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April 26, 2006

VIA ELECTRONIC FILING

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Dear Mr. Pellatt:

**Re: British Columbia Transmission Corporation (BCTC)
Certificate of Public Convenience and Necessity (CPCN) Application for Vancouver
Island Transmission Reinforcement Project (VITR) – Project No. 3698395
Sea Breeze Victoria Converter Corporation (Sea Breeze)
CPCN Application for Vancouver Island Cable Project (VIC) – Project No. 3698405
BCUC Orders No. G-70-05 and G-97-05**

We enclose Reply Argument on behalf of BC Hydro in the subject proceeding. Twenty copies of this submission will be delivered by courier to the Commission. Copies will also be delivered to all parties to the proceeding consistent with the requirements of the Commission's document filing protocols.

Yours very truly,
LAWSON LUNDELL LLP



Chris W. Sanderson, Q.C.

c: Registered Intervenors

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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**

**Reply Submissions
of
British Columbia Hydro and Power Authority**

April 26, 2006

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I. INTRODUCTION AND STRUCTURAL OVERVIEW

1. This reply contains BC Hydro's submissions in response to the arguments of other intervenors. BC Hydro will endeavour not to repeat points contained in its April 19, 2006 argument.¹ All defined terms in this Reply have the meaning ascribed to them in that argument.

2. Generally, the reply will be structured to respond to intervenor submissions under the same major headings as contained in BC Hydro's Argument. An exception to this general approach is required in the case of some aspects of the argument of Sea Breeze which do not fall comfortably under any of the specific headings in BC Hydro's Argument. Those points are made first below.

A. Personalization of Argument

3. Sea Breeze's argument² seeks to personalize or at least corporatize the key issues in this proceeding. Their argument seeks to employ BCTC's and, to a lesser extent, BC Hydro's lack of enthusiasm for their projects as evidence of incompetence, at best, and bad faith, at worst, on the part of both organizations.³ It seems not to have occurred to Sea Breeze that an objective review by both organizations could have concluded that their proposal was not the right project at the right time from the right proponent.

¹ Counsel's Argument on Behalf of British Columbia Hydro and Power Authority dated April 19, 2006 ("BC Hydro's Argument").

² Final Submission of Sea Breeze Victoria Converter Corporation dated April 19, 2006 ("Final Submission of Sea Breeze").

³ See for example at paragraphs 4 and 5 of the Final Submission of Sea Breeze where Sea Breeze states, "Instead of seriously considering whether JdF may be a solution to Vancouver Island's needs, BCTC has expended its energies on attempting to discredit Sea Breeze ... While Sea Breeze should have been able to expect fair and honest consideration of its JdF Project by these public utilities [BCTC and BC Hydro] without resorting to a Commission order, that has not occurred."

4. In BC Hydro's respectful submission, Sea Breeze has totally failed in its attempt to demonstrate an evidentiary record that would justify the extreme allegations that it makes in its argument. It has provided no motive for what it sees to be the conspiracy against it. As it points out, BCTC is an independent system operator charged by the Province of British Columbia to develop the transmission system in the manner its professional management thinks best.⁴ There is no hint given in Sea Breeze's argument as to why BCTC would be motivated to do anything other than employ its best efforts to do just that.

5. BC Hydro is a Crown Corporation whose first and foremost obligation is to serve its customers. Again, Sea Breeze has failed to point to any evidence that BC Hydro is motivated by anything other than meeting its obligations to its customers in the approach it took to either Sea Breeze or BCTC. Indeed, the evidence demonstrates that BC Hydro met with Sea Breeze on numerous occasions prior to the formal regulatory process beginning. Sea Breeze's specific complaint appears to be that BC Hydro sent representatives to some, but not all, of its public open houses. That is not a legitimate basis for complaint about its treatment by BC Hydro.⁵

6. Interestingly, the main customer groups that have no direct interest in who the proponent is or what route the project takes have reached similar conclusions to BCTC and BC Hydro. Each of JIESC,⁶ BCOAPO,⁷ and CEC⁸ has asked the British Columbia Utilities Commission

⁴ See Final Submission of Sea Breeze, para. 6.

⁵ Exhibit B2-13, BCUC IR 1.14.1 and Exhibit B2-50, December 23, 2005 memo from Eugene Hudgson to Brian Chernack.

⁶ See Final Submission of the Joint Industry Electricity Steering Committee dated April 19, 2006 ("Final Submission of the JIESC"), p. 5.

⁷ See 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") dated April 19, 2006 ("Final Argument of BCOAPO"), p. 21.

(“BCUC” or “Commission”) to approve the VITR project. Their position stands in stark contrast to that of Sea Breeze, the backers of which saw no hurry to complete any project that would serve the needs of Vancouver Island because they have no obligations in that regard⁹ and would only see a return on the money they have invested to this date if their project proceeds. In short, all those parties who have no particular reason to favour one project over another support VITR. Only those with either a vested financial interest (Sea Breeze) or a route specific interest oppose it in favour of the Juan de Fuca project. BC Hydro makes these observations at the outset in response to the numerous *ad hominem* attacks that Sea Breeze’s argument makes on both BCTC and BC Hydro. Rather than responding specifically in reply to each of these attacks, BC Hydro asks the Commission to consider the interests of the party making them.

B. Reversal of Onus

7. Sea Breeze attempts to argue in numerous places that the onus for demonstrating how third parties view its project lies with BCTC or BC Hydro. As Sea Breeze would have it, unless others prove the contrary, the Commission is required to assume that all regulatory process involving Juan de Fuca will be successfully completed on time; that Juan de Fuca is financeable; that BPA will construct all required infrastructure; and that third parties will want to use the transmission line. BC Hydro submits to the contrary, that the onus falls squarely on Sea Breeze to prove each of these elements of its case and it failed to do that in all these areas. Specific examples of this approach are highlighted below, particularly in Section III.B.

⁸ See Final Submission of Commercial Energy Consumers of British Columbia dated April 19, 2006 (“Final Submission of CEC”), p. 45

⁹ Transcript Volume 39, pp. 7431, line 26 to 7433, line 19.

C. Hearsay Evidence

8. The bulk of the evidence Sea Breeze does rely on is hearsay. While this Commission does accept hearsay evidence, the fact it is indirect evidence goes to its weight. In this case, where self-interested testimony was given by Sea Breeze witnesses about what third parties such as Bonneville Power Administration (“BPA”) or Powerex might have thought or said or be prepared to do in the future, very little weight should be given to the testimony at all. Sea Breeze could have obtained direct evidence in these areas and an adverse inference can and should be taken from its failure to do so. Specific examples are further elaborated in Sections III.B. and IV.

II. WILL VITR PROVIDE ADEQUATE CAPACITY FOR VANCOUVER ISLAND?

9. BC Hydro submitted in its argument that VITR is an adequate project to meet the needs of Vancouver Island and should receive a CPCN, unless the Commission concluded that in its absence, a preferable alternative would be built instead. This portion of the Reply will deal with submissions that question BC Hydro’s underlying premise in connection with VITR’s adequacy.

A. Ability of the Commission to Require Construction of VITR

10. At paragraph 21 and following, Sea Breeze’s Argument acknowledges the importance of the Commission having confidence that any project the Commission favours will in fact be completed and provide a solution to Vancouver Island’s capacity shortfalls. However, in doing so, Sea Breeze wrongly suggests that the commitment issues related to Sea Breeze’s projects apply equally to BCTC’s VITR project. In making this suggestion, Sea Breeze demonstrates a fundamental misunderstanding of what it means to be a regulated utility subject to the jurisdiction of the Commission.

11. BC Hydro acknowledges that there are risks of delay to BCTC's VITR project, as there are such risks associated with any project. However, on the evidence of this proceeding, there is absolutely no credible argument to suggest BCTC will fail to complete VITR if it is authorized to do so.

12. At paragraph 77, Sea Breeze specifically suggests that the Commission may permit, but not require, the VITR project. This submission completely ignores numerous provisions of the *Utilities Commission Act*, ("UCA") including section 35, which provides as follows:

If the Commission, after a hearing, concludes that in its opinion an extension by a public utility of its existing service would provide sufficient business to justify the construction and maintenance of the extension, and the financial condition of the public utility reasonably warrants the capital expenditure required, the commission may order the utility to extend its service to the extent the commission considers reasonable and proper.

Section 38 as follows:

A public utility must

(a) provide, and

(b) maintain its property and equipment in a condition to enable it to provide,

a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

And section 42 as follows:

A public utility must obey the lawful orders of the commission made under this Act for its business or service, and must do all things necessary to secure observance of those orders by its officers, agents and employees.

13. These sections make clear that the Commission can require the construction of the VITR project if the Commission concludes that:

- the extension of service it makes possible is required in the public convenience and necessity; and
- VITR is the best means of providing the required extension.

The evidence in this proceeding demonstrates both conditions exist in this case.

14. In summary on this point, the Commission has the authority to determine when a utility must extend service. The utility is charged with the responsibility of meeting that obligation.

Where, as here, the Commission has concluded the need exists and the utility has put forward a means of extending service that the Commission has determined is acceptable, the Commission has ample power to require the utility to complete the extension.

B. Legal Challenges to VITR

15. In paragraph 23, Sea Breeze raises the spectre of legal challenges from local residents as an obstacle to completion of the VITR project and uncertainties with respect to cable ordering.

16. With respect to the legal uncertainties, the forms of right-of-way agreement filed with the Commission make it completely clear that BC Hydro has an unfettered legal right to enter on the rights-of-way, as required, to construct the facilities associated with BCTC's Option 1.¹⁰ By comparison, Sea Breeze has no right-of-way for either project.¹¹ While individual parties are free to initiate whatever legal proceedings they determine are advisable, for the purposes of determining the public convenience and necessity, the Commission must assume that the utilities

¹⁰ See Exhibit B1-6, BCUC IR 1.3.2 and attached example of a typical existing right-of-way agreement on the corridor in question.

¹¹ See Transcript Volume 33, p. 6286, line 26 to p. 6287, line 4; p. 6288, lines 2-6; p. 6288, line 20 to p. 6289, line 7; and p. 6289, line 5 to p. 6290, line 3; Exhibit C31-38, p. 5, Milestones 28 and 29; Exhibit C31-46; and Exhibit C31-57, Sea Breeze's response to undertaking at Transcript Volume 36, p. 6840 and attached Gantt chart, p. 5.

under its jurisdiction will be able to employ their legal rights to take the steps that are necessary to meet their obligation to serve their customers. Thus, while threats of lawsuits may influence the Commission's thinking with respect to timing, they ought not to influence the Commission's thinking with respect to the final outcome if the Commission is satisfied, as it must be here, with the legal underpinnings for the VITR project.

17. At paragraphs 25 and 26, Sea Breeze states there is no real urgency flowing from the somewhat arbitrary timing of the derating of Pole 2 and that the bridging measures could be relied on through at least 2008 and up to October 2010. However, at paragraph 229, Sea Breeze argues that the threat of delay through legal challenge renders VITR an imprudent option to meet the reliability needs of Vancouver Island in a timely way. By attempting to have it both ways, Sea Breeze demonstrates the opportunistic nature of its submissions.

18. At paragraphs 161 to 164 of its Final Argument,¹² the Corporation of Delta submits that both the case law and the evidence in the hearing supports a conclusion that, for Option 2 expropriations, the remaining portions of those properties in Tsawwassen crossed by, but not actually in the VITR right-of-way, will also suffer a loss. Counsel for the Corporation states that a claim for injurious affection could form the basis for additional compensation payable by BCTC/BC Hydro. BC Hydro submits that the determination of such compensation, should there be any, is not a matter for the Commission to decide.¹³

19. BC Hydro defers to BCTC on the cable ordering issue.

¹² Dated April 19, 2006.

¹³ See BC Hydro's Argument, para. 17.

C. Comparison to Duke Point Power Project

20. Sea Breeze seeks to draw an analogy with the Duke Point Power Project. The analogy is completely inappropriate.

21. First, the generation facility at Duke Point was not a regulated public utility project. None of the provisions of Part 3 of the UCA applied to it. Thus, none of the sections upon which BC Hydro's or BCTC's submissions rely were relevant to it.

22. Second, it is quite wrong to suggest that the Commission "approved" the project.¹⁴ The Commission's jurisdiction under Part 5 of the UCA was limited to accepting an energy supply contract for filing or not. The Commission determined to accept the contract,¹⁵ as it has many others, but, in the end, the project did not proceed, in the same way that many other energy supply contracts that have been filed with the Commission have not proceeded.

23. In short, energy supply contracts are subject to fundamentally different regulatory oversight than public utility projects and no comparison between the two can properly be made.

D. Cost Control Mechanism

24. At page 19 of its final argument,¹⁶ BCOAPO suggests that a cost control incentive mechanism would be appropriate in connection with VITR. BCOAPO appears to justify its

¹⁴ See Final Submission of Sea Breeze at para. 77. See also IRAHVOL Final Argument dated April 20, 2006 ("IRAHVOL Final Argument"), p. 6, where IRAHVOL states that BC Hydro "cancelled the Duke Point combined cycle generation project, as approved by the BCUC..."

¹⁵ See *In the Matter of British Columbia Hydro and Power Authority Call for Tenders for Capacity on Vancouver Island and Review of Electricity Purchase Agreement: Decision* (British Columbia Utilities Commission, March 9, 2005, Order No. E-1-05).

¹⁶ 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") dated April 19, 2006 ("Final Argument of BCOAPO").

position on the basis that if BCTC will not take the risk for construction costs, then ratepayers will. BC Hydro has a number of points to make in connection with this submission.

25. First, BC Hydro points out that the only party other than ratepayers able to assume risk in connection with construction costs is BC Hydro. BCTC has simply not been capitalized in a way which would allow it to assume a meaningful responsibility for cost overruns. Thus, the real question is whether ratepayers should pay BC Hydro to take the risk associated with the capital cost of the project.

26. This issue was last debated in the context of the Heritage Contract proceeding. In that proceeding, BCOAPO, supported by JIESC, amongst others, took the position that paying a risk premium to BC Hydro was inefficient and customers ought to have the benefits or pay the price of the actual operating costs associated with running the Heritage Assets.¹⁷ In BC Hydro's respectful submission, the same principle should apply to any other facilities that are being constructed for the sole purpose of meeting the public convenience and necessity. The evidence is clear that there is no other purpose for the VITR project.

27. Variance from the conclusion reached in the Heritage Contract decision would require the introduction of a risk premium as discussed there. As Mr. Morris's evidence made clear, BC Hydro receives no additional return on equity by virtue of its investment in the VITR project. Thus, if BC Hydro were expected to assume some risk with respect to the ultimate construction cost, there would need to be provision for some form of reciprocal reward. If that reward took

¹⁷ See *In the Matter of British Columbia Hydro and Power Authority and An Inquiry into a Heritage Contract for British Columbia Hydro and Power Authority's Existing Generation Resources and Regarding Stepped Rates and Transmission Access: Decision* (British Columbia Utilities Decision, October 17, 2003), pp. 22-30.

the form of a return on investment, it would necessitate a radical restructuring of the way in which BC Hydro is regulated, which is not within the Commission's jurisdiction.

28. Finally, BCOAPO relies on the entirely distinguishable decision of the Commission with respect to the Southern Crossing project.¹⁸ Not only was the project proponent, BC Gas, regulated on a fundamentally different basis, but, as well, the project was admittedly designed to provide regulated and unregulated benefits to its owner. The argument of intervenors in that case was that if the owner was to obtain unregulated benefits, it should also be prepared to incur unregulated cost. That situation is entirely distinct from this one, particularly in light of the fact that far from incurring unregulated benefits, BC Hydro will only undertake this expense after both the independent system operator, BCTC, and this Commission conclude that it is for the benefit of ratepayers.

29. In summary, the structure of this investment is such that it would be wholly inappropriate to introduce a cost control mechanism.

E. Consultation with First Nations

30. At paragraphs 1 to 6 of the Final Argument of Hul'qumi'num Treaty Group ("HTG"),¹⁹ HTG suggests that the Crown cannot hide behind a Crown Corporation to avoid its legal duties to First Nations. BC Hydro agrees, but says there is no evidence the Crown has sought to avoid its obligations in connection with the VITR project.

¹⁸ *In the Matter of BC Gas Utility Ltd. Southern Crossing Pipeline Project December 11, 1998 Application for a Certificate of Public Convenience and Necessity: Decision* (British Columbia Utilities Commission, May 21, 1999, Order G-51-99) ("BC Gas SCP Decision").

¹⁹ Dated April 19, 2006.

31. To the contrary, BC Hydro has undertaken consultations as the Crown's delegate to First Nations on behalf of the Crown. Further consultation and accommodation, if appropriate, can occur through the Environmental Assessment Office ("EAO") process. The EAO office has confirmed by means of the Section 11 Order (Exhibit B1-41) that it will work with First Nations as part of that process to facilitate further consultation.

32. At paragraphs 10 to 20, HTG appears to argue that the full and final consultation and accommodation on the entire project must be completed as part of the Commission's process. That position is not supported by the case law.

33. In *Taku River*,²⁰ the Supreme Court of Canada expressly determined that it was not necessary for consultation regarding the entire project be complete before concluding any particular step in the review process (*Taku River*, paras. 45-6). Moreover, contrary to HTG's submission at paragraph 16, a presumption in favour of ongoing consultation is appropriate (*Taku River*, para. 46).

34. Any concerns with respect to future consultations can be resolved by making the CPCN subject to obtaining an Environmental Assessment Certificate through the EAO process. The evidence that First Nations issues will play a central role in the EAO process is uncontradicted.²¹

35. HTG insists in paragraph 20 that it has put forward evidence to demonstrate its rights and an infringement of those rights. BC Hydro accepts that there is an onus on HTG to do exactly

²⁰ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 S.C.C. 74.

²¹ See Exhibit B1-41, sections 8, 14 and 16; and Exhibit C6-8, para. 7-9 and attached Exhibit A.

that,²² but submits that HTG has not discharged that onus. The failure to discharge the onus cannot be justified on the basis of the Commission's failure to vary its normal rules and take the extraordinary step of ordering advance funding. The Crown's obligation to consult cannot transform the Commission into a source of funding for specific interests such as those of HTG. Any request for funding must be addressed to the Crown directly and its disposition must be considered in the context of the overall consultation effort.

F. Tsawwassen First Nations ("TFN") Issues

36. Several intervenors suggested that the evidence failed to demonstrate that the concerns of the TFN with respect to Options 4 and 5 were fully made out in the absence of direct testimony from TFN representatives. BC Hydro submits that direct testimony was not needed in this case because all the correspondence²³ and all the oral testimony²⁴ was to the same effect. Options 4 and 5 were unacceptable to the TFN.

37. Several intervenors took issue with the extent to which BC Hydro had made efforts to accommodate TFN concerns.²⁵ There is no prescribed form of accommodation, but accommodation may include avoidance or mitigation of potential impacts in determining the appropriate route for a linear project.²⁶ BCTC preferred route option accommodates TFN concerns.

²² See *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73 at para. 36

²³ Exhibit C6-5, p. 9 and attached Exhibits J, K and L.

²⁴ Transcript Volume 25, p. 4719, line 22 to p. 4721, line 26.

²⁵ SDSS PAC Argument at p. 25; Bradley Campbell Argument at para. 14; TRAHVOL Argument, paras. 128(b) and (c) and 131.

²⁶ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, 2005 SCC 69 at para. 66.

III. IS THERE A VIABLE ALTERNATIVE TO VITR?

A. The VIC Project

38. In paragraph 18 and Part V at page 100 of its argument, Sea Breeze continues to try and have it both ways. Having stopped the Commission's review of the VIC project and put to rest intervenor opposition to it by withdrawing the application before it could be heard, Sea Breeze now asks the Commission to deal with VIC as if it had been heard. A decision as important as that before the Commission ought not to be based on procedural slight of hand.

39. Sea Breeze withdrew the VIC CPCN application with its eyes open and for compelling economic reasons. EIF had not looked at the economics of the VIC project at all and, based on Mr. Schroeder's testimony, it was apparent that EIF would not find them acceptable, given the returns available to the equity investor from a regulated project in B.C.²⁷ Having made the no doubt sensible decision to stop spending money on the project in consequence, Sea Breeze cannot now ask this Commission to require BCTC to pick up where Sea Breeze left off. It certainly cannot pretend that the VIC project has been subjected to the necessary scrutiny required for a CPCN application in the way that VITR has. It was for that reason that BC Hydro did not deal with the VIC project's merits at length in its initial argument and it is for that reason that no more will be said about VIC in this Reply except to say that it appears inevitable that, given the submissions made by BCTC and some of the intervenors regarding the Commission's jurisdiction²⁸ and the disaffected rate payers or landowners that will likely emerge,²⁹ there would be an appeal were the Commission to grant a CPCN for the VIC project.

²⁷ See BC Hydro's Argument, p. 32, paras. 72-73.

²⁸ See for example the Final Submission of the JIESC, paras. 77-79; and the Final Argument of the BCOAPO, p. 1.

²⁹ See Transcript Volume 33, p. 6244, line 24 to p. 6245, line 7.

40. Commencing at paragraph 363, Sea Breeze deals with the question of whether the Commission can grant a CPCN to BCTC in respect of a revised VIC proposal. BC Hydro has set out its primary position on this issue above. However, at paragraphs 381 to 383, Sea Breeze says in the alternative that if it cannot directly grant a CPCN to a VIC-like project (which BC Hydro says it cannot), it can do so on an expedited basis.

41. If there is one thing the Commission and all interested stakeholders should have learned over the last number of difficult years of trying to find a solution for Vancouver Island's capacity problems, there are no shortcuts. There is no reason that anyone should assume that VIC would be subjected to any less scrutiny, risks or threats than any other route. To suggest to the contrary is to ignore these lessons. The Commission ought to be under no illusion that if it does not certificate VITR and if Juan de Fuca does not proceed, Vancouver Island residents remain a very long way from resolving the manner in which their capacity needs will be met.

B. The Juan de Fuca Project

42. At paragraphs 94 and 99, Sea Breeze references the beliefs of Mr. Moscardelli. Beliefs are not commitments. The difference in terms of underlying analysis and the degree to which others relying on the financing occurring is apparent in the following exchange:

MR. SANDERSON: Q: So you've not done the kind of detailed analysis of the specific conditions that this project will have to meet to obtain debt financing?

MR. MOSCARDELLI: A: I'm sorry, could you repeat the question?

MR. SANDERSON: Q: Yes. I was trying to generalize from your comment -- that is, is it the case that you've not delved into the level of detail the milestones do to allow you to ascertain for the debt financing purposes exactly which permissions and certificates and agreements will be critical to obtaining that debt financing.

MR. MOSCARDELLI: A: That's correct. We have not done that level of detailed analysis at this point.³⁰

...

MR. SANDERSON: Q: All right, and it is a project or is it not a project that you actually are currently planning to commit funds to?

MR. MOSCARDELLI: A: It is a project we are currently planning to commit funds to, yes.

MR. SANDERSON: Q: And at the moment that remains an internal plan with no commitment made to Sea Breeze.

MR. MOSCARDELLI: A: That's correct.³¹

43. At paragraph 130, Sea Breeze continues its attempt to shift the onus from itself (where it belongs) to other parties in connection with Sea Breeze's attempt to demonstrate it has a viable alternative. It was not and is not up to BCTC to call evidence from BPA to help assess whether Sea Breeze's proposal is feasible. To the contrary, once legitimate questions or issues are raised with respect to Sea Breeze's alternative, there was an onus on it to provide probative evidence to support its proposal. This obligation was of particular significance in the context of the BPA system because of the obvious concerns expressed by BPA in both its filing with FERC³² and its letter filed with the BCUC as Exhibit D-71. The failure of Sea Breeze to call evidence from BPA in light of the obvious issue was exacerbated by the failure to even contact BPA to seek clarification in respect to scheduling, the Canadian Entitlement and BPA system upgrades.³³ BC Hydro completely rejects the suggestion that the onus lay anywhere other than squarely upon Sea Breeze in this area.

³⁰ Transcript Volume 35, p. 6728, line 16 to p. 6729, line 3.

³¹ Transcript Volume 35, p. 6720, lines 3-10.

³² Exhibit B2-11, BCUC IR 1.19.3A.

³³ BC Hydro Final Argument, para. 93.

44. Paragraph 145 of Sea Breeze's Argument seeks to bolster its case that BPA's upgrades will take place by reference to the possibility that BC Hydro or Powerex would be making a request for a facilities study. There is no evidence to support that contention and neither BC Hydro nor Powerex have any intention of making such a request at this time.

45. At paragraph 149, Sea Breeze again suggests that firm supply at Port Angeles could be guaranteed if only BCTC would undertake open-minded, good faith discussions. In fact, the firm supply at Port Angeles issue primarily implicates BPA and there is no ability in the Commission, nor evidenced willingness in BPA, to make those kinds of discussions occur. If Sea Breeze has not succeeded in presenting itself as a credible party to BPA, there is nothing that any of the BCUC, BCTC or BC Hydro can do about that.

46. In paragraphs 150 to 169, Sea Breeze attempts to identify the many benefits it suggests would result for a number of parties from the creation of the Juan de Fuca line. It is striking that none of the beneficiaries themselves have confirmed or corroborated any of these benefits. The Juan de Fuca project will not be built until Sea Breeze can successfully persuade these alleged beneficiaries that it is worth their financial while to pay for these alleged benefits. Nothing in paragraphs 150 to 169 provides a basis for concluding that Sea Breeze has yet made or will make anytime soon sufficient progress to provide the Commission with any confidence that this will occur. For example, at paragraph 162, Sea Breeze volunteers that Powerex might wish to choose Port Angeles as a delivery point for its trading activities or receive downstream benefits pursuant to Article 8 of the Columbia River Treaty at Port Angeles. There is no evidence to support the notion that this is something Powerex is intending to do or would be interested in doing and this speculation provides no support for the Juan de Fuca project.

47. At paragraph 192 and following, Sea Breeze suggests that the Commission has the jurisdiction to grant a CPCN to BCTC for the VITR project, subject to the directions that Sea Breeze has sought in Exhibit C31-21. It has suggested that jurisdiction is inherent in the Commission's power to condition any CPCN it may issue under section 45 of the UCA.

48. At paragraph 195, Sea Breeze suggests that the UCA contains multiple provisions giving the Commission jurisdiction to order BCTC and/or BC Hydro to negotiate with Sea Breeze, but the specific sections that are referenced in the ensuing paragraphs do not bear this out. In particular, section 23 upon which Sea Breeze seems to primarily rely has been held not to confer powers in new substantive areas not otherwise covered by the UCA.³⁴ Section 46, which relates to procedural matters dealing with CPCNs can hardly be the source of a substantive authority in the Commission and, in any event, can only apply to BCTC, not BC Hydro, since this is BCTC's application for a CPCN.

49. More generally with respect to BC Hydro, notwithstanding Sea Breeze's 157-page submission, Sea Breeze has still not indicated what it wishes to negotiate with BC Hydro, as opposed to BCTC.

IV. IS JUAN DE FUCA MORE COST-EFFECTIVE THAN VITR?

A. Comparing BC Hydro Utility Investment With Privately Funded Projects

50. A number of parties have suggested that the proper means of comparing BC Hydro utility transmission with merchant transmission needs to be determined in this proceeding. Many of those have suggested a precedent setting discussion that would go well beyond comparing utility

³⁴ See *British Columbia Hydro and Power Authority v. British Columbia Utilities Commission*, [1996] B.C.J. No. 379 (C.A.) at para. 51.

transmission with merchant transmission and cover future comparisons of all BC Hydro funded projects with privately funded projects.³⁵ BC Hydro strongly submits that such broad questions as that can only be answered in the context of appropriately broad evidence. That evidence will arise in the context of the current Integrated Electricity Plan (“IEP”) proceeding and that would be the obvious place to debate such issues. A CPCN proceeding involving a single project is clearly not an appropriate place to develop the principles for future comparisons of diverse projects.

B. Timing

51. At paragraph 110, Sea Breeze admits that an engineering, procurement and construction (“EPC”) contract with ABB will not be signed until financing is secured. Mr. Tompkins testified that financial closing is “actually a month long process”.³⁶ As stated in BC Hydro’s Argument, financial close for the Juan de Fuca project requires the completion of all milestones except those that are identified as not essential.³⁷ One of the essential milestones is the completion of the environmental assessment satisfying requirements of NEPA which BPA has stated will not occur until early 2007 at the soonest.³⁸ In addition, there is no evidence that the EIS will consider BPA system upgrades.³⁹ During cross-examination, ABB stated that it would take between 20 and 24 months from the time an EPC contract was in place to commercial operation of the project.

What this means is that in the best case scenario, completion of the project could not occur until sometime between December 2008 and March 2009. This timeframe is in direct conflict with

³⁵ See Final Submission of Sea Breeze, paras. 384-390; Final Submission of CEC, paras. 45-48; IRAHVOL Final Argument, p. 83; and Final Submission of BCTC dated April 5, 2006, paras. 43-51.

³⁶ Transcript Volume 36, p. 6839, lines 19-20.

³⁷ See BC Hydro’s Argument, para. 92.

³⁸ See BC Hydro’s Argument, para. 93.

³⁹ Exhibit C31-57, Sea Breeze’s Response to Undertaking at Transcript Volume 35, p. 6827, Notice of Intent.

Sea Breeze's late hearing evidence predicting commercial in-service date for the project of April 28, 2008 and worst case estimate in Argument of October 2008.⁴⁰ If Sea Breeze is delayed in meeting any of the many essential milestones, the completion of the project would be much later than the best case scenario. Given the evidentiary record such an in-service date cannot and should not be relied upon.

C. Performance Guarantee

52. In paragraphs 119 to 121, Sea Breeze comments on performance guarantees. The performance guarantees contemplated by Sea Breeze do not meet the needs that BC Hydro perceives to exist.

53. At no time has Sea Breeze or EIF ever offered to post a bond or any other form of performance guarantee which would give BC Hydro or its customers any protection against failure of Sea Breeze to proceed with the project. As BC Hydro's Argument illustrated, and all the evidence indicates, there is no obligation on Sea Breeze to proceed with the Juan de Fuca project if the VITR project is not certificated and no protection being offered to ratepayers should events evolve in that way. A performance bond which appears to be for the primary benefit of equipment suppliers during the development and construction phases⁴¹ does not address this concern in any way.

⁴⁰ See Final Submission of Sea Breeze, para. 115. It is important to note that, over the course of the hearing, the in-service date for the Juan de Fuca project has changed from April 28, 2008 (see Exhibit C31-57, Sea Breeze's response to undertaking at Transcript Volume 36, p. 6840, and attached Gantt chart, p. 8) which Dr. El-Ramly agreed with (Transcript Volume 31, p. 5838, lines 14-18, "spring 2008") to mid-2008 as the "worst case scenario" (evidence of Mr. Chernack, Transcript Volume 31 p. 5837, line 24 to p. 5838, line 5) to the current worst case scenario of October 2008.

⁴¹ Transcript Volume 40, pp. 7500, line 19 to 7501, line 21; and Exhibit C31-57, Sea Breeze's response to undertaking at Transcript Volume 40, pp. 7501 and 7505-06.

D. Trade Benefits

54. At paragraph 70, Sea Breeze suggests substantial trade benefits to Powerex by taking advantage of increased transfer capabilities between Canada and the United States. Similar submissions are made by various other intervenors.⁴² In reply, BC Hydro submits that these are not benefits which BC Hydro or its subsidiary, Powerex, are forecasting and the estimate of these benefits are entirely speculative. The Commission does not have credible evidence to attribute these benefits to Juan de Fuca based on the record of these proceedings.

55. More fundamentally on this point, the question of trade benefits is quite distinct from the demonstrable needs of Vancouver Island residents. The Commission's task on BCTC's application for VITR is not to assess "the overall economics of the Juan de Fuca project". The Commission's jurisdiction arising from this application extends only to assessing the best means of serving Vancouver Island and its views respecting the overall economics of an unregulated project such as Juan de Fuca should form no part of that assessment.

56. Notwithstanding these criticisms of the Juan de Fuca project as presented by Sea Breeze, BC Hydro acknowledges in its Argument that the project may have the potential to increase trade in the long run or even defer transmission projects that would otherwise be necessary to serve future needs. BC Hydro is quite prepared to work with BCTC, BPA and, if it would add value, Sea Breeze in the longer run to develop this potential. However, these efforts must not deflect

⁴² See Commercial Energy Consumers of BC in its Final Submission dated April 19, 2006, at paras. 94 to 100; IRAHVOL Final Argument, pp. 65-66; and the Final Submission of Tsawwassen Residents Against Higher Voltage Overhead Lines Society dated April 19, 2006 at p. 1.


anyone from the task at hand, which is meeting Vancouver Island capacity needs in as timely a way as possible.


ALL OF WHICH IS RESPECTFULLY SUBMITTED.

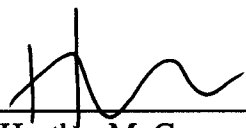
Dated: April 26, 2006

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