



July 28, 2009

Erica M. Hamilton
Commission Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, B.C.
V6Z 2N3
Dear Madam:

Re: British Columbia Utilities Commission
Order G-30-09
2008 Long-Term Electricity Transmission
Infrastructure Inquiry (“Section 5 Inquiry”)

The Association for Mineral Exploration BC (AME BC) submits its comments below on the two questions posed to participants (Exhibit A-16) with respect to the duty to consult with, and accommodate, First Nations in the BC Utilities Commission (Commission) Section 5 Transmission Inquiry.

1. ***What, if any, is the duty to consult with First Nations and accommodate with respect to the determinations of the Long-Term Electricity Transmission Inquiry?***

The duty to consult arises when the Crown has knowledge of the potential existence of Aboriginal rights or title and contemplates conduct that might adversely affect them.¹ AME BC submits that the Commission’s Determinations in this Inquiry do not contemplate specific conduct that might adversely affect Aboriginal rights or title, but rather that subsequent planning and execution of generation and transmission projects by BC Hydro and BC Transmission Corporation would give rise to the duty to consult.

In making determinations regarding British Columbia’s electricity needs over a 30 year period, the Commission’s mandate for the 2008 Long-Term Electricity Transmission Infrastructure Inquiry (Section 5 Inquiry) includes a review of generation resources ‘that will potentially be developed’, taking into consideration the electricity resource potential identified in BC Hydro’s 2008 Long Term Acquisition Plan and other sources. The Commission is to consider long-term need for generation and transmission based on multiple future economic development opportunities (regardless of size).

The terms of reference state clearly that the Commission may not (a) make determinations on the merits of specific generation projects, or (b) make determinations with respect to the specific routing or technological specifications of electricity transmission projects.² As clarified in the Commission Staff Discussion Draft

¹ Haida Nation v. British Columbia (Minister of Forests)[2004] 3 S.C.R. 511, paragraph 35.

² Terms of Reference – In the Matter of an Inquiry under Section 5(4) of the Act relating to British Columbia’s Electricity Transmission Infrastructure and Capacity Needs for the Next 30 Years (December 17, 2008).

on Scope³, the scope of the Inquiry (long-term regional development of generation and long-term transmission needs) involves a review of the province's bulk transmission system at a regional/zonal level, and not route specific detail. As a result, "bulk transmission reinforcements developed in response to various scenarios should not be voltage specific, but should provide a general (not-specific) path and a transfer capacity for that path in MW."⁴ This clearly precludes the acquisition of the level of detailed information required to determine whether generation and transmission determinations would potentially give rise to adverse effects on Aboriginal rights and title. Rather, this detailed information would be acquired during the course of subsequent planning by BC Hydro and BC Transmission Corporation.

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 fulfill its legal requirements to hold an Inquiry and complete its draft report by June 30, 2009?*

The Commission was directed by the Minister of Energy Mines and Petroleum Resources (MEMPR) 'to invite and consider submissions, evidence and presentations from any interested person, including First Nations' in this Inquiry, and in addition the Minister has directed BC Hydro to conduct parallel consultations with First Nations regarding the 'potential impacts of the generation and transmission scenarios proposed in the submissions.'⁵

The Commission invites participation and comment from First Nations throughout the Inquiry proceedings (submissions, Regional Sessions, etc.). This participation in the Inquiry by First Nations is augmented by the parallel, three phase consultation process by BC Hydro. The Commission has ensured that comments and information received from First Nations in the Inquiry Report will provide relevant information to BC Hydro and BC Transmission Corporation to assist with BC Hydro's consultation process. It is this latter consultation process by the Crown as represented by BC Hydro which fulfills the duty to consult with First Nations, and not the Commission proceedings.

In a letter to BC Hydro and BC Transmission Corporation dated March 25, 2009, the Deputy Minister specifically requested the Crown corporations undertake consultation with First Nations with the objective of acquiring and addressing their concerns as identified in the evidence, and in submissions by the BCTC and BC Hydro to the Commission.

BC Hydro will submit to MEMPR a final First Nations consultation report no later than June 30; 2010 outlining First Nations interests and concerns regarding potential impacts of the generation and transmission scenarios proposed in the submissions. In addition, if BC Hydro and the BCTC later submit to the Commission comments during the public review periods (this is reference to paragraph 12 of the Terms of Reference for the inquiry) that fall outside of the scope of the previous consultation with First Nations, then I ask that the relevant First Nations be consulted further and any additional interests and concerns be outlined in the report as an addendum. The report should describe the following:

- a. Which First Nations have been contacted/consulted - including certain umbrella groups (e.g., Okanagan Nation Alliance in addition to individual First Nations);
- b. What information was provided to the First Nations at various parts of the

³ Section 5 Transmission Inquiry Exhibit A-12

⁴ Ibid, p. 6

⁵ Letter from the Deputy Minister MEMPR to BC Hydro and BC Transmission Corporation dated March 25, 2009.

consultation process and the efforts made to consult First Nations, including when letters, follow-up phone calls, and meetings occurred;

c. A list of concerns that First Nations identified and details regarding how the concerns were addressed; and

d. The efforts made to follow up with First Nations to explain how their concerns were addressed in the evidence and submissions by the BCTC and BC Hydro to the BCUC.

AME BC therefore submits that a) the Commission is not responsible for fulfilling the duty to consult with First Nations and accommodate with respect to the determination of the Long-Term Electricity Transmission Inquiry, and b) there is a duty to consult, and this rests with BC Hydro.

Yours truly,

Laureen Whyte
Vice President, Association for Mineral Exploration BC