

In the Matter of the *Utilities Commission Act*,  
R.S.B.C. 1996, c. 473

- and -

Re: British Columbia Transmission Corporation  
Project No. 3698395 / Order No. G-70-5  
Certificate of Public Convenience and Necessity Application for  
Vancouver Island Transmission Reinforcement

**SEA BREEZE VICTORIA CONVERTER CORPORATION**  
**REPLY TO INTERVENOR SUBMISSIONS**

DAVIS & COMPANY LLP  
2800 – 666 Burrard Street  
Vancouver, BC V6C 2Z7  
Tel. 604.687.9444  
Fax. 604.687.1612

P. John Landry  
Jason K. Herbert

Counsel to Sea Breeze Victoria Converter Corporation

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**I. OVERVIEW OF REPLY TO INTERVENOR SUBMISSIONS**

1. Sea Breeze disputes many of the positions taken and arguments made by BC Hydro, JIESC, and BCOAPO in their respective Final Submissions filed on April 19, 2006. And, although Sea Breeze believes that CEC's Final Submission may well be of assistance to the Commission to the extent that it appears that CEC has attempted to provide an independent and objective assessment of many of the issues which have been raised in this proceeding – in stark contrast to the approach taken, for example, by BCOAPO, which adds very little if anything of substance to BCTC's arguments on most of the issues addressed – Sea Breeze nevertheless does not agree with or accept all of the positions taken and arguments made by CEC in its final submission.

2. To the extent that most of the issues raised in the Submissions of the foregoing intervenors have already been addressed in Sea Breeze's Final Submission of April 19, 2006, Sea Breeze does not intend to address those issues further in this Reply Submission. For those issues where Sea Breeze has chosen not to present further argument, this should not be taken as agreement with the positions taken or arguments made by any other intervenors concerning those issues.

3. Accordingly, this submission replies only to the following specific matters raised by other intervenor submissions:

- BCOAPO’s submissions about the approach the Commission should take in assessing the arguments made by the various intervenors in this proceeding, including BCOAPO’s officious suggestion that it should somehow be recognized as the sole voice of residential customers and their interests in this proceeding (BCOAPO Final Submission, pages 2 to 4);
- the overall approach which BC Hydro has taken in arguing, in effect, that there are various uncertainties which should preclude the Commission from considering JdF as an alternative to VITR, even though those uncertainties are of such a nature that they would be inherent in virtually any investor-funded proposal to build a merchant transmission line interconnecting two transmission systems (BC Hydro Final Submission, paragraphs 58 to 66, 69 to 75, 83 to 87, and 92 to 96);
- BC Hydro’s improper reliance on Exhibit D-71 as “evidence” in this proceeding (BC Hydro Final Submission, paragraphs 64, 66, and 93);
- BC Hydro’s incorrect assertion that “there is no evidence on the record that Sea Breeze has received a budgetary estimate from ABB for the Juan de Fuca project”, and the submissions of BC Hydro and JIESC concerning Sea Breeze’s inability to locate an e-mail from Mr. Eriksson confirming the accuracy of ABB’s budgetary estimate<sup>1</sup> (BC Hydro Final Submission, paragraph 81; JIESC Final Submission, paragraphs 82 to 83);
- BC Hydro’s submissions concerning how the Commission should assess the rate impact of VITR for the purpose of this proceeding (BC Hydro Final Submission, paragraphs 25 to 32); and
- the arguments of BC Hydro, BCOAPO, and JIESC that the very significant risk of delay which is inherent in BCTC’s proposed “Option 2” for VITR, as a result of the strong public opposition by local residents to BCTC’s proposal to acquire underground rights of way through Tsawwassen for the purpose of pursuing that option, can allegedly be avoided by Commission approval of VITR “Option 1” (BC Hydro Final Submission,

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<sup>1</sup> See Exhibit B2-19, BC Hydro IR 1.26.1; Exhibit C31-57, Response to Undertaking at TR v. 30, p. 5676 (PDF p. 3).

paragraphs 21 to 24; BCOAPO Final Submission, pages 13 to 14; JIESC Final Submission, paragraphs 12 to 13).

## **II. BCOAPO CHARACTERIZATION OF INTERVENOR ARGUMENTS**

4. BCOAPO suggests in its Final Submission<sup>2</sup> that there are only “[t]hree major intervenors” in this proceeding “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”, and BCOAPO then appears to go on to suggest that the arguments presented by other intervenors who opposed BCTC’s VITR Application at the hearing should be discounted or given less weight by the Commission, because those other intervenors had “very specific reasons for their opposition” which “were related to their own particular interests.”

5. It is Sea Breeze’s position that the Commission must consider the arguments presented by every intervenor in this proceeding based on the Commission’s objective and independent assessment of the merits of those arguments in light of all of the evidence that has been brought before the Commission in this proceeding and any applicable regulatory or legal principles. If an argument is meritorious, it does not become less so merely because the intervenor presenting it may have a particular interest at stake in doing so, or merely because the argument is made by a small or large stakeholder.

6. Indeed, as much as BCOAPO might criticize opponents of VITR because of the interests they have at stake, it could just as easily be said that BCOAPO (along with JIESC and CEC) has its own interests at stake, and could be expected to have a natural bias against supporting any measure aimed at reducing direct adverse impacts of transmission development on local residents and businesses, if such a measure could have the effect of imposing any additional cost on ratepayers, regardless of the severity of the localized impacts. Similarly, BCOAPO may have a natural bias to be more concerned with immediate short-term cost impacts than with broader long-term objectives such as avoidance of seismic risk or enhancement of trade capacity.

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<sup>2</sup> BCOAPO Final Submission, p. 2.

However, it is the Commission's role and responsibility to appropriately balance all of these interests in its assessment of whether the VITR proposal is in the "public convenience and necessity".<sup>3</sup>

7. In any event, BCOAPO certainly has no mandate to speak exclusively on behalf of residential customers.

8. The various organizations within the BCOAPO umbrella may be said to represent, at most, only a relatively narrow set of subclasses of residential customers, focussed primarily on anti-poverty groups. The concerns of those groups do not necessarily coincide with those of other members of the ratepaying public at large, many of who may be more interested, for example, in avoiding potential environmental or health impacts of AC transmission (even if that could involve additional cost), or in the promotion of private investment in the province, or who may be less risk averse when assessing the potential economic costs and benefits of different options for meeting the province's transmission needs.

9. Further, it should also be noted that there are many other intervenors in this hearing besides BCOAPO who do, in fact, represent the interests of various groups of residential customers, including IRAHVOL, TRAHVOL, the South Delta Secondary School Parent Advisory Council, the Corporation of Delta, and the Islands Trust, as well as various individual intervenors all of whom are, themselves, residential customers. The fact that those groups and individuals may be particularly affected by VITR in a way that members of BCOAPO are not does not remove them from the class of residential customers, and does not render their arguments or concerns any less worthy of the Commission's consideration.

10. Indeed, having regard to the overall scope of participation of the various intervenors in this proceeding, including the extent to which intervenors actually called evidence, asked information requests, cross-examined witness panels, or made other substantive contributions to the hearing process, an intervenor such as IRAHVOL can much more meaningfully claim to represent the interests of residential customers in this proceeding than BCOAPO, which filed no direct evidence, produced no witnesses, and – apart from its arguments to the effect that Option 1

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<sup>3</sup> Sea Breeze Final Submission, pars. 391-402.

should be preferred over Option 2, and its submissions concerning the establishment of a cost control mechanism – said very little else of substance in its Final Submission other than to assert its agreement with other positions taken by BCTC, as is particularly apparent with respect to BCOAPO’s submissions on VIC and JdF.<sup>4</sup>

11. In contrast, IRAHVOL called significant evidence at the hearing, and asked numerous information requests, conducted extensive cross-examination, and presented detailed arguments that have clearly gone far beyond the narrowly-defined interests of local Gulf Island residents, to encompass much broader issues involving, among other things, system planning, reliability, and seismic concerns which are obviously of general interest to all ratepayers.

12. Those broader issues were not addressed in any meaningful way by BCOAPO, which was singularly concerned in this proceeding with the immediate cost implications of the options before the Commission, and which, otherwise, has provided little if any real assistance to the Commission.

13. Indeed, the interventions of JIESC and CEC, neither of which filed any direct evidence or produced any witnesses at the hearing – and even BC Hydro, whose direct evidence was limited to the very narrow issues addressed by Messrs. Fralick and Morris – suffered from limitations similar to those of BCOAPO’s intervention, in comparison to the much more extensive contributions which were made by other intervenors in developing the evidentiary record that is now before the Commission.

14. In further reply to BCOAPO’s argument, Sea Breeze agrees with BCOAPO’s observations that “BCTC has not applied for approval of a specific project but rather for approval of a transmission solution to Vancouver Island”, and that BCTC “has provided the Commission with seven alternatives.”<sup>5</sup> However, given the dismissive approach which BCOAPO has taken to the interventions of other Intervenors in this proceeding (as outlined above), BCOAPO’s observations simply ignore the fact that there are now nine – not seven – alternatives before the Commission, including the JdF Project and the VIC-like alternative which have been proposed

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<sup>4</sup> BCOAPO Final Submission, pp. 4-6.

<sup>5</sup> BCOAPO Final Submission, p. 6.

by Sea Breeze. Those additional alternatives have been fully canvassed in this proceeding, and actually represent viable alternatives for meeting Vancouver Island's needs – unlike several of the route options BCTC has brought forward, which various intervenors, and even BCTC itself, agree are fraught with problems and are not feasible. The JdF and VIC-like alternatives must now be considered by the Commission.

### **III. BC HYDRO SUBMISSIONS RE: INHERENT UNCERTAINTY OF MERCHANT TRANSMISSION PROPOSALS**

#### ***(a) Introduction***

15. BC Hydro's first observation about the JdF Project, in the section of its Final Submission addressing JdF, is that "Sea Breeze's proposal is for a merchant line and it is under no obligation to build it if the economic circumstances are not favourable for itself and its financiers."<sup>6</sup> BC Hydro then outlines certain features of the JdF proposal which it says prevent Sea Breeze from establishing that there is a "virtual certainty" that JdF will be built; and, BC Hydro goes on to argue that, as a result of that absence of virtual certainty, the Commission should not even entertain JdF as an alternative to VITR.

16. In assessing the merits of BC Hydro's argument, the Commission should fully recognize that the principal features of the JdF proposal which BC Hydro refers to in its argument are features which flow directly from the simple fact that JdF is a proposal for an investor-funded merchant transmission facility connecting two transmission systems: in other words, they are features that would be present for virtually any such proposal. In particular, the following elements of JdF, which BC Hydro relies on heavily in its argument, are not unique to JdF; equivalent issues would arise in connection with virtually any proposal for investor-funded merchant transmission:

- the presence of various milestones under the contractual arrangements between Sea Breeze and EIF;<sup>7</sup>
- the dependency of JdF on certain upgrades to the BPA system;<sup>8</sup>

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<sup>6</sup> BC Hydro Final Submission, par. 58.

<sup>7</sup> BC Hydro Final Submission, pars. 59-60.

- the differences between the Commission’s regulatory jurisdiction over a merchant transmission line in contrast to a BC Hydro-financed asset;<sup>9</sup> and
- the flexibility in determining the price of access to the JdF Cable.<sup>10</sup>

17. Sea Breeze has already addressed each of the foregoing issues in its April 19, 2006 Final Submission,<sup>11</sup> and it does not propose to reargue those issues in detail in this Reply. However, for the purposes of this Reply argument, Sea Breeze does find it necessary to comment further on the general approach which BC Hydro has proposed the Commission should take to assessing these issues for the purpose of answering the question of whether the Commission can have sufficient confidence that JdF will be constructed for it to consider JdF as an alternative to VITR.

18. From a broad perspective, if the Commission adopts BC Hydro’s proposed approach to this question, as opposed to the approach Sea Breeze has proposed in its Final Submission, the practical effect will be to preclude the Commission from ever considering merchant transmission as an alternative to traditional ratepayer-funded investment in transmission in this province. Moreover, the same approach could even prevent the Commission from continuing to consider privately developed generation projects (IPPs) as potential alternatives to ratepayer-funded development, to the extent that virtually any privately developed project – transmission or generation – would suffer from similar “uncertainties” to those which BC Hydro is alleging are fatal to Sea Breeze’s proposal.

19. Such a result must be rejected.

20. Indeed, the implication that merchant transmission could never be considered as a viable alternative to ratepayer-funded investment in transmission directly contradicts BC Hydro’s own acknowledgment that there may be a place for private transmission in meeting the needs of BC’s transmission system.

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<sup>8</sup> BC Hydro Final Submission, pars. 62-66.

<sup>9</sup> BC Hydro Final Submission, par. 75.

<sup>10</sup> BC Hydro Final Submission, pars. 83-87.

<sup>11</sup> Sea Breeze Final Submission, pars. 87-146, 128-146, 192-207, and 63-73.

21. Testifying on behalf of BC Hydro at the hearing, Mr. Morris specifically acknowledged, in the context of considering the Canadian Electricity Association's analysis of the types of measures which could be taken to promote construction of the transmission infrastructure needed to relieve existing constraints on the North American grid and to ensure sustainability of electricity supply in Canada and the US,<sup>12</sup> that measures to promote investment in merchant transmission facilities in both countries should be explored.<sup>13</sup>

22. Similarly, BC Hydro states in its Final Submission that it "accepts there may well be a place for private transmission in meeting transmission needs in BC."<sup>14</sup>

23. BC Hydro goes on to assert in its argument that "it is not persuaded on the record of this proceeding that the financial basis on which that should occur has been established with sufficient clarity to allow the Commission to make a general determination on what that should be."<sup>15</sup> But, if BC Hydro truly believes, as it has stated, that private investment in merchant transmission may play a role in fulfilling BC's transmission needs, it is simply disingenuous for BC Hydro to suggest that Sea Breeze's JdF proposal should be dismissed by the Commission on the basis of factors which would necessarily apply to the financing arrangements for any such project.

24. If BC Hydro believes that debate is needed about the "financial basis" on which merchant transmission could be considered as an alternative for meeting BC's transmission needs, the JdF proposal was squarely on the table in this proceeding, and BC Hydro had ample opportunity to engage in such a debate, and to bring forward evidence to proactively and constructively engage in the issues raised by JdF, instead of simply criticizing the JdF proposal from the sidelines. Indeed, there could have been no better opportunity for BC Hydro to engage in such a debate than in the present proceeding, where Sea Breeze has willingly committed very substantial time, energy, and resources to assist the Commission in its consideration of these issues through its active intervention in the proceeding as a proponent of a merchant transmission proposal that BC Hydro itself has specifically acknowledged has the intrinsic potential to "resolve the transmission

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<sup>12</sup> Exhibit C31-42, pp. 12-13.

<sup>13</sup> TR v. 34, p. 6573.

<sup>14</sup> BC Hydro Final Submission, par. 32.

<sup>15</sup> BC Hydro Final Submission, par. 32.

problems on Vancouver Island for a number of years,”<sup>16</sup> and where Sea Breeze has also brought forward evidence from EIF, SocGen, and ABB to further assist the Commission in its consideration of these issues.

25. On the other hand, if the Commission decides to adopt the highly restrictive approach BC Hydro is advocating for considering merchant transmission as an alternative to traditional ratepayer-funded facilities – which sets an unreasonably high burden that could never be met by a privately-funded merchant transmission proposal – it is very unlikely that a similar opportunity to debate these issues will arise again before this Commission any time in the near future, as it is unlikely that another private proponent of merchant transmission will be as willing as Sea Breeze to expend the resources which Sea Breeze expended in this proceeding on a similar endeavour if there is clearly no likelihood of the Commission ever seriously entertaining merchant transmission as a viable alternative for meeting BC’s transmission needs.

26. It should also be abundantly clear, given the Commission’s very recent experience with BC Hydro’s abandonment of the Duke Point project, that the involvement of a public utility in the development of an infrastructure project needed to satisfy reliability concerns does not provide any automatic assurances that the project will actually be completed. Given that context, the Commission should be especially slow to accede to BC Hydro’s position that investor-funded merchant transmission should be dismissed out of hand as a potential alternative to solving the very problem that was created by BC Hydro’s own abandonment of the Duke Point project.

27. In addition to the foregoing, Sea Breeze adds the following more specific comments in reply to the approach BC Hydro has taken to addressing each of the specific issues noted above:

***(b) Presence of Contractual Milestones***

28. The issues that BC Hydro has raised in its argument with respect to financing arrangements for JdF, including, specifically, the presence of milestones in the Development Loan Agreement with EIF, are no different than the issues that could be expected to arise in

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<sup>16</sup> BC Hydro Final Submission, par. 62. See also BC Hydro Final Submission, par. 76, where BC Hydro states that it “does not wish to deny the potential usefulness of the Juan de Fuca project”, and that “[t]here is no question that, depending on the evolution of the BPA system on the Olympic Peninsula and load resource balances there, the Juan de Fuca link could become attractive.”

connection with the equity or debt financing components of any privately-financed proposal – as, indeed, was the case with the Neptune Project.<sup>17</sup> Such milestones are a normal feature of the contractual arrangements that can be expected in today’s business environment in connection with any such financing transaction. Nevertheless, the financeability of JdF, and EIF’s practical commitment to the Project, have been fully and adequately addressed in the evidence given by SocGen’s and EIF’s representatives at the hearing, as outlined in Sea Breeze’s Final Submission.<sup>18</sup>

29. BC Hydro also raises the milestones as a basis (along with Exhibit D-71, which is addressed below) for its expressed concerns about Sea Breeze’s projected JdF schedule.<sup>19</sup> BC Hydro suggests that, in light of Exhibit D-71, Sea Breeze is unlikely to be able to meet the milestone regarding the NEPA process, in that the NEPA permitting “prerequisite” contained in the the Development Loan Agreement will “take more time to satisfy than available to Sea Breeze”.<sup>20</sup>

30. BC Hydro raises the NEPA milestone as creating “uncertainty” about whether JdF will be financed. In doing so, BC Hydro once again chooses to effectively ignore the clear evidence of EIF generally and Mr. Schroeder in particular that the milestones are simply “guidelines”.<sup>21</sup> BC Hydro was given full opportunity to test that evidence through cross-examination of Mr. Schroeder and through the opportunity to pose IRs to EIF. On being given those opportunities, BC Hydro posed no information requests to EIF and elicited no response during cross-examination to support BC Hydro’s position; it is worth noting that BC Hydro does not cite anything said by Mr. Schroeder in his testimony in support of the proposition that the NEPA

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<sup>17</sup> TR v. 31, p. 5902, ll. 13-25.

<sup>18</sup> See, in particular, Sea Breeze Final Submission, pars. 93-109.

<sup>19</sup> BC Hydro Final Submission, pars. 92-96. In addition to discussing the milestones and Exhibit D-71 in these paragraphs, BC Hydro also relies on the US Department of Energy Notice of Intent filed by Sea Breeze in Exhibit C31-57, Sea Breeze’s Response to Undertaking at TR v. 35, p. 6827 (PDF pp. 107-115). At par. 94 of its Final Submission, BC Hydro mischaracterizes that Notice of Intent as creating doubt about the JdF NEPA process as testified to by Sea Breeze. A full reading of the Notice of Intent, however, makes evident that it does not in any way take issue with Sea Breeze’s evidence regarding the JdF EIS. In fact, it simply discusses the process issues to which Sea Breeze specifically testified.

<sup>20</sup> BC Hydro Final Submission, par. 96. See also pp. 43-50 of Sea Breeze’s Final Submission regarding the BPA upgrades required for the JdF Project, and the NEPA permitting process.

<sup>21</sup> Exhibit C31-52, March 14, 2006 letter from EIF to Sea Breeze, p. 1; Exhibit C31-53, Response to March 16, 2006 IR # 2(a) from BCTC; TR v. 39, p. 7431, l. 26 to p. 7432, l. 17.

milestone may prevent or delay financial close for the JdF Project. Mr. Schroeder testified that with a project of as high a quality as JdF, EIF could commit to financing the Project even where certain conditions precedent, including those relating to permitting, have yet to be satisfied.<sup>22</sup>

***(c) Dependency on BPA Upgrades***

31. Similarly, with respect to the need for upgrades to the BPA system, any proposal for merchant transmission interconnecting two ISO systems will almost inevitably require certain upgrades to the systems being interconnected which are not within the sole control of the proponent – again, as was the case with the Neptune Project.<sup>23</sup> In this case, as was the case with Neptune, neither ISO has yet embraced the concept of a merchant interconnection; however, it is critical to note that both BPA and BCTC will both nevertheless be required to act in accordance with their respective tariffs (OATT) and their respective regulators’ directions (FERC or BCUC).

32. Given the importance of investment in transmission infrastructure and the transmission system constraints that have been identified for which merchant transmission may provide part of the solution, it is up to the regulators to ensure that the monopolistic tendencies of entities such as BCTC and BPA do not put undue and unfair conditions on merchant investment. And, it is critical to recognize, in the context of this proceeding, that neither BCTC nor BPA can refuse to interconnect with Sea Breeze and to make the system upgrades needed for that purpose, in accordance with the prevailing rules, assuming the proper studies are done and the identified upgrades are paid for.

***(d) Differences in Regulatory Regime***

33. Another main factor which BC Hydro raises in support of its argument that the uncertainty in connection with JdF is too great for the Commission to consider it as an alternative to VITR is that “[t]he obligations of Sea Breeze in respect of a merchant line are fundamentally different than the complementary obligations of BC Hydro and BCTC, which are both subject to Commission regulation as public utilities.”<sup>24</sup>

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<sup>22</sup> TR v. 40, p. 7533, l. 26 to p. 7534, l. 19.

<sup>23</sup> TR v. 36, p. 7099, l. 24 to p. 7100, l. 13.

<sup>24</sup> BC Hydro Final Submission, par. 75.

34. This is another clear example of a feature of the JdF proposal which would be no different with respect to any other private developer of transmission infrastructure connecting the BCTC and BPA systems.

35. While it is, of course, true that a private developer of a project of this nature would never be subject to the same obligations that apply to BCTC and BC Hydro under the regulatory regime which governs those entities as public utilities, that cannot prevent the Commission from considering whether it, nevertheless, can have sufficient confidence in the private developer's ability and commitment to build a proposed transmission project such that the Commission could at least grant the type of relief which Sea Breeze is seeking in this proceeding.

36. In assessing the developer's ability and commitment to proceed with a proposed project, the Commission must also be able to fully take into account mechanisms that would be available to provide satisfactory assurance that the project will be completed, such as through appropriate contractual arrangements with the ISO (BCTC), and/or performance guarantees by the proponent and/or various other parties (such as, in this case, EIF, SocGen, and/or ABB).<sup>25</sup>

37. In this case, the Commission and all participants had a full opportunity at the hearing to test the evidence not only of Sea Breeze, but also of EIF, SocGen, and ABB, on this issue, and it is clear on the evidence that all of these parties have a sufficient degree of commitment to JdF to justify the Commission granting the relief that Sea Breeze is seeking.

38. Other key mechanisms that the Commission will have at its disposal to ensure that JdF is completed, and which do not depend on it having the same regulatory jurisdiction over Sea Breeze as compared to BCTC/BC Hydro, include the Commission's ability to give directions to BCTC and/or BC Hydro requiring them to enter into good faith and open-minded discussions with Sea Breeze concerning the use of the JdF line. Such a contract could include appropriate milestones and obligations on the various parties, which could also involve EIF, SocGen, and/or ABB (e.g. a key milestone that would have to be reached by a certain date would be the execution of an EPC contract with ABB). And, the contract could also be made subject to a

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<sup>25</sup> Sea Breeze Final Submission, pars. 119-121; TR v. 31, p. 5838, l. 26 to p. 5839, l. 10; TR v. 31, p. 5839, l. 23 to p. 5840, l. 6; TR v. 32, p. 6035, l. 12 to p. 6037, l. 2.

requirement for Commission approval, which would enable the Commission to ensure that the provisions of the contract provide it with sufficient assurance with respect to the completion of the project.

39. As noted in Sea Breeze's April 19, 2006 Final Submission,<sup>26</sup> the evidence also clearly indicates that EIF has provided performance guarantees for many other projects,<sup>27</sup> that Sea Breeze and EIF believe a performance bond of \$10 million to \$20 million would be appropriate and feasible for the JdF Project,<sup>28</sup> and that EIF is open to discussing the posting of such security as a performance guarantee if it would give the Commission more comfort regarding the completion of the project.<sup>29</sup> A performance guarantee also would not necessarily be limited to Sea Breeze and EIF – in appropriate circumstances (which, again, can be implemented by contract) ABB could also be required to give performance guarantees.

40. And, it should again be emphasized that the mere fact that BCTC is subject to the Commission's regulatory oversight does not provide any clear assurance that VITR will actually be completed, as should be abundantly clear from BC Hydro's recent abandonment of the Duke Point project.<sup>30</sup>

41. Sea Breeze also relies on its previous comments concerning the ability and commitment of Sea Breeze and its partners to proceed with and complete the JdF Project, as set out in Sea Breeze's April 19, 2006 Final Submission at paragraphs 87 to 146.

***(e) Price of Access to the Juan de Fuca Cable***

42. At paragraphs 83 to 87 of its Final Submission, BC Hydro argues that there is uncertainty as to the cost to BCTC of accessing the Juan de Fuca Cable, saying: "Whether EIF will be able to [make its decision to invest] and allow Sea Breeze to maintain the 75 percent discount from

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<sup>26</sup> At pars. 119-120.

<sup>27</sup> TR v. 40, pp. 7500-7501.

<sup>28</sup> Exhibit C31-57, Response to Undertaking at TR v. 40, pp. 7501 and 7505-7506 (PDF p. 610).

<sup>29</sup> Exhibit C31-57, Response to Undertaking at TR v. 40, pp. 7501 and 7505-7506 (PDF p. 610).

<sup>30</sup> See also, in particular, Sea Breeze Final Submission, par. 77.

the avoid [*sic*] cost of VITR is wholly unknown.”<sup>31</sup> In this respect BC Hydro specifically references Sea Breeze’s response to various undertakings in Transcript Volume 36.<sup>32</sup>

43. Although in its Final Submission<sup>33</sup> Sea Breeze outlined in detail the evidence given by EIF (and SocGen) in relation to EIF’s continued commitment to provide the necessary financing for the JdF Project, including Mr. Schroeder’s evidence as to what is necessary in terms of committed contracts for the JdF Project to be financed, Sea Breeze responds here in general to the issues raised by BC Hydro at paragraphs 83 to 87 of its Final Submission.

44. Sea Breeze (and its partners) do not contest that contractual commitments will have to be secured before full financing for the JdF Project can be arranged. In this proceeding, Sea Breeze has presented a proposal suggesting a level of pricing for the use of JdF by BCTC. It has done so, however, in the absence of any input from BCTC or BC Hydro; that is, BCTC and BC Hydro have refused the opportunity to negotiate in good faith with Sea Breeze for the use of JdF.

45. If such negotiations are ordered at the conclusion of this proceeding, all issues pertaining to the price of accessing JdF will be open for negotiation. For example, Sea Breeze has made it very clear that any Commission decision on system benefits will be accepted by Sea Breeze.<sup>34</sup> The evidence also clearly demonstrates that there are various revenue producing scenarios which would make the Project financeable, including those that were outlined in response to the undertakings at Transcript Volume 36, pages 6857-6858, 7037, and 7091-7093.<sup>35</sup> Each of these example pricing scenarios would be open for discussion as part of Sea Breeze’s negotiations with BCTC and/or BC Hydro.

46. Notwithstanding the various issues raised by BC Hydro in its Final Submission, the most important issue in relation to the financeability of the JdF Project is the minimum requirements

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<sup>31</sup> BC Hydro Final Submission, par. 83.

<sup>32</sup> Response to Undertaking at TR v. 36, pp. 6857-6858, 7037, and 7091-7093 (Exhibit C31-57, PDF pp.129-132).

<sup>33</sup> At pp. 31-36.

<sup>34</sup> If the Commission believes that further study is required to determine whether or not system benefits will be provided by JdF, Sea Breeze is willing to leave that issue to BCTC on the understanding that it would be treated consistent with the principles of BCTC’s OATT.

<sup>35</sup> Exhibit C31-57 (PDF pp. 129-132).

of EIF and SocGen to secure financing.<sup>36</sup> Contrary to BC Hydro’s argument, it is clear from the evidence that both EIF and SocGen believe that a BCTC contract which reflects 75% of the costs of VITR would be sufficient impetus to ensure that JdF proceeds.<sup>37</sup> Mr. Moscardelli’s uncontradicted evidence is that because of the interest expressed in JdF, beyond the response of Sea Breeze Energy Inc., a BCTC contract – even a short term contract – would result in further commitments from other users.<sup>38</sup>

***(f) Conclusion on BC Hydro’s Submissions Regarding the Inherent Uncertainty of Merchant Transmission Proposals***

47. The evidence clearly demonstrates that neither BCTC nor BC Hydro has proactively embraced Sea Breeze’s merchant transmission proposal, notwithstanding clear directions from the Commission to consider innovative customer-driven solutions. Sea Breeze submits that if BCTC and/or BC Hydro had engaged in some good faith consideration of JdF, many of the “uncertainties” alleged by BC Hydro in its Final Submission would not, in fact, be uncertain. BC Hydro cannot rely on its own unwillingness to consider JdF as support for its position that it does not know enough about JdF.

48. The only way that this Commission, and all British Columbia stakeholders, can truly evaluate whether JdF is a solution is through a direction to BCTC and/or BC Hydro to objectively evaluate Sea Breeze’s proposal through the course of good faith negotiations.

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<sup>36</sup> This issue was specifically addressed by Mr. Schroeder and Mr. Moscardelli, which is outlined at Sea Breeze Final Submission, pp. 31-36.

<sup>37</sup> At par. 87 of its Final Submission, BC Hydro selectively quotes from a response by Mr. Schroeder relating to the minimum contractual requirement to ensure EIF funding. Mr. Schroeder’s answer can only be fully understood in the context of the immediately preceding questions from Mr. Carpenter. The full relevant exchange between Mr. Carpenter and Mr. Schroeder is reproduced at par. 97 of Sea Breeze’s Final Submission and for that reason will not be repeated here.

<sup>38</sup> TR v. 36, p. 6927, l. 19 to p. 6928, l. 12.

#### **IV. BC HYDRO'S RELIANCE ON EXHIBIT D-71**

##### ***(a) Introduction***

49. BC Hydro attempts to ignore the clear and uncontradicted evidence of Sea Breeze and instead relies on Exhibit D-71, the BPA Letter of Comment which was not tested by IRs or cross-examination, despite Sea Breeze's invitation to BPA to apply for intervenor status.<sup>39</sup>

50. Sea Breeze submits that the Commission should not consider the BPA Letter of Comment and, alternatively, if the Commission does consider the BPA Letter of Comment it should not give it any weight, particularly where BC Hydro attempts to rely on it to contradict the oral testimony of Sea Breeze.

##### ***(b) The Commission should not consider the BPA Letter***

51. The BPA Letter of Comment should not be considered as evidence in this proceeding. Sea Breeze maintains its position that it would be patently unfair and contrary to the rules of natural justice to treat the BPA Letter as evidence without allowing IRs and cross-examination on that evidence.<sup>40</sup>

52. Letters of Comment and Interested Party Documents afford parties an opportunity to present their "views". They do not, however, give a party an opportunity to adduce evidence, particularly where that party seeks to contradict the evidence of an applicant or intervenor. Indeed, Commission counsel appeared to draw this distinction at the hearing in reference to the Letter of Comment from the Delta School District.<sup>41</sup> And, Commission Counsel also indicated in Exhibit A-41 that Letters of Comment are equivalent to statements of the "views" of Interested Parties and other participants, which are not normally required to be made under oath or subjected to cross-examination, as would ordinarily be the case for intervenor "evidence" that is subject to pre-filing requirements, information requests, adoption under oath, and cross-examination.<sup>42</sup>

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<sup>39</sup> See Exhibit B2-16.

<sup>40</sup> Exhibit B2-16, p. 1.

<sup>41</sup> TR v. 30, p. 5484, ll. 6-14.

<sup>42</sup> Exhibit A-41, pp. 5 and 7-8.

53. If BPA wished to adduce evidence to be used by the Commission to make findings of fact, it should have applied for intervenor status, filed intervenor evidence, responded to IRs, and offered witnesses for cross-examination. And, if BPA wished to challenge the evidence of Sea Breeze, the proper means for doing so was for BPA to cross-examine Sea Breeze's witnesses as an intervenor in this proceeding.

54. BPA made a deliberate decision not to seek intervenor status, and thus forewent the opportunity to adduce evidence. Indeed, in its letter, BPA noted that the due date for intervenor status had passed and simply asked for "interested party status, so that it may be kept apprised of the Commission's actions in this matter." BPA did not seek relief from the deadline for applying for intervenor status or seek to adduce evidence, despite Sea Breeze's commitment to support a request by BPA for an extension of time to request intervenor status and to file intervenor evidence.<sup>43</sup>

***(c) No weight should be given to the BPA Letter***

55. If, despite the foregoing, the Commission determines that the BPA Letter of Comment may be considered as part of the evidentiary record in this proceeding, Sea Breeze submits that no weight should be given to any factual assertions contained in it. The BPA Letter was not tested by the IR process nor by cross-examination of a witness, despite Sea Breeze's commitment to support BPA's bid for intervenor status.<sup>44</sup> Indeed, BPA never intended to submit to the Commission's IR process or oral hearing process, nor to offer a witness for cross-examination; and, when BPA again sought to submit another letter of comment dated March 17, 2006, Mr. Fulton reported to the Commission that BPA "wanted to stay on the periphery" of this proceeding and, as of March 21, 2006, had not been willing to offer a witness for cross-examination.<sup>45</sup>

56. In respect of the second BPA letter that was not admitted, counsel for BC Hydro acknowledged that BPA's failure to offer a witness for cross-examination "clearly affects its

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<sup>43</sup> Exhibit B2-16.

<sup>44</sup> Exhibit B2-16.

<sup>45</sup> TR v. 38, p. 7397, ll. 1-12.

weight.”<sup>46</sup> BC Hydro should be held to the same position with respect to Exhibit D-71, and, to the extent that BC Hydro relies on Exhibit D-71, it should be given little or no weight by the Commission. That is consistent with the approach taken by the Commission regarding Letters of Comment.<sup>47</sup>

57. In any case, as noted above, Letters of Comment and Interested Party Documents allow a party to present its “views”, but they should not be relied on for proving facts that are in issue in a proceeding. Accordingly, Sea Breeze submits that no reliance should be placed on the BPA Letter with respect to any facts in issue in this proceeding.

***(d) Substantive response to issues raised in BPA Letter***

***(i) BPA Upgrades***

58. In paragraph 64 of its Final Submission, BC Hydro relies on Exhibit D-71 for its assertion that “BPA does not consider itself to have been asked and has yet to undertake some of the essential steps necessary to strengthen its system.” In fact, in Exhibit D-71, BPA does not deny that Sea Breeze has made an interconnection request of BPA, nor does it deny that BPA has undertaken the studies triggered by such a request. Nor does BPA deny that Sea Breeze and BPA had discussions regarding, and that Sea Breeze requested, a Special Facilities Study for the engineering and costing of the BPA network upgrades required to ensure that power can be delivered over the Olympic Peninsula to Port Angeles.<sup>48</sup> In relying on Exhibit D-71, BC Hydro ignores the candid explanation provided by Sea Breeze when BC Hydro cross-examined Sea Breeze regarding Exhibit D-71 and the difference between the potential network upgrades required by the JdF interconnection request and broader upgrade requirements on the whole BPA system which are not tied specifically to the JdF request:<sup>49</sup>

MR. TOMPKINS: A: We don't dispute the part -- there's two parts to this. Sea Breeze asserts that Bonneville has studied the Bonneville grid system that will be required for the interconnection of the project and its effectuation of full bi-directional capacity to be transferred over the system in both first contingency and common mode failure situations. At this point Mary Kay says that is not correct. In keeping with the Sea

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<sup>46</sup> TR v. 38, p. 7399, ll. 4-6.

<sup>47</sup> Exhibit A-41, p. 8; Exhibit A-42.

<sup>48</sup> Sea Breeze Final Submission, par. 139.

<sup>49</sup> TR v. 35, p. 6754, l. 10 to p. 6755, l. 9; TR v. 35, p. 6756, l. 26 to p. 6757, l. 14.

Breeze interconnection press, Bonneville has only studied the effects of a small portion of the Bonneville grid.

We have a fundamental disagreement, not between the technical side of Bonneville Power but with Mrs. Kay. I can talk about the technical people, and Brian can talk about their attorney. The fact of the matter is we studied an interconnection study designed according to FERC terms, and we did the interconnection study on the agreement of BPA from Port Angeles and Fairmont all the way to Olympia, and then as we finally modified the end of the study, to Paul Raver. It is true we have not studied the whole system. That will not be done as the interconnection study. That will be done as part of the WECC, which I'm the chairman of the WECC group doing that study. Bonneville has not studied their whole system, that is correct.

...

MR. CHERNACK: A: And Mr. Sanderson, panel, I would like to add also to amplify what Mr. Tompkins said, Bonneville chose not to be available for questioning or cross-examination, and this correspondence was written by a member of the general counsel's office of Bonneville. And she is a lawyer, and a term such as "a small portion of the Bonneville grid" would certainly encompass what's been studied, which is the whole Olympic Peninsula. So the Olympic Peninsula, by transmission line miles, I would venture to guess, is less than 10 percent of the Bonneville system. So it's a general statement which does not, in my view, really reflect the work that has been done and the issues that have been identified. We don't dispute the statement.

59. Mr. Chernack later reiterated his earlier comments:<sup>50</sup>

MR. CHERNACK: A: Mr. Sanderson, I think again I would reiterate that this was a letter written by Bonneville, by an attorney, not by a system planner, not by an environmental person, but by an attorney, and you're interpreting her words, we're interpreting her words, and she's not here to explain to the Commission what she meant. So we can answer to the best of our ability, but we may have a different interpretation there.

60. In addition to ignoring Sea Breeze's forthright explanation of Exhibit D-71, BC Hydro also ignores Sea Breeze's evidence that the upgrades to the BPA system will be constructed. This evidence is described in paragraphs 128 to 146 of Sea Breeze's Final Submission. Given the evidence that Sea Breeze has put on the record, Sea Breeze rejects BC Hydro's assertion that "the Commission has virtually no evidence upon which to reach a conclusion with respect to the state of the reinforcement efforts of BPA and how likely they are to happen."<sup>51</sup> Sea Breeze also rejects BC Hydro's characterization of Sea Breeze's approach to establishing that the BPA

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<sup>50</sup> TR v. 35, p. 6793, ll. 15-23.

<sup>51</sup> BC Hydro Final Submission, par. 64.

upgrades will be constructed.<sup>52</sup> Sea Breeze has satisfied whatever onus it had to demonstrate the viability of JdF. BC Hydro chose not to adduce evidence to contradict Sea Breeze, and it must live with that choice.

61. Sea Breeze also rejects BC Hydro's specific assertion that no one has yet made a request to BPA for further improvements to the Olympic Peninsula.<sup>53</sup> At the beginning of the exchange cited in support of this assertion in footnote 51 of BC Hydro's Final Submission, Mr. Chernack notes that:<sup>54</sup>

We officially requested three studies -- I believe it was either the end of October, beginning of November, of Bonneville. A facility study for Fairmont, a facility study for Port Angeles interconnection, and a special study that would address both Bonneville's needs for upgrading transmission on the Olympic Peninsula and as a by product, how that would affect the Juan de Fuca interconnection in terms of its identified upgrades on the Olympic Peninsula. [emphasis added]

62. BC Hydro's assertion that no request for improvements to the Olympic Peninsula has yet been made ignores the fact that actual construction of the improvements must be preceded by facilities studies, studies which Sea Breeze has already requested for both the JdF interconnection at Port Angeles and the upgrades to the BPA system identified in the Sytem Impact Study. Once those studies are complete, given that Sea Breeze has agreed to pay for the upgrades, BPA will be required to construct them. This process, and the relevant evidence, is described in detail in paragraphs 128 to 146 of Sea Breeze's Final Submission.

63. BC Hydro's suggestion in paragraph 64 of its Final Submission that Sea Breeze should have sought testimony from BPA is fanciful, given BPA's complete unwillingness to participate in this proceeding as an intervenor and its choice to remain on the periphery of this proceeding.<sup>55</sup> Furthermore, at no time did Sea Breeze seek to leave "an impression that it ha[d] an enthusiastic partner in BPA".<sup>56</sup> The evidence clearly demonstrates that Sea Breeze has applied for interconnection under BPA's OATT and, pursuant to that interconnection request, the necessary studies have been completed or are in the process of being completed. Regardless of any

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<sup>52</sup> BC Hydro Final Submission, par. 65.

<sup>53</sup> BC Hydro Final Submission, par. 64.

<sup>54</sup> TR v. 36, p. 6996, l. 22 to p. 6997, l. 5.

<sup>55</sup> TR v. 38, p. 7397, ll. 1-12.

<sup>56</sup> BC Hydro Final Submission, par. 64.

reluctance on the part of BPA, it must act in accordance with its OATT. If it acts unreasonably or unfairly, Sea Breeze has cause to bring the matter to FERC's attention and BPA will be subject to sanction by FERC.<sup>57</sup>

**(ii) DSB Returns**

64. BC Hydro specifically relies on Exhibit D-71 in support of its position that it is unlikely agreement could be reached to allow for the return of DSBs to a Port Angeles point of delivery.<sup>58</sup>

65. In fact, the comments on this issue in Exhibit D-71 consist of mere speculation by BPA's lawyer about potential obstacles that could make it difficult to obtain an amendment to the existing agreement on the return of DSBs.<sup>59</sup> However, consistent with Dr. El-Ramly's observations on this issue at the hearing,<sup>60</sup> there is nothing in Exhibit D-71 to suggest that such an amendment could not be achieved if, as a result of good faith discussion between the various parties involved, including BC Hydro and BPA, it were to be determined that a change in the delivery points would be mutually beneficial, in terms of alleviating existing congestion in the BPA system while at the same time ensuring a firm supply of power to Vancouver Island.

66. Sea Breeze has generally addressed the issue of potential reliance on DSBs to provide a supply of power at Port Angeles for delivery to Vancouver Island via the JdF line at paragraphs 147 to 169 of its Final Submission. In the context of that argument, it should also be noted that although Exhibit D-71 comments on the potential option of a change to the delivery points for DSBs under Exhibit B1-131, Exhibit D-71 does not comment on or affect the alternative option referred to in paragraph 158 of Sea Breeze's Final Submission, whereby arrangements could be made (with Powerex's involvement) for all or a portion of the Canadian Entitlement to be disposed of in the United States pursuant to Article VIII of the Columbia Treaty and the Disposal Agreement referred to in Recital F of Exhibit B1-131, and for subsequent transmission of that

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<sup>57</sup> See Sea Breeze Final Submission, footnote 126, referencing the FERC Order in relation to the Neptune Project: US Federal Energy Regulatory Commission, 110 FERC, 61,098, issued February 10, 2005 (Docket No. EL05-48-000).

<sup>58</sup> BC Hydro Final Submission, par. 66.

<sup>59</sup> Exhibit B1-131.

<sup>60</sup> TR v. 35, p. 6796, l. 18 to p. 6798, l. 4.

power from the point(s) of disposal to Port Angeles, without the need for any changes to Exhibit B1-131.

67. Sea Breeze also reiterates its general comments, above, respecting the lack of evidentiary value of Exhibit D-71. The assertions made by BPA's lawyer about the alleged difficulty that would be experienced in negotiating a change to the delivery points under Exhibit B1-131 have not been tested by IRs or cross-examination, and should not be relied on or given any weight by the Commission in the present context where BC Hydro has never attempted to engage BPA in any discussion concerning the possibility of seeking such a change to Exhibit B1-131, given BC Hydro's admission that, to date, "it has not identified return at Port Angeles as a desirable or viable objective to pursue with BPA."<sup>61</sup> Indeed, it is not surprising that BC Hydro has failed to identify or take into account the potential benefits that would be associated with the return of DSBs at Port Angeles, given the absence of any existing intertie at Port Angeles, and BC Hydro's general opposition to the JdF Project, including its refusal to date to seriously consider JdF as a viable alternative to VITR for meeting Vancouver Island's transmission needs.

***(iii) NEPA Process***

68. BC Hydro also relies on Exhibit D-71 in its discussion of the timing of the NEPA process.<sup>62</sup> Sea Breeze reiterates its general comments, above, respecting the lack of evidentiary value of Exhibit D-71.

69. The record is clear that the NEPA process promises to be straightforward and that US authorizations for JdF will be granted by September 2006.<sup>63</sup> Neither BC Hydro nor any other parties to this proceeding have adduced any evidence to the contrary. It is absurd for BC Hydro to suggest that Sea Breeze's evidence on this issue is "speculative".<sup>64</sup>

70. BC Hydro takes issue with the fact that Sea Breeze did not send a letter to BPA after the date of Exhibit D-71 regarding the "expected timelines for the EIS process."<sup>65</sup> It is important to

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<sup>61</sup> BC Hydro Final Submission, par. 66.

<sup>62</sup> BC Hydro Final Submission, par. 93.

<sup>63</sup> Sea Breeze Final Submission, pars. 126 and 127; TR v. 31, p. 5898, ll. 2-4; TR v. 34, p. 6386, ll. 14-18.

<sup>64</sup> BC Hydro Final Submission, par. 96.

<sup>65</sup> BC Hydro Final Submission, par. 93.

note, however, that Exhibit D-71 was not received by Sea Breeze as part of that EIS process. It was a letter sent to Mr. Pellatt by BPA's attorney as part of the present proceedings. There is no evidence on the record that Sea Breeze has had any communication from BPA as part of the EIS process that the "expected timelines for the EIS process" are anything other than what was testified to by Sea Breeze at this proceeding.

71. The Sea Breeze representatives who testified and were cross-examined at this proceeding did so on the basis of their dealings with the very BPA representatives responsible for environmental assessment, and not BPA's lawyer, the author of Exhibit D-71. Sea Breeze's evidence in this respect is the only actual evidence on the record and as such it is BC Hydro's submissions on this issue, and not Sea Breeze's evidence, that are "speculative to the point of being hypothetical."<sup>66</sup>

#### **V. BC HYDRO/JIESC SUBMISSIONS RE: ABB CONFIRMATION OF JdF COST ESTIMATE**

72. Both BC Hydro and JIESC have questioned the reliability of ABB's price estimate for its HVDC Light® technology, on the basis of Sea Breeze's inability to locate an e-mail from ABB.<sup>67</sup>

73. Their reliance on the missing e-mail is specious. There is nothing remarkable about the missing e-mail, which Sea Breeze used best efforts to locate.<sup>68</sup> And, all participants had a full opportunity to cross-examine ABB's representatives at the hearing on the subject matter of ABB's price estimate.

74. Distracted by the missing e-mail, BC Hydro and JIESC completely ignore the evidence establishing the reliability of ABB's price estimates for the JdF and VIC Projects. Indeed, BC Hydro goes so far as saying "[w]hile there is no evidence on the record that Sea Breeze has received a budgetary estimate from ABB for the Juan de Fuca project, the record does make it clear that Sea Breeze has never received a contractually firm price from ABB for any project."<sup>69</sup>

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<sup>66</sup> BC Hydro Final Submission, par. 96.

<sup>67</sup> BC Hydro Final Submission, pars. 80-82; JIESC Final Submission, pars. 81-84.

<sup>68</sup> Exhibit C31-57, Response to Undertaking at TR v. 30, p. 5676 (PDF p. 3).

<sup>69</sup> BC Hydro Final Submission, par. 81.

75. Contrary to BC Hydro's assertion, Mr. Chernack testified that Sea Breeze does indeed have a budget price from ABB for the JdF Project.<sup>70</sup> That price is based on a substantial amount of local information provided to ABB respecting the JdF Project.<sup>71</sup> And, as acknowledged by BC Hydro, Sea Breeze confirmed at the hearing that ABB's estimate for JdF has an accuracy of  $\pm 15\%$ .<sup>72</sup> In fact, Sea Breeze has noted on numerous occasions that ABB's estimates have an accuracy of  $\pm 15\%$ .<sup>73</sup>

76. Not only did Sea Breeze testify to the percentage accuracy of ABB's estimate, Sea Breeze also testified that, based on its experience as a developer of other projects, ABB's estimate was a good faith estimate of what the actual EPC contract price would be.<sup>74</sup> Indeed, Sea Breeze has such high confidence in ABB's price estimate that it is willing to negotiate a contract with BCTC for capacity on JdF even before concluding a final EPC contract with ABB.<sup>75</sup> The Commission can be satisfied that ABB's estimates provided in this proceeding will indeed reflect the ultimate cost of the JdF and VIC Projects. ABB has an impressive track record of being within its EPC price and on schedule.<sup>76</sup>

77. Indeed, the very fact that Sea Breeze already has reliable price estimates from ABB stands in marked contrast to the situation with VITR, where there have been unexplained delays of nearly five weeks in the submarine cable tendering process, the outcome of which, as a result, is still completely unknown as of today's date (April 26, 2006).<sup>77</sup> The amounts of the bids, which BCTC has been directed to file with the Commission tomorrow, still remain to be seen.

78. Under cross-examination by BC Hydro and JIESC, Sea Breeze confirmed the accuracy of ABB's price estimates, and all participants also had a full opportunity to cross-examine ABB's representatives further on this issue if they considered it necessary to do so. However, Sea Breeze's evidence is uncontradicted, and BC Hydro and JIESC cannot impugn that evidence simply by pointing to a missing e-mail.

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<sup>70</sup> TR v. 30, p. 5585, l. 23 to p. 5586, l. 10.

<sup>71</sup> TR v. 30, p. 5679, ll. 14-25.

<sup>72</sup> TR v. 32, p. 5930, ll. 6-10.

<sup>73</sup> Exhibit B2-8, BCUC IRs 1.8.5 and 1.9.6 (VIC); TR v. 30, p. 5676, ll. 2-6; TR v. 32, p. 5930, ll. 6-10.

<sup>74</sup> TR v. 30, pp. 5677-5678.

<sup>75</sup> TR v. 35, p. 6744, l. 11 to p. 6745, l. 14.

<sup>76</sup> Exhibit C31-27.

<sup>77</sup> See Sea Breeze Final Submission, par. 23.

## **VI. BC HYDRO SUBMISSIONS RE: RATE IMPACT OF VITR**

79. With respect, BC Hydro's argument regarding the rate impact of VITR<sup>78</sup> misses the point and attempts, using a short term incremental cost analysis, to try to revisit an argument that BC Hydro unsuccessfully advocated in the VIGP proceedings. As was already discussed by Sea Breeze in its Final Submission,<sup>79</sup> the Commission's conclusions with respect to cost of service analysis contained in the VIGP Decisions should not be revisited here – and, indeed, even BCTC has now apparently indicated its agreement with that position,<sup>80</sup> despite its failure to have done so during the hearing.

80. The question for the Commission, in considering the rate impact of a proposed project, is not how BC Hydro will finance that specific project, such as VITR, but what debt-equity ratio should be assumed for long term capital assets for the purposes of a cost of service analysis.

81. The record is clear that BC Hydro would fund an approved VITR with 100% debt; however, the evidence was the same in the VIGP proceeding. In that case, BC Hydro claimed that the Vancouver Island Energy Corporation proposal would be funded incrementally with 100% debt and that therefore 100% debt should be the reference for purposes of comparison to other proposals. Just as that submission was rejected in the VIGP proceeding, it should be rejected here.

82. The only appropriate answer to the question of what debt-equity ratio should be assumed for long term capital assets for the purposes of a cost of service analysis is that the Commission should use BC Hydro's actual long term debt-equity ratio for that purpose.

## **VII. BC HYDRO/BCOAPO/JIESC SUBMISSIONS RE: AVOIDANCE OF VITR DELAY THROUGH COMMISSION APPROVAL OF OPTION 1**

83. In their Final Submissions, BC Hydro,<sup>81</sup> BCOAPO,<sup>82</sup> and JIESC<sup>83</sup> advocate VITR route Option 1 above all others (including JdF and a VIC-like project) in part on the basis that

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<sup>78</sup> BC Hydro Final Submission, pars. 25-32.

<sup>79</sup> At pars. 384-390.

<sup>80</sup> BCTC Final Submission, par. 51.

<sup>81</sup> At par. 21.

<sup>82</sup> At p. 13: Option 2 could result in a longer delay than Option 1.

construction of Option 1 is less likely to encounter delays based on, for example, legal challenges. There is reliance for this point on the likelihood of legal challenges to any expropriation action taken in respect of the underground rights necessary for Option 2.

84. Sea Breeze submits, however, that it is apparent from the evidence and the Final Submissions of other parties to this proceeding that the possibility of legal challenges in respect of a CPCN granted to VITR is not limited solely to the right of way issues associated with Option 2.

85. Support for this submission may be found in the challenge brought by JIESC in response to the Commission's decision in the CFT proceeding.<sup>84</sup> Pursuant to section 101 of the *Utilities Commission Act*,<sup>85</sup> JIESC sought leave to appeal to the Court of Appeal on four issues, which need not be repeated here, but none of which was related to acquisition of a right of way. As was noted by Sea Breeze in its April 19, 2006 Final Submission,<sup>86</sup> JIESC's leave to appeal application had the effect of delaying the Duke Point project by several months; it is impossible to say how long the total delay for legal proceedings would have been had BC Hydro not abandoned its plans for Duke Point, but undoubtedly it would have been many more months.

86. In this proceeding, there are several issues relevant to multiple VITR route options, particularly Options 1 and 2, other than right of way acquisition issues, that may result in legal proceedings on the issuance of a VITR CPCN.

87. Delta argues in its Final Submission that "the existing access rights do not encompass the proposed works in Option 1" and notes that the issue may be litigated in the courts after the conclusion of this proceeding.<sup>87</sup> Similarly, depending on the Commission's determinations regarding the scope of its own jurisdiction, other issues of interpretation of the right of way agreements may have to be decided in the Courts. In this respect, Sea Breeze notes that while BC Hydro has argued that timing is a reason why it advocates Option 1 over Option 2,<sup>88</sup> BC

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<sup>83</sup> At par. 13.

<sup>84</sup> See *Joint Industry Electricity Steering Committee v. British Columbia Utilities Commission*, 2005 BCCA 330.

<sup>85</sup> R.S.B.C. 1996, c. 473 (the "Act").

<sup>86</sup> At par. 229.

<sup>87</sup> Corporation of Delta Final Submission, par. 58.

<sup>88</sup> BC Hydro Final Submission, par. 21.

Hydro has interpreted the Commission's powers under the *Act* so narrowly as to require Court intervention on issues relevant to Option 1 that a more generous interpretation of the *Act* would allow the Commission to decide.<sup>89</sup> BC Hydro's argument invites further Court action, along with the associated delays.

88. In addition, there are procedural fairness and legitimate expectation issues that arise out of BCTC's change in position with respect to the order it is seeking that may be the subject of an application for judicial review or leave to appeal.<sup>90</sup> It is apparent from the Final Submissions of parties such as TRAHVOL and the South Delta Secondary School Parent Advisory Council that they relied on BCTC's position throughout the hearing that it would be recommending Option 2 for Commission approval and that unfairness may have resulted from what is, in effect, BCTC's current recommendation of Option 1.

89. Given the strong opposition to Option 1 by Tsawwassen and South Delta residents, Sea Breeze submits that if BCTC is granted a CPCN for VITR Option 1, there is a distinct likelihood that legal action will result – albeit not in respect of right of way acquisition – that will nevertheless have the effect of materially delaying the VITR schedule. In this respect Sea Breeze notes the submission of Dr. Nam: “If the BCUC allows the VITR project to go ahead through our backyard, we will not stop fighting it.”<sup>91</sup>

90. In a related point, Sea Breeze notes that, although TRAHVOL's complaint under section 25 of the *Act*<sup>92</sup> is separate from any approval of VITR, a Court review of the decision in respect of that complaint could have the effect of delaying VITR construction nonetheless.

91. In Sea Breeze's submission, the prospect of delay to the VITR schedule arises regardless of whether Option 1 or Option 2 is the subject of CPCN approval. If Option 2 is selected, affected residents will have the additional ground for legal challenge of any expropriation actions taken to secure underground rights of way, but there remain other grounds on which legal

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<sup>89</sup> See, for example, BC Hydro Final Submission, par. 17.

<sup>90</sup> See TRAHVOL Final Submission, par. 4.

<sup>91</sup> Dr. Nam Final Submission, p. 2.

<sup>92</sup> Exhibit C3-21.

challenges may be taken that are either common to both Options 1 and 2, or, indeed, as is apparent from TRAHVOL's Final Submission,<sup>93</sup> that may even be unique to Option 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "P. John Landry".

P. John Landry

A handwritten signature in black ink, appearing to read "Jason K. Herbert".

Jason K. Herbert

April 26, 2006

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<sup>93</sup> TRAHVOL Final Submission, pars. 8-22.