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July 24, 2009

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Erica M. Hamilton, Commission Secretary

Dear Sirs/Mesdames:

Re: Section 5 Long-Term Electricity Transmission Inquiry - Project No. 3698545
Comments on Exhibit A-16

We are counsel to the Commercial Energy Consumers Association of British Columbia (“CEC”).

In Exhibit A-16, a letter dated June 30, 2009, the BC Utilities Commission (the “Commission”) has asked participants in the Long Term Transmission Infrastructure Inquiry (the “Inquiry”) for their position on the following two questions:

1. What, if any, is the duty to consult with First Nations and accommodate with respect to determinations of the Section 5 Inquiry?; and
2. If there is a duty to consult, how would that duty be fulfilled and how can it best be fulfilled such that the Panel can also fulfil its legal requirements to hold an inquiry and complete its draft by 30 June 2010?

The following are the submissions filed by the CEC in response to the two questions.

1. Duty to Consult

The CEC submits that there is no need for the Commission to make a ruling on whether it has an independent duty to consult with First Nations. The law concerning the duty of consultation is evolving. The issue of whether a duty to consult arises in a process such as the Inquiry has not been the direct subject of judicial decisions. Whatever decision the Commission makes with respect to whether a duty exists will likely be the subject of legal challenge. Any such costly and



time consuming legal challenges will likely make it impossible for the Commission to meet its June 30, 2010 timeline.

The CEC's position is that, regardless of whether a duty of consultation exists in law for this Inquiry, there is significant value in having effective participation of First Nations. This inquiry will examine and make determinations with respect to BC's infrastructure and capacity needs for electricity transmission for the next thirty years. The value of First Nations participation has been expressly noted by and in the Terms of Reference of the Inquiry. The terms of reference specify that for the purpose of the Inquiry, the Commission must invite and consider submissions from any interested party, including First Nations.

2. Fulfillment of any Duty to Consult

The process for the Inquiry, as set out in the terms of reference, adequately deals with any duty of consultation that exists. Firstly, a process has been engaged whereby BC Hydro has been tasked with consulting directly with First Nations with respect to the First Nations interests and concerns respecting impacts of the generation and transmission scenarios contemplated.

In addition, the Duty of Consultation is met through the hearing process itself. The Commission has been expressly mandated to hear and consider evidence and submissions from any interested party, including First Nations. As the Commission is bound by the rules of natural justice and procedural fairness, this ensures that all participants, including first nations, have a right to be heard, including all of the component parts of that right, including the right to disclosure, the right to call evidence, and the right to make submissions. The CEC looks to the Commission to establish processes which will best gather information from First Nations with respect to their interests and expectations around long term electricity transmission planning, while fulfilling their duty of fairness to all participants in the process.

One useful process which is appropriate for use in this Section 5 Inquiry and which the Commission has already availed itself of in this Inquiry process, is the use of Commission attended Workshops. The CEC submits that Commission attended Workshops dealing with First Nations issues would provide a process to assist in fulfilling legal requirements to consult by providing an opportunity for direct engagement and interface with First Nations representatives to better understand the issues relevant to the Inquiry in order to ensure the Commissions draft report is fully informed. Those Workshops should remain open to all Inquiry participants. The Workshops would also create an opportunity for feedback from First Nations and BC Hydro on the parallel consultation process undertaken by BC Hydro.

3. BC Hydro Submissions

BC Hydro circulated their submissions on the Commission questions noted above on July 23, 2009. The CEC has reviewed those submissions and the CEC submits in the alternative to its positions set out above that if the Commission determines that it must make a determination on the specific legal questions set out in Exhibit A-16 the CEC would adopt and support the legal submissions made by BC Hydro on the questions posed by the Commission.

A copy of this letter has also been forwarded to the registered intervenors by e-mail.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jlb
Enclosure
cc: CEC
cc: Registered Intervenors