

Hul'qumi'num Treaty Group Response to BC Hydro Intervenor Argument, specifically in response to the following two questions:

- Has BC Hydro met the obligation to consult with First Nations in regard to each of the VITR route options?
- Does BC Hydro have an obligation to accommodate First Nations and when does the obligation arise?

1. HTG will rely on our original argument as it relates to the second question.
2. BC Hydro continues to argue that the BC Utilities Commission (BCUC) process may rely on the BC Environmental Assessment (BCEA) process, this is not so and is not supported by common law.

BC Hydro November 15, 2005 submission, page 3, section 3; *In Taku River, the SCC found that it was not necessary for consultation regarding the **entire** project to be complete before concluding any particular step in the review process, **only the consultation appropriate to that particular step need be undertaken** (emphasis added).*

3. Clearly the ruling of the Supreme Court of Canada expected that consultation with First Nations be undertaken parallel to the decision being made.
4. The BCEA and the BCUC processes are separate, not connected in any manner and conduct significantly different reviews. The processes are related only by project, but not by substance or inquiry.
5. The Hul'qumi'num issues will diverge with the topic of review. However, we cannot know the exact moment of divergence without the iterative process described by BC Hydro in their own submissions.
6. BC Hydro relates in their argument, their work to identify routes with the Tsawwassen First Nation, this First Nation is not the Hul'qumi'num First Nation and the work conducted with the Tsawwassen will not discharge the duty of BC Hydro to the Hul'qumi'num.
7. Further the work undertaken with the Tsawwassen First Nation was not offered to the Hul'qumi'num. BC Hydro cannot know how or where the Hul'qumi'num would like the transmission of power to occur through the Hul'qumi'num tumuhw (land). This is precisely our argument, this consultation has not been engaged between BC Hydro and the Hul'qumi'num.
8. The type of proponent/First Nation interaction has been recognized by the courts as a potential avenue of accommodation of First Nations interests. However, and

again this interaction has not been offered to the Hul'qumi'num. Consequently, if the CPCN is granted for a particular route and a properly conducted consultation process indicates that the route is inappropriate for any Hul'qumi'num First Nations reason(s), then the validity of the CPCN and the process comes into question. Further, this may require an additional CPCN process, thereby delaying the delivery of transmission to the island.

9. The Hul'qumi'num fully recognize the consultation process is *reciprocal* (actual wording of the courts) and there is a duty for the Hul'qumi'num to return consultation. However, consultation cannot be returned if it has never been engaged.
10. Regarding the argument for *consultation through participation as an Intervenor*, this is not consultation and cannot be argued to be both consultation and not by BC Hydro. BC Hydro argues that consultation is iterative in nature, and that the BCUC process cannot serve in that nature. Then BC Hydro argues that consultation can take place through intervention.
11. The difficulty BC Hydro is faced with is just this; as it relates to this project, the Hul'qumi'num do not know what we do not know. It is not a matter of fact that we could have asked questions in the hearing, but it is a matter of fact that we didn't know what questions were needed to be asked.
12. This is the purpose of consultation, to properly identify issues that we could not know otherwise, to then conduct an impact assessment and identify the significance of that impact.
13. BC Hydro has submitted no evidence that this has occurred, relating to this project in this proceeding and the decision made by the Commission.

All of which is respectfully submitted, April 26, 2006

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(Original signed)