

Island ^{Reprint} Tides

Visit www.islandtides.com for more interesting articles on other BC, national & international topics

Reprint from Volume 17 Number 12

June 30, 2005

Salvaging Meaning from the Duke Point Fiasco

Patrick Brown

BC Hydro's Bev Van Ruyven would have us believe that the Duke Point project was abandoned because the appeals process had simply run out the clock and the generating plant wouldn't get built on time. BC's Energy Minister Neufeld would have us believe that BC Hydro had finally seen the light. But was the real reason for Hydro's sudden retreat that neither Hydro nor the provincial government wanted the Appeal Court judges enquiring whether 'commercial confidentiality' could be maintained when government functions were privatized?

Celebrating a Victory

The Georgia Strait Crossing Concerned Citizens' Coalition (GSXCCC) and their allies are celebrating a significant victory, and they well deserve to. They have battled BC Hydro to a standstill on Hydro's proposals to build a natural gas pipeline across Georgia Strait through the Gulf Islands to Vancouver Island, to construct a gas-fired generating plant at various locations on Vancouver Island and eventually at Duke Point south of Nanaimo, and finally to privatize the plant and pay an investment syndicate, led by Pristine Power Inc., a handsome annual return for 25 years while Hydro assumes all the risk.

GSXCCC's people were all volunteers using their own time and money. Hydro, for its part, has spent over \$120 million of ratepayers' money on engineering and pursuing the many approvals necessary for this scheme, paying its own staff and legions of lawyers and consultants, and finally purchasing a gas turbine generation plant for which they now have no use. With the cancellation of the Duke Point contract, Hydro will now not recover the expected \$50 million from Pristine.

The Joint Industry Electricity Steering Committee (JIESC) (representing industrial users who collectively consume 25% of BC's power) joined the fray when it became apparent to them that Hydro's strategy would expose them, as well as all other electricity users in the province, to an uncontrollable and ever-rising cost of electricity.

The battle was waged through a motley collection of regulatory authorities: federal, provincial, US federal, and State of Washington, over many years; and finally the courts.

What lessons have been learned? BC Hydro has displayed an astonishing stubbornness in pursuing a strategy that originated with the NDP provincial government in the mid-

1990s, morphing into the privatization strategy promoted by the Liberal provincial government in the last few years. Meanwhile, the economics of natural gas power generation have deteriorated drastically; the economics of alternatives, including micro-hydro, wind power, and conservation have improved substantially; Canada has signed the Kyoto protocol, and public concern about pollution has become much more acute.

But until June 17, Hydro has unwaveringly pursued its outdated policy. Has it now learned to be more flexible?

Hydro's Overall Strategy

That very much remains to be seen. Hydro has made profits purchasing cheap off-peak power from the US and Alberta and exporting more expensive peak power, a strategy made possible by the immense energy storage capacity of its dams. This led to the idea that Hydro could increase its profits by generating power for export, or by encouraging private companies to do so. Will it now reconsider this strategy?

In the last couple of years, it has moved to integrate its power generation and distribution with a network promoted by the US government covering western North America. It has ventured, along with Enron, into the unstable and litigious business of selling power to California, and it has been burned. Will it now revisit its objective, which was originally to ensure an adequate supply of the cheapest possible power for British Columbia, both for its citizens and its industries?

In fact, Hydro's abandonment of Duke Point should raise questions about its entire strategy for the future: generation, transmission, pricing, conservation, and trading. And not only on Vancouver Island.

And privatization: there will be more potential private partners in all these areas. These private partners will be even more cautious in the future, and will seek even better deals than the rather generous terms Hydro negotiated with Pristine for Duke Point.

BCUC and the Courts

It has been suggested that at some point during the BC Utilities Commission (BCUC) consideration of the privatized Duke Point proposal, the Commission's mandate was changed from that of a public watchdog to that of a promoter of the

© Island Tides Publishing Ltd. This article may be reproduced with the following attribution, in its entirety, and notification to Island Tides Publishing Ltd.

'This article was published (June 30, 2005) in 'Island Tides', an independent, regional newspaper distributing across the Southern Strait of Georgia from Tsawwassen to Victoria to Nanaimo.'

Island Tides, Box 55, Pender Island, BC, Canada.

Phone: 250-629-3660. Fax: 250-629-3838.

Email: islandtides@islandtides.com.

Website: <http://www.islandtides.com>

government's energy policy. (Hydro, of course, has been a promoter of the government's energy policy all along.) However, BCUC's decisions, under its own legislation, can still be challenged in the courts; GSXCCC and JIESC took full advantage of this. BCUC's legislation also requires that intervenors be properly heard at hearings, that procedural fairness be practiced and exhibited, and that there be no bias. BCUC is, after all, a public body carrying on a public process.

The central issue for the courts turned out to be whether BCUC could maintain the 'commercial confidentiality' of a competitive bidding process in the face of intervenors who questioned its fairness and the resulting decision (made by Hydro) and its approval (by BCUC). This is a fundamental problem affecting the privatization of public functions (by government or publicly owned utilities). Hydro sought to maintain the confidentiality of three items: the terms of its contract with Pristine, the proposals of unsuccessful bidders, and the analysis upon which it chose Pristine's bid and negotiated the contract.

The terms of the contract, clearly the central subject of the hearing, were eventually made public after much argument by the intervenors. The terms of unsuccessful bids were maintained as secret on the basis that revealing them would discourage the bidders from ever bidding again, and besides that, BC Hydro had promised bidders that they would not be revealed.

Hydro's comparative analysis of competing bids, known as Appendix J, was disclosed to BCUC members, but not to the public. The intervenors questioned how they were expected to cross-examine Hydro on their choice if this analysis was not made available to them. BCUC admitted that this confidential information was a factor in their decision to approve the contract, and warned Hydro that it would have to be revealed in future applications.

It was the Commission's use of this confidential information which the Appeals judges identified as being worthy of further hearing.

On June 17, Hydro took the opportunity of abandoning the contract with Pristine on the basis of a clause that permitted a liability-free exit should ongoing legal activity pose the risk that the new plant would not be in operation on time. One might also question whether Hydro anticipated that they would lose the appeal and, whether or not they lost, whether Appendix J would have to be disclosed during the anticipated Appeals Court hearing. Would their analysis stand up to questioning? Hydro may have had second thoughts.

Now, of course, the Appeals Court hearing will not take place; as the lawyers say, the question is 'moot'. In addition to protecting Hydro, there's no danger to the government that the Appeals Court might set any awkward precedents requiring the transparency of future (or past?) privatization deals.

Maintaining 'Commercial Confidentiality'?

It is in the public interest for regulatory commissions, such as BCUC, to put the public interest, not government policy, first. To do otherwise destroys their integrity, not to mention insulting their legislation, and insulting the public to boot.

But disclosure, it would appear, is the Achilles' heel of privatization. Should 'commercial confidentiality' be maintained in the privatization of government or publicly owned utility functions? In the Duke Point case, both Hydro and its bidders claimed confidentiality, the sort of double layer that provides ample opportunity for deception.

Particularly in the BC Rail privatization, disclosure has been less than complete. Transparency has also been lacking concerning the Accenture contract for outsourcing Hydro's administration, and the privatization of some BC government information systems functions. After all, it's the public's business.

To read the news story on the Duke Point Power issue, please see page 1. For more historical information, visit our Vancouver Island Power online archive, a collection of 'Island Tides' articles about Duke Point, at www.islandtides.com