Our File: 1938

Via email

August 21, 2017

Commission Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Patrick Wruck

Dear Mr. Wruck:

Re: BCUC Site C Inquiry – Request for Materials

We are counsel for Prophet River and West Moberly First Nations (the “Treaty 8 Nations”).

We are in receipt of a letter from David Austin, on behalf of the Clean Energy Association of BC dated August 17, 2017. The Treaty 8 Nations support the requests for the models, contracts and reports made in that letter.

The Treaty 8 Nations were extensively involved, during the Joint Review Panel phase of the environmental assessment and prior to the Final Investment Decision in consultations with BC Hydro on the matters within the BCUC mandate.

The Treaty 8 Nations are entitled to these materials, not simply as a matter of procedural fairness, but as a matter of constitutional law, in order to fulfill the Crown’s duty of consultation. That duty has been delegated to the BCUC by the Crown setting up this inquiry pursuant to Order in Council No. 244. In order to fulfill its duty of meaningful consultation, the Commission is obliged to provide the Treaty 8 Nations with all the materials submitted by BC Hydro to the BCUC. If necessary, the Treaty 8 Nations are

1 See Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40 at paras. 21-23.
prepared to enter into confidentiality agreements to protect any commercially sensitive information.

We acknowledge the concern, set out in your letter of August 18, stating that the timeline set for this inquiry makes it difficult for disclosure of the materials by August 30th. However, in order to have a truly "open and transparent" process, we recommend that the materials be made available to any interested party by September 20th through a secure site, so that the Treaty 8 Nations and other interested parties can provide a comprehensive response to the BCUC preliminary Site C report.

Should you have any questions, please feel welcome to contact the writer.

Yours truly,
DEVLIN GAILUS WATSON

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JWG/lrl