PROJECT NO. 3698545/ORDER G-30-09

BRITISH COLUMBIA UTILITIES COMMISSION
INQUIRY INTO BRITISH COLUMBIA'S LONG-TERM TRANSMISSION INFRASTRUCTURE

REPLY OF THE TREATY 8 TRIBAL ASSOCIATION WITH RESPECT TO PARTICIPANT SUBMISSIONS FOR THE THIRD PROCEDURAL CONFERENCE SET FOR AUGUST 18-19, 2009

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SUBMITTED BY:

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INTRODUCTION

1. These are the Reply Submissions of the Treaty 8 Tribal Association ("T8TA") in response to BC Hydro, BC Transmission Corporation ("BCTC"), Joint Industry Electricity Steering Committee ("JIESC") and other Participant submissions noted throughout for the Third Procedural Conference, set to occur on August 18-19, 2009.

2. The T8TA will specifically respond to several points made by various of the Participants, concerning the following issues:

ISSUE I. What is the scope and content of the Commission's duty to consult given the "high-level" nature of its determinations in this Inquiry?

Is the duty to consult and accommodate triggered by high-level strategic decisions?

If so, what level of consultation and accommodation is required?

At what time, if any, is the Commission required to assess the scope of its duty to consult?

ISSUE II. Is the Commission precluded from owing a duty to consult by reason of its status or function as a quasi-judicial body?

LAW & ARGUMENT

ISSUE I. What is the scope and content of the Commission's duty to consult, if any, given the "high-level" nature of its determinations?

3. Several Participants argue that the "high-level" nature of the Inquiry and its determinations mean that the Commission does not owe a duty to consult, or that if there is such a duty, the level of consultation required is at the low end of the spectrum. These arguments all rely on two features of the Commission's Inquiry: (a) the *"non-final"* nature of the determinations; (b) the *geographical breadth* of the Inquiry's determinations.

Is the duty to consult and accommodate affected First Nations triggered by high-level strategic decisions?

4. The Joint Industry Electricity Steering Committee and the Association for Mineral Exploration BC (the "AMEBC") both rely on the non-finality and lack of geographical specificity to suggest that the duty to consult is not triggered by the Inquiry. JIESC posits that the Commission's Report is merely "a basis for future action" which "does not constitute authorization or approval of any kind". AMEBC submits that the regional/zonal level of the Inquiry precludes the Commission from acquiring sufficiently detailed information to ascertain whether the Inquiry's determinations would impact Aboriginal rights.

Written submissions of JIESC dated July 24, 2009 at para. 3.5.
Written submissions of AMEBC dated July 28, 2009.

5. BC Hydro also emphasizes the geographical breadth of the Inquiry, stating:

> The Commission's determinations may be so diffuse and "high level" that it will be challenging to identify which, if any, specific First Nations or aboriginal rights may be affected by the determination.

However, BC Hydro's position is that the duty to consult is likely to be triggered, albeit only in relation to determinations within "predetermined geographical regions" which are sufficiently specific to pinpoint which First Nation(s) or rights might be affected.

Written Submissions of BC Hydro dated July 23, 2009 at page 7

6. In reply, the T8TA submits, first, that the threshold for triggering the duty to consult is a low one: it is triggered whenever the Crown contemplates an activity or decision with the *potential* to adversely impact an Aboriginal or Treaty rights.

***Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, 2005 CarswellNat 3756 ("*Mikisew*") at para. 34, T8TA Book of Authorities (July 24, 2009) TAB 9.**

7. Canadian courts have repeatedly held that "high level" strategic planning conducted or overseen by agents of the Crown triggers the duty to consult.

8. Strategic planning is, by its very nature, not final because it precedes and forms the basis for subsequent steps in the regulatory process. Nevertheless, courts have held that the duty to consult may be triggered at this "strategic first step" in the regulatory process, as in *Wii'litswx,* where the Crown failed to adequately consult and accommodate the Gitanyow in relation to the replacement of forest licences.

***Wii'litswx v. British Columbia (Minister of Forests),* 2008 BCSC 1139 ("*Wii'litswx*"), paras. 157, 159-161, T8TA Book of Authorities (July 24, 2009)TAB 14.**

9. Treaty rights may also trigger the duty to consult at early stages of strategic planning. In *Dene Tha',* the federal court held that the Treaty 8 rights of the Dene Tha' First Nation triggered the Crown's duty to consult in relation to a coordinated planning and environmental review process for the Mackenzie Valley Gas Pipeline project. The Dene Tha' owned a trap line over which connecting facilities for the pipeline were proposed. The court held that the duty arose as early as the formation of the "Cooperation Plan", characterized by the court as a form of "strategic planning" which by itself conferred no rights but set up the means by which the whole process would be managed.

***Dene Tha' First Nation v. Canada*, 2006 FC 1354, 2006 CarswellNat 3642, ("*Dene Tha*") paras. 107-108, T8TA Book of Authorities (July 24, 2009)TAB 7.**

10. Moreover, where the conduct contemplated may adversely impact Aboriginal or Treaty rights, the Crown is not permitted to put off consultation to subsequent stages in a regulatory process. This principle was applied directly to the BC Utilities Commission by the BC Court of Appeal in *Kwikwetlem.* The court held that the Commission could not delay its constitutional duty (in that instance, to assess whether consultation conducted by BC Hydro was adequate) until the project then before the Commission reached a subsequent or another stage down the regulatory line, such as Ministerial review or Environmental Assessment, despite the fact that consultation would also occur at these later stages.

***Kwikwetlem First Nation v. British Columbia (Utilities Commission),* 2009 BCCA 68, 2009 CarswellBC 341 ("*Kwikwetlem*"), paras. 55-56, T8TA Book of Authorities (July 24, 2009), TAB 5.**

11. There is no case law, however, that suggests the duty to consult requires the Crown to be *certain* that contemplated conduct will adversely affect Aboriginal or Treaty rights. The Crown need only have knowledge that there is the *potential* for such an impact for the duty to be triggered. Contrary to the contentions of AMEBC, even if the Commission lacks information about Nation-specific or right-specific impacts of Inquiry determinations, the knowledge of the *potential* for such adverse impacts is sufficient to trigger the duty to consult.

***Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, 2004 CarswellBC 2656, ("*Haida*") at para. 35, T8TA Book of Authorities (July 24, 2009), TAB 10.**

12. In reply to the proposition that the Commission may not be equipped to ascertain whether its Inquiry will adversely affect Aboriginal or Treaty rights, there can be no doubt that the determinations of this Inquiry have the potential to adversely affect Treaty 8 rights. For the purpose of this reply, it is sufficient to state the following:
    a. Treaty 8 territory covers 272,500 km^2 in northeast British Columbia, or roughly 35 percent of the land base of the Province.
    b. The Treaty 8 First Nations have proven and constitutionally protected rights to hunt, trap, and fish within their traditional territories.
    c. There are a number of existing and proposed large-scale energy projects within Treaty 8 territory, including:
        - The W.A.C. Bennett Dam, which created the Williston Reservoir;
        - The Peace River Canyon Dam, which created the Dinosaur Reservoir;
        - The proposed Site C Dam, which would create a large reservoir within Treaty 8 territory; and
        - Thousands of existing and proposed oil and gas, pipeline, mining, and wind power projects within Treaty 8 territory.
    d. Many of these projects have or are highly likely to limit the ability of Treaty 8 First Nations to exercise their Treaty rights to hunt, trap, and fish. The cumulative effects of all of these energy projects further demonstrate the

significant erosion of the ability of Treaty 8 First Nations to exercise their Treaty rights meaningfully.

e. Although the Commission's determinations in the Inquiry may not have immediate on-the-ground impacts upon the rights of Treaty 8 First Nations, these strategic-level determinations will set the course for subsequent regulatory decisions and future development of electricity generation projects and transmission corridors within and adjacent to Treaty 8 land.

f. The Commission's generation capacity forecasts will likely include at least one scenario in which the Site C dam is approved. The Commission might determine that to meet future demand, the Site C scenario would be preferred. The potential for such a long-term strategic determination increases the probability of future approvals and adverse impacts on the rights of Treaty 8 First Nations.

BCUC Reasons for Decision on Scope, Appendix A to Order G-86-09, at p. 3.
Written Submissions of the T8TA, Appendix "B"

13. In reply to BC Hydro's submission that the duty to consult is triggered only in relation to determinations in "geographically predetermined regions", the federal court in *Dene Tha'* held that the Crown breached its duty to consult by not consulting the Dene Tha' in the early stages in regards to matters including the design of the regulatory and environmental review procedure itself.

Dene Tha', supra., **paras. 2, 3, 10, 14, T8TA Book of Authorities (July 24, 2009), TAB 7.**

14. The T8TA submits that the high level of consultation owed to it requires, among other things, the participation of the T8TA in the design of the Inquiry's consultation process and that consultation restricted to particular determinations of the Inquiry would be inadequate.

15. Furthermore, the submission advanced by BC Hydro is somewhat disingenuous, given that Treaty 8 territory encompasses 35 percent of the province's geography and presently contains two of the largest energy generation plants in the province (WAC

Bennett Dam and the Peace River Canyon Dam) and that BC Hydro is pursuing, with the approval of the Commission, active studies to dam the Peace River for a third time (Site C). It is *highly probable* that the determinations resulting from the Inquiry will have some impact on Treaty 8 territory and, therefore, on the rights held by Treaty 8 First Nations and the T8TA submits, it is quite unreasonable to say otherwise.

BCUC Reasons for Decision, BC Hydro Application for Approval of the 2008 Long Term Acquisition Plan, pp. 136 to 139, 183, and Commission Order G-91-09, p.3, Appendix A to T8TA Reply Submissions (July 31, 2009)

If there is a duty to consult, what level of consultation and accommodation is required?

16. BC Hydro, BCTC, FortisBC, JIESC and the Ministry of Energy, Mines and Petroleum Resources ("MEMPR") all assert that the high-level nature of the Inquiry means that the scope of the duty to consult and accommodate, if any, lies at the low end of the spectrum. Once again, the factors of non-finality and geographical breadth are relied upon to contend that the impacts on the rights of First Nations will be either minimal or impossible to determine during the Inquiry.

Written submissions of the JIESC at para. 3.14.
Written submissions of BC Hydro, dated July 23, 2009 at pg. 9.

17. These Participants contend, in essence, that the low or indeterminate probability of potential impact on Aboriginal or Treaty rights lessens the scope of consultation. With respect, this is an incomplete and inaccurate characterization of the legal basis for determining the scope of consultation. Neither the non-final nature nor the geographical breadth of the Inquiry supports the notion that the Commission owes only a low level of consultation. On the contrary, the level of the Commission's duty to consult the Treaty 8 First Nations is "deep" with respect to the designing of the consultation process for the Inquiry and with respect to the many determinations with the potential to adversely impact Treaty 8 rights, precisely because the process of this Inquiry will result in high-level, strategic planning for energy generation and transmission in this province for the next thirty years. Those strategic, high-level determinations will guide the development of energy generation and transmission projects for several decades to come. Thus, these strategic, high-level determinations

are the first steps to all future potential infringements of Treaty 8 rights in those decades to come as well.

18. Treaty 8 rights are of high significance to the Treaty 8 First Nations, as are the potential infringements thereof. Infringements to these rights, such as the loss of critical habitat for species at risk, or other serious threats to wildlife or fish within Treaty 8 territory, will not be compensable. The Crown's duty to consult the T8TA with respect to the Inquiry is, therefore, "deep".

Written Submissions of the T8TA, dated July 24, 2009, at para. 69.

At what time, if any, is the Commission required to assess the scope of its duty to consult?

19. The Commercial Energy Consumers Association of British Columbia ("CEC") submits that the Commission has no duty to assess the scope and content of its duty to consult. Rather, CEC states that "there is no need for the Commission to make a ruling on whether it has an independent duty to consult with First Nations" because "whatever decision the Commission makes…will likely be the subject of legal challenge" and "any such costly and time consuming legal challenges will make it impossible for the Commission to meet its June 30, 2010 timeline".

Written Submissions of the CEC, dated July 24, 2009, at pages 1-2.

20. In reply, it seems trite to have to observe that the fact that the Commission's decisions may be subject to legal challenge is no basis for refusing to decide the questions posed respecting the duty of consultation. These are questions of law which the Commission must answer correctly. Such questions cannot be avoided merely because they may be judicially reviewed at a later time.

***Wii'litswx, supra,* at para. 15.**

21. Furthermore, the avoidance of the question of the Commission's duty to consult is unlikely to reduce any potential for subsequent legal challenges. A decision not to decide is still a decision, a decision which too may be subject to legal challenge.

22. In any event, the BC Court of Appeal recently held in *Carrier Sekani* that the BC Utilities Commission misapplied the principles of the duty to consult by refusing to consider whether consultation conducted by BC Hydro pursuant to an electricity purchase agreement was adequate. The court stated:

> Not only has the Commission the ability to decide the consultation issue, it is the only appropriate forum to decide the issue in a timely way. Furthermore, the honour of the Crown obliges it to do so. As a body to which powers have been delegated by the Crown, it must not deny the appellant timely access to a decision-maker with authority over the subject matter.

***Carrier Sekani Tribal Council v. British Columbia (Utilities Commission),* 2009 BCCA 67, T8TA Book of Authorities (July 24, 2009), TAB 4, at para. 51**

23. The BC Court of Appeal made a similar finding in relation to an application to the Commission for a Certificate of Public Convenience and Necessity ("CPCN") in *Kwikwetlem.* It held that despite the fact that consultation was guaranteed to occur at later stages in the regulatory process, the Commission was required to determine whether consultation to that point was adequate prior to making a decision on the CPCN:

> The Commission's constitutional duty was to consider whether the Crown's constitutional duty of consultation had been fulfilled with respect to the subject matter of the application. Thus, before it certified the ILM Project as necessary and convenient in the public interest, it was required to determine when the Crown's duty to consult with regard to that project arose, the scope of that duty, and whether it was fulfilled. The Commission did not look at its task that way or undertake that analysis. It decided that the government had put in place a process for consultation and accommodation with First Nations that required a ministerial decision as to whether the Crown had fulfilled these legal obligations before the ILM Project could proceed and that the Commission should defer to that process.
>
> ...
>
> In my view, the nature and effect of the CPCN decision obliged the Commission to assess the adequacy of the consultation and accommodation efforts of BC Hydro on the issues relevant to the s. 45 proceeding. The Commission's refusal to consider whether the honour of the Crown was maintained to the point of its decision was based on a misunderstanding of the import of the relevant jurisprudence and was unreasonable.

***Kwikwetlem, supra,* at paras. 13-14.**

24. Clearly, the Commission is the "body to which powers have been delegated by the Crown" to conduct the Inquiry. In view of the "nature and effect" of the Inquiry (i.e. its potential for adverse effects upon Aboriginal and Treaty rights), the Commission is obligated to "assess the adequacy of the consultation and accommodation efforts...relevant to the" Inquiry.

25. In terms of the timing of assessing the scope and content of the duty to consult, BC Hydro suggests that the assessment "should be considered ... during the course of the Inquiry".

Written Submissions of BC Hydro dated July 23, 2009, p. 10

26. In reply, the Commission is obligated to assess the scope and content of its duty *prior* to the commencement of the Inquiry. The obligation to consider the scope of consultation at the outset follows logically from the fact that a Crown agency could not otherwise conduct adequate consultation. The case law indicates that this preliminary assessment is obligatory. For example, in *Brown v. Sunshine Coast Forest District,* Mr. Justice Grauer held that the Crown *must* make a preliminary assessment of the strength of the claim and the potential adverse effect of government action on the Aboriginal interests *at the outset*, if it is to inform itself and determine the scope and extent of the Crown's duty to consult and accommodate. To the extent that the Commission fails or has failed to do so, such failure constitutes a breach of the duty.

***Brown v. Sunshine Coast Forest District,* 2008 BCSC 1642, 2008 CarswellBC 2587 (BCSC) ("*Klahoose*") paras. 18, 26, 105, T8TA Book of Authorities (July 24, 2009), TAB 15.**

27. Second, consultation and accommodation must be *responsive* to the needs and concerns of First Nations, and has been described as a process of give and take. Therefore, there is an *ongoing obligation to assess the scope and content* of the duty to consult throughout the duration of the Inquiry.

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director),

2004 SCC 74, 2004 CarswellBC 2654 ("Taku River"), at para. 25, T8TA Book of Authorities (July 24, 2009), TAB 13, cited with approval in *Wii'litswx, supra,* at para 10.

28. In light of the above, T8TA submits that the Commission is required to conduct an assessment of the level of consultation owed to the Treaty 8 First Nations throughout the Inquiry generally, prior to the commencement of the Inquiry. For this reason, it is advised that the Commission immediately consult with Treaty 8 First Nations to establish the terms of reference for the consultation procedures to be employed during the Inquiry.

ISSUE II. Is the Commission precluded from owing a duty to consult by reason of its status or function as a quasi-judicial body?

29. Several of the Participants strenuously argue that the Commission is a quasi-judicial body, or is acting in a quasi-judicial capacity in the context of this Inquiry; therefore, goes the argument, the Commission owes every Participant before it an equal duty of procedural fairness and cannot owe a special or super-added duty to any particular Participant, i.e. the First Nations.

Written submissions of BC Hydro, dated July 23, 2009, p. 11-19
Written submissions of the BCTC, dated July 24, 2009, p. 2, 7-16
Written submissions of the JIESC, dated July 24, 2009, p. 4-6
Written submissions of the Independent Power Producers of British Columbia, p. 2
Written submissions of the BC Sustainable Energy Association, dated July 24, 2009, p. 4-9

30. With respect, these submissions tell only part of the story. First, they do not properly address the fundamental nature of administrative tribunals as a creation of the executive branch of government. They do not recognize that an administrative tribunal such as the Commission may have multiple roles, some adjudicative and others executive or advisory:

> To say that tribunals span the divide between the executive and judicial branches of government is *not* to imply that there are only two types of tribunals – those that are quasi-judicial and require the full panoply of procedural protections, and those that are quasi-executive and require much less. A tribunal may have a number of

different functions, one of which is to conduct fair and impartial hearings in a manner similar to that of the courts, and yet another of which is to see that certain government policies are furthered.

***Bell Canada v. Canadian Telephone Employee Association*, 2003 SCC 36, 2003 CarswellNat 2427 ("*Bell Canada*") at para. 22, Book of Authority for the Joint Submissions of the We Wai Kai and Haisla First Nations, TAB 1**

31. Even where a tribunal, such as the Commission, does have quasi-judicial powers conferred by statute pursuant to which it exercises a quasi-judicial role, its governing statute may also grant the tribunal one or more equally important executive roles. As the Supreme Court of Canada said in *Bell Canada, supra*:

> In ascertaining the content of the requirements of procedural fairness that bind a particular tribunal, consideration must be given to *all* of the functions of that tribunal. It is not adequate to characterize a tribunal as "quasi judicial" on the basis of one of its functions, while treating another aspect of the legislative scheme creating this tribunal – such as the requirement that the tribunal follow interpretive guidelines that are laid down by a specialized body with expertise in that area of law – as though this second aspect of the legislative scheme were external to the true purpose of the tribunal. All aspects of the tribunal's structure, as laid out in its enabling statute, must be examined, and an attempt must be made to determine precisely what combination of functions the legislature intended that tribunal to serve, and what procedural protections are appropriate for a body that has these particular functions.

***Bell Canada, supra.*, at para. 22**

32. This Inquiry is mandated by the Legislature pursuant to s. 5 of the *Utilities Commission Act*. This is no accident. Section 5 provides for the Commission's executive advisory functions. Section 5(1) obligates the Commission to advise the BC Cabinet "on any matter, whether or not it is a matter in respect of which the commission otherwise has jurisdiction", while section 5(2) provides that Cabinet may specify the terms of reference empowering the Commission to "inquire into the matter". And, of course, section 5(5) mandates the Commission to conduct this Inquiry. Sections 5(6) to 5(9) set terms and conditions in relation to section 5(5).

***Utilities Commission Act*, s. 5, T8TA Book of Authorities (July 24, 2009), TAB 3**

33. Both BC Hydro and the BCTC claim that the Commission "is not charged with policy-making function" and is not "taking on a policy-advising role". While no one is suggesting that the Commission is itself putting in place BC's energy policy, it is clear the Commission is tasked with gathering information on the energy options available by conducting an investigative inquiry, at the completion of which the Commission is to provide the Minister with a report advising the Minister and the BC Government as to the viable policy options. To suggest that this is not the role of the Inquiry, that it is not intimately linked with the policy-making function of the BC Government, is simply nonsensical. The task that the Minister has given the Commission is closer to an executive advisor's role than it is to that of a court of law.

Written submissions of BC Hydro dated July 23, 2009, p. 18
Written submissions of BCTC dated July 24, 2009, p.11

34. Both BC Hydro and the BCTC rely on the Supreme Court of Canada's decision in *Coopers & Lybrand.* In that case, the court noted that "[a]dministrative decision does not lend itself to rigid classification of function. Instead, one finds realistically a continuum" and, therefore, "[o]ne must weigh the factors for and against the conclusion that the decision must be made on a judicial basis."

***Minister of National Revenue v. Coopers & Lybrand*, [1979] 1 SCR 495 (SCC), ("*Coopers & Lybrand*") at para. 8, BC Hydro Authorities at TAB 9**

35. As part of its considerations in the case, the court listed four criteria that may be useful in determining if the decision or order of a tribunal is "one required by law to be made on a judicial or quasi-judicial basis":

> (1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
>
> (2) Does the decision or order directly or indirectly affect the rights and obligations of persons?
>
> (3) Is the adversary process involved?
>
> (4) Is there an obligation to apply substantive rules to many individual cases rather

than, for example, the obligation to implement social and economic policy in a broad sense?

***Coopers & Lybrand, supra* at para. 14, BC Hydro Authorities, TAB 9.**

36. A word of caution: these four questions should not be elevated to the level of a strict "legal test". As the Court pointed out, this list of four questions is "not intended to be exhaustive", nor is any one of these four questions "necessarily determinative". Instead, these questions are to be "weighed and evaluated" in order to assist in determining whether or not a given tribunal decision is one that is to be made "on a quasi-judicial basis". As the BC Supreme Court stated in the *Information & Privacy Commissioner* decision, "[i]t essential to note that the Court stated that the list is not exhaustive nor is the presence or absence of any of the criteria in any particular case determinative".

***Coopers & Lybrand, supra* at para. 15, BC Hydro Authorities, TAB 9.**
***British Columbia (Attorney General) v. British Columbia (Information & Privacy Commissioner),* 2004 BCSC 1597, 2004 CarswellBC 2893 (BCSC) ("*Information & Privacy Commissioner*") at para. 52, BC Hydro Authorities, TAB 10**

Is a hearing contemplated before a decision is reached?

37. Several of the Participants observe that a hearing will indeed occur over the course of this Inquiry. In reply, the T8TA says that the procedures of the Commission must be evaluated in the context of the host of procedures contemplated for this Inquiry, as well as the overarching purpose of this Inquiry. While hearings are indeed contemplated in the context of the Inquiry, so too are a number of other procedures that would not typically be utilized by a court, including workshops, a wide range of dispute resolution mechanisms, and working groups.

Written Submissions of BC Hydro, dated July 23, 2009, p. 13
Written submissions of BCTC, dated July 24, 2009, p. 12
Written submissions of JIESC, dated July 24, 2009, p. 5

38. In *Coopers & Lybrand, supra,* the decision-maker (the Minister of National Revenue) was not mandated to hold hearings. However, the Minister *was* granted other powers

that may appear, at first glance, to be quasi-judicial in nature, including the authority to request information and to order the production of documents. These powers, on their face, might be thought to be similar to those of a court, which may also order parties to produce information and documents. However, the Court characterized these powers as "investigatory powers" granted to the Minister to permit him to inquire into the matter before him.

39. While the Commission will hold hearings over the course of this Inquiry, these hearings are most properly characterized as investigative, as opposed to adjudicative. Furthermore, hearings are by no means the sole information-gathering exercises to be conducted over the course of the Inquiry. Indeed, the very fact that the Commission has been granted the authority to use a broad range of investigatory, information-gathering procedures indicates that the Inquiry is intended to proceed using multiple approaches to develop the strategic, high-level plans for energy generation and transmission for the Minister's consideration.

40. In this instance, the Commission is tasked with an investigative inquiry into strategic, high-level planning for energy generation and transmission for the province. Just as the Minister in *Coopers & Lybrand* had been, the Commission in this case has been "invested with investigatory powers", and, similarly, the power it exercises "is properly characterized as investigatory, rather than adjudicatory." The fact that a hearing is to occur does not necessarily reflect the true character of a given proceeding. This is not a determinative factor on the issue of the Commission's role in this Inquiry.

***Coopers & Lybrand, supra* at para. 22, BC Hydro Authorities, TAB 9**

Does the decision or order directly or indirectly affect the rights and obligations of persons?

41. The determinations of the Commission will have impacts on the rights and obligations of various persons, including the various Participants and the Treaty 8 First Nations.

42. However, the determinations to be made by the Commission are to be placed before the Minister as a Final Report, essentially providing the Minister with recommendations for the development of Government policy with respect to electricity generation and transmission. These determinations are not in the nature of a court order, a Certificate of Public Convenience or a project approval. They will be in the nature, fundamentally, of policy recommendations.

43. The point here is that just because rights are affected does not logically mean that there is a court-like process involved. Rights can be affected by policy decisions of the government as much as by quasi-judicial decisions. Narrow reliance on this part of the *Coopers & Lybrands* indicia leads to a red-herring answer because it ignores the larger picture: that the result of the Inquiry will be to place policy recommendations before the Minister for long term electricity generation and transmission.

44. Notwithstanding that rights will be directly affected, that does not lead to the conclusion that the Inquiry is a quasi-judicial process. Quite the opposite is, in fact, true. The Inquiry is a high-level strategic planning process and it is the planning nature of that process which determines the function of the Commission to be investigative not quasi-judicial.

Is the adversary process involved?

45. An analysis of this factor reveals the true character of this Inquiry. The issues to be determined by the Commission do not call on it to act in its quasi-judicial capacity. The Inquiry does not involve an adversarial dispute that must be "adjudicated" in a judicial or quasi-judicial manner.

46. Some of the Participants argue that the Inquiry is an adversarial process. They point out that there are various parties that will put forward contrary positions concerning various issues considered by the Inquiry, that the Commission has at its disposal various examination powers and procedures for the taking of evidence, and that the Commission is called upon to make "determinations" which they say are final in nature.

Written Submissions of BC Hydro, dated July, 23, 2009 at pages 1-5, 12-19.
Written Submissions of BCTC, dated July 24, 2009 at pages 3-5, 7-15.

47. With respect, these submissions miss the point. Not every dispute is adversarial in nature and not every decision, determination or even order indicates the existence of an adversarial dispute. The question to be determined is whether, looking at the entirety of the circumstances, the "disputes" before the Commission are disputes "in an adversarial sense".

***Coopers & Lybrand, supra* at para. 20(3), BC Hydro Authorities, TAB 9.**

48. While the circumstances of the Inquiry are different from those before the Court in *Coopers & Lybrand*, the point remains the same; here it cannot be concluded that the Inquiry involves an adversarial dispute simply because several of the Participants disagree over certain matters, or because they have different interests that they each believe should be prioritized over those of other Participants.

49. As the JIESC notes on a different issue, the Commission's Final Report will be "a basis for future action, but it does not constitute authorization or approval of any kind." This statement is telling. It points out the fundamental difference between the decisions that are made by the Commission in relation to Capital Plans or CPCNs, for example, and those determinations to be made in this Inquiry. As noted above, the Commission's "determinations" in this Inquiry are in the nature of policy recommendations. They are being sought for policy-making purposes, and they will be used by the Government for policy-making purposes, in part to determine the

policy background in which the Commission's own quasi-judicial functions are to be performed in the future.

Written submission of the JIESC dated July 24, 2009, para. 3.12
Terms of Reference, Preamble, page 2

50. Further, this Inquiry is *not* akin to the inquiries considered in the cases relied upon by some of the Participants, those cases being namely *Rigaux v. British Columbia (Commission of Inquiry into death of Vaudreuil)* and *Information & Privacy Commissioner case*.

51. In the *Rigaux* case, Commissioner Gove was called upon to inquire into past policies and practices with respect to social services procedures, case co-ordination and information sharing which lead to the death of a particular child in the care of the Ministry of Social Services. Given the seriousness of the Gove Inquiry's implications respecting how the "system" failed the particular child, and the particularity of the past policies and procedures before the Gove Inquiry, the context of the Gove Commission and this Inquiry are clearly distinguishable. In this Inquiry, the determinations will be forward looking as the Commission weighs different scenarios for strategic planning into the future for energy generation and transmission. At the end of the day, the Minister will be presented with strategic, high-level options for future development opportunities.

***Rigaux v. British Columbia (Commission of Inquiry into death of Vaudreuil)*, 155 DLR (4th) 716, 1998 CarswellBC 29 (BCSC), ("*Rigaux*"), BCTC Authorities, TAB 9**

52. In *Information & Privacy Commissioner*, the Smith Commission was created to consider a particular issue in dispute, i.e. whether a society had misappropriated funds. The BC Supreme Court held that the Smith Commission was involved in "fault finding" that would directly affect legal rights (the right to reputation), and that the inquiry concerned "specific allegations of misconduct" against parties who were then asked to respond. The process was adversarial in nature. The Smith

Commission was very different in kind from the Inquiry before the BC Utilities Commission.

***Information & Privacy Commissioner, supra* at paras. 59-60, BC Hydro Authorities, TAB 10**

53. Contrary to the statement by the JIESC, the Inquiry is not "akin to a reference to a court for a judicial ruling". In a court reference, a discrete point of law must be determined, with argument made by two or more adversarial parties taking contrary positions on the point to be decided. The process before the Commission is not what the Supreme Court called "the 'triangular' case of A being called upon to resolve a dispute between B and C". Instead, as in *Coopers & Lybrand*, the Commission is undertaking an information-gathering inquiry; one that will involve various Participants with different interests and viewpoints, to arrive at determinations which will shape energy policy for years to come. The Commission's determinations will concern broad policy questions about electricity demand. These are not determinations in the nature that a court would not be called upon to make, even in the context of a court reference. Thus, the disputes before the Commission are not those that can properly be characterized as disputes in the "adversarial sense".

Written submission of JIESC dated July 24, 2009. para. 3.12
***Coopers & Lybrand, supra* at paras. 20(3) & 22 BC Hydro Authorities, TAB 9**

Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

54. This fourth question addresses the difference between a court mandated to decide relatively specific points of law and apply strict procedures to disputing parties as opposed to an institution tasked with overseeing a broad-based investigation or planning process which will affect the rights of multiple parties in different ways.

55. While the Commission was granted specific sets of powers, including various powers that may be categorized as quasi-judicial, the Commission has been given the mandate to undertake a broad investigative or information-gathering task in aide of

policy-making. It is not concerned with using strict procedures to enforce rights in numerous individual cases, as a court would typically be, but is rather engaged in a broad and flexible procedure aimed at assisting the Government in long-term energy policy development. The Commission's role in the Inquiry is closer to the executive end of the spectrum, as opposed to the judicial.

56. Ultimately, in deciding whether the Commission is acting in an executive/advisory as opposed to a quasi-judicial capacity, "one must have regard to the subject matter of the power, the nature of the issue to be decided, and the importance of the determination upon those directly or indirectly affected thereby." In this case, the subject-matter of the power (an information-gathering inquiry) and the nature of the issue to be decided (determinations of need and general scenarios for sources and markets for BC's electricity) indicate that this Inquiry is part of a policy-making process established by the BC Government. On the spectrum of functions to be performed by the Commission, this Inquiry falls on the executive side, as opposed to the judicial. As such, the Commission is exercising its executive/advisory function, which is fully consistent with a constitutional obligation to consult and accommodate First Nations.

SUMMARY AND CONCLUSION

57. The duty to consult and accommodate affected First Nations is triggered by exactly the kind of high-level strategic planning determinations that the Commission has been tasked to perform in this Inquiry.

58. Neither the non-final nature nor the geographical breadth of the Inquiry supports the notion that the Commission owes only a low level duty of consultation. On the contrary, the level of the Commission's duty to consult the Treaty 8 First Nations is "deep" with respect to the designing of the consultation process for the Inquiry and with respect to the many determinations with the potential to adversely impact Treaty

8 rights. The process of this Inquiry will result in high-level, strategic planning for energy generation and transmission in this province for the next thirty years. These strategic, high-level determinations are the first steps to all future potential infringements of Treaty 8 rights in those decades to come as well.

59. The Commission is required to conduct an assessment of the level of consultation owed to the Treaty 8 First Nations throughout the Inquiry generally, prior to the commencement of the Inquiry.

60. It is clear the Commission is tasked with gathering information on the energy options available by conducting an investigative inquiry, at the completion of which the Commission is to provide the Minister with a report advising the Minister and the BC Government as to the viable policy options. This role is intimately linked with the policy-making function of the Government. The Commission's task is closer to an executive advisor's role than it is to that of a court of law.

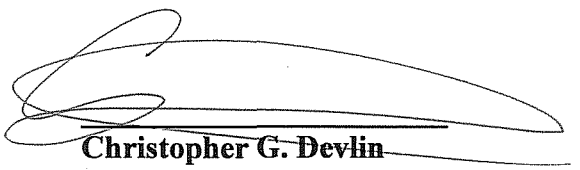
61. The process of the Commission cannot be characterized narrowly as quasi-judicial:

    a. While hearings are indeed contemplated in the context of the Inquiry, so too are a number of other procedures that would not typically be utilized by a court, including workshops, a wide range of dispute resolution mechanisms, and working groups.
    b. The Commission's determinations will be in the nature, fundamentally, of policy recommendations to the Minister, rather than in the nature of a court order, a Certificate of Public Convenience or a project approval.
    c. Simply because several Participants may disagree over certain matters, or because they have different interests that they each believe should be prioritized over those of other Participants, it cannot be concluded that the Inquiry involves an adversarial dispute.

d. The Commission's mandate is to undertake a broad investigative or information-gathering task in aide of policy-making rather than to enforce particular rights. It will be engaged in a broad and flexible procedure aimed at assisting the Government in long-term energy policy development. The Commission's role in the Inquiry is closer to the executive end of the spectrum, as opposed to the judicial.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31st DAY OF JULY, 2009.

Counsel for the T8TA



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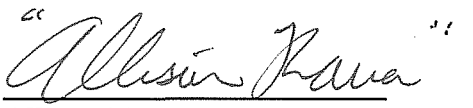

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APPENDIX "A"

British Columbia Utilities Commission Reasons for Decision, BC Hydro Application for the Approval of the 2008 Long Term Acquisition Plan, pp. 136 to 139, 183, and British Columbia Utilities Commission Order G-91-09

IN THE MATTER OF

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

AND

AN APPLICATION FOR APPROVAL OF THE
2008 LONG TERM ACQUISITION PLAN

DECISION

July 27, 2009

Before:

A.J. Pullman, Commissioner and Panel Chair
R.J. Milbourne, Commissioner
M.R. Harle, Commissioner

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CEC accepts the resource options BC Hydro is including in its CRPs. However, CEC submits that it would also be appropriate to include DSM options and IPP options (CEC Argument, pp.42-43).

JIESC characterizes BC Hydro's CRPs as "robust resource rich Contingency Resource Plans" (JIESC Argument, p. 16).

Commission Determination

The Commission Panel approves the Contingency Resource Plans for inclusion in BC Hydro's Network Integrated Transmission Services update to BCTC pursuant to the Commission's Directive 3 of Order G-58-05.

7.2 Site C

In its request for Primary Relief #2(e), BC Hydro seeks a determination pursuant to subsection 44.2(3) (a) of the *Act* that expenditures of $41.0 million required to complete Stage 2 Project Definition and Consultation work for Site C in F2009 and F2010 are in the public interest.

Both the 2002 Energy Plan and the 2007 Energy Plan refer to Site C. Policy Action No. 13 of the 2002 Energy Plan states that "While BC Hydro does not plan to invest in the construction of new hydroelectric facilities at the present time, any proposed new BC Hydro hydroelectric facility, such as Site C, must be brought to Cabinet for approval before being considered by the Utilities Commission as a source of supply."

The 2007 Energy Plan states "As part of The BC Energy Plan, BC Hydro and the Province will enter into initial discussions with First Nations, the Province of Alberta and communities to discuss Site C to ensure that communications regarding the potential project and the processes being followed are well known" (Exhibit A-1-1, Appendix B, p. 26 of 84).

BC Hydro describes its staged process for the evaluation of Site C, whereby it established incremental decision points in a series of stages of project development which are strategically placed to facilitate informed decision-making before the potential next step is taken in the process.

BC Hydro states that each stage, excepting construction, will conclude with its review and analysis of the status of the project followed by recommendations to the BC Government. Following receipt of the recommendations, the BC Government will make a decision as to whether to proceed to the next stage of the process or whether the project should be cancelled or deferred.

The Staged Process currently consists of the following stages:

1) Feasibility (complete and approved);
2) Project Definition and Consultation;
3) Regulatory;
4) Engineering; and
5) Construction.

BC Hydro states that Stage 2 is currently underway and involves further project definition, including environmental, engineering and socio-economic studies, as well as comprehensive consultation with communities, stakeholders, regulators, First Nations, and includes discussion with the Province of Alberta and the Northwest Territories, in order to better understand the benefits, costs, and impacts of the project.

BC Hydro provides a summary of the scope of work in Stage 2:

- engineering work which includes field investigations to confirm slope stability and foundation conditions; flood and earthquake design criteria; availability of construction material; Highway 29 relocation, safeline review, and mapping;
- environmental work including field research such as fish tracking, water quality, and wildlife, and the establishment of Technical Advisory Committees;
- commercial work including preparing a preparing a risk registry, procurement options, and reservoir operating analysis
- third party reviews;

- updated interim project cost estimate;
- First Nations consultation; and
- public, stakeholder and community consultation.

(Exhibit B-1, pp. 6-24 to 6-26)

BC Hydro plans to complete Stage 2 and prepare its recommendations to the BC Government for June 2009.

BC Hydro states that its Potential Large Hydro Project Report (Exhibit B-1-1, Appendix F8) suggests Site C is in the range of cost for other potential large hydro resource options based on a comparative analysis of the ISDs, preliminary cost estimates and relative environmental impacts of those options, which has led BC Hydro to conclude that further investigation of Site C as a potential resource option is warranted (Exhibit B-1, p. 6-23).

BC Hydro provided a comparison between the forecast costs of Stage 2 as set out in the 2006 IEP/LTAP and the amount for which it requests approval in the 2008 LTAP and ascribes the increase of $20 million in the cost estimate as being caused by:

- lengthening the timeline from 10 months to two years to allow for an expanded engagement with First Nations and communities;
- additional project definition work involving a large number of technical, engineering, environmental and socio-economic studies that are planned or underway for Stage 2, including work that was originally planned for stages other than Stage 2, as well as additional work not included in the scope for the 2006 IEP/LTAP estimate;
- a change in BC Hydro's policy to start allocating interest during construction and overhead costs directly to projects including Site C.

(Exhibit B-3, BCUC 1.126.1)

PVEA is the only Intervenor to oppose BC Hydro's request. PVEA submits that the Commission should reject the inclusion of Site C as part of the 2008 LTAP, and disallow the $41 million Stage 2 costs of Site C. PVEA submits that, if the Commission determines that the 2007 Energy Plan did not require these expenditures, the onus falls on BC Hydro to establish their prudence and

reasonableness. In PVEA's submission, given the limited role Site C plays in the 2008 LTAP and the very limited role it plays in meeting the self-sufficiency goals of SD 10, these expenditures are not reasonably incurred at this time, and should be rejected (PVEA Argument, p. 11).

PVEA further comments as to its view of the inadequacies of BC Hydro's stakeholder engagement processes in the affected area (PVEA Argument, p. 7).

JIESC supports the $41 million requested in the Application to complete Stage 2 of the Site C project, but expresses concern that "high level expenditures not continue on indefinitely without a higher level of commitment to proceeding to construction"(JIESC Argument, p.36).

CEC supports the expenditure of $41 million for the project definition and consultation with respect to Site C as being in the public interest (CEC Argument, p.41).

In Reply BC Hydro submits that PVEA inaccurately portrays BC Hydro's position and points to its President's testimony that it would be imprudent for it not to consider Site C as a potential option in the 2008 LTAP (BC Hydro Reply, p. 92).

Commission Determination

The Commission Panel accepts BC Hydro's position that it is proceeding in accordance with the stated action plans and objectives of the 2007 Energy Plan, and accepts that Site C is a suitable resource option to be considered in BC Hydro's long-term planning process. The Commission Panel finds that the expenditures of $41 million on Stage 2 are in the public interest.

7.3 Capital Plan Review Process

In Endorsement (viii), BC Hydro requests Commission endorsement of the current capital plan review process which BC Hydro filed as part of its F2009/F2010 Revenue Requirements Application ("F09/10 RRA"). BC Hydro states its approach arose from the F07/F08 RRA Negotiated Settlement

25	The Commission Panel accepts BC Hydro's position that it is proceeding in accordance with the stated action plans and objectives of the 2007 Energy Plan, and accepts that Site C is a suitable resource option to be considered in BC Hydro's long-term planning process. The Commission Panel finds that the expenditures of $41 million on Stage 2 are in the public interest.	139
26	The Commission Panel declines to endorse BC Hydro's approach to filing its Capital Plans, on the basis that it contributes little if anything to improved regulatory efficiency.	145
27	JIESC's request for an MTP threshold of $10 million for IT and building projects is rejected by the Commission Panel as JIESC has provided no evidentiary basis for it.	145
28	JIESC's request, concurred with in principle by CEC, that programs consisting of individual projects, as defined by BC Hydro, which are linked in functional and/or geographic terms and in which the aggregate of the individual projects achieves the MTP threshold of $50 million within a three year spending period constitute a MTP and be subject to a MTP review, is acceptable to the Commission Panel as being consistent with the practice of other public utilities under the Commission's jurisdiction.	145
29	IPPBC's request that all BC Hydro's MTP review applications be by way of a CPCN Application under section 45 of the *Act* is rejected by the Commission Panel, as IPPBC has provided no alternative authorities to refute that which supports BC Hydro's view that such a policy would in fact be tantamount to the Commission fettering its discretion.	145
30	IPPBC's request that BC Hydro not bring forward for review MTPs that have not been formally approved by its Board of Directors is accepted by the Commission Panel as being in accordance with proper corporate governance principles and practices.	145
31	The Commission Panel declines to provide BC Hydro with prescriptive guidance as to how it should file its capital plans for review, other than that they should be filed as part of an LTAP proceeding. As to the form of, and proceeding in which it files its MTP applications, the Commission Panel requests that, at its earliest convenience but in any event no later than 6 months from the date of this Decision, BC Hydro file with the Commission a set of guidelines within which it is prepared to make MTP filings and applications and that that set of guidelines reflect such consultations with its Intervenors and Commission staff as BC Hydro deems appropriate.	148

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-91-09

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

and

An Application by British Columbia Hydro and Power Authority
for the Approval of the 2008 Long-Term Acquisition Plan

BEFORE: A.J. Pullman, Panel Chair/Commissioner
R.J. Milbourne, Commissioner
M.R. Harle, Commissioner

July 27, 2009

O R D E R

WHEREAS:

A. On June 12, 2008 British Columbia Hydro and Power Authority ("BC Hydro") filed, pursuant to subsections 44.1(2), 44.1(4) and 44.2(1) of the *Utilities Commission Act* (the "Act"), the 2008 Long-Term Acquisition Plan ("2008 LTAP," "Application") with the British Columbia Utilities Commission (the "Commission") for review; and

B. The 2008 LTAP (Exhibit B-1) is a long-term resource plan for acquiring demand-side and supply-side resources to meet demand in British Columbia. The 2008 LTAP both updates and expands the 2006 IEP/LTAP, which was the subject of Order G-20-07 ("2006 IEP/LTAP Decision"); and

C. The 2008 LTAP reflects BC Hydro's commitment to examine the effects of the British Columbia Government's updated energy policy, "The BC Energy Plan: A Vision for Clean Energy Leadership," and the relevant issues in the 2006 IEP/LTAP Decision; and

D. The relief sought by BC Hydro is set out in Exhibit B-1-11, as amended in its Argument on pages 5 to 9; and

E. By Commission Order G-96-08 dated June 17, 2008 (Exhibit A-1), the Commission established a Procedural Conference for September 9, 2008 to hear submissions on the principal issues arising from or related to the Application, and the procedure for the review of the Application; and

F. Following the Procedural Conference the Commission issued Order G-126-08 dated September 11, 2008 (Exhibit A-4) and ordered, among other things, that the evidentiary phase for the Mica Units 5 and 6 Definition phase expenditures request would close on October 15, 2008 and final argument on those expenditures would form part of the Arguments following the close of the evidentiary phase of the Oral Hearing, which was at that time scheduled to commence on January 8, 2009; and

G. A Second Procedural Conference was established as a result of an amendment to the Hearing schedule proposed in BC Hydro's letter to the Commission dated November 14, 2008 (Exhibit B-5). In a follow-up letter from BC Hydro dated November 19, 2008 (Exhibit B-6), it requested that the Commission issue early orders with respect to the Mica Units 5 and 6 Definition phase expenditure request and with respect to the Fort Nelson Generating Station Upgrade Project ("FNGU") Definition and Implementation phase expenditures request; and

H. At the Second Procedural Conference on November 28, 2008, all Parties spoke to, among other things, the possibility of moving the FNGU to a separate hearing, a separate Argument phase for Mica Units 5 and 6 and separate orders and decisions for those two matters; and

I. Commission Order G-178-08 dated November 28, 2008 (Exhibit A-12) amended the regulatory timetable and established that the Oral Hearing would commence on February 19, 2009. The Order also established that the Mica Units 5 and 6 Definition phase expenditure request would be dealt with as part of the main 2008 LTAP argument phase and the FNGU Definition and Implementation phase expenditures request would remain part of the 2008 LTAP evidentiary and argument phases; and

J. The Oral Hearing commenced on February 19, 2009 and ended on March 12, 2009. BC Hydro filed its Argument on April 9, 2009; Intervenors filed their Arguments on April 27, 2009; and BC Hydro filed its Reply on May 13, 2009; and

K. By letter dated May 25, 2009 (Exhibit A-20), the Commission notified all Parties that the Oral Phase of Argument was required. All Parties were asked to advise the Commission if they would be prepared to make submissions on a list of matters outlined in that letter. The Oral Phase of Argument took place on June 1, 2009; and

L. By Commission Order G-69-09 dated June 8, 2009, the Commission determined that the $30 million expenditure in F2009 to F2011 to undertake and complete the Definition phase work for Mica Units 5 and 6 was in the public interest. By Commission Order G-75-09 dated June 15, 2009 the Commission determined that the $140.1 million expenditure requested to complete the Definition phase and Implementation phase of the Fort Nelson Generating Station Upgrade Project Case 3.2 ("FNGU3") was in the public interest; and

M. The Commission Panel has considered the balance of the Application, the evidence, and the submissions of the Parties all as set forth in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission, for the reasons stated in the Decision, orders as follows:

1. Pursuant to subsection 44.1(6) of the Act, the 2008 LTAP is not in the public interest and is rejected.

2. Pursuant to subsection 44.2(3) of the Act, the following expenditures are in the public interest and are accepted:

   - $418.0 million in F2009, F2010 and F2011 for the Implementation of Demand-Side Management ("DSM") Plans generally as described in BC Hydro's Adjusted Option A;
   - $600,000 in F2009 and F2010 to undertake and complete the Definition phase work for capacity-related DSM;
   - $1.6 million in F2010 for sustaining capital to ensure the reliability of Burrard;
   - $41.0 million in F2009 and F2010 to undertake and complete the Site C Stage 2 Definition and Consultation phase work.

3. Pursuant to subsection 44.2(3) of the Act, the following expenditure is not in the public interest and is rejected:

   - $2.0 million in F2009 and F2010 to complete the Definition phase work, and to implement the Clean Power Call.

4. The Contingency Resource Plans are approved for inclusion in BC Hydro's Network Integrated Transmission Services update to British Columbia Transmission Corporation pursuant to Commission Directive 3 in Order G-58-05.

5. The following endorsements are made:

   - The Clean Power Call ("CPC") eligibility requirement;
   - The DSM amortization period to remain at 10 years;
   - The filing of DSM performance reports on an annual basis going forward, subject to a transition measure;
   - The elimination of F05/F06 RRA Decision Directives 62 and 64 which relate to Load Displacement projects being considered as supply side alternatives;

- The amendment of F05/F06 RRA Decision Directive 60 to read as follows: "seek approval for all new Power Smart programs with a Total Resource Cost benefit/cost ratio of less than 1.0"; and
- BC Hydro's plan to rely on Burrard for planning purposes for 900 MW of capacity.

6. The following endorsements are declined:

   - The CPC pre-attrition and post-attrition targets of 3,000 GWh/year and 2,100 GWh/year respectively;
   - BC Hydro's plan to reduce its reliance for planning purposes on Burrard to 3,000 GWh/year of firm energy; and
   - The continuation of BC Hydro's capital plan review process as proposed in its F2009/F2010 Revenue Requirement Application.

7. BC Hydro will comply with all other directives in the Decision accompanying this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of July 2009.

BY ORDER

Original signed by:

Anthony J. Pullman
Panel Chair/Commissioner