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***DELIVERED BY E-MAIL***

British Columbia Utilities Commission  
6th Floor, 900 Howe Street  
Box 250  
Vancouver, BC V6Z 2N3

**Attention: Robert J. Pellatt, Commission Secretary**

Dear Mr. Pellatt:

**Re: April 3, 2006 BCTC Proposal to Change Argument Filing Dates**

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Pursuant to Exhibit A-74, we are writing to notify the Commission of Sea Breeze's objection to the proposal set out in Mr. Reghelini's letter of April 3, 2006 for a change to the argument schedule.

Mr. Reghelini states in his April 3, 2006 letter that "[s]ubsequent to the close of the evidentiary phase of the proceeding, BCTC found it necessary to extend the time for receipt of submarine cable bids to April 27, 2006." This represents a 20-day extension from the April 7, 2006 deadline by which Mr. Nelson testified on March 20, 2006 that BCTC would receive bids under the submarine cable tender process (Transcript Volume 37, p. 7242).

BCTC presumably must have known some time prior to March 29, 2006 (when Addendum No. 6 to the Tender Documents was apparently issued) that it was going to be necessary to issue a significant extension to the deadline for receipt of tenders. Given the critical importance of the outcome of the submarine cable tender process to the Commission's ability to compare the costs and risks involved in the VITR proposal to those involved in the alternatives which Sea Breeze has put forward, and given the clear commitment which BCTC made at the hearing to report on the outcome of the tender process by April 12, 2006 (Transcript Volume 37, pp. 7245-7246 and Volume 40, p. 7544), it was clearly incumbent on BCTC to notify the Commission and all participants as soon as it became apparent to BCTC that there was going to be a material delay with respect to the tender process which would necessarily have an impact on the schedule for final arguments.

Nevertheless, BCTC has provided no explanation for why it waited until April 3, 2006 to notify the Commission of this delay, or why it waited until yesterday morning (April 4, 2006) to send us a copy of Mr. Reghelini's letter, nearly a week after the issuance of Addendum No. 6.

We note that this delay in the cable tender process is of particular concern not only with respect to the argument schedule, but also with respect to the increasingly significant risk entailed by the delay that BCTC will be unable to meet critical path milestones in the VITR project schedule. Indeed, Mr. Carpenter referred to that risk in his submissions at the outset of this proceeding at the August 4, 2005 procedural conference (Transcript Volume 1, pp. 19-20) in the context of the position BCTC took at that time that the tender process could not be commenced until after the issuance of a CPCN, and BCTC's argument at that time that any delay in the issuance of a CPCN beyond mid-February, 2006 would therefore place the project in-service date at risk:

The other issue which drives timing is the cables for this project. And that is by far the most significant portion of the undertaking from the point of view of the physical attributes, at least in terms of the expense involved. Over 50 percent of the expense associated with this project is associated with the cables in one way or another.

... Some time this fall BCTC will issue a request for proposals for the cables and the cable laying. That has to be done by cable laying ships. There are currently only a handful of ships in the world that can undertake the project, although others could be retrofitted for the project.

...

Once a CPCN is granted, [BCTC] feels that it would have enough confidence in the project that it could issue that contract, and that contract is required to be in place at that point in time, because as I said, there are a limited number of vessels that are capable of undertaking the work, and there are a limited number of facilities which are capable of producing this cable. So effectively, what you need to do is get yourself in the queue for both the manufacturing of the cables and the laying of the cables.

If again, that date slips, that does not mean that there is no possibility – and when I say “that date” I mean the date, mid-February, for a CPCN decision. That does not mean there's no possibility of meeting the in-service date, what it means is that it places the in-service date more and more at risk the longer there is a delay. And we are simply not in a position to provide you with any estimate of what that risk is. These ships travel all over the world to do this type of installation. These manufacturers supply cables all over the world. So if a project pops up sometime after February 15<sup>th</sup>, or early March when BCTC would expect to let a contract, but BCTC wasn't in a position to do so, that could, in fact, affect the in-service date. And the risk simply gets greater presumably as long as any delay goes on.

BCTC referred again to the same serious risk that, it asserted, a delay in the cable tendering process would pose to the VITR project in-service date, in its response to BCUC Information Request 1.1.1 (Exhibit B1-6):

3. The third critical milestone is the award of the submarine cable contract. There are perhaps only 5 or fewer firms, worldwide, capable of design and manufacture of the required cables, splices and terminations.

In addition, there are perhaps even fewer large, specialized ships capable of delivering and installing the cables. The ship must be on-site with the cables by June of 2008 to maintain reasonable confidence of an on-time completion.

Even without considering the issue of scarce manufacturer resources or marine vessels, manufacturers need a minimum of 18 to 24 months to design, manufacture and deliver cable, including the required design review, prototype testing, final factory testing and the long voyage to deliver to site. There may be 90 days of float in the schedule to provide 24 months of lead time. This, however, assumes that all potential bidders and installation vessels will have time and resources available at the time a contract is tendered and awarded.

Further delays are anticipated if one or more of the potential bidders are unavailable and unable to respond to a Call for Tender under our required schedule. This would reduce competitiveness of the tenders and reduce the probability of receiving at least two conforming, cost effective tenders. Any delay in contract award considerably increases the risk of project delay.

Despite the foregoing concerns identified by BCTC itself, the only explanation provided in Mr. Reghelini's April 3, 2006 letter for the present delay in the cable tendering process is that "[t]he extension was required to ensure quality bids from the maximum number of potential bidders."

That explanation is completely unsatisfactory and inadequate in these circumstances.

In the circumstances, BCTC should be required, forthwith, to file with the Commission and provide copies to all registered intervenors of a complete explanation of the reasons for the present delay in the cable tending process, including a complete explanation of:

- what BCTC considered to be "quality bids";
- the basis for BCTC's assessment that it would not receive a sufficient number of "quality bids" by April 7, 2006; and
- why the Commission should now have any greater confidence that BCTC will receive a sufficient number of "quality bids" by the new deadline of April 27, 2006.

With respect to the requirement for BCTC to report to the Commission on the outcome of the cable tender process after bids are received, and the timing of that report, we note that Addendum No. 6 to the Tender Documents provides (on page 1-2, second to last paragraph) that all tenders received by 11:00 a.m. on April 27, 2006 shall be opened publicly, and that BCTC will make the prices known at 2:00 p.m. on that day.

In the circumstances, there is no justification for any further delay in BCTC's disclosure of the tender prices to the Commission and to all participants in this proceeding.

Accordingly, BCTC should be required to file with the Commission (and provide copies to all registered intervenors in this proceeding), on April 27, 2006, the amounts of all bids received in the submarine cable tender process.

BCTC should also still be required to file with the Commission a report on the outcome of the cable tender process of the nature that was contemplated in Mr. Nelson's exchange with the Commission Chair and Commissioner O'Hara at Transcript Volume 37, pp. 7238-7246; and, for greater certainty, that report should include confirmation of what, if any, of the bids received by BCTC satisfy the tender requirements. Further, BCTC should be required to file that report with the Commission, and provide copies to all registered intervenors, by no later than five days after receipt of the bids (i.e. by May 2, 2006), consistent with BCTC's prior commitment to provide its report by April 12, 2006, five days after the previous April 7, 2006 deadline for receipt of bids.

Given the critical importance of this evidence, Sea Breeze also submits that intervenors should be given a full week from receipt of BCTC's report on May 2, 2006 to file any submissions concerning the outcome of the tender process – thereby preserving the May 9, 2006 deadline for intervenor submissions proposed in Mr. Reghelini's letter.

Yours truly,

**DAVIS & COMPANY LLP**

Per:



Jason Herbert  
JKH/jzd

cc: Registered Intervenors