

July 24, 2012

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Ms. Alanna Gillis
Acting Commission Secretary
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Dear Ms. Gillis:

**Re: Project No. 3698640
British Columbia Utilities Commission (BCUC)
British Columbia Hydro and Power Authority (BC Hydro)
BC Hydro CPCN-Dawson Creek/Chetwynd Area Transmission
Project (DCAT)**

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As counsel for BC Hydro, we herewith submit the Final Written Submission in the above proceeding.

The Final Written Submission on behalf of BC Hydro references evidence concerning the consultation process with West Moberly First Nations which was filed confidentially with the BCUC. As a result, BC Hydro has filed two separate versions of the Final Written Submission, a public one and a confidential one.

Yours very truly,

LAWSON LUNDELL LLP



Chris W. Sanderson, Q.C.

CWS/sal

Enc.

cc. BCUC Project No. 3698640 (DCAT) Registered Intervener Distribution List

IN THE MATTER OF the *Utilities Commission Act*, R.S.B.C. 1996, Chapter 473 and An Application by the BC Hydro and Power Authority for a Certificate of Public Convenience and Necessity for the Dawson Creek/Chetwynd Area Transmission Project.

Project No. 3698640/Order G-132-11

BC Hydro and Power Authority Final Written Submission

July 24, 2012

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Table of Contents

1. Introduction	1
1.1. Application for CPCN and Proposed Tariff Revision	1
1.2. The DCAT Context	1
1.3. Layout of the Argument	2
2. Decision-making Framework.....	2
2.1. Introduction.....	2
2.2. The Interests of Persons in BC Who Receive or May Receive Service from BC Hydro	3
2.2.1. The Interests of Existing Customers.....	3
2.2.2. The Interests of New Customers.....	3
2.3. British Columbia’s Energy Objectives	3
2.4. Other Considerations under s. 46(3.3) of the UCA.....	4
2.5. Other Legislation - Special Direction No. 9.....	4
2.6. BCUC Order No. G-56-12	5
2.7. Topics Ruled Out of Scope for this CPCN Decision	6
3. Need for a Project.....	6
3.1. Existing Constraints in the System	6
3.2. Load Growth and Load Forecast (as updated)	8
4. Project Description	10
5. Whether the Project Meets the Need	11
5.1. Reasonableness of Service	11
5.1.1. Ability to Alleviate Existing Constraints on the Transmission System	11
5.1.2. Ability to Meet Load Growth and Forecast.....	11
5.1.3. Reasonableness of the Staged Approach.....	11
5.2. Adequacy and Safety of Service	12
5.2.1. Whether the Service will meet the Appropriate Standards, including Compliance with the N-1 Service Criterion.....	12
5.2.2. Safety of Service.....	12
6. Evaluation of Alternatives.....	12
6.1. Alternatives Considered and Conclusion.....	12
7. Fairness of Service	15
7.1. Application of the Electric Tariff and TS 6	15
7.1.1. Contribution of New Customers to System Reinforcement, and related Security Issues	15
7.1.2. Specific Matters Relating to TS 6 (BCUC Letter L-36-12)	19
7.2. BC Hydro’s Proposed Changes to the Electric Tariff.....	25
7.2.1. Proposed revision and its impact.....	25
7.2.2. Whether the proposed tariff changes may result in discrimination in the treatment of existing and new customers with respect to the allocation of project costs and service level standards	25
8. First Nations issues and Adequacy of Consultation with First Nations	25
8.1. Introduction.....	25

8.2. Summary of the Law on the Duty to Consult26

8.3. The BCUC's Role28

8.4. Consultation in the Present Case 29

 8.4.1. Identification of First Nations Potentially Impacted by the DCAT Project.....29

 8.4.2. The Scope of Consultation with WMFN.....29

 8.4.3. Information obtained through the Ongoing Consultation Process33

8.5. WMFN's Specific Complaints about the Consultation Process40

8.6. Consultation to Date has been Adequate to Support Issuing the CPCN42

9. Conclusion 43

Schedule A – Draft Order

BC Hydro & Power Authority

Final Written Submission

1. Introduction

1.1. Application for CPCN and Proposed Tariff Revision

On July 11, 2011 British Columbia Hydro and Power Authority (**BC Hydro**) applied for a Certificate of Public Convenience and Necessity (**CPCN**) for the Dawson Creek/Chetwynd Area Transmission Project (**DCAT Project or the Project**) pursuant to s. 46(1) of the *Utilities Commission Act (UCA)*.

In the Application BC Hydro also applied under UCA ss. 58(1) and 61(2) to make an amendment to the Electric Tariff to allow the collection of security from large distribution customers for transmission system reinforcement necessitated by the addition of distribution loads of 10 MW or more. This is a modest tariff revision which is expected to apply to very few distribution loads, but which treats the affected distribution customers the same as their transmission customer counterparts with respect to transmission system reinforcements, and which protects other ratepayers from the financial risk associated with the system reinforcements required to support those loads.

BC Hydro is seeking the BCUC order attached as Schedule A to this Final Written Submission.

In filing a CPCN application for the DCAT Project, BC Hydro is consistent with its Capital Project Filing Guidelines. The Guidelines contemplate filing an application for either a CPCN or an approval of an expenditure schedule under Section 44.2 of the *UCA*. BC Hydro considered the CPCN approach appropriate for the DCAT Project primarily because the Project is being undertaken to meet past and anticipated load growth.

Based on the evidence in this proceeding, BC Hydro submits that the DCAT Project is in the public convenience and necessity. BC Hydro also submits that the proposed tariff revision is not unjust, unreasonable, or unduly discriminatory and would in fact make the tariff fairer in its treatment of transmission system reinforcements required for customer load requests of 10 MW and higher.

1.2. The DCAT Context

On its face, the DCAT Project and CPCN Application appear to be relatively routine. The Project involves upgrading the existing transmission system to address system capacity constraints through system reinforcements that, at another time, might have been viewed as a normal and uncontroversial build-out of BC Hydro's transmission network. Instead, the regulatory review process has taken over a year and the Project has generated a moderate level of controversy – certainly more than would have been anticipated in more normal times. The causes of the controversy in connection with the DCAT Project are readily identifiable. First, the need for the particular reinforcement BC Hydro proposes results from dramatic and indeed unprecedented growth in one relatively confined area of the province, largely driven by an industry that is not present in most other areas of the province. Second, although the Project has little significance from a physical footprint perspective, it is being proposed at a time of

major developments in the area both in the natural gas industry and in connection with other BC Hydro projects, notably, Site C. Thus, the Project has attracted the interest of one First Nation that is concerned with development that has occurred over the last 30 years and is projected for the next 30 years.

This argument is shaped by this context, particularly with reference to the concerns raised by some Interveners and BC Hydro asks that the BCUC bear this context in mind when seeking to understand the perspective of those Interveners. It will be BC Hydro's submission that to the extent that it can, the BCUC's role on this application should be to separate concerns that actually arise from the DCAT Project from broader concerns that exist whether the DCAT Project proceeds or not.

1.3. Layout of the Argument

This argument will seek to focus on issues that Intervener evidence (in the case of AMPC and WMFN) or information requests suggest were of most interest and those issues that the BCUC has asked to be specifically addressed in argument. The argument will set the stage by laying out BC Hydro's views on the decision making framework within which the BCUC should render its decision (Part 2) and then move on to explain the need for the Project (Part 3), a brief description of the Project (Part 4), the basis on which BC Hydro asserts that the Project meets the need (Part 5), and the alternatives that were considered in reaching that conclusion (Part 6). Next, the argument will move on to deal with fairness of service (Part 7), including the application of TS 6 to new industrial customers that the DCAT reinforcements will permit to be served and the proposed changes to the Electric Tariff that are intended to ensure that service will be provided as between those customers on a non-discriminatory basis. Finally, the argument will discuss the adequacy of consultation with First Nations in general and the West Moberly First Nations in particular (Part 8).

2. Decision-making Framework

2.1. Introduction

The decision-making framework for applications for a CPCN by BC Hydro is set out in section 46(3.3) of the UCA. That section requires the BCUC to issue or refuse to issue a CPCN based on:

- (a) The interests of persons in British Columbia who receive or may receive service from BC Hydro;
- (b) British Columbia's energy objectives;
- (c) An applicable integrated resource plan approved under Section 4 of the *Clean Energy Act*; and
- (d) The extent to which the application is consistent with targets prescribed under section 19 of the *Clean Energy Act*.

Each of these decision-making criteria is placed in the context of the DCAT Project in the subsections below. These subsections will also identify other regulatory and BCUC decisions relevant to the BCUC's determination in this case. Later sections will then address the most important criteria in more depth.

2.2. The Interests of Persons in BC Who Receive or May Receive Service from BC Hydro

2.2.1. *The Interests of Existing Customers*

The DCAT Project will resolve an existing concern with BC Hydro's system ability to meet the needs of its existing customers. The system is incapable of providing the level of service to existing customers within the DCAT area that is required by the BCUC and the DCAT Project is the required first step to remedying that situation.

The BCUC has adopted Mandatory Reliability Standards (**MRS**) in its Order Nos. G-67-09, G-167-10, G-162-11 and G-175-11. These standards require BC Hydro to supply the Dawson Creek area to an N-1 standard consistent with the service standard throughout most of the rest of BC Hydro's service area. BC Hydro is required to comply with those standards. The BCUC is empowered to impose penalties for breach of these standards and has recently approved a Compliance Monitoring Program designed to ensure they are met. Thus, the issue on this application is whether the DCAT Project is the appropriate way to meet this need.

2.2.2. *The Interests of New Customers*

BC Hydro's obligations do not end with maintaining service to existing customers. New customers locating in the area are as entitled to service as existing customers provided that they are prepared to accept service on the basis that the BCUC has determined to be just and reasonable. BC Hydro has assessed the need for the Project based on both existing load and the anticipated location of new load within the area. Both old and new customers are entitled to service and thus the only true issue is whether the DCAT Project is properly configured to serve the existing and new load in as efficient a manner as possible and with proper regard to the interest of third parties including First Nations.

2.3. British Columbia's Energy Objectives

Section 46(3.3) of the UCA also requires the BCUC, when making a decision on a CPCN application, to consider and be guided by British Columbia's energy objectives, which are set out at s. 2 of the *Clean Energy Act*, as described in the Application.¹ The DCAT Project supports the objectives set out at paragraphs 2(g), 2(h) and 2(k) of the *Clean Energy Act* and does not detract from any of the other British Columbia's energy objectives. The only controversy surrounding this proposition appears to stem from the potential impact of the DCAT Project on rates. BC Hydro's position is that although the DCAT Project, like almost any project requiring a CPCN, is expected to have some impact on rates, it does not

¹ Exhibit B-1, pp. 2-16 to 2-17.

detract from the objective set out at paragraph 2(f) "to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America". BC Hydro does not interpret this objective to discourage BC Hydro from serving all new load of existing and new customers, notwithstanding that because the cost of new supply exceeds the average cost of supply in the system, all new loads (residential, commercial, industrial) increase average rates. BC Hydro has an obligation to serve existing and prospective customers in its service area who request service and are ready, willing and able to meet the requirements for service. Given this obligation to serve, and the need (in the case at hand) for a project to be undertaken to enable BC Hydro to meet this obligation, the question then becomes whether the Project has an acceptable impact on rates as compared to other feasible project alternatives. If it does, then the Project does not detract from the competitive rates objective because BC Hydro will be continuing to meet its core obligations while keeping its rates as low as possible in accordance with objection 2(f). This issue is explored further in subsection 6.1.

2.4. Other Considerations under s. 46(3.3) of the UCA

The other considerations referenced in section 46(3.3) of the UCA are not implicated by this application. Subsection 46(3.3)(b) states that when making a decision on a CPCN application by BC Hydro, the BCUC must consider and be guided by "an applicable integrated resource plan approved under section 4 of the *Clean Energy Act*".² BC Hydro has not yet filed its Integrated Resource Plan (IRP) for approval by government, and there is currently no applicable IRP by which the BCUC must be guided. The 2008 Long-Term Acquisition Plan is not an approved IRP.³ Therefore, this criterion has no application in this case.

Subsection 46(3.3)(c) of the UCA requires the BCUC to consider and be guided by "the extent to which the application for the certificate is consistent with the requirements under section 19 of the *Clean Energy Act*."⁴ Section 19 of the *Clean Energy Act* requires BC Hydro to facilitate the achievement of British Columbia's energy objectives by pursuing actions to meet the prescribed targets in relation to clean or renewable resources and use the prescribed guidelines in planning for the construction or extension of generation facilities. The BC Government has not prescribed planning guidelines or clean or renewable resources targets in relation to s. 19 and accordingly this criterion is also not applicable in this case.

2.5. Other Legislation - Special Direction No. 9

Section 2.1 of Special Direction No. 9 to the BCUC requires that in deciding whether to issue a CPCN to BC Hydro for a transmission project, the BCUC must consider and be guided by the government's

² *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 46(3.3)(b).

³ Exhibit B-15, Response to CEC IR 2.3.5.

⁴ *Utilities Commission Act*, s. 46(3.3)(c).

objective of encouraging public utilities to develop adequate electricity transmission infrastructure in the time required to serve persons who receive or may receive service from the public utility.⁵

Thus, in addition to considering BC Hydro's obligation to meet the MRS requirement, the BCUC must have regard to the timelines of BC Hydro's efforts to upgrade its system. This criterion is applicable to the DCAT CPCN application.

2.6. BCUC Order No. G-56-12

BCUC Order No. G-56-12 sets the scope of this review at a more detailed level and identifies the remaining significant issues, which can be divided into the following categories:

- The application of the *Clean Energy Act* to the DCAT Project (which includes a requirement to consider and be guided by those of British Columbia's energy objectives which are applicable⁶);
- The need for the Project, including updated project evidence and updated load forecast implications;
- Whether the Project meets the need, including whether the service will meet the appropriate standards (including compliance with the N-1 service criterion) and will be reasonable, safe, adequate and fair;⁷
- Evaluation of alternatives;
- Application of the Electric Tariff and TS 6, including contribution of new customers to system reinforcement, and related security issues;
- BC Hydro's Proposed Changes to the Electric Tariff, including whether the proposed changes may result in discrimination in the treatment of existing and new customers with respect to the allocation of project costs and service level standards; and
- First Nations issues and whether the duty to consult has been met.

Parts 3 through 8 of this submission address these issues, with the exception of the application of the *Clean Energy Act*, which is covered in sections 2.3 and 2.4 above.

⁵ Order In Council 015/2011, s. 2.

⁶ *Utilities Commission Act*, s. 46(3.3).

⁷ (Although BCUC Order No. G-56-12 at page 6, section 2.2, finding 2 says that "the service must be adequate, safe, efficient, fair and reasonable", these written submissions follow the language found at s. 25 of the UCA: "reasonable, safe, adequate and fair").

2.7. Topics Ruled Out of Scope for this CPCN Decision

By Order No. G-56-12, the BCUC ruled that the following topics are out of scope for this CPCN proceeding:

- the appropriateness of rolled in rates, or postage stamp rate principles;
- Province wide resource planning issues;
- the appropriateness of the N-1 MRS standard; and
- establishing priorities amongst the government of British Columbia policy objectives contained within section 2 of the *Clean Energy Act*, as they relate to projects other than that contemplated in the DCAT CPCN

The following sections address the issues identified in subsections 2.2 to 2.6. BC Hydro will not address these out-of-scope topics in subsection 2.7 any further in this submission. In commenting on these issues, BC Hydro relies generally on the evidence provided in the Application, as updated, the Supplemental Evidence at Exhibit B-22, and BC Hydro's responses to Information Requests, much of which is not in contention. The submissions will focus on the evidence relating directly to the specific issues identified in BCUC Order No. G-56-12 and any other issues raised by Interveners. It will not repeat the evidence contained in the Exhibits. Nevertheless, BC Hydro continues to rely on that evidence to support its contention that the DCAT Project will serve the interests of those who currently or may in the future receive electricity from BC Hydro and otherwise meet the criteria discussed above.

3. Need for a Project

The Dawson Creek area is currently served by a 212 km 138 kV transmission system interconnected at both GMS and Taylor Substations as depicted in Figures 2-1 and 2-2 of the Application.⁸ These 138 kV circuits serve BC Hydro substations at Dawson Creek, Bear Mountain and Chetwynd.

The DCAT Project is required as soon as possible:

- To resolve constraints in the existing 138 kV transmission system in the area;
- To serve significant load growth in the Groundbirch and Dawson Creek areas;
- To restore reliable service to the area.

3.1. Existing Constraints in the System

The record in this proceeding makes the need for system reinforcement beyond debate. Not only is there robust evidence of growing load in the area, the evidence is abundantly clear that existing load

⁸ Exhibit B-1, pp. 2-2 to 2-3.

cannot be adequately met with existing facilities. Something has to be done. The only legitimate question is what.

In the face of recent load growth, BC Hydro's transmission system in the Dawson Creek area is currently unable to serve existing customers at the standard required by the MRS, specifically the N-1 standard for service on the bulk transmission system.⁹ Where single element outages show impacts that do not meet the N-1 planning standard, BC Hydro is required to have written plans to show how the standard will be met and on what schedule.¹⁰ BC Hydro has proposed the DCAT Project, which is its plan to initiate the return of the quality of service to existing customers in the Dawson Creek area to the MRS standard required by the BCUC. BC Hydro must undertake system reinforcement work as soon as possible in order to meet the required MRS standard.

Existing system constraints include transmission line overloads, low voltage conditions and voltage instability which arise during peak condition and single element outages. The current shortfall is depicted in the application in figure 2-5 which shows that the current system is capable of serving a load of 70 MW at an N-1 Standard and 150 MW at the N-0 Standard. This compares to a normalized current load of 114 MW (for fiscal 2012) increasing to 130 MW in fiscal 2013, even without any increase in gas producer load. Thus, the evidence of a planning shortfall in the Dawson Creek area is overwhelming and uncontradicted. Current load conditions significantly exceed system limits at the required level of reliability and both near term and long term anticipated growth, as evidenced by the load forecast for the area, further demonstrates immediate action is required.¹¹

The BCUC's numerous orders relating to MRS¹² underscore the importance of BC Hydro ensuring that residents of British Columbia have access to a reliable and secure source of electricity. The rapid growth in the Dawson Creek area has put area residents at a higher risk of service outage than the BCUC has determined is acceptable within BC Hydro's system and BC Hydro accepts the burden to remedying that situation as expeditiously as practicable. The DCAT Project has been put forward as a result. BC Hydro does not consider this application to expand its capacity to serve the Dawson Creek area to be optional. Near term interim and temporary measures have been implemented to avoid unacceptable service outages to residential customers. BC Hydro must maintain adequate service to its customers and the DCAT Project is the first necessary step for BC Hydro to meet that obligation. Further steps will be determined as a GDAT project (see subsection 6.1 below) is defined to reflect evolving conditions in the area.

⁹ Exhibit B-1, p. 2-1, ll. 3-6; and Exhibit B-22, pp. 6-7.

¹⁰ Exhibit B-22, p. 7.

¹¹ Exhibit B-22, Attachment 2, pp. 23, 24, 27, 28, 30, 31, 33, 34.

¹² Including BCUC Order Nos. G-67-09, G-167-10, G-162-11 and G-175-11.

3.2. Load Growth and Load Forecast (as updated)

Load growth anticipated from existing customers will be exacerbated by the establishment of significant facilities by new customers in the near future. At a general level, BC Hydro has captured this in its updated load forecast which is also summarized in Part 3 of the Exhibit B-22¹³. This forecast evidence looks at the region as a whole and does not rely on the behaviour of individual customers. Substantive growth in the area arising predominately from a new and expanding resource industry could not have been anticipated sooner. If the forecast materializes as expected, system reinforcement in addition to the DCAT Project will be required in the area. While BC Hydro has labelled such a system reinforcement as the GDAT project it will only acquire definition as these demands develop.

BC Hydro's forecast of significant load growth is not mere conjecture. A portion of BC Hydro's load forecast in the Dawson Creek and Groundbirch areas is corroborated by the fact that five major new loads, with a combined total of 178.5 MW,¹⁴ have made requests for service. The DCAT Project is necessary in order for BC Hydro to provide service to these five new loads in a reasonable timeframe.¹⁵ The five customers are Air Liquide, ARC Resources Ltd., Encana Corporation, Murphy Oil Company Ltd., and Shell Canada Ltd. These customers have come to BC Hydro ready, willing and able to meet the requirements for service, and BC Hydro has an obligation to serve them. Air Liquide is reliant on electric service for its energy needs and has no ability to generate its own electricity beyond what any customer has to purchase a generator and pay for fuel. The evidence shows that Air Liquide will be unable to expand its plant as anticipated if it cannot receive electrical service from BC Hydro.¹⁶ At least three others of the five customers have made irrevocable decisions by expending capital to configure their facilities to take electricity instead of relying on natural gas compression.¹⁷ These customers have relied on BC Hydro's Electric Tariff in making these investments,¹⁸ and they are entitled to service. If the DCAT Project is not approved, the evidence shows that BC Hydro has no other plan which can provide service to these customers without incurring significant delay beyond the DCAT in-service date.¹⁹ A decision by the BCUC now that puts in doubt the right of these customers to expect service could be expected to be very ill-received by the industry, particularly the natural gas sector, and would create unnecessary and

¹³ BC Hydro's load forecast for the Groundbirch and Dawson Creek areas is detailed in Exhibit B-1, Appendix B, pp. 73-87, and updated in Exhibit B-22, pp. 22-34.

¹⁴ Exhibit B-22, Attachment 2, p. 5, l. 9 (A8).

¹⁵ Exhibit B-22, Attachment 2, p. 8, ll. 19 – 27; Exhibit B-30, Response to BCUC IR 4.1.1.

¹⁶ Exhibit B-22, p. 3 and at Attachment 2, p. 10, ll. 12-13 (A19) & ll. 22-26 (A20), and p. 11, ll. 3 – 7 (A21); see also Transcript Vol. 2, p. 183, ll. 12-23.

¹⁷ Exhibit B-22, p. 3 and at Attachment 2, p. 15, ll. 13-18 (A34), p. 17, ll. 8-9 (A40) & ll. 23-25 (A42), p. 20, ll. 7 – 15 (A50).

¹⁸ Transcript Vol. 2, p. 178, ll. 17 – 25; p. 180, l. 23 to p. 181, l. 10.

¹⁹ Exhibit B-30, Response to BCUC IR 4.1.1; see also Exhibit B-15, Response to BCSEA IR 2.28.2.

unhelpful uncertainty concerning BC Hydro's commitment and ability to meet the needs of new customers contemplating locating in British Columbia.

As set out in the Application, the load growth that BC Hydro is anticipating in the Dawson Creek and Groundbirch areas is "some of the most dramatic, single industry load growth in a discrete area that it has experienced in recent history."²⁰ Much of this load growth is due to the efforts of the natural gas industry to bring to market unconventional gas reserves from the Montney gas basin,²¹ which is estimated to be one of the largest of North America's shale gas plays, and one of the most competitive.²² The development of unconventional gas in northeast BC has the potential to be a major economic driver in the province, as evidenced by recent activities such as significant land sale bonus payments to the province, permitting of liquefied natural gas (LNG) facilities, proposals to construct new natural gas transmission pipelines, and high and growing levels of capital investments by gas producers and processors.²³ Calculated using BC Hydro's forecast prices for natural gas over the next 20 years, gross revenues to the natural gas industry from the level of production identified in BC Hydro's Dawson Creek Area Load Forecast would approximate \$4.5 billion per year.²⁴ Production at this level would represent an economic boom to British Columbia and BC Hydro does not wish to see the prospects for it diminished due to the unavailability of the electricity required to accomplish those levels of production.

The general expectations contained in the load forecast are corroborated by the requests of these five specific customers. Their load, together with the growth anticipated in the non-gas sector, will create loads well in excess of 250 MW by fiscal 2013. This is significant because four of these customers have already agreed to provide security for their pro rata share of the cost of the DCAT reinforcements. The largest of these customers (Shell) has already signed a facilities agreement which is being held in escrow pending the issuance of a certificate of public convenience and necessity.²⁵ The other three (Murphy, EnCana and ARC) have all signed agreements to post security once facilities studies have been completed and a facility agreement has been entered into.²⁶ Together, the DCAT security that these four customers will post will account for 54.5% of the revised DCAT Project cost estimate.²⁷

²⁰ Exhibit B-1, p. 2-1, ll. 10-12.

²¹ Exhibit B-1, p. 2-8, ll. 13-16.

²² Exhibit B-1, p. 2-8, ll. 3-5.

²³ Exhibit B-1, p. 2-8, ll. 12-15.

²⁴ Exhibit B-1, p. 2-17, ll. 6-10.

²⁵ Exhibit B-31, p. 1.

²⁶ Exhibit B-31, p. 1; Exhibit B-45, p. 1.

²⁷ Exhibit B-31, Attachment 1, p. 4 (\$88.4M from Shell toward DCAT estimated cost), and Attachment 3, p. 2 (\$15.1M from Murphy), Exhibit B-45, Attachment 1, p. 2 (\$7.4M from ARC) and Attachment 2, p. 2 (\$10.3M from Encana), Exhibit B-1-3, p. 4-23 (revised DCAT Project cost estimate of \$222.3M).

The result of these commitments is remarkable. It means that BC Hydro will be expanding a core part of its system in an area that is currently inadequately served by its network with virtually no risk that the assets that are thus constructed will be stranded before they are paid for. That is, if BC Hydro constructs the DCAT Project, it will do so with the knowledge that existing customers will obtain improved service from the transmission system relative to what they would have received without its reinforcement, but these customers, and ratepayers generally, will only be allocated less than half of the project cost. Between 92 and 100 %²⁸ of the remaining 60 % of the reinforcement costs will be covered by the security that the new customers will be posting pursuant to the provisions of TS 6. In the result, those new customers using the system will contribute to it through their rates or, alternatively, by forfeiting their security. Thus, BC Hydro is assured to a much greater extent than normal that the cost of reinforcing its system will be substantially recovered from new customers while significantly benefiting existing ones.

The only new customer that has not yet agreed to post security is Air Liquide. Air Liquide is still in the final process of confirming that it wishes to proceed with the investment in question but has indicated it is willing to sign a security agreement as soon as it has made that determination. In any event, its load is a very small percent of the overall load and not critical to justifying the need for the expanded system capacity that gives rise to this application.

4. Project Description

The DCAT Project consists of a new 230/138 kV Sundance Substation (**SLS**) east of Chetwynd Substation (**CWD**), an approximately 60 km long 230 kV double circuit steel pole transmission line from the new SLS to Bear Mountain Substation (**BMT**), an approximately 12 km long 230 kV double circuit steel pole transmission line from BMT to Dawson Creek Substation (**DAW**) operated at 138 kV, and the addition of 230/138 kV transformation and expansion of DAW. Approximately 55 km of the existing 138 kV transmission line IL358 (CWD to BMT) will be decommissioned, as will all of the 138 kV transmission line IL362 (BMT to DAW).²⁹

Section 4 of the Application and the Project Update in Exhibit B-1-3 set out the technical requirements for each major component of the DCAT Project and includes the cost estimate for completion. Together with appendices in the Application, the supplemental evidence set out in B-22, and responses to information requests, BC Hydro submits that the Application shows that BC Hydro has proposed and designed the DCAT Project with requisite consideration of engineering requirements, line routing and substation location options, and cost.

²⁸ This will depend on whether Air Liquide proceeds with its project or not.

²⁹ Exhibit B-1, page 4-1.

5. Whether the Project Meets the Need

5.1. Reasonableness of Service

5.1.1. *Ability to Alleviate Existing Constraints on the Transmission System*

The DCAT Project was designed to alleviate the existing constraints on the system. If the preferred project alternative is approved and once it is in service, it will allow BC Hydro to serve 185 MW at the N-1 standard.³⁰ This is more than the existing load that is already connected in the area. Once in service the DCAT Project will also enable BC Hydro to provide N-0 level service to the five identified industrial customers who have requested service, all of whom are aware of this and have been informed of the requirement to sign Remedial Action Scheme (RAS) agreements.³¹ No other project alternatives in evidence would enable this capacity at these service levels within the timeframe that the DCAT Project will provide them.

5.1.2. *Ability to Meet Load Growth and Forecast*

In addition to enabling N-0 service to the five identified industrial customers, the DCAT Project will provide BC Hydro with a limited ability to serve additional industrial load in the area with N-0 service.³² Further system reinforcement will be needed in order to accommodate load growth beyond that. The DCAT Project has been designed as the first stage of a multi-staged reinforcement to meet forecast load growth. The preferred project alternative provides flexibility for the next stage and interconnection options and, unlike Alternative 2, places BC Hydro in a good position to respond to the High Scenario forecast if necessary.³³

5.1.3. *Reasonableness of the Staged Approach*

Given the large increase in load in the area, the additional forecasted load, and the desired service timelines for existing service requests, BC Hydro's staged approach to system reinforcement in the DCAT area is eminently reasonable. The approval of the Preferred Alternative will enable BC Hydro to provide service to the loads that have materialized, and also allow BC Hydro some flexibility in designing the following stage based on further service requests and whatever forecast updates are available in that timeframe. The rationale for concluding that the Preferred Alternative is the most reasonable way to provide this service is set out in Section 6 below.

³⁰ Exhibit B-22, Attachment 2, p. 73 (A93).

³¹ Exhibit B-15, Response to CEC IR 2.14.2; Exhibit B-22, Attachment 2, p. 73 (A93).

³² Exhibit B-22, Attachment 2, p. 7, ll. 3-12 (A11).

³³ Exhibit B-1, p. 3-5, ll. 3-4 and p. 3-6, l. 11 to p. 3-7, l. 5.

5.2. Adequacy and Safety of Service

5.2.1. *Whether the Service will meet the Appropriate Standards, including Compliance with the N-1 Service Criterion*

The DCAT Project alone will permit the five new customers to be served at a N-0 standard as opposed to the N-1 standard required in the long term. Until further reinforcement is accomplished, these customers and some of BC Hydro's existing customers have accepted that they will be part of a RAS that ensures their load is automatically cut first if a contingency outage occurs.

The affected customers are aware of the N-0 service and have accepted it, knowing that BC Hydro has plans to apply for a CPCN for a further project that would enable N-1 level of service. Given that denying the DCAT Project CPCN will delay the provision of the service that these customers are requesting, it would serve no purpose to deny the CPCN on the grounds that the DCAT Project will not on its own provide N-1 service to certain industrial customers. There is no evidence before the BCUC that there are any alternatives sufficiently developed at this time to provide N-1 service to all customers in the area in the desired timeframe. That said, the two-step approach being proposed by BC Hydro minimizes the risk of overbuilding. That is, if the five customers did not follow through, BC Hydro can realize its security from them and further system upgrades may not be required. Thus, the risk of existing ratepayers being exposed to unused assets is rendered very low by the approach adopted.

5.2.2. *Safety of Service*

BC Hydro has committed to ensuring that all work on the DCAT Project meets safety standards.³⁴ No one has contended that the DCAT Project will not meet all applicable safety requirements.

6. Evaluation of Alternatives

6.1. Alternatives Considered and Conclusion

The question of alternatives to serve the Dawson Creek/Groundbirch area needs was canvassed at length, with several alternatives being suggested by Interveners and BCUC staff. BC Hydro originally considered several alternatives as set out in its System Planning Report, several of which were dismissed either because they were not cost effective or because they could not provide reliable capacity to meet long range supply requirements.³⁵ Two feasible alternatives were considered in further detail in the System Planning Report and described in the Application at Chapter 3.

³⁴ Exhibit B-1, p. 4-28, ll. 14-17.

³⁵ Exhibit B-1, pp. 61-65.

Alternative 1, a 230 kV transmission solution, which includes a new Sundance substation, double circuit 60 km 230 kV line from SLS to BMT and a double circuit 12 km line from BMT to DAW (operated at 138 kV).

Alternative 2, a 138 kV transmission solution, which includes a new Sundance substation (SLS), a new 60 km 138 kV line from SLS to BMT, a double circuit 12 km line from BMT to DAW, and a 110 MVAR static VAR compensator (SVC) at BMT.

Alternative 1 is the Preferred Alternative. Alternative 1 has a lower present value cost, provides superior energy transfer capability to serve the load growth, extra capacity to accommodate greater economic development, lower losses, greater reliability, lower footprint with fewer structures and greater reclamation from decommissioning.³⁶ Although Alternative 2 would also enable BC Hydro to serve the load that has so far materialized, it would be less capable of meeting higher load forecasts than the preferred project alternative. Given that the load forecast beyond the next two years has increased since the Application was submitted,³⁷ this has made Alternative 1 more attractive compared to Alternative 2.

As described in the System Planning Report, further system reinforcements beyond an initial project will be required over the 30 year planning to meet the long range forecast. For planning purposes in order to allow an effective evaluation of initial supply alternatives, a future system upgrade was defined common to Alternative 1 and Alternative 2 and generally referred to in the Application and this proceeding as an F2016 stage development or a GDAT project.³⁸ This future project is at an initial planning stage and will be the subject of its own regulatory processes, at the appropriate time as necessary. The scope, scale and timing of such a future project or projects remain to be defined.³⁹

During the course of these Proceedings several other alternatives for the DCAT Project were suggested by Interveners and BCUC staff. As a result, BC Hydro analysed five additional transmission alternatives and two local generation alternatives, and devoted a substantial portion of its supplemental evidence to the discussion of these alternatives.⁴⁰ Of the five supplemental transmission alternatives, one (B2) was identical to the Preferred Alternative in the F2014 stage (i.e. the DCAT Project), and the other four involved scenarios in which the proposed Sundance Substation would not be built. The two supplemental generation alternatives analysed involved the construction by BC Hydro of local natural gas generation in the Dawson Creek area. The supplemental alternatives were compared to the

³⁶ Exhibit B-1, page 3-13, ll. 2-22.

³⁷ Exhibit B-22, Attachment 2, p. 35 (A64).

³⁸ A description of later stage supply considerations was included in the System Planning Report at Exhibit B-1, Appendix B, pp. 93—100.

³⁹ Exhibit B-30-1, CEC IR 4.6.4 and 4.6.6; Exhibit B-22, Attachment 2, pp. 73-74 (A94).

⁴⁰ Exhibit B-22, Attachment 2, pp. 37 – 72 (A71 – A91).

Preferred Alternative, and then extensively canvassed through the IR process. Elements of the suggested alternatives arising in this proceeding will be further considered in the evaluation of future system reinforcement requirements, as appropriate.

The evidence demonstrates that the only other alternative analyzed that can be built in the same timeframe and has a lower PV Cost over the 30-year planning horizon is Alternative B2. This alternative has the same configuration as BC Hydro's preferred alternative during the DCAT stage but would be configured differently during the GDAT stage of BC Hydro's efforts to bring improved service to the Dawson Creek area.⁴¹ Thus, the two alternatives that can deliver timely service are the same for the DCAT stage, and only differ at a future stage which is still under study and will be the subject of a future regulatory proceeding.

The only alternative with a potentially lower net present value cost than the preferred alternative for the DCAT stage would be Alternative B1. The cost savings would be marginal⁴² and would come at the expense of a later in service date, less flexibility to optimize the system to future loads and a greater impact on the land. Finally, Alternative B1 would have less reliability than the Preferred Alternative. BC Hydro has concluded that these disadvantages outweigh the marginal cost savings that this alternative could permit.

In particular, the DCAT Project contemplates the transmission system reinforcement needed to enable BC Hydro to provide service to its existing customers by April 30, 2014 assuming a CPCN is issued by the end of September, 2012.⁴³ That is later than originally anticipated. It appears that several customer plants will be awaiting BC Hydro service by April 30, 2014,⁴⁴ and at least one other will be ready for service then.⁴⁵ The BCUC must consider and be guided by the government's objective for BC Hydro to develop adequate electricity transmission infrastructure in time to serve these customers. Thus, the ability of the DCAT Project as proposed to provide service sooner than most other alternatives is a significant factor in its favour.

⁴¹ Exhibit B-22, Attachment 2, p. 53 (A79) and p. 72 (A91).

⁴² Exhibit B-22, Attachment 2, p. 51 (A78); Exhibit B-30, Response to BCOAPO IR 4.8.1 (the estimated cost difference between the DCAT Project and Alternative B1 is in the range of 5 per cent to 10 per cent).

⁴³ Exhibit B-1-3 at page 4-25, l. 14.

⁴⁴ Exhibit B-22, Attachment 2, p. 15 (A33 -Encana requests service by December 2013 and will evaluate its options for interim supply if service from BC Hydro is not available in time for Encana's plant start-up); pp. 16-17 (A39 & A40 - Murphy's plant is already in service and being supplied by temporary on-site generation until the DCAT Project is in service); p. 19, ll. 11-12 (A47) & p. 20 (A50) (Shell's power demand for the DCAT Project is 60 MW in 2013 and a further 60 MW in 2014 - 2015, and Shell is making arrangements for temporary generators until BC Hydro service is available); p. 10 (A17 & A18 - Air Liquide requested service for its Phase 2 load for March 2013, and expects Phase 2 to be energized as soon as the DCAT Project is in service).

⁴⁵ Exhibit B-22, Attachment 2, p. 12, ll. 18 - 19 (A26) & p. 13, ll. 7-8 (A28) (ARC Resources requires service by Q2 2014).

In identifying the DCAT Project as the preferred alternative, BC Hydro evaluated supply capability, reliability, financial factors, substation and right-of-way requirements, environmental impacts, input from the general public and consultation with First Nations. BC Hydro maintains that the Preferred Alternative best meets the needs identified and no other alternative in evidence can provide adequate service more efficiently.

7. Fairness of Service

7.1. Application of the Electric Tariff and TS 6

7.1.1. *Contribution of New Customers to System Reinforcement, and related Security Issues*

When new or existing customers seek service from BC Hydro for new loads at transmission voltage, connecting and serving that load may require System Reinforcements. TS 6 provides that the connecting customer is responsible for the cost of the System Reinforcement necessitated by their load. Also pursuant to TS 6, BC Hydro provides to the customer an offset towards the cost of the System Reinforcement. The amount of this offset is capped by the lower of the System Reinforcement costs and an offset formula that is driven, primarily, by a multiple of the first year's revenue expected from the customer. TS 6 also defines the amount and form of security that customers must post in respect of any costs borne by BC Hydro as an offset to the System Reinforcement and the manner in which the security will be returned to the customer.⁴⁶

The tariff amendment sought by BC Hydro will, if approved, permit BC Hydro to recover security from distribution customers for the cost of transmission reinforcements necessitated by new distribution loads of 10 MW or more. The basis for that request is provided in Section 7.2.

The application of TS 6 to the five new customers has been the subject of many of the information requests and general controversy associated with this proceeding. It is interesting to recognize that while TS 6 has been in existence since 1991, controversy has arisen now when BC Hydro has sought to apply it to members of a new industry in the province which has not historically been a major user of electricity and has not been typically represented before the BCUC. Moreover, some of the major industrial users of electricity in this province that are members of AMPC are struggling financially⁴⁷ and therefore there are declining expectations that they will construct new facilities. The changing nature of the fortunes of these different sectors of British Columbia's industrial base may go some way to explaining the different perspectives that some parties now take to TS 6 relative to their perspective in the past.

⁴⁶ Exhibit B-22, Attachment 2, pp. 76-77 (A101).

⁴⁷ Exhibit C3-10, p. 16, ll. 23-24.

Whatever the explanation, AMPC has chosen to use this proceeding as a starting point for a campaign to have TS 6 modified. BC Hydro has argued and the BCUC has agreed that this hearing is not the place to mount that campaign and the issue before the BCUC in this case is whether or not TS 6 has been properly applied, not whether TS 6 should be revised.

In this respect, the BCUC has raised a number of issues it wishes to see addressed in argument. BC Hydro will do that in the sections that follow but does note at the outset that despite AMPC's numerous suggestions that it would be questioning the manner in which the TS 6 has been applied in this case and despite the BCUC's ruling that this was the issue that was within the scope of this proceeding, AMPC has not led any evidence to support the proposition that the proposed application of TS 6 to the five new customers sought to be served through the DCAT Project is inappropriate. AMPC's evidence lists a series of complaints with respect to the current wording of TS 6 but it is devoid of any suggestion that TS 6 has been inappropriately applied by BC Hydro.

Although it implicitly concedes that BC Hydro has applied TS 6 correctly, AMPC says that "BC Hydro ought to have recognized that TS 6 would create this outcome several years ago once it became aware of the initial scope of demand driving the DCAT Project".⁴⁸ It says that so long as TS 6 is in effect, DCAT ought not to proceed. AMPC provides no basis for its suggestion that the current load forecast for the DCAT area could have been anticipated "several years ago" and there is no support for that proposition on the record. Load growth in the area has been unprecedented and unpredicted in any credible forecast of which BC Hydro is aware.⁴⁹

AMPC also suggests that the members of AMPC are not being self-serving in making this suggestion but have submitted the evidence essentially because of a policy disagreement with the government's proposal to conduct a policy review in the future in a manner which does not unnecessarily delay projects that are currently ready to proceed.

The evidence submitted by AMPC is an initial attempt at argument more than it is evidence. It is based on two fundamental complaints. One complaint is that TS 6 does not obtain a sufficient contribution from new customers. It does not say that the concept of the TS 6 contribution policy is conceptually flawed. However, it would like to fine tune the application of the approach to yield a different basis for cost sharing between new and old customers in the circumstances.

Its other complaint is that the application of TS 6 in the case of the DCAT Project yields a different result than AMPC understands may be applied to customers with the potential to be served by the Northwest Transmission Line Project. Neither of these arguments is in the least compelling.

⁴⁸ Exhibit C3-8, p. 16, ll. 13 to 15.

⁴⁹ Exhibit B-1, p.3-2, ll. 22-27 and p.3-3, l.1.

First, the evidence in this proceeding provides no basis for the BCUC concluding that the approach in TS 6 to striking the balance between old and new customers is suddenly fundamentally flawed. The Commission, BC Hydro and its ratepayers, including AMPC, have accepted this balance for over 20 years. If AMPC now wishes to rethink its position because it believes that British Columbia is on the cusp of a significant period of growth, policy review of the type that government has advised the BCUC it is planning to undertake may be very sensible. To put new development on hold while that review takes place, however, is to threaten the very growth that made the review necessary in the first place and may effectively halt industrial developments requiring service from BC Hydro throughout the Province.

From a legal perspective, AMPC is inviting the BCUC to apply what might be called a "presumption of invalidity". That is, even though the BCUC has determined that TS 6 is just and reasonable and BC Hydro was required to file rate schedules that conform to it, AMPC has asked the BCUC to assume TS 6 is not just and reasonable and reject the DCAT application on that basis. This the BCUC may not do. To the contrary, the BCUC must assume that the existing rate schedules are just and reasonable until, after a hearing established for that purpose, it has concluded they are not.⁵⁰

From a practical perspective, declining to certificate the DCAT Project will not encourage the natural gas sector to make an appropriate economic choice before determining that it wishes to employ electric compression to support its operations as AMPC suggests. It remains unclear how a two to three year review process is going to introduce certainty for investments that the customers have already committed to make. The fact is that changing the rules at the eleventh hour will fundamentally shake the confidence of the five potential new customers who have already made investment choices in reliance on TS 6, and there is every possibility that loss of confidence will radiate out to others contemplating similar investments here. Jeopardizing British Columbia's growth prospects to serve AMPC's concern with respect to current rate design seems an unnecessarily high price to pay.

The second reason that AMPC puts forward in its evidence for rejecting the DCAT Project because TS 6 is inadequate is that it fears that TS 6 will not be applied in the case of the Northwest Transmission Line Project. That is speculation by AMPC and in any event wholly irrelevant. Any concerns that AMPC has with the treatment of new customers on the NTL Project should be addressed in the appropriate forum. The DCAT Project application before the BCUC is not that forum.

In sum, AMPC's evidence is an attempt to reargue the positions that it took unsuccessfully during the second pre-hearing conference. BC Hydro respectfully submits that the letter from Deputy Minister Steve Carr to the BCUC dated April 3, 2012 submitted by MEM as Exhibit C16-2 supports this view. That letter contains the following:

"Based on the availability of these preferred processes, the Ministry supports BC Hydro's request to exclude from this proceeding the five issues it has identified. This

⁵⁰ See UCA s. 58(3).

approach would enable the DCAT CPCN proceeding to move forward expeditiously, while ensuring suitable forums to discuss broader policy and rate design matters exist.”

In its reasons for decision in connection with Order No. G-56-12, the BCUC acknowledged this letter and said as follows:

“The Panel acknowledges the submissions from the MEM that the government is planning a broader review of industrial electricity policy, including retail access and rate design issues. Accordingly, questions that relate to the appropriateness of rolled in rate principles, or postage stamp rate principles, as a system wide BC Hydro policy, are out of scope for this hearing. However, the Panel finds that it is appropriate for parties to provide evidence and ask questions as to the application of TS 6 to the DCAT project so as to allow the Commission Panel to determine whether the DCAT project is in the public interest.”

The question now before the BCUC is whether it is in the public convenience and necessity that existing customers make a contribution to the reinforcement of BC Hydro's transmission system equal to 40% of the Project costs (less than \$90 million). Some reinforcement of the transmission system on a rolled in basis is necessary to provide existing customers with the level of service to which the BCUC has determined they are entitled. Thus, all or the bulk of the \$90 million expense would be incurred whether DCAT is designed to meet new customers' needs or not. Further, the retention and attraction of major new industry to the Province, in BC Hydro's respectful view, is a worthwhile investment. To put that into jeopardy because AMPC thinks that smaller portions of the Project costs should be rolled in than TS 6 would require seems to be an extraordinary risk to take.

AMPC and others have implied that a customer's option of self-supply should be considered a supply alternative. AMPC provides no basis for asserting that new customers should be required to self-supply where existing customers have faced no such obligation. In fact, new customers are as entitled to service as existing customers if they meet the requirements of the UCA and the tariff. These customers meet those requirements and are free to choose electric service if it best meets their needs. This argument is elaborated in the cover letter to Exhibit B-22 at page 5.

BC Hydro notes that the evidence of the Intervener CSI supports the DCAT Project.⁵¹ CSI however seemingly proposes that BC Hydro should not allocate a portion of the DCAT Project as system reinforcement under TS 6 for the identified industrial customers, but rather give greater consideration to wind farm developments. BC Hydro considers much of this evidence to be outside the scope of this proceeding, but will address it in Reply, if necessary, when it is known how CSI will rely upon its evidence in argument.

⁵¹ Exhibit C-15-5, p.1, ll.17-18.

The BCUC has asked parties to address certain specific issues raised in its letter L-36-12 which forms Exhibit A-31 in this proceeding. The next section deals with those issues.

7.1.2. Specific Matters Relating to TS 6 (BCUC Letter L-36-12)

A. SET Guidelines

1. Should the Utility System Extension Test Guidelines (**SET Guidelines**) apply to TS6? If so, does TS6 reasonably reflect the SET Guidelines?

TS 6 was approved by the BCUC on January 21, 1991, and has not changed since that time.⁵² By Order No. G-80-96 the BCUC issued the SET Guidelines as voluntary guidelines in September 1996. No changes were made to TS 6 as a result of the SET Guidelines. In BC Hydro's view, the SET Guidelines are not a useful guide to the proper interpretation of TS 6 and have no independent relevance in the context of BC Hydro's existing rate schedules.

B. Maximum Offset

2. The Guidelines recommend that, as a general principle, the costs and benefits to be considered in the analysis of proposed system extensions include "...net revenues from the system extension(i.e. customer payments less revenues to provide for commodity purchases and upstream transmission charges)." (p. 32)

2.1 How does this section of the Guidelines apply to the determination of the Maximum Offset as calculated in TS 6, Appendix 1, clause 5(c)(ii)?

2.2 Assuming it is applicable, what is an appropriate cost for commodity purchases and upstream transmission charges to use in the calculation of the Maximum Offset?

As explained above, in BC Hydro's view, the SET Guidelines are not applicable to TS 6. It follows that the clause referenced from page 32 of the SET Guidelines does not apply to the determination of the Maximum Offset calculated pursuant to clause 5(c)(ii) of Appendix 1 of TS 6.

C. 150 MV.A Threshold

3. TS 6, Appendix 1, clause 2 defines System Reinforcement such that it does not include any "additions or alterations to generation plant and associated transmission, or transmission lines at 500 kV and over," unless the new or incremental loads exceed 150 MV.A.

⁵² Exhibit B-22, Attachment 2, p. 75, ll. 24 – 25 (A100).

BC Hydro states that "System Reinforcement includes all costs BC Hydro will need to incur to permit its transmission system to provide service. It does not include any incremental generation costs incurred to provide service unless the customer load exceeds 150 MV.A. None of the DCAT Project customers has a load exceeding 150 MV.A." (Exhibit B-22, Q 102)

3.1 TS 6 states "additions or alterations to generation plant" while BC Hydro refers to it as "any incremental generation costs." Do "additions or alteration to generation plant" and/or "incremental generation costs" include costs for all potential sources of supply including the incremental costs to obtain electric energy from Independent Power Producers if required?

3.2 Would it be appropriate to aggregate the five new customers identified in the Application for the purpose of interpreting the definition of System Reinforcement in TS 6, Appendix 1, clause 2, and consequently the inclusion of any "additions or alterations to generation plant" and/or "incremental generation" costs incurred to provide service to the new customer in the System Reinforcement calculation?

3.3 Assuming it is appropriate to aggregate the five customers identified in the Application, what would the appropriate cost be for of any "additions or alterations to generation plant" and/or "incremental generation" costs incurred to provide service to the new customers?

TS 6 governs the relationship between BC Hydro and each of its customers that takes service under TS 6. By its very nature, TS 6 applies to an individual customer and that customer's load, not to an aggregate load of multiple customers.⁵³ Having regard to the purposes of TS 6, it would not be appropriate to aggregate the load of several customers when determining whether the 150 MV.A threshold in the System Reinforcement definition is met. Appendix 1 of TS 6 represents the unique Facilities Agreement that is to be signed, on an individual basis, between BC Hydro and each customer taking service under TS 6. Grouping customers together for the purpose of assessing whether definition thresholds in that Appendix are reached is fundamentally inconsistent with the intended function of TS 6.

Because none of the DCAT Project customers has a load exceeding 150 MV.A,⁵⁴ and it is not appropriate to aggregate the load of multiple customers when determining whether the 150 MV.A threshold is met, the 150 MV.A threshold is not triggered. The phrase "additions or alterations to generation plant" is used in the System Reinforcement definition only where the 150 MV.A threshold is triggered. Because the 150 MV.A is not triggered here, it follows that it is not necessary in this proceeding to consider what is meant by the phrase "additions or alterations to generation plant". Because it is not appropriate to aggregate the load of multiple customers when determining whether the 150 MV.A threshold is met, it

⁵³ Exhibit B-22, Attachment 2, p. 84, ll. 17 – 28 (A117).

⁵⁴ Exhibit B-22, Attachment 2, p. 85, l. 3 (A118).

also follows that there is no need to determine what the appropriate costs would be for any "additions or alterations to generation plant" if the loads of the five identified customers were aggregated.

D. Period of Time to Assess 150 MV.A Threshold

4. TS 6, Appendix 1, clause 5(c)(ii) requires that the "first year of normal operation" be used to calculate the estimated incremental revenue and incremental operating and maintenance expenses. The System Extension Guidelines state that "... where customer contributions are required, the Commission recommends that the utilities develop a policy which requires at a minimum all customers who attach within the first five years to contribute to system extensions." (p. 26) The Systems Reinforcement definition in TS 6, Appendix 1, clause 2 does not specify a period of time for determining the 150 MV.A load threshold.

4.1 What period of time would be appropriate to ascertain if the 150 MV.A threshold is met; the first year of normal operations, the largest forecast load within five years of the system reinforcement being complete, the full 30-year forecast, or some other point/range of time?

The 150 MV.A provision of TS 6 does not specifically address the timing of incremental load increases. Where it appears that a customer may be planning to add load to BC Hydro's system on a phased basis, BC Hydro takes a pragmatic approach to determining what constitutes the "Customer's Plant" for purposes of the application of TS 6 and the determination of system reinforcements. BC Hydro will consider various sources of information about the customer's project, including the sizing of the customer's own electrical equipment associated with the Project, public announcements by the customer, information contained in environmental or other applications and permits relating to the Project, and any plans the customer has to develop the Project in phases within a short period of time, such as one to three years.⁵⁵

BC Hydro submits that such factors, when taken together, enable a fair determination of what comprises the "Customer's Plant" for the purpose of applying TS 6, and this method is less prone to abuse than an arbitrary cut-off period may be. BC Hydro also notes that a customer has a disincentive to circumvent the 150 MV.A provision by underestimating its load because this increases the risk that BC Hydro will be unable to provide adequate service on a timely basis.⁵⁶

⁵⁵ Exhibit B-30, Response to BCUC Information Request No. 4.3.1.

⁵⁶ Exhibit B-30, Response to BCUC Information Request No. 4.3.1.

E. Subsequent Reinforcement Cost

5. When interpreting System Reinforcement in TS 6, Appendix 1, clause 2, should any subsequent reinforcement costs to the transmission system, such as the F2016 Stage GDAT Project (which is required to provide N-1 service to the new customers) be considered?

5.1 Assuming yes, how should the costs of these subsequent reinforcements be determined in the absence of firm project estimates?

BC Hydro has not sought security or contribution in aid of construction for the cost of a GDAT project from the five new customers for loads associated with the DCAT Project because all of these five loads will be served prior to the implementation of a GDAT project.⁵⁷ In this way, BC Hydro is treating these customers the same as any other customers whose load is connected to the system in advance of BC Hydro undertaking system reinforcements associated with existing load. For instance, the treatment of the new customers described in response to BCOAPO IR 4.16.4 is entirely consistent with the treatment of load from other customers who since the Fall of 2009 have signed RAS agreements,⁵⁸ these being existing loads that will have N-1 service only after system reinforcements in the GDAT stage are implemented.⁵⁹ These customers will not be required to make dedicated contributions to the cost of the DCAT Project or a GDAT project because they are existing customers.

TS 6 is applied to customers at the time they commit to service at a particular level. For Shell that has already occurred and will occur for the other customers as soon as their facilities studies are complete. The GDAT stage will not be a defined Project by then and there is no basis on which TS 6 contemplates a facilities agreement to be reopened once both BC Hydro and the new customer have made the commitments contained within them.

Notwithstanding that it would be incorrect to do so, BC Hydro notes that if the definition of System Reinforcement in TS 6 were to be interpreted now to include not only DCAT Project system reinforcement costs but also GDAT system reinforcement costs, then this would have the effect of changing the offset calculations under section 5 (c) of Appendix 1 of TS 6. The revenue applicable to the offset calculation from the five customers is expected to be approximately \$429 million, and that based on these forecast revenues, even if all the GDAT stage costs in addition to 60 per cent of the DCAT Project costs were allocated to the five customers, BC Hydro's calculated offset would not result in a requirement for a customer contribution in aid of construction under s. 5(b)(i) of Appendix 1 to TS 6.⁶⁰

⁵⁷ Exhibit B-30, Response to BCUC Information Request No. 4.10.0.

⁵⁸ Exhibit B-15, Response to CEC Information Request No. 2.14.2.

⁵⁹ Exhibit B-30, Response to BCOAPO Information Request No.4.4.2.

⁶⁰ Exhibit B-30, Response to BCUC Information Request No. 4.10.0.

Consideration of GDAT system reinforcement costs to determine security requirements would make little or no sense. A GDAT project will not be in service until at least F2016⁶¹ by which time the Projects of the five customers will either be built (in which case security is not necessary) or abandoned (in which case DCAT security will be realized and a GDAT project only undertaken if required).

For these reasons, BC Hydro does not agree that the costs of subsequent reinforcements contemplated in a GDAT project should be included.

F. Tariff Supplement No. 6, Appendix 1, clause 3(a) and "public interest"

6. TS 6, Appendix 1, clause 3(a) states that it is the primary responsibility of the Customer to establish that the provision of electrical service by BC Hydro to the Customer's Plant, is in the public interest.

6.1 Have the five customers demonstrated that the system reinforcement is in the public interest?

Clause 3(a) of Appendix 1 of TS 6 states that on all relevant applications, the customer shall have the prime responsibility for demonstrating that the provision of electrical service by BC Hydro to the customer's plant is in the public interest. This clause is intended to focus on safety and reliability arising from a physical extension of the system by imposing on the customer the obligation to build its interconnecting facilities to a standard acceptable to BC Hydro.⁶² BC Hydro has required all five customers to construct facilities that will meet this standard.

BC Hydro resists an overly broad interpretation of TS 6 in this regard. It does not believe TS 6 was intended to make BC Hydro the arbiter of the public interest and to interpret the provision that way would be fundamentally inconsistent with the reasoning in *Chastain*.⁶³ That said, for all the reasons that the evidence in this case has demonstrated that DCAT is in the public convenience and necessity, system reinforcement to serve these five new customers is in the public interest. These new customers have all agreed to pull their weight through either paying their tolls or through realization of the security they have provided. They will bring a substantial new industry to the Province with all the benefits that brings. Thus, providing service to them would satisfy any public interest test that could reasonably be applied in the circumstance.

What should not be considered as part of the public interest is the rate impact of the proposed project as compared to the rate impact of not serving these customer loads at all. Rather, when considering whether the service will be adequate, safe, efficient, fair and reasonable, an aspect of the reasonableness consideration is how the rate impact of this project compares to the rate impact of

⁶¹ Exhibit B-1, p. 3-2, l. 13.

⁶² Exhibit B-22, Attachment 2, pp. 78 - 79 (A106).

⁶³ *Chastain v. British Columbia Hydro and Power Authority* (1972), [1973] 32 D.L.R. (3d) 443 (B.C.S.C.).

other reasonable alternatives for serving this load. This point has been addressed in section 2.3 above in the discussion of British Columbia's energy objectives.⁶⁴ It is reasonable to expect that BC Hydro's cost of energy to serve the incremental customer loads will be the same regardless of what transmission project alternative is used, and therefore the cost of that energy will have no influence on the decision among transmission project alternatives. BC Hydro's analysis of the supplemental generation alternatives included a consideration of the cost of energy in order to compare the generation alternatives to the preferred DCAT alternative. That analysis showed that the preferred alternative has a lower PV cost than the generation alternatives.⁶⁵

G. Public Interest and Future Stages

6.2.2 Should consideration be limited to the DCAT Project or should consideration also be given to the 2016 Stage GDAT Project which is required to provide N-1 service.

The DCAT Project should be considered with the GDAT stage as part of its context, but a GDAT project is not before the BCUC. In particular, where the choice of the DCAT Project alternative may affect the choice of alternatives needed in the GDAT timeframe (F2016 or later), then it is fair to compare these choices over the 30 year planning horizon contemplated in the Application, to the extent that it is feasible to do so. That is to say, BC Hydro has provided high level guidance on how the F2016 stage is likely to be influenced by the DCAT alternatives examined,⁶⁶ and it is appropriate to consider that information when making a decision on the DCAT stage. Fundamentally the DCAT Project efficiently addresses current needs and provides a robust regional platform for any future growth scenarios and attendant required system reinforcement.

An important feature of the two-stage approach is that it minimizes the risk of overbuilding. First, the security provided for the DCAT Project minimizes the financial risk to ratepayers in the event that some of the DCAT load does not materialize. Second, by limiting the load growth being addressed in the DCAT stage, BC Hydro has not exposed its ratepayers to the financial risk of further system reinforcements to support additional forecast load. The DCAT stage is intended to work with the GDAT stage, but does not commit BC Hydro and its ratepayers to a particular path for a GDAT project or to building for a particular load forecast. BC Hydro has real customers who are waiting for the DCAT Project,⁶⁷ and it is neither necessary nor desirable to delay approval of the DCAT Project until the details of a GDAT project are

⁶⁴ See also Transcript Vol. 2, p. 238 l. 5 to p. 239, l. 26.

⁶⁵ Exhibit B-22, Attachment 2, pp. 64-68 (A89).

⁶⁶ See e.g. Exhibit B-22, Attachment 2, p. 37 (A71), pp. 40, 41, 43, 45 & 47 (A72), pp. 51-56 (A78, A79, A80, A81, A83), and p. 72 (A91); see also Exhibit B-30, Responses to BCUC IRs 4.4.9, 4.4.10, 4.4.11; see also Exhibit B-1, p. 3-7, ll. 10 - 16.

⁶⁷ Exhibit B-22, Attachment 2, p. 10 (A18), pp. 16 - 17 (A39, A40), and P. 20 (A50).

planned. The time to consider detailed information on the GDAT stage is when there is a fully developed project proposal sufficient to support a CPCN application for a GDAT project.

7.2. BC Hydro's Proposed Changes to the Electric Tariff

7.2.1. *Proposed revision and its impact*

BC Hydro has proposed to revise section 8.3 of the Electric Tariff Terms and Conditions to allow it to obtain security for the cost of transmission reinforcements where those reinforcements are necessitated by a request for 10 MW or more of distribution service. At present, new transmission customers are required to post security for transmission reinforcement to serve their load, whereas new distribution customers are required to post security for distribution reinforcement costs but not transmission reinforcement costs. In most cases, distribution loads are relatively small, in which case there is no need for transmission reinforcement. However, in those rare cases where a distribution load is 10 MW or higher and may require transmission system reinforcement, there is no principled basis on which to distinguish between a transmission load and a distribution load with respect to transmission system reinforcement costs. Any such distinction is undue. BC Hydro simply seeks to ensure that ratepayers do not bear the risk for transmission reinforcement necessitated by large distribution load requests. For the foregoing reasons, this tariff amendment is fair and reasonable, and seeks to prevent undue discrimination between distribution customers with large loads necessitating transmission system reinforcements and their transmission customer counterparts.

7.2.2. *Whether the proposed tariff changes may result in discrimination in the treatment of existing and new customers with respect to the allocation of project costs and service level standards*

The proposed changes to the Electric Tariff will in no way result in discrimination in the treatment of existing and new customers. The evidence shows that other than the distribution customers identified for the DCAT Project, there are no other distribution loads of 10 MW or greater that have required transmission system reinforcements.⁶⁸ It follows that there are no existing 10 MW distribution loads that would have triggered the proposed clause, and therefore introducing the proposed tariff amendment now causes no differential treatment between existing customers and new customers.

The proposed tariff amendment has no effect on service level standards.

8. First Nations issues and Adequacy of Consultation with First Nations

8.1. Introduction

West Moberly First Nations ("WMFN") has had the benefit of exhaustive and extensive consultation on the DCAT Project. Notwithstanding BC Hydro's numerous attempts to engage with WMFN over the past

⁶⁸ Exhibit B-5, Response to BCUC IR 1.50.1; see also Exhibit B-30-1, Response to CEC IR 4.6.1.

two years, WMFN has only recently identified the specific potential impacts on WMFN's interests arising from the DCAT Project. The evidence on record supports that the identified Project related potential impacts have either been or can be, adequately dealt with through appropriate mitigation and avoidance measures as part of the ongoing consultation process. There are no "Oh, my God" issues, nor are there any showstoppers.⁶⁹ Indeed, there are no issues that cannot be dealt with through the cooperation of the parties over the next few months. None of the impacts identified require delay of the proposed construction start date.

BC Hydro submits that the information recently provided by WMFN in fact confirms BC Hydro's preliminary assessment that there are no significant impacts arising from the DCAT Project and as a result the duty to consult is at the low end of the spectrum. BC Hydro submits that the evidence supports that the consultation that was undertaken meets, if not exceeds this level. While consultation will continue for the life of the DCAT Project, BC Hydro is satisfied that consultation has been adequate up to this point in the decision-making process.

8.2. Summary of the Law on the Duty to Consult

The Crown's duty to consult with First Nations arises when the Crown (1) has knowledge, real or constructive of the potential existence of the Aboriginal right or title and (2) contemplates conduct that has the potential to adversely affect it.

Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511 ("Haida"), para. 35.

The scope and content of the duty to consult and if necessary, accommodate, varies with the circumstances and will be "proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed." This produces a "spectrum" of consultation. At the low end of the spectrum are cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor. In these cases, the only duty may be to give notice, disclose information and discuss any issues raised in response to notice. At the other end of the spectrum, where the right has been established, the potential infringement is of high significance to the Aboriginal peoples and the risk of non-compensable damage is high, "deep consultation", aimed at finding a satisfactory solution, may be required. Many cases will fall somewhere between these two extremes.

Haida, para. 39-44.

What is required of consultation depends on the facts of each individual case as they evolve over time:

⁶⁹ During the oral hearing portion of the proceeding, WMFN Land Manager described what was meant by an "oh, my God" issue. See DCAT Project Hearing Transcript, July 9, 2012, vol. 1, p. 314 (l. 2) to p. 315 (l. 6).

Every case must be approached individually. Each must also be approached flexibly, since the level of consultation required may change as the process goes on and new information comes to light. The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake.

Haida, para. 45.

The Supreme Court of Canada has held that an honourable process does not have to be perfect, what is required is that the process be reasonable:

The [consultation] process itself would likely fall to be examined on a standard of reasonableness. Perfect satisfaction is not required; the question is whether the regulatory scheme or government action "viewed as a whole, accommodates the collective aboriginal right in question": *Gladstone, supra*, at para. 170. What is required is not perfection, but reasonableness.

Haida, para. 62.

Since the above articulation by the Supreme Court in *Haida*, subsequent court decisions have provided further guidance on the requirements articulated in *Haida* and some additional general requirements of consultation that apply to all points along the spectrum in order to make consultation reasonable. These include:

- The consultation process must be engaged early in the decision-making process, before the process has moved too far along. (See *Squamish Indian Band v. British Columbia (Minister of Sustainable Resource Management)*, 2004 BCSC 1320, para. 74).
- The consultation process must involve information sharing wherein the Crown must share with First Nations all information (about the proposed decision or course of action) that is available and necessary to help the Aboriginal group understand the nature of the proposed decision or activity and/or the possible impacts of the decision or activity on any proven or asserted s. 35 rights (See *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 (S.C.C.), para. 64 ("*Mikisew*").
- There is a reciprocal onus on First Nations to carry their end of the consultation, to make their concerns known, to respond to the Crown's attempt to meet their concerns and suggestions, and to try to reach some mutually satisfactory solution (See *Mikisew*, para. 65).

The Supreme Court of Canada has also made it clear that there is no requirement for the parties to agree in every case:

The process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal "consent" spoke of in *Delgamuukw* is appropriate only in cases of established rights, and then by no means in every case. Rather, what is required is a process of balancing interests, of give and take.

Haida, para. 48.

In *Mikisew*, the Court reiterated that there is no veto, but went on to provide that there could, however, be changes in contemplated conduct, in that case the road alignment or construction, that would address a First Nation's concerns. (*Mikisew*, para. 65).

The purpose of consultation is to ensure that when the decision-maker is weighing the various interests involved, it has adequate information to make a properly informed decision:

Somebody has to bring consultation to an end and to weigh up the respective interests, having in mind the Yukon public policy favouring agricultural development where the rigorous climate of the Yukon permits. The Director is the person with delegated authority to make the decision whether to approve a grant of land already surrendered by the First Nation. The purpose of the consultation was to ensure that the Director's decision was properly informed. [Emphasis in original.]

Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53, para. 84. ("Beckman")

8.3. The BCUC's Role

The BCUC recently described its role in adjudicating Crown consultation with First Nations as follows:

The Commission's role in assessing the Crown's duty to consult was confirmed by the Supreme Court of Canada in *Rio Tinto Alcan* where it held that the Commission has the power to consider whether adequate consultation with First Nations has taken place. (*Rio Tinto Alcan [v. Carrier Sekani Tribal Council]*, 2010 SCC 43, para. 74)

Further, in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 (*Kwikwetlem*), the British Columbia Court of Appeal affirmed the Commission's obligation at paragraph 13 in relation to BC Hydro's Interior to Lower Mainland (ILM) Transmission Project:

The Commission's constitutional duty was to consider whether the Crown's constitutional duty of consultation had been fulfilled with respect to the subject matter of the application. Thus, before it certified the ILM Project as necessary and convenient in the public interest, it was required to determine when the Crown's duty to consult with regard to that project arose, the scope of that duty and whether it was fulfilled.

In *Kwikwetlem*, the Court also held that the Commission's duty is to determine whether the Crown's duty to consult and accommodate First Nations has been adequate up to the point of the Commission's decision. (*Kwikwetlem*, paras. 15 and 70.⁷⁰)

8.4. Consultation in the Present Case

8.4.1. *Identification of First Nations Potentially Impacted by the DCAT Project*

As noted in Chapter 6 of the CPCN Application, BC Hydro identified the First Nations with whom to consult by reviewing a number of publicly available information sources.⁷¹ In so doing, BC Hydro determined that the DCAT Project is located within the boundaries of Treaty 8. The following First Nations are the successors to the original signatories of Treaty 8: McLeod Lake Indian Band, Sauleau First Nations, WMFN, Blueberry River First Nations, Doig River First Nation, Prophet River First Nation, Halfway River First Nation, and Fort Nelson First Nation. BC Hydro also identified the Treaty 8 Tribal Association as an Aboriginal organization whose members have interests in the DCAT Project area.

As described in section 6.1.6.1, BC Hydro consulted with each of the identified First Nations. BC Hydro has provided evidence to the BCUC of its efforts in this regard.⁷² With the exception of WMFN, none of the identified First Nations have intervened in the BCUC process to raise concerns regarding the adequacy of consultation. All were given notice of the BCUC's process. With respect to the adequacy of consultation with the identified First Nations that have not intervened in the BCUC process, the only evidence on record is that of BC Hydro. BC Hydro submits that the evidentiary record supports a finding that consultation with these First Nations has been adequate.

BC Hydro has restricted its submissions below to the adequacy of consultation with the WMFN.

8.4.2. *The Scope of Consultation with WMFN*

BC Hydro concluded that based on the information available to it at the outset of the consultation process, its consultation obligation was at the low end of the *Haida* spectrum because of the anticipated minimal potential impacts arising from the DCAT Project on WMFN's exercise of its treaty rights. BC Hydro accepted from the outset that WMFN has proven treaty rights, but when the low level of potential impacts is considered, a low level of consultation is warranted. This conclusion was at all material times subject to information obtained through BC Hydro's ongoing consultation process. It is BC Hydro's position that the information obtained since its preliminary assessment has confirmed and corroborated its assessment as to the appropriate scope of consultation required with the WMFN.

⁷⁰ In the matter of British Columbia and Power Authority Certificate of Public Convenience and Necessity for the Ruskin Dam and Powerhouse Upgrade Project, BCUC, March 30, 2012 at pp.81-82.

⁷¹ Exhibit B-1, pp. 6-2 to 6-5.

⁷² See for instance Exhibit B-1, pp. 6-14 to 6-2, Appendix G; Exhibit B-14 (Confidential Attachment 1); Exhibit B-22 pp. 93-95, Appendix A; Exhibit B-31, Attachment 1.

1. The Preliminary Assessments

BC Hydro shared its preliminary strength of claim and impact assessments with WMFN on July 12, 2011 (by email) and again on July 14, 2011 (by hard copy), despite being under no obligation to do so.⁷³

In assessing the strength of WMFN's rights to the DCAT Project area, BC Hydro accepted from the outset of consultation that WMFN had proven rights under Treaty 8. As described in the CPCN Application, BC Hydro understood that the WMFN's rights in the DCAT Project area included the right to hunt, to trap, and to fish throughout Treaty 8 territory saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.⁷⁴

Having accepted that WMFN had treaty rights, the focus of BC Hydro's analysis as to the scope of its consultation obligation was the extent of potential impacts on the WMFN's exercise of those treaty rights. As described in the CPCN Application, BC Hydro's preliminary assessment was that potential adverse impacts of the DCAT Project on First Nations' interests in the DCAT Project area were likely to be minimal.

In coming to this finding, BC Hydro considered the potential impacts identified by First Nations (including WMFN) up to that point in time.⁷⁵ BC Hydro's early interaction with all identified First Nations established early that encroachment on undisturbed lands was a significant concern in light of the development that has occurred in the area over the past 30 years. Generally, First Nations indicated a preference for BC Hydro to maximize the use of existing Rights of Ways ("ROWs") and to minimize the use of Crown lands and any expansion of BC Hydro's footprint.⁷⁶ Initial consultations with First Nations, including WMFN, also indicated the importance of certain wetlands.⁷⁷ The use of existing ROWs and avoidance of wetlands was taken into consideration early in choosing the Preferred Alternative and subsequent transmission line and route design processes.⁷⁸

BC Hydro's preliminary impacts assessment was also based on a detailed understanding of the extent to which the proposed transmission line would disturb the environment in which the WMFN's treaty rights were potentially being exercised. To help inform this assessment, BC Hydro retained AMEC to undertake the Environmental Overview Assessment (the "EOA").

With respect to the potential impacts to fish, wildlife (mammals) and wetlands, the following findings supported BC Hydro's assessment that potential impacts are low:

⁷³ Exhibit B-14-2, Confidential Attachment 5, pp. 443-446.

⁷⁴ Exhibit B-1 pp. 6-10 to 6-11.

⁷⁵ Exhibit B-1, pp. 6-11.

⁷⁶ Exhibit B-1, pp. 6-11 to 6-12.

⁷⁷ Exhibit B-1, pp. 6-11.

⁷⁸ Exhibit B-6, Response to WMFN IR 1.2.2.

- While there is potential for some destruction or alteration to fish and fish habitat during the construction, operation and maintenance phases, once recommended mitigation measures are implemented, no adverse impacts to fish or fish habitat are anticipated.
- Provided that recommended mitigations are implemented, there is expected to be very little impact and any residual effects of the DCAT Project on mammals are also expected to be low.
- Provided that recommended mitigations are implemented, there is expected to be very little impact and any residual effects of the DCAT Project on wetlands are also expected to be low.⁷⁹

With respect to the potential impacts on resources related to activities like trapping, hunting and fishing, the following findings supported that the potential impacts were low:

- Disruption to furbearers and game species during the construction phase may result in a temporary dispersion, but any disturbed wildlife is expected to return to the area after Project construction activities cease.
- The DCAT Project does not intersect any major fishing areas.
- Any disruption in access for trappers, hunters and fishers during construction and operation is expected to be temporary and the overall effect of the DCAT Project to those participating in these activities, after mitigation, is expected to be low.⁸⁰

With respect to land disruption, the following underlying facts support BC Hydro's assessment of impacts as being low:

- In total, 80 per cent of the proposed transmission line would be located on primarily privately owned farmland, while only 20 per cent would be located on Crown Land.
- A large portion of the proposed transmission line would utilize existing ROWs for other transmission lines (1L358 and 2L312) and highway 97.
- The proposed transmission line will be located in an already inhabited area where overhead utility crossing are already present, as is an existing highway and railroad.
- A number of major forest service roads, public and private roads and access trails are located along the route with existing access for the purposes of construction and maintenance.

⁷⁹ Exhibit B-1, pp. 5-11 to 5-16.

⁸⁰ Exhibit B-1, pp. 5-20 to 5-21.

- Natural barriers will, where possible, be maintained to limit continuous access on the ROW and no permanent bridges over any major creeks or waterways along the ROW are expected.
- The existing 138kV transmission line 1L362 will be decommissioned and removed after the DCAT Project is in place.
- Approximately 55 km of existing 138kV transmission line 1L358 will be decommissioned and removed.
- The land required for the BMT expansion will be acquired from private land owners.
- The land required for the expansion of the existing DAW was already acquired from private land owners located next to the existing station in late 2010.
- None of the proposed works are in proximity to any reserve lands.⁸¹

Based on the above, BC Hydro's preliminary assessment was that the appropriate level of consultation with the WMFN was at the low end of the spectrum. This assessment was shared with First Nations, including WMFN when the Application was filed in July 2011. BC Hydro was not legally required to share but did so in an effort to provide timely and effective notice of its approach.

BC Hydro emphasizes that there is no support in the Supreme Court of Canada jurisprudence for the proposition that there is a legal duty on the Crown to share with First Nations its preliminary assessments as to where the strength of claim, level of impacts and scope of consultation sit on the *Haida* spectrum. To the contrary, in *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, the Supreme Court of Canada found consultation was adequate notwithstanding that the provincial government denied any duty to consult. If consultation can be found adequate without even an acknowledgment that it has been triggered, it must follow that there is no duty on the Crown to share its preliminary assessments.

The BCUC has previously addressed the issue of whether the Crown must share its preliminary assessments. The BCUC has accepted that there is no legal requirement for the Crown to share its preliminary assessments.⁸²

Thus, the fact that BC Hydro shared this assessment at the outset of the CPCN process has provided adequate time for WMFN to provide any comments or additional information to either BC Hydro or the

⁸¹ Exhibit B-1, pp. 6-12 to 6-13.

⁸² See for instance, the BCUC's decision in *In the matter of British Columbia Transmission Corporation Reconsideration of the Interior to Lower Mainland Transmission Project*, February 3, 2011, at p. 101 and the BCUC's decision *In the matter of British Columbia Hydro and Power Authority Certificate of Public Convenience and Necessity for the Ruskin Dam and Powerhouse Upgrade Project*, March 30, 2012, at pp. 103-105.

regulator, the BCUC. The information that WMFN has subsequently provided through the consultation process with BC Hydro including the BCUC process and BC Hydro's consideration of that information is discussed below.

8.4.3. Information obtained through the Ongoing Consultation Process

Prior to filing the CPCN, BC Hydro provided potentially affected First Nations including WMFN up to date information about the development of the DCAT Project, encouraged face to face meetings to discuss the DCAT Project and invited feedback as to how the DCAT Project might affect these First Nations' interests. Examples of the information provided on which WMFN's feedback was requested include:

- Information regarding the alternatives (June 3, 2010);⁸³
- Segment maps showing the initial route options (November 12, 2010);⁸⁴
- Evaluation summaries and proposed preferred route segment maps (January 18, 2011);⁸⁵
- The draft EOA (March 10, 2011);⁸⁶ and
- The proposed Field Programs (including environmental, archaeological and investigative engineering field programs) (July 12, 2010 and April 21, 2011).⁸⁷

After sharing its initial assessment, BC Hydro continued to consult with potentially affected First Nations including WMFN over the course of the regulatory process and used any information obtained therein to further inform its assessments.⁸⁸ In this regard, BC Hydro coordinated its consultation efforts with WMFN with the review process before the BCUC. That is, BC Hydro sought to have any information obtained through its engagement of WMFN inform the BCUC's proceeding and, conversely, any information filed or submitted in the BCUC's review process was used to inform BC Hydro's engagement of WMFN. Thus, the consultation process included both the exchange of information and the provision of explanation occurring in the BCUC's process as well as the voluminous exchanges more directly between WMFN and BC Hydro.

⁸³ Exhibit B-14-1 (Confidential), pp. 103 – 118 and DCAT Project Transcript , July 10, 2012, vol. 2, p. 571 (l. 18) to p. 572, (l. 5).

⁸⁴ Exhibit B-14-3, Confidential Attachment 5, pp. 101-105.

⁸⁵ Exhibit B-1, Appendix G, p. 78.

⁸⁶ Exhibit B-1, Appendix G, p. 130.

⁸⁷ Exhibit B-14-3 Confidential Attachment 5, p. 5 and Exhibit B-1, Appendix G, p. 156.

⁸⁸ Exhibit B-1, p. 6-25.

Since the filing of the CPCN Application, BC Hydro has maintained a constant dialogue with WMFN despite a lack of similar commitment from WMFN. For instance, on July 19, 2011 and August 4, 2011, BC Hydro requested a meeting with WMFN to discuss the DCAT Project and WMFN's desire to undertake a study. No response was received until August 22, 2011 at which time WMFN advised that a meeting was likely not possible until September.⁸⁹ BC Hydro followed up on September 8, 2011 again requesting to meet with WMFN.⁹⁰ A meeting was scheduled for October 20, 2011, but then subsequently cancelled by WMFN.⁹¹ BC Hydro tried to reschedule the meeting on October 12, 2011 and November 7, 2011.⁹² A meeting was finally arranged for November 25, 2011.⁹³

Throughout BC Hydro has provided WMFN with up-to-date information about various aspects of the DCAT Project and the opportunity to provide feedback to help shape the Project's development including:

- the CPCN Application (July 12 and 14, 2012);⁹⁴
- Project updates (including February 6, 2012);⁹⁵
- information regarding the updated route alignment (February 6, 2012);⁹⁶
- draft Archeological Assessment (February 6, 2012);⁹⁷ and
- draft Construction Environmental Management Plan (May 8, 2012).⁹⁸

Despite specifically requesting feedback on the documents provided, BC Hydro received no response from WMFN.

At every step of the way, BC Hydro asked for input from WMFN and identification of any concerns. Arranging meetings and obtaining feedback proved extremely challenging but the confidentially filed consultation logs and correspondence make it completely clear that BC Hydro did everything that it could reasonably have done to encourage and facilitate feedback from WMFN.

⁸⁹ Exhibit B-14-2, Confidential Attachment 5, pp. 464, 528-530, 536.

⁹⁰ Exhibit B-14-2, Confidential Attachment 5, pp. 536-538.

⁹¹ Exhibit B-14-2, Confidential Attachment 5, pp. 584, 705-706.

⁹² Exhibit B-14-2, Confidential Attachment 5, p 705 and Exhibit B-34, Confidential Log, p 2.

⁹³ Exhibit B-34, Confidential Log and Documents, pp. 123-124.

⁹⁴ Exhibit B-14-3, Confidential Attachment 5, p. 445.

⁹⁵ Exhibit B-22, Appendix A, pp. 18-19.

⁹⁶ Exhibit B-22, Appendix A, at pp. 18-19.

⁹⁷ Exhibit B-22, Appendix A, at pp. 18-19.

⁹⁸ Exhibit B-22, Appendix A, at pp. 18-19.

As to capacity, as early as June 3, 2010 BC Hydro offered and provided WMFN initial capacity.⁹⁹ BC Hydro also offered to enter into a more fulsome funding arrangement through a formal Capacity Funding Agreement ("CFA"). BC Hydro provided an initial draft of the CFA in June 2010, and the parties ultimately reached an agreement on the CFA in spring, 2012.¹⁰⁰

BC Hydro also worked with WMFN as early as June 2010 to address its request to undertake a study. Contrary to the evidence provided by Mr. Muir during the oral hearing, the contemporaneous documentary evidence supports Mr. Dill's recollection that although the WMFN initially proposed a Traditional Use Study ("TUS") and BC Hydro took steps to make the proposed study a reality, it was WMFN that changed its position and chose instead to pursue an impacts study.¹⁰¹ At no time was a Traditional Ecological Knowledge study requested.¹⁰² At all times BC Hydro was flexible in the type of study WMFN wanted to pursue provided its scope was appropriate given the size and nature of the DCAT Project. Throughout this process BC Hydro made clear that it was prepared to hear and consult with respect to any matter or concern raised by the WMFN that related to the DCAT Project and seek to avoid any impacts that it could.

In the period leading up to the oral hearing, WMFN did not provide BC Hydro with any information regarding specific concerns arising from the DCAT Project notwithstanding the many opportunities it had to do so. Contrary to Mr. Muir's testimony, the contemporaneous documentary evidence supports that the purpose of the March 29, 2012 meeting was to provide BC Hydro with an update as to whether the

⁹⁹ Exhibit B-1, pp. 6-7.

¹⁰⁰ Exhibit B-33, Email 2012May09.

¹⁰¹ See in particular [REDACTED] Exhibit B-14-1, Confidential Attachment 1, pp. 103-105,

[REDACTED] (Exhibit B-14-3, Confidential Attachment 5, p. 6).

[REDACTED] (Exhibit B-14-3, Confidential Attachment 5, pp. 41-43).

[REDACTED] (Exhibit B-14-1, pp. 119-

120).

[REDACTED] (Exhibit B-14-3, Confidential Attachment 5, pp. 454-463).

[REDACTED] (see Exhibit B-14-3, Confidential Attachment 5, pp. 464, 528).

¹⁰² DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 587 (l. 23) to p. 588 (l. 2).

community interviews identified any significant impacts, issues or concerns in relation to the DCAT Project.¹⁰³ WMFN confirmed during that meeting that there were none.¹⁰⁴

It was only on the eve of the oral hearing that WMFN finally provided BC Hydro with details as to its specific concerns about impacts arising from the DCAT Project on its Aboriginal interests. The only specific concerns raised prior to this were not with the DCAT Project itself, but the impact of numerous other projects.

BC Hydro was provided with a confidential copy of the draft IAS on June 8, 2012. The information provided in the draft IAS was not complete and consisted largely, if not solely, of the transcribed results from the community interviews.¹⁰⁵ As Mr. Muir testified during the hearing, the excerpts from the community interviews had not yet undergone WMFN's internal review process and the synthesis of the substance of the interviews was not included in the draft.¹⁰⁶

While the draft IAS was incomplete substance wise, there was sufficient information therein for BC Hydro to identify some potential impacts specific to the DCAT Project. The specific issues identified are captured in the table attached to BC Hydro's letter of June 15, 2012 to WMFN. BC Hydro had already considered a number of these impacts and had already proposed mitigation measures in this regard. Included in the draft IAS were specific concerns in respect of potential impacts to moose and the presence of traditional trails in the Pine River area. In its letter of June 15, 2012, BC Hydro requested further particulars in respect of both of these concerns.

¹⁰³ See the [REDACTED] (Exhibit B-34, Confidential Log, pp. 123-124) [REDACTED]
[REDACTED] See also [REDACTED]
[REDACTED] (Exhibit B-34, Confidential Log, p. 125)
[REDACTED] See also, [REDACTED] (Exhibit B-34, Confidential log, p. 197)
[REDACTED] See also, [REDACTED]
[REDACTED] Exhibit B-34, Confidential Log, p. 256-257
[REDACTED] See also [REDACTED]
[REDACTED] Exhibit B-34, Confidential Log, p. 259).

[REDACTED] (Exhibit B-33, Confidential Attachment 1, 2012March08. See also DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 583 (l. 12) to p. 584 (l. 20).

¹⁰⁴ Exhibit B-33, Consultation Log, p. 1.

¹⁰⁵ Exhibit B-35.

¹⁰⁶ DCAT Project Hearing Transcript, July 9, 2012, vol. 1, p. 363 (l. 25) to p. 364 (l. 2) and p. 382 (l. 22) to p. 386 (l. 12).

BC Hydro was provided with the final IAS on July 5, 2012. It included new specific concerns about potential impacts to Grizzly bears, disruption of WMFN seasonal round, and the Pine River crossing. As Mr. Muir testified, the sections describing these concerns were not included in the draft IAS.¹⁰⁷

Setting aside the issue of delay experienced in bringing forth specific potential Project impacts, BC Hydro submits that there is no evidence on record supporting that the specific impacts raised by WMFN will materialize if the DCAT Project proceeds. In particular, WMFN has identified the following specific impacts arising from the DCAT Project:

- potential impacts to moose;
- potential impacts to Grizzly bears;
- potential disruption of WMFN's seasonal round;
- potential disruption of WMFN's use of historical trails; and
- the Pine River Crossing.

The evidence on record in respect of each of these specific potential impacts is as follows:

- With respect to potential impacts to moose, the evidence on record is that moose were adequately considered in the initial EOA through the identification of wetlands as a Valued Ecosystem Component. While the parties dispute whether this adequately addressed potential impacts to moose from the DCAT Project, this dispute is irrelevant given the additional study undertaken by AMEC prior to the oral hearing (the "Moose Study").¹⁰⁸ The Moose Study concludes "that moose are expected to be present in the area during all activities of the project. However, residual (post mitigation) effects are not considered significant."¹⁰⁹ WMFN has provided no evidence, in its IAS or otherwise, that puts this assessment into question.
- With respect to potential impacts to Grizzly bears, the evidence on record is that AMEC considered Grizzly bears, but ultimately did not include them in the EOA because the area is not suitable for Grizzly bears, the only bears found in the area are transients, and it would be difficult and not necessarily useful to consider them a VEC. Further, any potential impacts that may cause disturbances to Grizzly bears are covered in the construction EMP.¹¹⁰
- With respect to potential impacts to WMFN's seasonal round and historical trails, the evidence on record is that while WMFN has yet to provide sufficient detailed information about location

¹⁰⁷ DCAT Project Hearing Transcript, July 9, 2012, vol. 1, p. 363 (l. 4) to p. 364 (l. 15).

¹⁰⁸ Exhibit B-34, Appendix B.

¹⁰⁹ Exhibit B-34, p. 12.

¹¹⁰ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 614 (l. 4) to p. 615 (l. 3).

and in the case of the historical trails, current use, BC Hydro is interested in meeting with WMFN to obtain these specific details. If once these specifics are known to BC Hydro it appears there is potential for impacts, BC Hydro can consider mitigation and avoidance measures during construction and operations including modifying construction activity, timing, establishing work avoidance zones, and shifting poles.¹¹¹ Depending on availability, these issues should be able to be addressed within a matter of weeks or months, but should not impact construction timelines.¹¹²

- The proposed Pine River Crossing will simply replace the crossing that currently exists and is not anticipated to have any incremental impact. Nevertheless, BC Hydro has undertaken an assessment as to whether directional drilling, in particular Horizontal Direct Drilling ("HDD") of the DCAT transmission line under the Pine River was feasible. BC Hydro's technical staff concluded that overall, based on the existing information, there would be a significant probability of major problems in terms of technical feasibility. Irrespective of the technical feasibility, the approximate cost of HDD for the Pine River crossing would be approximately \$120 million or more (direct costs), increasing the DCAT Project cost by over 50 per cent. As a result, it was determined that HDD of the Pine River Crossing is not feasible.¹¹³ BC Hydro is willing to have technical staff meet with WMFN and further explain their conclusions. Depending on availability, this could take place over the following weeks or months, but should not impact construction timelines.¹¹⁴

In sum, while WMFN has finally identified potential impacts of the DCAT Project, the evidence is that significant impacts will not materialize in the case of moose or Grizzly bears and any potential impacts to WMFN's seasonal rounds and current use of historical trails can be mitigated or avoided. As to the Pine River crossing, the evidence is that BC Hydro took this concern seriously and spent time and resources trying to minimize the visual impact of the crossing. Ultimately it was determined that by using a crossing site adjacent to the existing crossing site and carefully locating the new towers, impacts could be minimized. Further, the existing line will be removed so only one line will cross the river.¹¹⁵ A HDD solution was considered but determined not to be feasible. None of the specific impacts identified by WMFN are either "Oh, my God" issues (as defined by WMFN) or showstoppers (as defined by BC Hydro). The evidence is that the potential impacts arising from the DCAT Project as identified by WMFN have been or can be adequately dealt with in the ongoing consultation process.

¹¹¹ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 575 (l. 5) to p. 576 (l. 3) and p. 576 (l. 15) to p. 577 (l. 5).

¹¹² DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 702 (l. 6) to p. 703 (l. 2).

¹¹³ Exhibit B-34, pp. 1-7.

¹¹⁴ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 700 (ll. 10-18).

¹¹⁵ Exhibit B-34, p. 5 (l. 1) to p. 7 (l. 15).

BC Hydro's studied conclusions were strongly corroborated by the viewing conducted by the Commissioners on July 23, 2012. Large scale, high resolution imagery is still no substitute for actually seeing the route and by flying over it, the Commissioners gained an invaluable perspective on the nature of the impacts the DCAT Project can be expected to have.

Visually, two dominant impressions emerged from the flyover. First, the entire route from Dawson Creek in the east to the Sundance Substation is dominated by cleared farm land interrupted by the activities of the oil and gas industry. It is crisscrossed with highways, roads, railroads and other diverse right of ways, including for the existing electric transmission line for much of the route. Second, BC Hydro's route has clearly been carefully chosen to follow those existing rights of way so that almost all of the route will be on land already cleared for transportation corridors. It is no wonder that Mr. Slaney characterized the vast majority of the route as "disturbed".¹¹⁶ From a wild or natural state perspective, it certainly is.

The detour south from the point at which the existing and proposed transmission line crosses the Pine River to the confluence of the Pine and Murray Rivers was interesting for the glimpse it gave of lands that have not been disturbed. These are the lands the edge of which can be seen on the bottom right hand quadrant of the image at Figure 16 at page 148 of Exhibit C5 -20.¹¹⁷ Notwithstanding the title of Figure 16, it does not depict the transmission line crossing point, but it does show where the line might have gone if a more southerly route had been chosen. What was clear from the flyover is that the land to the south and west appeared relatively undisturbed and the contrast between those lands and the lands through which the transmission line is proposed to go was clear. The proposed location of the Pine River crossing is north and around the bend from the confluence as depicted in Figure 16 of Exhibit C5-20 and any person or animal wishing to progress from the undisturbed lands in the southwest to the transmission line route would not only have to cross one or both of the Murray and Pine Rivers but would also have to navigate across a major highway and railroad.

Notwithstanding the common sense appeal of constructing the line on existing corridors and the views of its consultants with respect to minimizing impacts, BC Hydro has taken any new information it has recently obtained from WMFN and considered how it affects BC Hydro's preliminary assessments. As Mr. Dill stated during the hearing, the information received concerning impacts is more granular in nature, but nothing in it has caused BC Hydro to change its overall conclusion:

¹¹⁶ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 601 (l.13-22).

¹¹⁷ Exhibit C5-20, p. 148.

MR. DILL: A: No. Again, I mean, an assessment is, you know, at a certain altitude in terms of assessing the overall situation. I think what the report does is identifies a number of more specific concerns or issues that the First Nation has that we're interested in continuing to work with them to address. But those issues or concerns aren't of the nature that would cause us to completely re-evaluate, or change our overall conclusion, I guess is the best way to describe that as to our assessment of potential impacts of the project on their rights.¹¹⁸

BC Hydro's position is that the preliminary assessment that the consultation required with WMFN was at the low end of the spectrum remains correct. That being said, BC Hydro submits that the consultation up to this point has in fact exceeded this level.

8.5. WMFN's Specific Complaints about the Consultation Process

In the final IAS, WMFN also identified a number of procedural complaints about the consultation process particularly with respect to the adequacy of the EOA. At their core, these complaints are a collateral attack on the environmental assessment regimes in BC and in Canada. During cross-examination, Mr. Muir testified that he has over the last two years been writing articles about how the BC's environmental assessment process is not as effective as it should be given that the original goal of environmental assessment was sustainability.¹¹⁹ BC Hydro submits that WMFN is using the DCAT Project and in particular the BCUC's process, to raise their general concerns about the overall extent of development in their region.

BC Hydro submits that the BCUC lacks the necessary expertise in this area. In any event, BC Hydro submits that the BCUC should decline these complaints because they have no bearing on the adequacy of consultation in this case.

With respect to cumulative impacts, BC Hydro's position is clear. BC Hydro believes that consultation should extend to and include all impacts of the DCAT Project under consideration including the extent to which those impacts themselves increase the interference with treaty rights that are already occurring by virtue of past industrialization and any increase in the seriousness of those impacts by virtue of historical impacts that have already been experienced. That being said, the un-contradicted evidence in the present case is that the DCAT Project is a minor, and substantially a replacement, project and there is no evidence supporting that it will increase the seriousness of past impacts, nor will its own impacts be increased by past development. This was the evidence of Mr. Slaney, the AMEC Team Lead with over 35 years' experience in environmental assessment:

MR. SANDERSON: Q: Given the nature of the DCAT project itself, and in light of the findings in the environmental assessment report, can you indicate whether there

¹¹⁸ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 663 (l. 23) to p. 664 (l. 7).

¹¹⁹ DCAT Project Hearing Transcript, July 9, 2012, vol. 1, p. 321 (l. 26) to p. 323 (l. 2).

is any connection that you found between the impact of past development and the DCAT project that would tend to increase the impacts of the DCAT project?

MR. SLANEY: A: Well, past developments have decreased the impact of the project, because as I said earlier, we are looking at a lot of disturbed land. There are no old growth forests anywhere in the right of way and [...]

[...]

less than one percent of the route is coniferous forest, and about just under 50 percent, 46 percent of the route is on anthropogenic surfaces – you know, from cleared fields, to roads, to hard surfaces from rail lines, to those kind [*sic*] of disturbed areas. [...]

[...]

MR. SANDERSON: Q: Right. Do you think, based on the work your team did, that the DCAT project will make it more challenging for the Crown to take steps to restore historical conditions, or otherwise mitigate past impacts that industrial development has had on the environment in the area?

MR. SLANEY: A: No, the project has a relatively small footprint. Part of the existing line is going to be allowed to regrow and a new line has only a slightly larger footprint than the old one so it shouldn't make a material change.¹²⁰

In fact, Chief Willson himself testified that the facts of this case are not the facts of the First Coal Case. In response to a question from the Commission Panel, Chief Willson testified that "First Coal was directly on an endangered species" and that he didn't believe that in the case of the DCAT Project "there is an endangered species being impacted."¹²¹

The WMFN also expressed concerns with respect to a potential connection between the DCAT Project and general development in the natural gas industry. That connection is not supported by the evidence. To the contrary, the projects of all four new customers who are natural gas producers are likely to proceed with or without BC Hydro service and there is no basis to conclude that the DCAT Project will exacerbate their collective impact on WMFN's exercise of its treaty rights.¹²²

Finally, with respect to the issue of environmental baseline data, BC Hydro submits that the BCUC's jurisdiction to consider environmental factors in considering the public convenience and necessity of a project does not include determining what the appropriate approach to environmental baseline data in environmental assessment should be. It is clear that this is precisely what WMFN is asking the BCUC to decide. It is also clear that the WMFN's complaint is not really about the EOA undertaken for the DCAT

¹²⁰ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p 606 (l. 11) to p. 608 (l. 5).

¹²¹ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 560 (ll. 2 – 5).

¹²² Exhibit B-6, Response to BCSEA IR 1.10.1 to 1.10. 5.

Project specifically, but the environmental assessment process in general in BC. In the present case, the evidence is that the DCAT Project was so small in magnitude that it did not trigger either an assessment under the *Canadian Environmental Assessment Act* (as it then existed) or the *BC Environmental Assessment Act*.¹²³ That being said, Mr. Slaney testified that the methodology used in respect of baseline data generally met the requirements of those environmental assessment processes.¹²⁴ Further, the process employed was similar to those used in other BC Hydro projects that have been approved by the BCUC.¹²⁵ BC Hydro submits that to the extent that WMFN is asking for a higher standard for projects that don't trigger an environmental assessment than those that do, this position is unsupported. To the extent that WMFN is saying that environmental assessments should consider the impacts of existing impacts on resources as part of its baseline, the point is moot as Mr. Slaney testified that the methodology employed considered this.¹²⁶

8.6. Consultation to Date has been Adequate to Support Issuing the CPCN

As stated by the Supreme Court of Canada in *Haida*, consultation on the low end of the spectrum may only require the Crown "to give notice, disclose information and discuss any issues raised in response to the notice." (para. 43). The evidence is that this standard has clearly been surpassed in the present case. BC Hydro notified WMFN of the DCAT Project early in the process. It provided up to date information about the DCAT Project as it was developing and solicited feedback from WMFN on this information for a period of over two years. In addition, BC Hydro provided initial and more substantive funding to address capacity concerns and supported WMFN in its endeavour to undertake a study on the DCAT Project. In short, BC Hydro's efforts over the past two years have fully discharged the honour of the Crown to this point because they have provided adequate time and capacity for any First Nation wishing to engage constructively in consultation to have its concerns fully identified, understood and where necessary accommodated. That being said, the shaping and refinement of the DCAT Project continues and the evidence is that WMFN's specific concerns can be adequately addressed through the ongoing consultation process.

BC Hydro submits that the BCUC should conclude that consultation with First Nations, including WMFN, has been adequate up to this point. The BCUC does not need to be persuaded that all consultation is complete and that all the issues raised have been fully addressed before issuing a CPCN. To the contrary, the Crown must continue consultation over the lifespan of the DCAT Project. As stated by the Supreme Court of Canada in *Beckman*, the purpose of consultation, being reconciliation, is about developing "a mutually respectful long-term relationship".¹²⁷ As BC Hydro has repeatedly stated during this hearing

¹²³ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 601 (ll. 4-6).

¹²⁴ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 603 (l. 25) to p. 604 (l. 17).

¹²⁵ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 600 (ll. 7-20).

¹²⁶ DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 688 (l. 5) to p. 690 (l. 6).

¹²⁷ *Beckman*, para. 10.

process, it is committed to this ongoing process and, as an agent of the Crown, is required at every stage of the process, including during construction, operations and for the life of the DCAT Project, to ensure that consultation is adequate.¹²⁸

9. Conclusion

BC Hydro submits that the BCUC has conducted a hearing that has allowed all viewpoints to be fully considered. The evidence in this proceeding shows that the need for the DCAT Project is beyond debate, and that there are customers waiting for the DCAT Project to go into service. BC Hydro submits that for the reasons set out above the DCAT Project is in the public convenience and necessity and ought to be certificated. Likewise, the proposed tariff amendment is just, reasonable, and not unduly discriminatory, and should be approved as requested. First Nations consultations have been reasonable and adequate to this stage, and BC Hydro has engaged with the public to understand their concerns and interests. BC Hydro respectfully requests that the BCUC issue an order in the form included at Schedule A to this submission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24TH DAY OF JULY, 2012.

LAWSON LUNDELL LLP



Chris W. Sanderson, QC

¹²⁸ See for instance, DCAT Project Hearing Transcript, July 10, 2012, vol. 2, p. 663 (l. 20) to p. 663 (l. 6), Exhibit B-6 Response to WMFN IR 1.17.4.

Schedule A – Draft Order

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by British Columbia Hydro and Power Authority (BC Hydro)
Dawson Creek/Chetwynd Area Transmission Project

BEFORE: _____, Commissioner _____, 2012

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. On July 11, 2011, British Columbia Hydro and Power Authority (BC Hydro) applied (the Application) pursuant to subsection 46(1) of the Utilities Commission Act (the Act) to the British Columbia Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Dawson Creek/Chetwynd Area Transmission Project (the Project) as described in the Application;
- B. The Project is located in the Dawson Creek/Chetwynd area of north east British Columbia. Transmission capacity is needed in this area to enhance the quality of service to existing customers and to meet increasing customer load. The Project is BC Hydro's preferred alternative to meet the area's forecasted load growth;
- C. The Project consists of three main components:
 - a. The construction of the new Sundance Substation (SLS) including the acquisition of 8.5 hectares to facilitate the space requirements of the new substation.
 - b. The construction of a double circuit 230 kV transmission line strung on steel monopoles from SLS to Bear Mountain Terminal (BMT) (60 km) and from BMT to Dawson Creek Substation (DAW) (12 km). A new 33 metre (m) right-of-way is required for the route; in portions where the route parallels existing transmission lines, the required additional width may be less;
 - c. The expansion of BMT including the acquisition of approximately 14 hectares of land to facilitate the additional equipment required for the Project.
- D. The maximum anticipated cost of the Project is \$257.4 million with a Completion Date of April 2014;

- E. The review of the Application was completed on _____, 2012 in accordance with the Regulatory Timetable;
- F. BC Hydro has also proposed a revision to section 8.3 of the Terms and Conditions of its Electric Tariff to provide security for the cost of transmission system reinforcements by distribution voltage customers requesting new service equal to or in excess of 10 MW;
- G. The Commission has reviewed and considered the Application, the evidence and the submissions presented on the Application, and has determined, as set out in the Reasons for Decision attached as Appendix A to this Order, that the Project is in the public interest and that a CPCN should be issued to BC Hydro for the Project, subject to the conditions and directions set out in this Order.

NOW THEREFORE pursuant to sections 46, 58 and 61 of the Act the Commission orders that:

1. A CPCN is granted to BC Hydro for the Project as set out in the Application.
2. BC Hydro is directed to file with the Commission semi-annual updates on the actual Project schedule and costs with a comparison to plan set out in the Application and any variances the Project may be encountering. The semi-annual progress reports will be filed within 45 days of the end of each reporting period.
3. BC Hydro is directed to file a final report within six months of the end or substantial completion of the Project. The final report is to include a reconciliation of actual and anticipated Project costs as set out in the Application and provide an explanation of any material cost in excess of \$257.4 million.
4. The Electric Tariff is revised by adding a paragraph to follow the third paragraph in section 8.3 of the Terms and Conditions, providing as follows:

In addition to any Extension Fee and revenue guarantee to be paid or provided by a Customer pursuant to this part, for new services that:

- a. have a total expected Maximum Demand equal to or greater than 10,000 kW; and
- b. partially or wholly make necessary System Reinforcement (as defined in Tariff Supplement No. 6) to the transmission system in order to provide service to the distribution system to which the Customer is or will be connected;

the customer will be subject to the terms and conditions of Tariff Supplement No. 6 in respect of the System Reinforcement, including the requirement to provide security for the costs of the System Reinforcement in accordance with Tariff Supplement No. 6.

DATED at the City of Vancouver, in the Province of British Columbia, this _____ day of _____ 2012.

BY ORDER