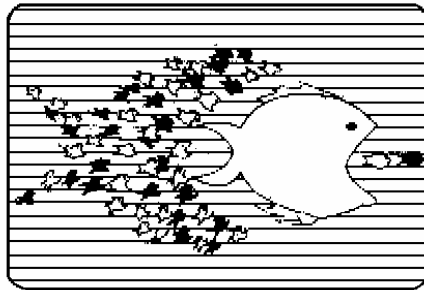


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April 18, 2006

**VIA E-MAIL**

Robert J. Pellatt  
Commission Secretary  
BC Utilities Commission  
Sixth Floor - 900 Howe Street  
Vancouver, BC V6Z 2N3

**Re: BCTC CPCN Application Vancouver Island Transmission Reinforcement Project  
Sea Breeze Victoria Converter Corporation CPCN Application Vancouver Island Cable  
Project**

Enclosed is the Final Argument of BCOAPO in this proceeding.

Yours sincerely,

**BC PUBLIC INTEREST ADVOCACY CENTRE**

*Original in file signed by:*

Patricia MacDonald for  
Richard J. Gathercole  
Executive Director

**BRITISH COLUMBIA TRANSMISSION CORPORATION CPCN APPLICATION  
VANCOUVER ISLAND TRANSMISSION REINFORCEMENT PROJECT  
SEA BREEZE VICTORIA CONVERTER CORPORATION CPCN APPLICATION  
VANCOUVER ISLAND CABLE PROJECT**

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**FINAL ARGUMENT**

**of**

**BC Old Age Pensioners' Organization,  
Active Support Against Poverty,  
Council of Senior Citizens' Organizations,  
federated anti-poverty groups of BC,  
End Legislated Poverty,  
BC Coalition of People with Disabilities, and  
Tenants Rights Action Coalition  
(collectively BCOAPO)**

---

**April 19, 2006**

**Richard J. Gathercole  
BC PUBLIC INTEREST ADVOCACY CENTRE  
208 – 1090 West Pender Street  
Vancouver, BC V6E 2N7**

**British Columbia Transmission Corporation CPCN Application  
Vancouver Island Transmission Reinforcement Project  
Sea Breeze Victoria Converter Corporation CPCN Application  
Vancouver Island Cable Project**

**Final Argument**

of

**BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations, federated anti-poverty groups of BC, End Legislated Poverty, BC Coalition of People with Disabilities, and Tenants Rights Action Coalition  
(collectively BCOAPO)**

**INTRODUCTION**

When the hearing into these applications commenced on February 6, 2006, the Commission was faced with three options:

- 1) approval of the application by British Columbia Transmission Corporation (BCTC) for a Certificate of Public Convenience and Necessity for the Vancouver Island Transmission Reinforcement Project (VITR) (Exhibit B1-1);
- 2) approval of the application by Sea Breeze Victoria Converter Corporation (Sea Breeze) for a CPCN for the Vancouver Island Cable Project (VIC) (Exhibit B2-1); or
- 3) reliance on Sea Breeze's Juan de Fuca Project (JdF) to meet the capacity requirements of Vancouver Island.

Sea Breeze subsequently withdrew its VIC application and, in BCOAPO's submission, approval of that alternative is no longer an option for the Commission. While the Commission agreed to consider the possibility of a "VIC-like option" in this proceeding approval of this option is not possible in this proceeding. There is no application from Sea Breeze, or any other party, for the VIC or a VIC-like project. BCOAPO concurs with BCTC that s. 46 of the *Utilities Commission Act* does not give the Commission jurisdiction to grant BCTC a CPCN for a revised VIC proposal. (BCTC April 5, 2006 Final Submission, p. 18)

Section 45(1) of the *Utilities Commission Act* requires BCTC to obtain a Certificate of Public Convenience and Necessity. While s. 45 does not establish any clear test for when such a certificate should be issued, the Supreme Court of Canada in *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetery Co.*, [1958] S.C.R. 353 stated:

The question of whether public convenience and necessity requires a certain action is not one of fact. It is pre-dominantly the formulation of an opinion. The facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion.

In BCOAPO's submission, the term "public" in s. 45(1), while broad in scope, should be considered within the context of the Commission's general jurisdiction under the Act. The public most directly concerned, apart from the utility itself, is the public directly served by the utility, although the interests of others, including interests raised in this proceeding, cannot be ignored.

With respect to this particular application, it is BCOAPO's position that the Commission, in exercising its discretion, needs to consider the interests supporting BCTC's application and those opposing it. It also needs to consider the reasons for the support or opposition.

Three major intervenors representing BC Hydro's major customer classes – the Joint Industry Electricity Steering Committee (JIESC) with respect to industrial customers, the Commercial Energy Consumers of BC with respect to commercial customers, and BCOAPO with respect to residential customers – all expressed an interest in ensuring a safe, reliable service to Vancouver Island in a timely manner and a most cost efficient manner. They each expressed, in varying degrees, some concerns about Sea Breeze's application, which was then before the Commission. (Opening Statement of JIESC, Transcript Vol. 6 pp. 820-831; Opening Statement of BCOAPO, Transcript Vol. 6 pp. 832-842; and Opening Statement of Commercial Energy Consumers of BC, Transcript Vol. 6 pp. 953-958)

The main opponents of BCTC's VITR Application had very specific reasons for their opposition, and these reasons were related to their own particular interests. These opponents are:

- 1) Sea Breeze. Sea Breeze has clearly stated that it wishes the Commission to deny BCTC's application and direct BCTC (and/or BC Hydro) to negotiate with Sea Breeze with respect to either or both of a VIC-like project or the JdF Project. With respect to the VIC-like project, Sea Breeze indicated that it would be prepared to turn over the project to BCTC and/or BC Hydro provided that it was compensated for its efforts to date in developing the VIC Project and its intellectual capital. (Transcript Vol. 29 p. 5477)

2) Tsawwassen residents and groups, including Tsawwassen Residents Against Higher Voltage Overhead Lines (TRAHVOL) and South Delta Secondary High School Parent Advisory Council. The opposition of these individuals and groups is not so much to the proposed VITR Project as it is the very existence of the right of way through their properties. This was evidenced by their absolute refusal to consider any alternative which involved use of the existing right of way, whether above ground, or below ground. The fundamental approach of these intervenors was that any alternative to serve Vancouver Island that did not involve the use of the existing right of way through Tsawwassen was preferable, regardless of costs to ratepayers – a classic case of NIMBY. It must be emphasized that the right of way was acquired by BC Hydro many years before any of the properties abutting it were built, and that its existence was known to all of the property owners at the time they acquired their properties.

As it stated in its opening statement, BCOAPO is not unsympathetic to many of the issues raised by TRAHVOL. However, in its submission these issues must be addressed in the context of the history of the acquisition of the right of way, the development of Tsawwassen since the acquisition of the right of way, and the balancing of interests of affected Tsawwassen residents and BC Hydro ratepayers. (Transcript Vol. 6 p. 835)

3) The Corporation of the City of Delta. Delta supported the Tsawwassen residents and their opposition to use of the existing right of way, but also opposed Option No. 3, which would see the new transmission line routed through the streets of the city. (Opening Statement of the Corporation of the City of Delta, Transcript Vol. 6 pp. 873-889). Its opposition to Option 3 appeared to be primarily technical in nature.

4) Island Residents Against Higher Voltage Overhead Lines (IRAHVOL), together with the Islands Trust and Owners of Strata Plan 905 and shareholders of Maracaibo Estates Ltd. These groups oppose the 230 kV VITR line utilizing the existing right of way across Galliano and Saltspring Islands. While IRAHVOL's position appears to be that the VIC line is generally a better alternative than VITR, the main concern of these intervenors was similar to those of Tsawwassen residents, including EMF and visual impact concerns, although they are not as directly impacted as the Tsawwassen residents. Again, however, the concern appeared to be not so much with the VITR upgrade as with the very existence of the existing right of way, and its impact on property values. Like the Tsawwassen residents, the Gulf Islands residents' opposition is to any transmission line going anywhere near their properties.

The concerns raised by these opponents of the project as they relate to the selection of the appropriate VITR alternative will be discussed in more detail. However, it needs to be noted

that, with the exception of the City of Delta, the positions advanced by each of the opponents, if accepted by the Commission, could result in direct financial benefit to them.

In his March 6, 2006 comments on the implications of Sea Breeze's decision to withdraw its CPCN Application for VIC, the Chairperson addressed timing issues and the nature of the Panel's decision arising from this proceeding. (Transcript Vol. 27 pp. 4947-4948)

The Chairperson characterized the key issue as:

Is the VIC project, as defined and advocated by Sea Breeze in this proceeding, a better alternative than the VITR Project as defined and advocated by BCTC in light of the characteristics of both projects?

He went on to state,

Considerable evidence has been filed regarding VIC by Sea Breeze. I believe that it is reasonable to assume that there will be an adequate evidentiary record at the end of this proceeding for the Commission to reach a conclusion on that principal issue.

These submissions are based on the understanding that the Commission intends in this proceeding to determine what is the appropriate project for meeting the identified Vancouver Island Capacity requirements.

#### **ALTERNATIVES TO BCTC'S VITR PROPOSAL**

From the very beginning of the hearing, BCOAPO had concerns with the two alternatives to BCTC's VITR proposal put forward by Sea Breeze. However, because of the limited resources available to it, BCOAPO chose not to cross-examine the Sea Breeze panels but to rely on other parties, notably BCTC, BC Hydro, and the Joint Industry Electricity Steering Committee (JIESC) and Commission staff to develop the record with respect to these proposals.

#### **The VIC Project**

As submitted above, the Commission does not have the jurisdiction to issue a CPCN for the VIC project in the proceeding, given that there is no proper application for this project before it. Given the Commission's stated desire, as noted previously to reach a conclusion in this hearing, this should be sufficient to eliminate this alternative.

The Commission indicated it was prepared to consider a VIC-like alternative. In response to Sea Breeze's decision to withdraw its CPCN Application for VIC but to continue to urge the Commission to consider it as an alternative, the Chairperson stated:

As the advocate of the revised VIC proposal, the onus may rest with Sea Breeze to satisfy the Commission on that issue, and any other issues regarding the revised proposal. (Transcript Vol. 27 p. 4948)

As noted above, the issue referred to was defined by the Chairperson as:

Is the VIC project, as defined and advocated by Sea Breeze in this proceeding, a better alternative than the VITR Project as defined and advocated by BCTC in light of the characteristics of both projects? (Transcript Vol. 27 p. 4947)

In BCOAPO's submission, the onus should be on Sea Breeze to establish that this alternative was preferable to VITR. BCOAPO supports the submissions of BCTC with respect to the VIC project (BCTC April 5, 2006 Final Submission, pp. 17-23). In particular, BCOAPO is concerned that this project would result in additional costs to ratepayers and could result in delay beyond the October, 2008 projected in service date of VITR. This delay could give rise to additional costs as well as causing potential problems for Vancouver Island consumers.

### **Juan de Fuca Project**

BCOAPO supports the submissions of BCTC with respect to JdF. (BCTC April 5, 2006 Final Submissions pp. 23-37)

In his opening statement, counsel for BCTC stated that the test the Commission should apply in determining whether the JdF Project will be approved by the bodies that need to approve it is that:

...the Commission would need to be assured that it is a virtual certainty that the Juan de Fuca Project would be approved, and put into service in the fashion that it assumed it would be. (Transcript Vol. 6 p. 848)

BCOAPO agrees that this is the appropriate test for the Commission to apply in determining whether JdF is a realistic alternative to VITR.

BCOAPO shares BCTC's three primary concerns as stated on page 28 of its April 5, 2006 Final Submission. In addition, BCOAPO is concerned with the absence of direct Canadian regulatory authority over the operations of JdF, and in particular, the limited jurisdiction the Commission

would have if this project were to be considered the appropriate solution to the requirements of Vancouver Island. On cross-examination by counsel for BCTC of the Sea Breeze JdF Panel (Transcript Vol. 36 p. 6899), the limited regulatory oversight of FERC and the NEB was clarified. The Commission's jurisdiction would be limited to approval of the rates paid by BCTC for use of JdF transmission.

BCOAPO submits that the Commission should reject both the VIC-like and JdF options. It should approve BCTC's VITR application and focus on:

- a) the appropriate routings of these projects through South Delta and the Gulf Islands, and
- b) establishing an appropriate mechanism for limiting the risk to ratepayers of project cost overruns.

The rest of this submission will address these issues.

### **BCTC'S VITR APPLICATION**

This application is somewhat unusual in that BCTC has not applied for approval of a specific project but rather for approval of a transmission solution to Vancouver Island. It has provided the Commission with seven alternatives. (Exhibit B1-1 pp. 101 & 102; the latter is revised by Exhibit B1-2).

While it states its preference for Option 2, it goes on to say:

For greater certainty, BCTC respectfully requests that the Commission approve the Project as proposed, or with modifications considered to be in the public convenience and necessity and supported by the evidence, rather than denying the Project if it finds that the Project, as proposed, is not in the public interest. (Exhibit B1-1 p. 6)

Mr. Barrett further expanded on the nature of BCTC's application. In Transcript Vol. 8 pp. 1020-1021, he stated:

Yes. In fact, perhaps I should restate our CPCN is recommending option 2, but really we are trying to present the need and the critical need for additional transmission capacity to Vancouver Island. So in a different light, perhaps, we are requesting a CPCN for a practical do-able project to serve this need. Therefore, the outcome of the hearing is that we do get a CPCN for a project that can serve the needs that we've identified.

While it is open to the Commission to require BCTC (and/or BC Hydro) to negotiate with Sea Breeze on the possibility of a VIC-like project financed by BC Hydro or with respect to the

development of the JdF project either as a backup or alternative to the VITR project, BCOAPO does not support this alternative, primarily because, as stated above, the additional costs and delay involved.

In particular, BCOAPO would strongly oppose the Commission refusing the VITR application in these circumstances. To do so would place BCTC and BC Hydro in a difficult, if not impossible, negotiating position with Sea Breeze, given the Commission's stated position with respect to the need for new transmission capacity to Vancouver Island and the derating of the existing 138 kV lines in 2007.

While such negotiations could be part of a conditional approval of VITR CPCN, BCOAPO does not see how this could result in a better alternative than the VITR, for the reasons stated above.

While BCOAPO supports a CPN for the VITR, it does not agree with BCTC's proposal to route a portion of VITR underground through part of South Delta, which is generally referred to as Option 2. BCOAPO supports Option 1.

BCTC has presented the Commission with various alternatives for providing service to Vancouver Island, including seven alternative routing options through South Delta (Exhibit B1-1 pp. 101-102 as revised by Exhibit B1-2) and four alternatives for routing across the Gulf Islands (Exhibit B1-1 pp. 104-106). These options were further developed in response to various information requests, including, in particular, BCUC Information Request 4.204. (Exhibit B1-54)

In BCOAPO's submission, the only options meriting serious consideration by the Commission are Options 1, 2 & 3 through South Delta and Option 1 through the Gulf Islands.

### **The South Delta options**

Option 7 involves the use of Options 2 or 3 to accelerate the installation of a second set of 230 kV underground cables through Tsawwassen. BCTC stated it was not applying for a second line at this time (Transcript Vol. 8 p. 1157), nor was it seriously advanced by any of the other parties to the proceeding.

On cross-examination by counsel for BCOAPO in the first day of the hearing, Mr. Barrett made clear BCTC's position with respect to Options 5 and 6. He stated:

It is our position that Option 5 and Option 6 are not feasible alternatives, and that's what we indicated in our application, and we still believe that. (Transcript Vol. 8 p. 1035)

He went on to state at p. 1036:

Our position is that those two alternatives are infeasible.

BCTC details its concerns with Options 5 and 6 on pp. 59-65 of its April 5, 2006 Final Submission. BCOAPO shares these concerns.

Aside from the technical difficulties associated with Options 5 and 6, Exhibit B1-54 indicated that Options 5 and 6 would be significantly more expensive than the other options.

Option 4 was an option that seemed to have some support from TRAHVOL and the Corporation of the City of Delta, at least in comparison to the first three options. However, Option 4 has its own problems, particularly with respect to the ability of BCTC to obtain a right of way through Tsawwassen First Nations lands. In cross-examination by counsel for the Corporation of the City of Delta, Mr. Barrett confirmed that the Tsawwassen First Nation is opposed to Highway 17 as an option. (Transcript Vol. 10 p.1471) BCTC does not have the means to expropriate property in a First Nation reserve, and there were also significant obstacles due to archaeological concerns. (Transcript Vol. 10 pp. 1471-1472) Mr. Barrett pointed out that correspondence from the BC Government Archaeological Branch stated that Option 4 would require an archaeological impact assessment and “there is a real possibility that there will be an absolute refusal to use this area.” (Transcript Vol. 10 pp.1489-1490)

These and other concerns that BCTC has with Option 4 are discussed on pp. 54-59 of its April 5, 2006 Final Submission. BCOAPO shares these concerns.

The non-financial ranking of project alternatives included in Exhibit B1-54, subsequently updated by Exhibit B1-68, also indicated a significant difference between Options 1 to 3 and the other options put forward by BCTC. On cross-examination by counsel for BCOAPO, in referring to these rankings, Mr. Barrett stated:

Well, and I think that’s what we’ve tried to present in our application, that there is a significant difference between Options 1, 2 and 3 and the others. (Transcript Vol. 8 p. 1037)

Exhibit B1-68 also shows that BCTC believes there is a significantly greater risk of delay with Option 4 than with the first three options.

Exhibit B1-54 indicates that both Options 2 and 3 will cost approximately \$14 million in excess of Option 1.

Option 3 is strongly opposed by the Corporation of the City of Delta. As counsel for the Corporation of the City of Delta stated in his opening statement:

So that there is no confusion on that matter, Delta is strongly opposed to [Option 3], and does not think it's viable or appropriate. (Transcript Vol. 6 pp. 875-876)

Section 36 of the *Utilities Commission Act* gives the Commission jurisdiction to order the use of the municipality's streets by BCTC if agreement cannot be reached between the utility and the municipality. The Corporation's opposition to this option and the fact that it could result in some delay in pursuing this option are factors which should be considered by the Commission.

In addition, no parties, including the applicant, indicated any strong preference for this alternative. TRAHVOL's counsel, in cross-examination of the Corporation of the City of Delta's witnesses seemed to indicate an interest on behalf of his clients in this option as an alternative to either of the options utilizing the existing right of way. (Transcript Vol. 21 pp. 3910-3937) However, his clients would not be the only ones potentially impacted by adoption of Option 3.

Accordingly, in BCOAPO's submission, while Option 3 is clearly preferable to Options 4, 5 and 6, it is not preferable to Options 1 or 2.

### **Why Option 1 is the preferable option**

In BCOAPO's submission, Option 1 is the option which should be approved by the Commission for the following reasons:

- A. BCTC's expressed preference for Option 2 was clearly arrived at as a response to the concerns raised by interested parties in Tsawwassen, particularly TRAHVOL, with its original proposal.

As Mr. Barrett indicated on cross-examination by counsel for BCOAPO:

Mr. Gathercole: Okay. Now, is it fair to say that when BCTC first started planning for the upgrade of the existing 138 kV lines, its preferred alternative was what is referred to in your materials as Option 1?

Mr. Barrett: That was our baseline we began with, that was not our preferred alternative necessarily. We did not actually select a preferred alternative in a final format until May of last year. (Transcript Vol. 8 p. 1018)

On p. 5 of its Application Exhibit B1-1, BCTC stated clearly the reasons for its preference for Option 2:

Based on consultation in the community of Tsawwassen, and considering the unique circumstances whereby development of residences has been allowed to enclose a portion of the existing ROW, severely limiting access for maintenance or vegetation management, BCTC proposes underground construction on the existing ROW for a 3.7 km section of the Project. BCTC submits that construction in this manner represents a balanced response to the interests of affected landowners to minimize impacts on their property, the achievement of ready access by BCTC to the ROW, and with the interests of ratepayers seeking service at least cost.

In response to BCUC Information Request 2.127.4 (Exhibit B1-17 Vol. 1), BCTC stated:

Comparing Options 1, 2 and 7, BCTC considers the most significant distinguishing factors to be cost, visual impacts, and implementation risk.

BCTC's recommendation for Option 2, taking into account these factors was explored in some detail by Commissioner Nichols with BCTC's Panel 1. (Transcript Vol. 15 pp. 2483-2494) None of the reasons seem compelling.

BCTC, to its credit, was endeavouring to respond to the concerns of Tsawwassen resident, while at the same time taking into account the potential impact on BC Hydro's ratepayers of its proposal.

However, the Tsawwassen residents have not responded in a positive manner to BCTC's recommendation. In fact, their position is that no use of the existing right of way is acceptable, including the existing use. This is evidenced by the following:

- a) TRAHVOL's formal complaint asking that the Commission order the removal of the existing lines; (Exhibit C3-21)
- b) the affidavits submitted by TRAHVOL; (Exhibit C3-23-24-27-28) and
- c) responses to questions on cross-examination by counsel for BCTC of TRAHVOL and South Delta Secondary School Parent Advisory Council panels in which they refused to choose between Options 1 and 2 stating that neither was acceptable. (Transcript Vol. 23 pp. 4365-4371; Transcript Vol. 24 p. 4528-4531)

The Tsawwassen residents appear to have two major concerns with respect to the location of the existing and proposed transmission lines. While there was some reference to aesthetics, the main

concerns stressed were electromagnetic fields (EMF) and property values, including the impact on property values of destruction of existing landscaping due to underground construction.

### EMF Concerns

This was expressed to be the key concern of the TRAHVOL witnesses. (Exhibit C3-45 p. 2; Transcript Vol. 23 p. 4340)

The Commission has addressed the EMF issue in a number of previous decisions. (Exhibits A2-1 to A2-7) In BCOAPO's submission, the evidence in this proceeding does not warrant a change in the Commission's approach to EMF concerns in the previous decisions.

In its April 5, 2006 Final Submission, BCTC discusses the EMF evidence in this proceeding in the light of previous Commission decisions considering EMF (pp. 41-47). BCOAPO believes this fairly sets out appropriate considerations with respect to EMF impacts. BCOAPO concurs with BCTC's statement in para. 126 of its April 5, 2006 Final Submission:

[T]he 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.

TRAHVOL witnesses in particular stressed measurements taken directly under or over the proposed lines which clearly are significantly higher than levels at the edge of the right of way.

While the evidence indicates that EMF levels immediately under the new overhead line or immediately above the proposed underground circuit would be greater than current levels, they would not be any higher than at present at the edge of the ROW. (Exhibit B1-6 BCUC IR 1.104.2) In these circumstances, EMF considerations provide no compelling reason for choosing Option 2 over Option 1.

### Property Value Concerns

In his opening submission, counsel for BCOAPO raised the issue of whether the Commission has jurisdiction to consider property values in this context and if so whether it should consider them. (Transcript Vol. 6 p. 839)

The Chair specifically requested parties to address the issue of property values and stigma and referred to the case of *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetery Co.* in this context. (Transcript Vol. 40 p. 7542)

That decision of the Supreme Court of Canada would appear to give the Commission some leeway in this respect in that it states:

The question of whether public convenience and necessity requires a certain action is not one of fact. It is pre-dominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. (*Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetery Co.*, [1958 SCR 353])

As well, the provisions of the *Utilities Commission Act* provide little direction with respect to what factors the Commission should take into account in determining whether to grant a CPCN.

However, in these circumstances it is BCOAPO's submission that the Commission, even if it considers it has jurisdiction to do so, should not take into account the possible impact on property values of the construction of the proposed VITR line on the existing right of way.

The existing right of way was obtained by BC Hydro more than 50 years ago and before the existence of any of the properties presently abutting the line. The existence of the right of way and the lines constructed thereon were known to all existing property owners at the time they purchased the property. There was some evidence in the affidavits filed on behalf of TRAHVOL that some individuals had contacted BC Hydro and had been given information with respect to the possible life expectancy of the existing line. (Exhibit C3-45 p. 2) However, the right of way agreements filed in response to BCUC IR 1.2 (Exhibit B1-6 Vol. 1) are clear that they are not time-limited but granted in perpetuity and that they give BC Hydro and its successors the right:

a) to construct, erect, operate and maintain towers and poles with anchors, brackets, cross arms, insulators, transformers, and their several attachments and to string one or more lines of wire for the transmission and distribution of electrical energy,

..., and

e) generally to do all acts necessary or incidental to the business of the company in connection with the foregoing.

Individuals purchased property subject to existing right of way agreement and the Commission has no jurisdiction to exempt them from the legal implications of the right of way agreement.

The property value implications of the existing right of way were properly taken into account at the time the rights of way were granted and at the time the existing owners purchased their properties. The purchase prices would, or should, reflect the existence of the right of way agreements. If they did not, that is the responsibility of the purchaser and should not give rise to

any legitimate claim to compensation from BCTC. This situation is clearly different from one in which the utility is attempting to acquire a new right of way. Property owners granting a new right of way are clearly entitled to compensation from the utility but subsequent purchasers of the property subject to the right of way are not.

In any event, what evidence there is with respect to potential impacts on property values, particularly long term, suggests that they would be modest or neutral at worst, whether the new line was overhead or underground and perhaps marginally positive if it were underground. (Exhibit B1-37; evidence of Larry Dybvig) Given the additional capital cost of Option 2 over Option 1, this evidence is not sufficient to tip the balance in favour of Option 2.

The only possible claim for compensation by the Tsawwassen residents is a claim for compensation for the additional rights, which BCTC agrees would have to be acquired for Option 2. However, since the Tsawwassen residents indicated refusal to negotiate compensation and to require BCTC to expropriate the additional right of way, this is a factor that will potentially lead to significant delay and additional costs if Option 2 is selected. These issues are discussed below.

In any event, what the Tsawwassen residents are demanding is removal of the existing lines, which will clearly significantly increase their property values even if the existing right of way remains in place. To require BCTC, and through it BC Hydro ratepayers, to undertake increased capital expenditures to avoid utilizing the existing right of way and to result in windfall profits for a limited number of Tsawwassen property owners is not something the Commission should seriously consider.

BCOAPO understands that this issue is more appropriately addressed in its response to TRAHVOL's April 19, 2006 Submission, which will include its argument in support of its complaint and may address this issue further at that time.

B. Selection of Option 2 could result in a significant delay in meeting the capacity shortfall on Vancouver Island.

BCTC's evidence as set out in Item 4 of Criterion 4 in Exhibit B1-54 is that:

The best-performing alternative on this attribute is the 230 kV AC overhead alternative through Tsawwassen, since BCTC has all of the necessary rights of way required. The two underground alternatives through Tsawwassen have relatively an additional risk of delay due to right of away acquisition and/or coordination with the Corporation of Delta for installation in municipal streets.

In response to BCUC IR 108.2 (Exhibit B1-6) which asked BCTC to provide a schedule and cost estimate for a “worst case scenario”, BCTC identified three possible “worst case scenarios”. The first is where the landowners challenge the amount of compensation they have been offered. In this situation, BCTC stated,

...assuming a reasonable amount of time for court proceedings to take place, including all appeals, it appears that it would likely be more than three years from the time that expropriation proceedings are commenced to when the amount of compensation may be finally determined.

While BCTC could, and presumably would, continue construction while compensation was being determined, the second “worst case” situation where landowners challenge an actual power to expropriate, raises different issues. The utility stated in response to BCUC IR 1.08.2 that with this situation, “it is likely to take more than two years before the issue is finally determined.”

This is a realistic possibility. Ms. Broadfoot made this clear in her opening statement on behalf of TRAHVOL when she stated, in respect of Option 2:

If BCTC had engaged in real public consultation they would have learned that the residents surveyed by TRAHVOL are not going to willingly “exchange” overhead rights for underground ones. I would like to state for the record that there is no “exchange”. This is a brand new right-of-way and BCTC and BC Hydro will need to expropriate over 120 private properties if not many more. I want to be clear that we will not cooperate with this plan and will continue with litigation and further action. [Emphasis added] (Exhibit C3-45 p. 5)

In BCOAPO’s submission, there is no justification for requiring BCTC and Vancouver Island ratepayers to run the risk of such a significant delay.

As Mr. Barrett stated, Option 1 is the option with the least risk of delay from unidentified risks. (Transcript Vol. 8 p. 1059) This is a major factor in favour of choosing Option 1 over Option 2.

### C. Impacts on ratepayers.

BCTC projects in Exhibit B1-54 that Option 2 would cost approximately \$14 million more than Option 1. However, that figure does not include all the possible costs that might be incurred if Option 2 would be proceeded with. In cross-examination by counsel for BCOAPO, the following discussion took place:

MR. GATHERCOLE: Q: Are you in a position to give the Commission somewhat of at least a ballpark figure as to what the upside might be if these worst case scenarios were to take place with respect to the ultimate costs of Option 2?

MR. BARRETT: A: I wouldn't be qualified to make that sort of estimate. Those would be legal costs and potential court awards for compensation. I wouldn't speculate on what they possibly could be.

MR. GATHERCOLE: Q: But clearly the potential of incurring those costs is something that you would agree the Commission would have to take into account in evaluating the appropriateness of Option 2.

MR. BARRETT: A: I believe that would be appropriate to assess that risk.

MR. GATHERCOLE: Q: And with respect to both Scenario No. 2 and Scenario No. 2, you have used the term "significant" with respect to the costs that could be incurred by BCTC with respect to this option?

MR. BARRETT: A: That means they would not be trivial on the worst case scenario. (Transcript Vol. 8 pp. 1047-1048)

BCOAPO notes that in its April 5, 2006 Final Submission BCTC states, in para. 137:

BCTC's estimate includes \$400,000 for legal, survey and other costs to effect an exchange of overhead for underground rights. 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.

There was some discussion as to the potential impact on ratepayers of the Commission requiring a contribution from the Tsawwassen residents towards additional costs of an alternative to utilizing the existing right of way. (Transcript Vol. 14 pp. 2337 to 2338; 2414 to 2418) It is BCOAPO's position that requiring a contribution from Tsawwassen residents in these circumstances is not analogous to the Commission's Boundary Road decision (Exhibit A2-2) where the option of requiring a contribution from the affected municipalities was discussed. In any event, the required contribution would likely be prohibitive.

Given the strong opposition from the Tsawwassen residents to any use of the existing right of way and their refusal to give the Commission any indication of their priorities with respect to Options 1 and 2 (while at the same time failing to suggest any reasonable alternative), the Commission should not require BCTC to incur additional capital expenditures for a proposal that was clearly meant to respond to those residents' concerns.

In its evidence before the Commission, BCTC takes the position that, having indicated to the residents of Tsawwassen that it would not proceed with an overhead option, it felt it could not go

back on that commitment without compelling reasons. (Transcript Vol. 16 p. 2712, Transcript Vol. 18 p. 3198) Far from responding in any positive way to this commitment, the Tsawwassen residents have attempted to interpret it as a commitment to not only not adopt the overhead option for the proposed 230 kV line, but to also remove the existing lines. As Ms. Broadfoot stated in her opening statement:

In addition to the anxiety at the prospect of our yards being tom up, our property values plummeting and our health being compromised, we have been betrayed by BCTC who made a firm commitment to the residents of Tsawwassen not to recommend construction of overhead lines and to pursue an alternate "route". This commitment was repeated in letters from Richard Neufeld, Valerie Roddick and on behalf of the Premier. We were led to believe that our concerns about why this transmission system doesn't belong in a residential neighborhood were understood and accepted. (Exhibit C3-45 p. 3)

Despite this reaction, BCTC still feels compelled to honour its original commitment, but appears to, in its final submission, attempt to give itself a way out. On p. 69 of its April 5, 2006 Final Submission, BCTC suggests the following:

BCTC believes that an appropriate mechanism is for the Commission to give BCTC 90 days from the date of the Commission's CPCN Order to negotiate an exchange of rights with a majority (51%) of the landowners whose properties would be directly impacted (52 owners of property). If BCTC is unsuccessful in negotiating this exchange of rights, BCTC believes that the added costs of underground cannot be justified, and the Commission's order should provide for overhead construction on the existing ROW.

BCOAPO does not consider this to be a reasonable alternative. Even if 51% of affected residents choose Option 2, this is not binding on the remaining affected residents and concerns about significant delays and additional costs are not alleviated.

In BCOAPO's submission, the Commission should interpret this suggested alternative as a recognition by BCTC that its commendable attempts to meet the concerns raised by Tsawwassen residents by recommending Option 2 has failed. If the Tsawwassen residents had indicated during the course of the hearing significant support for Option 2 over 1, this clearly would be a factor for the Commission to consider in choosing between the two options. However, they specifically refused to do so when given that opportunity. There seemed to be a belief that if they ignored the possibility of the existing right of way being used, the Commission would follow suit.

In these circumstances, if the Commission feels that the affected Tsawwassen residents should be given a second opportunity to express their opinion should the Commission determine that

utilization of the existing right of way for VITR is the appropriate alternative, the Commission should require 100% agreement to an exchange of rights rather than the 51% suggested by BCTC.

For all these reasons above, BCOAPO submits the only reasonable VITR alternative route through South Delta that balances the interests of all parties and properly takes into account the interests of BC Hydro's ratepayers is Option 1.

### **Gulf Island options**

There is clearly only one routing alternative for VITR across the Gulf Islands, and that is the one suggested by BCTC. To underground the line across the islands would cost an additional \$30 to \$75 million (Transcript Vol. 8 p. 1050). The concerns expressed by Gulf Island residents, primarily through IRAHVOL, were similar to those expressed by the Tsawwassen residents, primarily the impact of the EMF and the impact on property values. The potentially affected buildings on the properties in the Gulf Islands are further away from the proposed lines than in Tsawwassen and the EMF impacts would be correspondingly less.

As was the case with Tsawwassen residents, the concern with property values seems as much a concern about the existing right of way and its existing use as with the proposed VITR upgrade. The same argument with respect to the appropriateness of considering property values as was discussed above with respect to the Tsawwassen residents is equally applicable to the Gulf Island residents.

Like the Tsawwassen residents, the Gulf Island residents appear to have identified this application as an opportunity, not only to oppose any upgrade of the existing transmission system, but to get rid of the existing transmission lines with resulting benefits to property owners. (Transcript Vol. 22 pp. 3994-3995; p. 4041) In fairness, there was some suggestion of a potential allocation of the profits that would result to other than the individual property owners. (Transcript Vol. 22 p. 4063)

Unlike the Tsawwassen residents, the Gulf Island residents have consistently argued in favour of an alternative route to that proposed by BCTC, and that is essentially the route proposed by Sea Breeze in its VIC application. Initially, the Gulf Island residents argued that BCTC should do further studies of the proposed HVDC alternative. Subsequently they appeared to be supporting the VIC CPCN, at least until it was withdrawn by Sea Breeze. The Gulf Island residents also appear to be supporting Sea Breeze's JdF application over the VITR application. BCOAPO's

argument in support of BCTC's proposed routing over the alternatives for the Gulf Islands is discussed below.

The position of the Gulf Island residents, as represented by IRAHVOL, was succinctly summed up by Ms. Zovi as follows:

IRAHVOL does not think that the Commission has sufficient information now to make a determination on which is the best option. (Transcript Vol. 22 pp. 3999-4000)

Their position is that VITR should be rejected in the hope that such rejection would lead to some other alternative that would not involve the use of the existing right of way. In the absence of clear and compelling evidence that such an alternative to meet capacity requirements of Vancouver Island by the fall of 2008 exists, the opposition of the Gulf Island residents is not in itself sufficient to refuse BCTC's application for a CPCN for VITR utilizing the existing right of way through the Gulf Islands.

#### **THE IMPORTANCE OF THE EXISTING RIGHTS OF WAY**

BCTC stated in its evidence that it considers the existing rights of way to be a very significant public asset (Transcript Vol. 11 p. 1787).

It is also clear that it is very difficult in the present environment for a transmission utility to obtain new rights of way for siting of transmission facilities. Indeed, given the opposition in this proceeding to the upgrading of facilities on an existing right of way, one would conclude that it is next to impossible without expropriation.

For these reasons, before the Commission directs BCTC to ignore the existing rights of way in meeting the demands of Vancouver Island, it should be satisfied that there is compelling evidence that there are alternatives that provide significant benefits without at the same time placing undue burdens on existing ratepayers. Such evidence has not been forthcoming in this proceeding.

The Commission must also be cognizant of the precedential value of such a decision. If simple opposition by property owners on existing rights of way, who purchased those properties in full knowledge of the impacts of the right of way documents to which the properties were subject, can have this result, BCTC and British Columbia distribution utilities could be faced with significant problems and expenses for any future upgrades of facilities on existing rights of way.

### **COST CONTROL INCENTIVE MECHANISM**

In its opening statement, BCOAPO raised the issue of a mechanism to ensure as far as possible that potential cost overruns of a proposed transmission upgrade to Vancouver Island are limited or at least that their impacts on ratepayers is limited. (Transcript Vol. 6 p. 834) Counsel for BCOAPO raised this issue again with BCTC's first panel. (Transcript Vol. 8 pp. 1080-1082) BCOAPO had in mind a mechanism similar to that established by the Commission in its May 21, 1999 decision on BC Gas Utility Ltd.'s December 11, 1998 Application for a Certificate of Public Convenience and Necessity for its Southern Crossing Pipeline project. That mechanism was set out on p. 57 of that decision.

BCUC IR 3-175.3 (Exhibit B1-49) also raised the issue of whether such a mechanism would be appropriate but BCTC's response to that information request rejected that alternative.

Commissioner O'Hara (Transcript Vol. 14 pp. 2398-2403) and the Chairperson (Transcript Vol. 15 pp.2418) explored this issue with Mr. Gabel. Following those discussions, BCTC introduced Exhibit B1-64 as its suggestion for a penalty/incentive mechanism that could be implemented respecting the VITR project.

BCOAPO is concerned that some mechanism to protect ratepayers be implemented for the VITR project or any similar project for which the Commission grants a CPCN to BCTC. Prior to filing Exhibit B1-64, BCTC's position was summed up by Mr. Gabel in response to a question from counsel for BCOAPO as follows:

MR. GATHERCOLE: ... In other words, are you really saying, "Trust us"?

MR. GABEL: A: Well, to an extent, yes. We're saying we're using all reasonable practices to ensure that the costs that are going to be incurred for this project are reasonable costs. They include an awful lot of engineering work, which is the subject of some 35 binders' worth of evidence, and they involve competitive bidding processes that presumably will provide customers with the benefits that are appropriate. (Transcript Vol. 8 p 1081)

If BCTC is relatively confident with respect to its capital projections for the VITR Project, which it appears to be, it should be prepared to take the risk of actual costs being significantly out of line with these projections. Otherwise, as Mr. Gabel conceded to Commissioner O'Hara, BCTC is expecting the ratepayers to incur that risk. (Transcript Vol. 14 p. 2403)

BCTC's initial reluctance to consider any cost control mechanism suggests that it is not completely confident in its cost projections.

The mechanism established by the Commission in the BC Gas Utility Ltd. Southern Crossing Pipeline Decision proved to be very effective in controlling costs for that project which, in the final analysis, came within the established limits.

While BC Gas Utility Ltd. (now Terasen Gas Inc.) was, and is, an investor-owned utility and BCTC is owned by the Provincial Crown, this does not, in principle, make any difference with respect to the need for a cost control mechanism to protect ratepayers. Ratepayers are in the same position regardless of the utility's ultimate ownership and the nature of that ownership should not, in itself, be a reason for not protecting ratepayers through a cost control mechanism.

The mechanism established in the Commission's May 21, 1999 decision is a mechanism that has the benefit of having been proven to be successful. While BCTC's proposal in Exhibit B1-64 is preferable to no mechanism, it is not as clear-cut as the Southern Crossing mechanism.

In particular, BCTC states, on p.1 of 3 of Exhibit B1-64: "The quality of cost estimates and the risk of project delay vary among the routing options." However, for the routing options which BCTC considers the most appropriate (Options 1 to 3), these factors have already been taken into account in establishing fairly concrete estimates as set out in Exhibit B1-54, Response to BCUC IR 4.204.

On p. 2 of 3 of Exhibit B1-64, the BCTC states, "The prudence of BCTC's management of the VITR Project will be assessed in future revenue requirement proceedings." This was BCTC's initial reason for not agreeing that a cost control mechanism was appropriate. (Response to BCUC IR 3.175.3, Exhibit B1-49)

The Chairperson's comments in Transcript Vol. 15 pp. 2429-2432, particularly with respect to the difference between a prudency review and a cost control mechanism, are correct. It is because the prudency review mechanism is not as effective in protecting ratepayers that BCOAPO supports the establishment of a project-specific mechanism.

What BCTC is proposing appears to attempt to incorporate the prudency review mechanism into what is stated to be a project-specific cost control mechanism by relating the penalties and incentives not to the direct costs associated with the project but with the common equity component of the utility's overall revenue requirement. Mr. Gabel indicated that BCTC is more

comfortable explaining variances to the Commission at some future date, as is the case with a prudency review mechanism. (Transcript Vol. 15 p. 2436)

BCOAPO is also concerned that the mechanism proposed by BCTC might be difficult to apply to a utility having more than one major capital project being undertaken at the same time as could well be the case with BCTC.

Another problem with BCTC's proposal is that it suggests the Commission should make a decision on VITR based on the costs put into the application and then base any incentive mechanism on a different cost estimate. (Transcript Vol. 19 pp. 3390-3391) If this approach is adopted, there needs to be some mechanism for ensuring that the cost estimate eventually adopted for the purpose of the incentive mechanism is realistic in the circumstances and is not designed to ensure that the utility's risk is limited.

For these reasons, BCOAPO supports the Commission establishing a cost control mechanism similar to that established in its May 21, 1999 BC Gas Utility Ltd. Southern Crossing Pipeline Project decision.

## CONCLUSIONS

In summary, BCOAPO submits that the Commission should:

- a) grant a CPCN to BCTC for the VITR Project;
- b) approve Option 1 as the appropriate routing option through South Delta;
- c) approve Option 1 as the appropriate routing option through the Gulf Islands; and
- d) establish a cost control mechanism similar to that established by the Commission in its May 21, 1999 BC Gas Utility Ltd. Southern Crossing Pipeline Project decision to protect ratepayers against significant cost overruns.

All of which is respectfully submitted.

*Original in file signed by Patricia MacDonald for:*

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