October 11, 2017

Via Email: Sitecsubmission@bcuc.com

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 – Submissions on Preliminary Report

We are counsel for Prophet River First Nation and West Moberly First Nations (the “Treaty 8 Nations”). We write to provide the Treaty 8 Nations’ submissions on the Commission’s Preliminary Report.

On Time and On Budget

The Deloitte Report identified two key risks:

- Schedule – There is a potential to miss the 2019 milestone of Start of River Diversion.
- Cost – There is a potential that the existing cost contingency is insufficient to cover further increases in MCW contract, uncertainties in major contracts yet to be awarded, increases in interest rates, or geotechnical risks.¹

Both of these risks have now been realized.

¹ Deloitte Report at p. 36
On October 4, 2017, Chris O’Riley, the President of BC Hydro, advised the Commission that BC Hydro would miss the 2019 river diversion window adding another $610 million in costs as a result of the delay, pushing the total forecast project cost to $8.945 billion, exhausting any contingency and pushing the Project a further $200,000 over budget with only a quarter of the Project complete – mostly preparation, including clearing, grubbing, contouring, not the major construction work which will likely will have significant contract variance(s). We do not know what the costs of the other major contracts will be although BC Hydro’s letter does identify the

Given BC Hydro’s history of inflating or deflating numbers depending upon the circumstances, the Panel should view this estimate with great skepticism. In our view, the high impact scenario, which would require a further $1 billion as a result of a one-year delay should be preferred by Commission.²

Impacts to Ratepayers

One of the objectives set in the Clean Energy Act is “to ensure that rates remain among the most competitive of rates charged by public utilities in North America.” In spite of being in a surplus position, rates continue to rise. BC Hydro has advised the BCUC that it only requires rate increases of 3.5 per cent for 2017, three per cent for 2018 and an average of 2.6 per cent for 2019 to 2023. These claims are dubious at best. Even without Site C, due to the current capital plan and the high levels of regulatory asset balances as well as low load growth, substantial rate increases are inevitable.

Completing the Project means that BC Hydro will need to find a way to make up the difference between its unit energy cost and what it may recoup from exporting that power. It is the ratepayers (or the taxpayers) who will be responsible for coming up with the rest. That number, while significant, is uncertain at this point, although during the JRP hearings, BC Hydro estimated that four years of export would generate a loss of $800 million, based on a presumption that the power would be needed in 2024, which is no longer supportable.

While there will be sunk costs as a result of termination of the Project, ultimately, it will be up to government whether those sunk costs will be recovered from ratepayers in the form of increased rates. The Panel’s interim report finds that total costs of terminating the Project and remediating the Valley to be $1.1 billion, however remediation costs, in particular could be spread over a number of years.

Other Costs

² Deloitte Report at p. 42.
In its preliminary report, the Commission references the submissions of other interested parties regarding other costs to ratepayers. As the BCUC is aware, the costs to the environment and First Nations’ treaty rights are unprecedented in the history of environmental assessment in Canada. The Project will have unmitigable significant adverse effects on the Treaty 8 Nations’ ability to meaningfully exercise their rights to hunt, fish and trap.

The court challenges launched by the First Nations and the Peace Valley Landowners Association were judicial reviews that addressed administrative law issues, including the Crown’s duty of consultation. The courts were not prepared to address the substantive issue of whether the Crown, by approving the Site C Project, breached its Treaty promises, ie. infringed the First Nations’ treaty rights. The courts held that the Ministers did not have jurisdiction to determine whether the First Nations’ treaty rights would be infringed by the Project and in fact did not make such a determination. The proper course would be to bring an action.

There remains significant litigation risk to the Crown that a court will find that the Crown has unjustifiably infringed the treaty rights of the First Nations and as a result, damages are payable. These damages would be significant in the circumstances, given the promise that the Nations would be allowed to carry on their “usual vocations” of hunting, fishing and trapping. Thus the Treaty 8 First Nations not only have rights to fish, hunt and trap for food, social and ceremonial purposes but at a minimum to a moderate livelihood and more likely commercial rights.

The Blueberry River First Nation has filed a Notice of Civil Claim against the Province squarely raising the infringement of its Treaty rights as a result of the cumulative effects of the province authorizing industrial developments, including the Site C Project. We enclose a copy of the Notice of Civil Claim for your reference. Recently, the Blueberry River First Nation sought an injunction, restraining any new industrial activity in their traditional territory. While the court dismissed the injunction application, the court found that the First Nation had established irreparable harm. The court found that as the trial of the action is imminent, the balance of convenience favoured not granting such a wide-ranging injunction. In addition to the Blueberry River action, West Moberly and Prophet River First Nations have taken the courts’ direction and prepared an infringement claim based on the infringement of their Treaty rights by Site C and the existing dams and reservoirs.

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3 Preliminary Report at p.84-87.
Finally, there also remain outstanding claims relating to the Williston Reservoir, WAC Bennett Dam and Peace Canyon Dam that the government consistently denied, taking the position that they were not part of Treaty No. 8, a position dispelled by the recent Western Boundary decision.\(^6\)

**Alternatives**

The Terms of Reference attached to the Order in Council No. 244 provide that given the energy objectives set out in the *Clean Energy Act*, the Commission inquire into alternative portfolios to Site C. Section 2 sets out 16 energy objectives, including:

2. (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources.

Importantly, there is no hierarchy of objectives set out in the *Clean Energy Act*.

However, the reconciliation of First Nations' treaty rights with the province's purported need for more power must be front of mind. Alternative portfolios provide much greater benefits to First Nations' communities through, among other things, equity participation, revenue-sharing, contracting opportunities, clean renewable power (rather than relying upon diesel) and long-term employment. Clean Energy BC has produced several reports setting out these advantages. In contrast, Site C fails on every metric to meet the objective of fostering First Nations development. In making its recommendations to the government, the Commission should address how the alternative portfolios meet this important objective.

There are critical errors that underlie BC Hydro's approach to alternatives: 1) that the cost of such alternatives are static; 2) that the environmental effects and their impact(s) on the environment and First Nations' treaty rights are irrelevant to the consideration of cost/benefit; 3) that the energy generated by Site C is required and therefore an equivalent alternative portfolio would be required on an equivalent timeline. Each of these errors skews the analysis in favour of Site C.

The cost of alternatives, in particular wind, has plummeted as both the Deloitte Report and the Commission's preliminary report point out. Meanwhile the revised cost estimate of the Project, now $1 billion greater than the $7.9 billion cost reviewed by the Joint Review Panel that found alternatives to be competitive. Clearly Site C is not, if it ever was, the cheapest alternative.

While BC Hydro did not consider the environmental effects of alternatives on the environment or First Nations' Treaty rights, it is clear that any terrestrial alternatives such as wind, solar and geothermal would not have significant effects on fish and fish

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habitat in particular and the First Nations’ ability to harvest fish that are not contaminated with methylmercury. Similarly, the ecological footprint of these projects would be significantly smaller. That is the amount of land that would be “taken up” to use the language of the Treaty, would be far lesser than Site C and its reservoir. This is an important consideration for the Commission who directed BC Hydro in 1983 to come up with a comparison of alternative feasible system plans that demonstrate for a social benefit-cost point of view that Site C is the best project to meet an anticipated supply deficiency. In spite of many years of study, and a lengthy environmental assessment process, BC Hydro still has not produced such a plan.

As we stated in our initial submissions, there is no evidence that the power that would be generated by Site C is required at anytime in the foreseeable future. The reality is that applying a low load forecast leads to substantial significant surpluses for the end of the 20 year planning period, something that the First Nations brought to BC Hydro’s attention in October 2013 (letter attached).  

Benefits of Termination

While there will be costs for termination of the Project, as Chief Roland Willson stated in his presentation to the Commission, there is an opportunity for reconciliation. All the Treaty 8 First Nations are well-suited to perform rehabilitation and remediation work in the Peace River Valley. The First Nations have experienced companies that are involved in forestry and construction. The benefits that have flowed to McLeod Lake Band, the only First Nation to derive any significant contracting benefits from the project, through their company Duz Cho Construction Limited, for site preparation work have been exhausted. Any future construction of Site C would be via various large corporations or multi-nationals. The Nations also have the traditional knowledge regarding plant species that they could apply to any remediation work. And most importantly, as stewards of the Peace River Valley the First Nations have a vested interest in rehabilitating it to ensure the continued meaningful exercise of their Treaty rights.

The Treaty 8 Nations are not against the generation of energy in the Peace River Valley, but against this Project, as it represents an unjustified infringement of their Treaty rights. The Nations have been extensively involved with the clean energy sector and are prepared to work with this sector to develop projects as they are needed to meet any supply deficiency so long as such projects do not imperil their ability to meaningfully exercise their Treaty rights.

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8 A company owned by a Saulteau First Nation member, Paul Paquette & Sons Contracting also obtained site clearing contracts.
We trust that this letter is of assistance. Should you have any questions, please feel welcome to contact the writer.

Yours truly,
DEVLIN GAILUS WATSON

[Signature]

John W. Gailus

Email: john@dglaw.ca
Mobile: 250.514.9955

cc. Clients
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Marvin Yahey on his own behalf and on behalf of all other Blueberry River First Nations beneficiaries of Treaty No. 8 and the Blueberry River First Nations

PLAINTIFFS

AND:

Her Majesty the Queen in Right of the Province of British Columbia

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served

(b) if you reside in the United States of America, within 21 days after the date on which a copy of the filed notice of civil claim was served

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served

(d) if the notice of civil claim has been served within that time.

This is Exhibit 13 referred to in the Affidavit of Roland Wisseworn before me at Vancouver this 22nd day of March, 2017.

A Commissioner for taking Affidavits for British Columbia.
CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Introduction

1. Blueberry River First Nations brings this claim against the Crown to stop the consistent and increasingly accelerated degradation of the Nations’ traditional territory, and to protect and enforce the Nations’ constitutionally protected rights under Treaty 8 against the cumulative impacts of Crown authorized activities on their traditional territory.

2. As set out below, in seeking the Nations’ consent that their territory be opened for settlement in or around 1900, Her Majesty the Queen promised the ancestors of Blueberry River First Nations that they and their descendants were ensured their rights to carry on their modes of life and means of earning economic livelihoods, including by hunting, trapping and fishing.

3. At the time of making the Treaty, the Crown assured the ancestors of the Blueberry River First Nations that it was in both parties’ interests that the Nations must be able to carry on their traditional and economic activities so as to maintain themselves productively, in good health and well-being, and so as not to become dependent upon the Crown.

4. On the basis of the promises and assurances made by Her Majesty, and the trust placed in Her Majesty, the ancestors of the Blueberry River First Nations consented to allowing their traditional territory to be opened for settlement, on the conditions established by the Treaty.

5. However, the Crown has not maintained its promises. Instead of furthering or protecting Blueberry River First Nations’ interests, the Crown in right of the Province of British Columbia has consistently made choices to undertake or allow land alienation, resource extraction and industrial activities in the traditional territories upon which the Nations’ culture, economy and Treaty rights depend. These activities have damaged the forests, lands, waters, fish and wildlife that are integral to the Nations’ mode of life, and upon which the Nations rely. Rather than protecting the Blueberry River First Nations’ mode of life, these Crown choices have contributed significantly to an impoverishment of it.

6. The cumulative impacts of these activities have consistently and increasingly pushed the Blueberry River First Nations to the margins of their traditional territory, and have now left the members with almost no traditional territory within which to meaningfully pursue their constitutionally protected cultural and economic activities.

7. Blueberry River First Nations seek declaratory and injunctive relief against the Crown to prevent further cumulative impacts to their traditional territory, and to end the further erosion of any meaning from their Treaty rights. The relief is sought based on breaches of the Crown’s legal duties to uphold the promises made in the Treaty, to act honourably in the performance of the Treaty obligations, and to act in the interests of the Blueberry River First Nations, as a fiduciary must.
The Parties

The Plaintiffs

8. Blueberry River First Nations ("Blueberry") is a band within the meaning of the Indian Act, R.S.C. 1985, c. 1-5 and is an aboriginal people within the meaning of section 35 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

9. Blueberry traditional territory is located in the Upper Peace River region of northeast British Columbia.

10. Blueberry is one of two successor First Nations to the Fort St. John Beaver Indians that adhered to Treaty 8 (the "Treaty"). The other successor is Doig River First Nation ("Doig").

11. Marvin Yahey is an Aboriginal person within the meaning of s. 35 of the Constitution Act, 1982, an Indian as defined by the Indian Act, and a member and elected Chief of Blueberry. He is authorized to bring this action on behalf of Blueberry and its members.

The Defendant

12. The Defendant Her Majesty the Queen in Right of the Province of British Columbia is named in these proceedings pursuant to s. 7 of the Crown Proceedings Act, R.S.B.C. 1996, c. 89, and is that emanation of the Crown that holds the beneficial interest to the lands material to the issues in this proceeding, subject to the interests of the Plaintiffs.

13. The Defendant has the exclusive power to manage and regulate the lands material to the issues in this proceeding, as well as the resources on or under those lands, pursuant to ss. 109, 92(5) and 92A of the Constitution Act, 1867, subject to the terms of the Treaty and the Plaintiffs' interests.

14. The Defendant is, along with Her Majesty the Queen in Right of Canada, responsible for upholding the Crown promises made in the Treaty.

The Treaty

15. The Treaty is a treaty within the meaning of s. 35 of the Constitution Act, 1982. On June 21, 1899, the Treaty was originally made and concluded at Lesser Slave Lake between Her most Gracious Majesty the Queen of Great Britain and Ireland ("the Crown") and the Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country. The Treaty was ratified by Order in Council 363 on February 2, 1900.

16. On May 30, 1900, 46 members of the Beaver Indians from Fort St John, the ancestors of the present-day Blueberry and Doig, adhered to the Treaty.
The Treaty Rights

17. The Treaty created reciprocal rights and obligations on the part of the Plaintiffs and the Crown.

18. The Crown required and sought the consent of the Plaintiffs’ ancestors to open the tract of land they inhabited for settlement and other activities.

19. The Plaintiffs’ ancestors gave this consent in exchange for the solemn promises made by the Crown, including that:

   a) The Treaty, including the consent given by the Plaintiffs under the Treaty, would not lead to forced interference with the Plaintiffs’ mode of life;

   b) The same means of earning a livelihood and patterns of economic activity would continue for the Plaintiffs’ ancestors and their descendants after the Treaty as existed before it, and that the Plaintiffs would be expected to continue to make use of these means.

20. These solemn promises included the express assurance that the Plaintiffs would be as free to hunt, trap and fish throughout their traditional territory as they had been before entering the Treaty.

21. These solemn promises also ensured other rights to the Plaintiffs, including but not limited to rights:

   a) to undertake traditional and spiritual activities within the Plaintiffs’ traditional territory;
   b) to travel throughout the Plaintiffs’ traditional territory;
   c) to manage natural resources within the Plaintiffs’ traditional territory; and
   d) to gather various natural resources, including plants and berries within the Plaintiffs’ traditional territory.

22. These solemn promises also ensured the Plaintiffs’ rights to access to and protection and management of adequate quantities of clean and fresh water, capable of sustaining life within and around the Plaintiffs’ traditional territory.

23. The Plaintiffs further have rights to engage in activities incidental to the exercise of the rights under the Treaty, including but not limited to the following:

   a) the right to access the lands and waters necessary for hunting, trapping, and fishing;
   b) the right to maintain adequate terrestrial and riparian habitat to support the activities of hunting, trapping and fishing;
   c) the right to maintain and access tralines and traline infrastructure, including trails and cabins; and
d) the right to maintain and access teaching sites in order to be able to pass on the Plaintiffs’ traditional mode of life.

(collectively, the rights set out in paragraphs 19 to 23 are the Plaintiffs’ “Treaty Rights”)

24. The portion of their traditional territory within which the Plaintiffs traditionally exercised their Treaty Rights, including the rights to hunt, trap, fish and gather, is outlined on the map attached as Schedule 1 to this claim. This area is hereinafter referred to as the “Traditional Territory”.

25. The Traditional Territory is wholly within the land designated in the Treaty.

26. Pursuant to the Treaty, the Defendant’s obligations include:

   a) not to displace the Plaintiffs or force interference with the Plaintiffs' mode of life, or to permit the doing of these things;

   b) not to restrain the Plaintiffs’ means of earning a livelihood by exercise of the Plaintiffs’ Treaty Rights;

   c) not to force or permit interference with the Plaintiffs’ traditional patterns of economic activities;

   d) not to interfere, and to prevent interference, with the meaningful exercise of the Plaintiffs’ Treaty Rights;

   e) to exercise any rights under the Treaty to make regulations or to take up land honourably and in a manner that does not interfere with the Plaintiffs’ continued meaningful exercise of the Treaty Rights; and

   f) to manage and protect the lands designated under the Treaty, and adjacent lands, including the waters and ecosystems within those lands, in such a way as to seek to:

   i. minimize impacts on the Treaty Rights; and
   ii. ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs.

27. The Defendant has breached its Treaty obligations to the Plaintiffs.

28. The Defendant has not sought or received the consent of the Plaintiffs to breach the Treaty or infringe the Plaintiffs’ Treaty Rights.
Industrial Development within the Plaintiffs’ Traditional Territory

29. The Defendant has discretionary control over the management of the Plaintiffs’ Traditional Territory. The Defendant has authorized extensive industrial development within, and adjacent to, the Traditional Territory.

30. The Defendant has authorized activities, projects and developments within, and adjacent to, the Plaintiffs’ Traditional Territory, including but not limited to the following types of activities, projects and developments:
   a) oil and gas;
   b) forestry;
   c) mining;
   d) hydroelectric infrastructure;
   e) roads and other infrastructure;
   f) agricultural land clearing;
   g) land alienation and encumbrance; and
   h) other industrial development (collectively the “Industrial Developments”).

31. The Defendant authorized the Industrial Developments without regard to the potential cumulative effects and consequent adverse cumulative impacts of the Industrial Developments on the Plaintiffs’ continuing meaningful exercise of its Treaty Rights, including without:
   a) seeking to ensure that sufficient Traditional Territory remained available, after regulation and any taking up, for the meaningful exercise of the Plaintiffs’ Treaty Rights;
   b) obtaining sufficient information concerning the nature and extent of the Treaty Rights, and the conditions necessary for sustaining the meaningful exercise of those rights;
   c) obtaining sufficient information to understand the potential cumulative impacts of the Industrial Developments within and adjacent to the Traditional Territory;
   d) informing itself, or sufficiently informing itself, of the potential cumulative impacts of the Industrial Developments within, and adjacent to, the Traditional Territory on the continued meaningful exercise of the Treaty Rights;
   e) assessing, monitoring and managing the cumulative impacts of the Industrial Developments within and adjacent to the Traditional Territory;
   f) planning the cumulative development within, and adjacent to, the Traditional Territory;
   g) managing the pace, scale, location, nature and number of activities, projects, and developments within, and adjacent to, the Traditional Territory;
h) establishing thresholds for impacts to the lands, waters, and wildlife within, and adjacent to, the Traditional Territory beyond which there will be or may be interference with the Plaintiffs’ continued meaningful exercise of the Treaty Rights, and ensuring that the cumulative impacts of the Industrial Developments do not or will not exceed those thresholds;

i) seeking to minimize impacts, including cumulative impacts, of the Industrial Developments on the Plaintiff’s Treaty Rights; and

j) fulfilling its obligation to manage and protect the Traditional Territory, and adjacent lands, including the waters and ecosystems within those lands, in such a way as to seek to minimize impacts on the Treaty Rights and to ensure the continued meaningful exercise of the Treaty Rights by the Plaintiffs.

**Impacts of Industrial Development on the Exercise of Treaty Rights**

32. The cumulative impacts of the Industrial Developments have resulted in:

a) significant adverse impacts to the land, water, fish and wildlife and the exercise of the Plaintiffs’ Treaty Rights within the Traditional Territory, and

b) the loss of the Plaintiffs’ ability to meaningfully exercise some or all of the Plaintiffs’ Treaty Rights in the Traditional Territory.

33. The cumulative impacts of the Industrial Developments have resulted in the following within the Plaintiff’s Traditional Territory, without limitation:

*Destruction and loss of access to territory*

a) destruction of and loss of access to key hunting, trapping, fishing and gathering areas;

b) destruction of and loss of access to traditional and spiritual areas and sites;

c) destruction and loss of access to key habitation sites;

d) landscape fragmentation resulting in the reduction and loss of the ability of Blueberry members to know and effectively navigate their territory by land and water;

e) destruction of traditional travel ways, including trails;

f) reduction and loss of access to traditional foods sufficient to sustain the Plaintiffs’ culture, health and mode of life;

g) destruction and loss of access to teaching sites resulting in the loss of the ability to pass on the Plaintiffs’ traditional mode of life, including reduced Dane-zaa language retention and transmission;

*Harm to wildlife*

h) diminution in the abundance, health and diversity of wildlife;

i) alteration of migration patterns of wildlife, including caribou and furbearers;
j) fragmentation of wildlife habitat, including the destruction and loss of mineral licks, calving areas, and wintering grounds;

k) qualitative and quantitative impacts to wildlife habitat;

**Damage to water, land and air**

l) impacts to riparian systems and water quality and quantity, such that Blueberry members no longer feel safe drinking water from the Traditional Territory or bathing in areas of traditional importance;

m) contamination of air, land, and water and corresponding impacts on human health;

**Harm to fish**

n) diminution in the abundance, health and diversity of fish;

o) qualitative and quantitative impacts to fish habitat;

**Harm to plants**

p) reduced abundance, quality and access to berries; and

q) reduced abundance, quality and access to traditional plants and medicines.

34. The Plaintiffs have suffered further losses resulting from the cumulative impacts of the Industrial Developments, including:

a) loss of the Plaintiffs’ use and enjoyment of lands within their Traditional Territory and injury to the remaining lands and the meaningful exercise of the Plaintiffs’ rights thereon;

b) displacement of Plaintiff hunters, trappers and fishers from areas used for Industrial Developments;

c) curtailment of the continuity of the Plaintiffs’ traditional patterns of economic activity; and

d) loss of the Plaintiffs’ preferred means of exercising the Treaty Rights.

35. The cumulative effects of the Industrial Developments have had significant adverse impacts on the meaningful exercise of the Plaintiffs’ Treaty Rights, breached the Treaty and infringed the Plaintiffs’ Treaty Rights, including by:

a) forcibly interfering with the Plaintiffs’ mode of life;

b) restraining the Plaintiffs’ means of earning a livelihood; and

(c) significantly curtailing the Plaintiffs’ ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful right to exercise some or all of their Treaty Rights within their Traditional Territory.

36. The Plaintiffs’ have made their concerns regarding the cumulative impacts of the Industrial Developments on the continued meaningful exercise of their Treaty Rights, and the resulting
breach of the Treaty and infringement of their Treaty rights, known to the Defendant, but the Defendant has failed or refused to adequately address the impacts to and infringement of those rights.

37. The Defendant has not taken any, or sufficient, steps to prevent the breach of the Treaty, address the infringement of the Treaty Rights, or to ameliorate the impacts of the Industrial Developments on the continued meaningful exercise of the Plaintiffs’ Treaty Rights.

38. The Defendant has continued, and will continue unless restrained from doing so, to undertake or approve activities, projects and developments within the Traditional Territory contrary to the Defendant’s obligations under the Treaty.

Part 2: RELIEF SOUGHT

WHEREFORE the Plaintiffs claim as follows:

1. A declaration that, in causing and/or permitting the cumulative impacts of the Industrial Developments on the Plaintiffs’ Treaty Rights in their Traditional Territory, the Defendant has breached its obligations to the Plaintiffs under the Treaty;

2. A declaration that the Defendant has infringed upon some or all of the Plaintiffs’ Treaty Rights by causing and/or permitting the cumulative impacts of the Industrial Developments on the Plaintiffs’ Treaty Rights in their Traditional Territory;

3. A declaration that the Defendant may not lawfully continue to authorize activities that breach the promises made by the Crown to the Plaintiffs in the Treaty or that infringe the Treaty Rights;

4. A declaration that the Defendant has breached its fiduciary obligations to the Plaintiffs by undertaking, causing and/or permitting some or all of the Industrial Developments within and adjacent to the Plaintiffs’ Traditional Territory;

5. An interim injunction restraining the Defendant from undertaking, causing and/or permitting activities that:
   a) breach the Defendant’s obligations to the Plaintiffs under the Treaty;
   b) infringe the Plaintiffs’ Treaty Rights; or
   c) breach the Defendant’s fiduciary obligations to the Plaintiffs.

6. A permanent injunction restraining the Defendant from undertaking, causing and/or permitting activities that
   a) breach the Defendant’s obligations to the Plaintiffs under the Treaty;
   b) infringe the Plaintiffs’ Treaty Rights; or
c) breach the Defendant's fiduciary obligations to the Plaintiffs.

7. Costs; and

8. Such further and other relief as this Honourable Court may deem appropriate.

Part 3: LEGAL BASIS

The facts set out above establish that:

1. The Plaintiffs have rights under the Treaty against the curtailment by the Crown of the mode of life and means of earning a livelihood that the Plaintiffs enjoyed before entering the Treaty. These rights include the preservation of meaningful rights to hunt, trap, fish and gather within the Plaintiffs' Traditional Territory against incursions undertaken, caused or authorized by the Crown.

2. The existing treaty rights of the Aboriginal peoples of Canada are recognized and affirmed by the Constitution Act, 1982.

3. The Defendant is bound by the Treaty, as both levels of government are responsible for fulfilling the promises in the Treaty, in accordance with the division of powers under the Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

4. The exercise of the Defendant's rights under the Treaty, including any rights to make regulations or to take up lands, are subject to and burdened by the Defendant's obligations to the Plaintiffs under the Treaty, the Constitution and the legal doctrine of the honour of the Crown. The Defendant must act in a way that seeks to preserve and accomplish the intended purposes of the Treaty Rights, and seeks to minimize impacts on the Treaty Rights and to ensure the continuing meaningful exercise of the Treaty Rights by the Plaintiffs.

5. The Defendant has undertaken, caused and/or authorized extensive Industrial Developments within, and adjacent to, the Plaintiffs' Traditional Territory, which has resulted in:

   a) forcible interference with the Plaintiffs' mode of life;

   b) interference with the continuity of the Plaintiffs' traditional patterns of economic activity and restraint of the Plaintiffs' means of earning a livelihood;

   c) significant curtailment of the Plaintiffs' ability to exercise their Treaty Rights, such that the Plaintiffs have been left with no meaningful right to exercise some or all of their Treaty Rights.

6. As such, the Defendant has breached and infringed, and continues to breach and infringe, the Treaty and the Treaty Rights of the Plaintiffs, contrary to its constitutional obligations and the legal doctrine of the honour of the Crown.
7. Further, or in the alternative, the Defendant has unlawfully caused adverse effects upon the Plaintiffs' Treaty Rights without having fulfilled the obligations required of the Defendant pursuant to the Treaty, the constitution and the legal doctrine of the honour of the Crown.

8. Further, or in the alternative, any rights of the Defendant under the Treaty to make regulations or to take up land are subject to the legal doctrine of the honour of the Crown and the fiduciary duties of the Crown to the Plaintiffs, including the duty to act in the interests of the Plaintiffs and to seek to ensure the continuing meaningful exercise of the Treaty Rights.

9. The Defendant's authorization of the Industrial Developments adversely impacted the ability of the Plaintiffs to meaningfully exercise their Treaty Rights within their Traditional Territory, contrary to the interests of the Plaintiffs. As such, the Defendant's authorization of the Industrial Developments constitutes a breach of fiduciary duty and, or in the alternative, the legal doctrine of the honour of the Crown.

10. Further, or in the alternative, by authorizing the extensive regulation and taking up of land for development as herein described, the Defendant has taken benefit from its discretionary control over the Plaintiffs' Traditional Territory, and has put its own strategic and financial interests in the development of the Traditional Territory before the Plaintiffs' interests. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

11. Further, or in the alternative, the Defendant has failed to act with the reasonable care, skill and diligence required of it by law, as the Defendant failed to inform itself or the Plaintiffs of the potential cumulative impacts of the Industrial Developments on the exercise of the Plaintiffs' Treaty Rights or to consider the cumulative impacts upon the Plaintiffs in authorizing the Industrial Developments, and thus failed to seek to ensure the Plaintiffs' continuing meaningful exercise of their Treaty Rights. This conduct breaches the standards required pursuant to the legal doctrine of the honour of the Crown and the law of fiduciaries. The Crown has at all material times been required by law to meet one or both of these standards in its conduct toward the Plaintiffs.

Enactments

12. The Plaintiffs rely on the following enactments:

a) Constitution Act, 1867

b) Constitution Act, 1982; and

c) Indian Act, R.S.C. 1985, c I-5.
Plaintiff’s address for service:  Ratcliff & Company LLP
Barristers and Solicitors
Suite 500, 221 West Esplanade
North Vancouver, B.C. V7M 3J3

Fax number address for service (if any):  604-988-1452

E-mail address for service (if any):  N/A

Place of trial:  Vancouver, British Columbia

The address of the registry is:  800 Smite Street
Vancouver, B.C.

Date: 3/MAR/2015

Signature of
[ ] lawyer for Plaintiff

For: MAEGEN GILTROW

Rule 7-1 (1) of the Supreme Court Civil Rules states:
(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists
   (i) all documents that are or have been in the party’s possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
   (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim that in causing and/or permitting the cumulative impacts of the Industrial Developments the Defendant has breached and infringed, and continues to breach and infringe, Treaty 8 and the Treaty Rights of the Plaintiffs, and acted contrary to the Defendant’s constitutional obligations, the legal doctrine of the honour of the Crown and the law of fiduciaries. The Plaintiffs seek declaratory and injunctive relief.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
[ ] a motor vehicle accident
[ ] medical malpractice
[ ] another cause
A dispute concerning:
[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[ ] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[X] a matter not listed here

Part 3:
[ ] a class action
[ ] maritime law
[X] aboriginal law
[X] constitutional law
[ ] conflict of laws
[ ] none of the above
[ ] do not know

Part 4:
Constitution Act, 1867
Constitution Act, 1982
Indian Act, R.S.C. 1985, c I-5.
October 18, 2013

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Re: Treaty 8 Comments — Integrated Resource Plan

Dear Mr. Weiler,

Thank you for your letter of August 29, 2013 concerning BC Hydro’s 2013 Integrated Resource Plan (“2013 IRP”). We are writing to provide BC Hydro with comments on behalf of Doig River, Halfway River, Prophet River and West Moerly First Nations (the “Treaty 8 First Nations” or “T8FNs”) concerning the IRP, and the IRP process to date.

Additional detailed comments concerning the implications of the 2013 IRP in relation to the proposed Site C Project may be provided to BC Hydro and the Provincial Crown through other processes, including the environmental assessment process for Site C. For this reason, we have copied BC Hydro Site C representatives on this submission.

CONSULTATION ISSUES

1. Consultation not commensurate with potential impacts and implications

Site C is the only project specifically contemplated in the IRP process, and so potentially affected Treaty 8 First Nations should have been consulted directly from the outset of the planning process and not merely as “other First Nations in British Columbia”. The “same” consultation is not “equivalent” consultation when the courts have clearly stated that deeper consultation is required based on the nature of the potential impacts on Section 35(1) Rights.
The Treaty 8 First Nations are profoundly affected by the IRP, which recommends proceeding with the Site C Project. This recommendation and the analysis underlying it are likely to play an important role in the upcoming environmental assessment hearings on Site C. Furthermore, as indicated in the Consultation Summary (Table 7-2), most BC First Nations indicated that they would support the position taken by the First Nations local to the Site C project, i.e. the T8FNs. For all these reasons, we consider it important to attempt to provide thorough and in-depth comments on the 2013 IRP.

Overall, the two sets of workshops, the limited funding offered First Nations to attend these workshops, and the actions carried out by BC Hydro do not amount to adequate or meaningful consultation with our First Nations. This is especially the case considering the implications of the outcomes of the IRP process for potential hydroelectric development on the Peace River in Treaty 8 territory.

2. Inadequate time and information for adequate Consultation

In general, the timeframe for finalization of the IRP is not conducive to adequate consultation with potentially-affected First Nations. This issue has been raised throughout the process. It is not reasonable to expect the T8FNs or other Aboriginal groups to comprehend the considerable implications of the IRP in the timeframe provided.

In particular, the 2013 IRP represents an in-depth revision of the Draft IRP published in 2012 (“2012 IRP”). It is unfortunate that BC Hydro chose not to produce a document describing either the methodological modifications applied to the 2012 IRP or the changes in the resulting analytical findings contained in the 2013 IRP.

Each document is hundreds of pages long, not counting the appendices. We have reviewed portions of both documents in detail, and have identified very significant modifications, many of which we find very problematic and, at times, incoherent.

In certain respects, the 2013 IRP is incomplete, in that it fails to provide enough supporting information to allow an informed judgement about several key elements. Because the changes from the 2012 IRP are extensive, information provided earlier cannot be brought to bear in the analysis of the 2013 IRP.

These circumstances make it impossible for the T8FNs to prepare an exhaustive review of the 2013 IRP within the short time period provided.

The Treaty 8 First Nations have therefore chosen to present these high-level preliminary comments on the 2013 IRP within the consultation deadline imposed by the Minister. Subsequently, we intend to submit written questions (requests for information) to BC Hydro, seeking fuller explanation and supporting data, where appropriate.

PLANNING ISSUES

These high-level preliminary comments focus on the following planning issues:

- Approaches to energy planning.
- Treatment of uncertainty.
3. Approaches to energy planning

The 2013 IRP begins with consideration of a number of potential alternative futures for economic growth in British Columbia, and then goes on to ask how much energy will be required, and from where and when, in order to meet the various economic growth scenarios. The merits, sustainability or possibility of continued economic growth are never addressed, as economic growth is taken as the appropriate starting point for the energy planning process.

"Our province has an enviable quantity of future sources of clean and renewable energy." (2012 IRP, Executive Summary, p.5)

Potential resources (e.g. rivers, hillsides, forests, etc.), which currently meet other needs and satisfy other values, are presumed to be available for exploitation to serve our energy needs. There is no analysis as to whether this can be sustainably achieved and, if so, under what possible conditions.

One could, however, take a very different approach. Rather than the economy determining the amount of energy we require, the available and sustainable energy resources could determine the kind of economy that we could afford to have in British Columbia. In other words, energy planning would consider and respect the real limits that restrain continued energy development within the Province and provide the planning boundaries and values for the responsible development of energy resources, and ultimately of a sustainable economy. This approach would prevent the incremental and eventual development of all of the technically feasible energy resources of British Columbia, which is the logical outcome of the approach taken in the IRP. This "limits-based" or preventive approach would begin by acknowledging, among other things, that:

- sufficient conservation lands and waters need to be identified and set aside throughout the Province based on the maintenance of biodiversity – for example, only 4% of the Peace Region is currently protected, which is well below the 20-30% considered necessary by conservation biologists, and below the objective of 12% set by the Province for the year 2000; ¹

- sufficient lands and waters would be set aside, in consultation with Aboriginal groups, for the exercise of treaty and Aboriginal rights throughout the Province in areas traditionally used;

• GHG emissions would be set so as to fall over time to a *per capita* limit consistent with maintaining global temperature increases below +2C; and
• a sufficient agricultural reserve would be maintained to permit the Province to be self-sufficient in food production should that become necessary.

A limits-based approach would achieve sustainability in energy use within the Province. This contrasts with the approach taken in the IRP, which simply seeks to slow down the growth in electricity demand.

While conservation is important, at current levels it will not prevent the eventual exploitation of all available and technical suitable rivers (for hydro), forests (for biofuels), hillsides (for wind) and meadows (for solar) in the service of energy production, not to mention the substantial lands taken up by fossil fuel development. While conservation partially mitigates the adverse effects of the development process, the eventual outcome is the incremental and eventual degradation of extensive lands and waters within the Province in the service of economic growth vis-à-vis energy production.

The limitations of the deterministic approach can also be seen in relation to the 7% limit of non-GHG electricity included in the *Clean Energy Act*. Built-in GHG emission increases are inherent to the deterministic planning approach in which continual growth in electricity demand goes unquestioned. Under this approach, the GHG emissions continue to rise in absolute terms as a result of growth in supply. This is clearly illustrated in Figure 6-1 Available Headroom from Non-Clean Firm Energy and Figure 6-2 Available Headroom from Non-Clean Capacity, where GWh of natural gas units of electricity and therefore also GHG emissions continue to rise indefinitely.

BC Hydro has reached the limits of the conventional approach to energy planning to deliver sustainable outcomes. In order to ensure sustainability, a preventive approach is required that sees economic and energy development taking place within ecological limits and ensures the protection of land and waters for sustainable use.

### 4. Treatment of uncertainty

Despite its formidable analytical expertise, BC Hydro has systematically refused to explore the implications for its proposed resource plan (based largely on Site C) of scenarios where load growth and/or power market prices are lower than forecast, or that DSM results are better than planned. In particular, the rate impacts of Site C in a low load/high DSM deliverability scenario, which would likely be dramatic, are not examined.

In failing to do so, BC Hydro has ignored the lessons of its neighbour, the Northwest Power Planning Council. The NPPC is a recognized leader in power planning, and in particular in developing methodologies to address uncertainty. The following excerpt from the Fifth Plan, published in 2005, remains extremely relevant to BC Hydro’s IRP:

**Decision Making Under Uncertainty**

Strategic decision-making models use and manage uncertainty differently from many simulation models that incorporate uncertainty. The key difference between the two is the scale of risk and how a decision maker responds to uncertain events.
An example of a simulation that addresses uncertainty, but is not what we would call a strategic decision analysis, is how many utilities model hydro generation.... Because the variation in hydro generation averages out over a sufficient number of years with high probability, the average generation and average system cost are useful statistics, and may be the key outputs of interest.

The decision maker may need to make a choice among different plans to deal with this variation in hydro generation, but the tool she uses is essentially sensitivity analysis, albeit sophisticated sensitivity analysis. This kind of analysis is appropriate where the scale of the uncertainty and risk is small enough that the decision maker feels she can live with the outcomes, given the selected plan. In particular, the emphasis is on choosing a plan to which the decision maker feels comfortable committing.

This approach is common to many kinds of analysis. For example, it would be the way an industrial engineer would represent a manufacturing process, if he wanted to maximize productivity. ...

Against these examples, contrast strategic decision analysis. If the scale of change is large, extreme outcomes may be catastrophic. If the outcome would be catastrophic, the decision maker may need to consider individual scenarios. ...

An example of strategic decision analysis is planning for a military operation. In the fog of war, leaders must make life or death decisions about tactics and strategy. In addition to the main plan, strategists will develop Plan B, Plan C, and so forth, alternatives to implement if circumstances are not as expected. They create options by deploying resources and small numbers of troops to monitor enemy activity and serve as support if it becomes necessary to adapt to new scenarios.

Note that a general would never consider implementing a fixed strategy, one without options or alternatives, based on average survival. If an option will spare a life, it merits consideration. Whereas the average hydro generation over five or six years is a useful number for certain calculations, such as average power cost, failing to adapt military plans because the expected distribution was acceptable would be ludicrous and tragic. In decision analysis, the tails of the distribution, especially the “bad” tail, assume greater significance than they do in ordinary simulations. Adaptations that improve the outcomes in the worst of circumstances receive emphasis. Decision-making under uncertainty has more to do with making decisions that, while they may not have been optimal in retrospect, did not lead to a catastrophic outcome.2 (emphasis added)

Although BC Hydro has run a wide variety of scenarios, there is no indication that it has paid particular attention to the “bad tails”. Indeed, the portfolio analysis is focused on making multi-billion dollar decisions based on small differences in (discounted) present value, without regard for the potential for extremely adverse outcomes.

Extreme rate increases would represent a potentially catastrophic scenario. As rate impacts are not calculated or presented, one is left with the impression that each scenario is equally acceptable.

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According to the 2011 government Review of BC Hydro, BC Hydro is facing substantial rate increases in coming years, for reasons that have nothing to do with its resource plan. Even under the best of circumstances, the additional rate increases that flow from developing new resources will be substantial.

BC Hydro's load forecast claims to take elasticity effects into account – in other words, to take into account the price of electricity in forecasting the amounts that will be used in the future. However, nowhere is it stated what future rate increases have been used in calculating this elasticity effect. In any case, it is clear that the load forecast does not take into account the differential rate impacts that would flow from the wide range of scenarios explored in the IRP.

This is not merely a theoretical flaw. There is no doubt that under certain circumstances, rate increases would be significantly greater than in the base case. How much greater? BC Hydro takes pains not to provide any information in this regard.

If the resulting rate increases were great enough to cause further loss of load – whether through general economic contraction, through increases in distributed generation, or through the departure from the grid or from British Columbia of certain large industrial loads – a negative spiral could occur. Falling load combined with high fixed costs – once Site C is built, its costs will be sunk and unavoidable for many years – would result in ever greater rate increases, as those fixed costs will have to be spread over a smaller and smaller number of kWh. In the worst case, such a spiral could have catastrophic consequences for British Columbia.

Avoiding such a scenario should be a key objective of the 2013 IRP. Even under less extreme conditions, adverse outcomes could lead to rate impacts that, while not catastrophic, violate Energy Objective 2(f), discussed in the next section. Again, by avoiding any quantitative assessment of rate impacts under the various scenarios it explores, the IRP makes it impossible to assess the risk of such an outcome.

5. Rate Impacts

In Table 1-1, BC Hydro indicates how the 2013 IRP responds to each of the Energy Objectives mentioned in the Clean Energy Act (CEA). The first of the objectives listed (section 2(f) of the Act) is:

“to ensure that [BC Hydro’s] rates remain among the most competitive of rates charged by public utilities in North America.”

BC Hydro’s response to this key Energy Objective is lengthy but imprecise:

BC Hydro places priority on this objective given that BC Hydro has a service obligation pursuant to section 39 of the UCA in accordance with its tariffs, the fact that the IRP is designed to address customer electricity demand and because of BC Hydro’s relationship with its customers.

In the IRP BC Hydro generally uses the BCUC’s definition of ‘cost-effectiveness’, which in addition to low cost includes schedule/deliverability risk, reliability, timing, location and environmental impacts. BC Hydro considers that the recommended actions in Chapter 8 are the most cost-effective way (consistent with other requirements) to reduce costs in
the short-term consistent with other requirements, meet the projected longer-term energy and capacity load/resource gaps, and therefore the optimal way to reduce revenue requirements and ensure that BC Hydro’s rates remain competitive. Refer to Chapter 6, where BC Hydro emphasizes: (1) portfolios with the lowest Present Value (PV) costs; and (2) the lowest UECs or UCCs when examining potential resources. (underlining added)

If the CEA’s Energy Objective had been “to ensure that BC Hydro uses the most cost-effective resources,” this response might have been adequate. However, cost-effectiveness and rate impacts are not the same thing.

In fact, nowhere in the IRP are future rates discussed, either for a reference case or for any of the scenarios explored. In the absence of such an analysis, it is impossible for BC Hydro to make any affirmation at all about future rates. It certainly is in no position to affirm that they will “remain among the most competitive of rates charged by public utilities in North America,” as required by this statutory Energy Objective.

In fact, as the June 2011 Review of BC Hydro made clear, substantial rate increases are to be expected in the coming years, even without Site C, due to the current capital plan ($7 billion over the next three years) and the high levels of regulatory asset balances. Given the statutory objective to ensure that BC Hydro’s rates remain among the most competitive charged by public utilities in North America, the utility had an obligation to systematically examine the rate implications of the various scenarios and alternatives under study.

We know that BC Hydro has the tools to carry out rate forecasts. The Review of BC Hydro produced by the provincial government in June 2011 states (p. 93):

In order to illustrate the impact of [the self-sufficiency] policy on rates, BC Hydro performed a number of cost calculation scenarios. The costs of self-sufficiency using critical water levels with insurance was compared with the costs of self-sufficiency should the definition be changed to average water levels with no insurance. Changing the definition of self-sufficiency could have the effect of mitigating rate increases by up to 8% in 2016 and 20% in 2020 under current low market prices. ... (underlining added)

Clearly, then, BC Hydro has the capacity to predict future rates under a given set of assumptions, as it did in response to requests from the Review Panel.3 Given the statutory energy objective quoted above, such rate forecasts should form part of the IRP.

It is also true that, all else being equal, lower cost resources will lead to lower rates. But this simplistic view leaves out a critical variable: the energy and capacity balance. Over-acquisition of a less expensive resource can be more expensive, and have a greater rate impact, than acquisition of the needed amounts of a more expensive resource — especially when load growth net of DSM is modest, the value of surplus energy is very low and the value of surplus

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3 T&FNs requested on October 3, 2013 that BC Hydro provide it with documentation of the rate forecasting methodology used as well as the scenarios studied. BC Hydro refused to do so, claiming that “the requested materials are in the nature of policy advice for the Minister and Cabinet.”
capacity is near zero. According to BC Hydro's analysis of export markets presented in Chapter 5 of the IRP, there is no expectation that these conditions will change in the near term.

Many — indeed, most — of the drivers affecting future energy and capacity needs are beyond the control of BC Hydro. Furthermore, as recent history has demonstrated, these drivers can change rapidly and unpredictably. BC Hydro's success or failure over the next 20 years as measured by rate impacts is likely to reflect above all its ability to navigate the unpredictable twists and turns of the energy economy.

BC Hydro's portfolio analysis, in which the 20-year load growth path is fixed in advance for each scenario, provides only very limited insight into this question — especially because BC Hydro pays little or no attention to low load growth scenarios. (High growth scenarios are analyzed in the context of contingency plans.)

While scenarios based on low load growth are indeed found in Appendix 6A, there is little if any trace of them in the analyses presented in the IRP. One of the few exceptions is found in s. 6.4.4.5 (Large and Small Gaps), within the Site C section of Chapter 6. Below, in Fig. 6-7, we see that, under the small gap scenarios, continuing with Site C results in very substantial surpluses right to the end of the planning period.

![Figure 6-7: Energy Load Resource Balance for Large, Mid and Small Gap](image)

Neither the financial nor the rate impacts of such a scenario are mentioned.

While BC Hydro does not state this disinterest clearly in the IRP, it did so in the context of the Environmental Assessment process for Site C where, in response to a question from the T8FNs, BC Hydro responded:
Consistent with good utility practice and previous BCUC decisions, BC Hydro plans to the mid load forecast. The need for the Project is therefore based on the mid load forecast and no portfolios were created or evaluated using the high or low load forecasts. BC Hydro continues to consider the high and low load forecasts – described in Section 5 (‘Sensitivity Analysis’) of the 2012 Load Forecast, a copy of which is attached to the Technical Memo on Project Need – qualitatively in its analysis of uncertainty and in the case of the high load forecast, quantitatively in its contingency resource planning as described in Section 5.2.3 of the EIS. (underlining added)

Having ignored a whole range of possible futures in its planning process, BC Hydro cannot then affirm that the rate impacts under those futures would be minor.

6. Planning methodology

The 2012 IRP was based on a straightforward planning methodology. Load growth scenarios were identified (Chapter 2), the characteristics of each potential resource option (demand- and supply-side) were identified (Chapter 3, Resource Options). Then, in the portfolio analysis, presented in Chapter 6 (Resource Planning Analysis), System Optimizer was used to identify the optimal combination of supply- and demand-side resources to meet each load scenario.

In the 2013 IRP, however, this straightforward methodology was abandoned. In section 6.3 (Demand-Side Measures), instead of examining the options for demand-side solutions to its resource needs, BC Hydro jumps directly to the question of Site C:

"The analysis jointly considers the continued cost-effectiveness of Site C and the appropriate DSM reliance to minimize short-term costs while continuing to provide cost-effective long term savings" (p. 6-22).

In other words, the DSM options are examined in the context of the proposed Site C project.

At the same time, System Optimizer is no longer allowed to select by optimization when or whether Site C is needed, in a given scenario. Rather, that choice is imposed by BC Hydro.

We consider each of these issues in turn.

Many passages of this section of the IRP display the contradictions inherent in making the analysis of the optimal DSM option dependent on Site C.

"The initial analysis tests whether Site C continues to be a cost-effective resource given the current BC Hydro DSM target (Option 2)." (p. 6-26)

But why does the initial analysis of DSM options involve Site C? Under the straightforward methodology of the 2012 IRP, the initial analysis looked at the cost-effectiveness of each DSM option – on its own. Now, however, DSM Option 3 is evaluated only in the context of Site C, or of alternate supply-side resources of equivalent size:

"The next analysis was to determine if DSM Option 3 would be a lower cost potential alternative to Site C. DSM Option 3 on its own would only defer the need for Site C's energy output for two years (from F2027 to F2029, without Expected LNG). To be an alternative to Site C, DSM Option 3 must be augmented with additional supply side
resources to match Site C’s energy and dependable capacity output.” (p. 6-27)
[underlining added]

Thus, DSM Option 3 is penalized by the surplus produced by developing Site C (or equivalent quantities of unneeded energy and capacity produced by other means):

“A portfolio with Option 3 was also compared to a portfolio with Option 2/DSM Target, both with Site C and no natural gas-fired option. The comparison shows that given Site C, staying with Option 2/DSM Target would avoid costly surplus and has a $260 million lower PV cost than DSM Option 3.” (p. 6-27)

In other words, if Site C together with DSM Option 3 would result in a surplus, then DSM Option 3 is deemed to be too aggressive.

“The conclusions on the DSM target and Site C’s continued role will determine whether there is any need for clean or renewable IPP resources.” (p. 6-22)

If DSM Option 2 together with Site C results in a surplus, then there is no need to even consider whether or not other clean and renewable IPP resources would produce a better result. Conveniently, under this approach, there is no occasion to ask if some combination of DSM and IPP renewables would produce a satisfactory result, while avoiding the risk of expensive surplus (and consequent rate impacts) that would inevitably accompany any portfolio based on Site C.

Thus, the methodological framework has been “tweaked” to make Site C the centerpiece of the analysis. Other resources are evaluated in terms of whether or not they improve, or harm, the economics of Site C.

As no justification was presented for this important change, the reader is left with the distinct impression that this was done in order to make Site C unavoidable. While there may be an explanation, the failure to present it undermines the credibility of the entire IRP process.

7. Treatment of DSM costs

The 2012 IRP addressed in considerable detail the implications of the December 2011 amendments to the DSM regulation under the Utilities Commission Act (pages 6-28 to 6-31). It states:

“The amended DSM regulation recognizes that DSM can produce a range of benefits. In addition to avoided electric energy costs, these benefits can also include avoided electric capacity costs, avoided natural gas costs and non-energy benefits (NEB) (e.g., operation and maintenance savings resulting from the installation of an energy efficient measure).” (p. 6-29)

The regulation specifies methods for calculating avoided natural gas costs and non-energy benefits. These methods were integrated into the Draft IRP as follows:

“For comparison with costs shown in Chapter 3, this IRP represents DSM costs in three ways:

a) DSM gross cost (i.e., not reflecting any of the “additional benefits”);
b) DSM net cost pre-amendment (i.e., reflecting “additional benefits” as estimated by BC Hydro); and

c) DSM net cost post-amendment (i.e., reflecting “additional benefits” as prescribed by the amended DSM Regulation)." (p. 6-30)

A figure is then presented showing the implications for net DSM costs of these three ways of estimating additional benefits. Figure 6-10, reproduced below, shows that, based on method b) (the bottom segment of the middle bar of each group), these benefits reduced the net cost of DSM by some 50% (for Option 1), ranging down to 33% (for Option 5), compared to method a) (the gross DSM costs, shown in the left-most bar of each group).

Using method c), however — the bottom segment of the right-most bar in each group —, the additional benefits reduce the net cost of DSM much more: by over 90% for Option 1, ranging down to 75% for Option 5.

In the 2012 IRP, BC Hydro applied the 2011 DSM Regulation amendments in its portfolio analysis. For each scenario described in Appendix 6A, portfolio Present Values were calculated for both the Gross DSM Cost (method a) and for the Net DSM Cost, based on the methods for calculating non-energy and other additional benefits set out in the 2011 DSM Regulation
amendments (method c). Depending on the scenario, the Net Costs were lower than the Gross Costs by a factor of up to six.

It should also be noted that, in the discussion of demand-side measures in the portfolio analysis of the 2012 IRP (chapter 4 of Appendix 6A), all the graphs presented are based on “Net TRC (Post Amendment)”, i.e. method c.

Given the importance of this issue in the 2012 IRP, it is striking to observe that it has disappeared entirely from the 2013 IRP. In fact, it was only through painstaking cross-references between poorly written passages that the T8Fs were able to piece together the approach to DSM costs that underlies the portfolio analysis. Here is what we found:

1) Appendix 6A states that:

“DSM Option Cost shown is DSM Total Resource Cost (DSM TRC) reflective only of regional transmission and distribution capacity benefits for BC Hydro. Explanation of the TRC is provided in section 3.3.4.1 of the IRP.” (p. 6A-3)

2) Section 3.3.4.1 reads as follows:

“As described in section 1.2.1, subsection 3(1) of the CEA requires that BC Hydro submit an IRP to the Minister “that is consistent with good utility practice”. Consistent with good utility practice, among other things BC Hydro is guided by the TRC and UC tests as described by the California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects, (California Standard Practice Manual) to screen DSM. BC Hydro identifies the cost and benefit components and cost-effectiveness calculation procedures for DSM as follows:

• The TRC measures the overall economic efficiency of a DSM initiative from a resource options perspective. In particular, the TRC measures the costs of a DSM initiative based on the net costs of the initiative, including both participant and utility costs. The benefits are the avoided supply costs – BC Hydro refers to this result as the gross TRC. The California Standard Practice Manual and many other jurisdictions also recognize that DSM results in a range of other benefits, such as a reduction in capacity costs (generation, transmission and distribution), specific non-energy benefits (e.g., operation and maintenance savings resulting from the installation of an energy efficient measure) and avoided participant costs aside from electric utility bills (such as natural gas and water savings) – BC Hydro refers to this result as the net TRC. Inclusion of these benefits increases the cost-effectiveness of DSM. Except where specifically noted, BC Hydro uses the net TRC. …” [underlining added]

Several comments are required.


5 For example, in scenario L1H_BXC_KNO_000 (p. 6A-54), gross DSM costs are over $3 billion and net DSM costs are only $530 million.
First, the attribution of costs in a portfolio analysis (Appendix 6A) is very different from the screening process mentioned in the first paragraph of the above citation from s.3.3.4.1.

Second, there is nothing in “good utility practice” that specifies the use of DSM TRC in a portfolio analysis. On the contrary, as we shall see below, BC Hydro’s inappropriate use of these costs in a portfolio analysis is contrary to good utility practice.

Third, the citation erroneously suggests — probably due to poor drafting — that the avoided supply costs are included in the gross TRC.

Fourth, this citation — which, it should be recalled, was specifically referred to in relation to the portfolio study (Appendix 6A) — states that, except where specifically noted, BC Hydro uses net TRC, leading the reader to assume that the portfolio study does indeed use net TRC. However, careful reading of the referring passage quoted above (paragraph 1) reveals that it “specifically notes” an exception to the use of net TRC, in adding that “DSM Total Resource Cost (DSM TRC) [is] reflective only of regional transmission and distribution capacity benefits for BC Hydro.” It is our understanding that this means that BC Hydro has chosen not to use either of the pre-amendment and post-amendment versions of net TRC costs set out in the 2012 IRP (based on the definition of non-energy benefits pre- or post-amendment).

Rather, BC Hydro has chosen to use gross DSM Total Resource Costs (TRC) reduced only by “regional transmission and distribution capacity benefits for BC Hydro”. This is in fact a fourth version of DSM TRC, distinct from each of the three bars presented in Figure 6-10 (shown above). This new version of DSM TRC nets out only the top-most portion of the “Pre-“ and “Post-“ bars — about $10/MWh — from gross DSM TRC, ignoring the remainder of the additional gas and non-energy benefits discussed in the 2011 DSM Regulation amendments.

In other words, BC Hydro now chooses to recognize only those benefits that accrue directly to the utility. In doing so, it ignores the spirit of the 2011 amendments to the DSM Regulation, which clearly intended to ensure that non-energy benefits (which by definition accrue to parties other than BC Hydro) were taken into account. However, since the formal object of that regulation was screening of DSM programs by the BCUC, and not integrated Resource Planning, it can be said that BC Hydro is not contravening the letter of the regulation.

The approach used here —including only those benefits that accrue directly to the utility — is not in itself counter to good utility practice, but it is inconsistent with the Total Resource Cost Test. In fact, this approach is that of the Program Administrator Cost (PAC) Test, also described in the California Standard Practice Manual (chapter 5). This test answers the question, “Will utility bills decrease as a result of the DSM measures?”, by comparing direct utility costs to the avoided costs of supply-side resources.6 (In contrast, the TRC Test answers the question “Will the total societal cost of meeting energy needs decrease?” by comparing utility and customer

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costs to avoided resource costs.) Thus, the PAC Test “compares energy efficiency as a utility investment on a par with other resources.”

What is clearly counter to good utility practice is to use a methodology that includes the costs borne by third parties but excludes the benefits that accrue to those third parties. This is what BC Hydro has done, using DSM TRC costs, but counting only the benefits that accrue directly to the utility (i.e., the benefits that would be used for the PAC Test). Thus, it excludes energy (gas) and non-energy benefits that accrue to third parties while at the same time including non-utility costs — an unacceptable asymmetry.

In other words, on the cost side, we are to include the total costs of the program, including costs borne by participants, it stands to reason that, on the benefit side, we must also include the benefits accruing to participants. These are precisely the “additional benefits” addressed in the 2011 DSM Regulation — the same additional benefits that were included in the 2012 IRP but that are excluded from the 2013 IRP.

Thus, to be consistent, BC Hydro must either put back the additional benefits, using the Net TRC (method c) instead of the Gross TRC (net of capacity benefits, which of course are benefits that accrue to the utility, not to participants), or it must eliminate participant costs from its assessment of Gross DSM costs. As participant costs often range between 1/3 and 2/3 of Total Resource Cost, these modifications would have very significant effects. In practice, removing participant costs from the Total Resource Cost test is equivalent to replacing it with the Program Administrator Cost Test, which “examines the costs and benefits of the energy efficiency program from the perspective of the entity implementing the program.”

As usual, no indication was made of this methodological change from the 2012 IRP, nor is any justification presented for it. The effect, though, is clear: it dramatically increases the cost of DSM in the portfolio analysis, and therefore diminishes the relative advantages of scenarios that rely more heavily on DSM. Once again, the net effect is to reinforce the apparent cost-effectiveness of Site C, which constitutes the primary supply-side recommendation of the Integrated Resource Plan.

In this case, the chosen methodology, in addition to being poorly presented and in apparent contradiction with governmental policy, as expressed in the 2011 DSM Regulation and as presented in the 2012 IRP, in fact creates real analytical bias in favour of supply-side resources. By using DSM TRC, which includes participant costs, but excluding additional benefits that accrue to those participants, BC Hydro creates an unlevel playing field that seriously handicaps scenarios that rely more heavily on DSM. Until this problem is resolved, the results of the System Optimizer portfolio analysis, which is in fact the primary analysis underpinning the IRP as a whole, cannot be relied upon.

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7 Ibid., p. 6-4.

8. Capacity

A careful reading of the 2013 IRP makes clear that the recommended capital program — of which the centerpiece is the $7.9 billion Site C project — is justified essentially by BC Hydro’s forecast long-term needs for capacity, not energy. While BC Hydro has chosen not to make this point overtly in the IRP, it is an unavoidable conclusion.

We first consider near- to mid-term needs, and then turn to the long term.

Near- and mid-term needs

BC Hydro has “no need for incremental resources in the near to mid-term ..., regardless of the potential demand from LNG.”\(^9\) Indeed, given the existing surplus and the financial pressures on BC Hydro, the utility is making considerable efforts to scale back forecast incremental resources in the coming years, including DSM (p. 4-6).

These efforts in fact compromise future DSM as well, as BC Hydro considers these near-term reductions to be incompatible with any DSM Option more aggressive than Option 2.\(^10\) They also contradict the conclusions of the 2012 IRP, which stated:

“Despite the near-term energy surplus situation, BC Hydro should maintain its current trajectory of DSM activities as opposed to ramp down its DSM activities in face of load uncertainty. The potential regret as a result of ramping down is more costly.” (p. 6-42; emphasis added)

The 2012 IRP also concluded that “Increasing DSM targets from Option 2 to Option 3 is a cost effective balance of decreasing ratepayer impacts and securing environmental and economic development benefits versus increasing deliverability risk in the face of significant load and DSM savings uncertainty.” (p. 6-42) Again, this conclusion has been reversed in the 2013 IRP, due to the incompatibility of Option 3 with a near-term ramping down of DSM expenditures.

Long-term needs

Even after scaling back incremental resources, BC Hydro has an energy surplus through F2028 (without LNG) or through F2022 with Expected LNG (Table 4-18, p. 4-27). Figure 6-3 shows the Energy Gap after DSM (mid-gap), with surplus through most of the 2020s.

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\(^9\) IRP, p. 4-4.

\(^10\) “A version of Option 3 with near term reductions was not included in the analysis. Option 3 would only be selected if needed to fill the resource gap beyond Option 2. If that higher resource level was required, BC Hydro would not reduce Option 3 expenditures in the near-term due to the deliverability risk in recovering to Option 3 savings levels (uncertainty with the ramp rate assumptions).” IRP, p. 3-17.
As a result, the Base Resource Plan shows an energy surplus throughout the entire planning period, as seen in Fig. 8-3.
Furthermore,

"The risk of energy shortfall is less of a concern for BC Hydro because more short lead time options are available, and given BC Hydro system’s energy shaping capability, it is less risky to rely on the market for energy in the meantime before additional resources can be built to mitigate the shortfall. (p. 6-121)

However, capacity needs appear sooner, as seen in Fig. 8-4:

![Figure 8-4 Capacity Load/Resource Balance: BRP](image)

In terms of contingency planning, BC Hydro is clearly more concerned about capacity than energy, as seen in this passage from p. 6-121:

"The risk of capacity shortfall is BC Hydro’s primary concern because capacity is required at specific times to meet peak load requirements and maintain system security and reliability. BC Hydro also has limited short lead time capacity options in BC and relying on market comes with the risks as discussed in section 6.9.3.1."

Given the importance of capacity needs in driving the massive and financially risky (if forecast demand does not materialize) investment in Site C, it is surprising, to say the least, how little attention is paid in the IRP to alternate solutions to meeting future capacity needs.

Capacity-Focused DSM Options are discussed in both the 2012 IRP and the 2013 IRP. It is acknowledged that, while BC Hydro has little experience with them to date, they may in future years become available as long-term capacity resources. (2012 IRP, p. 9-36).

It should be noted, however, in the Environmental Impact Statement for Site C, DSM Capacity Initiatives are considered to be a Screened (not viable) Resource (EIS, p. 5-30).
In the 2013 IRP, two DSM Capacity-Focused Options are discussed: industrial load curtailment (with a potential of about 400 MW), and specific DSM programs (with a potential of about 200 MW). In the 2012 IRP, however, a third option was also identified: time-of-use rates, with a capacity potential of 400 MW. This option was removed from the 2013 IRP, with the explanation that “in accordance with government policy, BC Hydro has no plans to implement Time-Based Rates to address capacity requirements” (p. 3-24, note 22).

Consequently, the total potential for capacity-focused DSM options was reduced from over 1000 MW to under 600 MW, as seen in these two figures:

![Combined Capacity Savings (MW)](image)

2010 ROR, p. 4-25 (also Fig. 3-4 of 2012 IRP)
BC Hydro did not identify the policy document on which its exclusion of the potential capacity savings from time-of-use rates was based. However, this appears not to be immutable policy. Indeed, the current government has recently expressly indicated its interest in time-of-use rates for industrial customers in the supplemental mandate provided by the Minister of Energy and Mines to the Industrial Electricity Policy Review Task Force.\footnote{Letter dated June 19, 2013.}

It is thus to be expected that, once BC Hydro has developed more experience with capacity-focused DSM, this will be recognized as a legitimate resource for meeting capacity needs. Given the long-term nature of BC Hydro’s forecast capacity requirements, it is inappropriate to exclude such significant resources on the basis that, today, deliverability has not been proven.

The 1000 MW of savings from capacity-focused DSM identified in the 2012 IRP (before BC Hydro inappropriately removed 400 MW of potential related to time-of-use rates) is roughly equivalent to the capacity of Site C. Unlike Site C, it is a flexible resource, with much shorter lead-times and much lower unit cost.

BC Hydro fixes its Long Run Marginal Cost for capacity at $50-$55/kW-year, for F2017 through F2030.\footnote{IRP, p. 8-50.} Total Resource Costs of Capacity-Focused DSM are also in this range: $31/kW-year for
Industrial Load Curtailment, and $55/kW-year for Capacity-Focused Programs.\textsuperscript{13} (No unit cost was provided for the savings flowing from time-of-use rates; they are presumably very low.)

Despite the fact that Site C is designed primarily to meet BC Hydro’s future capacity needs, its costs are provided in terms of energy only. Viewed as a capacity resource, Site C is probably much more expensive than other capacity resources identified — though BC Hydro has consistently declined to calculate a UCC for the project. There is no doubt that it is considerably more expensive than capacity-focused DSM.

Clearly, Site C is a resource that would produce both capacity and energy. Given that its energy will be largely surplus to needs for many years and of very little value on the export market, it should be properly characterized (and priced) as a capacity resource that also produces energy. Had it been presented in this way, the options for meeting those capacity needs, and their relative costs, would have been far clearer.

9. Alternatives to Site C on the Peace River

A review of the 2013 Resource Options Report Update contained as Appendix 3A-1 to the 2013 IRP indicates that:

- the installed capacity of Province-wide run-of-river facilities considered in the IRP ranges from about 4 MW to 250 MW, and alternative hydroelectric generation projects to Site C on the Peace River are within that range;
- the firm unit energy costs for Province-wide run-of-river facilities considered range from about $143/MWh to $1170/MWh, and alternatives on the Peace River are within and at the lower end of that range;
- the Site C Project on the Peace River is considered and is reported to have a capacity of 1100 MW and a firm unit energy cost of $88/MWh (at a 5% real discount rate); and
- no other hydroelectric developments on the Peace River are considered.

The decision not to consider other potential smaller-scale hydroelectric developments on the Peace River appears to be inconsistent with other considerations made in the Resource Options Report. The Peace River cascade facilities are within the range of the capacity and unit energy costs of the other run-of-river hydro facilities considered in the Resource Options Report, and yet they are not considered. This, despite the fact that the information available for the Peace River small hydro facilities is far more developed than for many (if not most) of the run-of-river facilities on other rivers that are considered in the Resource Options Report. Specifically, in response to questioning from the TBFNs, BC Hydro reported that a 15-m head 240-MW facility at Site 7b on the Peace River upstream from the confluence with Farrell Creek has a conceptual-level POI UEC of $175/MWh to $225/MWh. Considering that such a facility would have numerous financial benefits, including a capacity credit, its firm unit energy cost would appear to be among the best hydroelectric facilities considered in the 2013 IRP.

\textsuperscript{13} IRP, p. 3-30.
The decision not to include potential smaller-scale hydroelectric development on the Peace River may be due to the insistence by BC Hydro, as expressed in other contexts, to “maximize the development of the hydroelectric resources” on this stretch of the Peace River. This insistence precludes the possibility for meaningful consultation and reconciliation of the desire on the part of BC Hydro to develop hydroelectric resources on the Peace River with the desire of the T8FNs to continue to use the Peace River Valley for the exercise of our Treaty rights.

10. Fostering First Nation development

Table 1-1 of the 2013 IRP identifies the Energy Objectives mentioned in the Clean Energy Act, including the following:

“2(l): foster the development of First Nation and rural communities through the use and development of clean or renewable resources”

The same table then provides the following response to this objective:

“Through the IRP consultation, BC Hydro sought input from First Nations on the topic of clean or renewable energy development in First Nations communities. BC Hydro is required to establish and maintain a Standing Offer Program (SOP) pursuant to subsection 15(2) of the CEA. Chapter 3 provides BC Hydro’s resource option assessment, including how to access the information in Geographic Information System (GIS) format, which is a tool that can inform clean or renewable energy development. This CEA energy objective informed BC Hydro’s IPP EPA portfolio actions; refer to Chapter 8.”

The T8FNs are unclear as to how “seeking input from First Nations” during the development of the 2012 IRP and then promptly rewriting the 2013 IRP to ignore that input fosters the development of First Nation communities through the use and development of clean or renewable resources. Specifically, the 2013 IRP does not foster that development in relation to the following:

- the Clean Energy Business Fund;
- Clean energy procurement;
- the Standing Offer Program; and
- Distributed Generation and Net Metering.

Clean Energy Business Fund

In 2007, a group of First Nations led negotiations with the Province to create the First Nations Clean Energy Business Fund. The fund was then established pursuant to the Clean Energy Act to share the prescribed land and water revenues the government derives from power project with First Nations, and to facilitate the participation of First Nations and aboriginal people in the clean energy sector. In 2011, a Memorandum of Understanding between Clean Energy BC and various First Nations was also signed to ensure First Nations opportunities and involvement in this sector. First Nations across the province are working in conjunction with industry to ensure sustainable development and maximize benefits for their communities.
The energy and capacity load resource balances depicted in Figure 8-3 and Figure 8-4, respectively, in the 2013 IRP indicate that no independent power projects are contemplated for the entirety of the 20-year planning period. Without the development of new projects, there will be no additional money going into the Clean Energy Business Fund for revenue sharing with First Nation and no money for supporting the development of new projects. It is unclear why the Province would continue its support for the Clean Energy Business Fund if BC Hydro has no intention of purchasing any new clean energy from independent power producers.

**Clean Energy Procurement**

As noted above, the 2013 IRP does not contemplate any clean energy procurement within the planning period. This is particularly surprising since the 2012 IRP, which underwent consultation with First Nations, recommended the development of a clean energy procurement process to acquire an additional 2,000 GWh/year of clean energy by 2018.

In addition to the lack of procurement of new energy from independent power producers, the 2013 IRP also creates considerable uncertainty respecting renewal of existing Electricity Purchase Agreements (EPAs). The 2013 IRP indicates that only 75% of EPAs for small hydropower projects will be renewed. It is unclear how BC will compensate First Nations for any adverse effects from these projects, which effects are likely to continue following decommissioning of the affected projects, if revenues previously available for compensation as a result of sale of electricity to BC Hydro are no longer available. The 2013 IRP also indicates that the BC Hydro intends to cancel many of the existing EPAs, which many First Nations are relying upon for economic development. Both of these proposals do not support the objectives of the Clean Energy Act.

It is unacceptable that the BC government is moving away from clean energy opportunities for First Nations when so much progress has been made with many benefits for First Nations.

**Standing Offer Program**

The Standing offer Program (SOP) was initiated in 2008 to encourage development of small-scale renewable energy projects in the Province. On March 26, 2013 BC Hydro amended the SOP rules to limit the participation of clustered projects that exceed 15 MW and to extend CODs for projects by up to two years.

Again, these actions will only serve to place further limitations on fostering the development of First Nations communities through the development of clean or renewable energy resources.

**Distributed Generation and Net Metering Program**

Appendix 3A-1 of the 2013 IRP notes that: “BC Hydro believes that additional DG potential exists and could be explored” (p.5-96). What is unclear is why these opportunities are not actually identified, analyzed and included in the IRP. While the IRP notes the impending increase in the Net Metering cap from 50 kW to 100 kW for commercial, institutional, industrial, municipal and First Nation customers, the T8FNs are concerned that this single action is insufficient, recognizing the rapidly decreasing costs and rapidly rising potential of distributed generation to meet the needs of First Nation communities, among other electricity consumers in the Province.
Keeping the net metering program capacity cap at 100kW effectively prevents self-generation for all ratepayers with power capabilities of between 101 and 1000kW. Forcing potential net metering customers into the more onerous SOP process effectively prevents self-generation for all ratepayers with power capabilities of between 101 and 1000 kW. We are recommending that the capacity cap be increased to at least 250 kW with planning initiated immediately with the objective of increasing the cap to 1000 kW within the next five years.

Overall, BC Hydro appears to be underestimating the potential of distributed generation to meet a much larger portion of provincial demand. In particular, the utility appears to be unconcerned about the potential for distributed generation to meet the needs of its current customers without being interconnected to the grid.

"Not much of a factor a decade ago, microgrids are expected to explode into a $40 billion-a-year global business by 2020, according to Navigant Research, a clean-technology data and consulting company. In the U.S., about 6 gigawatts of electricity -- enough to power as many as 4.8 million homes -- will flow through microgrids by 2020, Navigant said."14

Industrial and large commercial customers, given their concerns about inevitable and substantial increases in electricity prices in British Columbia, are particularly well-positioned to self-supply as microgrid technologies become more affordable and reliable. This is especially the case if these BC Hydro customers can avoid transmission and distribution construction entirely, avoid the rate implications of further political meddling in the electricity system, and no longer have to worry about unpredictable and substantial rate increases resulting from actions or inactions taken by BC Hydro.

CONCLUSION

The weaknesses outlined above compromise the credibility of the IRP as a whole. These undocumented changes from the approach used in the 2012 IRP – preselecting Site C rather than letting System Optimizer determine when and if it is needed, artificially increasing the perceived cost of DSM by eliminating consideration of non-energy benefits, to name just two – together lend support to the key Recommended Actions, which are to limit DSM to Option 2, and to proceed to build Site C for 2024.

It is hard to avoid the perception that this is not accidental – that these methodological choices were made precisely in order to lead to this desired outcome.

BC Hydro has established an enviable reputation as a leader among Canadian utilities in energy planning. The IRP does indeed demonstrate a high level of sophistication in its planning processes. However, that sophistication must be matched by an equally high level of integrity in the application of these processes. Bending complex methodologies to accomplish a predetermined goal is unworthy of BC Hydro. More importantly, it puts at risk the fundamental

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interests of British Columbians, and of First Nations, for whom those planning procedures have been put in place to protect.

The Minister should require that BC Hydro rerun its portfolio analysis, ensuring that:

a) the methodology for DSM costing reflects the spirit of the 2011 DSM Regulation amendments, by taking into account the benefits of DSM that accrue to society at large (or, alternatively, that it exclude participant costs);

b) the artificial limitation created by imposing an in-service date for Site C in each scenario is removed; and

c) the rate impacts of each scenario are calculated and presented.

CLOSING

Our primary observation is that BC Hydro is the victim of an inadequate and disingenuous planning process, resulting from its own choices and those of its shareholder.

If the IRP were presented in a regulatory proceeding, as is the case for every other similar planning document in North America, the Draft IRP would have been debated and approved long ago. Then, with changing circumstances, BC Hydro would have proposed changes in the form of the 2013 IRP, which would also have been debated during a regulatory proceeding.

Instead, following a cumbersome, inadequate and ultimately meaningless engagement approach with ratepayers, taxpayers and First Nations among others, the 2013 IRP was presented as the outcome of “consultation”. In reality, though, it is a very different plan from the Draft IRP, based on changed circumstances. Whether or not the changed circumstances have been perceived correctly by BC Hydro and whether or not the adjustments it proposes are appropriate cannot be properly debated in the consultation forum proposed. Instead, BC Hydro attempts to conceal these adjustments (in plain sight, buried in hundreds of pages of details), under the pretense that it is just finalizing the Draft IRP.

This serves no one, but in particular it does not serve the T8FNs, who are deprived of a forum to properly debate decisions that profoundly affect us.

Sincerely,

[original signed]

Tribal Chief Liz Logan

cc: Treaty 8 Chiefs Davis, Lilly, Tsakoza, Willson
    Shona Nelson, Treaty 8
    Trevor Proverbs, BC Hydro Site C Team