

**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 ARGUMENT OF THE**  
**JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE**

**APRIL 26, 2006**

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## **INTRODUCTION**

1. The JIESC has reviewed all of the Intervenors' final arguments filed in these proceedings and sees no reason to change or elaborate further on its position as set out in its Final Argument. However, it does have the following limited reply comments with respect to both TRAHVOL and Sea Breeze's Final Arguments, EMF and cost controls generally.

## **TRAHVOL**

### **Inflammatory Language**

2. The use by TRAHVOL of highly inflammatory language in the opening sections of its argument is unwarranted and most of all, unhelpful. BCTC has a broad mandate to take into account a variety of interests and to propose solutions to difficult issues that will be held to be in the public interest. While parties may disagree, a functional and efficient process requires that disagreement be sound and respectful. TRAHVOL's opening comments were neither.

3. Accusations of "bad faith", "abuse of process" and "dishonourable conduct"<sup>1</sup> should only be raised where the evidence of such conduct is beyond question and where the behaviour of the party raising the issues is beyond reproach. Clearly, this is not one of those situations. TRAHVOL is making this accusation because BCTC is suggesting that in the absence of evidence that a majority of the affected Tsawwassen property owners prefer an underground solution, this Commission should approve Option 1. That is not bad faith or an abuse of process, it is good sense. Pursuing the underground option is going to cost more than \$14 million extra, possibly much more if expropriation is necessary, solely for the benefit of 102 homes. If the residents won't say if this would be an improvement, they cannot complain when BCTC and others cannot justify the expenditure.

4. Furthermore, to complain that BCTC is acting in an abusive manner and in bad faith when it is acting in a manner that is forced upon it by TRAHVOL's own members' conduct is offensive. BCTC proposed Option 2 assuming it would be a compromise that would be more attractive to the residents. If TRAHVOL's members had simply said that the underground option was better than the overhead lines, while maintaining their position that they don't like either

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<sup>1</sup> TRAHVOL Final Argument, at page 3, paragraphs 8 – 22.

option, it is highly unlikely that BCTC would have felt compelled to qualify its initial support for Option 2.

### **Natural Justice, Legitimate Expectation and Estoppel**

5. The JIESC submits that there is no breach of the rules of natural justice should this Commission approve BCTC's new proposal<sup>2</sup> and there is no merit whatsoever to TRAHVOL's argument that BCTC is precluded from presenting Option 1, or that this Commission is somehow estopped from entertaining BCTC's proposal because BCTC, "*created a legitimate expectation on the part of the residents of Tsawwassen that BCTC would not recommend Option 1.*"<sup>3</sup>

6. TRAVHOL relies on the *Apotex Inc. v. Canada (Attorney General)*<sup>4</sup> and the *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*<sup>5</sup> cases to argue that BCTC created a legitimate expectation that it would not recommend Option 1. Both cases can be distinguished on their facts in that they dealt with Ministerial discretion, in the first instance to enact regulations and in the second, to issue a permit. In this case, BCTC is not the ultimate decision maker. BCTC presented various routing alternatives to the BCUC and it is the BCUC who will ultimately make the decision as to which option is in the public interest.

7. While the JIESC does not accept that BCTC created a legitimate expectation, in any event, TRAVHOL cannot argue that "*BCTC is estopped from making such a recommendation*"<sup>6</sup> because TRAVHOL cannot establish that it relied on BCTC to its detriment. On the contrary, the following facts demonstrate that TRAVHOL did not rely on BCTC:

- TRAHVOL knew precisely what the application was from the start of this proceeding;
- TRAHVOL attended these proceedings knowing that this Commission had seven (7) alternative route options available to it and that BCTC could not bind the Commission by

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<sup>2</sup> *Ibid*, at pages 5 - 6, paragraphs 17 - 18.

<sup>3</sup> *Ibid*, at pages 5 - 6, paragraph 18.

<sup>4</sup> *Apotex Inc. v. Canada (Attorney General)*, [2000] 4 F.C. 264.

<sup>5</sup> *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, [2001] 2 SCR 281.

<sup>6</sup> TRAVHOL's Final Argument, at page 6, paragraph 18.

agreeing not to recommend Option 1. Clearly, even if Option 1 was not available to it, the Commission could have approved Option 2 without an underground section if it decided that was appropriate;

- TRAHVOL created the conditions under which it became difficult for BCTC to rationally continue to support Option 2; and
- TRAHVOL participated fully as an Intervenor with legal counsel in the entire proceeding, which legal counsel cross-examined BCTC's representatives, including BCTC's President and CEO, on the nature and extent of its qualified decision not to recommend Option 1.

The JIESC submits that there is no breach of the doctrine of legitimate expectation or the rules of natural justice, no further cross-examination is required, and this Commission is free to pick from Options 1 to 7.

### **Indemnity**

8. The JIESC strongly disagrees with TRAHVOL's argument that it is entitled to full indemnity for its costs to participate in these proceedings.<sup>7</sup> Such a position is untenable and without precedent. TRAHVOL participated in the hearing to the fullest, taking everyone's time as it looked for any possible grounds to challenge BCTC's conclusions. While it has every right to do this and to make its positions clear and to test the options, it does not have a right to require others to pay the costs of it doing so.

### **SEA BREEZE**

#### **Perspective**

9. Throughout this hearing Sea Breeze has proceeded as if it is being persecuted by BCTC. This attitude is particularly clear in paragraphs 4 – 7 of its argument. The attitude seems to come from a belief that because BCTC has not seen the benefits in the projects that Sea Breeze views as obvious, BCTC must be acting in bad faith. If the benefits were this obvious, all the ratepayers would be on Sea Breeze's side and promoting its projects, but they are not.

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<sup>7</sup> *Ibid*, at page 7, paragraph 22.

10. BCTC and BC Hydro's first duty is to their customers, not to would be developers. BCTC's customers expect it to be prudent and to take advantage of cost saving opportunities, but they also expect BCTC to be sceptical of the unproven and to test projects like the VIC and JDF Projects. In this case, BCTC did so and found that Sea Breeze projects are not the optimal solutions to the problems BCTC is facing on Vancouver Island; conclusions the JIESC agrees with. BCTC has done what it is expected to do and should not be abused for it.

### **Review of Alternative Options**

11. Sea Breeze states, at paragraph 5 of its Final Argument, that:

"While Sea Breeze should have been able to expect fair and honest consideration of its JDF Project by these public utilities without resorting to a Commission order, that has not occurred."

The JIESC submits and the record shows, that BCTC has fully considered all reasonable options and that it employed an appropriate process to review and evaluate reasonable alternatives. BCTC has a duty to test all options, particularly where it is not familiar with the parties involved, to a reasonable degree. BCTC should not do the same level of examination of every possible option. It should examine all options only to the extent necessary to determine whether or not they are viable. In some cases this will require a great deal of work, in some cases it will not require much work at all.

### **Split Case Argument**

12. Sea Breeze argues that issues of fairness require that:

... BCTC argue its case in full in the first instance and use its opportunity for Reply only to deal with points raised by Intervenors in their arguments that BCTC could not have anticipated.<sup>8</sup>

The JIESC submits that the proper approach is that BCTC be required to state its case in full and set out in reasonable detail its objections to the suggestions from the opposition. It has done this. BCTC should not be required to anticipate in advance each and every twist or reason for opposing an application that an Intervenor may potentially raise. To require BCTC to set out its case and the essential problems it sees with the other options, as it has done here, is appropriate. To then ask it to anticipate the entirety of the hundreds of pages of Intervenor arguments, including Sea Breeze's 157 page argument, is improper, inefficient and unreasonable.

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<sup>8</sup> Sea Breeze Final Argument, at pages 12 – 13, paragraphs 36 – 42.

## **GENERAL COMMENTS**

### **EMF and Environmental Matters**

13. While the BCUC can consider EMF and other environmental issues at some level in order to compare alternative projects, it should be remembered that we now have other more appropriate specialized tribunals that are required to consider EMF and other environmental issues of the sort raised by Sea Breeze<sup>9</sup> and other Intervenors. The VITR will be subject to several environmental assessment processes including environmental assessments and approvals under the *British Columbia Environmental Assessment Act* (BCEAA), the *Canadian Environmental Assessment Act* (CEAA) and because a 12 km portion of the marine section of the Project will take place in US waters, under various US legislation.<sup>10</sup> In order to avoid duplication of work, effort and expense, the BCUC should leave detailed consideration of EMF and other environmental matters to these specialized tribunals which will be reviewing the BCTC VITR application in any event.

### **Cost Control Incentive Mechanism**

14. In its final argument, the British Columbia Public Interest Advocacy Centre (“BCOAPO”) argued that this Commission establish a cost control mechanism similar to that established in its May 21, 1999 BC Gas Utility Ltd. Southern Crossing Pipeline Project Decision.<sup>11</sup> The JIESC believes that cost control is a legitimate issue and that this Commission should establish project-specific cost control mechanisms for the VITR Project to protect ratepayers against significant cost overruns.

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<sup>9</sup> Sea Breeze’s Final Argument, at pages 75 – 76, paragraphs 234 – 239 [reference to Eel grass areas in Boundary Bay and the impact of fluid filled cables].

<sup>10</sup> B1-1, at page 6, lines 4 – 9.

<sup>11</sup> BCOAPO’s Final Argument, at pages 19 – 21.

## CONCLUSION

15. In conclusion, having considered the final arguments of all of the Intervenor in these proceedings, the JIESC remains convinced that the VITR Project, with Option 1 overhead through Segment 2 in Tsawwassen, is consistent with the public interest and should be approved by this Commission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26<sup>TH</sup> DAY OF APRIL, 2006

BULL, HOUSSER & TUPPER LLP

Per:

A handwritten signature in cursive script that reads "BWallace".

Brian Wallace

A handwritten signature in cursive script that reads "SHansen".

Sarah D. Hansen

Counsel for the Joint Industry Electricity Steering Committee