

**BRITISH COLUMBIA UTILITIES COMMISSION**  
**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**  
**CALL FOR TENDERS FOR CAPACITY ON VANCOUVER ISLAND**  
**REVIEW OF ELECTRICITY PURCHASE AGREEMENT**  
**PROJECT NO. 3698354**  
**FINAL ARGUMENT OF DUKE POINT POWER LIMITED PARTNERSHIP**

**A. INTRODUCTION**

Duke Point Power Limited Partnership ("DPP") has actively participated in these proceedings as the successful bidder in the Call for Tender ("CFT") process conducted by British Columbia Hydro and Power Authority ("BC Hydro") following the Commission's decision regarding the Vancouver Island Generation Project dated September 8, 2003 ("VIGP Decision"). During the course of these proceedings, it appears that several parties have lost sight of, or at least would like the Commission to lose sight of, the purpose for holding the Call for Tenders in the first place. As reiterated by BC Hydro during the proceedings, the primary purpose of the CFT was to obtain "capacity" for Vancouver Island (9T2160). The CFT was driven by the need to have dependable capacity in place by 2007 (6T1236). DPP submits that it is crucial not to lose sight of this overall objective of the CFT when assessing the various positions that have been advocated by parties to this proceeding. It was in this context that DPP, and we would suggest other CFT bidders, formulated their bid strategy and submitted their bids as part of the CFT process.

DPP submits that all parties were clearly aware of the fact that BC Hydro was seeking a "capacity" product. It was likewise clearly recognized that a "capacity" product is different than an "energy" product, including the fact that there are different costs associated with these products and that you cannot directly compare the two (6T1102-3, 1240). This distinction could not have been made clearer than by the discussion between the DPP witnesses and Counsel for JIESC after Ex. C19-23 (the JIESC Witness Aid) was put to the DPP witnesses. In addition to disagreeing with the

alleged comparison prepared by JIESC in numerous material respects, Mr. Campbell stated that the "witness aid" misses the point, as the DPP plant is a "capacity" product, not an "energy" product; and by trying to do this type of analysis you just get misleading results (10T2226). This distinction was also discussed in DPP's Direct Evidence (Ex. C17-6, p. 8-9) and this evidence is commended to the Commission.

In addition to the BCUC's encouragement in the VIGP Decision for BC Hydro to conduct a CFT process for the above referenced purpose, two other critical findings made by the Commission in the VIGP Decision are of fundamental importance to this case. These findings were reiterated by the Commission during its Scoping Decision for these proceedings (2T307), wherein the Commission stated as follows:

"... The Commission Panel accepts that the following determinations from the VIGP Decision are relevant to a determination of the scope of the CFT review.

The first item: the evidence from this hearing suggests that the appropriate next resource addition should be on Island generation ...

... The Commission Panel accepts the evidence that there is a capacity shortfall on Vancouver Island, commencing in the winter of 2007/08." (2T308)

These determinations of the Commission have not been the subject of any challenge by any intervening party; and hence stand as valid findings which provide the backdrop against which the CFT process has been conducted. In fact, the only evidence on these matters in this proceeding is that the increase in the capacity deficit since the time of the VIGP Decision reinforces the need for on-Island generation (8T1723-25).

An additional consideration referred to in the VIGP Decision (p. 2) is the Provincial Government's Energy Plan which, pursuant to Policy Action No. 13, states that the private sector will develop new electricity generation. As stated by DPP (10T2265) the very clear statement of need in the VIGP Decision and the market-based

approach adopted to address this matter were key considerations in DPP deciding to participate in the Call for Tenders process.

Another key factor influencing not only DPP's participation, but we would submit the approach adopted by BC Hydro to the overall Call for Tenders process, relates to the requirement for BC Hydro to remain in compliance with the WECC Planning Criteria (ie. N-1 criteria). As will be discussed in greater detail below, much has been made of various "band-aid" solutions that could "bridge the gap" until the proposed 230 kV transmission line to Vancouver Island is constructed and put in service. DPP submits that the overwhelming evidence in these proceedings confirms that such "band-aid" solutions are not adequate or appropriate measures to meet the forecast capacity deficiency. As stated by BC Hydro, it needs a twenty-four hour, seven-day a week, capacity solution over the six month period October to March commencing May 1, 2007. This relates to the N-1 criteria that the Commission has reaffirmed as their planning basis versus an operating type of criteria that BC Hydro uses (6T1237). Based on the evidence addressed in these proceedings, DPP submits that it would border on irresponsibility to fail to take measures to address the identified capacity deficiency and instead rely upon measures that have been clearly acknowledged to be more suited to a crisis, or N-2, situation. As stated by BC Hydro, the reason for the DPP plant is to meet the N-1 planning criteria (6T1251). In this regard, it was noted that the plant is providing reliability whether it is being dispatched or not (6T1252). DPP submits that these key considerations have largely been missed by Intervenor's in various of the positions they have advanced to the Commission. The Commission should indeed be reluctant to put BC Hydro, and the Province of British Columbia for that matter, in a position where the accepted WECC planning criteria will not be met.

Also apparently lost on a number of participants to this proceeding, whether by design or inadvertence, is the governing legislation that is applicable to the subject Electricity Purchase Agreement between BC Hydro and DPP. This filing has been made pursuant to Section 71 of the *Utilities Commission Act* ("UCA"), which requires that an energy supply contract be filed with the BCUC. A key provision of paragraph

71(1)(b) of the UCA has largely been ignored. This paragraph requires the person filing the Contract to "provide to the Commission any information it considers necessary to determine whether the contract is in the public interest." (emphasis added) Two things are very clear from this provision of the Act, being (i) that the test to be applied to the determination the Commission must make is a broad public interest one, regarding which the Commission has considerable discretion; and (ii) the determination of the scope of information that the Commission decides to examine in the context of this filing is totally in the discretion of the Commission. More will be said regarding the provisions of Section 71 and its implication for the issues which have arisen in these proceedings below.

## **B. THE CALL FOR TENDERS PROCESS**

DPP's perspective on the CFT process is obviously that of a participant attempting to understand the requirements of the process and assess what is needed in order to submit a successful bid. In addition to the extensive information contained in the CFT documentation itself, and other detailed information made available to all parties throughout the conduct of the CFT process, DPP submits that additional guidance for all parties was obtained from the Commission's statements in the VIGP Decision, as well as, the Commission's supplementary statements in its January 23, 2004 letter to BC Hydro regarding the conduct of the CFT process.

As stated by BC Hydro, senior management set guidelines at the beginning for the Project Team that addressed several key issues arising from the Commission's recommendations, which were designed to ensure that a fair, transparent and credible process was conducted which would yield a cost effective solution (6T1087). In this regard, DPP observes that BC Hydro adopted other measures which could be considered extraordinary in order to ensure that the aforementioned goals were achieved. First and foremost among these was the appointment of an Independent Reviewer whose primary responsibility was to ensure that BC Hydro conducted the CFT process in accordance with its specifically stated terms. Likewise, BC Hydro attempted

to remove as much discretion as possible from the CFT process (6T1186). Additionally, the CFT process provided unprecedented information to bidders, including the model, which would allow parties to run various scenarios themselves (6T1125; 7T1529-30). In short, DPP concurs with the position put forward by BC Hydro that parties knew the "rules of the game" when they participated in the CFT process (7T1566-67).

The Independent Reviewer confirmed that it was completely satisfied that the rules were complete and appropriate (8T1778). The Independent Reviewer also confirmed that, with respect to process, part of its responsibility was to ensure that all bidders were on an equal footing with respect to the Terms and Conditions of the CFT (8T1790-91). The Independent Reviewer further reiterated that the concept of fairness in the criteria related to all parties knowing clearly what such criteria are and understanding how they will be treated in the evaluation (8T1787-88). In conclusion on this matter, the Independent Reviewer's assessment of the criteria was that all bidders would be treated equally; and there was no apparent bias designed into the process, regardless of technology. The Independent Reviewer also confirmed that the criteria used is consistent with what others have used in industry, so there is nothing unique about the criteria (8T1825). In summary, while several of the assertions from parties need to be addressed in more specific detail, it is clear that BC Hydro clearly outlined the CFT criteria from the outset and that all parties knew the product that BC Hydro was seeking to obtain via the CFT. It is likewise clear that BC Hydro diligently followed the process it clearly outlined at the outset, relying upon independent expert advice throughout.

DPP observes that several parties now wish to contest several aspects of the CFT process itself, as well as the QEM employed by BC Hydro to assess the results of the CFT process and determine the winning bidder. Again from the perspective of a CFT participant DPP considers it useful to provide its comments on a number of the key allegations now being made by parties in this regard. The failure of DPP to mention every specific point raised by opposing parties should not in any way be considered as concurrence with the views expressed by such parties. Rather, DPP has concluded

that these matters are either definitively disposed of by BC Hydro's evidence or not of sufficient importance in the overall process to warrant specific comment. These matters are discussed briefly below.

**(i) Gas Price Risk**

In assessing the overall issue of gas price risk, DPP submits that it is critical to understand that the gas price risk issue has been badly mischaracterized by certain parties, in an effort to infer that this risk could somehow operate to the significant detriment of ratepayers. As stated by DPP, there is no gas price risk that would lead to customers being harmed, as the plant will only operate (other than when required for operational purposes) when it makes economic sense to run and will only buy fuel when it is needed (10T2255). This issue was further explained in DPP's Evidence (Ex. C17-6, p. 9-10) wherein it was noted that the dispatchable nature of this plant ensures that it will contribute positive margins to BC Hydro. This evidence was unchallenged during the proceeding. In this regard, BC Hydro confirmed that it would dispatch the plant opportunistically when the market price provides positive energy margins (6T1242). In short, the DPP plant will only run when it produces positive results in the energy margin context. This is a clear advantage of a dispatchable plant over a "must run" plant, regarding which the energy must be taken whether it produces positive or negative margins.

During the course of the proceedings much was made by certain parties of the fact that BC Hydro had agreed to take the gas price risk associated with gas-fired generation projects, but had not assumed the fuel risk associated with other non-gas fired projects. In this regard, DPP confirmed that it did not consider going with the non-tolling or the partial tolling options offered by BC Hydro (10T2234). DPP submits that the basis for adopting this approach is both patently obvious and persuasive of its appropriateness. The uncontradicted evidence confirms that BC Hydro is in a better position to handle gas supply, given its existing

infrastructure, resources, skills and energy portfolio (6T1158). As well, BC Hydro recognized that it would be difficult for a dispatchable plant to manage such gas risk, given that the future volumes required are uncertain because of BC Hydro's turn-down rights (7T1498; 8T1667).

In this regard, it is noted that BC Hydro asserted that a balance was achieved in the overall design of the CFT to produce a cost effective outcome. Consideration was given to having the party best able to take a risk having to assume such a risk, as this produces the lowest cost outcome; and hence a benefit to ratepayers (7T1498; 8T1736). Additionally, it was noted that BC Hydro's assumption of this gas price risk allowed smaller units to bid into the CFT process. It is also noteworthy that the Independent Reviewer confirmed that tolling options are common in RFPs (8T1792) and characterized gas tolling as very typical (8T1826). The Independent Reviewer confirmed that there was no evidence of bias in the process regarding natural gas versus another resource (8T1827). In short, DPP submits that the evidence clearly demonstrates that the assumption of the gas price risk by BC Hydro was the appropriate course of action to adopt, as it is fully consistent with achieving the lowest cost outcome to the benefit of ratepayers (see also BC Hydro response to BCUC I.R. 1.71.1, Ex. B-9 in this regard).

## **(ii) Gas/Electricity Price Forecasting**

During the course of these proceedings significant discussion occurred regarding BC Hydro's gas/electricity price forecasting. BC Hydro confirmed that the average of the six gas price scenarios it examined were close to the EIA forecast and therefore it chose to use the EIA forecast as a simplifying assumption in the QEM. BC Hydro confirmed that it looked into this issue during the month when the process took a break (6T1091). While the JIESC, and others, chose to challenge BC Hydro's forecasts and the underlying approach adopted, it is very clear from the totality of the evidence, including specifically the extensive

Rebuttal Evidence provided by BC Hydro via its own and outside expert witnesses (Ex. B-97), that the approach adopted by BC Hydro is indeed reasonable and appropriate and should be accepted by the Commission. In this regard, it is noted that the issues raised by the JIESC, and others, have been fully responded to in the evidence and that the Intervenor positions simply have not withstood the testing of these positions during the proceeding. It is also noteworthy that BC Hydro conducted a sensitivity of its gas price forecasts by running both a full recover case and a 25% recovery case and then averaged the results. It is arguable that this was an extremely conservative approach. The use of the 25% recovery case was a proxy for low market prices and provided a range of heat rates for evaluation (7T1522-23).

### **(iii) Credit for VIGP Assets**

This matter was pursued on a number of occasions during the proceedings, principally by the CEC, which seemed to be unable to grasp precisely what was occurring regarding this matter. As fully explained in the CFT question and answer documentation (Question 118) this matter has been specifically examined and the treatment afforded the VIGP assets confirmed as being appropriate. The appropriateness of this treatment was also confirmed by the Independent Reviewer (7T1535, 1540; 8T1836; also see Ex. B-61). The Independent Reviewer confirmed that it was comfortable with the approach adopted and that it fit within the overall finding of a fair and competitive process. The CEC's persistence in repeatedly pursuing this matter does not change the appropriateness of such treatment and DPP submits that the Commission should accept BC Hydro's approach as completely appropriate in the circumstances. In this regard, it is noted that BC Hydro agreed that when one approaches the credit for the VIGP assets from the perspective of incremental cash flows; in order to be incremental, the determination with respect to these funds necessarily needs to be completely independent of any issue with respect to the recovery of the initial investment (8T1723).



**(iv) Gas Transportation**

During the course of the proceedings several parties pursued the issue of gas transportation to the DPP plant, as BC Hydro has not yet finalized an agreement with TGV in this regard. DPP submits that this is not a matter which should be of material concern to the Commission. The evidence confirms that BC Hydro and TGV are actively discussing this matter, with BC Hydro targeting November, 2005 as a timeframe to have the issue resolved. BC Hydro repeatedly reiterated its view that the necessary transportation arrangements will be in place when needed and noted that it could opt for a short term contract if this were required (7T1395-97). As well, it was noted that BC Hydro could approach the Commission for relief if this ever became necessary.

**(v) CFT Bias**

Much was made by parties opposing the acceptance of the CFT outcome of the supposed biases built into the process itself. As mentioned above, the Independent Reviewer did not support the assertions that the process was biased in any manner. In assessing this allegation, it is instructive to note that, from an overall perspective, every possible component of the CFT was put under a microscope and tested extensively during the hearing. The evidence clearly indicates that BC Hydro demonstrated that it has thought through all aspects of the situation and, in the end result, it provided a reasonable justification for the various approaches adopted. As mentioned above, BC Hydro structured the CFT in order to achieve a balance in its overall design, with the overall approach having the party best able to assume a risk doing just that (in order to achieve the maximum benefits for ratepayers) (7T1498). BC Hydro confirmed that it had no perceived outcomes for the CFT and, in fact, had concluded that it favoured smaller projects and that this would be the likely outcome (7T1518). BC Hydro also stated that it was surprised that a VIGP type project won, due to the NPV

calculation and the removal of the transmission deferral credits (8T1730-31). BC Hydro indicated that it conducted significant testing on the model and ran a variety of shadow bids with different configurations and that the outcomes consistently favoured a project of approximately 150 MWs (8T1731). As noted, therefore the outcome of the process depended on bidder dynamics.

In this regard, BC Hydro reiterated that the process favoured small bidders because of the elimination of the transmission deferral credit by the Commission and the use of the net present value basis to assess the resultant portfolios. BC Hydro considered that there was a very small chance that a project of approximately 285 MW could compete with a 150 MW project. BC Hydro also confirmed that the provision of an energy margin did not change the relative positions of different bidders (7T1527-28).

DPP submits that the evidence on the record to these proceedings definitively disposes of the unsubstantiated accusations that there was a resource bias in the CFT process. Rather, the evidence confirms that all bidders participated on an equal footing with regard to their ability to successfully bid into the CFT process.

In summary, DPP submits that the CFT process and the QEM model used to assess the outcomes have withstood the enormous scrutiny brought to bear during the course of these proceedings. BC Hydro has demonstrated that the process it adopted and implemented was fair and appropriate and, as such, should be accepted by the Commission. DPP submits that all bidders into the CFT process knew and understood the rules very clearly, including the fact that the qualification and compliance rules would be strictly enforced. Hence, any party submitting a bid, which it knew to be non-compliant, would have understood from the outset that this bid would simply not be accepted. This was obviously required in order to maintain a "level playing field" amongst all bidders with no favouritism being shown to any bidder. DPP concurs with

the view that BC Hydro could have, and likely would have, been subjected to legal liability exposure if it did not adhere to its own rules that were established at the outset.

As well, it is important to note the observation of the Independent Reviewer that a process is not unfair simply because it is structured to obtain the product the Buyer requires (8T1828). Here, BC Hydro was seeking to replace the high level of reliability provided by the existing cable that will soon be zero-rated. It was seeking to replace "like for like", with equivalent reliability (8T1698). DPP submits that there is no "unfairness" associated with establishing criteria designed to meet the identified needs. As well, everybody was made aware of this from the outset.

### **C. BC HYDRO MANAGEMENT COST EFFECTIVENESS ANALYSIS**

Also lost in the detail that has transcended the overall proceeding is the fact that the cost effectiveness analysis requested by BC Hydro's senior management represents an extraordinary step that one would not expect to occur in a situation where a market-based Call for Tenders process has yielded a positive result in accordance with its Terms. In fact, DPP would have expected the process to end with the completion of the CFT process and the determination of a winning bid conducted in accordance with the strict application of the criteria employed for this process.

Appropriately viewed, the cost effectiveness analysis represents an added measure of due diligence by BC Hydro in order to ensure that the outcome was in the best interest of customers. As part of this effort, senior management requested the Project Team to conduct a high level test of the CFT results, in order to determine if there was any compelling reason to reject the successful outcome of the CFT process (6T1094, 1123). As part of this cost effectiveness analysis, BC Hydro went beyond the confines of the CFT and QEM and looked at the CFT outcome versus the Tier 2 and No Award scenarios, in order to verify that it has achieved a good and valid outcome (6T1095). BC Hydro also confirmed that the cost effectiveness analysis considered a variety of matters beyond simply the costs, including reliability, dispatchability, safety,

timing, location and the financial capability of the CFT award winner (6T1196). Additionally, BC Hydro considered items such as the supply/demand balance, the timing of the 230 kV cable, load requirements, the gas/electricity price relationship and other quantitative and qualitative factors (7T1377).

Of particular note is the fact that as part of the cost effectiveness analysis BC Hydro applied the harshest test available to compare other projects versus the Tier 1 outcome. BC Hydro assembled a "portfolio" of the two successful projects which were in Tier 2 combined with the Norske Demand Management Proposal. Thus, a project such as Green Island was considered as part of a compilation of projects examined during the cost effectiveness analysis phase (7T1449-50). This was in addition to the evaluation of the Green Island project, as a tender result, under the QEM. While Green Island could not be assembled into a portfolio, its price envelope was opened and its price terms were processed through the QEM (7T1446). It was also noted that in assembling this "portfolio" of Green Island and the Ladysmith Peaker (for 122 MW) the use of an additional peaker to reach the minimum bid quantity would have yielded costs greater than the Norske Proposal, which is what BC Hydro used (9T1941-42). It is also noteworthy that BC Hydro further "stress tested" the results of the CFT process for senior management by evaluating the results in the context of a high gas/low electricity price scenario which assumed that there was no correlation between the two variables (6T1190; 9T2034). While this scenario was viewed as very unlikely, it did serve to provide further information on how the CFT winning bid would operate in such a circumstance.

DPP submits that it is also critical to note that BC Hydro confirmed that the CFT results would not have yielded a different outcome if they had been measured on a \$/MW, NPV basis (8T1656-57).

DPP submits that, when viewed objectively, the efforts to which BC Hydro management went in order to ensure that the outcome of the CFT process indeed provided the most cost effective solution for addressing the pending capacity deficit on

Vancouver Island removes any doubt that the original objectives set by BC Hydro have been achieved and that the outcome should be accepted by the Commission.

**D. BCTC'S 230 KV PROJECT**

In its Ruling regarding the scoping of this proceeding the Commission confirmed that the timing of the 230 kV supply is within the scope of the matters to be considered (2T309-10). The timing also serves an important function with respect to the QEM model run which should appropriately be viewed as the "most likely" scenario for purposes of evaluating or testing the QEM results.

At the outset it is important to understand that DPP completely concurs with the view that the CFT and the DPP project are not in competition with the proposed 230 kV project. DPP certainly does not consider its project as an either/or situation for future transmission upgrades to Vancouver Island. Rather, DPP's concern with respect to the proposed 230 kV project go solely to the matter of timing in light of the prevailing circumstances. In this regard, it is instructive to note that for purposes of its "base case" BC Hydro has assumed that for planning purposes the 230 kV cable will be delayed one year and, hence, not be available until fall 2009 (9T1994). As indicated by BC Hydro, if the cable is delayed by just one month, it still has to serve the peak load for Vancouver Island. Therefore, given the uncertainties with respect to the cable, including its stage of development and the required regulatory approvals, it was not appropriate to use any other assumption. BC Hydro concluded that these factors suggested that there was considerable uncertainty in the earliest in-service date of October, 2008, as this was only a month earlier than its peak requirements (9T2017).

DPP conducted a thorough cross-examination of the BCTC witnesses with respect to the matter of timing and submits that the inevitable conclusion of this investigation is that there is a high risk that BCTC will not be able to meet the October, 2008 forecast in-service date (10T2335ff). In this regard, while optimism and confidence are indeed commendable virtues, they can easily be transformed into

stubbornness and ill-advised persistence in seeking to maintain unsupportable views. DPP submits that the record of the cross-examination of the BCTC witnesses is testimony to such a transformation.

As confirmed during questioning, the detailed Risk Log attached to BCTC's response to BCUC I.R. 1 (Ex. C6-2, q. 3.3) clearly confirms that there are approximately 20 significant risk factors which could lead to potential delays in the in-service date of the proposed 230 kV project. While the BCTC witness persisted in putting forth the view that progress had been made on numerous of these risk factors, several points are abundantly clear. First, BCTC confirmed in response to DPP's I.R. 1.1 (Ex. C6-6) that it would not expect to accept direct financial risk under the circumstances identified by DPP, where permits and regulatory approvals are delayed. In this response BCTC referred to the prospect of seeking a deferral account from the Commission if these circumstances arose. At this point there is no evidence that such an application for a deferral account has even been requested, not to mention approved. Hence, it is clear that BCTC will only incur expenditures which have been preauthorized by the Commission. In this regard, it is clear that the only expenditures authorized to date (as part of BCTC's Capital Plan) are those required to conduct preliminary work on a variety of the aspects of this proposed project.

All of this goes to demonstrate that little more than certain preliminary activities have been undertaken by BCTC regarding this project to this point in time. It is submitted that, while this Risk Log may indeed be in need of an update, very few (if any) of the significant risk factors identified by BCTC itself have been definitively addressed at this point in time. In fact, it appears that certain of the most significant risks identified, including matters such as public consultation, are indeed surfacing as major concerns for this proposed project. What the Risk Log does confirm is that BCTC has a significant number of major issues to address and it is simply inconceivable that a project Risk Log prepared in April, 2004 (almost one year ago), which operated under the assumption that October, 2008 was the earliest possible in-service date, could credibly maintain this date in the face of what has occurred since that time. While it is

not necessary to detail each and every aspect of the project which could cause a delay (as was done during the cross-examination) it is sufficient to conclude that major obstacles remain to be overcome and that BCTC's confidence has indeed turned into foolhardiness. The full cross-examination is commended to the Commission in this regard.

Also of note is the fact that as far back as the VIGP proceedings in June, 2003 BCTC was asserting that, at that time, an accelerated schedule would see the 230 kV line being installed in the fall of 2008 and that a normal schedule would be for the fall of 2009 (10T2356; Ex. C17-15). DPP questions whether it is credible to assume that a period of one and one-half years could lapse, with little more than some preliminary work being conducted, yet BCTC can still meet the originally forecasted "accelerated" in-service date. Likewise, an Information Request filed by BCTC in the VIGP proceedings (see Ex. C17-16) confirmed that some 5-5 1/2 years would be required for the installation of this proposed project from the June 2003 timeframe. Again, credibility is strained to assume that such a date is still achievable notwithstanding the lapse of one and one-half years.

Adding further doubt to BCTC's ability to obtain the October, 2008 in-service date is the fact that in the BCUC's recent decision regarding BCTC's Capital Plan (November, 2004) there are still numerous significant issues outstanding regarding the 230 kV project itself. In fact, as recently as December, 2004 BCTC was responding to issues questioning if the 230 kV option was the best option available and providing an extensive technical justification for this option (10T2361-64; Ex. C17-19).

It is also clear from the questioning of the BCTC witnesses that little work has been done with respect to obtaining significant Federal, Provincial and U.S. permits. Also of specific note is that, even before BCTC's public consultation program is implemented in any material way, there is mounting opposition to the project by affected landowners on the Mainland portion of the proposed route. This concern was recognized by BCTC in its Risk Log, including a recognition of the potential delays

associated with resident opposition. While the reaction of the residents on Galiano and the Salt Spring Islands has not yet been definitively obtained, the BCTC witness agreed that it is likely the residents will have concerns. Also, while the witness did not think that BCTC would have any problems with the right of way, he did acknowledge that this was other than the fact that the property owners do not want the 230 kV line on their property (10T2375-81).

During the course of the discussion with DPP, the BCTC witnesses acknowledged that several other difficulties exist, including a scheduling window for cable ships if the project is not able to meet the time window they have reserved (10T2382-83).

The key consideration regarding the timing of the 230 kV line relates to the fact that, for planning purposes, if the "accelerated" schedule for the line were to slip by even one month, this line could not be included for planning purposes for the 2008-2009 peak period (10T2387).

It is also informative to contrast the fact that the DPP project has a binding contract, which provides cost certainty, with the BCTC "best efforts" proposal, which contains significant uncertainties (7T1365). A further point of note is that the 230 kV cable alone does not solve the problems confronting Vancouver Island. There must be generation available to provide supply to the cable. In this regard, it is important to note that the total system is reaching an overall balance (6T1100).

Based on the totality of the evidence regarding the potential in-service date for the proposed 230 kV line, DPP submits that it would be foolhardy to rely upon the position advanced by BCTC. Unjustified persistence does not equate to the provision of a solid evidentiary base; and DPP submits that for purposes of these proceedings the most likely scenario upon which the Commission can rely is that at the earliest the proposed 230 kV line will be available for the fall of 2009. In fact, given the stage of



development at this point it is indeed questionable that such a delayed date could be achieved.

**E. SUITABILITY OF SHORT TERM MEASURES**

During the course of the proceedings several parties, including specifically Norske, attempted to suggest that the pending capacity deficiency on Vancouver Island could be met with a combination of short term "bridging" measures that would be available until the proposed 230 kV cable is in-service. It is very clear that, while the Norske Demand Management Proposal can play a key role in meeting the energy requirements of Vancouver Island residents in certain critical, short-term conditions, it simply is not an acceptable option for the provision of required capacity in the context of the WECC's N-1 criteria. In this regard, it is noteworthy that Mr. Mansour, for BCTC, while expressing appreciation for the efforts of Norske in assisting BCTC in addressing certain operating issues, confirmed that such proposals could not be relied upon for long term planning purposes and noted that the Commission agreed with this conclusion (10T2394). The BCTC witness also confirmed that they have assessed the information provided regarding Norske's Demand Management Proposal and have concluded that it is not suitable for long term planning. Rather, BCTC would like to keep things like the Norske Proposal for contingency events (10T2395). Furthermore, the BCTC witness confirmed that the views he expressed during the VIGP proceeding are still his views today and, in fact, he is more concerned than in 2003 when he indicated that a combination of generation and transmission provide the right answer for Vancouver Island and that the first generation project available for Vancouver Island should be built (10T2404-06).

These views confirm those expressed by BC Hydro, wherein it indicated that the Norske Demand Management Proposal is appropriately viewed as a short term, stop-gap measure (6T1109; 7T1366-67). BC Hydro also confirmed that load shifting demand management proposals are not considered reliable enough to be considered as a long term planning option (9T1955). BC Hydro stated that the N-1 criteria cannot be satisfied

by the Norske proposal (7T1402-03). BC Hydro needs resources that are available throughout the year, not limited as per the Norske proposal (9T1977). BC Hydro expressed concern with the reliability and short-term nature of this proposal. DPP submits that these views are consistent with those expressed by the Board in the VIGP Decision (p. 22), wherein it characterized potential arrangements with Norske for short term load curtailments as a bridge for a period until other resources, such as the 230 kV transmission line or on Island generation can be completed (emphasis added). DPP submits that proposals such as the Norske Demand Management submission which was introduced into these proceedings do not provide a viable option to address the capacity requirements for Vancouver Island and should not in any way be seen as a legitimate basis for refuting the results of the valid CFT process conducted by BC Hydro to meet its capacity needs.

The most telling discussion regarding the suitability of relying upon a combination of "band-aid" measures to meet the pending capacity shortfall arguably occurred with Mr. Mansour. The old cables were described as being "on life support" (10T2293). The witness stated that, if pushed they could come up with a reasonable bridge "with fingers crossed" (10T2310). The witness noted that there could be a potential problem that could lead to a cascading of problems and stated that this would really be a mediocre kind of performance (10T2314). These words, which DPP submits are an accurate reflection of the situation, hardly reflect confidence in relying on a combination of "band-aids" to meet Vancouver Island's capacity requirements.

In conclusion, relying on such short-term measures is entirely inappropriate when not in a crisis situation, and when time exists to address the situation properly.

## **F. OTHER VANCOUVER ISLAND CAPACITY OPTIONS**

As part of its Scoping Decision for these proceedings the Commission clearly laid out its views on the positions raised by parties regarding the implications of the CFT criteria for other possible resource options. The Commission agreed that these issues

could be pursued during this proceeding. In this regard the Commission stated as follows:

"However, the Commission Panel also notes that in the absence of evidence from developers, it may not be persuaded that the CFT is not satisfactory evidence that Duke Point is the most cost effective resource for Vancouver Island at this time." (2T312)

This clear statement by the Commission gave ample notice to any developer, particularly those who participated in the CFT process, that if they wanted to have their former projects considered in any way as part of these proceedings the onus was clearly on such parties to bring forward evidence to the contrary, to demonstrate that the results of the CFT process should not be accepted.

The only developer to accept this challenge was the proposed Green Island Biomass Project. As acknowledged by the witnesses for Green Island, it was aware from the outset that in order to satisfy the minimum 150 MW requirement for the CFT its project would have to be aggregated with other project(s), as it was a 75 MW project. This was clearly known and understood by Green Island (18T2423-25). Green Island also clearly understood that, as it did not control any of the other project developers, it was dependent upon these proponents acting in a manner which would have compliant bids available to BC Hydro to aggregate into a portfolio that met the minimum threshold established by the CFT.

Recognizing the reality of the situation confronting Green Island in these proceedings, it assumed the Herculean task of rehabilitating two projects, which simply no longer exist. In the absence of any active participation from the proponents of these former projects, Green Island also assumed responsibility for persuading the Commission that these former project proponents had somehow been treated unfairly by the CFT process. One would have expected a party that has been ill-treated to forcefully bring forth evidence of such ill treatment before the Commission. However, no such evidence was forthcoming by the supposedly aggrieved parties. DPP submits

that a far more plausible explanation is that these developers gave the CFT their "best shot", were not successful and have moved on. The dilemma created by the realities of the situation also forced Green Island to create factitious, non-existing "portfolios" in its Direct Evidence (Ex. C9-10). DPP submits that Green Island "doth protest too much", as there is simply no evidence to support any assertion that Green Island was inappropriately treated during the course of the whole CFT process. The fact that Green Island was run through the QEM and also aggregated with other projects as part of BC Hydro's cost effectiveness analysis provides further demonstrable evidence that it was indeed treated fairly in this process and has no valid basis for a complaint.

Green Island also sought to establish that BC Hydro's management should have exercised the privative clause contained in the CFT criteria and for some unknown reasons reject the successful CFT Tier 1 bid; and select Green Island's proposal (supposedly in combination with other non-existent bids) instead. Putting aside totally the fact that the exercise of this provision was solely at the discretion of BC Hydro (and hence not to be dictated by the Commission), Green Island has not established any reasonable basis upon which BC Hydro's management might have even considered such action. The CFT yielded a Tier 1 result that provided a cost-effective solution to address the capacity shortfall on Vancouver Island. No consideration of this clause was required.

DPP submits that no developers, other than Green Island, have accepted the challenge put forth by the Commission as part of the aforementioned Scoping Decision and there is no evidence to suggest that DPP is not the most cost effective resource for Vancouver Island. In fact, the overwhelming evidence on the record supports such a finding in DPP's favour.

## **G. GREEN-HOUSE GASES**

The issue of which party to the EPA bears the responsibility for potential future liability associated with Green-House Gas ("GHG") emissions arose at several points

during the proceeding. Both BC Hydro and DPP agreed that, pursuant to the EPA, DPP has assumed responsibility for this potential emission liability. DPP was very open regarding the approach it has utilized to assess and quantify this potential liability. DPP confirmed it had spent a great deal of time on this issue and had consulted two outside experts, as well as in-house capability, to assess this risk before agreeing to assume responsibility for it (10T2242-43). DPP also confirmed that it is actively involved in the ongoing dialogue regarding industry specific GHG policy in Canada with senior Natural Resources Canada officials and through the Large Final Emitters ("LFE") group (10T2244). It is abundantly clear that DPP fully understands and appreciates the risks and potential liabilities associated with GHGs, as well as, the current status of the evolving developments on this matter.

GSXCCC et al presented testimony by Dr. Mark Jaccard regarding this matter (Ex. C20-20). The record confirms that this evidence is of questionable relevance and of dubious value to these proceedings. First, Dr. Jaccard did not focus on the impacts of the LFE program or the potential GHG obligations for this project. Likewise, he did not address the responsibility of the parties for any associated potential emission liability. Second, while purporting to provide views on the most recent information available regarding GHG's and the international developments associated with this issue, Dr. Jaccard knew nothing about what is arguably one of the most significant recent developments on this issue, being the recent COP 10 (Conference of the Parties) meetings and the outcome of these international discussions. DPP submits it is indeed remarkable that Dr. Jaccard can profess to be able to opine on Canadian and international GHG policy, given his unfamiliarity with the very matters that go to the heart of the COP 10 meetings. Dr. Jaccard relies on a being "briefed" by a third party to keep informed, and there has been no such "briefing" yet (14T2913-15). As such, Dr. Jaccard is in no position to speak to the current views of any party on this matter.

Dr. Jaccard self-admittedly engaged in "speculation" on the potential future liabilities associated with GHGs (14T2933, 2937). His views would result in liabilities for industry in the order of \$45 billion in present value terms (14T2925). While

acknowledging that implementation of these measures would be "very difficult" politically, DPP maintains that this severely understates the reality of adopting such an approach, which would be more akin to political suicide (14T2926). DPP questions whether there is any expectation, reasonable or otherwise, that such extreme measures will be adopted.

Furthermore, both BC Hydro and DPP noted that, if DPP were unable to meet its future liabilities, and BC Hydro had to step-in, there would be approximately \$35-36 million/year in capacity payments available to satisfy such liabilities (7T1389-90; 10T2243).

DPP does not see any basis upon which GHGs issues could or should inhibit the Commission from determining that the subject EPA is consistent with the public interest.

#### **H. SECTION 71 OF THE UCA**

During the course of these proceedings an anomaly has arisen wherein a non-winning CFT bid has been identified as having had the potential to provide added value to customers. A further consideration regarding this non-winning bid is that it was also submitted by DPP, the winning CFT bidder.

The facts surrounding this situation indicate that the winning bid, with the lowest NPV cost, relates to the DPP plant without duct firing; whereas the second place (ie. non-winning) bid included DPP's duct firing capability. As confirmed in evidence, the facility DPP will actually construct, includes such duct firing capability (10T2210); but this added capacity is not under contract to BC Hydro and is not included within the Terms of the existing EPA. The Commission has raised an issue regarding how it could ensure that the DPP plant's duct firing capability would be made available to BC Hydro (12T2517).

DPP submits that when the record of these proceedings is considered in total, there can be no doubt that the approval of the EPA, as filed, is consistent with the overall public interest and satisfies the requirements of Section 71(1) of the UCA. Furthermore, from a legal point of view, the EPA submitted by BC Hydro is the only binding agreement that remains following the completion of the CFT process. The project which is the subject of the existing EPA has survived the rigors of both the CFT and the cost effectiveness process; and has clearly demonstrated that it provides the most cost effective approach that is available to meet the identified capacity deficit on Vancouver Island. The evidence also confirms that BC Hydro has secured substantial financial savings through the use of the market-based CFT process. In these circumstances, DPP submits that the public interest will clearly be served by the approval of the filed EPA. This EPA will provide approximately 265 MWs (105% of 252 MWs) of contracted capacity that is required in the immediate future. It is clearly in the public interest to ensure that this capacity is secured.

Furthermore, DPP submits that another significant public interest consideration is the impact the treatment of the current CFT process will have on future CFT/RFPs that will be held by BC Hydro. DPP submits that the confidence of potential bidders into future processes will be substantially eroded if the valid results of a market-based process are rejected. Therefore, such action should not be taken lightly by the Commission, as it could result in negative implications, including increased costs, in the future.

Notwithstanding the above, DPP submits that the Commission could, if it wished, provide commentary in its Reasons for Decision which encouraged BC Hydro to secure the additional 28 MWs of capacity available from DPP's duct firing capability under a separate EPA, which would be part of a separate filing. BC Hydro and DPP would obviously have an incentive to consider the Commission's views very carefully.

Additionally, Duke Point Power would note that the evidentiary record to these proceedings clearly confirms that the value of the duct firing capability of its plant is of

little relative value to DPP. The EPA confirms that this capability would only be available for sale to any party in circumstances where the plant is already operating at its full capability (ie. 105% of the BC Hydro contracted capacity). Hence, the ability to offer such a resource in any meaningful way to the market is severely restricted. The fact that this capability will be physically available from DPP's plant should also give the Commission considerable comfort that the capacity would be made available to BC Hydro in circumstances where this would be required in order to meet the capacity requirements on Vancouver Island.

Based on the above, DPP submits that an explicit order requiring DPP to make the duct firing capability available to BC Hydro is unnecessary. This capacity will be inherently available simply because of the physical nature of the plant that will be constructed by DPP. DPP submits that the Commission should approve the EPA, as filed, as being wholly consistent with the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1<sup>st</sup> day of February, 2005.

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Bennett Jones LLP  
Counsel for Duke Point Power Limited Partnership