

**BRITISH COLUMBIA UTILITIES COMMISSION**  
**IN THE MATTER OF THE *UTILITIES COMMISSION ACT***  
**R.S.B.C. 1996, Chapter 473**  
**and**  
**Re: British Columbia Transmission Corporation**  
**Project No. 3698395 /Order No. G-70-05**  
**Certificate of Public Convenience and Necessity**  
**Application Vancouver Island Transmission**  
**Reinforcement Project**

**FINAL SUBMISSION OF THE**  
**JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE**

**APRIL 19, 2006**

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## INTRODUCTION AND ORDER SOUGHT

1. The Joint Industry Electricity Steering Committee (“JIESC”) is a group of approximately 30 industrial companies operating at 42 locations in British Columbia, including some locations on Vancouver Island. Generally, these operations involve the intensive use of electricity and it is important to the economics of the members’ operations that they continue to receive a reliable supply of low-cost electricity at cost-based rates.
2. The British Columbia Transmission Corporation (“BCTC”) applied for a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to sections 45 and 46 of the *Utilities Commission Act* for the Vancouver Island Transmission Reinforcement Project (“VITR” or the “Project”).
3. In general terms, the VITR Project consists of replacing one of the existing 138 kV transmission lines between South Delta and North Cowichan with a new 67 km, 230 kV AC transmission line. The particulars of BCTC’s Project are outlined in its application to the British Columbia Utilities Commission (“BCUC”) filed as Exhibit B1-1 in these proceedings.
4. Sea Breeze filed its application for a CPCN for the VIC Project on September 30, 2005, the particulars of which are outlined in Sea Breeze’s application to the BCUC and filed as Exhibit B2-1 in these proceedings. Subsequently, on March 1, 2006, Sea Breeze withdrew its CPCN Application. Accordingly, there is no application for a VIC or VIC-like project currently before the BCUC.
5. Based on the evidence in this proceeding, the JIESC submits that a southern transmission connection to Vancouver Island is required and in the public convenience and necessity. The Commission should approve the BCTC option that best balances the public interest, namely:
  - (a) the need for timely electricity transmission reinforcement to Vancouver Island;
  - (b) the reliability and cost effectiveness of the solution chosen;
  - (c) the ability of the BCTC to deliver on its commitments; and

- (d) the appropriate treatment of transmission lines in urban areas throughout British Columbia.

6. The JIESC respectfully supports BCTC's request for an Order, subject to some modification, with the following conditions:

- (a) A CPCN be granted for the VITR Project as proposed by BCTC consisting of a 230 kV AC circuit between Arnott substation ("ARN") and Vancouver Island Terminal ("VIT") as described in Exhibit B1-1, Section 3.0, pp. 28-39; and
- (b) The land portions of the VITR Project be constructed using overhead construction through Segment 2 in Tsawwassen (BCTC Option 1); or
- (c) In the alternative, if the Commission decides that some underground construction through Tsawwassen is required in the public interest (BCTC Option 2), then the land portions of the VITR Project be constructed using overhead construction, except for Segment 2 through Tsawwassen, for which underground construction be approved, subject to:
  - (i) BCTC obtaining within 90 days of the issuance of the CPCN Order, ROW Agreements from at least 75% (at least 77 property owners) providing for underground rights required to construct, operate and maintain the Project (the "ROW Agreements") while maintaining the existing overhead lines;
  - (ii) BCTC reporting to the Commission within 95 days of the CPCN Order that the 75% threshold has been achieved; and
  - (iii) The Commission reviewing and approving the negotiated compensation amounts, if any, payable to property owners to obtain the ROW Agreements and considering the reasonableness of any amounts that may be payable under the ROW Agreements relative to the total cost of all compensation amounts payable pursuant to the acquisition of ROW rights for the entire underground portion of Segment 2 in Tsawwassen.
  - (iv) Failing achievement of the 75% threshold, the CPCN granted authorizes overhead construction for Segment 2 through Tsawwassen.

## STRUCTURE AND CONTENT OF FINAL SUBMISSION

7. The JIESC has not addressed all of the issues raised in the Consolidated Hearing Issues List,<sup>1</sup> rather, the JIESC has only addressed those issues delineated in its Opening Statement.<sup>2</sup> In particular, the JIESC is primarily focused on:

- (a) Ensuring that adequate transmission is available in a timely and reliable manner for its members and other customers on Vancouver Island; and
- (b) Ensuring that the electricity and transmission services are provided in the most cost-effective manner possible consistent with the public interest.

8. For ease of reference, the JIESC's submissions track BCTC's Final Argument main headings to a large extent, modified as follows:

- A. The Need For and Timing of the VITR Project
- B. JIESC's Assessment of Alternatives to the VITR Project – Route Options in Tsawwassen
- C. Route Options in the Southern Gulf Islands
- D. The VIC Project
- E. The Juan de Fuca Project

A Table of Concordance, which indicates where Commission questions asked by the Chair at the close of the evidentiary portion of the hearing are addressed, is included as Appendix A to this argument.

### A. THE NEED FOR AND TIMING OF THE VITR PROJECT

9. The JIESC submits that the need and urgency for transmission reinforcement are clearly proven by the evidence of BCTC and Sea Breeze and their VITR and VIC Projects. The recognition of this need is not new. It has been spoken to many times before this Commission

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<sup>1</sup> Exhibit A-71.

<sup>2</sup> Exhibit C7-4.

during the various Vancouver Island generation proceedings and is effectively summarized in BCTC's Final Argument at pages 3 to 7.

**B. THE JIESC'S ASSESSMENT OF BCTC ALTERNATIVES  
TO THE VITR PROJECT – ROUTE OPTIONS IN TSAWWASSEN**

10. The JIESC agrees with BCTC's approach to the extent that the JIESC accepts that BCTC employed an appropriate process to review and evaluated reasonable alternatives in relation to the VITR Project, however, the JIESC disagrees with the conclusion reached by BCTC to put forth Option 2 as its preferred proposal for Segment 2 through Tsawwassen.

***I. JIESC's Preferred Option 1***

11. The JIESC's preferred route option through Segment 2 in Tsawwassen is Option 1, overhead transmission lines through Tsawwassen, for the following reasons:

- (a) Option 1 is viable and can be constructed in a timely manner;
- (b) Option 1 is the most cost-effective option and can likely be constructed at or near the projected costs; and
- (c) Option 1 maintains EMF levels at current levels, meets all regulatory standards and guidelines for EMF and does not raise property values, safety, and ongoing maintenance issues.

The JIESC will address each of these arguments in turn.

***(a) Option 1 is viable and can likely be constructed in a timely manner***

12. Under Option 1, the existing 138 kV wooden H-frame transmission lines would be removed and replaced with a new 230 kV double-circuit line on single pole steel structures. The new lines would be entirely within the existing ROW.<sup>3</sup>

13. The JIESC submits that Option 1 is viable and can be constructed in a timely manner. In final argument, BCTC concludes that:

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<sup>3</sup> Exhibit B1-1, page 101, line 7.

*"Option 1 is also the option with the least risk of delay from unidentified risks."<sup>4</sup>*

This is consistent with all of the evidence.

(b) *Option 1 is the most cost-effective option and can be constructed at or near the projected costs*

14. In its argument and throughout the hearing, BCTC has always maintained that Option 1 is the least cost alternative.<sup>5</sup> The JIESC agrees and states that Option 1 represents, at a minimum, an estimated \$13.8 million dollar savings to rate payers, plus Stage 2 capital costs.<sup>6</sup>

(c) *Option 1 maintains EMF levels at current levels, meets all regulatory standards and guidelines for EMF and does not raise property values, safety, and ongoing maintenance issues*

15. The JIESC submits that Option 1 and the associated EMF levels will be well below the levels established in all regulatory standards and guidelines for EMF and EMF levels would be the same at the edge of the existing ROW and reduced as much as possible using a narrow profile assembly and alternating the phases on one side of the structure versus the other.<sup>7</sup>

16. In specific response to the mitigation argument advanced by BCTC in its Final Argument,<sup>8</sup> the JIESC submits that there is no need for BCTC to undertake additional mitigation measures available for the overhead structure such as making them taller.

17. In all other respects, the JIESC agrees with BCTC in that the evidence in this proceeding reconfirms the Commission's earlier rulings and directions on EMF and there is no new evidence supporting suggestions that these decisions should be revisited.<sup>9</sup>

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<sup>4</sup> BCTC's Final Argument, at page 40, paragraph 105; Vol. 8, page 1059, lines 4-14.

<sup>5</sup> BCTC's Final Argument, at page 40, paragraph 105; Exhibit B1-54, BCUC IR 4.203.1.

<sup>6</sup> Exhibit B1-54, BCUC IR 4.203.1.

<sup>7</sup> BCTC's Final Argument, at page 46 - 47, at paragraph 127; Exhibit B1-6, BCUC IR 1.104.2.

<sup>8</sup> BCTC's Final Argument, at page 47, paragraph 127; Vol. 15, page 2458, line 18 – page 2459, line 18.

<sup>9</sup> BCTC's Final Argument, at page 46, paragraph 126.

18. BCTC raises EMF, property values, safety and ongoing maintenance issues in its argument to address concerns raised by various parties to the hearing. However, BCTC does not put forward EMF, property values, or safety issues as reasons for its choosing Option 2 over Option 1.

19. The JIESC supports BCTC's characterization of the evidence and its arguments that:

- (a) *Option 1 would ... involve the least disruption to homeowners in Tsawwassen;*<sup>10</sup>
- (b) *... BCTC's attempts with TRAHVOL and the SDSSPAC to measure the reaction of overhead lines in comparison with the under-grounding proposal have been "unsuccessful;"*<sup>11</sup>
- (c) *... the evidence in this proceeding reconfirms the Commission's earlier rulings and directions on EMFs and there is certainly no "authoritative new evidence" that suggests these decisions should be revisited;*<sup>12</sup>
- (d) *In the context of Option 1, both typical and maximum EMF levels will be well below the levels established in the ICNIRP guidelines. While EMF levels immediately under the new overhead line would be greater than existing levels, as a result of the configuration of the conductors these levels would decrease more rapidly and would be approximately the same at the edge of the ROW. If overhead construction were to take place on the existing ROW, the structures and lines would be designed to reduce EMF as much as possible using a narrow profile assembly and alternating the phases on one side of the structure versus the other;*<sup>13</sup>
- (e) *... the effect of Option 1 on property values would likely be a modest positive or negative effect depending on the pre-existing circumstance. This was primarily related to where the new poles would be located and the ability to "see" the poles. There was no evidence contradicting Mr. Dybvig's opinion or indicating that if overhead lines were constructed*

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<sup>10</sup> BCTC Final Argument, at page 40, paragraph 105; Vol. 15, page 2476, lines 4 – page 2482, line 20.

<sup>11</sup> BCTC Final Argument, at page 41, paragraph 109.

<sup>12</sup> BCTC Final Argument, at page 46, paragraph 126.

<sup>13</sup> BCTC's Final Argument, at page 46-47, paragraph 127; Exhibit B1-6, BCUC IR 1.104.2;

*through Tsawwassen that this would result in dramatic impacts on property values.<sup>14</sup>*

20. For reasons given previously, the JIESC submits that this Commission should accept that Option 1 does not increase EMF levels at the edge of the ROW and has no negative effect on property values or safety issues in its consideration of the various route options presented by BCTC.

21. With respect the scientific benefits of removing the lines, the JIESC submits that it follows that if EMF levels are within acceptable standards and guidelines, then the benefit of the removal of those same lines and the associated reduction of EMF levels is irrelevant. No evidence has been put forth in the hearing to conclude otherwise.

## ***II. Option 2***

22. The JIESC repeats its arguments in favour of Option 1 and submits that Option 2 is not a preferred option for the following reasons.

(a) *Option 2 is unconventional and sets an expensive and unwanted precedent*

(i) *the additional incremental cost estimate for Option 2 is, at a minimum, overly conservative*

23. The JIESC submits that the estimated \$13.8 million dollar additional incremental cost for Option 2 is overly conservative and that the likely additional cost is actually substantially higher on the basis of the following:

(a) Envirow Consulting identified that:

*... the landscape restoration costs were likely to be higher than BCTC's planning level estimates;<sup>15</sup>*

(b) BCTC's estimate includes \$400,000 for legal, survey and other costs to effect an exchange of overhead for underground rights;<sup>16</sup>

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<sup>14</sup> BCTC's Final Argument, at page 47, paragraphs 130 – 131; Exhibit B1-37, page 46, lines 1172-1185.

<sup>15</sup> Exhibit B1-63.

(c) No estimated compensation costs have been provided to effect the exchange of overhead for underground rights;<sup>17</sup> and

(d) BCTC acknowledges that:

*... if a substantial number of the property owners on the ROW refuse to exchange overhead for underground rights, the costs of acquiring these rights could be much greater than the amount allocated.*<sup>18</sup>

24. When all of these factors are considered, it is very likely that BCTC's \$13.8 million dollar premium for Option 2 underground wiring is not merely overly conservative. Rather, it is likely that the underground portions for Option 2 will cost significantly more to complete than forecasted.

(ii) *what BCTC characterizes as an "exchange" for ROW rights is much more complex*

25. In the JIESC's submission, there is a fundamental flaw in BCTC's reasoning with regard to what it characterizes as an "exchange" of ROW rights with property owners. An exchange would mean BCTC would exchange its overhead rights for underground rights, but this is not in fact what would need to happen for BCTC to implement Option 2 through Tsawwassen.

26. The evidence in this hearing is that BCTC intends to:

*... release [its] rights to build any future overhead lines ... to remove one existing line and replace it with an underground line, with the understanding that eventually the other line would come out and in the future there would be no overhead lines on that right-of-way.*<sup>19</sup>

And further:

*... So it's our intent, although we can't guarantee when they'll come out, that's – you know, those kinds of things may be subject to a Commission hearing, but it is*

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<sup>16</sup> Exhibit B1-6, BCUC IR 1.86.1.

<sup>17</sup> Vol. 30, page 2582, lines 2 - 4.

<sup>18</sup> BCTC's Final Argument, at page 49, paragraph 137.

<sup>19</sup> Vol. 8, page 1182, lines 8 to 15.

*our intent to guarantee that we will not build any new overhead lines on that right of way.*<sup>20</sup>

27. Even if BCTC undertakes to remove the remaining line in the future, the delay until the 2<sup>nd</sup> stage is undertaken in 2017<sup>21</sup> and thus before any tangible benefit is realized by property owners is significant and will likely result in further costs to affect an “exchange” of ROW rights with Tsawwassen property owners.

28. The JIESC submits that this Commission should consider the acknowledged \$13.8 million dollar additional cost for Option 2, the additional risk of delay, and the risk of increased associated costs for acquiring additional ROW rights, in rejecting Option 2.

*(iii) Tsawwassen property owners bought their properties with knowledge of the ROW*

29. In judging the economic position of Tsawwassen property owners along Segment 2, it must be remembered that they bought their properties with knowledge of the existing ROW. To the extent that the ROW may affect the value of these properties, the purchasers received the benefit of that affect at the time of purchase.

30. With respect to Tsawwassen property owners and the ROW, the evidence in this hearing is as follows:

*Ms. Hansen: Q: ... was the right of way there prior to those homes being built?*

*Mr. Barrett: A: We have aerial photographs of the area of – in the late fifties. There were a few buildings in the Tsawwassen area, but very few. I would have to say that the majority, if not all of those homes, were built after the line was put in. There may have been one or two that were there before, but I don't think so.*<sup>22</sup>

31. Later in the proceedings, BCTC's Mr. Dunn clarified the issue when he stated:

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<sup>20</sup> Vo. 8, page 1183, lines 10 to 15.

<sup>21</sup> Exhibit B1-54, BCUC IR 4.203.1.

<sup>22</sup> Vol. 8, at page 1099, at line 26 to page 1100, line 8.

... There were no homes adjacent to the right of way when the actual lines were installed and the right of way was put there.<sup>23</sup>

32. Clearly the Tsawwassen property owners bought their properties with knowledge of the ROW and associated agreements and this Commission should consider that property owners had, or ought to have had, the requisite knowledge of the ROW Agreements and accordingly, they should not be awarded an unnecessary windfall that is not in the public interest. The cost of changes to the base case (Option 1) to benefit a special interest group should be borne by the parties requesting and receiving the benefit of those changes.

(iv) *the Tsawwassen ROW situation is not unique*

33. The JIESC is concerned that this Commission decide to set such an expensive and unwanted precedent in this case. The JIESC believes there are likely many other neighbourhoods in British Columbia with similar circumstances even though Mr. Barrett indicated that the Tsawwassen situation is “*unique in some respects*”<sup>24</sup> with respect to overhead transmission lines that run through residential neighbourhoods in the province.

34. However, Mr. Barrett also agreed that in terms of EMF, the situation in Tsawwassen was “*not unique*”,<sup>25</sup> but that this ROW is “*difficult to get to and there are a large number of homes built right on the boundary of the ROW.*”<sup>26</sup> Mr. Barrett also stated that:

*We have rights of way throughout the Lower Mainland that have many residents of residential properties at the edge of our rights of way, and many cases where there's actually yards that extend into our right of way. What is unique is the way this is entirely enclosed and that barriers have been allowed to be built all the way through. The houses are so close together that we can't get at the right of way. So it is unique in some respects. But as far as the proximity of, as you point out, to EMF and other, it's not. Like I said, there are a few places where we even have yards under 500 kV lines.*<sup>27</sup>

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<sup>23</sup> Vol. 15, page 2569, at line 26 to page 2570, line 2.

<sup>24</sup> Vol. 15, page 2507, line 16.

<sup>25</sup> vol. 15, page 2506, lines 17 to 19.

<sup>26</sup> Vol. 15, at page 2506, lines 14 to 16.

<sup>27</sup> Vol. 15, at page 2507, lines 8 to 20.

35. Mr. Barrett confirmed and agreed that it was his understanding that the ROW Agreements give him rights of access.<sup>28</sup> In other words, the unique access problems BCTC faces have been created by the property owners in violation of the terms and conditions of the ROW Agreements.

36. When questioned further as to why the barrier to access was a justification for the expenditure, Mr. Barrett answered that:

*I will suggest that some utilities on a quarter like this wouldn't allow these kinds of barriers to be built. And the past history with B.C. Hydro has been they've tried to accommodate the property owners as much as they could and remove as little vegetation as possible to allow what they call compatible uses of the right of way, which might be compatible to operating the transmission line, inspecting it, but you know, produce inconveniences in assessing it. The only way I can say this is a justification is, is this the way it is? And the way that the property has been subdivided and developed in Tsawwassen, we do have the rights under those right of way agreements if necessary to -- for example, if we have to replace one of those structures and can't do it without tearing down those fences and hedges, we can do it. And in theory we have no obligation to necessarily to repair those if they actually impeded our access to our structures. But again that's a legal question. But we are judging this on a whole basis.<sup>29</sup>*

37. With respect to the foundations at the edge of the ROW issue, Mr. Barrett confirmed that their existence does not cause him concern from an operational perspective,<sup>30</sup> and also confirmed that:

*... there are other rights of way where there are residences as close to the right of way as through Tsawwassen.<sup>31</sup>*

38. With respect to the uniqueness of the Tsawwassen area, Mr. Barrett stated that BCTC's decision turned on the number of foundations close to the ROW in that they were – “packed together” -, and went on to say that:

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<sup>28</sup> Vol. 15, at page 2508, lines 16 to 19.

<sup>29</sup> Vol. 15, at page 2508, line 22 to page 2509, line 17.

<sup>30</sup> Vol. 15, at page 2509, lines 18 to 23.

<sup>31</sup> Vol. 15, at page 2510, lines 13 to 18.

*... ... we weren't able to find one like that. But there are some areas in Surrey and Coquitlam where – and some of these are quite recent, where homes have been built with the foundations on the right of way, the edge of the right of way.*<sup>32</sup>

39. Some Intervenors continued to maintain throughout the course of the hearing that Segment 2 through Tsawwassen is “unique” in that it is literally in the “back yards” of residents. The JIESC submits that the Tsawwassen situation is not unique, or alternatively, not unique enough, to justify the Commission setting such a precedent.

40. The JIESC agrees with the testimony of BCTC's Mr. Barrett and his response to a question from Commissioner Nicholls:

*Mr. Barrett: ...And the ratepayers, you know, outside of Tsawwassen get no benefit from this additional capital investment other than just the knowledge we've tried to balance all our stakeholders' interests. And we understand that they could be disputed, you know, what the balance might be. This is just our judgment on -- it's the somewhat unique character of this particular situation.*

*Commissioner Nicholls: It's somewhat unique in that the people that you've tried to accommodate aren't very happy with the balance, are they?*

*Mr. Barrett: A: Yes, and I think you can see that with all of the evidence we've filed, we have looked at other alternatives, but our conclusion is that the only real alternatives that we'd be prepared to undertake and recommend to this Commission would be Options 1, 2 or 3, and they all go through Tsawwassen.*<sup>33</sup>

41. The JIESC submits that if this Commission decides that these overhead lines must be removed from Segment 2 through Tsawwassen and that BCTC must incur the additional cost to put them underground, then other existing transmission lines in the Province of British Columbia may arguably deserve the same treatment. Moreover, this Commission should not set a precedent that rewards, and thus by implication encourages, non-conforming improvements within an existing ROW which “improvements” are infringements that offend the provisions of ROW Agreements.

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<sup>32</sup> Vol. 15, at page 2510, line 22 to page 2511, line 1.

<sup>33</sup> Vol. 15, page 2492, line 19 – page 2494, line 9.

(b) Option 2 creates significant uncertainty respecting both costs and delay to acquire ROW rights

42. The JIESC submits that this Commission should consider that both the risk of delay and the associated cost to negotiate new underground ROW rights is too great a risk for the public to bear when there is such a need and urgency for transmission reinforcement to Vancouver Island. To that end, the JIESC repeats and adopts its arguments found at paragraphs 11 to 41 of this argument.

43. BCTC acknowledges that:

*... if a substantial number of the property owners on the ROW refuse to exchange overhead for underground rights, the costs of acquiring these rights could be much greater than the amount allocated.<sup>34</sup>*

44. BCTC put forth Option 2 as its preferred choice in this hearing and it made a commitment to property owners not to recommend Option 1.<sup>35</sup> BCTC has maintained and continues to maintain in final argument that:

*The proposal to underground the proposed circuits on the existing ROW was put forward in an effort to balance a number of competing interests and to avoid overhead construction on the existing ROW, not on the basis that this would be done at any cost.<sup>36</sup>*

45. In addition, the JIESC submits that BCTC did not, and has not, properly canvassed or assessed the “competing interests” to which it refers to in making its conclusion to put forth Option 2 as its preferred choice. At page 69 of its Final Argument, BCTC effectively concedes this when it states:

*... BCTC recognizes that there is no evidence on the record of support for Option 2, and that the participants in the hearing have refused to express a preference between Option 1 and Option 2.*

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<sup>34</sup> BCTC’s Final Argument, at page 49, paragraph 137.

<sup>35</sup> Exhibit B1-1, at page 52, lines 14 – 16 and Appendix D.

<sup>36</sup> BCTC’s Final Argument, at page 49, paragraph 137.

*On this basis, BCTC does not believe that it can continue to justify the additional \$14 million cost and risks associated with Option 2 in the absence of some significant degree of support for this Option. Accordingly, BCTC believes that some mechanism should be put in place to finally determine if there is any support for the Option 2 and to attempt to mitigate at least some of the risks associated with this proposal.<sup>37</sup>*

46. BCTC then goes on to propose that it proceed with Option 2 if 50% plus one owner of the Tsawwassen property owners are in favour of the underground option. In the JIESC's submission, 50% plus one owner, is not a "significant degree of support" by anyone's standard. Furthermore, it could mean that BCTC is committing to spend an additional \$13.8 million, and likely significantly more, on the basis of the desires of 52 property owners while the interests of the other 50 property owners and the ratepayers are ignored. This cannot be a proper measure of the public interest.

47. The JIESC submits that even if ROW Agreements are negotiated with 51% of property owners, the threshold set by BCTC, does not warrant the acknowledged increase in the cost of Option 2 and the potential for significant delay to acquire an "exchange" of ROW rights should be afforded considerable weight in this Commission's consideration of Option 2.

48. In any event, the preference of the Tsawwassen property owners should be considered, but should not be the determinative factor in deciding whether to go ahead with Option 1 or Option 2. Any "commitment" by BCTC only extends to not "recommending" the overhead option.<sup>38</sup> Clearly, such a commitment does not bind this Commission which must decide the preferred option based on a consideration of the public interest.

49. The JIESC submits that the BCTC does not merely acknowledge the potential for "unexpected delays or costs"; BCTC fully expects delays and additional costs. This is evidenced by the Order sought by the BCTC which builds in delay specifically for Option 2 which is not required for Option 1.

50. In summary, on Option 2's potential for delay and uncertainty, BCTC's preferred Option 2 will almost certainly result in significant delay in that BCTC must undertake to complete legal,

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<sup>37</sup> BCTC's Final Argument, at page 69, paragraph 198.

<sup>38</sup> Exhibit B1-1, at page 52, lines 14 – 16; Appendix D.

survey and other costs to effect an “exchange” of overhead for underground rights from Tsawwassen property owners. In its final argument, BCTC attempts to limit the potential for significant delay by proposing to seek further direction from the Commission if it appeared that there were unexpected potential delays or costs associated with proceeding with Option 2.<sup>39</sup>

(c) Impact and rights of access issues are without merit

51. BCTC makes two additional arguments to support its preferred choice of Option 2, underground in Segment 2 through the Tsawwassen ROW.

(i) *Option 1 would not necessarily have the greatest impact during the operation phase of the Project*<sup>40</sup>

52. The JIESC submits that notwithstanding that BCTC argues that Option 1 would have the greatest impact during the operation phase of the Project, there is no evidence before this Commission to support such a conclusion, in fact, the evidence before this Commission supports a contrary conclusion.

53. As stated by BCTC, under Option 2:

*Under Option 2, one of the existing 138 kV lines would be removed and replaced with a new underground 230 kV cable circuit installed in ductbanks. The second existing overhead line would remain in place. To minimize further disruptions to properties, a second set of ductbanks would be installed at the same time to accommodate a second 230 kV structure if this was required and approved at some time in the future.*<sup>41</sup>

54. Option 1 effectively maintains the status quo because even if Option 2 is implemented, one of the existing overhead lines remains in place until Stage 2 of the VITR Project is eventually concluded.<sup>42</sup> The evidence before this Commission is that:

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<sup>39</sup> BCTC's Final Argument, at pages 49-50, paragraph 137.

<sup>40</sup> BCTC Final Argument, at page 40, paragraph 106.

<sup>41</sup> BCTC's Final Argument, at page 49, paragraph 134 referencing Exhibit B1-1, page 32, lines 1-3; B1-1, page 101, lines 8 – 10; and B1-6, BCUC IR 1.3.1.

<sup>42</sup> Exhibit B1-6, BCUC IR 1.3.1.

*The need for the second 230 kV circuit is currently forecast for 2017 and will be the subject of a separate CPCN Application when necessary.*<sup>43</sup>

Accordingly, one of the existing lines may not be removed until at least 2017, and, there is no certainty that this will actually be done if, and until, it is approved.

55. The JIESC submits that Option 1 would not necessarily have the greatest impact from a visual perspective and that the impact is certainly not significantly “greater” than the existing status quo to justify this Commission granting a CPCN for Option 2 over Option 1.

(ii) *[Option 1] ... would require BCTC to continue to access properties along the ROW on an ongoing basis to conduct vegetation management and occasional facilities maintenance.*<sup>44</sup>

56. The JIESC submits that Option 1 and Option 2 will require essentially the same maintenance for many years to come as the existing line will still require on-going vegetation management and occasional facilities maintenance. Option 1 will not require additional vegetation management and occasional facilities maintenance than is already undertaken and BCTC’s preferred Option 2 will not eliminate ongoing vegetation management and occasional facilities maintenance.

57. In fact, BCTC admits that ongoing vegetation management and facilities management is required at page 51 of its argument when it states:

*While deep, tap-rooted trees would not be permitted to be planted within 5 meters of the centre line of either ductbank, on balance, a greater variety of species could be planted and maintained than with the existing 138 kV lines or if Option 1 was in place.*<sup>45</sup>

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<sup>43</sup> Exhibit B1-1, at page 25, lines 10-11.

<sup>44</sup> BCTC Final Argument, at pages 40 - 41, paragraph 106.

<sup>45</sup> BCTC’s Final Argument, at page 51, paragraph 142; Volume 19, page 3407, lines 4 and pages 3128 - 3132.

58. BCTC will also have the added burden with Option 2 to ensure that the public is made aware of the danger of invisible underground lines given the extensive digging and gardening in the area.

(d) The incremental cost to the public for Option 2 outweighs the benefit to a small group of property owners

59. When weighing the costs and associated benefits that Option 2 represents as compared to Option 1, the JIESC repeats and adopts its arguments put forth at paragraphs 11 - 21 of this argument.

60. In this section, the JIESC will respond to some of the Chair's questions put to the parties at the end of the evidentiary portion of the hearing, which questions conceptually focus on the cost/benefit analysis this Commission must undertake and, to that end, the questions raise fundamental issues including what interests form the public interest and compensation to individual property owners affected by the public interest.

(i) *The Public Interest*

61. The Commission asked the asked the question:

What are the interests that can be considered as part of the public interest in respect of the matters to be decided in this proceeding?

62. The JIESC submits that the meaning of “necessity” in a given case must be ascertained by reference to the context and to the objects and purposes of the statute in which it is found.<sup>46</sup> The question of whether public convenience and necessity requires a certain action is not one of fact. It is predominantly the formulation of an opinion.<sup>47</sup>

63. Notwithstanding that the Court of Appeal was overturned on the main issue in *Memorial Gardens*, the JIESC concurs with the *obiter dicta* of Justice Sheppard at paragraph 77:

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<sup>46</sup> *Memorial Gardens v. Colwood Cemetery Co.*, [1958] S.C.R. 353, at paragraph 8.

<sup>47</sup> *Ibid*, at paragraph 9.

A perusal of the provisions of these statutes – the *Cemeteries Act* and the *Public Utilities Act* – indicates their intention to be not to benefit a particular class or individual and therefore those statutes create not private rights but public rights – ...<sup>48</sup> Such construction is borne out by the provisions in sec. 14, *Public Utilities Act*, that “any interested person may file a complaint.” Such a provision would be expected in a statute conferring public [rights] by would be out of place in a statute creating private rights.<sup>49</sup>

The JIESC submits that, similar to the *Public Utilities Act*, the *Utilities Commission Act* creates public rights, not private rights and accordingly, the legislature did not intend to benefit a particular class or individual.

(ii) *Compensation to Property Owners*

64. The Commission asked:

Does the Commission have jurisdiction to order a public utility to compensate property owners for adverse impacts of utility plant or system in respect of both conforming and non-conforming improvements?

65. The JIESC submits that the short answer is no, the Commission does not have jurisdiction to order compensation and nor should it do so. If BCTC proceeds with Option 1, then the rights of the residents to compensation are contained in the ROW Agreements and the interpretation of those agreements is a matter for the courts, not the Commission.

66. Both conforming and non-conforming improvements are subject to existing ROW Agreements that create underlying contractual rights registered on land titles. What is a conforming or non-conforming improvement is contained in the ROW Agreements themselves and accordingly, any contractual dispute concerning the interpretation of “improvements” is a matter of contractual interpretation and accordingly a civil dispute between BC Hydro and third parties.

67. If BCTC proceeds with Option 2, then compensation to the Owners will be determined by negotiation or under the law governing expropriation under the *British Columbia*

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<sup>48</sup> *Gorris v. Scott* (1874) LR 9 Ex 125; *Ward v. Hobbs* (1878) 2 QBD 150 as cited in *Memorial Gardens v. Colwood Cemetery Co.*, IBCCA) [1957] 22 WWR 348.

<sup>49</sup> *Memorial Gardens v. Colwood Cemetery Co.*, IBCCA) [1957] 22 WWR 348, at paragraph 77.

*Expropriation Act*,<sup>50</sup> which Act takes precedence over the *Utilities Commission Act*. Section 2(1) of the *Expropriation Act* states:

*2(1) If an expropriating authority proposes to expropriate land, this Act applies to the expropriation, and, if there is an inconsistency between any provisions of this Act and any other enactment respecting the expropriation, the provisions of this Act apply (emphasis mine).*<sup>51</sup>

68. The JIESC submits that in the case of contract disputes, negotiation and expropriation, the Commission's involvement is limited to a review of whether or not the expenditures made by the utility are prudent for the sole purpose of deciding whether they should be included in the rate base when brought into service.

69. In the alternative, should this Commission determine that it does have jurisdiction to determine whether, and in what amount, compensation is payable to property owners, the JIESC submits that the Commission should not exercise its discretion in these circumstances for the following reasons:

- (a) First, the Commission's decision to award compensation to a property owner renders the Commission incapable of reviewing its own decision at a later date when it considers whether BCTC's expenditures were prudent and the associated impact on rate base;
- (b) Secondly, and strictly from a policy perspective, this Commission should not set a precedent that rewards, and thus by implication encourages, non-conforming improvements within an existing ROW which "improvements" are arguably infringements that offend the provisions of ROW agreements; and
- (c) Thirdly, the Commission risks awarding compensation to a property owner in an amount which is inconsistent with what the Inquiry Officer or Court under the *Expropriation Act* would have awarded, and has awarded in past decisions.

70. To summarize, the JIESC submits that this Commission does not have the requisite jurisdiction to award compensation to property owners. In the alternative, should this Commission decide that it does have jurisdiction, then the JIESC submits that it should not exercise its jurisdiction in these circumstances.

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<sup>50</sup> *Expropriation Act*, [RSBC 1996], Chapter 125, as amended.

<sup>51</sup> *Expropriation Act*, [RSBC 1996], Chapter 125, as amended, section 2.

### **III. Option 3**

71. BCTC's Option 3 is the removal of one of the existing overhead lines in Tsawwassen and replacement with an underground circuit in the city streets in Tsawwassen.

72. The estimated incremental cost for the Tsawwassen portion of Option 3 is \$14.8 million more than Option 1 and this estimate is merely a planning level estimate with a corresponding +/- 30% degree of accuracy.<sup>52</sup>

73. During the course of the hearing, no preferred route for Option 3 was identified. BCTC argues that this is because Delta did not identify its preferred route.<sup>53</sup>

74. The JIESC submits that because of the level of uncertainty with respect to the route being advanced, the lack of any serious notice to affected parties, the planning level cost estimates, and the lack of evidence concerning scheduling and timing of Option 3, that this Commission cannot conclude that Option 3 is in the public interest.

### **IV. Options 4, 5, 6,7 and associated modifications**

75. The JIESC submits that Options 4, 5, modified Option 5, 6 and 7 are all infeasible given the considerable uncertainty in relation to costs and what BCTC has characterized as "*significant shortcomings*"<sup>54</sup> (Option 4) and "*infeasible*"<sup>55</sup> options (Option 5, modified Option 5 and 6), including First Nations compensation, archaeological protection issues, rights of way acquisitions, seismic reinforcement and conditions, the potential for rejection from the Environmental Assessment process, and the significant risk of delay. To this end the JIESC accepts the arguments of BCTC found at pages 54, paragraph 157 to page 65, paragraph 186.

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<sup>52</sup> Exhibit B1-54, BCUC IR 4.204.3; Vol. 15, page 2562, lines 1 to 13.

<sup>53</sup> BCTC's Final Argument, at page 54, paragraph 153.

<sup>54</sup> BCTC's Final Argument, at page 55, paragraph 159.

<sup>55</sup> BCTC's Final Argument, at page 59, paragraph 173; page 63, at paragraph 181; page 64, at paragraph 185;

### C. ROUTE OPTIONS IN THE SOUTHERN GULF ISLANDS

76. With respect to the various route options and alternatives in the southern Gulf Islands, the JIESC support BCTC's conclusion found at page 71 of its argument that its proposed route through the Gulf Islands is in the public interest and should be approved by this Commission. The JIESC agrees with BCTC in that any alternative to remove the transmission lines from the Gulf Islands would cost a minimum of \$175 million dollars more than the proposed alternative and that under grounding is not justified.<sup>56</sup> Clearly, this level of expenditure is well beyond that warranted by any alleged benefits.

### D. THE VIC PROJECT

77. The JIESC's submissions on the VIC or a revised VIC or "VIC-like" project (hereinafter collectively referred to as the "revised VIC Proposal") are as follows.

(a) *The Commission has no jurisdiction to grant BCTC a CPCN for a revised VIC Proposal*

78. The Commission has no jurisdiction to grant BCTC a CPCN for a revised VIC Proposal because Sea Breeze's CPCN application for the VIC Project has been withdrawn and without an application for either the VIC Project or a revised VIC Proposal before it, the Commission has no jurisdiction to grant to BCTC a CPCN for the VIC Project or a revised VIC Proposal.

79. The JIESC submits that pursuant to subsection 46(3) of the *Utilities Commission Act*,<sup>57</sup> the Commission has no jurisdiction to amend BCTC's VITR Application so as to substitute a completely different project in place of the VITR Project. The Commission's jurisdiction is limited to those applications that are before it, not hypothetical projects.

(b) *The revised VIC proposal is not in the public interest*

80. The JIESC submits that the revised VIC proposal is not in the public interest. The JIESC endorses BCTC's argument and its extensive assessment of the VIC Project starting at page 21 of its argument, at paragraph 52 and highlights the following in respect of the revised VIC Proposal.

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<sup>56</sup> B1-1, page 106 Table 4-4; BCTC's Final Argument at page 70, paragraph 206.

<sup>57</sup> *Utilities Commission Act*, RSBC 1996, Chapter 473, as amended.

(i) *Uncertainty of Costs and Timing*

81. The JIESC submits that this Commission does not have the requisite assurance of the accuracy of ABB's cost estimate for HVDC Light™ technology such that it can place any reasonable reliance on HVDC Light™ technology as an alternative to BCTC's AC technology.

82. The JIESC tested the accuracy of ABB's assurance through cross-examination when it pressed Sea Breeze and ABB for some assurance of the accuracy of ABB's EPC estimates. Sea Breeze stated that it had relied on an e-mail from Christer Eriksson of ABB that "*provides assurance of the accuracy of ABB's EPC estimates.*"<sup>58</sup> When asked for a copy of that e-mail assurance, Sea Breeze in its response to the request answered:

*After reviewing their respective databases, neither Sea Breeze nor ABB has been able to locate the above-reference email.*<sup>59</sup>

83. The JIESC submits that this Commission cannot take any comfort from that evidence. Without some solid assurance of cost estimates, this Commission should not conclude that HVDC Light™ technology is the better alternative.

84. With respect to BCTC's argument and in particular, Appendix B – System Costs/Benefits, the JIESC relies on the work that BCTC has done in Appendix B and in evaluating each of "System Benefits" and associated cost offsets that Sea Breeze claimed resulted in the VIC proposal representing an overall savings compared to the VITR Project.

(ii) *State-of-the-Art Technology*

85. The JIESC and other Vancouver Island customers do not want to be the test subjects for new "state-of-the-art", otherwise unproven, technology in its first application. The JIESC agrees with BCTC that there is no evidence in this hearing that anyone else has purchased the 550 MW product offered by ABB notwithstanding that it has been available for some time.<sup>60</sup>

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<sup>58</sup> Transcript Vol. 30, starting at page 5676, lines 2-19.

<sup>59</sup> Sea Breeze response to undertaking Vol. 30, at page 5676.

<sup>60</sup> BCTC's Final Argument, at page 15, paragraph 38 section 5; Transcript Vol. 32, at page 6044, line 23 – pg. 6045, line 18.

86. Like BCTC, the JIESC is also concerned that ABB may indeed stop supporting HVDC Light™ technology if in fact it is used by BCTC, as it did previously in its dealings with BC Hydro when it stopped supporting the mercury arc technology used in the original HVDC Pole 1.<sup>61</sup> The JIESC submits that a similar decision by ABB would result in substantial costs to BCTC the likes of which are outside of any reasonable risk assessment and clearly not in the public interest.

(c) Exhibit C31-21 Directions

87. The Commission should not grant a CPCN to BCTC for the revised VIC Proposal subject to directions similar to those found in Exhibit C31-21 even if it finds either VIC or JDF may be more cost-effective than VITR because a CPCN cannot be issued to BCTC for the revised VIC proposal, or the JDF, as a CPCN application is not before the Commission for the revised VIC proposal and thus such a direction is outside the Commission's jurisdiction, and the JDF does not consist of facilities that require or can be issued a CPCN by this Commission.

88. In the alternative, should this Commission determine that it has jurisdiction and grants a CPCN to BCTC for a revised VIC proposal, then in answer to the Commission's' question:

If the Commission finds that either VIC or JDF may be more cost-effective than VITR, can the Commission grant the CPCN to VITR subject to directions similar to those found in Exhibit C31-21?;

the JIESC submits that the directions in Exhibit C31-21 must be substantially different than the terms and directions to those found in Exhibit C31-21 and modified as follows:

- (a) good faith discussions between Sea Breeze, BCTC, and BC Hydro must not exceed 60 days for the revised VIC Proposal;
- (b) failing an agreement on either project, BCTC be ordered to proceed with the VITR Project, with Option 1 for Segment 2 overhead through Tsawwassen; and
- (c) no report concerning the outcome of discussions with Sea Breeze is required.

89. If an agreement is reached in respect of either the revised VIC Proposal, then the JIESC submits that:

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<sup>61</sup> BCTC's Final Argument, at page 15, paragraph 38, section 5.

- (a) there should be no compensation, alternatively, minimal compensation, to Sea Breeze for development work that has value going forward. In particular, there should be no compensation for any “propriety information” as the whole VIC routing is a concept that Sea Breeze apparently thinks is self-evident and should have been adopted by BCTC in the first place;
- (b) if compensation is awarded, there must be some form of proceeding instituted to allow stakeholders to test any compensation payable to Sea Breeze and to allow the agreement to be examined and approved by the Commission; and
- (c) Sea Breeze need not have continued involvement in the development of the project.

90. With respect to cost for participation in this proceeding, the JIESC submits that Sea Breeze should not be awarded costs that would encourage promoters of all sorts to bring on applications to the BCUC for projects that they want to have BCTC or BC Hydro take on for their ultimate gain as a developer. The JIESC is opposed to any cost award to Sea Breeze and expects to participate in what we understand to be a subsequent proceeding to hear Sea Breeze’s application for costs.

#### **E. THE JUAN DE FUCA PROJECT**

91. The JIESC had fundamental concerns with the JDF Project from the outset of this hearing process and those concerns are amplified having explored the JDF Project in further detail throughout this hearing process. The JIESC’s submits that this Commission should not issue a CPCN for the JDF Project, or endorse the JDF Project for the following reasons.

(a) *The Commission has no jurisdiction to grant a CPCN for the JDF Project*

92. The JIESC submits that the JDF Project, whose facilities consist of an international transmission line, does not require and cannot be issued a CPCN. This Commission has no jurisdiction over the JDF Project as the JDF Project is under the jurisdiction of the National Energy Board pursuant to the *National Energy Board Act*, R.S., c. N-6, as amended.

(b) The JDF Project is not in the public interest

(i) *The JDF Project is unlikely to be constructed in a timely manner*

93. The JIESC submits that in the circumstances of this case, the Commission must be "virtually certain" that the JDF Project will proceed on an acceptable schedule before the project is even considered as a possible alternative to BCTC's VITR Project. The consequences of not securing reliable and timely transmission reinforcement to Vancouver Island are simply too great to take any other position. BCTC has demonstrated that a great deal of effort has gone into VITR and has presented at least one option that can be completed in a timely manner. JDF must provide a similar or better degree of certainty if it is to be considered.

94. Furthermore, the Commission has significant power to ensure BCTC and BC Hydro carry out their obligations under a CPCN. The Commission has no such power over Sea Breeze.

95. The JIESC submits that Sea Breeze and its partners, including EIF, have not established that the JDF Project, or the necessary upgrades to the Olympic Peninsula, will be completed in a timely manner. Further, when the JIESC tested Sea Breeze's ability to meet its scheduled in-service date, Mr. Chernack's evidence was that the JDF would be ready for service in mid-2008.<sup>62</sup>

96. However, throughout the course of the hearing, it became readily apparent to the JIESC that one could not rely on an in-service date with any reasonable degree of certainty in that various Sea Breeze representatives seem to hold different opinions as to the in-service date.<sup>63</sup> Moreover, these different opinions appear to be in direct contrast to ABB's expected timeframe given in its cross examination.<sup>64</sup>

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<sup>62</sup> Vol. 30, at page 5685, lines 9-12.

<sup>63</sup> Evidence of El-Rambly, Vol. 31, page 5838, lines 7-10 [April 2008]; Evidence of Mr. Tompkins, Vol. 32, page 5933, lines 17-24 [February to October 2008].

<sup>64</sup> Evidence of ABB's Mr. Bahrman, at Vol. 32, page 6034, lines 16-19 [20 – 24 months following an EPC Contract].

97. The JIESC submits that given the various opinions, it is apparent that Sea Breeze representatives offer in-service dates that do not represent firm commitments, but rather are “best guess” estimates that reflect unwarranted optimism that this Commission should not put any reasonable degree of reliance on.

(ii) *the JDF Project is not cost effective*

98. The JIESC submits that it is essential that the JDF Project must, if it is to be considered at all, be able to provide the same degree of reliability as VITR. Doing this requires at a minimum firm service, from a location where BC Hydro has firm supply capability, to the southern terminus of JDF. The JIESC believes that the record clearly shows that the JDF Project, structured to provide the same degree of reliability and usefulness to the BC system as VITR, is not cost competitive.

99. The cost of providing such service is close to \$10 million USD<sup>65</sup> per year plus loss compensation of \$1.4 million.<sup>66</sup> However, the total annual savings from a VITR contract are only in the range of \$6.2 million to \$9.8 million dollars per year for 40 years.<sup>67</sup> This is based on the most favourable debt/equity assumptions for Sea Breeze. If VITR is financed on the basis of 100% debt, it reduces the cost of VITR by about \$4 million per year and the savings under the JDF formula by \$1 million per year.<sup>68</sup> Clearly on a properly comparable basis it simply does not make sense to use JDF.

100. Dr. El Ramly acknowledged under cross-examination that it makes "*absolutely no business sense*"<sup>69</sup> to contract for firm service this way and speculated on other less secure ways one might use JDF. The JIESC submits that nothing less than a firm wheeling contract is adequate to meet the needs of ratepayers on Vancouver Island, and certainly not Dr. El-Ramly's speculative suggestions, which were not backed up by any concrete evidence.

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<sup>65</sup> Vol. 36, at page 6869, lines 15 to 25; Vol. 36, at page 6936, line 13 to page 6937, line 7.

<sup>66</sup> Vol. 36, at page 6937, lines 22-22.

<sup>67</sup> Vol. 36, at page 6846, line 26 to page 6847, line 14; Vol. 36, page 6848, lines 9 to 13.

<sup>68</sup> Vol. 36, at page 6853, lines 14-23.

<sup>69</sup> Vol. 36, at page 6869, lines 11-14; Vol. 36, at page 6934, line 12 to page 6937, line 12.

## CONCLUSION

101. In conclusion, the JIESC submits that this Commission should grant a CPCN to BCTC for the VITR Option 1 Project, with overhead transmission in Segment 2 through Tsawwassen, as this option ensures that adequate transmission is available in a timely and reliable manner for JIESC members and other customers on Vancouver Island and ensures that the electricity and transmission services are provided in the most cost-effective manner possible consistent with the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19<sup>TH</sup> DAY OF APRIL, 2006.

BULL, HOUSSER & TUPPER LLP

Per:



Brian Wallace



Sarah D. Hansen

Counsel for the Joint Industry Electricity Steering Committee

## LIST OF AUTHORITIES

*Memorial Gardens v. Callwood Cemetery*, [1958] S.C.R. 353; BCCA [1957] 22 WWR 348.

## F. APPENDIX A - TABLE OF CONCORDANCE

1. What are the interests that can be considered as part of the public interest in respect of the matters to be decided in this proceeding? For example, property values and stigma.

[*Memorial Gardens v. Callwood Cemetery* (“Memorial Gardens”)]

- JIESC Argument, at pages 20 - 21

2. Should we be concerned with achieving equity among private interests?

- Not addressed

3. Does the Commission have jurisdiction to order a public utility to compensate property owners for adverse impacts of utility plant or system in respect of both conforming and non-conforming improvements?

- JIESC Argument, at pages 21 - 22

4. If the Commission finds that either VIC or JDF may be more cost-effective than VITR, can the Commission grant the CPCN to VITR subject to directions similar to those found in Exhibit C31-21?

- JIESC Argument, at pages 26 – 27

5. Can the Commission grant to BCTC a CPCN for a revised VIC proposal?

- JIESC Argument at pages 24 - 27

6. Regarding consultation and accommodation issues identified in Exhibit A-40: Has BC Hydro met the obligation to consult with First Nations in regard to each of the VITR route options? Does BC Hydro have an obligation to accommodate First Nations, and when does the obligation arise?

- Not addressed

7. Given the evidence and matters to be decided in this proceeding, should this Panel review the cost of service analysis of capital projects conclusions found at page 35 of the VIGP decision dated December the 8th, 2003?

- Not addressed