g) revenues raised by other means authorized under this or another Act;
- (h) revenues received by way of agreement, enterprise, gift, grant or otherwise.

Authority for fees and taxes

193 (1) A municipality may not impose fees or taxes except as expressly authorized under this or another Act.

(2) Section 12 (1) [*authority to establish variations*] does not apply in relation to bylaws imposing taxes referred to in section 192 (b), (c), (d) and (e).

(3) A council may only provide an exemption from property taxes if expressly authorized by this Part or another Act.

(4) For the purposes of assessment, taxation, recovery of taxes and tax sale, parcels combined under the *Assessment Act* to form one parcel are deemed to constitute one parcel.

Interest calculation

193.1 A municipality may, by bylaw, establish the manner in which interest is calculated if

- (a) this or another Act provides a requirement or authority to apply interest to an amount owed to, or owing by, the municipality, and
- (b) the manner in which interest is calculated is not otherwise provided for.

Division 2 — Fees**Municipal fees**

194 (1) A council may, by bylaw, impose a fee payable in respect of

- (a) all or part of a service of the municipality,
- (b) the use of municipal property, or
- (c) the exercise of authority to regulate, prohibit or impose requirements.

(2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:

- (a) apply outside the municipality, if the bylaw is in relation to an authority that may be exercised outside the municipality;
- (b) base the fee on any factor specified in the bylaw and, in addition to the authority under section 12 (1) [*variation authority*], establish different rates or levels of fees in relation to different factors;
- (c) establish fees for obtaining copies of documents that are available for public inspection;
- (d) establish terms and conditions for payment of a fee, including discounts, interest and penalties;
- (e) provide for the refund of a fee.

(3) As exceptions, a council may not impose a fee under this section

- (a) in relation to Part 3 [*Electors and Elections*] or 4 [*Other Voting*] of the *Local Government Act*, or
- (b) in relation to any other matter for which this or another Act specifically authorizes the imposition of a fee.

(4) A municipality must make available to the public, on request, a report respecting how a fee imposed under this section was determined.

(5) A municipality may not impose a highway toll unless specifically provided by a Provincial or federal enactment.

NEWS RELEASE

For Immediate Release
2008CS0054-000396
March 20, 2008

Ministry of Community Services

106 LOCAL GOVERNMENTS PLEDGE CARBON NEUTRALITY

VICTORIA – More than 100 local governments are now signed on to the B.C. Climate Action Charter with the Province and the Union of BC Municipalities (UBCM), committing to become carbon neutral by 2012, announced Community Services Minister Ida Chong today.

“The B.C. Climate Action Charter is an extraordinary agreement that strives to find the best made-in-B.C. solutions to the increasingly important issue of climate change,” said Chong. “It gives me great pleasure to see that, to date, 106 local governments are committed to this timely and sensitive matter. I know other local governments will be joining this important initiative over the coming months.”

Local governments that sign the B.C. Climate Action Charter pledge to become carbon neutral, and measure and report on their community’s greenhouse gas emissions profile, and work to create compact, more energy efficient communities.

Local governments can achieve carbon neutrality by reducing emissions, by purchasing carbon offsets to compensate for their greenhouse gas emissions or by developing projects to offset emissions. Such projects may include improving the energy efficiency of local government-owned and operated buildings and vehicle fleets.

“Municipalities and regional districts across the province are taking up the challenge to address climate change in ways that are meaningful for them,” said Chong. “Together, they are working side by side, under the B.C. Climate Action Charter, in an effort to make greater differences in their communities.”

The B.C. Climate Action Charter was introduced in September at the 2007 UBCM Convention, where 62 local government representatives presented Premier Gordon Campbell with signed charter agreements.

Local governments that signed the B.C. Climate Action Charter are working with UBCM and the provincial government on a Joint Provincial-UBCM Green Communities Committee and Green Communities Working Groups. The groups focus on urban and rural strategies that support local governments in taking actions to make their own operations carbon neutral by 2012 and to reduce greenhouse gas emissions.

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1 backgrounder(s) attached.

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December 10, 2008

Mr. George Isherwood
525 3rd Avenue
Trail, BC, Canada V1R 4V4

SUBJECT: Simultaneous Buy/Sell Arrangements Under PURPA

Dear Mr. Isherwood,

This letter is sent as a follow up to our telephone conversation of December 8, 2008. It is intended to provide a written confirmation of our discussion regarding examples where there is a simultaneous buy/sell arrangement between an industrial customer with a cogeneration facility and the local retail utility.

The United States passed the Public Utility Regulatory Policies Act (“PURPA” or “Act”) in 1978. It applies to all utilities with total annual retail energy sales in excess of 500,000 megawatthours. While PURPA did not mandate the adoption of all the standards set forth in the Act, it did require that all regulatory authorities and qualifying non-regulated electric utilities consider all the standards and clearly state the reason why a standard was not implemented or adopted by the regulatory authority or utility. Given the circumstances at the time, most regulatory authorities and many non-regulated utilities adopted all the standards with little—if any—modification. A critical element of PURPA was a mandatory “must take” feature whereby the local utility was required to purchase all energy and capacity made available from a qualifying facility which included cogeneration facilities. While the Energy Policy Act of 2005 added a section to PURPA that would exempt utilities from the mandatory must take obligation under certain circumstances going forward, there are many industries operating in the United States where they are simultaneously buying energy from their local utility at tariffed charges to meet their on site needs and selling all the power from their cogeneration facility to the same utility (“buy/sell arrangement”).

The economic choice to enter into a buy/sell arrangement is relatively straightforward. If the rates paid to the industry for the power produced from the cogeneration facility are higher than the rates charged by the utility for the industrial load, the industry will sell all of the power to the utility and buy all its needs from the utility. On the other hand, if the retail rates charged by the utility are higher than the price paid for the industry’s power, the industry will use the cogeneration power on site in lieu of purchasing it from the utility (“self-serve” arrangement).

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This economic choice can be illustrated with real world examples. In California, the rates charged to large industrial customers have been higher than the avoided costs paid to cogeneration facilities for many, many years. As a result virtually all cogeneration power is first used to serve on-site needs with any excess or surplus then sold to the local utility. Our firm has represented over 1,500 MWs of cogeneration facilities located in California since the mid-1980s. *All* of these facilities use the cogeneration first to serve their on-site needs with any surplus sold to the local utility. In the Pacific Northwest, the economics are generally reversed. The low utility rate charges to industrial customers have been less than the avoided cost rates paid for cogeneration power. Consequently, in the PNW, most industries sell all their power to the local utility and buy all their on-site needs from the same local utility. While the development of cogeneration in the Pacific Northwest has been much more limited than in California (in part due to the low cost for utility delivered power), I have consulted on three arrangements that are all buy/sell arrangements. These are the two cogenerations facilities on site at the former Texaco refinery (March Point I and March Point II total about 140 MW) in the territory served by Puget Sound Energy in Anacortes, Washington. The Shell Oil Company acquired complete ownership of the Texaco refinery in 2002. The other buy/sell arrangement I'm familiar with is the Kimberly-Clark cogeneration facility located in Everett Washington. Under the contractual arrangements, all the power is sold to the Snohomish Public Utility District. While the choice to enter into a buy/sell or self serve arrangement is driven by the case specific economics, either approach is allowed under PURPA.

I hope this letter is responsive to your needs. Feel free to contact me for further information or should you have any questions.

Regards,



Donald W. Schoenbeck