



ERICA M. HAMILTON  
COMMISSION SECRETARY  
Commission.Secretary@bcuc.com  
web site: <http://www.bcuc.com>

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

Log No. 27984

**VIA E-MAIL**

August 14, 2009

**SECTION 5**  
**TRANSMISSION INQUIRY      EXHIBIT A-19**

To: Long-Term Transmission Inquiry Participants

Re: British Columbia Utilities Commission  
Project No. 3698545/Order G-30-09  
Inquiry into British Columbia's Long-Term Transmission Infrastructure

Commission Panel Questions for the Third Procedural Conference

Further to the Third Procedural Conference established by the Commission's letter dated June 30, 2009 (Exhibit A-16) to address First Nations' issues, which is scheduled to take place on Tuesday, August 18 and Wednesday, August 19, 2009, please find enclosed a List of Panel Questions.

All Participants will have the opportunity to address each Question, if they so wish.

Yours truly,

*Original signed by:*

Erica M. Hamilton

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Attachment

## COMMISSION PANEL QUESTIONS FOR THE THIRD PROCEDURAL CONFERENCE

1. The Treaty 8 Tribal Association, in Exhibit C105-6, submits that the Section 5 Inquiry “does not involve an adversarial dispute that must be “adjudicated” in a judicial or quasi-judicial manner”. What weight should the Commission place on the absence of what might be described as a “dispute” in the traditional sense in determining whether or not it is acting in a quasi-judicial manner in the context of the Section 5 Inquiry?
2. The Haisla Nation (Exhibit C83-3), the Nations (Exhibit C97-3), the Squamish Nation *et al* (Exhibit C98-2) and the Treaty 8 Tribal Association (Exhibit C105-2) among others, assert that in the context of the Section 5 Inquiry, the Commission is not acting in a quasi-judicial capacity. If the Commission is not acting in a quasi-judicial manner in the context of the Section 5 Inquiry, does that necessarily result in the Commission owing an independent duty to consult? If yes, why? If no, why not?

In answering this question, what weight, if any, should be given to the following factors:

- (a) under subsection 5(6) of the *Utilities Commission Act* (“UCA”), it is the Minister who has determined the Terms of Reference (“TOR”) requiring and empowering the Commission to hold the Section 5 Inquiry;
  - (b) under subsection 5(7) of the UCA, it is the Minister who has the authority to issue regulations declaring that the Commission may not, during the period specified in the regulation, reconsider, vary or rescind a determination made under subsection 5(4) of the UCA;
  - (c) the duty of consultation is not set out in the TOR nor is it specified as an obligation that the Commission must discharge;
  - (d) BC Hydro, a Crown corporation, has been requested to undertake certain aspects of the duty to consult (pursuant to the Minister’s letter to BC Hydro dated March 25, 2009, Exhibit B2-4); and
  - (e) Exhibit B2-4 contemplates BC Hydro undertaking consultations with First Nations for the purposes of any decision the Minister may make regarding regulation under subsection 5(7) of the UCA.
3. The Treaty 8 Tribal Association, in Exhibit C105-6, states that clearly, the “Commission is obligated to ‘assess the adequacy of the consultation and accommodation efforts...relevant to the’ Inquiry”. They further submit that in the context of the Section 5 Inquiry, the Commission owes the Treaty 8 First Nations a deep level of consultation. If the Commission were to determine that it owes an independent duty to consult First Nations in the context of the Section 5 Inquiry, how could it also perform the role of assessing the adequacy of the consultation in an impartial manner that is consistent with the principles of natural justice?
  4. The Nations, in Exhibit C97-4, submit that the “fact that the Commission, has an obligation to act impartially, does not preclude it from having an obligation to consult with First Nations”. Haisla Nation in Exhibit C83-3 and We Wai Kai Nation in Exhibit C84-3 urge the Commission to meet directly with First Nations and indicate that “these meetings should include the provision of information by the Commission about the potential determinations that the Commission might

make and a discussion about the potential impacts of such determinations...”. If the Commission were to determine that it owes an independent duty to consult First Nations in the context of the Section 5 Inquiry, how could it also provide the procedural fairness it owes to all Inquiry Participants consistent with the principles of natural justice?

5. The Hwlitsum First Nation (Exhibit C89-4), the Nations (Exhibit C97-3), the Toquaht Nation (Exhibit C103-2) and the Treaty 8 Tribal Association (Exhibit C105-2) advocate for the appointment of a First Nations Advisory Panel which would assist the Commission in ensuring that consultation with First Nations is appropriately implemented. Similarly, Squamish Nation *et al*, in Exhibit C98-2, recommends the appointment of an Advisory Panel whose members would sit as equals in some or all of the Commission’s deliberations. What is the source of the Commission’s jurisdiction, if any, to appoint either a First Nation’s Advisory Panel to assist the Commission and oversee First Nation engagement or a co-panel with a direct and equal role in some or all of the Commission’s deliberations?
6. If the Commission were to determine that it has the jurisdiction to appoint either a First Nations Advisory Panel or a co-panel, how could it also provide the procedural fairness it owes to all Inquiry Participants consistent with the principles of natural justice?
7. Can the Hwlitsum First Nation elaborate on the “Other key measures” described at paragraph 13 of Exhibit C89-4?
8. If the Commission were to determine that it is acting in a quasi-judicial manner in the context of the Section 5 Inquiry, owes no independent duty to consult and does not have the jurisdiction to appoint either a First Nations Advisory Panel to assist the Commission and oversee First Nation engagement or a co-panel with a direct and equal role in some or all of the Commission’s deliberations, are there measures apart from those described at paragraph 13 of Exhibit C89-4 that the Hwlitsum First Nation or other Inquiry Participants can suggest?