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
for the Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest
in the Waneta Dam and Associated Assets

BEFORE:  
A.W.K. Anderson, Commissioner  
and Panel Chair  
February 3, 2010
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

O R D E R

WHEREAS:

A. On June 17, 2009 British Columbia Hydro and Power Authority ("BC Hydro") entered into a non-binding master term sheet (the "Term Sheet") with Teck Metals Ltd. ("Teck") and Teck Resources Limited that contemplates the sale and purchase ("Waneta Transaction") of an undivided one-third interest in the Waneta Dam on the Pend d'Oreille River and associated assets (the "Waneta Assets"); and

B. On July 6, 2009 BC Hydro made a filing ("Filing") pursuant to section 44.2(1) of the Utilities Commission Act (the "Act") requesting acceptance by the British Columbia Utilities Commission (the "Commission") that proceeding with the expenditures contemplated in the Term Sheet is in the public interest pursuant to section 44.2(3)(a) of the Act; and

C. On September 23, 2009 BC Hydro filed the executed Asset Purchase Agreement ("APA") with the Commission. The APA will take effect if several conditional precedents are met and the parties execute final agreements substantially in the form of the several draft associated agreements filed with the APA; and

D. The Commission, by Order G-97-09A and Letter L-61-09, established a Regulatory Timetable for a written public hearing for the review of the Application; and

E. The Commission, by Letters L-98-09, L-100-09 and L-105-09, revised and clarified the Regulatory Timetable for the proceeding; and

F. By Order G-173-09 dated December 30, 2009, the Commission Panel ordered that the Okanagan Nation Alliance ("ONA") Reply Submission dated December 22, 2009 would be admitted, and provided Teck, Commercial Energy Consumers Association of British Columbia ("CEC") and the Sinixt Nation an opportunity to reply to the ONA Reply Submission by Wednesday, January 6, 2010; and
G. Final arguments, replies and sur-replies were filed by BC Hydro and Intervenors during the period December 9, 2009 and January 6, 2010; and

H. The Commission Panel has considered the evidence and submissions with respect to BC Hydro’s consultation with First Nations and has determined that those consultations, to the date of this decision, have been adequate and upheld the honour of the Crown in the circumstances of the Waneta Transaction.

I. The Commission Panel has reviewed the Filing, information requests, Intervenor evidence, transcripts, Interested Party documents, Letters of Comment, Final Submissions and Reply Submissions, and concluded that the Waneta Transaction is in the public interest. The Commission Panel has reviewed the draft Surplus Power Rights Agreement and has identified no reason why this agreement should not be accepted for filing, but reserves the right to make the final determination on acceptance upon BC Hydro filing a fully executed copy of the agreement under section 71 of the Act. The Reasons for Decision for this Order will be released at a later date.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 44.2(3)(a) of the Act the expenditure schedule contained in the Filing, consisting of an $825 million payment to Teck Metals Ltd., Teck Resources Limited or Teck American Limited to acquire a one-third interest in the Waneta Assets, plus associated transaction costs currently estimated at $25 million, is in the public interest and is accepted.

2. Subject to Directives 3 and 4 of this Order and closure of the Waneta Transaction, the Commission accepts that it is in the public interest for BC Hydro to enter into the Co-Ownership and Operating Agreement.

3. BC Hydro shall file a fully executed Co-Ownership and Operating Agreement that is substantially in the form of the draft agreement within 60 days of the closure of the Waneta Transaction, and shall file all amendments to the agreement in a timely manner.

4. Expenditures made by BC Hydro under the Co-ownership and Operating Agreement that BC Hydro is not able to veto, or not able to refer to an independent third party referee, or which the referee determines BC Hydro is required to make, will be deemed to be in the public interest. BC Hydro shall ensure that each other expenditure under the Co-ownership and Operating Agreement is in the public interest. Such other expenditures may be subject to a prudence review by the Commission.

5. Pursuant to section 43 of the Act, the Commission Panel directs BC Hydro to file with the Commission:

a. A report of the final actual Waneta Transaction costs, including a comparison with the estimated transaction costs, within 90 days of acquiring a one-third interest in the Waneta Assets together with an explanation for any variance greater than ten percent from the estimated transaction costs; and

b. An annual Waneta Transaction report (“Report”) disclosing the operations, maintenance and capital expenditures. This will include those major sustaining capital expenditures or operating and maintenance expenditures that BC Hydro was entitled to refer to a third party referee and the related referee determinations as well as any significant non-sustaining capital expenditures that BC Hydro had the right to veto; and...
c. The Report shall consist of and shall be provided in a format acceptable to the Commission and include the following:

i. An annual cash flow comparison of actual expenditures versus estimated expenditures and an explanation for any variance greater than ten percent from the estimated expenditures;

ii. An organization chart showing the Operator and members of the Operating Committee;

iii. The cumulative and annual average levelized unit energy cost (in $/MWh) to BC Hydro as compared to $64.08/MWh based on an eight percent discount rate and $78.6/MWh at a ten percent discount rate as outlined in the Filing;

iv. Electricity Price Scenarios similar to Figure 5-3, Electricity Price Scenarios at Mid-C by Calendar Year;

v. A summary of the Resource Physical Major Risks and mitigation measures employed;

vi. Statement of Delivery of Capacity and Energy to BC Hydro under the Waneta Transaction; and

vii. Statement of Entitlement Adjustments under the Canal Plant Agreement and amendments to the Canal Plant Agreement.

d. The Reports will be submitted as part of BC Hydro’s Regulatory Annual Report and as an appendix in its Revenue Requirements Applications until 2036.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of February 2010.

BY ORDER

Original signed by:

A.W.K. Anderson
Commissioner/Panel Chair
IN THE MATTER OF

A FILING BY

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

FOR THE ACQUISITION FROM TECK METALS LTD. OF AN

UNDIVIDED ONE-THIRD INTEREST

IN THE WANETA DAM AND ASSOCIATED ASSETS

REASONS FOR DECISION
to Order G-12-10

March 12, 2010

BEFORE:

A.W. K. Anderson, Panel Chair/Commissioner
D.A. Cote, Commissioner
P.E. Vivian, Commissioner
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**COMMISSION ORDER G-12-10**
1.0 INTRODUCTION

1.1 The Filing

On July 6, 2009 the British Columbia Hydro and Power Authority (BC Hydro) filed an expenditure statement (the Filing) pursuant to section 44.2(1) of the Utilities Commission Act RSBC, 1996, Chapter 473 (the Act). The Filing seeks a determination from the British Columbia Utilities Commission (the Commission) that the expenditures associated with the acquisition of an undivided one-third interest in the Waneta Assets (as defined in Exhibit B1, Appendix D) on the Pend d’Oreille River in south eastern British Columbia (B.C.) near Trail (the ‘Waneta Transaction’ or ‘Transaction’) should be accepted by the Commission on the basis that the expenditures are in the public interest pursuant to section 44.2(3)(a) of the Act. The scheduled expenditures comprise a payment of $825 million for the Waneta Assets plus transaction costs currently estimated at $25 million. Transaction costs will be incurred up to and including closing, and will include taxes, transfer fees, professional services costs and all other expenses necessarily incidental to the Waneta Transaction. The payment for the Waneta assets will be made to Teck, referring to Teck Metals Ltd. (formerly Teck Cominco Metals and before that Cominco Ltd.), Teck Resources Limited or Teck American Limited as the context may require.

The Waneta Dam is a sizeable hydro electric generating facility located on the Pend d’Oreille River, south of Trail, B.C. which for a period of 50 years has produced safe, reliable power for its owner Teck. In acquiring a one-third interest in the asset, BC Hydro will be provided with a resource which, over the long-term is expected to generate 167 Megawatts (MW) of dependable capacity and 890 Gigawatt-hours (GWh) of firm energy annually. One of the appealing aspects of the Waneta Transaction to BC Hydro is the fact that the Waneta Assets are currently in operation, and have a history of reliability in the generation of clean, renewable energy which is attractively priced.
1.2 Legal and Regulatory Requirements

The Filing requests acceptance for the expenditure for a one-third interest in the Waneta Assets. Upon reviewing the expenditure schedule, the Commission has the option of either accepting it if it is considered to be in the public interest, rejecting it, or accepting or rejecting part of it as provided in sections 44.2 (3) and (4) of the Act. In making a decision on whether to accept this expenditure, section 44.2(5) of the Act requires the Commission to consider the following:

1. the government’s energy objectives;
2. the most recent long term resource plan filed by BC Hydro;
3. whether the purchase is consistent with requirements for electricity self sufficiency detailed in sections 64.01 and 64.02;
4. whether any demand side measure expenditures are cost effective, and
5. the interests of those B.C. persons who receive or may receive service from BC Hydro.

1.3 First Nations

BC Hydro is a Crown corporation continued under section 2 of the British Columbia Hydro and Power Authority Act and is a representative or agent of the Crown. BC Hydro’s Filing brings into play consideration of the duty to consult, and if necessary accommodate First Nations in order to uphold the honour of the Crown with respect to the Waneta Transaction. The Crown or representative of the Crown, in this case BC Hydro, is obligated to undertake consultation with First Nations when making decisions that may affect aboriginal rights. *(Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, (2004) 3S.C.R. 511) (Haida)*

The Commission, as a quasi judicial tribunal, does not itself have a duty to consult. Decisions of the BC Court of Appeal with respect to *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission), 2009 BCCA 67 (Carrier Sekani)* and *(Kwikwetlem First Nation v. British Columbia*
(Utilities Commission), 2009 BCCA 68) (Kwikwetlem) have confirmed the obligation of the Commission to assess the adequacy of Crown consultation within the scheme of its regulation. The adequacy of BC Hydro’s consultation with First Nations, in the context of the Waneta Transaction, is addressed in section 2.2 of these Reasons for Decision.

1.4 Summary of Reasons and Findings

After consideration of the Filing, responses to the Information Requests (IRs), and evidence and submissions of the parties, the Commission Panel found that the schedule of expenditures for the proposed Waneta Transaction between BC Hydro and Teck is in the public interest. The schedule of expenditures was accepted in Order G-12-10. These are the Reasons for Decision for that Order.

In reaching its findings, the Commission Panel reviewed issues related to the public interest which include those related to the need, cost effectiveness, due diligence and local impact of the Waneta Transaction as described in Section 2.1. Section 2.2 comprises the Commission Panel’s assessment of the Crown’s duty to consult First Nations. Section 2.3 encompasses an examination of other considerations the Commission Panel is required to take into account in making its determination. Finally, Section 2.4 encompasses a discussion of other matters related to the Waneta Transaction. These include the regulation of the Waneta Assets, Operating, Maintenance and Capital Expenditures, Rate Impact, Water Licenses, Transmission Line 71 (Line 71) and Reporting Requirements.
2.0 PUBLIC INTEREST

2.1 General

2.1.1 Need

This Section addresses BC Hydro’s need for approximately 167 MW of dependable capacity and 890 GWh of firm energy annually that a one-third interest in the Waneta Assets would provide.

The Filing states that the Waneta Transaction will provide BC Hydro with a significant block of domestic generation capacity that is not currently relied upon by any BC utility, and which has typically been used for exports from the Province. BC Hydro states that the Waneta Transaction assists in achieving self-sufficiency by 2016 and will add to BC Hydro’s resource base to attain the insurance objective that is to be met by 2026, as described in Special Direction No. 10. (Exhibit B-1, pp. 1-2, 4-2)

The Filing relied on BC Hydro’s 2008 Load Forecast Update in the 2008 Long Term Acquisition Plan (2008 LTAP) application. This forecast assumed that 3,000 GWh of energy would be available annually from the Burrard Generating Station (Burrard). The Filing indicates an energy supply deficiency starting in F2014 based on the inclusion of the Burrard 3,000 GWh. (Exhibit B-1, Table 4-2)

The Provincial Government issued Direction No. 2 to the Commission, dated October 28, 2009, which requires the Commission to use a criterion which states that BC Hydro must not plan to rely on Burrard for any firm energy. Consequently, the load resource balance shown in Exhibit B-1, Table 4-2 overstates the energy resource availability for all years in the planning horizon by 3,000 GWh. BC Hydro states “The firm energy shortfall which was identified in Chapter 4 (Table 4-2) as starting in F2014 would advance to the very beginning of the planning horizon in F2013 after
incorporating the effect of the Burrard Direction.” and that “… the Waneta Transaction is a unique opportunity for it to obtain a source of power that was unavailable to it in the past and may not be available again on a firm and reliable basis. (BC Hydro Argument, pp. 6, 7)

No Intervener disputed BC Hydro’s need for the energy and capacity that would be provided by the Waneta Assets over the longer term. Commercial Energy Consumers (CEC) proposed a number of changes to the 2008 LTAP forecast, but concluded that BC Hydro may still require energy from Waneta after recasting the 2008 LTAP forecast and submitted that the capacity from Waneta will have value to the BC Hydro system for domestic purposes after about 10 years (CEC Argument, p. 4).

Commission Determination

The Commission Panel considers that Direction No. 2 regarding firm energy supply from Burrard has the effect of reinforcing, for planning purposes, the need for power from Waneta before 2016. The Commission Panel is satisfied that BC Hydro’s virtually unchallenged evidence, coupled with the impact of Direction No 2, has adequately established the need for the energy and capacity that would be result from the completion of the Waneta Transaction.

2.1.2 Cost Effectiveness

Economic viability is a significant element in determining whether the Waneta Transaction is in the public interest. This section considers whether the $850 Million cost of securing the long term energy and capacity which would be provided by completing the Waneta Transaction would be consistent with the public interest.

Exhibit B-1, Chapter 6, sets out BC Hydro’s economic analysis of the Waneta Transaction and includes sections addressing:
1. Comparative Economic Analysis;
2. Estimated rate impacts;
3. Other factors of cost effectiveness;
4. Teck’s opportunity cost;
5. Risk analysis.

2.1.2.1 Comparative Economic Analysis

Effective Adjusted Price (EAP)

BC Hydro’s analysis, set out at Exhibit B-1, Sections 5 and 6, indicates an EAP of $64.08/MWh, (levelized unit energy cost at an 8% discount rate) inclusive of additional costs related to new issues raised in the due diligence process (Exhibit B-13, BCUC 2.34.2.2, p. 4). BC Hydro states that the EAP compares very well with other available energy supply alternatives as outlined in the Filing (Exhibit B-1, Chapter 6, Table 6-1, p. 6-3).

The Joint Industry Electric Steering Committee (JIESC), CEC, British Columbia Sustainable Energy Association-Sierra Club of British Columbia (BCSEA-SCBC), and British Columbia Old Age Pensioners Organization (BCOAPO) in their Arguments all support the view that the Transaction offers energy supply at a reasonable cost when compared to the alternatives. Independent Power Producers of British Columbia (IPPBC) notes the energy costs compare favourably to the clean energy call from independent power producers but argue that the true levelized energy costs and the effective adjusted price is much higher than BC Hydro’s amounts presented in this Filing. However, IPPBC does support the Transaction.

Allan Wait submits that BC Hydro has not provided sufficient information to make a complete economic assessment and provides his analysis of a revised energy cost per MWh in the $94-$96 range for 2011 and 2012. Mr. Wait states that based on his analysis, the cost of Waneta power is
too high, hitting the level of $109.78 by 2015 (Wait Argument, Appendix 1).

BC Hydro states that the information which Mr. Wait indicates was not provided was in fact provided (BC Hydro Reply, p. 2). BC Hydro notes that the Project’s power is expressed in nominal dollars and the alternatives are expressed in 2009 dollars, resulting in a comparison of financial information from two different time periods which is inconsistent with standard economic practices accepted by the Commission. BC Hydro further notes that if Mr. Wait’s analysis was extended to a longer term, it would yield a 2009 levelized cost similar to the amount estimated by BC Hydro (BC Hydro Reply, pp. 2-3).

The Commission Panel puts minimal weight on Mr. Wait’s submission as the model he used in his argument is not a true reflection of the total costing as it omits certain items included in BC Hydro’s costing analysis.

The Commission Panel, after reviewing BC Hydro’s EAP methodology, believes that there is some merit in the concerns expressed by IPPBC and that BC Hydro will need to be sensitive to these methodology issues in future applications. Nevertheless, the Commission Panel accepts BC Hydro’s estimated EAP of $64.08 per MWh as representative of the range of the levelized cost of energy from the Waneta Transaction, and concurs with the views of BCOAPO, JIESC, CEC and BCSEA-SCBC that the cost of this firm energy compares favourably with other alternatives.

Optimum Sequence Portfolio (OSP)

BC Hydro describes the OSP analysis as one which compares one portfolio of supply resources that includes the Waneta Electricity with another portfolio of supply resources that does not. The OSP analysis illustrates how well (expressed in dollars) the Waneta Transaction decision would compare to a scenario where BC Hydro did not make the Waneta Transaction. BC Hydro states that the analysis indicates a significant economic benefit to the Waneta Transaction. (Exhibit B-1, pp. 6-3 to 6-5)
BCOAPO suggests that “The Portfolio Weighted NPV in Table 6.3 of the Application, Exhibit B-1, is understated because the weightings do not adequately reflect the fact that future government policy directions, reflecting provincial, national and international standards, is highly likely to steer BC Hydro farther away from the use of thermal resources. (BCOAPO Argument, p. 2)

No other interveners commented on the Optimum Sequence Portfolio analysis.

**Commission Determination**

While the Commission Panel considers the BCOAPO comment on the OSP to be speculative, it does seem supportive of BC Hydro’s analysis. The Commission’s review of the OSP analysis did not reveal any substantive reasons to question the conclusion that there would be significant benefit arising from the Waneta Transaction. Accordingly, the Commission Panel determines that the OSP analysis supports a conclusion that the Waneta Transaction is in the public interest.

### 2.1.2.2 Rate Impact

BC Hydro’s rate impact analysis indicates incremental annual rate increases in the initial partial year and the first full year following the Waneta Transaction, followed by smaller increases for the years 2012 through 2016. Incremental rate decrease impacts would result for the years 2017 through 2027, the last year modeled, and beyond. By the years 2027 the annual revenue requirement would be approximately $100 million lower with the Waneta Transaction. (Exhibit B-1, pp. 6-6 to 6-8)

The estimated incremental rate increase/decrease impacts of the Transaction are illustrated in the following table taken from Exhibit B-1:
BCOAPO agrees that the Project will provide value to ratepayers as a result of rate decreases when compared to alternative means of meeting BC Hydro’s energy requirements (BCOAPO Argument, p. 2).

CEC, while supporting the project, submits the Commission should limit BC Hydro’s ability to recover project costs in interim rates in fiscal 2011 and 2012. CEC notes that BC Hydro has indicated a willingness to consider options to smooth out the rate impacts of large capital expenditures such as the Waneta Transaction. (CEC argument, p. 18) This matter is addressed in Section 2.4.3 of this Decision.

BCSEA/SCBC is of the view that the rate impact analysis supports the cost-effectiveness of the Waneta Transaction. (BCSEA/SCBC Argument, p. 3)
None of the Interveners questioned the accuracy of BC Hydro’s rate impact analysis.

Commission Determination

The Commission’s review of the evidence did not reveal any reason to question the accuracy of BC Hydro’s rate impact analysis. While the Commission Panel considers that the forecast incremental rate increase indications in the early years are not insignificant, these indications are more than offset by the positive impact of continuing longer term overall rate decreases. Accordingly, the Commission Panel determines that the rate impact analysis is supportive of a conclusion that the Waneta Transaction is in the public interest.

2.1.2.3 Other Indications of Cost-Effectiveness

BC Hydro provides an analysis of a number of cost effectiveness benchmarks with respect to the Waneta Transaction including: reliability; safety; schedule; financing arrangements; dispatch ability; timing; location; and environmental impacts. (Exhibit B-1, pp. 6-8 to 6-13)

There were no objections by Interveners with respect to BC Hydro’s analysis of these factors. Environmental impact considerations of the Waneta Transaction on First Nations are addressed in Section 2.2.4 of these Reasons.

The Commission Panel considers BC Hydro’s evidence concerning the other factors to be supportive of the Waneta Transaction in the context of its economic analysis.

Teck’s Opportunity Cost

In addition to the comparative analysis focusing on the value of the Waneta Assets to BC Hydro and its customers, an analysis was conducted to assess whether the Waneta Transaction cost is fair in light of the opportunity cost value to Teck. This analysis is described at Exhibit B-1, Section 6.5, pp. 6-13 - 6-20.
BC Hydro notes that in the Alcan decision, the Commission accepted the opportunity cost of the seller as a valid consideration in assessing whether a transaction is in the public interest. (BCUC Alcan Decision, January 29, 2008, pp. 18-22) BC Hydro argues that although the Filing is made under a different section of the Act than the Alcan decision, the Commission should consider Teck’s opportunity cost when evaluating the price to be paid for the Waneta Assets. (BC Hydro Argument, p. 4)

BC Hydro states that Teck’s opportunity cost is directly comparable to the $825 million purchase price and estimates Teck’s opportunity cost, on a net present value basis, to lie between $1,046 million and $746 million, using high and low end discount rates of 8 percent and 10 percent, respectively. BC Hydro believes this estimate is conservative in some respects as Teck may achieve higher prices in the open market under certain circumstances (Exhibit B-1, Chapter 6, Table 6-4, p. 6-19). BC Hydro submits that there is no evidence on record supporting the suggestion Teck would have been prepared to sell the interest acquired by BC Hydro for an amount less than $825 million (BC Hydro Argument, p. 4).

Both BCSEA-SCBC and BCOAPO agree that Teck’s opportunity cost is a valid consideration in evaluating the cost effectiveness of the Transaction (BCSEA-SCBC Argument, p. 5; BCOAPO Argument, p. 3). BCSEA-SCBC is satisfied with BC Hydro’s explanation that the $825 was an outcome of negotiations and notes both parties were professionally represented with no evidence that BC Hydro ought to have achieved better terms (BCSEA-SCBC Argument, p. 3). Alan Wait has a contrary view and submits the price for the Waneta assets is too high as BC Hydro was the only bidder capable of effectively using the power from the facility (Wait Argument, p. 3).

**Commission Determination**

The Commission Panel considers that bilateral negotiations, between arms length parties dealing in good faith and represented by qualified advisors, can achieve a result which is fair to both parties. The Commission Panel also considers that informed opportunity cost analysis is a valuable
technique for use as both a negotiation tool and, in the case of the Waneta Transaction, as a benchmark consideration in assessing whether the purchase price is in the public interest. The Commission Panel considers the use, application and result of the opportunity cost analysis to be appropriate and supportive of a finding that the price to be paid for the Waneta Assets is in the public interest.

Asset Ownership vs. Energy Purchase Agreement

BC Hydro’s Filing states “Teck initially indicated a preference to pre-sell its generation (an Energy Purchase Agreement or EPA) for a defined period in return for an upfront payment, while retaining ownership of the Waneta Assets for the long term. BC Hydro was unwilling to proceed on that basis because it could not identify a means to obtain sufficient security to ensure that it would receive all the energy that it was entitled to in future years. Accordingly, BC Hydro insisted on acquiring an interest in the Waneta Assets themselves.” (Exhibit B-1, p. 6-14)

BC Hydro reiterated that the Teck EPA (with a fixed prepayment) proposal was rejected due to concerns with enforcing the supply obligation in the event of Teck’s insolvency at some point in the future. (BC Hydro Argument, p. 3)

The City of Trail (City) supports the EPA alternative and submitted that over the short and medium term the needs of BC Hydro could have been met at a lower price through what it termed as “the simple purchase of surplus power from Waneta.” The City also submitted that “...it is incumbent upon BC Hydro to consider ‘the price and availability of any other form of energy that could be used instead’.” (City Argument, p. 27) The City did not provide any evidence in support of its submissions.

IPPBC was the only other intervener expressing any concern with asset ownership, submitting that that the “risk profile for BC Hydro in such an asset purchase is completely different from that in an energy purchase contract” and noting this is a factor which should be a consideration when
comparing this Transaction against other options with IPP’s. Notwithstanding this position, IPPBC submitted that it “... reaffirms its support for the Waneta Transaction ... [with other caveats]” (IPPBC Argument, p. 27).

**Commission Determination**

The Commission Panel finds that BC Hydro’s decision to reject an EAP style arrangement in favour of the purchase of an undivided interest in the Waneta Assets was prudent in light of its assessment of the risks associated with the EAP alternative. The Commission Panel takes note of IPPBC’s comments concerning the risk profile, but considers that BC Hydro’s concerns with respect to prepaying a long term EPA, given the uncertainties inherent in such an arrangement, constitute greater risk. The Commission Panel finds that the Waneta Asset purchase arrangement filed by BC Hydro better serves the public interest.

**First Nation Costs**

Costs, if any, relating to First Nations have not been included in the transaction costs relating to the Transaction, and thus have not been included in the economic analysis at Chapter 6 of the Filing. (Exhibit B1)

IPPBC expresses concern that economic evaluation does not include any analysis of the risk or potential first nation costs associated with the Transaction. (IPPBC Argument, p. 27)

**Commission Determination**

The Commission Panel considers that any prospective First Nation costs relating to the Waneta Assets are speculative, and not readily quantifiable. The Commission Panel also considers that any First Nations costs which could potentially arise with respect to the Waneta Assets would not be attributable to the Waneta Transaction in any event. This issue is discussed further in Section
2.2.4. The Commission Panel concludes that First Nations’ costs, if any, should not be included in assessing whether the Waneta Transaction is in the public interest.

2.1.2.4 Risk Analysis

BC Hydro’s risk analysis is set out in Exhibit B-1, Section 6.6. BC Hydro describes its analysis as addressing “... the risks that arise with BC Hydro making the Waneta Transaction compared to what it would have done in the alternative. The premise is that in the alternative, BC Hydro would continue with the actions set out in its Base Resource Plan as set out in the 2008 LTAP Evidentiary Update.”

BC Hydro notes that “All resource acquisitions decisions carry with them some elements of risk and the Waneta Transaction is no exception.” The Waneta Transaction risks are categorized into three broad categories; market, counter-party, and physical plant risks (Exhibit B-1, p. 6-20, 21). BC Hydro identifies specific risk components within the broad categories, and describes the risk, related mitigation measures and any remaining residual risk.

IPPBC submits that BC Hydro will be incurring significant owner’s risks with the project, some of which are quantifiable but not included in the Waneta comparative economics. IPPBC also identifies other risks it describes as unquantifiable with potential for future costs which may be very substantial for BC Hydro and its ratepayers (IPPBC Argument, p. 2). IPPBC discusses Teck’s credit risk and questions the value of Teck’s share of the Waneta Assets due to other possible liabilities related to contaminated sediments. IPPBC also submits that the asset holding structure selected by BC Hydro was not optimal at limiting liability (IPPBC Argument, pp. 23-24).

Notwithstanding IPPBC’s concerns regarding the unit energy cost calculations and the quantified and un-quantified risks, IPPBC concludes its submission by reaffirming its support for the Waneta Transaction. (IPPBC Argument, p. 27)
CEC expresses support for the Waneta Transaction and notes that BC Hydro has used the Klohn Crippen Berger Report in determining the value of the proposed purchase and the Golder Report to conclude that the environmental issues are comparable to other hydroelectric plants. (CEC Argument, p. 9)

JIESC submits that the Waneta facility has a long operating record and that BC Hydro has performed a diligent review of the facility conditions and future costs, thus reducing the inherent risk of owning such an asset (JIESC Argument, pp. 1-2).

BCOAPO submits that the while the Waneta Transaction has some risks due to asset ownership, it is not aware of any evidence suggesting these risks could increase the cost of ownership to the point where it would exceed the cost associated with comparable energy supply from independent power producers.

**Commission Determination**

The Commission Panel recognises and concurs with BC Hydro’s statement that “All resource acquisitions decisions carry with them some elements of risk and the Waneta Transaction is no exception.” (Exhibit B-1, pp. 6-20 to 6-21) The Commission Panel notes the caveats identified by IPPBC in expressing its support for the Waneta Transaction, but considers that relatively little weight should be ascribed to them as they are expressed as views in argument with little if any supporting evidence on the record. IPPBC’s concerns are addressed further in the following section discussing due diligence and asset acquisition assessment.

The Commission Panel considers that BC Hydro’s evidence concerning risk analysis and related activities, considered along with the due diligence and asset acquisition assessment activities, is adequate to support the Waneta Transaction. The Commission Panel considers that BC Hydro has made reasonable attempts to identify and mitigate risk to a tolerable level. The Commission Panel also notes that the estimated EAP for the Waneta Assets is lower than comparable energy sources by an amount sufficient to provide a reasonable margin for possible risk factors.
2.1.3 Due Diligence and Asset Acquisition Assessment

This Section discusses BC Hydro’s due diligence and related asset acquisition assessment issues in the context of assessing if the Waneta Transaction is in the public interest.

Waneta Dam was completed in 1954. BC Hydro understands the facility is in good condition for its age and has had a number of upgrades and life extensions. BC Hydro, in its Filing, states that while it is aware of some physical plant issues, forced outage factors and overall plant availability at Waneta compare favorably with similar sized hydroelectric projects (Exhibit B-1, pp. 2-2 - 2-3). BC Hydro states that it is not aware of any safety or environmental concerns which would be an impediment to the Waneta Transaction and the proposed Purchase Agreement would contain a number of representations and warranties between the parties.

BC Hydro conducted what it describes as a significant due diligence process, including retaining Klohn Crippen Berger Ltd. and Golder Associates to conduct further assessments of Waneta. Klohn Crippen Berger Ltd. undertook a technical due diligence assessment, condition assessment and review of the maintenance and capital plans for both the Waneta Generating Station and a similar assessment of Transmission Line 71 (KCB Report). (Exhibit B-11-4) Golder Associates addressed the environmental risk assessment and management practices at these facilities (Exhibit B-11-5) (Golder Report). The Golder Report, while identifying a number of what it described as low to moderately-high risk consequence environment and public safety issues, noted that these are not dissimilar to those facing other utilities and dam owners in the Columbia basin and they have been addressed in a reasonable fashion. In its conclusions, the Golder Report states that its review of the Waneta Dam and assets “demonstrate a generally well-run facility where basic issues are managed and response to incidents lead to ongoing improvements in management practices” (Exhibit B-11-5, p. 49). The KCB Report concluded that the generating station and transmission line have generally been maintained in working order, with plans and budgets based on historical costs in place to continue ongoing maintenance. In addition, the report noted eight previously
unidentified issues or risks which could cost in excess of $1 million each (Exhibit-B-11-4, pp. 3-5). BC Hydro states that this information was employed to update its future cost estimate (BC Hydro Argument, p. 6).

BCOAPO, BCSEA and CEC had similar views concerning the condition of the physical plant and raised no major concerns with respect to these matters (BCOAPO, BCSEA and CEC Arguments). IPPBC, while continuing to support the Waneta Transaction, did raise concerns as to the completeness of the due diligence conducted by BC Hydro and submits that the energy costs resulting from BC Hydro’s calculations do not provide a complete picture of the quantified factors or un-quantified risks that are being accepted in making the transaction. (IPPBC Argument, p. 27)

**Commission Determination**

The Commission Panel views the due diligence process conducted by BC Hydro as satisfactory. The KCB Report outlines eight previously unidentified risks. The Commission Panel accepts that when costs for remediating these risks are added to the unit energy cost, the impact is relatively minor and has little impact on the viability of the Transaction. The Commission Panel finds no evidence to support any assertion that the probability and potential impact of these risks would be sufficient to offset the identified benefits of the Waneta Transaction.

2.1.3.1 Waneta Expansion Project

The Waneta Expansion Project (WEP) is proposed by Columbia Power Corporation (CPC)/Columbia Basin Trust (CBT) through their subsidiary Waneta Expansion Power Corporation (WEPC). The WEP is a proposal to develop additional capacity and energy capability at Waneta. This project, if approved and built, would be adjacent to the dam and power plant. The WEP entails the construction of a second power house and the addition of two new turbines and generating units which would provide incremental capacity of 335 MW (Exhibit B-1, pp. 2-14, 2-15).
BC Hydro states that the negotiated operating terms for the Transaction provide that, through December 31, 2035, any advancement or delay in the WEP or any future entitlement changes or outages would have no impact on BC Hydro’s supply of firm energy (Exhibit B-1, 3-6, 3-7).

BC Hydro states that while its Waneta electricity would be reduced by the full amount of the anticipated reduction in energy and capacity related to WEP, it has taken this into consideration in its negotiation of purchase price. BC Hydro also advises that the Asset Purchase Agreement (APA) provides for Teck to accept any risk of actual entitlements deviating from the estimates.

**Commission Determination**

The Commission Panel finds that appropriate and prudent steps have been taken to mitigate risks associated with the completion of WEP.

2.1.3.2 Waneta Dam Asset Purchase Agreement and Subsidiary Agreements

The APA of September 22, 2009 is the umbrella agreement for the Waneta Transaction. (Exhibit B-11-1) The APA contains several schedules and subsidiary agreements which are an elaboration of the Indicative Terms referenced in the Master Term Sheet and its appendices. BC Hydro has provided the Table of Concordance that records changes from the Master Term Sheet that are substantive in nature.

This section discusses the following subsidiary agreements that form part of the APA:

1. Waneta Partial Sale Canal Plant Agreement Amending Agreement;
2. Co-Ownership and Operating Agreement;
3. Reciprocal Security Agreement;
4. Mortgage;
5. Assignment Agreement;
6. Surplus Power Rights Agreement;
7. Transmission Right of Way and
8. Road Right of Way

Waneta Partial Sale Canal Plant Agreement Amending Agreement

BC Hydro, Teck and FortisBC entered into an agreement made as of August 1, 1972 (the Original Canal Plant Agreement). BC Hydro, Teck, FortisBC, BPC, BEPC, and WEPC subsequently entered into the Canal Plant Agreement (the CPA) as of July 1, 2005. The CPA is exempt from regulation by Order G-41-06.

Teck and BC Hydro have agreed to amendments to the CPA which do not affect the rights or obligations of any other parties to this agreement. The Teck/BC Hydro amendments address operating issues, responsibilities and entitlements corollary to the APA, described at Exhibit B-11-1, pp. 82-88. The other parties to the CPA accept these arrangements. (BC Hydro Argument, p. 37) None of the Interveners opposed the amendments.

Commission Determination

The Commission Panel considers the amendments to the CPA to be appropriate and understands that they are exempt from regulation and acknowledges that it has no jurisdiction over these amendments.

The Commission Panel directs BC Hydro to file a copy of the Waneta Partial Sale Canal Plant Agreement Amending Agreement with the Commission within 90 days of its execution.
Co-Ownership and Operating Agreement

The Co-Ownership and Operating Agreement (COO Agreement) will govern the relationship between the parties as long as the Waneta Dam is owned in undivided interests by more than one owner. BC Hydro and Teck will be co-owners rather than partners. The agreement governs the manner in which future costs are allocated between Teck and BC Hydro, and how expenditure decisions will be made. It establishes an Operating Committee, and addresses the delivery of capacity and energy from Waneta, future transfers of interests in Waneta and several other matters (Exhibit B-1, pp. 3-3 to 3-10).

The Commission Panel has reviewed the COO Agreement and concludes that its provisions provide reasonable protection for the public interest and for BC Hydro as minority co-owner.

Reciprocal Security, Mortgage, Assignment, Transmission and Waneta Road Right of Way Agreements

The Commission Panel has reviewed the provisions of the Reciprocal Security, Mortgage, Assignment, Transmission and Waneta Right of Way Agreements and determines that they are reasonable commercial arrangements for inclusion as part of the Waneta Transaction. Other issues with respect to the Line 71 transmission arrangements are discussed at Section 2.4.5

Surplus Power Rights Agreement

BC Hydro and Teck intend to enter into a Surplus Power Rights Agreement (SPRA) which relates to the future sale of surplus energy and capacity by Teck to BC Hydro. This agreement provides BC Hydro with an option to purchase energy in some circumstances, and an obligation to purchase in others. BC Hydro believes the SPRA is in the public interest. BC Hydro submits that the SPRA provides benefits to both parties. BC Hydro expects, under the proposed pricing structure, that the acquisition prices for securing domestic load will be advantageous and that, when there is a surplus
to domestic load, resale will occur on a profitable basis. BC Hydro also states that the SPRA is consistent with the Commission’s requirements under section 44.2(5) of the Act. (Exhibit B-13, IR 2.10.2)

No Intervener stated a position or provided evidence with respect to the SPRA.

The Commission Panel has reviewed the draft SPRA and considers that there is no reason why the agreement should not be accepted for filing. However, the Commission Panel reserves the right to make final determination on acceptance of the SPRA upon BC Hydro filing a fully executed copy of the agreement under section 71 of the Act.

The Commission Panel concludes that the APA and Subsidiary Agreements are acceptable in the circumstances and requests BC Hydro to file a copy of all fully executed agreements within 60 days of the closing of the Waneta Transaction.

2.1.4 Local Impact

The Teck smelter operation is a major employer and driving economic force in the City and the surrounding area, including the Regional District of Kootenay Boundary (RDKB) and the communities represented by the Association of Kootenay and Boundary Local Governments. The City, supported by the City of Castlegar, opposes the Waneta Transaction, as do the United Steel Workers Local 480 (USW 480), local governments and many individuals, including those signing petitions submitted by USW 480.

The principal concerns of those opposing the Waneta Transaction are similar if not identical and can be summarized by reference to the following submissions of the City, a registered Intervener:

“... [the Waneta Transaction] is not in the public interest because it neither safeguards the industrial base dependent upon the power for which the dam was constructed and on which the City and its surrounding areas rely, nor does it result
in the creation of clean power at a rate more beneficial to ratepayers than otherwise would have been achieved.” (City Argument, p. 1)

“... the economic impact of the Acquisition on the City and the surrounding communities is a factor the BCUC must consider in its public interest analysis.” (Argument, p. 2, para. 5)

“... this application [sic] should not be entertained by the BCUC because BC Hydro, as an agent of the provincial government, failed in its duty to consult local governments pursuant to the Community Charter ...” (Argument, p. 2)

“... in determining whether the Acquisition [sic] is in the public interest ... the BCUC needs to consider ... impact on communities primarily dependent on power generated by Waneta.” (Argument, p. 4)

In support of its submissions, the City filed evidence comprising past annual reports of Teck and external reports discussing the Waneta Transaction.

2.1.4.1 Safeguarding the Industrial Base

It is clear that the sale of surplus power has made a substantial contribution to Teck’s Trail Operation over the past decade. However, there is no evidence to suggest with certainty or even probability that Teck will pursue other options and either close or curtail its Trail smelter operations. On the contrary, the evidence of BC Hydro and Teck is that the capacity being sold is surplus to Teck’s smelter power capacity requirements, and that the parties have taken steps within the structure of the Transaction to ensure sufficient low cost power to be available for Teck to continue running its existing smelter operations. Those steps include:

- Operating Terms which contemplate a series of entitlement adjustments until at least December 31, 2035;
- Monthly estimated maximum energy requirements which include a 15 MW buffer; and
- Provision for BC Hydro to bear the total decrease in energy entitlement associated with the Waneta Expansion Project.

(Teck Argument, pp. 12-13)
BC Hydro, in Reply, submits that there is a “fundamental flaw” in the reasoning of the City in that Teck’s assessment of whether to self-supply electricity to the smelter operation or sell that electricity on the market is one which exists regardless of whether it owns all or two-thirds of Waneta Assets. (BC Hydro Reply, p. 5)

**Commission Determination**

It is natural for an event such as the Waneta Transaction to give rise to apprehension and concern on the part of local residents and officials. However, the Commission Panel also considers it to be plausible, in these circumstances, that the Waneta Transaction may be a positive factor in providing financial stability to sustain Teck’s Trail smelter operation.

The Commission Panel considers the submissions of the City and the local Interveners to be understandable, but speculative and unsupported by any persuasive evidence, and accordingly the submissions are given little weight.

The Commission Panel finds the evidence of Teck and BC Hydro plausible and supportive of the likelihood of Teck’s Trail smelter being able to continue operations into the foreseeable future without negative impact on the local area.

### 2.1.4.2 No Benefit to Ratepayers

The City submits that there is no benefit to ratepayers arising from the Waneta Transaction as BC Hydro’s cost-benefit analysis is based on short-sighted assumptions, particularly in respect to water rights, and suggests that future governments will consider differential water rates between industrial and other uses. (City Argument, para. 51, 56-60) In Reply, BC Hydro dismisses the City’s reference to changes in water rates as speculative, and notes that differential water rates currently apply to the Waneta Dam, with water used to produce power for Teck’s Industrial Operations.
qualifying for commercial water fees, while power produced for other purposes is subject to the higher general category water fee rate. The submissions of the City on this matter were not supported by any evidence.

**Commission Determination**

The Commission Panel finds the City’s submission to be speculative and without any supporting evidence, and accordingly gives it minimal weight.

2.1.4.3 Negative Community Impact

The City notes that the residents of Trail and surrounding areas such as Castlegar, Nelson and the Kootenay-Boundary region depend on the continued profitable operations of Teck’s smelter. The City expresses concern that Teck may not maintain the Trail smelter operations if those operations are no longer subsidized by the annual sale of surplus power generated by the Waneta Dam. The City also submits that the negative socio-economic impact on the City and surrounding communities will be significant. The impacts the City describes include loss of municipal taxation revenue, the potential reduction of smelter operations and consequential negative effect on employment and economic activity in the region. The City refers to Teck’s annual reports in Exhibit C9-5 to illustrate the impact of external power sales on the results of the Trail smelter operations, including the operation of the Waneta Dam. (City Argument, para. 64-87)

Teck addresses the concerns of the City and USW 480 in its argument and describes the arrangements with BC Hydro to supply its industrial load under the Waneta Transaction, and states:

“In summary, the Transaction has been designed to have the low-cost power that is required for the Industrial Operations available to Teck, and to have the power that is in excess of the requirements of the Industrial Operations (that would otherwise have been sold by Teck as market power) available to BC Hydro.” (Argument, para 35-38)
BC Hydro submits that the concerns of City and USW 480 are entirely speculative and goes on to submit that:

“It is equally possible to speculate that far from jeopardizing the future operation of the Trail Smelter, the Transaction played a significant part in providing a future for that operation. At the time that Teck came to BC Hydro to sell surplus power, it had a real and urgent need to monetize the value of some of its assets in order to remain financially solvent. Had it been unable to do that, its corporate survival was in issue. Although the ongoing operation of the Waneta Assets was never in doubt during this period, the future of the Trail Smelter if Teck had not been able to escape its financial difficulties was highly uncertain.” (Argument, p.38)

Commission Determination

The Commission Panel finds that local community concerns are relevant in considering whether the Waneta Transaction is in the public interest. In order for those concerns to affect the determination of the public interest having been met, they must be supported by credible evidence supporting the probability of a significant negative impact resulting from the transaction.

The Commission Panel acknowledges the negative impact the Waneta Transaction may have on local taxation revenue, and commends the RDKB for its initiative in taking the matter up with the Provincial Government, as the Commission has no jurisdiction to address this matter. The Commission Panel accepts BC Hydro’s comments that the net effect of the ownership change is speculative and unlikely to offset the asserted benefits of the Waneta Transaction.

The evidence before the Commission Panel is that the Waneta Transaction is structured for Teck to continue to have the power it requires for its Industrial Operation supplied by the Waneta Dam, and that Teck’s financial position and viability will be improved by the monetization of the Waneta Assets. The Commission Panel finds this evidence to be credible, leading to the conclusion that there is minimal increased risk of any negative impact on the scope of Teck’s ongoing Industrial Operations arising from the Waneta Transaction itself. The Commission Panel considers that the concerns expressed by the City are speculative, without support from any persuasive evidence.
Accordingly, the Commission Panel sees no reason to reject all or any part of the Waneta Transaction based on possible negative community impacts.

2.1.4.4 Failure to Consult Local Government

The City submits that BC Hydro failed to satisfy its duty to consult with local government (City Argument, para. 94-103). The Commission Panel sees no credible evidence in support of the City’s assertion that the Local Government Act and/or the Community Charter apply to BC Hydro. Accordingly, the Commission Panel does not accept the City’s attempt to establish that BC Hydro is compelled, as an agent of the Crown, to consult directly with local government.

2.2 First Nations: the Duty to Consult

The Commission is required, under the Act, to review and accept or reject all or part of the Waneta Transaction after assessing whether the proposed expenditures are in the public interest. A significant element in considering the public interest is the requirement for the Commission to assess, to the date of its decision, the adequacy of BC Hydro’s consultation with First Nations in the context of the Waneta Transaction.

The assessment of BC Hydro’s First Nations consultation is based on evidence available to the Commission up to the close of the evidentiary record and submissions received in arguments and replies. BC Hydro notes that new information regarding First Nations’ concerns may come to light prior to closing the Waneta Transaction and that, as a Crown agent, it will have to make a final decision on the adequacy of consultation before deciding whether to complete the Transaction. In contemplation of this determination, BC Hydro states that it has the ability to withdraw from the Transaction if it is of the opinion that completing the Transaction would not be honourable.

The Courts have addressed issues relating to the duty to consult on a number of occasions. In the context of the Commission’s requirements in the case of the Waneta Transaction, the Commission Panel takes particular note of the following comments concerning scope of consultation provided
in Delgamuukw and Haida:

“The nature and scope of the duty of consultation will vary with the circumstances.” (Delgamuukw, para. 168)

“The scope of the duty is 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.” (Haida, para. 39, p. 24)

Haida also establishes that the Crown’s duty to consult varies along a spectrum (the ‘Haida spectrum’):

“... At one end of the spectrum lie cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor...” and “At the other end of the spectrum lie cases where a strong prima facie case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high...” (Haida, para. 43, 44).

The Courts have also provided guidance as to the processes to be followed in the course of fulfilling the duty to consult, once triggered (Carrier Sekani and Kwikwetlem). Those processes can be summarized as follows:

1. Identify and engage potentially affected First Nations at an early stage of the process;
2. Obtain information and make a determination of the strength of claims;
3. Obtain information and make a determination of the degree of seriousness of any asserted adverse impacts;
4. Based on 2 and 3, and considering the circumstances of the particular activity being undertaken, determine the required level of consultation based on placement on the ‘Haida Spectrum’;
5. Undertake further information gathering and consultation in accordance with step 4: and
6. Determine any further accommodation required.
There are two primary issues for the Commission Panel to address: first, whether BC Hydro has
appropriately determined the level of any required consultation and accommodation on behalf of
the Crown in the circumstances of the Waneta Transaction, and second, whether the consultations
undertaken by BC Hydro have been adequate to uphold the honour of the Crown with respect to
the Waneta Transaction.

The First Nations take the position that the Waneta Transaction requires BC Hydro to fulfill the
Crown’s constitutional obligation to consult and accommodate, inclusive of past infringements and
grievances.

BC Hydro submits that it has upheld the honour of the Crown at each step of the process in
connection with the Transaction (BC Hydro Argument, p. 9) and that it was under no obligation to
consult or accommodate with respect to past grievances, but nevertheless did so, thereby going
beyond what was necessary to preserve the honour of the Crown. (BC Hydro Argument, p. 10)

**Commission Determination**

In summary, the Commission Panel finds that nothing about the Waneta Transaction, in itself,
changes or has any potential adverse effect on any pre-existing and ongoing infringements or the
day to day operations of the Waneta Assets.

The Commission Panel finds that the seriousness of any potentially adverse effect arising from the
Waneta Transaction should be given primary weight in assessing the adequacy of BC Hydro’s
consultation with First Nations.

The Commission Panel finds that BC Hydro has undertaken a level of consultation and
accommodation which at least adequately meets and likely exceeds that necessary to uphold the
honour of the Crown in the circumstances of the Waneta Transaction.
2.2.1 BC Hydro’s Consultation

BC Hydro filed two exhibits prepared by its Aboriginal Relations and Negotiation Group (ARN): a Record of Decision and First Nations Preliminary Consultation Report, dated September 18, 2009 (Exhibit B-11–2), and an Updated First Nations Consultation Report dated November 26, 2009 (Exhibit B-20), (‘Preliminary ARN Report’ and ‘Updated ARN Report’ respectively), documenting and describing its consultation with First Nations.

BC Hydro’s assessment of the strength of claim and potential for adverse impacts and resulting placement on the Haida spectrum is summarized as follows:

Preliminary ARN Report, September 2009:

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<thead>
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<th>Strength of Claim</th>
<th>Potential for Adverse Impacts</th>
<th>Haida Spectrum Placement</th>
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<tbody>
<tr>
<td>ONA (Including Upper Nicola Indian Band)</td>
<td>Low</td>
<td>Very low</td>
<td>At the low end</td>
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<tr>
<td>KNC and SIB</td>
<td>Low</td>
<td>Low</td>
<td>At the low end</td>
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<tr>
<td>Sinixt</td>
<td>Low to moderate</td>
<td>Very low</td>
<td>Towards the low end</td>
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<td>SIB (Included with KNC)</td>
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Updated ARN Report, November 2009

<table>
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<tr>
<th></th>
<th>Strength of Claim</th>
<th>Potential for Adverse Impacts</th>
<th>Haida Spectrum Placement</th>
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The following discussion of the adequacy of BC Hydro’s First Nations consultation is made in relation to the guidance of the courts noted above.
2.2.2 Engagement of Potentially Affected First Nations

BC Hydro’s evidence is that it consulted a number of sources in order to identify potentially affected First Nations, and that immediately following the agreement with Teck to enter into a bilateral non-binding term sheet the following were contacted, advised of the potential transaction and provided with a copy of the term sheet detailing the transaction:

- Sinixt First Nation (Sinixt Nation Society / SNS);
- Okanagan Nation Alliance (ONA) and member First Nations, including the Upper Nicola Indian Band, (UNIB);
- Ktunaxa/Kinibasket Treaty Council (KKTC) / Ktunaxa Nation Council (KNC) and member Nations; and
- Shuswap Indian Band (SIB) and Secwepemc (Shuswap) Nation Asserted Traditional Territory.

The ONA suggest that they should have been notified of the potential transaction prior to the completion of the Term Sheet.

Commission Determination

The Commission Panel considers that the confidential nature of negotiations concerning commercially sensitive transactions, particularly when involving publicly traded corporations, renders premature disclosure highly inappropriate, and precludes any public disclosure prior to the Term Sheet being agreed. It is only at that point that a transaction can be said to be a possibility.

The Commission Panel finds that BC Hydro’s identification and engagement of First Nations immediately following the completion of the Term Sheet was both timely and complete with respect to the Waneta Transaction.
2.2.3 Strength of Claim

Each of KNC, ONA and SNS make claim to Aboriginal rights or title with respect to their asserted use and occupation of the Waneta area. Their evidence primarily comprises ethnographic and archeological studies, reports and opinions of professionals and other related material, most of which relates to information in support of establishing and analyzing the presence and activities of First Nations in the area of the Waneta Dam and surrounding regions. The Commission Panel considers that the evidence tends to support the conclusion that there was some use and occupation by each of the First Nations of the area asserted to be impacted by the Waneta Dam. However, the evidence taken as a whole is inconclusive as to which, if any, of the First Nations had a predominant presence.

This issue is clouded by the existence of competing and conflicting claims. ONA contends that the Arrow Lakes people (Sinixt), through their descendants, continue as Okanagan while the SNS contends that the Sinixt are and continue to be a distinct nation, with their own dialect. The Ktunaxa also indicate that their people include descendents of the Sinixt, among others.

Commission Determination

This issue is unresolved, but, in the view of the Panel, cannot and does not need to be resolved by BC Hydro in the context of the Waneta Transaction and any related duty to consult. That the issue continues unresolved does, however, speak to BC Hydro’s determination of the strength of claim of the individual First Nations interveners. The Commission Panel concludes that the strength of asserted claims of none of the First Nation Interveners has been firmly established. This leads the Commission Panel to the conclusion that through the consultation process and the information available, BC Hydro’s Updated ARN Report assessment of the First Nations’ strength of claim with respect to asserted title is reasonable.
2.2.4 Assess Adverse Impacts

The evidence and assertions of the First Nations concerning the adverse effects of the Waneta Dam are substantially overlapping, and for the most part relate to past infringements caused by the construction and ongoing operation of the Waneta Dam. In summary, the adverse effects asserted by the First Nations are primarily related to river passage blockage, and include the resulting effect on fish stocks, boat travel, upstream flooding and interference with hunting, harvesting, spiritual beliefs, gathering places and cultural uses. BC Hydro has acknowledged the concerns about the effect of the Waneta Dam on fish populations, but notes that these effects do not arise out of the Waneta Transaction, but rather out of the existence and operation of the Waneta Dam itself.

(Exhibit 20, p. 94) The First Nations’ asserted adverse effects were not otherwise challenged by BC Hydro or other Interveners.

BC Hydro is buying a one-third minority interest in the Waneta Assets, originally constructed some 50 years ago, presumably with all the necessary permits and licenses required from the Crown at that time. Land upstream of the dam was flooded. The evidence is clear and without contradiction that it was the construction and operation of the dam that gave rise to any infringements and grievances which have been ongoing and seem likely to continue.

The First Nations attempt to connect the Waneta Transaction to the historic infringements and grievances. Clearly, any infringements resulting from the construction and operation of the Waneta Dam existed prior to and will continue with or without the Waneta Transaction.

The issue here is not whether there are adverse effects, infringements and grievances associated with the existence of the Waneta Dam, but whether the Waneta Transaction itself gives rise to any potential incremental adverse effects. None of the First Nations Interveners presented any persuasive evidence or assertion of any potential incremental negative effects which would arise from the Waneta Transaction itself.
BC Hydro’s uncontradicted evidence is that there would be no new physical impacts associated with its acquisition of a one-third interest in the Waneta Assets and no non-physical impacts which BC Hydro can foresee that would have any effect on the Aboriginal interests in the area. (Exhibit B-1, p. 7-3)

**Commission Determination**

The Commission Panel accepts BC Hydro’s evidence and concludes that its low and very low assessments of the potential for adverse effects on asserted rights and title arising from the Waneta Transaction are more than reasonable and beyond the legal requirement.

**2.2.5 Placement on the *Haida* Spectrum**

The assessment of the strength of claim and potential for adverse effects discussed above are the primary drivers of the placement on the *Haida* spectrum, which in turn is the primary determinant of any requirements for consultation and accommodation.

The Preliminary ARN Report ranked duty to consult for the Sinixt to be towards the lower end, and the ONA and KNC rankings to be at the low end of the *Haida* spectrum. The subsequent consultations and assessments were reflected in the Updated ARN Report and resulted in upgraded rankings for each of ONA and KNC from ‘at the low end’ to ‘towards the low end’ on the *Haida* spectrum.

**Commission Determination**

Based on the above findings with respect to strength of claim and potential for adverse effects, which the Commission Panel accepts, the Commission Panel finds BC Hydro’s placement of the First Nations on the *Haida* spectrum to be reasonable.
2.2.6 Assess Consultation

The intervening First Nations each take the view that BC Hydro’s determination of their placement on the *Haida* spectrum was incorrect, and accordingly the resulting consultation and accommodation has been inadequate. Their evidence and arguments can be summarized as focusing on the asserted infringements and grievances which arose from the original construction and ongoing operation of the Waneta Dam and related facilities, and their respective strength of claims, adverse effects and depth of consultation entitlement in relation to the existence of the dam. The KNC states that it “… does not completely oppose the Transaction. Rather, the KNC is looking to ensure that the Crown through BC Hydro and the BCUC lives up to its obligation to consult and accommodate KNC and other First Nations whose rights are also impacted by the Transaction.” (KNC Argument, para. 56)

The First Nations submit that BC Hydro has erred by not completing a preliminary assessment of strength of claim until September 2009, when BC Hydro entered into the APA. The Commission Panel’s view is that the First Nations have failed to recognize two key points: first, that the Preliminary ARN Report was just that: preliminary, and second, that signing the APA closed neither the Transaction nor the door for further consultations.

BC Hydro’s evidence makes it clear that the Preliminary ARN Report was used as the basis for assessing the need for ongoing consultations and information gathering through to November 2009, when the Updated ARN Report was completed. BC Hydro states that it will also consider any additional information which comes to its attention prior to the closing date for the Transaction. The Upgraded ARN Report considered consultation and information received subsequent to the Preliminary ARN Report, resulting in upgraded strength of claim and Haida spectrum assessments for ONA and KNC.
BC Hydro has also clearly stated that the Waneta Transaction is subject to a condition providing that BC Hydro does not have to close the transaction unless it is satisfied that it has maintained the honour of the Crown. That condition enables additional opportunities for consultation and assessment prior to the closing of the transaction. The First Nations have put undue weight on the signing of the APA, in effect suggesting that it represents the closing of the Transaction.

**Commission Determination**

The First Nations’ submissions that their placement on the *Haida* spectrum is too low are based on their flawed assertions that the Waneta Transaction somehow exacerbates the historic infringements and grievances. BC Hydro’s consultation and accommodation has been determined in relation to the strength of claim and potential for adverse impacts on First Nations’ interests which arise from the Waneta Transaction. The Commission Panel finds that the First Nations submissions concerning the impacts of the Waneta Transaction are not supported by any persuasive evidence of potential for adverse effects arising from the Waneta Transaction.

The Commission Panel has determined that BC Hydro’s placement of the First Nations interests on the *Haida* spectrum as toward or at the low end was reasonable. That placement in turn suggests that the duty to consult, as described in *Haida*, is at the lower end of the Haida spectrum. The Commission Panel finds that, on review of BC Hydro’s Preliminary and Updated ARN reports, and the manner in which the Waneta Transaction has been structured, the consultation requirements have been met or exceeded.

**2.2.7 Required Accommodation**

In addressing accommodation for First Nations, BC Hydro noted the expressed wish of First Nations to have enhanced input into operating considerations on the Pend d’Oreille River. The KNC formally requested that BC Hydro commit to a number of accommodation activities including construction of salmon passage facilities at the Waneta Dam (Exhibit B-20, p. 45). KNC also
speculates on BC Hydro’s prospective role on the Waneta Dam Operating Committee, and suggests that BC Hydro’s role as one-third owner will impact on operational control and will change the decision-making process and incentives. (KNC Argument, para. 43, 44) However, BC Hydro notes that its role will be advisory only, as it will have only one-third of the votes on the Operating Committee and will not be in a position to dictate outcomes in connection with the operation of the facility. (Exhibit B-20, p. 96)

BC Hydro states that it has provided assurance that, through its presence on the Operating Committee, it will advise Teck, the party directly responsible for operation of the facility, of First Nations’ concerns in respect of the operation of the Waneta Dam. BC Hydro submits that this consultation provides First Nations with a new venue to express their concerns with respect to the ongoing operation of the Waneta Assets. BC Hydro states that provision of this route for dialogue represents a significant accommodation of their concerns that exceeds the requirements imposed on the Crown by law. (BC Hydro Argument, p. 23, 24)

**Commission Determination**

The Commission Panel takes note that BC Hydro will have only a minority position on the Operating Committee with only limited ability to exert influence through persuasion and no ability to direct decisions concerning the operations of the Waneta Assets. In these circumstances, the Commission Panel considers that the assurance BC Hydro has provided exceeds any requirement for reasonable accommodation in the circumstances of the Waneta Transaction.

**2.2.8 Conclusions/Determinations**

In reaching its findings with respect to the adequacy of BC Hydro’s duty to consult, the Commission Panel considers that the Crown’s involvement with the Waneta Assets may have commenced at the time of the planning, permitting and original construction of the dam, thus triggering a duty to consult with First Nations. The Commission Panel finds that, with or without BC Hydro or any other proponent as a purchaser of a minority interest in the Waneta Assets, the ongoing operations of
the dam and related assets would be unchanged and any pre-existing duty to consult would survive any such transaction.

The Commission Panel considers that any duty to consult with respect to historic matters need not be completed in order for there to be adequate consultation in the particular circumstances of the Waneta Transaction. There are other forums for treaty negotiations and rights and title claim resolutions which can appropriately address any pre-existing infringements and grievances. The Commission Panel notes that the Ktunaxa Nation, Canada and British Columbia are currently engaged in treaty negotiations. The Commission Panel is not aware of any authority or mandate available to either BC Hydro or the Commission to address those historic issues. The Waneta Transaction does not constrain any of the First Nations from pursuing their claims in other forums.

Whatever claims the First Nations have will survive the Waneta Transaction. The issue here is simply whether the Waneta Transaction causes any change to the historic and ongoing impacts of the Waneta Dam. It does not. The completion of the Waneta Transaction neither changes nor diminishes any previous or ongoing obligation the Crown may have to consult and accommodate First Nations.

In summary, the Commission Panel confirms its finding that BC Hydro has undertaken a consultation and accommodation process which adequately and reasonably upholds the honour of the Crown in the circumstances of the Waneta Transaction.

2.3 Required Considerations

2.3.1 Governmental Energy Objectives and the BC Energy Plan (2007)

The Filing is made by BC Hydro under section 44.2(1) of the Act as an expenditure schedule. Under section 44.2(5), in making a determination as to whether to accept an expenditure schedule, the Commission is required to consider the following:
(a) the government’s energy objectives;
(b) the most recent long-term resource plan filed by the public utility under section 44.1, if any;
(c) whether the schedule is consistent with the requirements under section 64.01 or 64.02, if applicable;
(d) if the schedule includes expenditures on demand-side measures, whether the demand side measures are cost-effective within the meaning prescribed by regulation, if any; and
(e) the interests of persons in British Columbia who receive or may receive service from the public utility.

The government’s energy objectives are defined in section 1 of the Act as:

(a) to encourage public utilities to reduce greenhouse gas emissions;
(b) to encourage public utilities to take demand-side measures;
(c) to encourage public utilities to produce, generate and acquire electricity from clean or renewable sources;
(d) to encourage public utilities to develop adequate energy transmission infrastructure and capacity in the time required to serve persons who receive or may receive service from the utility;
(e) to encourage public utilities to use innovative energy technologies
   (i) that facilitate electricity self-sufficiency or the fulfillment of their long-term transmission requirements, or
   (ii) that support energy conservation or efficiency or the use of clean or renewable sources of energy;
(f) to encourage public utilities to take prescribed actions in support of any other goals prescribed by regulation.

In addressing these required considerations the Commission Panel was guided, in part, by the more comprehensive analysis set out in *The BC Energy Plan (2007)* which provides context for the amendments that were made to the Act in 2008 and gave rise to the mandatory considerations set out above.
BC Hydro discusses the achievement of the government’s energy objectives and goals and the requirements of the Act at Section 6.4.9 of the Filing (Exhibit B-1, pp. 6-12 to 6-13). BC Hydro points out that the Transaction will satisfy the requirements of the Act and meet the government’s energy objectives on a number of fronts including:

- acquisition of additional electricity supply that does not emit GHGs;
- granting BC Hydro’s DSM Plan priority over the Waneta Transaction in the load/resource balances and all cost-effectiveness analysis in Chapter 6 of the Filing;
- BC Hydro would acquire all the rights necessary to claim BC Hydro’s Waneta electricity to be B.C. Clean or Renewable, as set out in Chapter 3 of the Filing.

BC Hydro makes reference to Special Direction 10 (June 2007) which directs the Commission, in regulating BC Hydro, to take into consideration the self-sufficiency objectives that have been set for BC Hydro by the government.

The Waneta Transaction did not form part of any long-term resource plan submitted by BC Hydro and thus, the provisions of section 44.2(5)(b) are not applicable to the consideration of the expenditure schedule by this Commission Panel.

There are no demand side measures included in the Waneta Transaction expenditure schedule.

The Commission Panel accepted the cost effectiveness of the Waneta Transaction in Section 2.1.2 and further finds the resulting favourable long term cost impact on BC Hydro’s revenue requirements, as discussed in the analysis of Rate Impacts, to be beneficial to persons in British Columbia who receive or may receive service from BC Hydro.
Commission Determination

The Commission Panel finds that the Waneta Transaction will help BC Hydro meet its self-sufficiency target by 2016 and that it will provide an alternative source of clean new generation for the BC Hydro system in a cost effective manner.

The Commission Panel finds that the Waneta Transaction satisfies the requirements of the Act and the provisions of Special Direction 10.

2.4 Other Matters

2.4.1 Regulation of the Waneta Assets

Rate Base Treatment

The Commission notes that the purchase by BC Hydro of an undivided third in the Waneta Assets is without precedent in terms of past decisions of the Commission. Upon completion of the Transaction, BC Hydro will be a minority owner, and this status is reflected in the Co-ownership and Operating Agreement (COO Agreement). Teck and BC Hydro will each have representation on the Operating Committee, with voting proportionate to their respective ownership ratios. (Filing, Section 3.3.3.1) BC Hydro will hold one-third of the votes. Thus, BC Hydro is not in a position of control, and may be subject to the will of the majority owner, particularly in relation to operating, maintenance and capital expenditure decisions.

The Commission Panel must determine the extent to which the initial capital expenditure for the Waneta Assets should be reflected in the rate base of the regulated utility, and decide if the relief requested by BC Hydro in respect of the continuing operating and capital expenditures should be granted.
The Filing is made under section 44.2(1) of the Act as an expenditure schedule. The Commission Panel accepts, under section 44.2(3)(b), that the initial capital expenditure of $825 million and an estimated $25 million in transaction costs are in the public interest and in the normal course of regulation will be added to the rate base of BC Hydro.

2.4.2 Operating, Maintenance and Capital Expenditures

Under the provisions of the COO Agreement, BC Hydro will be committed to make certain operating, maintenance and capital expenditures. In particular, the Operating Committee may authorize expenditures over which BC Hydro will have varying degrees of control as described in sections 5, 6, and 24(i) of the Operating Terms. These categories of expenditures may be summarized as follows:

1. Expenses incurred in the normal course of operations. In the Operating Committee, Teck will be able to control these routine matters including insurance coverage, operating and sustaining capital budgets determined using existing practices, and non-sustaining capital budgets under $10 million. BC Hydro will be committed to making its contribution to these expenses even if it was of the view that the expenses were not justified;

2. A second category of expenses deals with decisions of the Operating Committee relating to safety plans, environmental management and dam safety, environmental remediation and changes in the practices underlying sustaining capital or operating and maintenance budgets. In these areas, in the face of any disagreement between Teck and BC Hydro, BC Hydro will have the right to refer the matter in issue to an independent referee, whose acceptance of the proposal of one party or the other would be determinative of the issue. So BC Hydro will have input and the power to refer any dispute to a third party referee; but may, in the end, still be required to make a contribution toward these costs even if BC Hydro still disagreed with the particular expense item or change in practice; and

3. BC Hydro would have a veto right in respect of expenditures that would have a major impact on the cost structure associated with the Waneta Assets. If BC Hydro disagrees with such proposed expenditures, it would not be required make a contribution if Teck decided to proceed with the expenditure.
**Commission Determinations**

The Commission Panel finds that all expenditures incurred by BC Hydro that fall into the first category above will be deemed to be in the public interest.

In cases where a proposed expenditure is referred to a referee in accordance with the process set out in the COO Agreement, and despite BC Hydro’s opposition, expenditures are required by BC Hydro, the expenditure will be deemed to be in the public interest.

In cases where BC Hydro has the right to refer a proposed expenditure to a referee and chooses not to, or can by veto right choose not to contribute, but chooses to do so, any such expenditure will be subject to review by the Commission and may have to meet a prudency test.

The Commission Panel has some concerns about making, at this time, a decision to accept future unknown and un-quantified expenses as being in the public interest. However, the Commission Panel considers that the protections in the COO Agreement balance these concerns, and align the interests of Teck and BC Hydro with the public interest in achieving efficient management of the assets in the public interest. Accordingly, the Commission Panel finds that it is in the public interest for BC Hydro to enter into the COO Agreement.

2.4.3 Rate Impact Issues

CEC submitted that the need for additional power in the 2008 LTAP was primarily for the period starting in 2016, and requested that the Commission establish a deferral account for the costs of the Waneta Transaction as a way to manage the impact on F2011 and F2012 rates. CEC proposed that Waneta costs not form part of a BC Hydro request for interim rate increases for F2011 and F2012, and instead be considered in the revenue requirements application for these years. (CEC Argument, pp. 17-9)
BC Hydro submitted in Reply that, if the Commission approves the requested expenditures, BC Hydro should be allowed to recover them in the normal course until the Commission determines otherwise. BC Hydro is prepared to consider mechanisms to smooth rates over time, in its next revenue requirements proceeding, but submits that any decision in this regard should not be prematurely anticipated by imposing a limitation on its ability to recover the costs. BC Hydro also notes that it has a number of regulatory deferral accounts that may play a role in smoothing rates over time, and singling out any one cost item can only limit the Commission’s discretion. (BC Hydro Reply, pp. 8, 9)

The Commission Panel considers that Commission regulation of the BC Hydro one-third interest in the Waneta Assets with respect to cost recovery should follow the normal regulatory process. Accordingly, the Commission Panel finds that any proposals to level or smooth the rate impact of the Waneta Transaction should be addressed in a revenue requirements proceeding, and declines to make a direction in response to the CEC request in this proceeding.

2.4.4 Water Licenses

Interveners have raised concerns with respect to water licenses and rates which will be borne by BC Hydro as a result of completing the Transaction. The City submits that the water rental rates should reflect the use to which the water will be put, by implication suggesting that such is not currently the case. The City also submits that it would be open for government to raise the applicable rates where power has been diverted to power sales and that the costs of this increased risk were not included in BC Hydro’s financial analysis (City Argument, pp. 17-18).

In Reply, BC Hydro submits that City’s concern about increased water rates is based entirely on speculation and is not supported by details or evidence that such a change is likely to happen. (BC Hydro Reply, p. 5)
BC Hydro’s evidence is that all power used for industrial purposes qualifies for the lower commercial water rates while the rates applicable to Waneta power produced for other purposes are the higher general category and that it has reflected the impact of a 10 percent increase in water rental fees in the Filing.

Mr. Wait also submits that water fees have not been included in BC Hydro’s analysis and, as a consequence, the impact numbers are wrong “from the get go” (Wait Argument, p. 5).

In Reply, BC Hydro notes that the water rental cost information requested by Mr. Wait is included in its response to IR BCUC 2.34.1.3 (Exhibit B-13). It is thus evident that BC Hydro has included this information in its analysis.

USW Local 420 commented at the Community Input Session that it was their understanding that water licenses were granted to Trail Operations for the purposes of offsetting shipping costs, to allow for expansion and to build a strong community (T2: 94-95). In Reply, BC Hydro provides additional information on the subject of Water Licenses and Rates and direction as to how it has been included its analysis.

The Commission Panel finds BC Hydro’s evidence and submissions to be satisfactory responses to the concerns of the Interveners and finds that BC Hydro’s treatment of water rates and licensing fees in its analysis is reasonable.

2.4.5 Transmission: Line 71

2.4.5.1 Teck’s Ownership Retention

The transmission line connecting the Waneta power station to the BC Hydro/BCTC system, known as Line 71, is owned by Teck. Line 71 also connects to the United States. Teck will continue to own Line 71 following the Waneta Transaction which provides, under the subsidiary transmission
Agreement, that BC Hydro’s Waneta power entitlement will be delivered using Line 71. (Exhibit-B-1, p. 2-14)

The City’s submission speculates that Teck’s intention in retaining Line 71, “an otherwise useless asset,” enables it to be used to make additional power available on the open market through reducing Teck’s industrial load by reducing smelter operations (City Argument, p. 24).

Teck submits that the primary purpose for retaining ownership of Line 71 is to enable the company to purchase outside power in the event it is required due to outages or other power requirements. Teck also notes that retaining ownership of Line 71 would allow it to sell power in the event of unforeseen circumstances. (Teck Argument, p. 14)

**Commission Determinations**

The Commission Panel notes that Line 71 is simply not part of the assets included in the Waneta Transaction, and finds that BC Hydro’s need to transport its Waneta power entitlement on Line 71 is adequately provided by the subsidiary transmission agreement. The Commission Panel also notes that, by retaining ownership of Line 71, Teck’s ability to sell electricity on the open market is no different than it would have been without the Waneta Transaction.

The Commission Panel finds no evidence that Teck’s continued ownership of Line 71 has any negative impact on the finding that the Waneta Transaction is in the public interest.

**2.4.5.2 Cascade Pacific Concerns**

Cascade Pacific Power Corporation (CPPC) has expressed concern with regard to the sale of one-third interest in Waneta Dam to BC Hydro, suggesting that that approval of the sale will “eliminate free market competition for electricity sales to the US.” CPPC requests the Commission to give certain directions to BC Hydro/Powerex with respect to what it describes as market based transmission access strategy (Exhibit C-14-2). CCPC’s submission seems to be based on the
mistaken understanding that Line 71 is being sold as part of the Waneta Transaction. That is not the case. The Commission Panel finds that Teck is committed to provide access to Line 71 for transportation of BC Hydro’s one-third interest in the power generated at Waneta, and that Teck retains full access to any additional capacity as owner of the line. The Commission Panel also finds that this proceeding is not the appropriate venue to address open access transmission issues. CPPC’s request is denied.

2.4.6 Reporting Requirements

The Commission Panel is of the view that, in view of the size and unique nature of the Waneta Transaction, it is incumbent upon the Commission to monitor the future operations and ongoing investment requirements associated with the Waneta Assets.


The Report is to include:

1. An annual cash flow comparison of actual expenditures and estimated expenditures with an explanation for any variance greater than ten percent from the estimated expenditures;

2. An organization chart showing the Operator and members of the Operating Committee;

3. The cumulative and annual average levelized unit energy cost (in $/MWh) to BC Hydro as compared to $64.08/MWh based on an eight percent discount rate and $78.6/MWh at a ten percent discount rate as outlined in the Filing;

4. Electricity Price Scenarios similar to those illustrated at Exhibit B-1, Figure 5-3, Electricity Price Scenarios at Mid-C by Calendar Year;

5. A summary of the Resource Physical Major Risks and mitigation measures employed;

6. Statement of Delivery of Capacity and Energy to BC Hydro under the Waneta Transaction; and

7. Statement of Entitlement Adjustments under the Canal Plant Agreement and amendments to the Canal Plant Agreement.
The Report is to be submitted as part of BC Hydro’s Regulatory Annual Report and as an Appendix in its Revenue Requirements Application.

3.0 CONCLUSION

The Commission Panel finds the proposed Waneta Transaction to be in the public interest. Accordingly, the expenditure schedule filed by BC Hydro with respect to the Waneta Transaction is accepted.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of March 2010.

Original signed by:  
A. W. KEITH ANDERSON  
PANEL CHAIR/COMMISSIONER

Original signed by:  
DENNIS A. COTE  
COMMISSIONER

Original signed by:  
PETER E. VIVIAN  
COMMISSIONER
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
for the Acquisition from Teck Metals Ltd. of an Undivided One-Third Interest
in the Waneta Dam and Associated Assets

BEFORE: A.W.K. Anderson, Commissioner
and Panel Chair
D.A. Cote, Commissioner
P.E. Vivian, Commissioner

February 3, 2010

O R D E R

WHEREAS:

A. On June 17, 2009 British Columbia Hydro and Power Authority ("BC Hydro") entered into a non-binding master term sheet (the “Term Sheet”) with Teck Metals Ltd. ("Teck") and Teck Resources Limited that contemplates the sale and purchase ("Waneta Transaction") of an undivided one-third interest in the Waneta Dam on the Pend d'Oreille River and associated assets (the "Waneta Assets"); and

B. On July 6, 2009 BC Hydro made a filing ("Filing") pursuant to section 44.2(1) of the Utilities Commission Act (the “Act”) requesting acceptance by the British Columbia Utilities Commission (the "Commission") that proceeding with the expenditures contemplated in the Term Sheet is in the public interest pursuant to section 44.2(3)(a) of the Act; and

C. On September 23, 2009 BC Hydro filed the executed Asset Purchase Agreement ("APA") with the Commission. The APA will take effect if several conditional precedents are met and the parties execute final agreements substantially in the form of the several draft associated agreements filed with the APA; and

D. The Commission, by Order G-97-09A and Letter L-61-09, established a Regulatory Timetable for a written public hearing for the review of the Application; and

E. The Commission, by Letters L-98-09, L-100-09 and L-105-09, revised and clarified the Regulatory Timetable for the proceeding; and

F. By Order G-173-09 dated December 30, 2009, the Commission Panel ordered that the Okanagan Nation Alliance ("ONA") Reply Submission dated December 22, 2009 would be admitted, and provided Teck, Commercial Energy Consumers Association of British Columbia ("CEC") and the Sinixt Nation an opportunity to reply to the ONA Reply Submission by Wednesday, January 6, 2010; and
G. Final arguments, replies and sur-replies were filed by BC Hydro and Intervenors during the period December 9, 2009 and January 6, 2010; and

H. The Commission Panel has considered the evidence and submissions with respect to BC Hydro’s consultation with First Nations and has determined that those consultations, to the date of this decision, have been adequate and upheld the honour of the Crown in the circumstances of the Waneta Transaction.

I. The Commission Panel has reviewed the Filing, information requests, Intervenor evidence, transcripts, Interested Party documents, Letters of Comment, Final Submissions and Reply Submissions, and concluded that the Waneta Transaction is in the public interest. The Commission Panel has reviewed the draft Surplus Power Rights Agreement and has identified no reason why this agreement should not be accepted for filing, but reserves the right to make the final determination on acceptance upon BC Hydro filing a fully executed copy of the agreement under section 71 of the Act. The Reasons for Decision for this Order will be released at a later date.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 44.2(3)(a) of the Act the expenditure schedule contained in the Filing, consisting of an $825 million payment to Teck Metals Ltd., Teck Resources Limited or Teck American Limited to acquire a one-third interest in the Waneta Assets, plus associated transaction costs currently estimated at $25 million, is in the public interest and is accepted.

2. Subject to Directives 3 and 4 of this Order and closure of the Waneta Transaction, the Commission accepts that it is in the public interest for BC Hydro to enter into the Co-Ownership and Operating Agreement.

3. BC Hydro shall file a fully executed Co-Ownership and Operating Agreement that is substantially in the form of the draft agreement within 60 days of the closure of the Waneta Transaction, and shall file all amendments to the agreement in a timely manner.

4. Expenditures made by BC Hydro under the Co-ownership and Operating Agreement that BC Hydro is not able to veto, or not able to refer to an independent third party referee, or which the referee determines BC Hydro is required to make, will be deemed to be in the public interest. BC Hydro shall ensure that each other expenditure under the Co-ownership and Operating Agreement is in the public interest. Such other expenditures may be subject to a prudence review by the Commission.

5. Pursuant to section 43 of the Act, the Commission Panel directs BC Hydro to file with the Commission:

   a. A report of the final actual Waneta Transaction costs, including a comparison with the estimated transaction costs, within 90 days of acquiring a one-third interest in the Waneta Assets together with an explanation for any variance greater than ten percent from the estimated transaction costs; and

   b. An annual Waneta Transaction report (“Report”) disclosing the operations, maintenance and capital expenditures. This will include those major sustaining capital expenditures or operating and maintenance expenditures that BC Hydro was entitled to refer to a third party referee and the related referee determinations as well as any significant non-sustaining capital expenditures that BC Hydro had the right to veto; and
c. The Report shall consist of and shall be provided in a format acceptable to the Commission and include the following:

   i. An annual cash flow comparison of actual expenditures versus estimated expenditures and an explanation for any variance greater than ten percent from the estimated expenditures;

   ii. An organization chart showing the Operator and members of the Operating Committee;

   iii. The cumulative and annual average levelized unit energy cost (in $/MWh) to BC Hydro as compared to $64.08/MWh based on an eight percent discount rate and $78.6/MWh at a ten percent discount rate as outlined in the Filing;

   iv. Electricity Price Scenarios similar to Figure 5-3, Electricity Price Scenarios at Mid-C by Calendar Year;

   v. A summary of the Resource Physical Major Risks and mitigation measures employed;

   vi. Statement of Delivery of Capacity and Energy to BC Hydro under the Waneta Transaction; and

   vii. Statement of Entitlement Adjustments under the Canal Plant Agreement and amendments to the Canal Plant Agreement.

d. The Reports will be submitted as part of BC Hydro’s Regulatory Annual Report and as an appendix in its Revenue Requirements Applications until 2036.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of February 2010.

BY ORDER

A.W.K. Anderson
Commissioner/Panel Chair