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September 14, 2017

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: Project No. 1598922  
British Columbia Utilities Commission (BCUC or Commission)  
Inquiry Respecting Site C  
British Columbia Hydro and Power Authority (BC Hydro)  
Confidential information Redacted in the BC Hydro Filing and  
Deloitte Reports**

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BC Hydro writes further to the Commission's letter of September 7, 2017 which contemplates a process whereby interested parties are able to make a request of BC Hydro for access to confidential information that had been redacted in BC Hydro's August 30, 2017 Filing (**Filing**) or the Deloitte Report "Site C Construction Review" dated September 8, 2017 (**Deloitte Report**). The process contemplates individuals being granted access upon signing an undertaking of confidentiality. We have significant concerns about the adequacy of this approach in the current circumstances. We are writing to propose a higher level of protection for some of the redacted information.

**Overview**

BC Hydro has used the undertaking process in prior proceedings, and it can work well in certain circumstances. The Commission has also recognized, however, that there are circumstances when protecting those who would be harmed by the release of information merits limiting disclosure to the Commission only. We submit, for the reasons outlined below, that the Commission's standard undertaking is insufficient protection against harm to BC Hydro's customers. We respectfully request that the Commission order the following approach to redacted information in BC Hydro's Filing and the Deloitte Report:

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Category	Nature of Information	Reference	Proposal
A	Granular detail on physical remediation cost categories	Some redactions in Appendices P and O and Deloitte Report	Commission's standard undertaking, modified only to make clear that any party in receipt of the information may, in BC Hydro's discretion, be excluded from bidding on remediation work.
B	Granular detail on other suspension and termination cost categories (except as related to benefit agreements with First Nations addressed in Category C) Information in the Deloitte Report on the Project budgets, contingency, and critical path	Some redactions in Appendix O, and Deloitte Report	Limit access to the Commission itself. In the alternative, limit access to the Commission itself unless a requestor is a lawyer who meets the following three requirements: (a) declares he or she is not, and will not be, personally representing a contractor with respect to work on Site C, and (b) provides a binding solicitor's undertaking to BC Hydro that the information will not be disclosed to anyone other than an expert who: (i) will be filing analysis in Phase 2 of this process, (ii) has signed the Commission's undertaking and provided it to BC Hydro, and (iii) declares he or she is not, and will not be, personally representing a contractor with respect to work on Site C; and (iv) undertakes to provide any expert report to BC Hydro prior to publication to ensure confidential information has been redacted.
C	Load and business information of individual industrial customers Details of benefit agreements with individual First Nations	Redactions in Appendix J and some in Appendix O and Deloitte Report	Limit access to the Commission itself.

We submit that this nuanced approach is fair, balanced and appropriate in the circumstances.

Our submission in support of this request is organized around the following points:

1. The vast majority of BC Hydro's Filing and the Deloitte reports are public, and the redactions cover the minimum amount of information necessary to avoid harm.
2. BC Hydro is providing further information on a public website.
3. The release of any of the redacted information in the Filing or the Deloitte Report will harm BC Hydro and our customers, and the harm they would suffer is significant. There are two groups of ratepayers that would be harmed:
  - ▶ individual industrial customers that have provided to BC Hydro in confidence sensitive information about their operations in order to assist BC Hydro's load forecasting (Category C); and
  - ▶ BC Hydro customers generally, who ultimately pay when disclosure compromises BC Hydro's ability to negotiate favourable resolutions to issues or disputes with contractors, to procure future contracts or negotiate future benefit agreements with First Nations. (Category A, B and C).
4. We are generally unable to identify those who would be able to use the information to the detriment of BC Hydro and our customers, or the sufficiency of the steps those requestors will take to protect information.
5. Access to the redacted information would add limited value to most requestors in terms of their ability to participate in this process. While customer-specific business information (Category C) is redacted, the aggregate industrial loads are public. Vetting the information redacted in Categories A and B relating to work upon termination or suspension, would require technical expertise in engineering, construction and environmental reclamation.

## **1 The Vast Majority of the Filing and Deloitte Reports Are Public**

We recognize that there is value in public disclosure of information. The vast majority of the filed information is public.

- There are only three appendices in BC Hydro's Filing that include redacted information, and only limited portions of those Appendices have been redacted. BC Hydro has redacted the minimum amount of information from these appendices that is necessary to avoid harm.
- The Deloitte report on load forecasting has no redactions, and there are very limited redactions in the other Deloitte Report.

## **2 Deloitte's Source Documents Are Published on Website**

BC Hydro is providing a significant amount of additional information on a public website. It houses documents relied upon by Deloitte LLP, other than those containing

commercially sensitive information. The web page can be accessed at [www.sitecproject.com/submissions](http://www.sitecproject.com/submissions).

### **3 The Harm to Our Customers Would Be Significant**

The information that has been redacted is highly sensitive to individual industrial customers and BC Hydro and our customers generally. The harm that will flow from this information being released is very significant.

#### ***Category C Redactions: Customer-Specific Business Details and Benefit Agreements With Individual First Nations***

Appendix J provides information on the current load forecast and developments that have occurred since we prepared the current load forecast. The public version of Appendix J redacts information on large industrial customer-specific loads and service requests since this information is commercially sensitive for our customers. The fact that this information is highly sensitive is self-evident in reviewing the public version. For instance:

- The load of an individual customer can be used to estimate output levels, e.g., to assess whether production is to be ramped-up / down or discontinued.
- Information about the timing of new customer projects can be used by competitors.

In some cases we have been able to obtain customer consent to provide the information publically, and in those cases we have included the information in the public version. The other customers have not consented.

BC Hydro has a long history of working with industrial customers to develop load forecasts. That process requires mutual trust. The long-standing practice has been to treat this information as confidential. The industrial customers are providing this information to BC Hydro with a reasonable expectation that their information will not become public.

With respect to details of the Impact and Benefit Agreements with individual First Nations, the terms of those agreements are confidential. BC Hydro remains in negotiations with other First Nations with respect to future impact and benefit agreements. BC Hydro's negotiation position would be prejudiced if the terms of the existing agreements were disclosed.

***Category A and B Redactions: Cost Details and Assumptions,  
Contractor Claims Upon Termination or Suspension and Critical  
Path Detail***

The redacted portions of Appendices O and P and the Deloitte Report, include the following:

- Appendix O provides detailed information on the cost estimate for termination and suspension scenarios. The cost categories, work descriptions, and aggregated amounts are in the public version. However, we have redacted the more specific and granular information. Deloitte has made similar redactions.
- Appendix P is the report of Hemmera Envirochem Inc., an external consultant retained to provide an expert assessment on the permitting and environmental work that would have to be completed in the event of termination or suspension. The vast majority of their report has been made public, with only the dollar amounts for various scopes of work in the event of a termination or suspension redacted.
- The Deloitte Report provides details of claims made by BC Hydro's contractors, BC Hydro's budget and contingencies for ongoing and future contracts, and critical path information regarding future Project work.

The harm to BC Hydro and our customers generally in the event that the above information were to become public is as follows:

- In the case of the environmental remediation scope and estimates, public disclosure would compromise our ability to obtain favourable pricing in the event we need to procure this work.
- In the case of other specific information regarding suspension and termination, public disclosure would harm our negotiations should suspension or termination result in any claims or disputes related to existing construction contracts or benefit agreements. Simply put, the information provides a "road map" to potential claimants to maximize their claims in the event of suspension or termination.
- In the case of other Project information such as contract budgets, contingency amounts, and critical path information, it would harm BC Hydro's negotiation position in future procurement work and benefit agreements as it provides bidders with information on BC Hydro's "bottom line" negotiation position.

#### **4 We Cannot Identify Those Who Would Benefit at the Expense of Customers**

The significant risk of harm from disclosure is compounded by the fact that, we are generally unable to identify those parties who may be able to benefit from accessing the information to the detriment of BC Hydro and our customers. A vetting process and background check is impractical in the current context, and is not properly a role that can be fulfilled by BC Hydro in any event.

For instance, we will not know if a person requesting information is employed by a Site C contractor.

Moreover, there is nothing in the Confidentiality Declaration and Undertaking, as currently worded that would prevent someone from requesting the information for the legitimate purposes of this proceeding, while also potentially being in a position to benefit from access to that information in another context to the expense of BC Hydro. For instance, if an employee of a potential future bidder on BC Hydro work obtains information about BC Hydro's budgets for spending, the information learned in this process cannot be "unlearned" when it comes time to bid on future work.

We wish to be clear that, in expressing this concern, we mean no disrespect to those who have filed requests. We are merely pointing out that, because due diligence cannot be done effectively, the risk of harm to BC Hydro customers with the general approach currently contemplated by the Commission is amplified significantly.

## **5 Access Would Generally Have Little Impact on Meaningful Participation**

Meaningful participation in this process does not require the public, whether on undertakings or otherwise, having access to granular details that are specific to BC Hydro's customers or contracts, or details of impact and benefit agreements with individual First Nations. The aggregate industrial loads are public, as are the general information regarding the types of benefits provided in the impact and benefit agreements. The Commission is in a position to vet the more granular information provided.

The information in Categories A and B relate to costs of remediation work in the event of suspension or termination, costs relating to existing contracts that would need to be terminated, or Project information relevant to ongoing and future contracts. Vetting that information would require legal and/or technical expertise in engineering, construction, and environmental reclamation. It would also require detailed knowledge of the current state of construction. For that reason, we believe it is reasonable to, at a minimum, impose additional requirements limiting disclosure to such information to lawyers for the purposes of instructing an expert.

## **Conclusion and Order Sought**

Our proposed order takes a nuanced approach, recognizing the need to balance the public interest in disclosure against the need to protect BC Hydro and our customers from harm. We are proposing the highest level of protection over the information that is the most sensitive: customer specific information; information that relates to individual impact and benefit agreements with First Nations; and, granular information that would provide a road map to potential claimants in a termination and suspension scenario, or

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bidders of future Project work. The details of remediation work are also sensitive and merit some form of protection through undertakings.

The requested treatment is consistent with past treatment of similar types of highly sensitive information in Commission proceedings. We respectfully submit that the public interest is well served by the proposed order.

Thank you for your consideration, and we look forward to receiving the Commission's direction.

The Commission's correspondence related to this proceeding should be directed to Fred James at 604-623-4046 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Media or public inquiries should be directed to BC Hydro Media Relations at 604-928-6468.

Yours sincerely,



Fred James  
Chief Regulatory Officer

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