



CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 401

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September 30, 2005

FILE COPY

Comptroller of Water Rights,
c/o Rick Couroux,
Secretary to the Comptroller,
P.O. Box 9340,
STN PROV GOVT,
Victoria, B.C.

Dear Mr. Couroux:

Re: Responses by Epcor North Island ("Epcor") to Information Requests and Representations
Concerning Epcor's Application to Purchase Breakwater Enterprises

Thank you for providing copies of Epcor's responses to information requests from the Comptroller as well as responses to various public representations concerning Epcor's application to purchase Breakwater Enterprises and to operate a private water utility in the French Creek area.

I am writing to provide some further commentary and information on behalf of C.U.P.E. Local 401, Nanaimo Civic Employees.

1. The Need for an Oral Public Hearing:

In its response to the Comptroller, dated August 26th, 2005, Epcor makes the following argument against an oral public hearing at page two *"An oral public hearing is not required in order to afford an opportunity to properly test the information that has been filed. To the contrary, the evidence includes the responses that E.N.I. provided to numerous information questions that were issued by the Comptroller and customers."* They further contend that an oral public hearing will be unnecessarily expensive.

C.U.P.E. Local 401 respectfully disagrees with this contention by Epcor and strongly recommends that the Comptroller conduct a full, oral public hearing. We believe that Epcor has not been adequately transparent, has not been sufficiently fulsome in providing information and has responded to enquiries and concerns in a strategic rather than fully open manner. Later in this letter, I provide some examples of why we feel this way.

Beyond the fact that Epcor has not provided the Comptroller and the public with adequate information, C.U.P.E. Local 401 submits that it is in the broad public interest to conduct oral public hearings. As evidenced by growing public concern about privatization of water and wastewater services in the mid-Island region and throughout Vancouver Island, it is important to hear directly from concerned citizens. The general public deserves an opportunity to provide the Comptroller with views and information about issues such as accountable governance, consumer costs, utility debt, environmental protection, the importance of regional integration of water operations,

legislated access to information, the regional drinking water protection plan, liability protection for the public, international trade agreements, past problems in the Breakwater service area, problems with private utilities elsewhere, fisheries concerns and much more.

It will be quite inadequate if the extent of public consultation on this important decision is an invitation to respond to a small ad placed in local newspapers by the proponent last spring. C.U.P.E. Local 401 calls on the Comptroller to ensure growing community concerns about the public interest are, instead, fully canvassed through a thorough oral public hearing.

2. C.U.P.E. concerns not dealt with:

After spotting the small proponent ad in local newspapers last spring, C.U.P.E. Local 401 decided to submit its concerns to the Comptroller. The advertisement about the Comptroller's process – placed by Epcor – stated that anyone requiring a copy of the Epcor application or other information should contact Epcor directly.

We did so. With the assistance of our national union, we contacted Epcor and requested a copy of their tariff application.

We were sent a copy of precisely what we requested, but no more. We were sent a copy of the tariff application, but were not sent any of the appendices which accompany it. We must have neglected to request all appendices.

Although we should perhaps have followed up with a request for the appendices as well, we did not. Rather, in the face of imminent deadlines, we proceeded to prepare a submission to the Comptroller. We assumed in good faith that we had been sent all the information necessary to assist us in commenting on this important application.

Now, after reviewing Epcor's response to our submission, we learn that we should not have relied on our good faith assumption. We learn that tariff Appendices "C" ("State of the System and Business Plan") and "E" formed a vital part of the tariff submission.

C.U.P.E. Local 401 has not made comments to the Comptroller about the information in those appendices. It was made uniquely difficult for us to do so, since we were not sent the full tariff application, including appendices.

Given all of that, it is particularly problematic to read in Epcor's response to the Comptroller about C.U.P.E.'s submission (at page 2) that: *"The issues raised by C.U.P.E. are among those identified in Appendix E of E.N.I.'s application and include public ownership, watershed protection, water supply and financial impacts. Accordingly, a separate response to C.U.P.E.'s submission has not been prepared."*

Likewise, (at page 2 of its August 26th note) Epcor says: *"Water Supply – Appendix 'C' State of the System and Business Plan provides extensive discussion of water supply, water management and water planning and coordination issues and discusses a strategy for dealing with the issues raised."*

While the Comptroller has access to these vital Appendices and will have reviewed the issues contained within them, C.U.P.E. Local 401 has never seen them. Because we were not sent these documents, I cannot comment on whether or not the Appendices do adequately respond to the issues we raised in our submission.

I do note that Epcor has failed to respond substantively to any of the concerns raised in our submission to the Comptroller.

May I please request that we be sent a copy of these two Appendices, as well as all the other appendices that accompanied the tariff application? Also, I would like to respectfully request an extension to the Comptroller's deadlines to allow us a chance to review the appendices and make informed comment on them.

3. Draft Regional District M.O.U.:

On the evening of August 23, 2005, the Board of Directors of the Regional District of Nanaimo considered the matter of a draft Memorandum of Understanding that management staff had concluded with Epcor.

C.U.P.E. made delegation presentations and a large crowd of citizens was present.

Staff reported to Directors that a penultimate version of this draft M.O.U. had been circulated to the Board for information several months before. A number of Directors said they did not recall seeing it. Management staff informed the Board that the version of the draft M.O.U. which had been circulated was not the final version that staff subsequently negotiated and signed. That final version had not been circulated to the Board before the meeting of August 23rd.

After considering the contents of the draft M.O.U., the Board of Directors of the Regional District of Nanaimo passed the following motions unanimously: *"MOVED Director Westbrook SECONDED Director D. Haime – That staff be directed that the fourteen water local service areas now under the management of the R.D.N. not be put on the table in any negotiations with EPCOR."* (Minutes of regular meeting of Board of Directors of Regional District of Nanaimo, August 23, 2005)

This motion was further explained to the public in a news release from the Regional District of Nanaimo dated August 25, 2005 and headlined R.D.N. Board Says No to Epcor Operation of Rural Water Systems. The news release begins with the following statements: *"At the August 23rd Board meeting, the Regional District of Nanaimo Board of Directors resolved that the RDN will attempt to purchase the Breakwater utility without contracting the operation of its 14 rural water systems to Epcor. Therefore, the existing 14 RDN water local service area systems will no longer be part of any negotiations with Epcor."*

The concept of Epcor operating these 14 water service areas in exchange for transfer of the Breakwater system is at the heart of the draft M.O.U. that managers negotiated. Now that this concept has been firmly ruled out by the R.D.N. Board, the essence of the M.O.U. has been nullified.

This is important in light of our concern that Epcor has not been sufficiently transparent and supports our recommendation for an oral public hearing.

Even though the R.D.N. Board meeting that unanimously rejected the core of the draft M.O.U. was held on August 23rd, 2005, and even though the R.D.N. issued a news release to inform the public about it on August 25th, Epcor cited the M.O.U. in a submission to the Comptroller dated August 26th. In its submission of August 26th, Epcor did not inform the Comptroller of the decision of the

Regional District Board. Instead, it actually cited the old draft M.O.U. and included a copy of it as an attachment in the package for the Comptroller.

While it may be argued that it is not Epcor's responsibility to inform the Comptroller of the decisions of the Regional District of Nanaimo, a proponent that was acting in an open, transparent and good faith manner would have taken the initiative to inform the Comptroller of this important material change. Epcor chose instead to leave a misleading impression with the Comptroller about an M.O.U. that changed fundamentally as a consequence of a Regional District decision taken three days before Epcor's submission.

This reinforces our view that an oral public hearing is essential. The general public deserves an opportunity to test Epcor's evidence in open public sessions and to make its views known to the Comptroller.

Finally, in this regard, we remind the Comptroller that Epcor's original submission cited a Parksville water parcel tax that does not, in fact, exist. Epcor's reply to C.U.P.E.'s submission does not deal with this error, just as it neglects to deal with all the other issues and information we raised.

4. Liability protection for the public

Epcor's response to the Comptroller's questions confirms that it is proposing to significantly reduce liability protection for the public by relieving Epcor of any liability for economic losses caused by Epcor service interruptions. Epcor also concedes that this proposal is unprecedented. They suggest it will still be possible for aggrieved parties to sue, but – of course – there will be much less likelihood of such suits succeeding if Epcor's liability is significantly reduced in its formal permit.

We urge the Comptroller to put liability protection of the general public, including protection against economic loss, well ahead of the corporate interests of Epcor.

5. City of Edmonton Council rejects Epcor expansion

As is noted in its response to the Comptroller, Epcor is "*...ultimately owned by a municipal government, the City of Edmonton.*"

It is interesting, then, to consider a recent decision of the Council of the City of Edmonton. After a two day public hearing, the Council of the City of Edmonton decided on September 28, 2005 to reject a proposal to transfer the drainage and sewer system of the City to Epcor. Epcor had pushed hard for the City to give it control and operation of the municipal drainage and sewer system, but Council rejected this proposed Epcor expansion. A number of councilors observed that utility services should be in public hands and should not be transferred to for-profit corporations like Epcor.

This is pertinent for the Comptroller's review of what is ultimately the best way to operate water services in the French Creek area. If even Epcor's owner (the City of Edmonton) is concerned that public utility services should not be transferred to a for-profit corporation like Epcor, then we here in British Columbia should think twice before transferring vital water services to this company.

I would like to reiterate our recommendation that the Comptroller request the Regional District of Nanaimo bring forward proposals for public ownership and operation of water services in the French Creek service area.

6. Rates will increase

The responses from Epcor confirm our understanding that water rates will increase. At page 2 of its response, Epcor says: "...no increase will be instituted after 2007 without an application to the Comptroller's office."

It goes without saying that an application will have to be made to the Comptroller if rates are going to vary from those permitted by the Comptroller.

Epcor's repeated indication (both in its original submission and in its August response) that it intends to make application in 2007/08 for a rate increase should be of concern to ratepayers in the French Creek area. It is a safe bet that Epcor will propose to increase rates at that time in order to help it recoup the unnecessarily high costs of its private borrowing, to meet the profit targets set by headquarters in Edmonton and to make up for the freezing of rates between now and 2007.

7. What is the Water Use Plan?

It may be that Epcor assumes the Business Plan contained at Appendix C of its tariff submission is the formal Water Use Plan which we trust the Comptroller is requiring of the proponent. I'm not sure, for the reasons noted in point 2 above.

In particular, we are unaware whether Epcor has any plan to access water from behind the Arrowsmith Dam.

But if there is, then we strongly urge the Comptroller to require Epcor to develop a formal Water Use Plan that is consistent with the Water Use Plan guidelines set out by the provincial government. Social, environmental, economic, fisheries, First Nations and other considerations should be reviewed comprehensively and formally, in consultation with all community stakeholders.

I hope the Comptroller will deal with the issue of water use planning in its decision regarding the Epcor application.

8. Summary

In summary, C.U.P.E. Local 401 recommends:

- an oral public hearing to test Epcor's evidence
- an extension to review deadlines to afford respondents an opportunity to fairly review all relevant appendices to the application. We also request that a copy of all appendices be sent to C.U.P.E. Local 401
- confirmation by the Comptroller that provincial government policy calls for regional government ownership and coordination of rural water services like those in French Creek
- that the Comptroller request the Regional District of Nanaimo to bring forward a plan for full integration of the French Creek water system within the overall public water system in the rest of the Regional District

- that the Comptroller ask Epcor for an explanation as to why it cited a draft M.O.U. in its August 26th response which had materially and significantly changed by that date
- that Epcor's request for reduced public liability protection be rejected
- in the event that Epcor is contemplating access to water supply from behind the Arrowsmith Dam, that the Comptroller order Epcor to commence a formal water use planning process and to bring forward a proposed Water Use Plan.

Thank you again for providing our Local with the responses from Epcor and for offering us the opportunity to provide this further comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Oakley', with a stylized flourish at the end.

Rodger Oakley, President
Canadian Union of Public Employees
Local 401