IN THE MATTER OF

CENTRAL COAST POWER CORPORATION

SALE AND DISPOSITION OF UTILITY ASSETS OF CENTRAL COAST POWER CORPORATION TO BORALEX OCEAN FALLS LIMITED PARTNERSHIP

DECISION

December 5, 2008

BEFORE:

Peter E. Vivian, Panel Chair and Commissioner

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1.0 INTRODUCTION

1.1 Background

By letter dated April 18, 2008, Central Coast Power Corporation ("CCPC") advised the British Columbia Utilities Commission (the "Commission" or "BCUC") that it was negotiating the sale of its utility assets relating to the generation and sale of electrical power at Ocean Falls, BC. CCPC wished to apply for approval of the sale in accordance with Commission Order G-40-86, paragraph 2.(e) dated July 4, 1986. That paragraph provides:

> (e) Except for the disposition of its property in the normal course of its business CCPC shall not, without first obtaining the Commission's approval, dispose of the whole or part of its property.

According to the letter, the Purchaser was a fully owned Canadian Company with its registered office in Montreal, Quebec and a subsidiary was to be incorporated in British Columbia. CCPC expected that if the sale proceeded, it would be completed by June 1, 2008. CCPC's letter requested a description of the necessary next information or process steps that are required to obtain the Commission's approval.

By letter dated April 28, 2008, the Commission informed CCPC that it is generally the responsibility of the Seller and the Purchaser to file the application for acquisition with the Commission. As a guide for the type of information that is required in an application for acquisition, the Commission provided CCPC with a copy of the application filed by Kanelk Transmission Company Limited ("Kanelk") on June 8, 1999 to dispose of its utility assets. That application was approved by Commission Order G-127-99 dated December 2, 1999 and was the most recent utility asset sale application approved by the Commission.

In addition, the Commission also included a copy of the recent joint application from Fortis Inc. ("Fortis"), Fortis West Inc. and Fortis Pacific Holdings Inc. and Princeton Light & Power Company, Limited ("PLP"), although that application related to a disposition of the shares of the PLP and their acquisition by Fortis.

By email to the Commission dated April 29, 2008, CCPC inquired as to the level of detail required in the application, since the purchase and sale involved the sale of hydro-electric assets rather than shares and the operations and rate structure would remain unchanged. CCPC's letter also requested confidentiality for certain aspects of the agreement with the Purchaser, including confidentiality for the purchase price.

By letter dated May 1, 2008 the Commission replied that in its view the Kanelk application, which also involved an asset sale and purchase, was a more relevant precedent for the CCPC application. The Commission also stated that it would not provide an advance ruling on the confidentiality of the agreement or certain aspects of the sale, including purchase price or any part of the Application. CCPC was further informed that if it considered that the exemption provided by Commission Order G-40-86 was relevant to CCPC's request for confidentiality, then CCPC should address that issue in its application for the sale of the utility assets. The Commission also informed CCPC that it should, at a minimum, address the matters covered in Items 2 and 7 of the Commission's "Confidential Filings" Practice Directive in making any submissions on confidentiality. In addition, CCPC was informed that the level of information required of the purchaser of the utility assets could vary depending on whether the purchaser was an existing utility known to the Commission or a new utility that is being established to operate the utility. CCPC was further informed that the Commission may have further requests for information once it had reviewed CCPC's filed application in detail.

1.2 Application

On August 1, 2008 CCPC and Boralex Ocean Falls Limited Partnership ("Boralex LP"), (the "Applicants") applied for an Order pursuant to Section 52(1) of the Utilities Commission Act (the "Act") approving the sale and disposition of the utility assets of CCPC to Boralex LP as set out in an asset purchase agreement dated June 3, 2008 (the "Purchase Agreement"); or alternatively pursuant to [paragraph]2.(e) of the BCUC Order G-40-86 approving the said sale and disposition (the "Application"). Central Coast Hydro Ltd. ("CCH"), a non regulated business, which owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Coola Valley in BC (the "CCH Rights") is also a party to the Purchase Agreement. The Purchase Agreement contemplates that CCH will sell the CCH Rights to Boralex LP.

The assets to be sold by CCPC pursuant to the Purchase Agreement comprise CCPC's property, licences, permits, privileges and rights used to generate, transmit and distribute electricity (the "Utility Assets") (Exhibit B-1, pp. 1, 3).

The Applicants also applied for the continuation of the exemption from certain sections of the Act set out in Order G-40-86 and for confidentiality of the sensitive business terms of the Purchase Agreement. Two copies of the Purchase Agreement were filed with the Commission -a redacted copy Schedule "A" that was publicly filed and an unredacted copy Schedule "A-1" labelled as Confidential.

1.3 Purchase Agreement

The Purchase Agreement contemplates that the Utility Assets and the CCH Rights will be sold by CCPC and CCH respectively to Boralex LP.

Paragraph 5 of the Application, as amended by Exhibit B-1-2, summarizes what the Applicants consider to be the salient terms of the Purchase Agreement. That summary is as follows:

(a) it is a condition of the closing of the transaction that the Commission approve the Purchase Agreement and permit disposition by CCPC and the acquisition by Boralex LP of the Utility Assets;

(b) CCPC sells, transfers, conveys, assigns or delivers to Boralex LP:

i. the Utility Assets

ii. a transmission line between Ocean Falls and the community of Shearwater;

iii. substation equipment in CCPC's Shearwater substation;

iv. a conditional water licence and the associated Crown land permit;

v. the water licence applications and the associated Crown land applications related to the potential hydroelectric projects on Noosgulch River and Bella Coola Valley and on the Atnarko River;

(c) CCH sells, transfers, conveys, assigns or delivers to Boralex LP the studies and reports associated with the water licence and Crown Land applications related to the potential hydroelectric projects on the Noosgulch River at Bella Coola Valley and on the Atnarko River;

(d) CCPC and CCH respectively sell, transfer, convey, assign or deliver to Boralex LP, the rights, title and interest under contracts, permits, equipment, personal property and intangible property leases, rental agreements and similar agreements relating to the electric transmission of CCPC and CCH;

(e) CCPC and CCH sell their goodwill to Boralex LP;

(f) Boralex LP will assume and be responsible for all obligations and liabilities of CCPC and CCH which are to be observed, performed or paid from and after the closing date in respect of:

i. Utility Assets and CCH Assets;

ii. contracts (including all contracts, commitments or engagements which are entered into by CCPC and CCH between the date of the Purchase Agreement and closing and which are not prohibited by the Purchase or are consented to in writing by Boralex LP);

iii. permits; and

iv. any other contract, agreement or obligation specifically agreed to be consumed by Boralex LP;

(g) Boralex LP will indemnify and hold harmless CCPC and CCH from and against any claims or losses suffered or incurred by them as a result of, or arising out of, the failure of Boralex LP to perform or pay any of the obligations referred to in paragraph (f) above; (Exhibit B-1-2, Errata)

(h) the conditional closing date is August 3, 2008;

(i) Boralex LP will, as an obligation arising at closing of the Purchase Agreement, enter into an Operation and Maintenance Agreement with CCPC for the continued operation and maintenance of the Utility Assets until December 31, 2010;

(j) Boralex LP will, as an obligation arising at closing of the Purchase Agreement, enter into an Advisory Services Agreement with Tony Knott to provide a wide range of consulting, development and operational services with the goal to develop the hydro electric projects on the Noosgulch River and Atnarko River (Exhibit B-1, pp. 3-4).

2.0 CORPORATE BACKGROUND

2.1 Boralex Group of Companies

The Boralex Group of Companies are described in Part B of the Application.

Boralex LP is a limited partnership under the British Columbia Partnership Act. The Partners of Boralex LP are Boralex Inc. (Limited Partner, holding 99.9% of the Partnership's Capital Units) and newly created Boralex B.C. Development Inc. (General Partner holding 0.1% of Capital Units). Boralex B.C. Development Inc. is a wholly owned subsidiary of Boralex Inc.

Boralex Inc. is one of Canada's largest private corporations in the development and production of renewable energy. Boralex Inc. currently operates 21 power generation sites with a total installed capacity of 351 megawatts ("MW"). Boralex Inc. was a pioneer in the production of renewable energy, which is the core business of almost all of its operations. It has facilities in Quebec, the northeastern United States and France, in three different types of electrical generation: wind power (7 sites, 108MW), hydro electric power (7 power stations, 25MW) and thermal power (7

power stations, 218 MW). Its operations include several hundred kilometres of transmission and distribution power lines. Boralex has considerable experience in all aspects of hydroelectric generation and electrical delivery.

Boralex Inc. has assets of approximately $514.7 million with annual revenues from energy sales of approximately $162.8 million. Boralex Inc.'s growth strategy is based on diversification by segment and by geography, and on its state of the art expertise in the development, acquisition, operation and maintenance of power stations. It employs some 300 highly qualified employees (Exhibit B-1, pp. 5-6).

2.2 CCPC and CCH

CCPC is a British Columbia corporation which generates electricity and supplies electricity to 95 accounts. These accounts are held by 27 holders who reside in Ocean Falls (approximately one-quarter of whom hold multiple accounts) and 32 account holders whose primary residence is outside of Ocean Falls. In addition to these 95 accounts, CCPC has one industrial customer (Marine Harvest Canada Ltd.) in Ocean Falls and an Electricity Purchase Agreement with BC Hydro in Bella Bella, BC (the "Electricity Purchase Agreement", "EPA") (Exhibit B-1, p. 3).

CCH is also a British Columbia corporation. Tony Knott, a principal of CCPC, is the sole shareholder of CCH. CCH owns the CCH Rights which relate to potential hydroelectric projects located at or near the Atnarko River and the Bella Coola Valley in British Columbia (Exhibit B-1, p.3).

On February 19, 1986, CCPC and BC Hydro and Power Authority ("BC Hydro") signed the 20 year Electricity Purchase Agreement for the sale and supply of electricity by CCPC to BC Hydro. The electricity was to be generated at the hydroelectric facilities of CCPC and transmitted over transmission facilities to be constructed and owned by CCPC to a point of delivery which was the point where CCPC's transmission connection met BC Hydro's substation at Bella Bella, BC.

On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from Ocean Falls Corporation ("OFC").

On June 4, 1986 CCPC applied to the Commission for an exemption from the Utilities Commission Act (the "Act") for the sale of electric power to residential, commercial and industrial customers located at Ocean Falls and to BC Hydro at Bella Bella, BC.

By Order G-40-86, the Commission granted the exemption and allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the agreement between CCPC and OFC that was attached to the order. In the event of a complaint by an interested party, the Commission could review whether the exemption for CCPC continued to be in the public interest (Order G-40-86).

The Electricity Purchase Agreement between CCPC and BC Hydro was subsequently extended for another 10 years to December 31, 2016 (BC Hydro 2007 Rate Design Phase II Hearing Exhibit B-79).

By Order G-30-02 dated April 17, 2002, the Commission amended Order G-40-86 with respect to Schedule F, by striking out Section 2 (c) of Schedule F and replacing it with the following wording: "For present firm installed capacity in CCPC's Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro's Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity of the plant is required, the parties may negotiate rates with consideration of the cost of installing additional generation".

3.0 PUBLIC CONSULTATION, REGULATORY REVIEW PROCESS AND INTERVENOR SUBMISSIONS

3.1 Public Consultation

The Applicants summarized their stakeholder consultation efforts in Part D of the Application and provided a report on the consultation process and its results as Schedule "B" to the Application.

Following the announcement of the Purchase Agreement, representatives of CCPC and Boralex LP contacted all relevant stakeholders regarding the proposed transfer of Utility Assets to Boralex LP. Consultation efforts included meeting with every permanent residential customer of CCPC in Ocean Falls and letters were sent to each non-resident account holder informing them of the sale. A letter which included an enclosure drafted by CCPC was sent to all permanent residents on the proposed transfer. The residents were asked to sign and send the letter to the Commission with an opportunity to comment. A copy of the letter was also posted in the Ocean Falls Post Office on July 3, 2008. Copies of the signed customer letters were included in Schedule B(ii) of the Application (Exhibit B-1, pp. 7-8, Schedules B, B(i) and B(ii)).

The one Industrial customer of CCPC, Marine Harvest Canada Ltd, agreed to transfer its contract with CCPC to Boralex LP.

The approval for the transfer of the Electricity Purchase Agreement with BC Hydro was pending, subject to confirmation and advice from BC Hydro respecting particular forms to be completed by the Applicants. BCUC IR 1.4.1 states that a signed copy of the EPA had been obtained from BC Hydro (Exhibit B-1, Schedule B).

3.2 Regulatory Process

By Order G-121-08 dated April 22, 2008, the Commission established a Regulatory Timetable, which set the following deadlines: (i) publication of a notice of the written public hearing process for the Application - August 30, 2008; (ii) Commission Information Requests to the Applicants - September 12, 2008; (iii) registration of Intervenors and Interested parties - September 22, 2008; (iv) Applicants' responses to the Commission Information Requests - September 24, 2008; (v) Intervenor Information Requests to Applicants - October 1, 2008; (vi) Applicants responses to Intervenors Information requests - October 8, 2008; (vii) Intervenor written Submissions - October 20, 2008; and (viii) Applicants Written Reply - October 28, 2008 (Exhibit A-1).

Only two parties registered as Intervenors: Heiltsuk Tribal Council (the "Heiltsuk") and Shearwater Marine Ltd. ("Shearwater"). Neither Intervenor filed evidence. The Heiltsuk delivered Information Requests and made two sets of Final Submissions. Shearwater was not actively involved and did not deliver Information requests or make Final Submissions.

On September 24, 2008 the Commission received the Applicants' Responses to the Commission's Information Requests ("IR No. 1"). Upon review of the responses, the Commission determined that it needed to make further Information Requests ("IR No 2").

On October 1, 2008 the Heiltsuk issued an Information Request to the Commission (Exhibit C1-4).

By letter dated October 3, 2008, the Commission informed the Heiltsuk that as the decision-maker of matters within its jurisdiction under the Act, the Commission does not respond to Information Requests. The Commission's letter advised the Heiltsuk to direct their questions to the Applicants and informed the Heiltsuk that the deadline for Intervenor Information Requests would be extended to October 14, 2008.

The Commission's letter also explained that the purpose of Information Requests is to allow parties appearing before the Commission to ask questions of each other. The Responses may then, for example, be used by the party receiving the Response:

i. As the basis for additional questions during a further round of Information Requests, if the Commission Panel allows for a further round of Information Requests;

ii. As the basis of questions during cross-examination, if an oral hearing takes place; and

iii. In support of Final Argument.

The letter, in addition, informed the Heiltsuk of an opinion the Commission Panel in the Vancouver Island Transmission Reinforcement Project ("VITR") proceeding had received from Commission counsel which dealt in part with the principles regarding the duty to consult and accommodate. Parts of Exhibit A-31 and all of Exhibit A-37 in the VITR proceeding were attached to the Commission's letter.

In addition, the letter informed the Heiltsuk that the Commission Panel was prepared to receive submissions on the duty of the Crown and of the Commission to consult and accommodate and any duty the Commission may have to ensure that consultation has been adequate in the context of the proposed sale of the assets contemplated by the Application as part of the Written argument process provided by Order G-121-08. The Heiltsuk were informed that if they decided to make submissions on these issues they needed to do so by October 20, 2008. The letter also stated that the Commission Panel was prepared to further amend the Regulatory Timetable to allow the Heiltsuk to file a Reply, if any, to the Written Argument of the Applicants on these issues by Tuesday, November 3. It cautioned that the Regulatory Timetable would only be further amended in this respect if the Heiltsuk advised the Commission Secretary by Friday, October 10, 2008 of their intention to file Written Argument on these issues (Exhibit A-4).

The Heiltsuk did not notify the Commission Secretary of their intention to file written Argument on the issues within the time provided for in Exhibit A-4.

The Commission issued a second letter on October 3, 2008 (Exhibit A-5), which arose as a response to the Commission's review of the Applicants' Responses to Commission IR No. 1 and the Commission's request that the Heiltsuk deliver their Information Requests to the Applicants and not the Commission (Exhibit A-5). The letter amended the Regulatory Timetable established by Order G-121-08 by extending the date of the filing deadline for Intervenor Request No. 1 to October 7, 2008 and providing for the delivery of IR No. 2 from the Commission by the same date. The original Regulatory Timetable was further amended to allow for the delivery of the Applicants' Responses by October 14, 2008. The original dates for the filing of Intervenor Written Submissions and Reply remained the same.

The Heiltsuk filed a Written Submission on October 20, 2008 and the Applicants filed a Written Reply on October 27, 2008.

On November 10, 2008, the Heiltsuk, without seeking leave, attempted to file a further submission which responded to the Applicant's Written Reply. The Commission decided to treat the second Heiltsuk submission as including an application for a leave to file and sought submissions from the Applicants. The Applicants did not oppose the filing of the further Heiltsuk submission and accordingly that submission became one of the submissions that the Commission Panel has considered in arriving at its determination of the Application.

4.0 ISSUES

1. Should the Commission Panel approve the disposition of CCPC's assets as contemplated by the Purchase Agreement, with or without conditions?
2. Should the rate setting mechanism employed by CCPC in accordance with Commission Order G-40-86 as amended by Commission Order G-30-02 be allowed for Boralex LP?

3. What is the normal accounting treatment of recording utility assets on the books of a purchaser of public utility assets such as Boralex LP?

4. Should the Commission Panel accept the Applicant's request for confidentiality for certain parts of the Application?

5. Does the Commission Panel have the jurisdiction to approve the continuation of the exemption provided in Commission Order G-40-86 to Boralex LP.? If so, should it do so?

6. Does the Commission have a duty to consult and accommodate the Heiltsuk Tribal Council (the "Heiltsuk") in the circumstances of this Application? If not, should the Commission Panel delay its determination on the Application until consultation and, accommodation, if required, has taken place between the Heiltsuk and the Crown through the agency of the Integrated Land Management Bureau?

4.1 Relevant Sections of the Utilities Commission Act

CCPC is a public utility as defined in the Act and is subject to the regulatory jurisdiction of the Commission to the extent not otherwise exempted by Order G-40-86. Section 52 of the Act requires Commission approval for, among other things, the disposition the property, franchises, licences, permits, concessions, privileges or rights of a public utility, other than in the ordinary course of its business.

Section 52 of the Act states:

> (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
>
> (a) dispose of or encumber the whole or part of its property, franchises, licences, permits, concessions, privileges or rights, or
>
> (b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits concessions, privileges or rights with those of another person.
>
> (2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest. [Emphasis added.]

Order G-40-86, paragraph 2.(e) referred to in Section 1.1 of this Decision contains wording which make it clear that a disposition of the nature contemplated by the Purchase Agreement requires Commission approval.

Section 54 of the Act relates to share transactions involving a public utility that result in reviewable interests or impacts on reviewable interests as defined by the Act. This is the section of the Act that the Commission considers when determining whether or not to approve the sale of shares of a public utility.

Subsection 54(9) of the Act provides:

> (9) The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give approval under this section unless it considers that the public utility and users of the service of the public utility will not be detrimentally affected. [Emphasis added.]

In utility share purchase Decisions, the Commission has applied certain criteria to assist in determining whether there is potential for detrimental effects to the utility and its customers and in broader sense, to the public interest. The criteria are that:

1. The utility's current and future ability to raise equity and debt financing not be reduced or impaired;
2. There will be no violation of existing covenants, the effect being detrimental to the customers;
3. The conduct of the utility's business, including the level of service, either now or in future, will be maintained or enhanced;
4. The application be in compliance with appropriate enactments and/or regulations;
5. The structural integrity of the assets be maintained in such a manner as to not impair utility service; and
6. The public interest is being preserved. (Exhibit B-1, p. 8, Commission Order G-49-07 Fortis Inc. acquisition of Terasen Inc. Decision)

Subsection 88(3) of the Act requires the Commission to obtain the advance approval of the Lieutenant Governor in Council before exempting a person, equipment or facilities from all or any of the provisions of the Act. The subsection provides as follows

> (3)The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act. [Emphasis added.]

4.2 Confidential Filings Directive

The Commission has issued a Confidential Filings Directive (the"Directive") to address requests for confidentiality of information made by parties appearing before it.

As previously stated in Section 1.1 of this Decision, in its letter to CCPC dated May 1, 2008, the Commission informed CCPC, in part, that on the issue of any claim for confidentiality CCPC should at a minimum, address matters covered in items 2 and 7 of the Directive. Those sections state:

2. The request for confidentiality should:
   (a) briefly describe the nature of the information in the document and the reasons for request for confidentiality, including specific harm that could reasonably be expected to result if the document were placed on the public record; and
   (b) indicate whether all or only part of the document is the subject of the request.
7. In determining whether the nature of the information or documents require a confidentiality direction, the Commission will have regard to matters that it considers relevant, including,
   (a) whether the disclosure of the information could reasonably be expected to result in
      i. undue material financial loss or gain to a person, or
      ii. significant harm or prejudice to that person's competitive or negotiating position and

(b) whether the information is financial, commercial, scientific or technical information that is confidential and consistently treated as confidential by the person,

(c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing, and

(d) whether it is practical to hold the hearing in a manner that is open to the public.

The Applicants address their claims for confidentiality in Part H of the Application.

The Commission received two filings from the Heiltsuk which were confidential in nature. The first had embedded within it confidential information and the second was marked "Confidential". The Commission removed the first letter from its website when it became apparent that the Heiltsuk were claiming confidentiality over part of the letter. Neither complied with the Directive.

The Commission informed the Heiltsuk that before it would post either letter as confidential exhibits, it required the Heiltsuk to comply with the Directive. The Commission informed the Heiltsuk that the Directive could be located on the Commission's website and pointed out where the Applicants had addressed their claims of confidentiality in the context of the Directive in the Application (Exhibit A-3).

The Heiltsuk made no request for filing in compliance with the provisions of the Directive.

The Commission Panel accordingly determined that neither document would form part of the evidentiary record (Exhibit A-7).

4.3 Intervenor Submissions

The only active Intervenor in this proceeding was the Heiltsuk. Their first Submissions were received on October 20, 2008. The Heiltsuk do not support the proposed sale and disposition of CCPC's Utility Assets to Boralex LP and seek a delay of the Commission's decision on the Application pending adequate consultation.

In their first submissions the Heiltsuk submitted that "The Crown owes a duty to consult and accommodate Heiltsuk with respect to the Crown's decision to consent to a change in control over CCPC's utility assets where such interests cover lands over which Heiltsuk assert aboriginal title and rights. Such duty is based in case law, provincial consultation guidelines and the New Relationship between British Columbia and First Nations."

On the subject of any duty the Commission may have to consult, the Heiltsuk submitted that the Commission "takes position that it does not have a duty to consult and accommodate Heiltsuk's aboriginal rights, title or interests. While we respectfully disagree, given BCUC's position, it would be unproductive for Heiltsuk to provide submissions to the Commission on this matter."

The Heiltsuk then went on to submit: "The Commission, then, having absolved itself of any responsibility to Heiltsuk in this regard, must rely on other Crown agencies to fulfill the duty of consultation and accommodation. Heiltsuk is presently engaged with the Ministry of Agriculture and Lands, Integrated Land Management Bureau, regarding the Crown's duty to consult and accommodate its aboriginal interests. Such consultation is still in its preliminary stages whereby the parties are sharing information and Heiltsuk is identifying its interests. Until such time as these steps have been concluded, no meaningful consultation has commenced to address Heiltsuk's interests or the potential measures for accommodation. Given that the Commission is now aware that the Crown's duty has been triggered, any decision it makes prior to the conclusion of the consultation process could not only prejudice this other regulatory process but be moot and a waste of everyone's time if it is ultimately determined that Heiltsuk has not been adequately consulted and/or Heiltsuk must be accommodated…".

The Heiltsuk acknowledge " that the Commission must consider all parties, including the public interest" but add that "the failure of the Crown to properly consult with Heiltsuk, compromises that interest as well as the integrity of both the Commission's process and the Crown's consultation process."

The Heiltsuk conclude their first Submissions as follows: "Based on the foregoing, the Commission must be satisfied that Heiltsuk's concerns have been adequately addressed before proceeding any further. To date, they have not. Therefore, in order to ensure that consultation has been adequate in the context of the proposed sale of assets contemplated by the Application, it is in everyone's best interest that the Commission delay any decision regarding the proposed sale. To do otherwise would seriously jeopardize all parties, including CCPC and Boralex."

In their submissions filed on November 10, 2008, the Heiltsuk addressed:

i. the Commission's jurisdiction to consult and accommodate the Heiltsuk;

ii. the Heiltsuk's view that the duty to consult and accommodate rests with the Integrated Land Management Bureau ("ILMB") of the Ministry of Agriculture and Lands;

iii. the Heiltsuk's view that the Applicants opinion regarding the impact of Heiltsuk's Aboriginal rights and title interests was irrelevant;

iv. the Heiltsuk's view that the Applicants opinion regarding the appropriate level of consultation was irrelevant; and

v. the Heiltsuk's conclusions.

On the issue of the Commission's jurisdiction to consult and accommodate, the Heiltsuk declined to engage in any debate over the issue, saying it did not want to take up the Commission's "valuable time" and argue whether the matter may or may not be within the Commission's jurisdiction.

On the issue of the duty resting with the ILMB, the Heiltsuk asserted that it had been contacted by the ILMB for the purposes of commencing the consultation process. The Heiltsuk referred to the five step test for consultation described in the *2008 Gitanyow* decision on the subject of transfers of interest. The Heiltsuk further asserted "We are currently fully engaged with ILMB on this matter" and requested a delay in the Commission's decision.

On the issues of the opinions of the Applicants, the Heiltsuk submitted that their opinions are irrelevant and that they "are not part of our consultation process with ILMB…The duty to consult rests with the Crown." The Heiltsuk go on to state the "The appropriate level of consultation will be determined by both ILMB and Heiltsuk."

In their conclusions, the Heiltsuk requests a temporary delay until the ILMB has reached its conclusions on the impact the transfer may have to their aboriginal rights and interests and whether accommodation is possible. The Heiltsuk offer to keep the Commission updated, state that in the near future they will be providing the ILMB with further information on the strength of their claim and the impacts of the transfer and additionally will be organizing a meeting with the ILMB.

They assert there is no pressing reason for a decision by the Commission and there is a risk that the results of the ILMB consultation process may significantly alter the Application. The Heiltsuk conclude with the comment that a Commission decision that does not consider the ILMB's conclusions "could perpetuate any existing or past infringements and impacts to our aboriginal rights, title and interests."

The Heiltsuk submissions contain no comments on the Applicants' claims for confidentiality.

5.0 REVIEW OF CRITERIA AND RELEVANT ISSUES

As previously identified in this Decision, the Application requests approval of the sale and disposition of CCPC's Utility Assets to Boralex LP pursuant to section 52(1) of the Act or alternatively, pursuant to paragraph 2.(e) of Order G-40-06. The Application notes that neither section 52 of the Act nor Order G-40-86 sets out the criteria by which the Commission will determine whether to approve the transfer of assets.

The Applicants addressed each of the criteria that the Commission has used in examining applications for the approval of the transfer of utility operations through the sale of shares. The Applicants submitted that the Purchase Agreement satisfies each of the criteria that have been applied by the Commission in a sale of shares application. In particular, the Applicants submitted that the acquisition by Boralex LP of the Utility Assets will not detrimentally affect any of the Utility Customers and that the public interest will be preserved by the completion of the transaction (Exhibit B-1, pp. 1, 8-9).

The Commission Panel finds the information provided in accordance with the criteria applied in the review of a sale of utility shares to be of some value, but does not consider that its determination under section 52 of the Act should be limited to a finding of whether any detrimental effects may result from the acquisition. The Commission Panel notes that the wording in subsection 52(2) does not contain the words "detrimentally affected" and therefore the Commission Panel considers that its discretion under subsection 52(2) is much broader in scope.

The Application and Responses to the Information Requests provided the following information relating to the factors that the Commission Panel has taken into account in arriving at its determination of this Application under section 52 of the Act:

5.1 Financing

(a) Financing Capability Not Adversely Affected – CCPC's current owners wish to cause CCPC to sell the Utility Assets. In response to BCUC IR 1.1.2, the Applicants note that guarantees are not necessary because of the close relationship between Boralex Inc. and Boralex LP. In particular, Boralex Inc. is financially responsible for its wholly owned subsidiary, Boralex Canadian Energy Inc. which is a partner of Boralex LP. In their response to BCUC IR 1.12.2, the Applicants state that Boralex Inc. will stand behind future investments if necessary. Accordingly, Boralex LP submits that the acquisition of the Utility Assets by Boralex LP will enhance the financial integrity of the operation of the CCPC System.

(b) The acquisition will not reduce or impair the current or future ability of the operator of Utility Assets to raise equity and debt financing. In fact, Boralex LP's ability, through its limited partner, Boralex Inc. will be substantially greater than CCPC.

(c) In their response to BCUC IR 1.1.1, the Applicants state that "The closing of the transaction is not conditional upon a third party financing but it is intended to contract a term loan at a later date. The exact amount of the loan is still uncertain; however, it is anticipated to be approximately in the range of $8 million to $10 million. The balance of the purchase price will be provided by Boralex as equity."

(d) In their response to BCUC IR 1.12.1, the Applicants state "Boralex has a very strong balance sheet, with $78 million of cash available as of the end of the second quarter 2008. It is Boralex's intent to initially finance 100% of this transaction using cash already available on its balance sheet. Debt will later be contracted under typical project financing conditions. Boralex Inc. has a vast experience in financing large renewable energy projects and sees no significant problems in obtaining such financing."

(e) There are no covenants, agreements or legislative restrictions on Boralex Inc. or Boralex LP that would adversely affect or limit the ability to access capital in relation to the business using the Utility Assets.

5.2 Utility Business Conduct will be Maintained or Enhanced

The Application states that acquisition will not alter the regulatory oversight of the Commission over the Utility Assets. To the extent the Commission currently regulates the operations of the Utility Assets and CCPC, it will continue to have the ability to regulate the operation of the Utility Assets and Boralex LP, including rates and other terms and conditions of the services provided by it and the construction of the new facilities. More particularly, the Commission will continue to have jurisdiction to regulate the following business transactions:

(a) The disposition of any property other than in the ordinary course of the business of Boralex LP (Act, section 52);

(b) Orders for service provided by Boralex LP (Act, section 25);

(c) Orders respecting extensions of service by Boralex LP (Act, section 30);

(d) No discontinuance of service (Act, section 41);

(e) Any consolidation, merger or amalgamation of Boralex LP with any other person (Act, section 53);

(f) The subsequent acquisition by any person of a reviewable interest in Boralex LP (Act, section 54); and

(g) Hearing costs (Act, section 117).

5.3 Compliance with Enactments

The Purchase Agreement is subject to various conditions, including obtaining necessary approvals and consents from the Commission and other regulatory authorities having jurisdiction. Accordingly, at the time of its completion, the acquisition will be in compliance with applicable federal and BC legislation, including the Act.

5.4 Structural Integrity of the Assets Maintained

The Purchase Agreement does not alter the regulatory obligations of the owner operator of the Utility Assets to ensure that it is capable of providing safe, reliable and secure service to its customers. Legislated regulatory oversight is in place, will be observed, and will not change as a result of this transaction.

The Applicants in their Final Submission under the heading "Maintenance of Service" state, in part, the following:

i. Boralex Inc. operates its various utilities at a higher level of sophistication and quality control than CCPC. For example, it uses more electronically automated systems, a central control room to provide 24-hour monitoring, and an enhanced emergency response system. The system will be applied immediately to the CCPC System;

ii. Boralex LP will establish a dedicated communication link to provide real-time operations information to its control centre to allow monitoring of the CCPC System 24 hours / day, 7 days / week and improve response time to any unplanned event;

iii. Under the control of Boralex LP, the CCPC System will have access to all Boralex Inc. technical services such as mechanical, electrical, civil programs to ensure the CCPC System will be maintained consistent with good utility practices;

iv. All capital projects contemplated by CCPC will be maintained and completed;

v. Boralex LP, with the assistance of CCPC will invest $3 million to maintain the existing dam. Currently, only one penstock is available to supply water to any of the four units located with the power house. Boralex LP has committed to adding a second penstock in order to obtain redundancy in water supply to the units.

5.5 Public interest is being preserved

The Application states that Boralex Inc. is a well-capitalized company with expertise, commitment and resources to expand and develop the business to be carried on by Boralex LP in BC. In all of the circumstances of the Application, following completion of the Purchase Agreement:

i. There will be continuity in the business and operations of the Utility Assets;

ii. Structural integrity of the Utility Assets will be maintained;

iii. There will be continuity in the utility services provided by Boralex LP to CCPC's customers;

iv. There will be continuity in the regulation of the Utility Assets and the services provided under the Act;

v. There will be no adverse impact on the ability to access capital markets;

vi. There will be compliance with applicable BC statutes and regulations; and

vii. No other public interest in the Utility Assets as defined in the stakeholder consultation process will be adversely affected.

In the Applicants' view, completion of the acquisition contemplated by the Purchase Agreement will not detrimentally affect the Utility Assets or the service provided using those assets.

In regard to whether the Purchase Agreement may be approved, the Applicants submit that it is appropriate for the Commission to have regard for the following considerations:

(a) Boralex LP is knowledgeable in management of both regulated integrated electrical utilities and hydroelectric generating facilities;

(b) Boralex LP will assess opportunities for improved efficiency and security in the management of power supply to the utility customers;

(c) Boralex LP has substantial and valuable experience with respect to the operation of regulated electrical distribution utilities;

(d) Completion of the acquisition will bring the Utility Assets under the control of a diversified, Canadian electric utility holding company having regulated operations in Canada, the United States, and France;

(e) There will be no adverse change in the current capital expenditure program related to Utility Assets;

(f) Boralex LP expects to retain continuity in CCPC's employees and management;

(g) The proposed acquisition of the Utility Assets by Boralex has been favourably received by key stakeholders.

Having considered the Applicants' evidence and submissions on these matters, the Commission Panel determines that the acquisition of the Utility Assets by Boralex LP will not adversely affect the financial integrity of the operation of the CCPC System, will maintain or enhance the conduct of the utility business, will maintain the structural integrity of the assets, will result in the continued compliance with all relevant enactments and preserve the public interest.

5.6 Confidentiality

The Applicants' reasons for requesting confidentiality for certain parts of the Application are as follows:

(a) CCPC and Boralex LP have agreed between themselves to keep the sensitive business terms of the Purchase Agreement confidential;

(b) As a public company, Boralex Inc. is subject to numerous disclosure requirements, and will continue to comply with them.;

(c) Subject to securities disclosure rules, Boralex LP has adopted a general business policy of not disclosing financial details provided in acquisition agreements such as the Purchase Agreement for several reasons including:

i. Boralex Inc.'s competitors, many of whom are private companies and do not face public company disclosure rules, would obtain a competitive advantage;

ii. Boralex Inc.'s bargaining position in acquiring other projects may be undermined by disclosure of the Purchase Agreement;

iii. Many of Boralex Inc.'s investors are attracted in part by Boralex Inc.'s policy of non-disclosure.

iv. As a result of the above Boralex LP is of the opinion that the publication of the Purchase Agreement, particularly financial details would cause harm to Boralex LP.

(d) As a result of the above, publication of the Purchase Agreement, particularly financial details would cause specific harm to Boralex LP;

(e) CCPC is also concerned that the Purchase Agreement, including financial details be kept confidential for the following reasons:

i. CCPC is closely held private corporation and the disclosure of the sensitive business terms of the Purchase Agreement will serve no public interest;

ii. As a non-rate based Utility, there is no public interest to be served by the disclosure of the financial and economic aspects of the Purchase Agreement;

iii. In the event that the financial details of either CCPC and/or CCH are made public, their potential competitors, many of whom are private companies or individuals and do not face public disclosure requirements, would obtain a completive advantage; and

(f) CCPC and Boralex LP are also concerned that disclosure of the sales price, along with other information contained in the Purchase Agreement, might introduce a source of unwarranted speculation and concern by CCPC's current workforce as they will not be aware of all the parameters involved in the Purchase.

No Intervenor has challenged the request for confidentiality or the other assertions made by the Applicants.

The Commission Panel accepts that the reasons the Applicants have provided for their request for confidentiality are reasonable in the circumstances of this Application.

The Commission determines that the financial details of the Purchase Agreement will be kept confidential.

The Commission considers that the following further issues are relevant in its review of the Application pursuant to section 52 of the Act:

5.7 Accounting Issues

5.7.1 Acquisition Premium and Transaction Costs

In their Responses to BCUC IR 1.8.1 and 1.8.2, the Applicants have confirmed that no acquisition premium, transaction fees, litigation expenses, retention bonuses, termination costs or any other related cost of the sale will be recovered from the utility customers of CCPC or Boralex LP.

5.7.2 Accounting Treatment of Utility Assets

BCUC IR 1.8.5 sought confirmation that Boralex LP will be reporting its acquired utility assets at the historical cost for regulatory and financial statement purposes. The Response to BCUC IR 1.8.5 states "Since this transaction is an asset purchase, the acquired utility assets will be reported as at the date of acquisition at the fair market value as per Canadian GAAP. Subsequent to the acquisition date, the assets will be reported at cost (less depreciation) for regulatory and reporting purposes."

BCUC IR 2.15.1 referred to the Response to BCUC IR 1.8.5 and requested that the Applicants identify the Section(s) of the Canadian Institute of Chartered Accountants Handbook that support the fair market value treatment of the CCPC Utility Assets that are acquired by Boralex LP for regulatory purposes.

In their Response to BCUC IR 2.15.1, the Applicants state that "The Applicants believe that the provisions of the Handbook requires Boralex LP to record the purchase at fair market value and that it is not necessary, feasible or appropriate to apply other treatment for regulatory purposes given the manner in which CCPC has been regulated and the manner in which it is proposed that the utility assets will be regulated....Historically, many of the assets utilized to provide service to CCPC's customers in Ocean Falls were valued and priced at $1 because of the unique circumstances. The allocation between improvements and maintenance is indistinct and exact costing has not occurred with respect to individual assets...It should be noted that, from a practical perspective, the generation, distribution and sale of power to the residents of Ocean Falls does not generate sufficient revenue even to cover maintenance of the system and does not generate normal return on regulated rate base or return on equity."

BCUC IR 2.15.3 asked the Applicants if they are aware of any restriction or circumstance that would prevent the Commission from approving the fair market value of the acquired utility assets at the time of purchase but in accordance with Section 3475.26(b) of the Handbook also requiring the excess proceeds on disposal of utility assets by CCPC to be deferred for the future benefit of Boralex LP customers. The Applicants replied that Section 3475.26(b) of the Handbook applies to entities selling rate-regulated operations. It does not apply to Boralex LP since (i) it is purchaser of the assets, and (ii) it is currently not rate–regulated. It does not apply to CCPC as neither CCPC nor its utility operations are rate-regulated in a typical manner. Its rates are set "by proxy' with reference to BC Hydro rates.

Present fair market value is the only applicable benchmark evaluation that can be used to assign value to the assets either in total, or individually, at this time. This is true whether the rates for the utility as operated by Boralex LP continue to be set with reference to BC Hydro rates or whether, under ownership of Boralex LP, the utility's rates are to be determined on the basis of cost of service methodology."

BCUC IR 2.15.4 asked the Applicants if it would be appropriate to record utility assets at their historic, depreciated value for regulatory purposes and a fair value for financial statement purposes. In their Response to BCUC IR 2.15.4, the Applicants stated that "...Boralex LP does not consider that it would be appropriate to attempt now to record the utility assets at their historic, depreciated value for regulatory purposes."

BCUC IR 2.15.5 referred to Commission Order G-127-99 and the attached Reasons for Decision, in the Kanelk Transmission Company Limited "(Kanelk') application to dispose of its utility assets to BC Hydro. In the Kanelk Decision, the Commission did not accept BC Hydro's request to capitalize Kanelk's utility assets at the full purchase price. The Commission considered that it would be more appropriate to record the Kanelk utility assets at net book value (Order G-127-99, Appendix A, p. 5). BCUC IR 2.15.5 also referred to the June 26, 2001 Plateau Pipeline Ltd. ("Plateau") Decision, page 36, where the Commission expressed the view that "purchase of assets which remain in regulated service should continue to reflect the historic, depreciated value of the assets."

The Commission denies Boralex LP's request to capitalize the Utility Assets of CCPC at fair market value. The Commission is of the view that it is more appropriate for Boralex LP to record the CCPC Utility Assets at the historical depreciated value. This is more in keeping with normal regulatory accounting treatment which protects customers from the increased rate effects of having the value of utility assets previously paid for by customers being increased by a new utility owner.

The Commission approves the Application subject to the Applicants confirming within 60 calendar days of this Decision that Boralex LP will record the CCPC Utility Assets at their historical, depreciated value and providing a detailed listing of the CCPC Utility Assets with their historical, depreciated value.

The Panel surmises that the Applicant's reluctance to record the purchased Utility Assets at their depreciated historical costs, may in part be due to the state of accounts in CCPC. If, in fact, there are deficiencies in the recording by CCPC of initial costs and depreciation over the years, for the

purpose of satisfying this condition of the approval of the Application, the Commission will accept reasonable estimates of the depreciated costs of the Utility Assets. Any such estimates should be submitted for approval by the Commission, with a brief supporting rationale consistent with general accounting and depreciation principles appropriate to a rate-based regulated utility.

5.7.3 Asset Purchase versus Share Purchase

In their Responses to BCUC IR 1.8.3 and 1.8.4, the Applicants confirmed that Boralex Inc. was purchasing only the Utility assets of CCPC. The benefit to an asset agreement, unlike a share agreement allows Boralex LP to acquire only those assets necessary to operate the "CCPC System" under the existing BCUC Orders. Some CCPC assets were not of interest to Boralex Inc. Because of this, an asset transaction was determined to be more appropriate and effective than a share transaction.

5.8 Rate Setting Mechanism Employed by CCPC

The rate setting mechanism that has been employed by CCPC in accordance with Commission Order G-40-86 as amended by Order G-30-02 is described in detail in the Corporate Background section of this Decision. BCUC IR 1.9.1 stated that CCPC had been following the BC Hydro tariff binder for rates and terms and conditions of service for customers in Ocean Falls and asked if Boralex LP will be following the BC Hydro binder for rates and terms and conditions of service. In response to BCUC IR 1.9.1 Boralex LP confirmed that it will be following the BC Hydro binders and in the response to BCUC IR 9.2 confirmed that retail customers will continue to be charged the same rates [as BC Hydro rates] and new industrial customers will be charged negotiated rates.

The Applicants requested a continuation of the 1986 exemption provided to CCPC, also apply to Boralex LP. In BCUC IR 1.14.1 the Applicants were asked if they were aware that a request for exemption from regulation for Boralex LP from the Act except for Sections 25, 38, 41 and 117 requires the approval of the Lieutenant Governor in Council ("LGIC') and such approval can take a

few months to receive. In BCUC IR 1.14.2, Boralex LP was asked if it is prepared to provide utility service to its customers under complaint-based regulation while awaiting LGIC exemption approval. The Applicants replied, yes, if it is legally necessary.

The Commission approves the continuation of the rate setting mechanism employed by CCPC pursuant to Order G-40-86 as amended by Order G-30-02 and complaint-based regulation while awaiting LGIC exemption approval for Boralex LP, subject to the Applicants accepting the condition of approval relating to the accounting treatment for the recording of Utility Assets and confirmation from Boralex LP that the transfer is proceeding. Customer rates will only be set based on the historical, depreciated cost of Utility Assets in the event that a customer complaint cannot be resolved by Boralex LP and if the Commission decides to set cost-based rates.

5.9 Continuation of the 1986 Exemption

Commission Order G-40-86 exempted CCPC from application of the Act, except for Part 2 and sections 30, 44, 47 and 133. The exemption was to be in effect until total demand exceeded 6,000 KW, at which time continuation of the exemption would be subject to review by the Commission. Part 2 was repealed in 2003. Sections 30, 44, 47 and 133 of the 1986 Act are now sections 25, 38, 41 and 117 of the Act. The Applicants' reasons for continuing the exemption were stated in the Application as follows:

(a) without the exemption, the CCPC System would become a rate-based utility, with the inevitable result that tolls for customers of the CCPC System would increase substantially above the current tolls that are linked to BC Hydro's tolls for residential retail customers. Rates currently charged to the residents and other customers located in Ocean Falls are determined by the 1986 Order. The amending Order G-30-02 relates to the rates charged to the industrial customers on the industrial site in Ocean Falls;

(b) public interest is maintained. For example, the Commission retains the jurisdiction to regulate service standards. Sales to BC Hydro (via the Electric Purchase Agreement with BC Hydro) have been deemed by the Commission to be in public interest;

(c) BC Hydro submitted to the Commission in *British Columbia Hydro and Power Authority – 2007 Rate Design Application Phases – I and III* that the current Bella Bella arrangement, including the CCPC-BC Hydro electricity purchase agreement was "fair and appropriate";

(d) the transition provisions of the Purchase Agreement will ensure that the CCPC System can and will operate in substantially the same way by Boralex LP;

(e) the limit to the 1986 Order is 6.5 MW (sic), meaning that Boralex LP will be subject to full BCUC regulation with any significant increase (from the current production);

(f) Boralex LP, together with its partner, Boralex Inc. are sophisticated operators and a large part of the business elsewhere consists of providing power compliant with service standards. Boralex Inc. has acquired substantial expertise and capacity for dealing with a wide array of service standard issues in various jurisdictions, including FERC standards in the U.S;

In their Response to BCUC IR 1.9.1, the Applicants state that "Boralex LP will be following the BC Hydro binders [for rates and terms and conditions of service for customers in Ocean Falls]". In their Response to BCUC IR 1.9.2 regarding new customers, the Applicants state "Retail customers will continue to be charged the same rates. New Industrial customers will be charged negotiated rates."

BCUC IR 1.14.4 asked Boralex LP to confirm if it takes issue with the inclusion of the following provision in a new exemption Order: "This exemption, granted pursuant to this Order, shall remain in effect until the Commission orders otherwise, for reasons that may include the determination of any complaint it receives from a person whose interests are affected." This provision is now generally included in exemption Orders, and would have the effect of not exempting the utility from Section 99 of the Act. Boralex LP responded that "Boralex LP does not take issue with the inclusion of Section 99" (Exhibit B-4, BCUC IR 1.14.4).

The Applicants' Final Submission states that the continuation of the exemption is in the interest of the CCPC system and utility customers and observes that no utility customers have expressed any concern or objection to the continuation.

The Applicants do not address the impact of subsection 88(3) of the Act in their submissions or explain a basis under the Act that would enable the Commission to transfer the exemption under Order G-40-86 to Boralex LP, or to continue the exemption in the name of Boralex LP. Commission Order G-40-86 does not provide for the assignment of the exemption to a subsequent purchaser of the assets of CCPC. Boralex LP as the purchaser of the Utility Assets is seeking exemption from certain sections of the Act, and Section 88(3) can be applied in that situation.

The Commission Panel therefore determines that since the transaction is the purchase of Utility Assets by Boralex LP the Commission is unable to continue the CCPC exemption for Boralex LP and denies the request to continue the exemption.

In order to grant an exemption for Boralex LP the Commission must obtain the approval of the LGIC before it can grant the exemptions sought. The Commission has considered the reasons that Boralex LP submits in support of its request for an exemption, and has determined that the exemption should be granted providing the transfer of Utility Assets proceeds.

Therefore, if Boralex LP advises the Commission within 60 calendar days of the date of the Order which accompanies this Decision that it accepts the condition for approval relating to the accounting treatment of the recording of the Utility Assets and that the transfer is proceeding, the Commission will send a request to the LGIC for approval to grant Boralex LP an exemption from regulation from the Act except for sections 25, 38, 41, 99 and 117 and with the inclusion of the afore-mentioned provision related to the Commission's ability to revisit the exemption.

5.10 Duty to Consult and Accommodate First Nations

As noted above, the Heiltsuk were the only active intervenor in this proceeding. They did not file evidence. Their submissions raised issues of First Nations consultation and accommodation, if appropriate, in the context of the Commission's hearing process for this Application. Without making any substantive submissions on the point, although given the opportunity to do so, they took issue with the Commission's position in previous proceedings that as a quasi-judicial decision maker exercising adjudicative functions, the Commission does not have a duty to consult with First Nations.

In their two submissions, the Heiltsuk referenced their present involvement with the ILMB on behalf of the Crown and asked the Commission Panel to defer its decision on the Application until the outcome of the ILMB process is known.

There has been a substantial amount of recent case law in the area of First Nations rights and more particularly, the duty of the Crown to consult with First Nations. There can be no longer any doubt that the Crown has a duty to consult with, and accommodate, if appropriate, First Nations.

The leading case in this area is *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73, 245 D.L.R. (4th) 33 ("Haida"). That case did not involve a decision by a quasi judicial tribunal such as the Commission and the Panel has not had any legal decision or precedent brought to its intention that discusses the Crown's duty to consult where the context is that of a quasi judicial regulatory body exercising adjudicative functions, such as the Commission. However, the *Haida* decision did decide that there was a firm duty on the Crown to consult, and if appropriate, accommodate the concerns of a First Nation where there has been (or will be) an alleged infringement of an Aboriginal right or title.

The Supreme Court of Canada in *Haida* recognized that they were breaking new ground in 2004 and stated:

> This case is the first of its kind to reach this Court. Our task is the modest one of establishing a general framework for the duty to consult and accommodate, where indicated, before Aboriginal title or rights claims have been decided. As this framework is applied, courts in the age-old tradition of the common law will be called on to fill in the details of the duty to consult and accommodate. (Paragraph 11)

While the *Haida* decision did not involve a tribunal similar to the Commission, it did involve **the transfer of existing rights** (in that case a Tree Farm Licence) between two third parties, in an area where a First Nation was claiming Aboriginal rights. To that extent only, the facts parallel the claims being asserted by the Heiltsuk that arise in this proceeding.

In fleshing out the "framework" for dealing with the claims of First Nations and the Crown's duty to consult, the Supreme Court of Canada gave guidance on the manner by which decision-making bodies should proceed. Without going into a detailed analysis of the decision, it is important to note some of the guidelines put forward by Canada's highest court:

> It [the Crown] must respect these potential, but yet unproven, interests. The Crown is not rendered impotent. **It may continue to manage the resource in question pending claims resolution.** (Paragraph 27)
>
> But, when, precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggests that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and **contemplates conduct that might adversely affect it.** (Paragraph 35)
>
> To facilitate this determination, **claimants should outline their claims with clarity**, focussing on the scope and nature of the Aboriginal rights they assert and on the alleged infringements. (Paragraph 36)
>
> A dubious or peripheral claim may attract a mere duty of notice, while a stronger claim may attract more stringent duties**. The law is capable of differentiating between tenuous claims, claims possessing a strong *prima facie* case, and established claims.** Parties can assess these matters, and if they cannot agree, tribunals and courts can assist. Difficulties associated with the absence of proof and definition of claims are addressed by assigning appropriate content to the duty, not by denying the existence of a duty. (Paragraph 37)

> The content of the duty to consult and accommodate varies with the circumstances**. Precisely what duties arise in different situations will be defined as the case law in this emerging area develops.** In general terms, however, it may be asserted that the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and **to the seriousness of the potentially adverse effect** upon the right or title claimed. (Paragraph 39)
>
> In discharging this duty [to consult], **regard may be had to the procedural safeguards of natural justice mandated by administrative law.** (Paragraph 41)
>
> While precise requirements will vary with the circumstances, the consultation required at this stage [where the risk of non-compensable damage is high] may entail **the opportunity to make submissions for consideration, formal participation in the decision-making process, and provision of written reasons to show that the Aboriginal concerns were considered and to reveal the impact they had on the decision.** (, Paragraph 44)
>
> **The process does not give Aboriginal groups a veto** over what can be done with land pending final proof of the claim. …Rather, what is required is a process of balancing interests, of give and take. (Paragraph 48)
>
> The process itself would likely fall to be examined on a standard of reasonableness. Perfect satisfaction is not required; **the question is whether the regulatory scheme or government action "viewed as a whole", accommodates the collective aboriginal right in question. …What is required is not perfection but reasonableness.** (Paragraph 62)
>
> [In all the extracts above, emphasis has been added.]

The issue of the Crown's duty to consult has arisen in several recent Commission proceedings:

(a) An Application for a Certificate of Public Convenience and Necessity for the Vancouver Island Transmission Reinforcement Project ("VITR") (Decision July 7, 2006);

(b) In the Matter of British Columbia Hydro and Power Authority, Application for a Certificate of Public Convenience and Necessity for Revelstoke Unit 5 (Decision July, 12, 2007);

(c) In the Matter of British Columbia Hydro and Power Authority, A Filing of Electricity Purchase Agreement with Alcan Inc. as an Energy Supply Contract Pursuant to Section 71 (Decision January 29, 2008) ("Alcan"); and

(d) d)In the Matter of British Columbia Transmission Corporation and An Application for a Certificate of Public Convenience and Necessity for the Interior to Lower Mainland Transmission Project ('ILM") (Decision August 5, 2008);

All of these decisions are available on the Commissions website at *www.bcuc.com* . Alcan and ILM are presently under appeal to the British Columbia Court of Appeal on First Nations issues.

None of the fact situations in these proceedings are congruent with the facts in the Application, although many of the considerations that played into the decisions of the various Commission panels have some relevancy to the facts before the Panel in this proceeding. Pursuant to section 75 of the Act, the Commission is not bound to follow its previous decisions and must make its decision on the merits and justice of the case.

Given that the Commission must base its decision on the merits and justice of the case, there is still an obvious benefit in the Commission establishing a consistent approach to the issues involving the Crown's duty to consult. How quasi-judicial tribunals exercising adjudicative functions **must** deal with the complex nature of the Aboriginal claims asserted by First Nations, will await further development of case law by the courts. In the interim, the Commission will continue to apply the law as set out in the *Haida* decision and the cases that build upon it.

As part of the VITR proceeding, Commission Counsel produced a memorandum of law dealing with a number of issues that had been raised in that proceeding by the Hul'qumi'num Treaty Group. The opinion was filed as Exhibit A-31 (November 15, 2005) in that proceeding. In brief, the opinion concluded that the Commission does not, itself, have a duty to consult with or accommodate First Nations. (The opinion, as an Exhibit in that proceeding is available on the Commission's website) An extract from this opinion was circulated by staff of the Commission to the Heiltsuk under cover of a letter dated October 3, 2008 (Exhibit A-4) is part of the record.

In the memorandum of law, Commission counsel reviewed the case law that builds upon the *Haida* decision and as well, canvasses several decisions that involved quasi-judicial decision makers. (See Memorandum at p. 13 and following.) The leading case cited for quasi judicial decision bodies was *Attorney-General of Quebec v. Canada (National Energy Board), [1994] 1 S.C.R. 159* ("NEB"). This case was decided before *Haida,* but lends support to the argument that the normal procedural safeguards dictated by administrative law and the Rules of Natural Justice will go some way to meet and satisfy any duty owed by a quasi judicial tribunal to an intervener asserting Aboriginal rights. The most recent case law is consistent with this ruling and none disapproves of the NEB finding.

Also of relevance to the manner in which the Commission should approach the Crown's duty to consult is the "Provincial Policy for Consultation with First Nations", issued in October 2002. This was attached as Appendix A to the Commission Counsel's opinion that was filed in the Vancouver Island Transmission Reinforcement Project mentioned above. There is no guidance given in the Policy as to how quasi-judicial tribunals should approach the issue of the Crown's duty to consult nor any discussion as to how tribunals should interact with the prime agencies of the Provincial Crown established to carry out consultations with First Nations.

5.10.1 Position of the Parties

The Heiltsuk Tribal Council

On the record of this proceeding, the Heiltsuk did not provide any evidence as to the nature and extent of the claims that they were advancing nor did they attempt to show any particular adverse affect on their people, should the proposed transfer of the CCPC Utility Assets and the CCH Rights to Boralex LP be approved by the Commission.

In their November 10, 2008 Submission, the Heiltsuk reported that they are engaged in a consultation process with the ILMB. They asserted that this consultation was triggered by the proposed sale of assets and the ILMB took the initiative of contacting the Heiltsuk to initiate the

process. The Heiltsuk provided a brief description of the nature of the consultation that will take place and make reference to the *2008 Gitanyow* decision (*Wii'litswx v. British Columbia (Minister of Forests) 2008 BCSC 1139*) and the five step test set out in that decision. The Heiltsuk do not address the expected schedule of proceedings with the ILMB nor do they estimate when those consultations might be brought to a conclusion.

They point out that the Applicants in this proceeding are not part of the consultations with the ILMB, and "…do not possess the expertise or relevant information to make any decision or reach any conclusions regarding the nature and extent of our aboriginal rights, particularly the impact this transfer may have to such rights. The duty to consult rests with the Crown. All we seek is to permit the Crown to fulfill its duty to us." (Heiltsuk November 10, 2008 Submission, Paragraph 3.) And later at Paragraph 4 they note that "…the [Applicants] are not part of our consultations with ILMB nor do they have the expertise to make any decision or reach any conclusion regarding the nature and extent of consultations. Part of the consultation process will include gathering evidence to determine the level of consultation, evidence which is not before the Commission or within the knowledge of the [Applicants]."

The same informational deficiencies might also be attributed to the Commission.

In sum, the Heiltsuk did not advance any particular claim or suggest any remedy by way of accommodation in these proceedings. Their solitary request was to have the Commission delay its decision in this application until such time as they have brought their consultations with the ILMB to a conclusion. No estimate is given although the Heiltsuk do undertake to keep the Commission informed. In their view, the Heiltsuk states that there is no pressing need for the Commission to proceed in the absence of the results of the consultation process with the ILMB.

The ILMB was not an intervenor in this proceeding nor was any other provincial government department or agency.

Central Coast Power Corporation and Boralex Ocean Falls Limited Partnership

On the issue of the duty to consult, the Applicants summarize their position at Item 4, Paragraph 5 in their Final Argument:

> "The Applicants submit that the Heiltsuk Submission [in respect of the duty to consult] is without merit because:
>
> (i) the jurisdiction of the Commission is limited strictly to matters under the Act;
>
> (ii) there is no obligation of the Commission to consult with the Heiltsuk in these circumstances, since there is no "impact" resulting from the decision of the Commission;
>
> (iii) as a quasi-judicial body, the Commission has no obligation to consult and consultation with the Heiltsuk would itself offend the Commission's obligation to conduct its proceedings fairly and in accordance with the rules of natural justice; and
>
> (iv) if there was an obligation on the Commission to consult, in these circumstances it would be at the low end of the "Haida Nation spectrum", and such obligation, if any, has already been met by the established process of the Commission.
>
> (a) Jurisdiction of the Commission is limited to the Act."

In support of their position, the Applicants cite *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) 2005 SCC 69* which built upon *Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511* and pointed out that there is an onus on those asserting a First Nations right, to present evidence of some adverse impact. In this proceeding, the Applicants state that there "…is no evidence (or assertion) that the proposed transfer might have any impact on any asserted right, [and hence] it follows that there is no duty to consult." Even if there was a duty to consult [directly on the Commission], the duty would be at the very low end of the "spectrum" of consultation as described in *Haida Nation* and this has been satisfied by the hearing process of the Commission.

The Applicants also rely upon *Little Salmon/Carmacks First Nation v. Yukon (Minister of Energy, Mines and Resources) 2008 YKCA 13),* a decision of the BC Court of Appeal sitting as the Yukon Court of Appeal. There, the court held that " … notice to the aboriginal group, an opportunity to submit a position by the aboriginal group, and a fair consideration of the submission of the aboriginal group by the decision making body, all within the normal rules of the decision making body, was determined to be adequate consultation." (Final Argument, Item 4(d), Paragraph 6)

The Applicants also point out that the proposed transfer of the Utility Assets is a time-sensitive transaction and they seek a "speedy and unconditional approval of the Application. (Final Argument, Item 5, Summary and Conclusion)

Commission Determination

The Panel notes that the only question remaining before it is whether or not the decision in this matter ought to be delayed until such time as the consultations now underway with the ILMB are brought to some sort of conclusion. However, the broader issues of the Commission' duty to consult were raised during the course of the proceeding.

The Panel notes that there was no specificity presented by the Heiltsuk in respect of their asserted First Nations rights nor was there any information presented as to any adverse impact that a positive decision by the Commission might precipitate.

Further, the Heiltsuk had every opportunity to participate in the proceeding. They did ask IRs and were permitted make two sets of final submissions. They could have filed evidence pursuant to the Commission's Confidential Filings Directive, but chose not to do so. They were afforded the opportunity to make submissions on the duty of the Crown and of the Commission to consult and accommodate and on any duty the Commission may have to ensure that consultation has been adequate in the context of the proposed sale of assets contemplated by the Application as part of the written process provided for by Order G-121-08 and to file a reply to the Written Argument of

the Applicants on these issues by November 3, 2008. They chose not to make full submissions on these matters, nor did they advise the Commission in a timely way that they intended to file a Reply by November 3.

When they did file a Reply, they did so on November 10, 2008 some 13 days beyond the end of the Regulatory Timetable contemplated by Order G-121-08. In an effort to afford every accommodation to the Heiltsuk, the Commission extended filing deadlines and accepted submissions for the record that were outside of the Commission's Regulatory Timetable for this proceeding.

On the basis of the evidence on the record, the relevant cases cited by the parties and the arguments submitted by the Applicants and the Heiltsuk, and on the facts of this case and in the particular circumstances of this Proceeding under the Act for the disposition of assets of a public utility, the Panel determines as follows:

(a) The Commission has no mandate or statutory right to evaluate the asserted claims of First Nations in respect of Aboriginal rights or title (and any appropriate accommodation) and such matters are beyond the jurisdiction of the Commission, at least insofar as they extend to matters that are beyond the direct impact of the decision before the Commission;

(b) While no details of the consultations that are on-going before the ILMB are in evidence for the purposes of the record, the Panel is of the view from the assertions made by the Heiltsuk in their submissions that, *prima facie,* the Crown's duty to consult is being addressed in that venue;

(c) The Heiltsuk has been afforded every opportunity to participate in this proceeding and to present any concerns or to outline any adverse impact that a positive decision by the Commission might have on their Aboriginal rights or on the people that they represent;

(d) Given that the operations of the public utility in this case will not change in any significant way and that the proposed transfer of the Utility Assets will not impact the service to the public, there seems to be no reason to delay the decision of the Commission pending the resolution of the consultations with the ILMB at some undetermined date in the future.

In result, the request by the Heiltsuk for a delay in proceedings is denied.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of December 2008.

Original signed by:

P.E. VIVIAN
PANEL CHAIR AND COMMISSIONER

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-180-08

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

An Application by Central Coast Power Corporation
and Boralex Ocean Falls Limited Partnership
for Approval of the Sale and Disposition of Utility Assets of
Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership

BEFORE: P.E. Vivian, Commissioner December 5, 2008

O R D E R

WHEREAS:

A. On August 1, 2008, Central Coast Power Corporation ("CCPC") and Boralex Ocean Falls Limited Partnership ("Boralex LP") applied, pursuant to Section 52(1) of the Utilities Commission Act (" the Act") or alternatively pursuant to section 2.(e) of British Columbia Utilities Commission ("the Commission") Order G-40-86 dated July 4, 1986, for an Order approving the sale and disposition of Utility Assets of CCPC to Boralex LP as set out in an agreement dated June 3, 2008 (the "Purchase Agreement") (the "Application"); and

B. Central Coast Hydro Ltd. ("CCH"), a non-regulated business, owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Bella Valley in BC ("CCH Rights") that CCH will sell to Boralex LP as part of the Purchase Agreement; and

C. On February 19, 1986, a 20 year agreement was signed by CCPC and British Columbia Hydro and Power Authority ("BC Hydro"). CCPC would supply electricity to BC Hydro at the point of delivery, which was the point where CCPC's transmission connection met BC Hydro's substation in Bella Bella (the "Power Purchase Agreement"); and

D. On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from the Ocean Falls Corporation ("OFC"). On June 4, 1986 CCPC applied to the Commission for an exemption from the Act pertaining to the sale of electric power to residential, commercial and industrial consumers located at Ocean Falls and to Bella Bella, BC; and

…/2

E. Commission Order G-40-86 approved the Transfer of Lands and Chattels from OFC to CCPC and exempted CCPC from the Act (S.B.C 1980 Chapter 60) except for Part 2 and Sections 30, 44, 47 and 133. Part 2 has since been repealed and the sections have been renumbered as Sections 25, 38, 41 and 117, respectively; and

F. Order G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the Agreement between CCPC and OFC that was attached to the Order. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and

G. The 20 year Power Purchase Agreement between CCPC and BC Hydro was extended for another 10 years to December 31, 2016 (BC Hydro 2007 Rate Design Phase II Hearing, Exhibit B-79); and

H. Commission Order G-30-02 amended Order G-40-86 with respect to Schedule F, by striking out Section 2 (c) of Schedule F and replacing it with the following wording: "For present firm installed capacity in CCPC's Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro's Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity of the plant is required, the parties may negotiate rates with consideration of the cost of installing additional generation"; and

I. Order G-30-02 was also amended by striking out paragraph 2(a) of the Order and replacing it with the following wording: "CCPC shall fully comply with the terms of its agreements with B.C. Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively"; and

J. Boralex LP is a limited partnership under British Columbia's Partnership Act. The Partners of Boralex LP are Boralex Inc. (limited partner) and Boralex B.C. Development Inc. (general partner). Boralex Inc. is one of Canada's largest and most experienced private corporations in the development and production of renewable energy and is based in Quebec; and

K. Boralex LP is also applying for the continuation of the exemption for rates currently charged to residents and other customers as set out in Order G-40-86 and for industrial customers as amended in Order G-30-02; and

L. CCPC has informed its customers by personally meeting with every permanent customer in Ocean Falls. A copy of the letter was posted in the Ocean Falls Post Office. A letter was sent to all non-resident account holders informing them of the sale. The industrial customer agreed to the transfer of its contract with CCPC to Boralex LP; and

M. By Order G-121-08 the Commission established Regulatory Timetable for a written public hearing process to review the Application; and

N. CCPC and Boralex LP, as part of the stakeholder consultation process, were directed to inform the public of the Application and respond to questions from the public concerning the Application and process to consider the Application; and

O. On September 19, 2008, Heiltsuk Tribal Council (the "Heiltsuk") filed for Registered Intervenor status; and

P. On October 3, 2008 by Letter L-48-08, the Commission amended the Regulatory Timetable to provide additional time for issuance of Information Request No.2 and for the Heiltsuk to direct their questions to CCPC and Boralex LP; and

Q. On October 20, 2008, the Heiltsuk filed its comments on the Application; and

R. On October 27, 2008, CCPC and Boralex LP submitted their Final Argument; and

S. By letter dated November 10, 2008 (the "Heiltsuk Filing"), the Heiltsuk filed its closing comments in response to the Final Argument of CCPC and Boralex LP dated October 27, 2008; and

T. On November 14, 2008 by Letter L-54-08, the Commission informed CCPC and Boralex LP and all other participants that the amended Regulatory Timetable did not provide for a right of reply by Intervenors after October 20, 2008, consistent with the Commission's practice and that the Commission Panel had established a process to address the Heiltsuk Filing; and

U. By letter dated November 17, 2008, CCPC and Boralex LP advised that that they did not oppose the Commission accepting for filing the Heiltsuk Filing; and

V. Section 52 of the Act states:

(1) "Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,

a) dispose of or encumber the whole or a part of its property, franchises, licenses, permits, concessions, privileges or rights, or

b) by any means, direct or indirect, ,merge, amalgamate or consolidate in whole or in part its property, franchises, licenses, permits, concessions, privileges or rights with those of another person.

(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest"; and

W. The Commission has reviewed the Application, the evidence and the submissions and considers the sale and disposition of the Utility Assets, subject to one condition, desirable in the public interest.

NOW THEREFORE the Commission orders as follows:

1. Subject to compliance within 60 calendar days of the date of this Order with the condition set out in Section 5.7.2 of the Decision issued concurrently with this Order by Boralex LP, the Commission approves, pursuant to Section 52 of the Act, the **sale and disposition** of the Utility Assets of CCPC to Boralex LP as set forth in the Purchase Agreement.

2. In the event of the failure of Boralex LP to comply with the said condition within 60 calendar days of the date of this Order, the Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of December 2008.

BY ORDER

Original signed by:

P.E. Vivian
Panel Chair and Commissioner

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

and

Application for Approval of the Sale and Disposition of Utility Assets
of Central Coast Power Corporation
to Boralex Ocean Falls Limited Partnership

EXHIBIT LIST

Exhibit No.	Description
COMMISSION DOCUMENTS	
A-1	Letter dated August 22, 2008 and Order No. G-121-08 establishing a Written Public Hearing and Regulatory Timetable
A-2	Letter dated September 11, 2008 issuing Information Request No. 1 to Central Coast Power Corporation
A-3	Letter dated September 26, 2008 issuing an response to Heiltsuk Tribal Council
A-4	Letter dated October 3, 2008 issuing an response to Information Request No. 1 from the Heiltsuk Tribal Council
A-5	Letter dated October 3, 2008 issuing an amendment to the Regulatory Timetable
A-6	Letter dated October 7, 2008 issuing Information Request No. 2 to Central Coast Power Corporation
A-7	Letter dated October 10, 2008 withdrawing exhibits from the proceeding
A-8	Letter dated November 14, 2008 issuing response regarding Heiltsuk Tribal Council filing of closing comments to Central Coast Power Corporation and Boralex Ocean Falls Limited Partnership Final Argument
APPLICANT DOCUMENTS	
B-1	Letter dated August 1, 2008 filing Application for Approval of the sale and disposition of utility assets of Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership
B-1-1	CONFIDENTIAL - Application for Approval of the sale and disposition of utility assets of Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership

Exhibit No.	Description
B-1-2	Received November 20, 2008, an Errata for page 4, paragraph 5, line 3 of the Application for Approval of the Sale and Disposition of Utility Assets
B-2	Email dated August 27, 2008 filing Notice of Publication of the written public hearing for the sale and disposition of utility assets
B-3	Email dated September 8, 2008 filing Notice of Publication of the written public hearing in the Coast Mountain News
B-4	Letter dated September 24, 2008 filing response to Commission's Information Request No. 1
B-4-1	**CONFIDENTIAL** - Filing Financial Statements for 2006 and 2007 as part of the response to Commission's Information Request No. 1
B-4-2	Letter dated September 25, 2008 filing investment analyst reports in response to Commission's Information Request No. 1.12.3
B-5	Letter dated September 26, 2008 from Waldemar Braul, of Fraser Milner Casgrain, legal counsel, filing confirmation of compliance
B-6	Letter dated October 10, 2008 filing responses to the Heiltsuk First Nation Information Request No. 1
B-7	Letter dated October 14, 2008 filing responses to Commission Information Request No. 2

INTERVENOR DOCUMENTS

C1-1	**HEILTSUK TRIBAL COUNCIL -** Online web registration received September 19, 2008 from Marilyn Slett, filing request for Registered Intervenor status
C1-2	~~**CONFIDENTIAL** - Letter dated September 19, 2008 from Marilyn Slett, filing comments~~ ***** EXHIBIT WITHDRAWN ***** ~~**CONFIDENTIAL** - Letter dated September 24, 2008 from Vi Bowack, Executive Director, filing request to remove Exhibit C1-2~~ ***** EXHIBIT WITHDRAWN *****
C1-3	Letter dated October 1, 2008 issuing Information Request No. 1

Exhibit No.	Description

C2-1 **SHEARWATER MARINE LIMITED –** Letter dated September 22, 2008 from Fred J. Weisberg, Weisberg Law Corporation, legal counsel, filing request for Intervenor status

LETTERS OF COMMENT

E-1 **MOSS, JOANN** – Letter of Comment dated July 3, 2008, from Joann Moss, Ocean Falls, BC

E-2 **OLSON, DWIGHT** - Letter of Comment dated July 3, 2008, from Dwight Olson, Ocean Falls, BC

E-3 **BAUMAN, MARTIN –** Letter of Comment dated July 3, 2008, filed after the Application from Martin Bauman, Ocean Falls, BC