

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

- and -

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

**SEA BREEZE VICTORIA CONVERTER CORPORATION
SUBMISSION RE: BCTC REPORT ON CABLE TENDER**

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I. OVERVIEW OF SEA BREEZE'S POSITION

1. Pursuant to the revised schedule for filing of arguments established by the Commission in Exhibit A-76, this submission supplements Sea Breeze's Final Submission of April 19, 2006, and contains further argument in response to the information that BCTC has now produced concerning the outcome of the VITR submarine cable tender process. That information is contained in:

- BCTC's letter of April 27, 2006, filing certain publicly announced information concerning the basic bids of the two bidders who responded to the VITR cable tender; and
- BCTC's subsequent letter of May 4, 2006 (Exhibit B1-135), containing BCTC's response to its undertaking to file a report on the outcome of the cable tender process as contemplated in Mr. Nelson's exchange with the Commission Chair and Commissioner O'Hara at Transcript vol. 37, pp. 7238-7246.

2. In its April 19, 2006 Final Submission,¹ Sea Breeze stated its position that the VITR proposal is critically deficient due to the high degree of risk and uncertainty in relation to the VITR Project schedule. Specifically, Sea Breeze noted the following with respect to the risk and uncertainty arising from delays in the cable tendering process:

¹ Sea Breeze Final Submission, par. 23.

There is also a very serious risk of extensive delay in the VITR in-service date as a result of the continuing uncertainty arising from recent unexplained delays of nearly five weeks in the cable tendering process. When, during the course of the hearing, BCTC extended the original deadline for receipt of tenders^[2] by two weeks to April 7, 2006, Sea Breeze was skeptical about BCTC's assertion they would not delay the process further than that.^[3] That skepticism proved to be well-founded, when BCTC subsequently informed the Commission, without explanation, that the deadline for receipt of tenders was further extended by another 20 days to April 27, 2006.^[4] As outlined in Mr. Herbert's letter of April 5, 2006 to the Commission concerning BCTC's April 3, 2006 proposal to change argument filing dates,^[5] that additional delay is of particular concern with respect to the resulting risk that BCTC will be unable to meet critical path milestones in the VITR Project schedule. Having regard to the concern BCTC itself has expressed about the serious implications any delay in the tender process would have for the VITR project in-service date,^[6] this is another risk that the Commission must take very seriously with respect to VITR.

3. Sea Breeze went on to state⁷ that it would not be in a position to fully address issues relating to the risk and uncertainty in relation to the VITR Project schedule until after receiving the information BCTC had been directed to file on April 27 and May 4, 2006, and that it was Sea Breeze's intention to address those issues further in the present submission.

4. Having regard to the limited information which BCTC has now actually disclosed about the outcome of the VITR cable tender – including the fact that there were no bids received from three of the world's top tier cable manufacturers (ABB,⁸ Pirelli,⁹ and J-Power Systems Corporation¹⁰), and the fact that the basic bids of the two bidders who did respond to the cable tender are substantially higher than the cost estimates BCTC previously produced in this proceeding – it is Sea Breeze's position that:

- BCTC has failed to provide the Commission with sufficient information to properly assess the costs and risks involved in the VITR proposal (as referred to in Mr. Herbert's letter of April 5, 2006 concerning BCTC's proposal to change argument filing dates), or

² Exhibit B2-58A, p. 1-2.

³ TR v. 36, p. 7095.

⁴ Exhibit A-74, Letter from Mr. Reghelini to Commission Secretary dated April 3, 2006.

⁵ At pp. 2-3.

⁶ See, for example: TR v.1, pp. 19-20; Exhibit B1-6, BCUC IR 1.1.1.

⁷ Sea Breeze Final Submission, par. 24.

⁸ <http://www.abb.com/>

⁹ Now Prysmian Cables & Systems: <http://www.prysmian.com/>

¹⁰ A joint venture company established by Hitachi Cable, Ltd. and Sumitomo Electric Industries, Ltd:
http://www.jpowers.co.jp/03products_index.htm

to properly compare those costs and risks with the costs and risks involved in the Juan de Fuca and “VIC-like” proposals which Sea Breeze has put forward for the Commission’s consideration as alternatives to VITR;

- in particular, the limited information which BCTC has chosen to provide is hopelessly inadequate to enable the Commission or interested stakeholders to properly evaluate the bids or their implications for the overall cost and risks associated with the VITR Project – especially having regard to the obvious importance of the cable bids to the viability and appropriateness of VITR as a timely solution for Vancouver Island’s reliable transmission needs;
- it should be presumed that BCTC would have taken any steps available to it to produce obviously relevant information about the cable bids if that information supported BCTC’s case; and
- in the circumstances, in light of BCTC’s conscious choice not to produce readily available information about the cable bids, the only reasonable and fair conclusion that can be drawn is that, if such information were put before the Commission, it would support the position of Sea Breeze and other intervenors that there is a very high risk, in light of the nature and content of the bids obtained, that BCTC will be unable to complete the VITR Project by the projected in-service date, and that BCTC cannot complete the Project without incurring substantial cost overruns.

5. The attitude that BCTC has demonstrated in its April 27 and May 4, 2006 filings is that all stakeholders and the Commission must simply trust BCTC’s judgment on these critically important issues.¹¹ That attitude is simply unacceptable.

¹¹ This is the same “Trust us” attitude that Mr. Gabel admitted to at the hearing under questioning by Mr. Gathercole (TR v. 8, p. 1081) and, again, under further questioning by Commissioner O’Hara (TR v. 14, p. 2399).

II. OBSERVATIONS RE: INFORMATION DISCLOSED BY BCTC

(a) What has been disclosed?

6. BCTC has chosen to disclose only very limited information about the outcome of the VITR cable tender in its April 27 and May 4, 2006 filings. However, even that limited information raises very serious questions concerning the content, quality and competitiveness of the bids obtained by BCTC in the VITR cable tender, and the resulting risk and uncertainty with respect to the VITR Project schedule and projected costs.

7. It is especially conspicuous that, despite BCTC's decision to extend the cable tendering process by a total of nearly five weeks, from the original March 24, 2006 deadline for receipt of tenders¹² until April 27, 2006, purportedly "to ensure quality bids from the maximum number of potential bidders":¹³

- BCTC has apparently only received tenders from two bidders, Mitsubishi Canada Limited and Nexans Norway As, despite the evidence of BCTC's witnesses at the hearing that five manufacturers responded to its August 2004 Request for Information¹⁴ and that there were six vendors purportedly interested in the VITR cable tender;¹⁵
- BCTC has not received any bids at all from three of the world's top cable manufacturers, ABB, Pirelli, and J-Power Systems Corporation;¹⁶
- of the two basic bids received, there is only a single bid for Basic Cable Type A (PPLP Insulation) and a single bid for Basic Cable Type B (Kraft Paper Insulation);¹⁷
- as a result, despite BCTC's acknowledgement as recently as on April 3, 2006 of "the importance of the range of cable bids to the Commission's decision in the VITR

¹² Exhibit B2-58A, p. 1-2.

¹³ Letter dated April 3, 2006 from Mr. Reghelini to the Commission Secretary (Exhibit A-74); letter dated April 5, 2006 from Mr. Herbert to the Commission Secretary.

¹⁴ TR v. 18, pp. 3234-3235.

¹⁵ TR v. 10, p. 1534.

¹⁶ See company websites cited in footnotes 8 to 10 above.

¹⁷ The two Basic Cable Types are described in the Tender Documents (see, e.g., Exhibit B2-58A, pp. 7.1-4 and 7.6-4 to 7.6-5).

proceeding,”¹⁸ there is no actual range of bids for BCTC to consider with respect to each of those cable options; and

- in particular, there is no actual range of bids with respect to the PPLP Insulation option, for which BCTC and BC Hydro have expressed a clear preference,¹⁹ but only a single bid by an entity (Mitsubishi Canada Limited) that is not known as one of the leading industry suppliers of high voltage transmission cable, and concerning which there does not appear to be any evidence on the record in this proceeding, including any evidence to establish its relevant experience or track record in manufacturing, supplying or installing submarine transmission cable of the nature required for VITR.

8. With respect to the bid submitted by Mitsubishi Canada Limited, it should be noted that the website of Mitsubishi Corporation does not even list high voltage cables among the “Major Products & Services” actually offered by that entity.²⁰ In the absence of any evidence to the contrary, Sea Breeze assumes that under the Mitsubishi bid the cable would actually be supplied by EXSYM Corporation, an entity which was established in April 2002 by the integration of Showa Electric Wire & Cable Co. (SWCC Showa Holdings Co., Ltd.) and Mitsubishi Cable Industries, Ltd.²¹ However, although EXSYM’s website describes Showa and Mitsubishi Cable Industries as “two companies that lead Japan and the world in the high-voltage electrical cable business,”²² it is Sea Breeze’s understanding based on publicly available information that their relevant experience and track record in carrying out projects on a scale comparable to VITR is actually very limited in comparison to leading cable manufacturers such as ABB; and, BCTC has not put any evidence on the record to address this. For that matter, BCTC has not put any evidence on the record to explain what if any role EXSYM would actually play under the

¹⁸ Letter dated April 3, 2006 from Mr. Reghelini to the Commission Secretary (Exhibit A-74).

¹⁹ Exhibit B1-11, TRAHVOL IR 1.111.2; BC Hydro Project Planning Report 230 kV Transmission Circuit from Arnott to VIT, June 2003, Report No. SP2003-04, p. 10, 2nd par. (Exhibit B1-6, BCUC IR 1.40.1, attaching BCUC IR 1.3.1 from the BCTC Capital Plan F2006 to F2015 proceeding).

²⁰ <http://www.mitsubishicorp.com/en/network/us/canada.html> – The “Major Products & Services” of Mitsubishi Canada Limited are indicated to be: “Carbon, Coal, Iron Ore, Non-Ferrous Metals & Minerals, Non-Ferrous Metal Products, Power & Electrical Systems, Plants, Automobiles, Industrial Machinery, Aerospace Business, Petrochemical Products, Materials for Synthetic Fibers, Fertilizer, Functional Chemicals, Materials for and Products by Synthetic Resins, Food and Feed Additives, Advanced Materials, Foods (Commodity), Food (Products), Textiles, General Merchandise.”

²¹ <http://www.exsym.co.jp/en/index.html>

²² *Ibid.*

Mitsubishi bid, including with respect to the provision of performance bonds and other security and contractually-binding assurances required.

9. In any event, the low level of interest actually shown by leading cable manufacturers in the VITR cable tender is remarkable in light of the evidence which BCTC gave in this proceeding, including BCTC's evidence that an "optimum solution for replacement of the 138 kV transmission system to Vancouver Island" could be determined through a "competitive" tender process.²³ However, that low level of interest is not surprising, having regard to the concerns Sea Breeze raised during the hearing about the onerous risks placed on the cable manufacturer under BCTC's call for tenders, and the impact that was likely to have on responses to the tender.²⁴

10. In the circumstances, it could hardly be said that the outcome of the cable tender reflected a genuinely "competitive" process of the nature that seemed to be contemplated by BCTC's evidence at the hearing.²⁵ Indeed, BCTC itself specifically acknowledged in its response to an information request in August 2005 that if one or more of the potential bidders were unavailable or unable to respond to the cable tender it would reduce the competitiveness of the tenders and reduce the probability of receiving conforming, cost-effective tenders.²⁶

11. Apart from the overall low level of interest shown in the VITR cable tender, it is also conspicuous that, despite the confidence Mr. Barrett expressed at the hearing that the Commission could rely on BCTC's cost estimates,²⁷ there is in fact a very significant disparity between the "read out" costs of the two bids BCTC actually received (\$135.3 million and \$149.8 million) and the cost estimate of \$119.3 million which BCTC provided – as Sea Breeze clearly predicted would be the case for the reasons outlined in Exhibit B2-63.

12. Indeed, given the enormous significance of the 230 kV submarine cable in relation to the entire VITR Project – comprising over half of the total project cost – this disparity between the

²³ Exhibit B1-44, Sea Breeze IR 2.80.1.

²⁴ Exhibit B2-63 ("Reasons Why Sea Breeze Believes Bids Under the January 2006 Call for Tender Will be Higher Than the Budgetary Quotes Received Under RFI"), pp. 2-3.

²⁵ See, e.g., TR v. 8, p. 1081, ll. 12-20; TR v. 10, p. 1509, ll. 21-26.

²⁶ Exhibit B1-6, BCUC IR 1.1.1, par. 3 (4th subparagraph).

²⁷ TR v. 8, p. 1085.

“read out” costs of the tenders and the cable cost estimates which BCTC previously provided to the Commission calls into serious question the reliability of all of the cost estimates which BCTC has provided for VITR.

13. Even if it were appropriate to compare the “read out” costs of the bids directly against the total of BCTC’s \$119.3 million cost estimate plus the \$12.2 million contingency for the VITR proposal – which Sea Breeze disputes (see below) – both of the basic bids would still exceed the \$131.5 million total of those two figures. As a result, BCTC is now facing the scenario it described on February 17, 2006 in the last paragraph of Exhibit B1-69.²⁸

If, on an initial review of the bids, there were no bids that satisfy the tender requirements that fall within the estimated costs and contingency in the Application, BCTC will notify the Commission of this and seek direction from the Commission. Depending on the bids themselves, this outcome could affect the costs of the VITR Project. BCTC does not believe that it is helpful to attempt to speculate on what the potential outcomes of this might be in terms of process or result. It appears that this could be very much affected by the nature of the bids themselves and BCTC believes this is better left until these bids are known.

14. On this point, it should be emphasized that Sea Breeze does not accept that it is meaningful or appropriate to draw a simple comparison between the “read out” costs from the bids and the total amount of the VITR cost estimate plus the P50 contingency provision, as BCTC has purported to do in its April 27, 2006 letter and in Exhibit B1-135. Such a comparison is misleading; the mere fact that responses have now been received to the cable tender does not remove continuing uncertainty with respect to the cost of the VITR cable or eliminate the need for a contingency provision, since the cable prices quoted in the basic bids are still subject to numerous risks, including currency risk, commodity price risk, risks related to change orders that may become necessary during the detailed design phase of the project or during construction, and risks related to the significant prospect of delay in the VITR project schedule. Accordingly, to do a meaningful comparison with the VITR cost estimate plus contingency, a contingency provision must still be added to the “read out” costs of the tenders.

²⁸ Exhibit B1-69, BCTC’s February 17, 2006 Response to Undertaking at TR v. 11, p. 1185, ll. 16-21 and p. 1705, ll. 13-17.

15. Certainly, the Commission cannot be in a position to reasonably conclude that uncertainty with respect to the VITR cable costs has been eliminated by the responses to the cable tenders, in the absence of any real information from BCTC about the nature or content of the bids received.

16. In any event, BCTC clearly acknowledged (in the above-quoted passage from Exhibit B1-69) that, in circumstances where there are no bids falling within the estimated costs and contingency for the VITR proposal, the implications of that scenario “in terms of process or result ... could be very much affected by the nature of the bids themselves”; and, BCTC also clearly acknowledged that it would need to seek direction from the Commission in these circumstances. Nevertheless, BCTC is continuing to behave as if it were in the first scenario described in Exhibit B1-69, with BCTC receiving bids that “fall within the range of estimated costs in the Application.” It was only in that first scenario – which obviously has not materialized – that BCTC said in Exhibit B1-69 that it “would prefer to continue to address these bids in the normal course of business and not provide any further analysis to the Commission.”²⁹

17. Given what little information BCTC has actually disclosed about the outcome of the tender process, this is unacceptable. BCTC implicitly acknowledged in Exhibit B1-69 that it would be incumbent on BCTC in these circumstances, with no bids received that are within the range of estimated costs for the VITR cable, to provide the Commission with substantially more information and analysis concerning the outcome of cable tender process than what BCTC has chosen to disclose in its April 27 and May 4, 2006 filings.

(b) What has not been disclosed?

18. In light of the information about the “read out” bid costs that BCTC disclosed in its April 27, 2006 letter, Sea Breeze notified BCTC on May 1, 2006 (in a letter from Mr. Herbert to Mr. Carpenter, referenced by Mr. Reghelini in Exhibit B1-135³⁰) of its position that BCTC would need to include certain specific information its May 4, 2006 filing to enable all participants and the Commission Panel to adequately assess the implications of the outcome of the cable tender process with respect to VITR costs and risks.

²⁹ Exhibit B1-69, p. 1.

³⁰ Exhibit B1-135, p. 3.

19. Specifically, Sea Breeze asked BCTC to include the following information in its May 4, 2006 filing, which Sea Breeze asserted would be critical to assessing the implications of the outcome of the cable tender:

- a description of the cable specifications contemplated by each bid (including cable size and dimensions, and any exceptions to BCTC's requested cable specifications) and confirmation that the cable specifications would be suitable for transmission of 600 MW;
- an explanation of any price adjustment factors, price-related conditions, or other qualifiers specified in each bid that may affect or result in any adjustment to the actual cable costs to be incurred under each bid;
- the name(s) of the legal entity or entities putting forward each bid, and who would be responsible for providing performance bonds and contractually-binding assurances under each bid;
- a description of each bidder's relevant experience and track record (including relevant experience and track records of any partners they may have) in manufacturing, supplying and installing submarine transmission cable on the scale required for VITR and with a comparable power transfer capability, including the number of similar projects installed by each bidder, and the operating history of those projects; and
- confirmation as to whether each bidder has available to it or has secured the use of a cable laying ship that will be suitable for this project, and the impact that may have on the VITR project schedule and related costs.

20. Mr. Herbert's May 1, 2006 letter also indicated that Sea Breeze assumed BCTC's May 4, 2006 filing would contain details of the optional bid referred to in BCTC's April 27, 2006 letter (which, presumably, is a bid submitted by either Mitsubishi Canada Limited or Nexans Norway As for Cable Type C (XLPE Insulation)³¹), unless BCTC determined that bid would not satisfy the tender requirements.

³¹ See Exhibit B2-58A, pp. 7.1-5 and 7.6-4 to 7.6-5.

21. A copy of Mr. Herbert's May 1, 2006 letter to Mr. Carpenter is attached, for the Commission's reference.

22. It is patently obvious that the information requested in Mr. Herbert's letter is highly relevant to the ability of the Commission and all stakeholders to properly evaluate the risks and costs involved in the VITR Project.

23. Indeed, the information requested is of the very same nature as that which Sea Breeze, ABB, SocGen and EIF were asked by BCTC and other participants to provide in relation to the JdF Project, to enable the Commission and all participants to better evaluate the risks and costs involved in JdF. If, as BCTC asserts in its Reply Argument,³² BCTC is not in fact proposing that the Commission should hold JdF to a more onerous standard than VITR, there cannot have been any legitimate basis for BCTC to refuse to provide information in relation to VITR of precisely the same nature it previously said was needed in relation to JdF, where the information in question is now readily available and was specifically requested by Sea Breeze, and where BCTC had a clear opportunity to file that information in its May 4, 2006 filing (Exhibit B1-135).

24. Nevertheless, of the information Sea Breeze requested in Mr. Herbert's May 1, 2006 letter, the only information that BCTC actually provided in Exhibit B1-135 was confirmation that the tenders were received from Mitsubishi Canada Limited and Nexans Norway As. But, even in providing that information, BCTC did not give any indication of which legal entity or entities have submitted the bid bonds, certified cheques, and letters of credit required with each bid, or of which legal entity or entities would be responsible under each bid for providing the performance bond and the labour and materials payment bond that would be required if a contract is awarded.³³ That information is critical to the ability of the Commission and all stakeholders to independently assess the costs and risks involved in the two bids received.

25. None of the other information requested in Mr. Herbert's May 1, 2006 letter has been provided. That information is, however, also critical to the ability of the Commission and all stakeholders to assess the costs and risks involved in the two bids received.

³² BCTC Reply (May 5, 2006), at pars. 193-194.

³³ Exhibit B2-58A, pp. 2-11 to 2-12.

26. Besides refusing to provide the information that Sea Breeze requested, BCTC has also failed to provide critical information and analysis that Mr. Nelson indicated at the hearing would be included in BCTC's report on the outcome of the cable tender. In particular:

- although Exhibit B1-135 quotes Mr. Nelson's testimony that BCTC would provide a "high-level assessment" of whether "all of the commercial conditions of the tenderers are clean", to confirm (subject to subsequent clarifications from the tenderers) that "we're not looking at a low price from a bid that is potentially commercially or technically noncompliant,"³⁴ BCTC did not actually include such an assessment in Exhibit B1-135;
- similarly, although Exhibit B1-135 quotes Mr. Nelson's testimony that BCTC would identify "what some of the risks may be from a performance point of view, schedule point of view, [and] the commercial point of view from those tenders,"³⁵ BCTC did not actually identify or analyze any of those risks in Exhibit B1-135; and
- again, although Exhibit B1-135 quotes Mr. Carpenter's statement at the hearing that BCTC would "do [its] best" to answer the Commission Chair's question about "whether or not there are bids that will satisfy the tender requirements,"³⁶ BCTC has not actually provided any clear answer to that question in Exhibit B1-135, other than asserting some very cursory conclusions in paragraph 6 of that Exhibit, without any reasons or analysis in support of those conclusions.

27. As for the concern BCTC has raised in Exhibit B1-135 about the need for confidentiality in the tendering process, that concern provides no justification in these circumstances for BCTC's failure or refusal to disclose information that is obviously relevant to the Commission's assessment of the impact of the cable tender on the costs and risks involved in the VITR proposal.

28. BCTC's asserted concern about confidentiality is not dissimilar to the concerns Sea Breeze raised during the hearing with respect to the confidentiality of EIF's financial models

³⁴ Exhibit B1-135, pp. 1-2; TR v. 37, pp. 7240-7241.

³⁵ Exhibit B1-135, p. 2; TR v. 37, p. 7241.

³⁶ Exhibit B1-135, p. 2; TR v. 37, p. 7246.

used to evaluate the JdF and VIC Projects.³⁷ Those concerns were appropriately addressed at the hearing through the execution of confidentiality agreements by those counsel and participants who received copies of the EIF financial models (including BCTC), and BCTC could have requested the use of a similar mechanism here.

29. Indeed, BCTC has specifically acknowledged that it has not given the bidders any guarantee that their bid information would not be disclosed in this proceeding,³⁸ that BCTC could and would disclose bid information if directed to do so by the Commission,³⁹ and that an analysis of the bids could be provided on a confidential basis.⁴⁰

III. INFERENCES TO BE DRAWN FROM BCTC'S LIMITED DISCLOSURE

30. There is no dispute that the 230 kV submarine cable is the single most important component of the VITR Project, comprising over half of the total project cost, or that the timely installation of the submarine cable is fundamental to BCTC's ability to complete the VITR Project by its projected in-service date. As such, the VITR cable tender is obviously of critical importance to any assessment of the overall risk of delay and/or cost overruns with respect to the VITR Project.

31. Accordingly, in these circumstances, where the VITR cable tender has yielded responses from only two bidders neither of whom has submitted a basic bid falling within the range of estimated costs for the VITR cable, the very limited information about the two bids received which BCTC has chosen to disclose in its April 27 and May 4, 2006 filings is clearly inadequate for the purpose of the Commission carrying out a sufficiently thorough, independent assessment of the impact of the cable tender on the costs and risks associated with the VITR proposal.

32. As noted in Mr. Herbert's April 5, 2006 letter to the Commission Secretary concerning BCTC's April 3, 2006 proposal to change argument filing dates, the risks associated with the VITR proposal are particularly significant with respect to the risk that BCTC will be unable to

³⁷ See Exhibit C31-53, Response to BCTC IR #15.

³⁸ TR v. 17, p. 3064, ll. 18-19.

³⁹ TR v. 17, p. 3064, ll. 19-21, p. 3066, ll. 6-12 and p. 3067, ll. 9-19.

⁴⁰ Exhibit B1-69, p. 1, 2nd par.

meet critical path milestones in its project schedule if there are any delays in connection with the very limited availability of cable laying ships required to undertake the project.

33. BCTC has explained this risk as follows:⁴¹

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.

34. Despite the critical nature of this risk, the fact the tender process has already been delayed by nearly five weeks, and the absence of bids from most of the potential bidders that BCTC was apparently contemplating, BCTC has not provided the Commission with any information about the experience or track record of either of the responding bidders in laying cable of the nature required for VITR, or whether either bidder has available to it or has secured the use of a cable laying ship that will be suitable for the VITR Project.

35. Delays relating to the availability of cable laying ships will also inevitably increase the overall cost of completing the VITR Project. Mr. Barrett specifically testified at the hearing that, if the installation of the cable were delayed until 2009, "there would be costs for BCTC."⁴² He

⁴¹ Exhibit B1-6, BCUC IR 1.1.1, par. 3.

⁴² TR v. 11, p. 1683, ll. 24-26.

also stated that “[u]ntil we receive the tenders we don’t necessarily know what that might be”;⁴³ however, BCTC has not provided the Commission with any information about the content of the tenders that could enable the Commission to independently assess this risk.

36. In addition to risks relating to the availability of cable laying ships, the risk of delay and/or cost overruns with respect to VITR may also be significantly enhanced if the selected bidder does not have a proven capacity and track record to be able to produce and deliver the required cable on time and on budget. And, there may also be a significantly increased risk of cost overruns if the selected bid contains price adjustment factors, price-related conditions, or other qualifiers that may affect or result in an adjustment to the actual cable costs to be incurred.

37. Further, with respect to the risk of cost overruns, as Sea Breeze has previously stated:⁴⁴

The design build approach adopted by BCTC in the Call for Tender can easily lead to significant cost overruns above the successful bidder’s original bid. Sea Breeze and its principals’ experience suggest that depending on the manufacturer, one must be always careful that the successful price reliably reflects the ultimate project cost. It is well-known in the trade that some manufacturers provide low estimates of what final project costs will be for bid purposes in order to win bids and then use the “change order” process to authorize cost adjustments, the result being that the final project costs are substantially higher than the initial bid estimates.

38. However, BCTC simply has not provided the Commission with the information it would need to be able to independently assess any of the foregoing concerns in relation to the two bids received.

39. Indeed, as noted above, BCTC has not even provided the Commission with the “high-level assessment” that was promised at the hearing as to whether, based on BCTC’s initial review of the two bids received, either or both bids might be “potentially commercially or technically noncompliant.” This further frustrates the Commission’s ability to perform any sort of reasonable, independent risk assessment in relation to the two bids received.

40. Finally, with respect to BCTC’s refusal to provide any information at all with respect to the optional bid referred to in BCTC’s April 27, 2006 letter – which, as noted above, is

⁴³ TR v. 11, p. 1684, ll. 1-2.

⁴⁴ Exhibit B2-63, p. 4.

presumably a bid submitted by either Mitsubishi Canada Limited or Nexans Norway As for XLPE cable – the absence of any evidence whatsoever about that bid makes it impossible for the Commission to assess whether the optional bid is compliant, or whether BCTC will even potentially have the option available of using XLPE cable for VITR instead of fluid-filled cable. In the context of BCTC’s refusal in the tender process to accept any other bids for XLPE cable except if they accompanied a basic bid for fluid-filled cable,⁴⁵ it must now be assumed that the responses BCTC received to the cable tender will not give BCTC a viable option of using XLPE cable for the VITR Project. Given the potential significance of environmental concerns with respect to the use of fluid-filled cable for VITR,⁴⁶ this increases the risk that the VITR Project may be jeopardized or substantially delayed as a result of the environmental assessment process, in which “the attributes of the various cable insulation alternatives, including the benefits of the preferred cable design” will be considered.⁴⁷

41. In light of the foregoing, and in the absence of evidence to the contrary:

- it should be presumed that BCTC would have produced the information about the cable tenders requested in Mr. Herbert’s May 1, 2006 letter to Mr. Carpenter if that information were supportive of the VITR Application; and
- the Commission should therefore infer that, if BCTC were to have produced that information, it would instead have supported findings by the Commission that there is a very substantial risk, as a result of the nature and content of the bids BCTC has obtained, that BCTC will be unable to complete the VITR Project by the projected in-service date and without substantial cost overruns.

42. Alternatively, if the Commission is not prepared to draw such an inference, it is Sea Breeze’s position that:

- BCTC has simply failed to provide the Commission with sufficient information about the outcome of the cable tender to enable the Commission to make a reasonable and fair

⁴⁵ Exhibit B2-58A, pp. 2-6 and 3-2; TR v. 17, p. 3062, ll. 6-25.

⁴⁶ Exhibit B2-1, p. 44.

⁴⁷ Exhibit B1-44, Sea Breeze IR 2.67.2, attaching “Approved Terms of Reference for an Environmental Assessment Certificate Application”, p. 11.

comparison between the VITR proposal and the alternative options which Sea Breeze has brought forward in this proceeding (JdF and “VIC-like”); and

- in the circumstances, it would be unreasonable – and procedurally unfair to Sea Breeze⁴⁸ and other participants – for the Commission to entertain granting BCTC’s VITR Application without the benefit of such highly relevant information.

IV. CONCLUSION

43. For the foregoing reasons, and for the reasons previously outlined in Sea Breeze’s April 19, 2006 Final Submission and its April 26, 2006 Reply to Intervenor Submissions, it is clear that the VITR Application, and the evidence that BCTC has brought forward in support of it, are seriously deficient.

44. Accordingly, having regard to the superior alternatives which Sea Breeze has brought forward for satisfying Vancouver Island’s reliability needs (JdF and “VIC-like”), the Commission should reject BCTC’s Application for a CPCN for the VITR Project, and, instead, grant the relief outlined in Sea Breeze’s Final Submission.⁴⁹

ALL OF WHICH IS RESPECTFULLY SUBMITTED



P. John Landry



Jason K. Herbert

May 11, 2006

⁴⁸ In the context of Sea Breeze’s competing JdF proposal, if the Commission were to approve the VITR Application without requiring BCTC to provide readily available information that is highly relevant to comparing the merits, costs and risks of VITR and JdF, it would raise concerns about procedural fairness of a similar nature to those which Sea Breeze identified in the context of its October 18, 2005 submission on consolidation of the VITR and VIC applications (Exhibit B2-5, pp. 5-7), notwithstanding the fact that Sea Breeze no longer has the status of an applicant in this proceeding.

⁴⁹ Sea Breeze Final Submission, pp. 14-16.

from the office of: Jason Herbert
direct tel: 604.643.2928
direct fax: 604.605.3564
jherbert@davis.ca

May 1, 2006

file number: 66107-00001

DELIVERED BY E-MAIL

Fasken Martineau DuMoulin LLP
3400 First Canadian Centre
350 - 7th Avenue S.W.
Calgary, AB T2P 3N9

Attention: Sandy Carpenter

Dear Mr. Carpenter:

Re: BCTC-VITR Application

In light of the information disclosed in Mr. Reghelini's April 27, 2006 letter to the Commission Secretary concerning the basic bids of the two bidders who responded to the VITR cable tender – both of which substantially exceed the cost estimates which BCTC has previously produced in this proceeding, and which, notably, do not include bids from three of the world's top cable manufacturers, ABB, Pirelli, and J-Power Systems Corporation – we are writing to request that BCTC include the following information in the report which is to be filed on Thursday, May 4, 2006 (without limiting the scope of any other information to be included in the report as contemplated in Mr. Nelson's exchange with the Commission Chair and Commissioner O'Hara at Transcript Volume 37, pp. 7238-7246):

- a description of the cable specifications contemplated by each bid (including cable size and dimensions, and any exceptions to BCTC's requested cable specifications) and confirmation that the cable specifications will be suitable for transmission of 600 MW;
- an explanation of any price adjustment factors, price-related conditions, or other qualifiers specified in each bid that may affect or result in any adjustment to the actual cable costs to be incurred under each bid;
- the name(s) of the legal entity or entities putting forward each bid, and who would be responsible for providing performance bonds and contractually-binding assurances under each bid;

- a description of each bidder's relevant experience and track record (including relevant experience and track records of any partners they may have) in manufacturing, supplying and installing submarine transmission cable on the scale required for VITR and with a comparable power transfer capability, including the number of similar projects installed by each bidder, and the operating history of those projects;
- confirmation as to whether each bidder has available to it or has secured the use of a cable laying ship that will be suitable for this project, and the impact that may have on the VITR project schedule and related costs.

We also assume the report will contain details of the optional bid referred to in Mr. Reghelini's letter, unless BCTC determines that bid will not satisfy the tender requirements.

Sea Breeze believes the foregoing information will be necessary to enable all participants and the Commission Panel to adequately assess the implications of the outcome of the cable tender process for the expected costs and risks involved in the VITR proposal, as referred to in our letter of April 5, 2006 to the Commission.

If any of the foregoing information is not provided in BCTC's report, Sea Breeze may ask the Commission to draw an adverse inference as a result of BCTC's non-disclosure of that information.

Yours truly,

DAVIS & COMPANY LLP

Per:



Jason Herbert
JKH/jkh

cc: Gordon Fulton

BCTC-VITR Proceeding Intervenors