Putman, Aimee V BCUC:EX

From: csanderson@lawsonlundell.com
Sent: Monday, February 07, 2005 10:40 PM
To: Commission Secretary BCUC:EX
Cc: gfulton@boughton.ca; alice.ferreira@bchydro.com
Subject: Project No. 3698354 - CFT EPA Review - BC Hydro Reply Argument

Importance: High

BCHReply.pdf (1 MB)

Please find attached a PDF copy of BC Hydro's Reply Argument in connection with the referenced proceeding. Alice Ferreira will be providing a searchable PDF version of this document to the Commission first thing Tuesday morning, and will distribute copies to the Intervenors at that time as well.

<<BCHReply.pdf>>

Chris W. Sanderson, Q.C.
Lawson Lundell
Barristers & Solicitors
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, B.C. V6C 3L2
Tel: (604) 631-9183
Fax: (604) 669-1620
e-mail: csanderson@lawsonlundell.com
www.lawsonlundell.com

IN THE MATTER OF THE *UTILITIES COMMISSION ACT*, R.S.B.C. 1996, C. 473

— AND —

A FILING BY BRITISH COLUMBIA HYDRO AND POWER AUTHORITY CALL FOR TENDERS FOR CAPACITY ON VANCOUVER ISLAND/ REVIEW OF ELECTRICITY PURCHASE AGREEMENT

Reply on Behalf of
British Columbia Hydro and Power Authority ("BC Hydro")

FEBRUARY 7, 2005

Table of Contents

Introduction

1. This reply responds to those intervenor arguments not fully addressed in BC Hydro's original argument. Many of the intervenors' arguments do not directly address the issues that the Commission identified as being within scope and, accordingly, are not addressed here. Others do not squarely take on the submissions of BC Hydro in its Final Argument. Where the Final Argument contains BC Hydro's full position, no further reply is offered here.

2. The Reply attempts to organize and address intervenor arguments under the same headings used in the Argument. References have been included where time permitted. An "Other" category has been added to reply to those arguments that did not fit under the pre-existing headings. However, two arguments addressed by many intervenors can usefully be addressed at the outset.

3. First, many intervenors suggest directly or indirectly that BC Hydro's objectives in conducting the CFT process and in entering into an EPA with the successful bidder in that process were something other than a *bona fide* attempt to obtain reliable, cost-effective supply for Vancouver Island. BC Hydro rejects that suggestion. While there will always be room to argue about whether any particular solution will work out for the best in the long term and reasonable people may have significant disagreement respecting the preferred course of action, BC Hydro believes the record supports its contention that it has been motivated throughout the CFT exercise by a *bona fide* desire to find the solution that is in the best interests of its ratepayers. While BC Hydro is disappointed that it has not persuaded the representatives of its ratepayers appearing in this proceeding that it has succeeded in this endeavour, BC Hydro does not believe there is any basis in the evidence for doubting the integrity of its considerable efforts to do so. The hiring of the Independent Reviewer, the complete transparency of the QEM methodology, and the ongoing and successful attempts to comply with the methodology throughout, are all testimony to BC Hydro's commitment to a competitively developed solution to Vancouver Island's electricity needs. There is no evidence to support any other motivation on BC Hydro's part.

4. Second, many intervenors engage in extensive discussion of BC Hydro's general planning criteria and overall level of reliability. This issue was not addressed in BC Hydro's Final Argument because it is beyond the scope of this proceeding, having been resolved in the VIGP Decision. However, given the prominence of both the discussion of the criteria themselves and their application to the CFT process, this Reply discusses the issue under the heading "Reliability Criteria" immediately following the discussion of the "Timing Risk of Proposed 230 kV Circuit to Vancouver Island."

Commission Authority to Disallow Filed EPA in Favour of a New EPA

5. Some intervenors (e.g., BCOAPO, pp. 17-18, 20-21; GIE, pp. 16-17) argue that DPP without duct firing is not the most cost-effective option based on the comments of Ms. Hemmingsen at T8: 1741. These submissions miss the fact that under the EPA, DPP is required to build a project with duct firing. Acquisition of 252 MW under the EPA is cost-effective and does not preclude acquiring an additional 28 MW if an appropriate arrangement can be struck with DPP. BC Hydro will do that if it is cost-effective to do so. GIE suggests that an EPA will be filed in respect of "the DPP with duct firing project." That will not happen. If BC Hydro agrees to acquire 28 MW of capacity from DPP, a separate EPA associated with that acquisition would be filed with the Commission. If required by the Commission, BC Hydro would only be required to show that entering into that EPA for 28 MW was in the public interest.

Timing Risk of Proposed 230 kV Circuit to Vancouver Island

6. A number of intervenors rely on portions of Mr. Mansour's evidence. Generally, the evidence is not in dispute; its interpretation is. BC Hydro interprets Mr. Mansour's evidence to be that he is less than comfortable with the options available in the winter of 2007/08 but has a plan that he hopes will be adequate for that winter. He can provide no guarantees. Similarly, he has a plan to finish the transmission circuit by the winter of 2008/09 but again there are no guarantees. The cumulative effect of these uncertainties is to make him a supporter of adding a significant generation resource on the Island. While some intervenors may have

reached a contrary conclusion, BC Hydro submits that it is telling that the party claiming responsibility for ensuring transmission reliability has reached the same conclusion as the party with the ultimate obligation to serve. That is, new generation on the Island is needed and "No Award" is not a prudent option. Some intervenors also suggest that BC Hydro has not aggressively pursued the 230 kV circuit (see, e.g., McLennan, p. 2). To the contrary, BC Hydro initiated the request that BCTC pursue the earliest possible in-service date for the transmission circuit.[1]

Reliability Criteria

7. JIESC's argument, at pp. 6-9, discusses planning criteria and undertakes a back-of-the-envelope reliability analysis. BC Hydro does not believe that the cursory and incomplete analysis contained therein is a substitute for the rigorous analysis required to conclude that BC Hydro should plan not to serve foreseeable load as JIESC seems to be proposing. BC Hydro's planning criteria were carefully considered in the VIGP hearing and endorsed by the Commission in these words:

> The Commission has in the past endorsed BC Hydro's compliance with industry standards for reliability as stated by NERC and the WECC, and believes that these standards are necessary for the safe and reliable delivery of power to customers. Moreover, the economic consequences of load shedding other than in exceptional circumstances are not acceptable. The Commission Panel also notes that the probabilistic tools that BC Hydro has developed to aid in comparing various options are very valuable (recognizing that good reliability statistics are necessary to the usefulness of the results) as an addition to the more traditional deterministic criteria. The Commission Panel commends BC Hydro for this work.[2]

8. Attempts to reargue this point here should be rejected since there is no evidence that circumstances have changed and, in fact, Mr. Mansour's testimony makes clear that the situation is, if anything, more acute than it was at the time of the VIGP Decision. From the outset, the CFT has targeted long-term capacity on Vancouver Island as clearly contemplated in the VIGP Decision.

---

[1] T7: 1359/21-1360/5.

[2] VIGP Decision, p. 7.

9. JIESC's discussion of planning criteria shows a lack of understanding of both WECC standards and BC Hydro's and BCTC's planning responsibilities. First, the reason that failure to have adequate transmission to the Island does not violate WECC standards is because a failure of supply to the Island does not threaten any WECC-interconnected utility. WECC standards are not applicable in these circumstances. The fact that other jurisdictions are not affected by a failure to serve the Island is no reason for BC Hydro not to reliably serve its own customers.

10. BC Hydro's and BCTC's rejection of the NCDMP to meet their planning criteria reflects an approach to planning that is used industry-wide[3] and endorsed by the BCUC;[4] BC Hydro has not said that it is up to an individual component to meet N-1 criteria.[5] Rather it has said that the system as a whole must be able to withstand the loss of its largest source of supply at any time of year and still meet load. If an existing 500 kV circuit went out of service, neither BCTC nor BC Hydro believe that reliable service could be maintained through a load reduction mechanism such as NCDMP. Load reduction mechanisms *may* be appropriate and useful to provide further protection to ensure reliable supply when N-1 conditions exist and N-2 (or greater) conditions are a possibility. This issue was extensively debated in the VIGP proceeding, and the Commission determined that:

> . . . no contracted demand reductions should be added to dependable supply for the purpose of the Application" but that "arrangements with NorskeCanada for short-term load curtailments are an attractive option in the event that BC Hydro needs to bridge a period until a resource like a 230 kV transmission line, other on-Island generation, or even VIGP can be completed.[6]

11. The Commission reiterated this determination in its January 23, 2004 letter to BC Hydro. BC Hydro rejects the suggestion that the planning criteria that have created a reliable system in British Columbia and allowed BC Hydro to consistently

---

[3] Exhibit B-9, BC Hydro response to McKechnie IR 1.4.0.

[4] VIGP Decision, p. 7.

[5] T7:1403/1-5.

[6] VIGP Decision, p. 22.

meet its obligation to serve should be altered at the behest of JIESC based on its incomplete understanding of how those reliability criteria work.

12. At pp. 8-9, JIESC accurately cites Mr. Mansour's testimony in response to questions from the Chairman. BC Hydro agrees that Mr. Mansour was not endorsing DPP or any other specific generation project as the solution for Vancouver Island. However, he was endorsing adding generation to the Island as quickly as possible. He was not supporting the delay implicit in the No Award proposal endorsed by JIESC.

13. JIESC suggests at p. 5 that "for the supply on the Island to be in jeopardy in the foreseeable future one of these lines (the 500 kV circuit) must be out of service during the one or two weeks a year when very low temperatures are experienced on Vancouver Island." Green Island makes a similar argument at pp. 4-5. This displays a lack of understanding of BC Hydro's planning criteria. BC Hydro must be able to withstand one of those transmission circuit being out any time during the year. That means that when other resources are foreseeably unavailable for planned maintenance or because of hydro conditions or otherwise, the system must nevertheless be able to withstand one of the circuits becoming unexpectedly out of service. BC Hydro sought in its evidence to point out that this introduces potential capacity issues at times other than system peak.

14. NorskeCanada's comments on ICP (p. 15) should be disregarded. There is no evidence in this hearing to substantiate the comments made in this connection.[7] Moreover, the Commission ruled ICP comparisons out of scope in this hearing for the very good reason that the contract with ICP is fundamentally different than the EPA with DPP. This was reaffirmed by Ms. Hemmingsen in oral testimony.[8] She went on to note that ICP uses different turbine technology than will DPP.[9]

---

[7] Indeed, evidence in the hearing for TGVI's CPCN application for an LNG facility is to the contrary: in that hearing, BC Hydro filed evidence of ICP's recent compliance with dual fuel capability.

[8] T8: 1693/18-21.

[9] T8: 1695/18-26.

15. Shadybrook Farm and some other intervenors continue to support the notion that, for planning purposes, the HVDC line should still be counted on for 200 MW. From a resource planning perspective, firm supply is compared to forecast demand under N-1 conditions. The firm capability of the HVDC system has been determined to be 0 MW, not 200 MW, as of F2008. While Mr. Mansour was asked at T10: 2295 if he would be comfortable with a reasonable level of reliability of about 200 MW from the HVDC system for operating purposes in 2007, his answer was in the context of using the HVDC as an operating contingency and does not re-establish a firm capability of 200 MW.

16. Shadybrook Farm also assumes that 2600 MW of supply capability is available from the two 500 kV circuits when both are in service. But the cables in these circuits would never be loaded to that extent, since an outage of one cable would cause the other to immediately trip on overload.

17. Shadybrook Farm also claims that DPP plus the 230 kV circuit do not improve Vancouver Island supply reliability in an N-2 situation involving both 500 kV cables. This is erroneous. In the event of a double outage of the two 500 kV circuits, the supply from DPP and the 230 kV circuit would be vitally important for supplying some, if not all, of the Island's electricity requirements until the 500 kV system could be restored. For example, as of F2009, they would limit the shortfall to 756 MW (2324 MW – 1568 MW)[10] rather than a shortfall of 1608 MW (2324 MW – 716 MW.[11]

Gas Supply/Price Risk

JIESC

18. JIESC, at pp. 14-15 of its argument, suggests that BC Hydro's acknowledgment that the bidders would have charged a substantial premium to take gas price risk implies

---

[10] See B-98. The 1568 MW is composed of 450 MW of hydro, 266 MW of purchases, 252 MW from DPP, and 600 MW from the 230 kV circuit.

[11] *Id.* The 716 MW is composed of 450 MW and 266 MW of purchases.

that the cost of that risk to BC Hydro's ratepayers is high. BC Hydro disagrees. The expectation that bidders would have to charge a substantial premium for gas risk speaks to bidders' inability to manage this risk, not the magnitude of the risk itself. BC Hydro is in a better position to hedge the risk by virtue of the fact that it already has a gas portfolio in connection with its other resources.[12] Perhaps more importantly, it has a natural hedge against gas price volatility because of the relationship between electricity and gas prices. As BC Hydro's rebuttal testimony made clear, while that relationship is not one-to-one, over time there is expected to be sufficient connection between gas and electricity prices that market heat rates will support dispatch from DPP most of the time and thus contribute value to BC Hydro's system. Bidders required to sell to BC Hydro at a fixed price would not be able to take this risk[13] and would have to add a significant premium to eliminate it in illiquid long-term gas markets.[14]

19. At p. 16, JIESC suggests that BC Hydro applied different rules to its gas supply arrangements than to other fuel supply arrangements of bidders. This is not so. The evidence does not indicate that BC Hydro rejected any bidder on the basis of the inadequacy of its fuel supply arrangements. BC Hydro only required that the bid contained a description of how the fuel supply would be assured so that its SEC Technical sub-committee could assess that aspect of the bid. There is no basis to suggest that the sub-committee's judgment was different in substance than the judgment applied by BC Hydro to its own gas supply arrangements. This is summarized in an exchange between Commission counsel and Mr. Eckert:

> MR. FULTON: Q: Okay. And my question is, if the Duke Point proposal had not been a fully tolling -- had not been on a fully tolling basis, would the same Fuel Supply Certainty Guidelines apply?
>
> MR. ECKERT: A: I'd suggest that they would. In fact, the way that we evaluated the fuel supply -- we did evaluate the fuel supply certainty for the portfolio -- on the portfolio for tolling projects, so there was an assessment of the fuel supply

---

[12] B-9, BC Hydro response to BCUC IR 1.17.2.

[13] T8: 1738/20-25.

[14] T8: 1667/16-22.

> certainty for Duke Point Power, with B.C. Hydro providing that gas. So we did evaluate the gas transportation and we looked at all the information that was available to us. We looked at the contingencies that were available. Likewise, if they were to have bid a non- tolling project, we were prepared to use the same evaluation on that basis. Likewise with respect to a biomass or a coal plant, we looked at all of the information that was provided from the bidder, and we looked at what the availability of fuel was, what the likelihood of them being able to secure contracts was, what the number of suppliers were, what the different means of transportation were. So there was no obligation for -- there was not necessarily any obligation to have firm contracts in place, but we took all those factors into consideration when we determined whether or not they met the mandatory criteria with respect to dependable capacity with respect to fuel supply certainty.
>
> MR. FULTON: Q: If Duke was not a tolling plant and it was in the same situation that B.C. Hydro is today in terms of gas transportation arrangements, would its bid still have been considered?
>
> MR. ECKERT: A: Its bid certainly would have been considered. We would have evaluated the circumstances around their plan to secure transportation, the availability and non-firm transportation, what options were available to them, in very much the same way that we looked at the portfolio when we looked at the tolling project.[15]

Value of Energy

BCOAPO

20. BCOAPO says at p. 2 of its argument that the facility would be "approaching the end of its useful economical life by the time the longer-term 20 year horizon comes into play." The evidence is to the contrary. Mr. Lauckhart predicted a high rate of dispatch in the facility's later years and Dr. Pickel elaborated on the status and effect of "G" and "H" class turbines in the future.[16] Given the rate of capital stock

---

[15] T8: 1706/12-1707/25.

[16] T15: 3127/18-26.

turnover in the WECC, it takes a long time for incremental improvements in new generation technology to have a substantial impact on the system as a whole.[17]

JIESC

21. The EPA costs quoted by JIESC on page 2 of its Argument are misleading. As evidenced in Mr. Wallace's cross-examination of the DPP panel, the nominal power costs for 2007/08 are $76/MWh at 80% load factor and $101/MWh at 40% load factor.[18] During this same cross-examination, Mr. Campbell of DPP indicated that the real average cost of their plant in 2004 dollars was $71/MWh at 80% load factor and $147/MWh at 40% load factor.[19] BC Hydro has also stated that the levelized unit cost of duke Point under the EIA average price forecast scenario is $70.30/MWh, including tolls, in 2006 dollars.[20]

22. JIESC suggests at p. 16 that there was no risk adjustment to reflect the possibility that the market heat rates will be lower over the next 25 years than virtually any time in the past. In fact, BC Hydro weighted such a scenario at 50% in assessing the return that it expected from energy generated at the Duke Point facility.

23. At pp. 20-21, JIESC continues to support Mr. Fulton's use of the EIA electricity price forecast in the face of the acknowledgement that it does not seek to measure market price at all. This is perhaps the most startling portion of its or any other intervenor's argument. Mr. Fulton's reaction to the disclosure that the EIA power price forecast relied on regulated prices seemed to be one of surprise. Certainly, there was no evidence that he had known this and considered the use of the forecast in light of that information. More fundamentally, it is disingenuous for JIESC to express outrage at the suggestion that a market price forecast might be higher than a forecast of regulated rates. JIESC says this may be "tantamount to saying that

---

[17] T15: 3204/5-18.

[18] T10: 2218/6-14.

[19] T10: 2221/22-26.

[20] B-50, BC Hydro revised response BCUC IR1.41.1.

deregulation leads to higher power prices, not lower." During the course of final argument at the Heritage Contract proceeding, JIESC said the following:

> De-regulation of the generation Heritage assets to the detriment of ratepayers. JIESC believes strongly that these assets and their low-embedded costs are the key to the value in the Heritage Contract. The Commission must retain jurisdiction over those assets, for the life of the assets, to ensure that they continue to deliver their full value to customers in a rapidly changing environment.[21]

and

> The CBTE proposal would also remove generation from regulation. This is contrary to the Energy Plan and simply unacceptable to the JIESC. The Provincial Government has clearly indicated that BC Hydro is to return to regulation. Leaving the Heritage generation assets in regulation, to ensure that the benefits of those assets and of all future enhancements flow to ratepayers, is absolutely essential to ensuring that the value of low cost generation will be locked in for ratepayers.[22]

24. It is not possible to reconcile these comments with JIESC's current attempt to deny that in low embedded cost jurisdictions, rates will be substantially lower than market. This argument by JIESC weakens the credibility of its entire submission. Certainly, Mr. Fulton's use of regulated rates to calculate the market price undermined the credibility of his opinions.

25. JIESC's reference to Mr. Fulton's testimony in Exhibit C-19-24 and backcasting highlights another basic inconsistency in Mr. Fulton's approach. Having acknowledged that a backcast should be for at least five years,[23] he restricted his analyses to the last three. This eliminated the need for Mr. Fulton to explain the consequences of the extraordinarily high market heat rates he experienced in 2000 and 2001. As became clear from Exhibits B-81 A and B, the market heat rates used by Mr. Lauckhart, Dr. Pickel and Mr. O'Riley were all low viewed in historical

---

[21] Final Argument on behalf of the Joint Industry Electrical Steering Committee in BC Hydro Heritage Contract and Stepped Rates Inquiry dated August 27, 2003, p. 4.

[22] *Ibid*, p.7.

[23] T12: 2554/16-23.

context[24] and Mr. Fulton's suggested market heat rates are only tenable if there is a long-term supply glut produced by generators consistently and constantly over-building in the next 28 years. While this might be desirable from a customer's point of view, it is unlikely. In short, Mr. Fulton's testimony did not stand up to scrutiny.

26. At pp. 25-26, JIESC makes much of Option 4 in BC Hydro's alternative heat rate scenario deliberations. In the slides presented by Mr. O'Riley, the Risk Management Committee considered using five different price forecasts, each to be weighted at 20%. One of those would have reflected the alternative heat rate scenario. Ultimately, a decision was made to use two heat rate assumptions: one sufficient to fully recover the capacity costs of a gas plant, the other to recover only 25% of the capacity costs. Each of these scenarios was then given a 50% weighting. These were ultimately reflected in the QEM.

27. There is no evidence to suggest that the result of this approach was materially different than what would have occurred had Option 4 of the alternative heat rate scenario been given the 20% weighting that it was suggested that it be given in the February 9th presentation. At no time was it ever suggested that the Option 4 levelized market heat rate would be the only heat rate assumed in the forward forecast. Rather, it would be one of the five scenarios considered. The approach which was ultimately employed – equally weighting the full and partial recovery scenarios – was arguably more conservative[25] than the original approach which accorded only 20% weighting to the alternative heat rate scenario.

28. In fact, JIESC goes so far as to suggest a bias (p. 24-25) against Option 4 alternative market heat rate by members of price team who were identified as also being involved in the CFT. The price team, under the leadership of Ms. Hemmingsen, developed the presentation including the recommendation for Option 4.[26] Having put forward the recommendation to use this scenario, this group could hardly be seen as biased against it.

---

[24] T14: 3004/9-19.

[25] T15: 3204/19-3205/4.

[26] T15: 3122/14-19.

29. In its discussion of Dr. Pickel's evidence on p. 26, JIESC seems to lump Mr. Lauckhart and Dr. Pickel together because they use similar models. The evidence is clear that Dr. Pickel and Mr. Lauckhart have both built up completely distinct simulations of the entire supply and demand picture in the WECC and have separately attempted to predict the need to add resources to meet demand and growth over time in their respective models. The similarity in the models is that they both use market fundamentals to forecast the future where no market transactions are available. Based on those market fundamentals, both conclude that gas will remain on the margin for the life of the plant. This is not a valid ground for criticism.

30. JIESC suggests at p. 27 that Mr. Lauckhart ran an EIA case that "essentially confirmed Mr. S. Fulton's EIA gas and power case." In fact, Mr. Lauckhart's EIA case predicts a high level of dispatch completely contrary to Mr. Fulton's, even with the unrealistic assumptions employed by him. JIESC than suggests that Mr. Lauckhart failed to take into proper account the current trend away from natural gas towards coal and cogeneration. To the contrary, unlike Mr. Fulton and unlike any other party giving testimony with the exception of Dr. Pickel, Mr. Lauckhart had actually considered the extent to which there was a trend and concluded that natural gas-fired generation was likely to make up a material component of future supply additions and that to the extent other resources based on coal or cogeneration would be added in the WECC, they would not affect the fact that natural gas generation would remain the marginal resource. JIESC's reference to the situation in Alberta is a complete red herring, since Alberta is largely islanded by virtue of transmission constraints and as Mr. Fulton acknowledged, the market for B.C. power. Again, it should be evaluated include the whole of the Pacific Northwest.

Gas Transportation Costs and Risks

31. JIESC, BCOAPO, NorskeCanada, and TGVI all address gas transportation issues. A number of intervenors argue that lack of a long-term agreement with TGVI for pipeline capacity "would expose BC Hydro and its customers to an unacceptable

level of risk."[27] The fact is that BC Hydro is confident that it can reach an appropriate agreement with TGVI, with the worst case scenario being that a service agreement is not in place until November 2005. In that case, while *LNG expansion* would not be possible for 2007, *compression expansion* could readily be done within two years such that firm gas delivery would be available to DPP in time for the 2007/08 winter peak. This is supported by the following excerpt from TGVI's own development risk assessment information:[28]

> In the unlikely event that the LNG facility is not ready on time, TGVI has a range of alternatives which to pursue to ensure that at least 30 TJ/d of firm service is available for the CFT Portfolios during 2007. In conjunction with capacity from planned compression expansion the alternatives to meet a shortfall in 2007 resulting from delay of the LNG project could include:
>
> - Contracted demand reductions with BCH related to ICP
> - Contracted demand reductions with the JV under the existing Peaking Gas Management Agreement or other arrangements
> - Advancement of other capital projects
>
> While the alternative employed would depend on the specific nature of the delay and the requirements of the CFT Portfolio, the table below provides one example whereby contracted demand reductions could be used to ensure 32 TJ/d of firm service for Portfolios R, S, W, and X without the LNG facility in 2007. In this table "source" represents the source of the contracted reduction, "extent" represents the capacity that would be available to the customer. Based on forecast demand requirements "duration" represents the number of days that a reduction would be required during the November to March winter period and "energy" represents the total amount of reduction required over the winter.

Source	**Extent** (TJ/d available)	**Duration** (days)	**Energy** (TJ)
JV	17	5	85
ICP	>35	22	110
CFT	>32	5	26

> Many other combinations of contracted demand reduction are possible, and up to 40 TJ/d of firm capacity can be provided for the CFT under similar circumstances with full curtailment of ICP. In addition to contracted demand reduction alternatives, alternative capital solutions are also available to mitigate delay of the LNG facility. For example, Appendix 4 of TGVI's CPCN Application contains alternative capital programs for serving a 45 TJ/d load at Duke Point without reliance on the LNG facility.

---

[27] e.g., BCOAPO, p. 15.

[28] B-9, BC Hydro response to BCUC IR 1.23.5, Attachment 2, page 9.

32. This evidence is unchallenged and indicates that, if TGVI's LNG expansion does not proceed, compression expansion and other measures could provide firm service to DPP of at least 30-40 TJ/day for 2007. It should be noted that this information was prepared before the recent JV long-term contract demand reduction to 12.5 TJ/day. Thus, the current expectation would be that TGVI could provide even more capacity in 2007 than the 30-40 TJ/day indicated in the original development risk information. At this level of service, DPP would be able produce at least 150 MW of dependable capacity.

33. In short, negotiation of a firm contract (short- or long-term) with TGVI by November 2005 is a realistic position, with a fallback position, as indicated in BC Hydro's argument, of seeking Commission intervention.[29] Under a short-term arrangement, the Commission could direct TGVI to expand its system to provide service, particularly in the case where capital funding for the expansion would be made available by BC Hydro. In these scenarios, BC Hydro is not reliant on dual fuel capability at Duke Point or barge delivery of LNG. These measures may be investigated independently to see if they will reduce costs and enhance fuel supply certainty above the base case. They are not "show-stoppers" to DPP proceeding or to the project's ability to provide dependable capacity to BC Hydro.

34. JIESC purports to adjust for the alleged risks relating to gas transportation with a $114 million entry at Row 4 of the table on page 35 of its argument. But as acknowledged by Mr. Guenther under cross-examination, this risk exists whether or not DPP proceeds: BC Hydro is exposed to it for the ICP-only scenario. As there is no incremental risk associated with DPP, JIESC's $114 million adjustment for the Tier 2 and No Award outcomes is without foundation.

35. What will ultimately be important for a rate impact analysis is whether the incremental tolling revenues paid by BC Hydro for service to DPP meet or exceed the incremental cost of service of expansion facilities (net of incremental benefits) required on the TGVI system to meet DPP's expected contract demand. That is a matter for consideration in other proceedings before the Commission, but it is

---

[29] BC Hydro Argument, p. 23, note 65 and accompanying text.

germane to this hearing that Mr. Guenther in no way suggested that the NPV of costs calculated for the DPP tolling revenues in the CFT was less than the NPV of TGVI's projected incremental facility expansion costs, net of mitigating revenues and gas supply benefits.

Peak Demand Forecast for Vancouver Island

36. GSXCCC recommends reliance on Mr. Miller's forecast in place of BC Hydro's. A number of intervenors, generally without further elaboration, support this approach. BC Hydro believes that Mr. Tiedemann's testimony makes clear that its load forecast is on a solid methodological footing and rejects the contrary forecasts prepared by Mr. Miller. The principle criticism of BC Hydro's approach addressed by GSXCCC are discussed below.

Alleged Reliance on An Undisclosed Discretion

37. BC Hydro provided all the key assumptions and drivers for its 2004 peak and energy forecasts in response to BCUC IR 1.3.2, Exhibit B-104 provided in response to GSXCCC's update request and GSXCCC IR 1.29.8. The methodology employed to link the employment forecast data to the energy sales forecast reflects the complexity of the relationship between the use of variables.

38. Contrary to the assertions of GSXCCC, BC Hydro did provide in Exhibit B-90 the historical, actual and predicted employment forecasts from Malatest. BC Hydro did submit and the Commission accepted that further Malatest data was not required because it was insufficiently connected to the points in issue in this proceeding. Finally, the assertion that the BC Hydro employment forecast requires the number of unemployed be cut roughly in half is unsubstantiated or explained.

Alleged Undisclosed or Unmeasured Variability

39. GSXCCC mischaracterizes the nature of Exhibit B-76. It does not provide any information on the precision of the estimated coefficients (i.e., kW/account) used to develop the peak forecast. The coefficients are based on the regression analysis as explained in GSXCCC IR 1.29.2.

Upward Bias

40. BC Hydro does not compare its forecasts, which are prepared on weather-adjusted basis, to actual peaks. To assess its forecast record, it compares its forecasts to weather adjusted peaks which account for the impact of temperature on the peak relative to the design temperature. This is a standard utility technique that GSXCCC does not accept. The basis of the disagreement is fully explored on the record.

Undue Weight Given to the Most Recent Peak

41. BC Hydro's December 2004 forecast was taken without the benefit of any information with respect to January 2005 actual loads. The fact that the December 2004 peak accurately predicted what would happen at design day temperatures does not challenge the forecast – rather it confirms it. GSXCCC and JIESC (p. 4) both appear to make the accuracy of the model a problem, not a virtue. BC Hydro does not see it that way.

42. At p. 4 of its argument, JIESC attempts to slip in untested "facts" of unknown significance or relevance relating to the load forecast since JIESC led no evidence and did not cross-examine on the point.

43. As a general comment, the evidence is clear that SMA's forecasts have been consistently very short of the mark and, as originally filed, would not have predicted the load actually experienced in 2005 until 2014 or 2018. To recommend SMA's forecast as JIESC and Norske do is to diminish the credibility of both their arguments.

CFT Criteria

GIE

44. At p. 3 of its argument, GIE mixes and matches the QEM and cost-effectiveness analyses conducted by BC Hydro. The QEM was conducted in a rigorous fashion using a model provided to GIE and all other bidders before use. The process gave

GIE an unprecedented level of understanding of how its bid would be evaluated. It knew that its bid was reliant to the participation of other bidders in order to accumulate a portfolio of a 150 MW. It has no basis to claim surprise or complain of how that evaluation was carried out.

45. GIE suggests at p. 12 that the QEM could have been adjusted for differences in terms. Mr. Oliver explained why such an adjustment could not have been straightforward.

46. GIE suggests at p. 13 that Calpine was not properly treated under the CFT. Calpine has made no such argument.

47. GIE says at p. 18 that "in retrospect it appears that the CFT process was set up in such a way that the eventual selection of a VIGP type project at Duke Point was inevitable." The bulk of GIE's argument directly contradicts this conclusion. GIE's core complaint is that based on the QEM methodology that was applied by BC Hydro, it fully expected to win the bid right up to the last moment. The reasons it believes it did not is that other bidders whom it thinks could have come forward with attractive bids failed to do so. As BC Hydro said in its opening, BC Hydro would have been pleased had those bidders come forward. They did not. That is the nature of a competitive process and BC Hydro believes that it is required, and the Commission should support, that it honour the outcome of that competitive process.

JIESC

48. JIESC suggests at p. 12 that the reduction from 23 potential bidders to only 6 successful bids implies that a resource bias must have been present. In fact, as Panel 3 witnesses testified, the receipt of six bids indicated a robust level of interest in the process and is more than is often received in comparable cases.[30]

---

[30] T8: 1797/20-24.

49. JIESC suggests that no consideration was given to the Commission's comments relating to the rigidity of the CFT process. In fact, BC Hydro was sensitive to this issue as shown in Table 2 to the CFT Report.[31]

50. In contending for resource bias, JIESC lists four factors at pp. 14-15 of its argument. All these factors seek to reargue the VIGP Decision's conclusion that an on-Island generation resource was to meet the Island's long-term capacity needs. It first notes the term (length) of the contract and asks "should a peaking plant that meets all the important requirements in terms of availability and reliability in fiscal 2008 be ruled out because it is not available in 2030." This misses the point. BC Hydro assumed, and common sense suggests, that a peaking plant is not going to be constructed if BC Hydro only agrees to use it in one year. The extended term is a benefit to the bidder more than it is to BC Hydro. That benefit could reasonably be expected to reduce the cost of bids to the benefit of ratepayers. It is true that BC Hydro could have allowed bids of any length into the process but all the testimony and common sense suggest that all bids that would have been received would have been in the 15-year plus term.[32] Rather than compromise its objective of developing a straightforward and transparent evaluation methodology by trying to accommodate different terms, BC Hydro put all on an even footing by requiring a 25-year term.

51. It is also worth noting that the characterization of the contract as having 35-year term is false. While it is true that BC Hydro has an option to require an additional 10-year supply, the last 10 years would be at a price and on terms which reflected all additional costs the bidder would incur to provide the supply in the last 10 years. Thus, the bidder faced no incremental risk for those 10 years and BC Hydro would only exercise the option where it was clear that the bidder's facility continued to be the least cost resource.[33] The tenure extension is accordingly a red herring.

52. JIESC suggests at pp. 17-18 that BC Hydro has conducted no risk analysis within the QEM. Within the QEM, risk is taken into account through the mandatory

---

[31] B-1, p.7.

[32] See particularly T8: 1822/10-21; 1823/1-12; 1825/23-26 and 1851/21-1852/2 (Sorensen/Oliver).

[33] T6: 1230/4-10 (Eckert).

criteria that each project had to meet. It is also reflected by the 50/50 weighting of the market heat rates. Any project capable of meeting them is assumed to have the same level of risk. However, the consideration of relative risks was considered outside the QEM through the cost-effectiveness analysis and in the reliability comparison contained in Exhibit B-54.

Greenhouse Gas Emissions

GSXCCC

53. At pp. 6-8 of its argument, GSXCCC conducts an elaborate analysis of *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 in support of the proposition that the *Utilities Commission Act* must be interpreted in a manner consistent with the principles of international law. BC Hydro respectfully submits that the Commission does not need to deal with this issue in this proceeding. The Commission has previously ruled that it will consider only factors which may reasonably impose costs on ratepayers in assessing matters before.[34] Neither GSXCCC or any other party has challenged this approach. Indeed, GSXCCC does not appear to seek the Commission to do more than that here. Thus, whether the Commission has interpreted its jurisdiction employing principles of international law or not, there does not appear to be any direct quarrel with its interpretation of its responsibilities. The many layers of speculation required to reach the conclusion that the EPA will cause BC Hydro to incur unanticipated costs is conjectural throughout. This conjecture probably reaches its high point in the paragraph in the middle of page 9 beginning "in paras. 71-73". There GSXCCC interprets the evidence to suggest that there may be both emission trading systems and upstream taxes. There is a complete absence of evidence to suggest that the Commission has a basis for concluding that a double level of taxation and something that is not now taxed at all is "foreseeable".

---

[34] Exhibit A-7.

54. More generally, the evidence makes clear that any direct tax on the activities of DPP are to its account. The price of natural gas is at the risk of BC Hydro and that risk includes the risk the price will include a tax based on GHG's. As the evidence makes clear, the issue is not the price of gas but rather market heat rates. There is no evidence to support what impact any GHG scheme will have on market heat rates.

Treatment of Payment Under the VTA

GSXCCC and CEC

55. At p. 2, GSXCCC characterizes the payment as a subsidy. The payment for the VIGP assets under the VTA is a real benefit to BC Hydro and its ratepayers. It is not a subsidy for the reasons set out in the Final Argument.

56. BC Hydro's basis for rejecting CEC's arguments on the accounting treatment relating to the receipt of $50 million under the VTA were also fully developed in the Final Argument, particularly paragraph 75.

NorskeCanada Demand Management Proposal (NDCMP)

NorskeCanada

57. At p. 5 of its argument, NorskeCanada says that it pressed on and prepared the NCDMP despite the fact that the CFT was a generation call. NorskeCanada did more than that. It engaged in the CFT process fully and, despite opportunities to do so, did not withdraw from the process to free itself to speak with BC Hydro about non-bid alternatives until August 2004 when it simply did not submit a bid.[35]

58. NorskeCanada spends considerable space in argument regretting the lack of discussions between NorskeCanada and BC Hydro over the past number of months.

---

[35] B-1, Appendix B, p. 9, s. 9.2.

This lack of dialogue has reflected first BC Hydro's belief that from a contractual and bidding process perspective it would have been inappropriate for it to consult with NorskeCanada during the course of the CFT process and its further belief that discussions with NorskeCanada will not likely be fruitful until the outcome of the CFT process is known. In other words, it is clear that NorskeCanada wished to talk about providing an alternative to the outcome of the CFT process. BC Hydro did not and does not believe that would be appropriate. Once the outcome of the CFT process is known, the place for contributions by NorskeCanada can be determined and BC Hydro remains committed to the trial program with NorskeCanada and BCTC this spring to see what role the constructive suggestions in the NCDMP can play in meeting the future needs of the Island.

59. Norske suggests at p. 11 of its argument that it is "extremely conservative" of BC Hydro to assume completion in F2010 when BCTC is forecasting completion four weeks before the potential peak season in F2009 (October 2008). BC Hydro notes that any delay in the expected in-service date, even as little as one month, would mean that it could not rely on the 230 kV circuit as a firm capacity resource for the 2008/09 winter peak.[36] Thus BC Hydro does not accept that assuming relatively minor slippage for a project in respect of which no permitting applications have yet been made, and which is not anticipated to be on stream for more than 3-1/2 years, is "conservative."

Cost-Effectiveness

BCOAPO

60. BCOAPO says at p. 2 that the facility "would be largely redundant to the Island's capacity requirements" after the new transmission line is connected. To the contrary, Mr. Mansour and Ms. Van Ruyven both indicated that on-Island

---

[36] For details, see B-9, BC Hydro response to BCUC IR 1.29.3.

generation would provide significant reliability and capacity benefits leading to a more reliable system even after the transmission line is built.[37]

61. At p. 4, BCOAPO characterizes the No Award option as "sending BC Hydro to develop, in conjunction with BCTC, the optimum solution to the capacity deficiency on Vancouver Island commencing in the winter of 2007/08." BC Hydro submits that characterization is overly broad and far too vague. As accepted by the Commission in the VIGP Decision, the time to stop searching and start building has arrived. The No Award alternative is only appropriate if the Commission is persuaded that there is a clear course it can require BC Hydro to take that does not require approval of the EPA.

62. At pp. 21-22, BCOAPO finds it "galling" that BC Hydro has argued "at the final submission stage" that the Duke Point plant is the answer to system needs. In fact, BC Hydro has simply cited evidence led on the first day of the hearing that there is a benefit to the system as a whole from the initial capacity being introduced by Duke Point. As contemplated by the Commission, the QEM evaluated Duke Point and found it to be the preferred solution without any regard to system benefits.[38] However, BC Hydro did look at system benefits in its cost-effective analysis and its relative reliability analysis during the hearing and there is nothing "alien" about citing that evidence in Argument.

GIE

63. GIE suggests at p. 2 of its argument that it is wrong to characterize the EPCOR and Calpine projects as "hypothetical." BC Hydro stands by that characterization. In the absence of Calpine's and EPCOR's telling reluctance and ultimate refusal to participate in this proceeding, those projects are quite properly characterized as "hypothetical". BC Hydro did not and does not characterize NCDMP as hypothetical.

---

[37] See BC Hydro's Argument at paragraphs 20-26.

[38] T6: 1187/6-12.

64. GIE's position with respect to the cost-effective analysis was anticipated and dealt with in paragraphs 84 and 85 of BC Hydro's Final Argument.

65. GIE suggests at p. 4 that the evidence leads to the "inescapable conclusion that the cost-effectiveness check was built for the sole purpose of creating justification for the desired Tier 1 outcome." To the contrary, the cost-effectiveness test was developed to ensure that the CFT process—designed to give unprecedented consideration to bidder fairness issues—yielded a result that served BC Hydro's broader objectives. A bidder would only have had a basis for a process-related complaint if the cost-effectiveness study had suggested a different outcome than the CFT. As things turned out, it did not.

66. GIE seeks to redefine Tier 1 at p. 6 of its argument. Tier 1 has the lowest net portfolio cost on a NPV basis using the QEM methodology. The QEM methodology can only be applied on its terms to portfolios that accumulate to at least 150 MW from qualifying bids. None of GIE options A-D comprised such portfolios.

67. GIE makes much of the fact that its evidence was undisputed. It was undisputed because it was irrelevant. It is easy to develop portfolios more cost effective than Tier 1 based on hypothetical projects that might have been bid into the process. The QEM's task was to evaluate qualified projects that passed the conformity and mandatory criteria, which could then be assembled in portfolios within the acceptable range.

68. At pp. 13-15, GIE seeks to make the relationship between the QEM and the cost-effectiveness study much more complex than it really was. GIE queries why BC Hydro did not keep adjusting the QEM methodology to deal with evolving events over the course of 2004.

69. The testimony of the Independent Reviewer makes it clear that fundamental changes to the underlying parameters are undesirable.[39] Bidders who have spent money on the process they find that unanticipated changes in the requirements make their bids

---

[39] T8: 1771/23-1773/4.

less desirable. Bidders who had previously dropped out of the process might wish they had not. In consequence, fundamental changes to the requirements in the CFT process were undesirable.

70. Significant consideration was given to the changed circumstances BC Hydro faced in the early part of 2004 when the CFT process was suspended. BC Hydro ultimately decided to continue with the process with some changes as incorporated in Addendum 10, but decided not to adjust the size of the acceptable portfolios at that time.[40] Instead, Article 17 was revised to give BC Hydro the ability to salvage whatever it could out of the CFT process if no acceptable portfolio emerged from it.[41] This resulted in what all bidders understood would be a two-step process. The first part would be a continuation of the CFT process to obtain an outcome employing the QEM methodology which was shared with all bidders. In certain circumstances, within the CFT process, BC Hydro could accept bids less than 150 MW on a per-unit cost basis. BC Hydro determined that those circumstances did not exist and thus declined to employ that contractual mechanism.[42]

71. As the testimony makes clear, despite that determination within the CFT process, senior management determined to do its own cost-effectiveness analysis to satisfy itself that the result was in the broader interest of the Corporation and its ratepayers.[43] That analysis formed no part of the CFT process and took into account all factors that management thought were relevant. In this, senior management of BC Hydro was simply carrying out its responsibilities.

72. GIE says at p. 17 that the QEM was transparent, was developed with bidder impact, and was the appropriate methodology to assess the appropriate resource for the Island. BC Hydro agrees. The difference between GIE and BC Hydro turns on BC Hydro's belief that the QEM methodology could only be applied to bids that

---

[40] B-1, p. 6.

[41] *Id.*, p. 13.

[42] T6: 1148/10-18.

[43] B-55 (opening statement of Bev Van Ruyven).

were received in the CFT process.[44] GIE would have the QEM methodology apply to non-compliant bids. That is the source of the disagreement between the two parties.

GSXCCC

73. At p. 5, GSXCCC, like other intervenors, attempts to draw significance from the distinction between BC Hydro's statement of the principal issue in this proceeding and the words implied by the Commission. In BC Hydro's respectful submission, these intervenors make too much of an article (the word "the") and not enough of a conjunction (the word "or"). BC Hydro has characterized the central issue as being comparing the effectiveness of the CFT outcome with potential Tier 1 or no awards solutions. GSXCCC and others seemed to suggest that to the contrary, BC Hydro was required to show that the CFT outcome is *the* most effective cost option. From this they conclude that the onus on BC Hydro is to demonstrate that the CFT outcome is better than any other conceivable solution.

74. BC Hydro has rejected that characterization from the outset of this proceeding. GSXCCC's interpretation of the word "the" in the phrase "the most cost-effective solution" ignores the word "or" in the first part of the sentence. The use of "or" limits the comparison to the three options identified. Thus, the issue is defined by the Commission and by BC Hydro in its Argument as which of the three options is *the* most cost-effective.

75. The Commission's statement of the issue accurately reflects the effect of the Energy Plan's emphasis on BC Hydro becoming a purchaser of competitively generated energy as distinct from a planner and manufacturer of energy. This shift of responsibility removes BC Hydro's ability to "prove" that it has obtained the most cost-effective solution in a planning sense and replaces it with reliance on the market as the means to ensure cost-effectiveness. In posing the central question in

---

[44] T6: 1132/4-11; T7: 1447/19-1448/1.

this proceeding, the Commission was doing no more than reflecting the paradigm shift mandated by the Energy Plan.

76. At p. 15, GSXCCC again stresses the difference between a cost-effective solution and the most cost-effective solution. This time it suggests that BC Hydro has changed it position. To the contrary, in opening BC Hydro said this:

> BC Hydro cannot explain why Duke Point Power was able to offer a bid that met its needs most cost-effectively. BC Hydro is not a proponent of the Duke Point project. From Hydro's perspective the only virtue of Duke Point is that it has come forward to meet Hydro's needs in a manner which is the most cost-effective for it and its ratepayers. Hydro would have been very pleased if even more cost-effective solutions could have been found. It does not say that Duke Point Power is the best of all hypothetical projects. It does say that the Duke Point Power project is the best project which came forward and submitted a bid in the completely open and transparent process that Hydro fostered. As a buyer, BC Hydro has no ability to do anything more than that.[45]

77. BC Hydro has been clear throughout this process that it has relied on the transparent competitive tendering process as the primary support for its assertion that the CFT outcome is cost-effective and continues to take that position.

78. GSXCCC p. 6 suggests that the fact that the QEM model preferred Duke Point without duct firing to Duke Point with duct firing was somehow a fundamental flaw that puts the whole analysis in doubt.

79. Ms. Hemmingsen testified that it was understood throughout that the QEM analysis was skewed in favour of smaller projects.[46] Whatever BC Hydro may have thought of that, it was a natural consequence of the Commission's decision that the transmission deferral credit should not be utilized in the analysis. Some of the attributes of larger projects were admittedly being ignored in an effort to employ a simplified methodology consistent with Commission requirements, one of which favoured the

---

[45] T6:1067/9-23.

[46] T8: 1730/18-1732/6.

solution that was the minimum needed to meet what the Commission saw as the Islands' needs. It is hard to see how this can now be viewed as a fundamental flaw.

JIESC

80. JIESC complains at pp. 19-20 that the EPA is expensive "by any standard." JIESC might have at least acknowledged that the QEM process brought forward the least cost gas-fired project. The fact is that the terms proposed by DPP in the EPA were very much more attractive than the other bids evaluated in the QEM portfolio analysis and then the VIGP Benchmark.

81. Gold River expresses concern with respect to the calculation of the energy margin on the backfill in the cost-effectiveness analysis. On page 35 of its Argument, JIESC addresses a similar concern and purports to reconstruct a cost-effectiveness comparison table. BC Hydro submits that the values inserted in three of the rows in the table it created are wrong.

82. In row 2, the recalculation of the Energy Margin is flawed because it credits Tier 2 and the No Award with energy margins already taken into account in the breakdown of Appendix J, Attachment A presented in response to BCUC IR 2.46.6. In that exhibit, the Value of Energy produced in each scenario from the CFT and Mainland Generation Resource reflects both the capacity and energy obtained in each case. Accordingly, in each case, the full value of the Energy Margin contributed is accounted for. To add in a separate Energy Margin is double counting. This issue is fully explored in an exchange between Chairman Hobbs and Panel 4.[47]

83. JIESC's proposed $114 million adjustment for TGVI toll increases is dealt with in paragraph 34 of this Reply.

---

[47] T9: 1918-22; As noted there, it is difficult to calculate the Energy Margin for the backfill generation assumed in the Tier 2 and No Award scenarios given that the backfill resource is assumed to have a fixed or all-in price of $64/MWh. This resource would have a fixed and variable cost component but BC Hydro has not endeavoured to break down the generation costs of the assumed backfill resource. Thus, to attribute a further Energy Margin to the No Award scenarios (as suggested by JIESC and CEC) is improper since it would result in double counting. That is, all three CFT scenarios already include implicit Energy Margin values.

84. Regarding row 7 and additional backfill adjustments, there is no basis in the evidence for the $59/MWh used by JIESC. As explained elsewhere, the $64/MWh figure is derived from the DPP bid (excluding transportation tolls) and is a reasonable estimate of the cost of new Mainland generation providing comparable capacity and energy.[48] Furthermore, as stated in response to GSXCCC IR 1.25.4,[49] using a cost that is 90% of the Tier 1 project would be a significant discount to the price signals BC Hydro has seen in recent power acquisition calls.

Other

GIE

85. GIE expends considerable effort at pp. 8-11 to persuade the Commission to interpret Section 17.3 of the CFT. BC Hydro submits that the Commission ought to make no comment on the proper interpretation of Section 17.3. GIE strongly resists BC Hydro's assertion and argument that Article 17.3 creates no obligation of BC Hydro to bidders. If GIE wishes to assert that BC Hydro had obligations that were not met, this is not the proper forum for those arguments. The bidding process that was undertaken by BC Hydro was subject to complex and highly developed law that governs tendering processes and if GIE has any complaint about the way it was treated, its remedies lie with the courts. It should not be permitted to bootstrap its position with respect to those proceedings through this process.

86. In BC Hydro's respectful submission, that is a real concern. In *The Owners, Strata Plan LMS 1816 v. British Columbia Hydro and Power Authority*,[50] Mr. Justice Macaulay made clear that there are consequences to the Commission using its jurisdiction to interpret contracts. At paragraph 88, the Court summarizes its determination that it will not use its powers to interpret a tariff between BC Hydro and one of its customers because the Commission had previously done so. The Court in that

---

[48] B-1, BC Hydro response to BCUC IR 1.41.1.

[49] B-12.

[50] 2002 BCSC 485.

circumstance deferred to the Commission's interpretation in this regard. Here, there is a real risk that an interpretation of the CFT process by the Commission will lead to arguments that interpretation binds a Court on the meaning of the CFT. It is respectfully submitted that the *Utilities Commission Act* does not contemplate that this Commission would have the expertise and experience to determine the respective rights and responsibilities of parties to a contractual tendering process. Accordingly, the Commission ought to refrain from making any interpretation at all and disregard the submissions urging it to do so by GIE.

87. GIE suggests at pp. 11-13 that BC Hydro should have either accepted the Calpine bid or somehow itself sought to see whether NorskeCanada was willing to extend Calpine's lease. BC Hydro was as surprised as GIE appears to be that Calpine was unprepared to take the risk that it would be able to successfully negotiate an additional three years to its lease. There is nothing in the CFT requirements that necessitated Calpine to have nailed down the lease. It was entirely open to it to take that risk. Because Calpine did not appear at the hearing, we do not know whether its refusal to take that risk was because it had tried and failed to receive adequate comfort from NorskeCanada. That may be the most likely explanation of its behaviour. Whatever the explanation, it is undeniable that the CFT process was clear that bids with conditions such as that would not be accepted, and for whatever reason Calpine in fact submitted a bid that was bound to fail.[51]

88. GIE suggests at p. 15 that peaking needs are met by peaking plants or DSM proposals throughout North America. BC Hydro is unaware of what evidence GIE is referring to in that regard, and in any event views the statement as an oversimplification.

89. At p. 38 of its argument, JIESC interprets BC Hydro's argument to "its customers and stakeholders are too sensitive." BC Hydro has not said that. It simply reflected on the indisputable fact that the regulatory process involving its ratepayers and stakeholders has been more intense over the past two years than at any other time in

---

[51] T8: 1819/15-1820/2; T9: 1935/14-25.

recent memory. This is perhaps a predictable consequence of the significant changes in the energy industry heralded by the Energy Plan.

Sea Breeze Pacific Regional Transmission System, Inc.

90. Sea Breeze's entire argument, and the new evidence it attaches to that argument in the form of an ABB Electric Systems Consulting technical report, is outside the scope of this proceeding.

CECBC

91. On p. 21, CECBC suggests it could not pursue the cost-effectiveness issue with Panel 4 because it did not have access to the in-camera sessions until after Panel 4 had stepped down. No application to recall Panel 4 was made by CEC after being expressly invited to do so by the Chairman. Only GSXCCC sought the recall of Ms. Hemmingsen after the release of the previously redacted portions of Volume 8 of the transcript and neither CEC nor any other intervenor supported that application.[52]

Summary and Conclusion

92. The arguments of the intervenors repeat positions they have taken from the outset of this proceeding. They fail to come to grips with the arguments in support of the EPA made by BC Hydro and DPP. They provide no basis for the Commission to declare all or part of the EPA unenforceable. In the circumstances, BC Hydro submits that the Commission should find the EPA to be in the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of February, 2005.

LAWSON LUNDELL

per Chris W. Sanderson, Q.C.

per John C. Kleefeld

[52] T14: 2883-2893.