

April 19, 2006

Via email: [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com)

Robert Pellatt, Commission Secretary  
B.C. Utilities Commission  
BOX 250, 900 Howe Street, Sixth Floor  
Vancouver, BC V6Z 2N3

Au Si:em,<sup>1</sup>

Re: BCTC application for a Certificate of Public Convenience and Need for the  
Vancouver Island Transmission Reinforcement Project  
BCUC Hearing Order G-70-05 Project Number 3698395

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Hul'qumi'num Treaty Group (HTG) is an Intervenor in the above noted proceeding.  
Please accept the enclosed, with attachments as the HTG's Final Argument in this  
matter.

Please note we intend to make application with regard to costs per the participation  
award guidelines.

Huy tse:ep q'a<sup>2</sup>



Kathleen Johnnie, Referrals Co-ordinator

Attachment: November 29, 05 HTG – BC Hydro Reply Submission

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<sup>1</sup> An expression denoting respect in the Hul'q'umi'num language.

<sup>2</sup> An expression of acknowledgement or gratitude in the Hul'q'umi'num language.

## **SUMMARY OF ARGUMENT**

1. The Provincial Crown, here represented as BCTC and BC Hydro, owes a duty to consult and, if necessary, accommodate First Nations in relation to potential impacts on aboriginal rights and title. Specifically, in relation to the proposed project the Provincial Crown owes this duty to the Hul'qumi'num Treaty Group and the Chemainus, Lyackson, Halalt, Penelakut, Cowichan and Lake Cowichan First Nations.
2. The Crown has not discharged its duty to consult, and if necessary, accommodate.
3. The Commission should rule that:
  - a) it is in the public interest for the Crown to meet its legal duties to First Nations,
  - b) the Crown has not met its legal duties to the First Nations that are members of the Hul'qumi'num Treaty Group,
  - c) there is no guarantee the Crown will meet its legal duties to First Nations in Environmental Assessments or other processes outside the control of the Commission in regards to this matter,
  - d) a certificate of public convenience and necessity should not be granted and the project should not proceed to the next level of authorizations until the Crown has fully discharged its legal duties to the First Nations, and
  - e) the Proponent should reimburse the reasonable costs incurred by HTG and the member First Nations in relation to the Commission process.

## **FACTS IN EVIDENCE**

4. BCTC is a Crown Corporation.  
(BCTC Application, Section 2.1)

## **ANALYSIS**

5. BCTC is a Crown Corporation. BCTC Application, Section 2.1 states:  
*"BCTC is a provincial Crown Corporation that was formed in May 2003, and begun in August 1, 2003".*
6. The Crown cannot hide behind Crown Corporations to avoid its legal duties to First Nations. This would be contrary to the honour of the Crown. In the *Taku* ruling the Supreme Court of Canada chastised the provincial Crown from trying to put forward "an impoverished vision of the honour of the Crown" by trying to limit the duty to consult based on narrow and technical interpretations. The Court stated:  
  
"The Province's submissions present an impoverished vision of the honour of the Crown and all that it implies. ... In all its dealings with Aboriginal peoples, the Crown must act honourably, ... The Crown's honour cannot be interpreted

narrowly or technically, but must be given full effect in order to promote the process of reconciliation mandated by S. 35(1) (of the Constitution).”  
(*Taku River Tlingit v. British Columbia*, [2004] 3 S.C.R. 550, at para. 24. See also, BCH submission, Attachment 2, page 9.)

7. BC Hydro states that it is inappropriate for the Commission to require BCTC to consult with First Nations because this is a duty of the Crown and because BC Hydro has a side agreement with BCTC stating who will carry out consultation. (Exhibit C6-5, BC Hydro November 15, 2005 submission).
8. HTG submits that the Commission should reject BCTC’s and BC Hydro’s narrow and technical interpretations designed to delay any decisions on consultation by the Commission. The Commission should not allow the Crown to hide behind Corporations it has created or narrow technical arguments but should instead ensure that the honour of the Crown is upheld.
9. BC Hydro also submits that full consultation is not necessary because there will be consultation as part of the Environmental Assessment process.
10. BCTC has repeated this discredited approach in its Final Argument:

BCTC continues to rely on its submissions in response to the HTG request.<sup>144</sup> Based on those submissions, BCTC submits that the Crown’s obligation to consult First Nations regarding the VITR Project does not need to be satisfied until a final decision is rendered allowing the Project to proceed. From the Commission’s perspective, BCTC submits that while the Commission needs to set its mind to the issue of the Crown’s obligations, ultimately it only needs to be satisfied that a process is in place for this consultation, and accommodation if necessary, to take place. The duty to accommodate arises where a strong *prima facie* case exists for the asserted First Nation’s rights and the consequences of a proposed decision to allow an activity to proceed may adversely affect the asserted right in a significant way.<sup>145</sup>

Given the consultation that has taken place, and the process that has been established, it is too soon to determine whether any accommodation will be necessary and, if so, what that accommodation might be. BCTC cannot proceed with the VITR Project until it receives an Environmental Approval Certificate under the *Environmental Assessment Act*.<sup>146</sup>  
( at para. 102).

11. The provincial Crown has continually raised these types of arguments and excuses and the Courts have consistently rejected them. The Supreme Court of Canada provided a lengthy discussion of these issues in the recent *Haida* case under the heading “When the Duty to Consult and Accommodate Arises”. The Court rejected the Crown’s arguments and stated:

“But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation, suggest that **the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.** See *Halfway River First Nation v. British Columbia (Minister of Forests)*, [1997] 4 C.N.L.R. 45 (B.C.S.C), at p. 71, *per Dorgan J.*” (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 at para. 35, emphasis added.)

12. Applying this ruling to the current situation yields the conclusion that the Crown's duty arose as soon as the Crown had knowledge of the potential aboriginal rights of the HTG First Nations and began contemplating conduct that might adversely affect those rights. The Crown had knowledge prior to the commencement of the Commission process because of extensive negotiations and information-sharing as part of the Treaty process. The Crown began contemplating conduct that might adversely affect these potential rights prior to the date on which BCTC submitted their application to the Commission for a certificate of public convenience. Therefore, at the very latest, the Crown's duty to consult was triggered on the date that BCTC submitted their CPCN application to the Commission.
13. In a similar vein, the provincial Crown has tried in a number of court cases to argue that consultation is not necessary during the early stages of projects because it can happen after all the strategic decisions have been made and all approvals granted as long as there is consultation prior to operations taking place on the ground. The courts have flat out rejected this flawed logic. In the context of forestry operations, the Supreme Court of Canada stated:

“I conclude that the Province has a duty to consult and perhaps accommodate on T.F.L. decisions. The T.F.L. decision reflects the strategic planning for utilization of the resource. Decisions made during strategic planning may have potentially serious impacts on Aboriginal right and title...Consultation at the operational level thus has little effect on the quantity of the annual allowable cut, which in turn determines cutting permit terms. If consultation is to be meaningful, it must take place at the stage of granting or renewing Tree Farm Licences.” (*Haida*, SCC, *Supra* at para. 76).
14. BCTC is urging the Commission to accept the same line of reasoning that the Supreme Court of Canada has expressly rejected in *Haida* and other cases. The Commission ought to follow the Supreme Court of Canada and also reject BCTC's submission on this point.
15. In addition, the Commission ought to be very cautious about placing any faith in the Environmental Assessment process for at least two other reasons.
16. Firstly, the Commission has no control over the EA process. The EA process may or may not continue after the Commission reaches a decision on the CPCN. There

is no guarantee that any consultation with First Nations will take place as part of the EA process. Specifically, any of the First Nations concerns with respect to the certificate of public convenience and need will not be reviewed nor addressed.

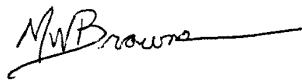
17. Secondly, the EA process for the BCTC project is a very different one from the process commented on by the Supreme Court of Canada in the *Taku* case. Since *Taku* the provincial government has amended the *Environmental Assessment Act* to remove the requirement for First Nations to have a seat on EA Project Committees to design and carry out EAs. The current process provides for a much lesser role for First Nations, all at the discretion of provincial officials.
18. The Crown owes a duty to consult in a proactive manner, before the decisions have been made. A mere invitation to participate in a public process like Commission hearing does not necessarily discharge the Crown's duty. In the *Mikisew* case the Crown tried to argue that it had met its duty by providing the First Nation a chance to participate in the public EA process. The Supreme Court of Canada stated:

“The Crown was required to provide notice to the Mikisew and to engage directly with them (and not, as seems to have been the case here, as an afterthought to a general public consultation with Park users)...however, consultation never reached that stage. It never got off the ground...Had the consultation process gone ahead, it would not have given the Mikisew a veto over the alignment of the road. ... There could, however, be changes in the road alignment or construction that would go a long way towards satisfying the Mikisew objections. We do not know, and the Minister cannot know in the absence of consultation, what such changes might be.”

*(Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] 3 S.C.R. 388 at paras. 65 and 66).*
19. BCTC and BC Hydro have provided some potential evidence of consultation that has taken place or may take place in relation to the EA process, not the BCUC process. They have not submitted any evidence of consultation in relation to the Commission process whatsoever.
20. HTG was very limited in its ability to provide information about its rights and title and potential impacts. The Commission declined to order advanced funding and the First Nations were only able to participate on a very limited basis. HTG submits that the Commission should take into account the poverty of the First Nations, their lack of funding, and their attempts to participate despite these serious limitations. The First Nations have provided evidence of their rights and title and potential infringements and any evaluation of the sufficiency of this information should weigh in favour of the First Nations.
21. The Commission has a legal responsibility to take into account the Constitution of Canada when making decisions. Therefore, section 35 which preserves Aboriginal rights and title must be considered in light of the granting of a certificate of public

convenience and necessity. This is articulated in the recent Supreme Court of Canada's *Paul* decision. Thus, the Commission has an obligation to ensure the laws of consultation, specifically, the Crown's duty to consult, which flow from section 35 has been complied with.

**All of which is respectfully submitted this 19<sup>th</sup> day of April, 2006.**



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Murray Browne and Renee Racette  
Counsel for the Intervenor  
Hul'qumi'num Treaty Group

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**BRITISH COLUMBIA UTILITIES COMMISSION HEARING**

**BRITISH COLUMBIA TRANSMISSION CORPORATION:  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY APPLICATION  
FOR THE VANCOUVER ISLAND TRANSMISSION REINFORCEMENT  
PROJECT NO. 3698395**

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**REPLY SUBMISSIONS OF THE INTERVENOR  
HUL'QUMI'NUM TREATY GROUP (to B.C. HYDRO)**

1. The Commission invited additional submissions from the Hul'qumi'num Treaty Group (HTG) in relation to the orders sought and other requests set out in the HTG's original submissions dated October 19, 2005. In a letter dated November 22, 2005 (C27-11), HTG provided a reply to the responses from the Applicant (B-31) and Commission Counsel (A-31). HTG is now replying to the response of B.C. Hydro (C6-5).

**Summary**

2. Many of the points raised by B.C. Hydro have already been addressed by HTG in its earlier reply (C27-11).
3. The Crown cannot avoid or minimize the duty to consult by incorporating corporations or subsidiaries and selectively allocating consultation responsibilities.
4. Orders regarding the duty to consult are both helpful and necessary.
5. The recent Supreme Court of Canada ruling in the *Mikisew* supports HTG's request for a separate consultation process.
6. The Commission should take into account aboriginal perspectives and should not accept efforts to force all consultation to take place in proceedings that do not fit well with traditional laws and protocols of the First Nations.
7. HTG appreciates the offer of 50% advance funding by BC Hydro but questions the percentage and the conditions.

**Whose Duty is it Anyway?**

8. B.C. Hydro characterizes advance order as "ambiguous" because "it does not identify 'by whom' the duty is owed". B.C. Hydro argues BCTC is a third party and cannot

owe a duty to consult.

9. BCTC's own web-site describes it as a Crown Corporation:

“BCTC is a provincial Crown corporation, incorporated May 2, 2003. The Minister for the Crown holds 100 per cent of the shares of the Corporation, as required by the *Transmission Corporation Act* of May 29, 2003. BC Hydro continues to own the core transmission assets. The people of BC continue to be the sole owners of the existing core transmission, generation and distribution assets.” ([http://www.bctc.com/about\\_bctc](http://www.bctc.com/about_bctc))

10. HTG submits that it is neither helpful nor consistent with the honour of the Crown for B.C. Hydro to engage in technical hair-splitting about the duty to consult.

11. The honour of the Crown is always at stake in dealings with aboriginal people.<sup>1</sup> The Crown may wish to incorporate all manner of corporations and subsidiaries to carry out Crown business. However, it is not consistent with the honour of the Crown to expect First Nations with limited resources to sort through the various corporate and contractual arrangements to determine who is representing the Crown for any particular project. The Crown owes a positive duty to consult. The Crown cannot hide behind a corporate veil or contractual arrangement to avoid or limit this duty.

12. One can easily conceive of a situation where BCTC is appearing before the Commission on a project that does not require any additional environmental assessments. In such a case, BCTC would clearly not be able to avoid the Crown's duty to consult by throwing up its hands and saying that, despite the fact it is a Crown corporation, it does not represent the Crown and does not owe any duty to consult with First Nations.

13. The fact of the matter is that BCTC is a Crown Corporation appearing before the Commission. Any CPCN or authorization granted by the Commission will be granted to BCTC, not B.C. Hydro. HTG submits that the Commission should either ensure that BCTC carries out the duty to consult or, in the alternative, ensure that a separate consultation is established with whatever Crown entities need to be present to carry out full consultation and, if necessary, accommodation.

### **Is this Really Necessary?**

14. HTG is requesting the Commission to rule that the First Nations are owed a duty to consult and to declare that ensuring compliance with the Crown's legal duty to consult is in the public interest.

15. BC Hydro submits that “it would not be helpful for the Commission to declare only that HTG is owed a duty to consult in respect of VITR and that it would be premature

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<sup>1</sup> *R. v. Badger*, (1996), 133 D.L.R. (4th) 324 (S.C.C.), para. 41

to make and declaration regarding the scope and content of the duty”.

16. BC Hydro acknowledges that “compliance with the law is always in the public interest” but characterizes the primary issue as one of determining the content of the duty to consult.
17. Since BC Hydro agrees that compliance with the law is always in the public interest, HTG submits that there is no reason for the Commission not to grant HTG’s requested Order #2 (Rule that ensuring compliance with the common law requirements of consultation and accommodation with First Nations is in the public interest).
18. BC Hydro may feel it is trite and unnecessary for the Commission to confirm this point but the history of dealings between First Nations and the Government of British Columbia is typified by a consistent failure of the provincial Crown to follow the legal requirements set out by the courts. It is important for the First Nations and the public to know whether the Commission will declare that compliance is in the public interest and whether or not the Commission will hold the Crown to its legal duties.
19. HTG agrees in part with BC Hydro’s submissions that the content of the duty to consult for the project in question requires further elaboration. However, the need to further determine the exact content of the duty does not negate the duty itself. If BC Hydro is attempting to argue that there is no duty to consult at all, it should clearly state this and provide additional arguments on this point.
20. As HTG has already detailed in its submissions, the threshold for triggering the duty to consult is a low one (C27-7, paras. 22-27). Commission Counsel concurs that the threshold to trigger the duty to consult is a low one (A-31, para. 29). Unless BC Hydro is attempting to argue that there is no duty to consult at all, HTG submits that the Commission is in a position—based on the evidence submitted to date—to determine that the HTG First Nations are owed a duty to consult.
21. Once the Commission confirms whether or not it believes there is a duty to consult and whether or not there should be a separate process, the parties can begin the process of setting out the scope and content of the duty and assisting the Commission to assess what the scope and content should be and whether or not accommodation is required.

**A Separate, Distinct, or Additional Process is Required**

22. BC Hydro relies heavily on the *Taku* case for the proposition that a separate, distinct or additional process is not required. For the reasons detailed in HTG’s reply submission dated November 22, 2005, the *Taku* case is not determinative of this issue (C27-11, paras. 15-24).

23. HTG appreciates that Commission Counsel has brought to the attention of the Commission and all participants (A-37) the recent ruling by the Supreme Court of Canada in the *Mikisew* case<sup>2</sup>.
24. However, HTG respectfully disagrees with Commission Counsel on whether the *Mikisew* case has any bearing on HTG's request for a separate, distinct or additional consultation process.
25. Commission Counsel dismisses the relevance of *Mikisew* by stating that "The Court does not discuss the issues of the need for a separate process in the context of proceedings before a quasi-judicial panel" (A-37, cover letter).
26. In fact, HTG submits that the Supreme Court of Canada decision in *Mikisew* is highly relevant to the issues before the Commission. *Mikisew* was about a Crown project to build a road, much in the way that the VITR hearing is about a Crown project to upgrade a transmission line. The Crown argued that the impact of the road on the First Nation would be low, much in the way that the Crown will argue that the impact of the transmission line on First Nations will be low.
27. Most relevant is the fact that the Crown in *Mikisew* argued that existing consultation processes, including the environmental assessment process, were good enough and that no separate consultation process was required for First Nations:

"According to the trial judge, most of the communications relied on by the Minister to demonstrate appropriate consultation were instances of the *Mikisew*'s being provided with standard information about the proposed road in the same form and substance as the communications being distributed to the general public of interested stakeholders. Thus Parks Canada acting for the Minister, provided the *Mikisew* with the Terms of Reference for the environmental assessment on January 19, 2000. The *Mikisew* were advised that open house sessions would take place over the summer of 2000. The Minister says that the first formal response from the *Mikisew* did not come until October 10, 2000, some two months after the deadline she had imposed for "public" comment. Chief Poitras stated that the *Mikisew* did not formally participate in the open houses, because "... an open house is not a forum for us to be consulted adequately"...

The Minister now says the *Mikisew* ought not to be heard to complain, about the process of consultation because they declined to participate in the public process that took place. Consultation is a two-way street, she says. It was up to the *Mikisew* to take advantage of what was on offer. They failed to do so. In the Minister's view, she did her duty"<sup>3</sup>.

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<sup>2</sup> *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69.

<sup>3</sup> *Mikisew* (SCC) at paras. 9 and 13, emphasis added.

28. The Court flatly rejected the arguments by the Crown that the public consultation process was good enough to discharge the duty to consult. Even though the Supreme Court of Canada described the project as “a fairly minor winter road” and noted that it would be built on lands already surrendered by the First Nation in Treaty 8, the Crown failed to meet its legal duty so the Court over-turned the road authorization and sent the Crown back to engage in consultation with the First Nation.

“The duty [to consult] here has both informational and response components. In this case, given that the Crown is proposing to build a fairly minor winter road on surrendered lands where the Mikisew hunting, fishing and trapping rights are expressly subject to the “taking up” limitation, I believe the Crown’s duty lies at the lower end of the spectrum. The Crown was required to provide notice to the Mikisew and to engage directly with them (and not, as seems to have been the case here, as an afterthought to a general public consultation with Park users). This engagement ought to have included the provision of information about the project addressing what the Crown knew to be Mikisew interests and what the Crown anticipated might be the potential adverse impact on those interests. The Crown was required to solicit and to listen carefully to the Mikisew concerns, and to attempt to minimize adverse impacts on the Mikisew hunting, fishing and trapping rights. The Crown did not discharge this obligation when it unilaterally declared the road realignment would be shifted from the reserve itself to a track along its boundary. I agree on this point with what Finch J.A. (now C.J.B.C.) said in Halfway River First Nation at paras. 159-160.

The fact that adequate notice of an intended decision may have been given does not mean that the requirement for adequate consultation has also been met. The Crown’s duty to consult imposes on it a positive obligation to reasonably ensure that aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action. [Emphasis added by the Supreme Court of Canada]

It is true, as the Minister argues, that there is some reciprocal onus on the Mikisew to carry their end of the consultation, to make their concerns known, to respond to the government’s attempt to meet their concerns and suggestions, and to try to reach some mutually satisfactory solution. In this case, however, consultation never reached that stage. It never got off the ground.<sup>4</sup>

29. The Mikisew Cree declined to participate in the public processes on offer, including an environmental assessment process, because the First Nation felt that these public processes were “not a forum for us to be consulted adequately”. The Court stated that the First Nations have some responsibility to engage consultation but that the consultation for the road in the *Mikisew* case “never got off the ground” because the

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<sup>4</sup> *Mikisew* (SCC) at paras. 64-65, emphasis added.

Crown was only offering the public consultation process.

30. In the hearing before the Commission, HTG is trying to participate to the best of its abilities and resources. Ultimately, the HTG First Nations may not be able to fully participate in the BCUC process or the Environmental Assessment process due to lack of resources and due to the narrowness of the scope of both reviews.
31. The Supreme Court of Canada ruling in *Mikisew* confirms HTG's submission that the mere ability to participate in a public process is not sufficient. A separate, distinct or additional First Nations consultation process is required.

### **The Commission Should Make Efforts to Accommodate Aboriginal Perspectives**

32. The Supreme Court of Canada has consistently emphasized the importance of reconciliation in dealings between the Crown and First Nations. The Court has stated that:

"...the only fair and just reconciliation is ... one which takes into account the aboriginal perspective while at the same time taking into account the perspective of the common law. True reconciliation will, equally, place weight on each."<sup>5</sup>

33. HTG would like to observe that neither the BCUC process nor the EA process is consistent with traditional law and protocol regarding intrusions into First Nations territory. Both processes are foreign and artificial. It does not fit comfortably with HTG First Nation laws and protocols to prepare formal submissions in legalese. First Nation laws require that anyone wanting to carry out activities in the Territory should come and speak with the First Nation in person, attend cultural ceremonies, respectfully explain who they are, who their family is, what they want, and what they are proposing to offer in exchange for being granted permission to be in the Territory.
34. There is a whole system of traditional laws and protocols that must be followed. Reconciliation requires proponents, decision-makers, courts and quasi-judicial entities to give equal weight to the First Nations' laws and protocols and not just try to force the First Nations to fit into processes that are foreign to them and are not designed to deal with aboriginal rights, title and laws.

### **Costs**

35. HTG has already presented arguments relating to its request for an order of advance costs (C27-11 paras. 38-47).
36. BC Hydro states that the Commission does not have jurisdiction to order BCTC to pay HTG's costs because BC Hydro has a contractual agreement with BCTC which states that BC Hydro is responsible for costs relating to consultation with First Nations (C6-5 p. 10). HTG does not have a preference for who pays the costs as long

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<sup>5</sup> *R. v. Van Der Peet* [1996] 2 SCR 507 at para. 50.

as somebody does. However, HTG notes that BC Hydro's position could leave the Commission with no party against whom to assess costs if BC Hydro ceased being an intervenor in the hearing process.

37. HTG respectfully suggests that the Commission ought to be cautious about allowing applicants to enter into contractual arrangements which purport to eliminate any responsibility for paying costs, since in some circumstances the party required to pay the costs may not be a party to Commission proceedings. HTG suggests that the better procedural approach is to assess costs against the applicant and to leave the applicant to seek indemnification or reimbursement through whatever contractual arrangements it may have.
38. HTG appreciates BC Hydro's offer to pay 50% of HTG's costs in advance but questions the amount and the conditions.
39. The proposed percentage is arbitrary and does not deal with the primary issue. HTG has no funding to participate in the hearing. An offer of 50% funding is helpful but means that HTG will only be able to participate in the hearing at a 50% level. The other 50% will not magically materialize from somewhere. If HTG cannot count on receiving full reimbursement in a timely manner, HTG will have to scale back its participation to the amount that can be recovered in a timely manner.
40. The amount required by HTG is relatively small in comparison to the value of the project. BC Hydro is clearly not proposing a 50% funding offer due to financial constraints or lack of funds on the part of BC Hydro. If there is some political motivation for only proposing 50% or some attempt to gain an advantage over the First Nations by only partially funding them, HTG questions whether the offer of 50% is consistent with the honour of the Crown.
41. BC Hydro is also requesting compliance with the conditions set out in the *Okanagan Indian Band* case (C6-5 at p. 11). HTG has already addressed why the Commission should not consider these conditions to be determinative and should not require strict compliance with them (C27-11, paras. 38-47).

**All of which is respectfully submitted this 29th day of November, 2005.**

Murray Browne and Renee Racette  
Counsel for the Intervenor  
Hul'qumi'num Treaty Group

**SCHEDULE “A”  
TABLE OF AUTHORITIES**

1. *R. v. Badger*, (1996), 133 D.L.R. (4th) 324 (S.C.C.).
2. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69.
3. *R. v. Van Der Peet* [1996] 2 SCR 507.