

From: John Johnson [j.johnson@cloudworksenergy.com]
Sent: April-30-10 5:13 PM
To: Living Water Smart ENV:EX
Cc: VPs & Principals; Jackie Hamilton
Subject: Cloudworks Energy Water Act Submission
Attachments: CEI Water Act Submission Apr 30 10.pdf

Please find attached Cloudworks Energy Inc's submission to changes under the Water Act.

Kindest regards,

John Johnson

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warrant it.

Cloudworks does not support a standard 'cap' on all streams, as one size does not fit all when it comes to stream ecosystems. Rather, for our sector, we support a stream-specific and seasonal life cycle set of instream flow requirements, based on site-specific scientific assessments and tailored to the key physical, biological, and chemical processes in each specific aquatic ecosystem. The procedures for these assessments are already well documented for the hydroelectricity sector, but the Province could also consider applying them to any stream where consumptive use pressures

1. Protect Stream Health and Aquatic Environments

Water Act Discussion Paper – Goals

follows:

This submission mirrors the format of the IPPBC submission but provides Cloudworks' additional comments on the four basic goals and six principles identified in the Water Act Discussion Paper, as follows:

We are aware that our industry association, the Independent Power Producers of BC, has provided an extensive submission, which Cloudworks has participated in and supports. That submission points out an important distinction about run of river projects which Cloudworks wishes to emphasize: run of river projects do not permanently remove water from a watershed – we are authorized to use only a portion of the water in a segment of the stream and all of the water used is recycled back into the stream after power is generated. This differs significantly from consumptive uses:

Cloudworks Energy Inc., a BC-based run of river independent power producer, appreciates the opportunity to submit its views as part of the Water Act Modernization review for the Province of BC.

Subject: Cloudworks Energy Inc. Submission Regarding Water Act Modernization

Sent by email: livingwatersmart@gov.bc.ca

Water Act Modernization Submission
Ministry of Environment, Water Stewardship Division
PO Box 9362, Stn Prov Govt
Victoria, B.C. V8W 9M2

April 30, 2010

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2. Improve Water Governance Arrangements

Cloudworks supports investigation of alternative models of water governance, however, Provincial authority should remain in place to resolve conflicts – that authority should not be delegated in a way that would prevent Provincial policy objectives and interests, e.g. the Energy Plan, from being met.

3. Introduce More Flexibility And Efficiency In The Water Allocation System

IPBC has provided a submission that Cloudworks supports regarding the first in time, first in right system, as it applies to water power applications. This would introduce more transparency and efficiency in the system. We would like to emphasize that the system of setting a priority date for water power applications relative to other types of consumptive uses in a watershed should remain, because, while run of river licences are a non-consumptive use, consumptive users upstream of a water power project could endanger a project's ability to meet its power contract with the Province's Crown Corporation (BC Hydro) or for other purchasers enabled by the Clean Energy Act. The Water Act should responsibly protect the interests of the Energy Plan and the Clean Energy Act.

4. Regulate Groundwater Extraction And Use

We acknowledge that groundwater extraction and use is a difficult problem in areas where consumptive water use pressures are high, and support some form of water management regime in those areas. This is generally not an issue in run of river projects in remote areas, where consumptive use pressures are non-existent or very low. Currently, water rental fees collected by the Province from (non-consumptive) hydroelectric power generators are far greater than fees collected from domestic (consumptive uses) water users. Cloudworks believes this to be inequitable in light of the relatively high environmental cost of consumptive water use.

Water Act Discussion Paper - Principles

1. BC's water resources are used within sustainable limits.

We recommend that the Province establish a more transparent process for allowing a first-in-line applicant for a run of river project, to maintain that placeholder for investigating development. We support annual fees and a certain amount of work proven every five years, in order to hold a place for possible project development. And we support the concept that multiple applications on the same area of a watershed not be accepted by the Province, in order to avoid confusion with the public and First Nations. We have long advocated a system similar to mineral claims, whereby if the fees are not paid in any year, or the proof of work is not submitted, the application is forfeited.

Cloudworks supports environmental cumulative effects assessment for watersheds where water is used for consumptive purposes as well as non-consumptive purposes.

2. First Nations social and cultural practices associated with water are respected and accommodated.

Cloudworks was the first run of river company in BC to provide an impact benefit agreements to First Nations. The recently tabled Clean Energy Act's commitment to establish a First Nations Clean Energy Business Fund, using some revenues from land and water rentals is an important acknowledgement that business should not be alone in funding the significant capacity-building issues that First Nations face. We wholeheartedly support the Fund and request that capacity building funding for negotiations with Independent Power Producers be speedily available upon application by the relevant First Nations from this Fund.

3. Science informs water resource management and decision making.

Cloudworks has obtained approvals for more than eight water power projects since the late 1990's in BC. In all cases, detailed scientific studies have been required in order to determine the instream flow needs for aquatic life prior to the Province would approving temporary withdrawals for power production. Other studies for wildlife, heritage and cultural issues, recreation and cumulative impacts, among other valued ecosystem components, are also required. Over time, the study requirements have been refined and formalized into guidelines, and agencies continue to require that these studies be completed prior to any agency review taking place, whether inside or outside the BC Environmental Assessment Act review process. There remain some areas for improvement and for reviewing how well the current regime is working. We suggest that there be a regular review of such guidelines, in collaboration with industry, professional consultants and their certifying associations, academic institutions and key environmental groups, in keeping with the principles in environmental management systems, of continual improvement.

4. Water resource legislation, policy and decision making processes as well as management tools are integrated across all levels of government.

This is perhaps the most critical issue to the industry and ratepayers. To reduce costs to ratepayers, BC Hydro has offered (and continues to offer) 40-year Electricity Purchase Agreement terms. This allows IPP's to bid lower by matching the 40-year term with a 40-year debt amortization schedule. The Province's Lands division has modified its maximum 40-year tenures accordingly to commence at Commercial Operation of the power contract with BC Hydro.

Incredibly, however, Water Stewardship continues to interpret a 40-year term for a Water Licence to include the financing and construction period, in effect reducing the debt term to something less than 40 years and increasing costs to ratepayers.

For several years, Cloudworks has been advocating that the 40 year term for a water power licence, currently specified by the Act, not include the construction period – when the water is not yet being used – consistent with other agencies interpretations including BC Hydro. The 40-year Water Licence term should commence with beneficial use of the water. IPPBC has provided a submission which outlines the implications of this shortfall in beneficial use. This inconsistency and mismatch with other agencies is creating investment uncertainty, affecting a number of current contracts with 40 year terms and increasing future costs to ratepayers.

In addition to the 40-year issue, Cloudworks also suggests that improved integration with federal agencies be considered by government – while it may be outside of the scope of changes to the Water Act, it would be beneficial to establish formal processes that involve our industry, and federal and provincial agencies to work together on integration of legislation, policy and decision making processes for our sector.

5. Rules and standards for water management are clearly defined, providing a predictable investment climate across the province.

We believe that the current rules and standards for water management for our sector are well established and are continually improving, however, there is a lack of clarity with the public about how our sector is regulated. Better information dissemination and public engagement by the Province with assistance from our sector where it is appropriate should be coupled with an ongoing program of clearly defining rules and standards. We would also support efforts by the Province to communicate how BC's rules and standards for water management compare to other jurisdictions, and to other low impact certification processes.

6. Flexibility is provided to adapt to extreme conditions or unexpected events on a provincial, regional or issue-specific level.

Cloudworks supports this principle.

7. Incentives are created for water conservation that consider the needs of users and investors.

Cloudworks supports this principle.

8. Rights to use water come with responsibilities to be efficient and help protect stream health.

Run of river projects are currently required to show, from extensive monitoring programs, that stream health is indeed protected in the portion of the stream where water is partially diverted. As a temporary, non-consumptive, user of water, Cloudworks will continue to assist in the Province's efforts to develop programs for assessment, monitoring, compliance, and ongoing adaptive management.

However, protection of stream health also needs to be a part of all consumptive uses of water as well. Cloudworks would be pleased to participate in further discussion and dialogue on the Water Act Modernization process, as it relates to our sector.

Kindest regards,

John Johnson
Director