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British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Laurel Ross, Acting Commission Secretary

Dear Ms. Ross:

**Re: British Columbia Hydro and Power Authority
Inquiry of Expenditures related to the adoption of the SAP Platform
British Columbia Utilities Commission Action on Complaint**

As you know, we represent Adrian Dix, an intervenor in the above noted matter. We write further to the Commission's November 23, 2016 Order No. G-168-16 and BC Hydro's letter of December 2, 2016. We support BC Hydro's suggestion that the Commission gather evidence from former BC Hydro employees and wish to advise the Commission of some additional areas of concern.

The Order does not specify the manner in which the statements are to be made. We suggest that they take the form of sworn affidavits. Requiring sworn affidavits does not decrease the efficiency of collecting evidence through written rather than oral means but having the statements sworn does help increase their reliability.

The witnesses' statements must be reliable because they will be used for two extremely important purposes. They will be used by the Commission to determine whether or not an oral hearing is required. Then, especially if there is no further oral hearing, the statements will be used as evidence on the merits of Scope Items 2 and 5.

In short, the statements will contain key witness recollection of the essential events surrounding this Inquiry. They are not will-says of anticipated evidence but rather evidence itself. Accordingly, they ought to take the form of sworn testimony.

Our second concern is about the process through which witness evidence will be obtained. As it stands now, the Commission and the intervenors will not be involved in the preparation of witness statements. BC Hydro alone will obtain and provide the statements of its officers and employees. Those witnesses will not be available for cross-examination unless there is an oral hearing. BC Hydro's motives and intent are elements of this Inquiry and if BC Hydro collects the statements itself, this might create the

perception that some evidence may be presented differently or left out of the statement entirely if that evidence is not in BC Hydro's best interests. This fear is resolved if Commission counsel obtains all of the witness affidavits.

If the Commission does not lead the evidence gathering process such that some or all of the witnesses are contacted by BC Hydro, we suggest that certain procedural safeguards be adopted. We ask the Commission to direct the following.

1. The preparation of witness statements should not be facilitated by BC Hydro employees or in-house counsel because these individuals have a duty of loyalty to the organization. There is the possibility that if evidence is gathered by colleagues of the witnesses it will be seen as tainted. If the Commission itself does not obtain the affidavits, BC Hydro should be directed to retain external counsel for this purpose.
2. For a transparent and fair process, BC Hydro must disclose to the Commission and intervenors:
 - i) all communications between each witness and BC Hydro representatives or counsel regarding the witness' evidence;
 - ii) all notes created by each witness while preparing the statement; and
 - iii) all drafts.

In this Inquiry's unique circumstances, witness evidence must be and be seen to be unaffected by the interests of the participants.

Yours truly,

CAROLINE + GISLASON LAWYERS LLP



Gary Caroline

- c. Client
eFiling List of Participants