



Our File No.: 1010-003
September 22, 2011

Ms. Alanna Gillis
Acting Commission Secretary
British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, British Columbia V6Z 2N3

Dear Ms. Gillis:

**Re: Project No. 3698640
British Columbia Utilities Commission (BCUC)
British Columbia Hydro and Power Authority (BC Hydro)
Application for a Certificate of Public Convenience and Necessity (CPCN) for the
Dawson Creek/Chetwynd Area Transmission Project (DCAT)**

We are writing in response to BC Hydro's September 15, 2011 request for confidential filing of certain responses to BCUC Information Request No. 1.

Pursuant to BCUC Confidential Filing Practice Directive (the Practice Directive), sections 4 and 9, West Moberly First Nations (WMFN) requests that it be provided access, on a confidential basis, to the BC Hydro responses that address BC Hydro's engagement with WMFN on the DCAT Project. If required, WMFN, its legal counsel, consultants, and experts will provide confidentiality declarations with respect to the information released.

In particular, WMFN requests access to the following IR responses:

2.1 *	Anticipated direct and fully loaded First Nations' costs related to the DCAT Project.
2.2 *	Level of capacity funding given to each First Nation to date, anticipated in the future, and discussion if the deliverables have been met by each First Nation.
5.2 *	First Nations' use of land where transmission line is proposed, and Aboriginal and treaty rights, and traditional uses exercised by each First Nation or Band. BC Hydro has provided a public response for McLeod Lake Indian Band and Sauteau First Nation, but has requested confidential filing of the response relating to WMFN and Blueberry River First Nation.
8.1 *	Whether BC Hydro offered capacity funding to Sauteau First Nation, and if not, why was funding offered to McLeod Lake, WMFN and Blueberry River First Nations, but not Sauteau?
9.1	September 8, 2011 letter to WMFN attached to this response to indicate BC Hydro has offered to provide WMFN with an opportunity for further input.
9.2	Entire response relating to the details of BC Hydro's consultation with WMFN, including, the treaty rights or traditional uses identified, the potential impacts of the project on these rights and uses, BC Hydro's efforts to address, minimize or mitigate, and BC Hydro's assessment of the duty to consult with WMFN on the DCAT Project.
13.1 *	A breakdown of all capacity funding provided to First Nations.

13.1.1 *	Identify First Nations capacity funding in the Cost Estimate Report Table located in Appendix C of the Application.
13.2 *	An estimate of the First Nations accommodations costs of the DCAT Project.
13.2.1 *	Identify First Nations accommodation costs in the Cost Estimate Report Table located in Appendix C to the Application.

* In instances where the IR also pertains to First Nations other than WMFN, WMFN requests access to the portion of the response that pertains to WMFN only.

WMFN strongly contends it is entitled to know what representations BC Hydro is making to the BCUC regarding the consultation record between BC Hydro and WMFN in relation to the DCAT Project. WMFN's ability to meaningfully and fully participate in the DCAT CPCN Application will be notably compromised without access to this information. WMFN is the only "person who may be affected by disclosure" as contemplated in section 4 of the Practice Directive.

Furthermore, the reason given by BC Hydro for the confidentiality request is: "*Response relates to First Nation funding or agreement details. The release of such information may generally prejudice negotiations with First Nations.*" This reasoning may or may not support avoiding general public disclosure of the information, but it clearly does not justify preventing WMFN from having access to this information in order that WMFN may know what information responses BC Hydro has provided to the BCUC regarding discussions/relations between BC Hydro and the WMFN in relation to the DCAT Project. It is imperative that WMFN has access to this information in order to assess the adequacy of BC Hydro's Application with respect to issues affecting WMFN and to ensure that the record before the BCUC is full and complete in relation to the same. Further, it is in the public interest that BC Hydro conduct itself in a transparent fashion, consistent with its duty to uphold the honour of the Crown.

We can also advise that WMFN is considering filing a full objection to some or all of the above noted IR responses and applying to the BCUC to make these responses part of the public record. However, having regard to the factors noted in section 7 of the Practice Directive, including the administration of justice and the public interest, WMFN cannot assess BC Hydro's request for confidential filing without knowing what BC Hydro is proposing to redact from the public record in this Application. WMFN requires access to the IR responses in order to determine if it is in the public interest that these responses form part of the public record in this matter.

Please note, WMFN specifically reserves its right to issue a further objection to BCUC's September 15, 2011 request for confidential filing, and to request some or all of the BCUC IR No.1 responses in question be placed on the public record.

Sincerely,
RANA LAW


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CC: BCUC Distribution List, *via email*