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CB Powerline Ltd.

Application for a Certificate of Public Convenience and Necessity

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Decision  
and Order G-383-21

December 17, 2021

Before:  
T. A. Loski, Panel Chair  
C. M. Brewer, Commissioner  
W. M. Everett, QC, Commissioner

## TABLE OF CONTENTS

Page no.

<b>Executive Summary</b> .....	<b>i</b>
<b>1.0 Introduction</b> .....	<b>1</b>
1.1 Background.....	1
1.2 Approvals Sought .....	1
1.3 The Applicant.....	1
1.4 Regulatory Process .....	2
1.5 Legal and Regulatory Framework.....	3
1.6 Previous Relevant Decision .....	3
1.7 Decision Framework.....	3
<b>2.0 Project Need, Alternatives &amp; Justification</b> .....	<b>4</b>
2.1 Project Need.....	4
2.2 Alternatives .....	4
2.2.1 Maintain Status Quo .....	4
2.2.2 Islanded System .....	4
2.2.3 Electric Service from FortisBC Inc. ....	5
2.2.4 Electric Service from BC Hydro .....	5
2.2.5 Community built system connecting to BC Hydro.....	6
2.3 Preferred Alternative Justification .....	8
<b>3.0 Project Description</b> .....	<b>9</b>
3.1 Introduction.....	9
3.2 Basis of Design.....	10
3.3 Safety and Reliability .....	12
3.4 Operations.....	13
3.5 Project Schedule.....	13
3.6 Project Risks .....	14
3.7 Project Permits .....	14
<b>4.0 Project Costs and Rate Impact</b> .....	<b>16</b>
4.1 Project Cost Estimate .....	16

4.2	Shareholder and Power Purchase Agreements.....	18
4.3	Funding Commitment Levels.....	18
4.4	Grid Promissory Notes.....	20
4.5	Capital Recovery.....	21
4.6	Indicative Rates .....	21
<b>5.0</b>	<b>Environment &amp; Archaeology.....</b>	<b>23</b>
5.1	Environment.....	23
5.2	Archaeology.....	25
<b>6.0</b>	<b>Public Engagement and Indigenous Consultation .....</b>	<b>27</b>
6.1	Public Engagement.....	27
6.2	Indigenous Engagement.....	28
6.3	Indigenous Consultation.....	30
6.3.1	Duty to Consult .....	30
6.3.2	BCUC’s Role.....	30
6.3.3	Scope of Duty to Consult .....	32
6.3.3.1	Strength of Claim to Aboriginal Title and Rights .....	33
6.3.3.2	Project impacts .....	33
6.3.4	Crown Consultation .....	36
<b>7.0</b>	<b>Alignment with BC Provincial Government Energy Objectives .....</b>	<b>37</b>
<b>8.0</b>	<b>CPCN Determination .....</b>	<b>38</b>

## **BCUC ORDER G-383-21**

### **APPENDICES**

**APPENDIX A** List of Acronyms

**APPENDIX B** List of Exhibits

## Executive Summary

On September 11, 2020, CB Powerline Ltd. (CBP) applied to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA)(Application). CBP had initially applied to the BCUC, on June 13, 2019, seeking to exempt the Project from Part 3 of the UCA. That application to exempt the Project was denied by Order G-71-20.

The community of Cosens Bay is located on the east side of Kalamalka Lake in the Regional District of North Okanagan, BC. CBP is a community member-founded entity incorporated in British Columbia in 2017 with the sole purpose of carrying out the proposed Project. The community has to date relied on self-generation of its electricity as there has been no third-party electrical service provided. The objective of the proposed Project is to provide stable, year-round electricity to the Cosens Bay community. The Project involves the construction, ownership and operation of an electric distribution system connecting the property owners within Cosens Bay to British Columbia Hydro and Power Authority's (BC Hydro) supply system.

The BCUC established a written hearing process for the Application which comprised public notice, intervenor registration, and information requests (IRs). On February 17, 2021, the BCUC received and subsequently approved a request for intervenor registration in this proceeding from the Okanagan Indian Band (OKIB). The BCUC established a further regulatory timetable for the review of the Application to include IRs by OKIB, the filing of evidence by OKIB, and one round of IRs by CBP and the BCUC on the evidence filed by OKIB. Following submissions on further process, the BCUC established a further regulatory timetable to include CBP and OKIB written final arguments, as well as CBP's written reply argument.

Four interested parties registered in the proceeding: FortisBC Inc., BC Hydro, Hugh Harden (Harden) and Jim Bay (Bay). Harden and Bay submitted letters of comment in support of the Project. The BCUC also received an additional 56 letters of comment from the public, all expressing support for the Project.

The Panel finds there is a demonstrated need for the project and considers the selection of a community-led electric distribution system to be reasonable. The Panel finds that CBP's proposed Project financing, through shareholder capital commitments and Grid Promissory notes, to be reasonable. Further, the Panel is satisfied that CBP has addressed concerns raised by the BCUC in Order G-71-20 relating to Public Safety and aspects of Long-Term viability.

The Panel, however, determines that Crown consultation with OKIB on the Project has not been adequate up to the point of this decision to support issuing the CPCN. CBP and OKIB present significantly different views on the issue of Project impacts. CBP submits that the Project will have a negligible long-term effect on the Kalamalka Lake area and that the impacts to OKIB rights and title are likely to be minimal. OKIB submits it has concerns regarding the potential significant archaeological and environmental impacts. OKIB further submits that it has not been able to identify the interactions between its rights and the potential impacts of the Project, since it lacks the capacity funding to undertake the necessary studies.

CBP is directed to demonstrate to the BCUC that OKIB has been adequately consulted no later than six months from the issuance of this decision. If CBP can provide evidence that Crown consultation with OKIB is adequate, then the BCUC will issue a CPCN to CBP for the Project. If the CPCN is issued, the BCUC will provide any directions about reporting requirements of CBP for the Project and construction at the time the BCUC issues the CPCN.

## **1.0 Introduction**

### **1.1 Background**

On September 11, 2020, CB Powerline Ltd. (CBP) applied to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA)(Application). In its Application, CBP seeks approval to build, own, operate and maintain an electrical distribution system which would serve the community of Cosens Bay, located on Kalamalka Lake in the Regional District of North Okanagan. The estimated capital cost to develop and construct the Project is \$4.5 million.<sup>1</sup>

Since its establishment, Cosens Bay property owners have relied predominantly on fossil fuel-fired generators, and to a lesser degree residential solar panels, for electricity as there has been no third-party electrical service provided to the community.<sup>2</sup> The objective of the proposed Project is to provide stable, year-round electricity to Cosens Bay community members<sup>3</sup>.

In recent years, Cosens Bay community members have approached both British Columbia Hydro and Power Authority (BC Hydro) and FortisBC Inc. (FBC) to collectively evaluate third-party electrical service connection alternatives. No viable solutions were identified, and as a result, CBP was left to pursue the electrification Project on its own.<sup>4</sup>

### **1.2 Approvals Sought**

CBP seeks approval of a CPCN for the Project, pursuant to sections 45 and 46 of the UCA.<sup>5</sup> It also seeks approval of its CPCN Application Workplan (CPCN Workplan) pursuant to BCUC Order G-71-20.<sup>6</sup>

### **1.3 The Applicant**

CBP is a community member founded entity incorporated in British Columbia in 2017 with the sole purpose of owning and carrying out the Cosens Bay community electrification Project.<sup>7</sup>

The community of Cosens Bay is located on land which borders Kalamalka Lake Provincial Park and, in part, the east shore of Kalamalka Lake.<sup>8</sup> Access to the community by road is only possible via Cosens Bay Road, which is a narrow, gravel-surfaced road passing through Kalamalka Lake Provincial Park.<sup>9</sup>

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<sup>1</sup> Exhibit B-1, p. 54.

<sup>2</sup> Exhibit B-1, p. 1.

<sup>3</sup> Exhibit B-1, p. 20.

<sup>4</sup> Exhibit B-1, p. 1.

<sup>5</sup> Exhibit B-1, p. 1.

<sup>6</sup> CBP Final Argument, para 88.

<sup>7</sup> Exhibit B-1, p. 1; Exhibit B-6, BCUC IR 1.2.

<sup>8</sup> Exhibit B-1, p. 15.

<sup>9</sup> Exhibit B-1, p. 32.

The community is made up of 101 land parcels, of which 72 are fee simple owned parcels and the remaining 29 are cooperatively owned parcels. The cooperatively owned parcels are collectively known as Kalamalka Park Estates.<sup>10</sup> There are currently two to three permanent residences in Cosens Bay.<sup>11</sup>

The service area of the Project is limited to the 101 land parcels within the community of Cosens Bay.<sup>12</sup> At the time the Application was submitted, 51 community members, representing 54 land parcels, had committed to the Project.<sup>13</sup>

## **1.4 Regulatory Process**

CBP had initially applied to the BCUC, on June 13, 2019, seeking to exempt the Project from Part 3 of the UCA. On March 31, 2020, by Order G-71-20, that application was denied and CBP was directed to produce a plan to ensure CBP's compliance with the UCA on a prospective basis. On July 28, 2020, in compliance with Order G-71-20, CBP filed its plan with the BCUC and subsequently submitted this Application for a CPCN for the Project on September 11, 2020.

By Order G-248-20, the BCUC established a written public hearing process and a regulatory timetable for the review of the Application which consisted of public notice, intervener registration and one round of information requests (IRs).

By Order G-317-20, the BCUC amended the regulatory timetable and directed CBP to provide further notice to affected parties. The amended regulatory timetable established the deadline for intervener registration as January 7, 2021. The BCUC did not receive any intervener registration requests by the deadline.

On February 17, 2021, the BCUC received and subsequently approved a request for intervener registration in this proceeding from the Okanagan Indian Band (OKIB). By Order G-47-21, the BCUC amended the regulatory timetable to include one round of OKIB IRs followed by submissions on further process by OKIB and CBP.

By Orders G-101-21 and G-128-21A, the BCUC established a further regulatory timetable for the review of the Application to include a second round of IRs by OKIB, the filing of evidence by OKIB, and one round of IRs by CBP and the BCUC on the evidence filed by OKIB. On June 9, 2021, OKIB filed its evidence in the Application.

By Order G-229-21, the BCUC established a further regulatory timetable to include CBP and OKIB written final arguments, as well as CBP written reply argument.

Four interested parties registered in the proceeding: FBC, BC Hydro, Hugh Harden (Harden) and Jim Bay (Bay). Harden and Bay submitted letters of comment in support of the Project.

Between November 18, 2020 and February 28, 2021, 56 letters of comment were submitted regarding this proceeding in addition to the two letters of comment submitted by Harden and Bay. All 58 letters of comment expressed support for the Project.

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<sup>10</sup> Exhibit B-6, BCUC IR 2.1.

<sup>11</sup> Exhibit B-1, p. 32.

<sup>12</sup> Exhibit B-6, BCUC IR 3.2.

<sup>13</sup> Exhibit B-1, p. 50.

## **1.5 Legal and Regulatory Framework**

Section 45(1) of the UCA stipulates that a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the BCUC a certificate that public convenience and necessity require, or will require, the construction or operation of the plant or system proposed.

Section 46 of the UCA sets out the procedure on a CPCN application. Section 46(3) provides that the BCUC may issue or refuse to issue a CPCN or may issue a CPCN for the construction or operation of only a part of the proposed facility, line, plant, system or extension, and may attach terms and conditions to the CPCN.

The BCUC's CPCN Guidelines provide general guidance regarding the information that should be included in a CPCN application and the flexibility for an application to reflect the specific circumstances of the applicant, the size and nature of the Project and the issues raised by the application.<sup>14</sup>

## **1.6 Previous Relevant Decision**

By Order G-71-20, dated March 31, 2020, the BCUC denied CBP's Exemption Application and identified the following issues in its decision:

- The financial viability of the Project;
- The long-term viability of the Project;
- Fairness of rates;
- Public safety; and
- The adequacy of consultation with First Nations.

In the Exemption Application decision, the BCUC also recommended that CBP continue to work with BC Hydro to develop a feasible solution to providing the Cosens Bay community with electrical service, as BC Hydro had indicated it was still willing to work with CBP to provide such electrical service.<sup>15</sup>

In this CPCN Application, CBP addresses each of the issues listed above.<sup>16</sup>

## **1.7 Decision Framework**

The structure of this decision generally follows that of the CPCN Application and the BCUC's CPCN Guidelines.

- Section 2 addresses the need for the Project and its alternatives.
- Section 3 addresses the scope of the proposed Project, as well as the Project schedule and risks. Section 3 also addresses aspects of the Project's operations, such as maintenance, safety and reliability.

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<sup>14</sup> BCUC Order G-20-15, 2015 Certificate of Public Convenience and Necessity Application Guidelines.

<sup>15</sup> Decision and Order G-71-20, p. 15.

<sup>16</sup> Exhibit B-1, pp. 10–14.



- Section 4 addresses Project costs. This includes the review of the Shareholder and Power Purchase Agreements, Project funding mechanisms, future capital recovery by Shareholders and indicative electricity rates.
- Section 5 addresses the Environmental and Archaeological related planning and studies that have been completed by CBP.
- Section 6 addresses Public Engagement and Indigenous Consultation.
- Section 7 addresses the Project's consistency with BC's Energy Objectives.
- Section 8 contains the overall CPCN determination.

## **2.0 Project Need, Alternatives & Justification**

### **2.1 Project Need**

The community of Cosens Bay has been without electrical service since its inception more than 60 years ago and has expressed a desire for stable year-round electricity for many years, as it is a requirement of modern living.<sup>17</sup> Fifty-eight (58) letters of comment were submitted to the BCUC from Cosens Bay community members expressing support for the Project and their desire for electrical service for uses including improving the safety and comfort of their properties.<sup>18</sup>

### **2.2 Alternatives**

CBP identified several alternatives to achieve the objectives of the Project, which are discussed below.

#### **2.2.1 Maintain Status Quo**

CBP identified as an alternative to electric service connection, the option to maintain the status quo. Currently, most of the 74 properties with structures upon them manage without electrical service by maintaining some form of individual generation by, for example, fossil fuel fired generators and/or solar panels.<sup>19</sup>

CBP states there are limits to the large-scale use of solar panels within the community due to mountain and tree shading, snow cover, lack of available lands and system costs.<sup>20</sup> Notwithstanding these limitations, CBP concluded that maintaining the status quo was not a viable alternative given the community's desire for stable, year-round electricity supply.<sup>21</sup>

#### **2.2.2 Islanded System**

CBP assessed an islanded system alternative, in which CBP would build, own and operate an in-community power generation and distribution system, with fossil fuel as the primary source of energy. CBP completed a qualitative assessment of the operational challenges unique to an islanded system approach compared to a grid connected approach, which identified fueling, maintenance and active load management as challenges/risks

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<sup>17</sup> Exhibit B-1, p. 15.

<sup>18</sup> Exhibit E-1 to E-57; Exhibit D-3-1 & D-4-1.

<sup>19</sup> Exhibit B-6, BCUC IR 8.1.

<sup>20</sup> Exhibit B-6, BCUC IR 8.4.2.

<sup>21</sup> Exhibit B-1, p. 19.

with this approach.<sup>22</sup> CBP determined this alternative to not be viable at an early stage due to the operational complexity and difficulties of obtaining a suitable site for the power generation.<sup>23</sup>

### **2.2.3 Electric Service from FortisBC Inc.**

The Cosens Bay community members first approached FBC regarding an electric service connection in 2011 and then again in 2016.<sup>24</sup> The Cosens Bay community and FBC discussed several electric service connection alternatives, including:<sup>25</sup>

1. Direct service from FBC with construction of a new 230 kV substation and connection to an existing transmission system;
2. Direct service from FBC with a connection either co-located within FBC right-of-way or under-strung from the existing transmission line;
3. Direct service from FBC through an FBC built and owned connection to BC Hydro's system; and
4. Cosens Bay community built and owned connection to BC Hydro's system with operation and maintenance services provided by FBC.

Each of these FBC service alternatives were determined by CBP to not be viable at an early screening stage, for the following reasons:

- Alternative 1: required the construction of a \$15 million substation.<sup>26</sup>
- Alternative 2: FBC stated it would not allow any co-location or trespass within its right-of-way.<sup>27</sup>
- Alternative 3: required executive level approval to have a community become FBC customers within what is otherwise BC Hydro service territory.<sup>28</sup>
- Alternative 4: required a premium price for such an operation and maintenance contract.<sup>29</sup>

### **2.2.4 Electric Service from BC Hydro**

CBP approached BC Hydro in 2017 and 2019 to discuss potential connection alternatives for the community of Cosens Bay.<sup>30</sup> Two BC Hydro electric service connection options were developed as a result of these discussions:

1. Park Option: a connection adjacent to the existing Cosens Bay Road north through Kalamalka Lake Provincial Park to BC Hydro's system in the District of Coldstream; and
2. Lake Option: a connection west from Cosens Bay via submarine cable across Kalamalka Lake to BC Hydro's system along Highway 97.

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<sup>22</sup> Exhibit B-6, BCUC IR 8.5.

<sup>23</sup> Exhibit B-6, BCUC IR 8.3.

<sup>24</sup> Exhibit B-1, p. 15.

<sup>25</sup> Exhibit B-1, pp. 15–16.

<sup>26</sup> Exhibit B-1, p. 15.

<sup>27</sup> Exhibit B-1, p. 16.

<sup>28</sup> Exhibit B-1, p. 16.

<sup>29</sup> Exhibit B-1, p. 16.

<sup>30</sup> Exhibit B-1, p. 18.

BC Hydro's initial evaluation of both of these electric service connection alternatives concluded that neither option meets BC Hydro's Electric Tariff requirements and are therefore not viable.<sup>31</sup>

In BC Hydro's Evaluation of Connection Alternatives, it notes that the Lake Option involves crossing private, Crown and recreational land trails, requires the resolution of the identified risk of unexploded ordinances (UXO) in the area, and includes the laying of a submarine cable across Kalamalka Lake.<sup>32</sup> BC Hydro states that considering the challenges of securing Statutory Right of Ways, and with no practical alternative route, any installation of utilities within the Lake and surrounding areas would not be permitted, would not comply with applicable laws and would not meet the requirements of BC Hydro's Electrical Tariff.<sup>33</sup>

In subsequent emails with CBP, BC Hydro states that CBP "appears to have made considerable progress towards mitigating the major concerns raised by BC Hydro...with respect to servicing the Cosens Bay community via the 'Lake Option'. In recognition of these efforts, BC Hydro is willing to review and perhaps reconsider [its] position regarding direct electrical servicing to the Cosens Bay Community."<sup>34</sup> BC Hydro further states that if the identified obstacles have been mitigated to BC Hydro's satisfaction, one of the remaining items needing review prior to delivering electricity to Cosens Bay would be the extension cost.<sup>35</sup>

The extension cost to be paid by CBP is based on the conceptual level capital cost estimates prepared by BC Hydro for the Lake Option Submarine cable scope and for the underground distribution system within the community of Cosens Bay. The Lake Option capital cost estimate provided by BC Hydro was \$8 million and the underground distribution system capital cost estimate was \$0.9 million, both with an accuracy of -50 percent to +200 percent.<sup>36</sup> Based on the requirements of its Electrical Tariff, BC Hydro determined that it would be in a position to contribute \$81,125 to the Project.<sup>37</sup> Therefore, based on the estimated capital cost from BC Hydro, minus the capital contribution from BC Hydro, CBP determined that the extension cost to pursue electric service directly from BC Hydro would total approximately \$8,818,875.<sup>38</sup> CBP states that its shareholders cannot overcome this estimated extension cost, and therefore CBP concluded this alternative was not viable.<sup>39</sup>

A third BC Hydro electric service alternative was considered by CBP and BC Hydro, in which CBP would permit and construct an electric service connection that would subsequently be transferred to BC Hydro for ownership, operation and maintenance. BC Hydro declined to take ownership of a CBP built project.<sup>40</sup>

### **2.2.5 Community built system connecting to BC Hydro**

The final alternative considered by CBP was for a community owned, built and operated electric distribution system connecting the properties within Cosens Bay to BC Hydro's supply system.

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<sup>31</sup> Exhibit B-1, p. 19.

<sup>32</sup> Exhibit B-1, Appendix Exhibit 2.2.

<sup>33</sup> Exhibit B-1, Appendix Exhibit 2.2.

<sup>34</sup> Exhibit B-6, BCUC IR 7.2.1.

<sup>35</sup> Exhibit B-6, BCUC IR 7.2.1.

<sup>36</sup> Exhibit B-6, BCUC IR 7.3.1.

<sup>37</sup> Exhibit B-6, BCUC IR 7.3.1.

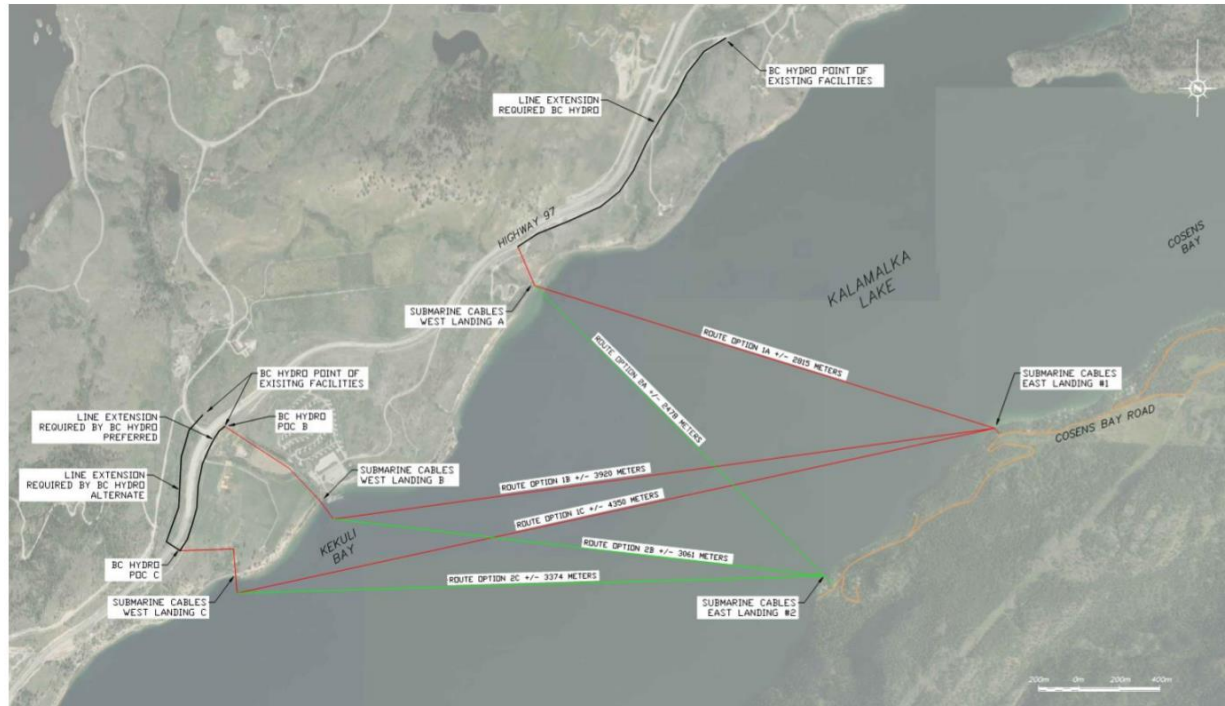
<sup>38</sup> Exhibit B-6, BCUC IR 7.3.1.

<sup>39</sup> Exhibit B-6, BCUC IR 7.2.1.

<sup>40</sup> Exhibit B-1, p. 19.

CBP states that, based on its years of connection and land-use alternative evaluations with FBC and BC Hydro, the preferred routing for the connection to BC Hydro's supply system was an underwater crossing of Kalamalka Lake. CBP identified two landing points on the east side of Kalamalka Lake and three alternate points of connection to BC Hydro's supply system on the west side, resulting in a total of six potential routing options.<sup>41</sup> These routing options are shown below in Figure 1.

**Figure 1: Project Routing Options<sup>42</sup>**



The following is a brief description of the landing sites considered by CBP on the west and east side of Kalamalka Lake:

- Kalamalka Lake – West Side<sup>43</sup>
  - Landing site A: Privately owned parcel of land adjacent to existing single phase BC Hydro distribution line. There is a significant elevation difference between the potential point of connection and the Lake, as well as a residential dwelling which would limit space for construction activities.
  - Landing site B: Privately owned parcel of land adjacent to existing three phase BC Hydro distribution line. The site is mostly farmland with reasonable grade down to the Lake, however its shore is located within critical fish habitat.
  - Landing site C: Privately owned parcel of land approximately 650m from existing three phase BC Hydro distribution line. The site is undeveloped vacant land within the Agricultural Land Commission (ALC) Land Reserve, is adjacent to an existing water intake pipe and its shore is not located within or adjacent to sensitive fish habitat.

<sup>41</sup> Exhibit B-1, p. 20.

<sup>42</sup> Exhibit B-1, Figure 3, p. 21.

<sup>43</sup> Exhibit B-1, p. 22

- Kalamalka Lake – East Side<sup>44</sup>

- Landing site #1: BC Ministry of Transportation and Infrastructure controlled land requiring considerable vegetation clearing as it is currently undisturbed. The site is not located within or adjacent to sensitive fish habitat.
- Landing site #2: Land owned collectively by KPE which is previously disturbed and includes an existing water intake pipe. The site is not located within or adjacent to sensitive fish habitat.

### **2.3 Preferred Alternative Justification**

CBP conducted an assessment of the six potential routing options. The assessment included a review of the technical, environmental and social factors for each underwater routing options.

In its assessment of landing sites on the west shore of Kalamalka Lake, CBP identified landing site C as “acceptable,” instead of the highest rating of “preferred” as given to landing site B. The “acceptable” rating for landing site C was determined because it requires a considerably longer directional drill, there is a sensitive riparian area in the alignment of the powerline, and the grade from the directional drill to the BC Hydro point of connection is considerably steeper than landing site B.<sup>45</sup> Landowners at landing sites A and B indicated to CBP that they did not want to entertain the Project on their land and would prefer for the Project to seek an alternate Project location, respectively.<sup>46</sup>

Of the sites considered on the east shore of Kalamalka Lake, landing site 2 was assessed as ‘preferred’ in part because the landing site aligns with an existing intake water pipe that is used as the water source for the community of Kalamalka Park Estates.<sup>47</sup> CBP submits that alignment with existing utilities minimizes environmental impact. Landing site C also aligns with existing infrastructure—a private landowner’s water intake pipe.<sup>48</sup>

The initial review of the routing options led CBP to identify routes 2B and 2C as feasible alternatives.<sup>49</sup> CBP subsequently completed constructability reviews and Class 4 cost estimates for those routes. Both routes were determined to be constructable and the Class 4 cost estimates yielded no material cost advantage.<sup>50</sup>

At the time of submitting the Application, CBP states there were no known or asserted Indigenous land titles or claims within or immediately adjacent to the Project, and therefore potential impacts to Indigenous titles or claims were not considered in the evaluation of routing alternatives.<sup>51</sup> However, in its Application, CBP recognizes as-yet to be filed claims that assert the Project falls within traditional territory of an Indigenous community may arise and therefore CBP submits it has continued to actively engage with Indigenous

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<sup>44</sup> Exhibit B-1, p. 21–22.

<sup>45</sup> Exhibit B-6, BCUC IR 9.5.

<sup>46</sup> Exhibit B-6, BCUC IR 9.7.

<sup>47</sup> Exhibit B-6, BCUC IR 9.6.

<sup>48</sup> Exhibit B-6, BCUC IR 9.6.

<sup>49</sup> Exhibit B-1, p. 23.

<sup>50</sup> Exhibit B-1, p. 24.

<sup>51</sup> Exhibit B-6, BCUC IR 9.11.

communities to identify any potential issues.<sup>52</sup> CBP notes that its evaluation of routing options identified no difference in potential impacts to Indigenous communities between routes 2B and 2C.<sup>53</sup>

CBP ultimately determined that route 2C is the preferred route as, unlike route 2B, the landowner at the 2C site was willing to host the project and the route would result in less impact on aquatic species.<sup>54</sup>

### *Positions of the Parties*

CBP submits that the reasons given for both FBC's and BC Hydro's inability to provide electrical service to the Community of Cosens Bay do not reflect on the ultimate viability of the Project.<sup>55</sup>

CBP also submits that BC Hydro has confirmed that it cannot connect the community of Cosens Bay and notes that BC Hydro's statement that "...a project designed, built, constructed, and maintained by CBP is [the] only viable way forward to electrify the community of Cosens Bay."<sup>56</sup>

### *Panel Determinations*

**The Panel finds that CBP has established a need for the Project.** The Panel is persuaded that CBP has demonstrated that the community members of Cosens Bay have a desire and need for electrical service to facilitate the safe and comfortable usage of their properties. It also notes the 58 letters of comment received in support of the Project during the course of this proceeding, many of which were said to have been submitted by Cosens Bay community members and Project Shareholders, confirming a strong community desire and need for the Project.

The Panel is satisfied that CBP has considered the various potential alternatives and that it pursued the FBC and BC Hydro direct service alternatives to their full extent before concluding that neither are viable alternatives. Regarding the BC Hydro direct service alternative, in particular, the Panel acknowledges CBP's continued efforts to work with BC Hydro to develop a workable solution. The Panel accepts that the BC Hydro direct service alternative is not viable due to the inability of CBP and its shareholders to overcome the estimated amount of BC Hydro's extension cost.

For the foregoing reasons, the Panel finds there is a demonstrated need for the project and considers the selection of a community led electric distribution system to be reasonable. The Panel is satisfied that the preferred routing option is the most appropriate based on current information.

## **3.0 Project Description**

### **3.1 Introduction**

CBP has proposed the following scope of work as its preferred alternative to provide electric service to the community of Cosens Bay:<sup>57</sup>

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<sup>52</sup> Exhibit B-6, BCUC IR 9.11.

<sup>53</sup> Exhibit B-6, BCUC IR 9.11.1.

<sup>54</sup> Exhibit B-1, p. 24.

<sup>55</sup> CBP Final Argument, para 9.

<sup>56</sup> CBP Final Argument, para 27.

<sup>57</sup> Exhibit B-1, p. 37.

- Connection to BC Hydro's 25 kV distribution system near to Highway 97 (Primary Service Connection, PSC);
- Installation of a revenue meter, backfeed protections, and other ancillary facilities at the PSC;
- Combination of overhead, submarine, and underground power line from the PSC to the community of Cosens Bay;
- Within the community of Cosens Bay, combination of overhead and underground 25 kV distribution power lines, transformers, secondary service cables, and other ancillary facilities; and
- Installation of a revenue meter at each customer's off-take point.

## 3.2 Basis of Design

### Sizing & Customer Load

CBP proposes to size its electrical system for the forecasted load of all land parcels within the community of Cosens Bay.<sup>58</sup> At the time of submitting the Application, CBP had secured participation from 54 of the 101 land parcels within the Cosens Bay community.<sup>59</sup> Of the 47 non-participating land parcels, 12 land parcels had executed Expressions of Interest (EOI) with CBP at an early stage of the Project development however elected not to ultimately execute Power Purchase Agreements (PPAs). The 35 remaining land parcels had not executed EOIs at any point.<sup>60</sup> CBP submits that once the Project is operational and substantively de-risked, these other non-participating landowners may join the Project or, as properties are bought and sold over time, new land parcel owners may choose to participate.<sup>61</sup>

CBP submits that there is no historical load data for the Cosens Bay community, and therefore it turned to third-party data sources to determine system sizing.<sup>62</sup> Through this approach, CBP determined that 5 kW/customer as a base peak load was both reasonable and appropriate for its planning and design activities.<sup>63</sup> CBP estimated an 8 kW/customer load in year 20 of the Project, which takes into account newer building requirements and increased year-round usage. The anticipated electrical load for the Project was therefore determined to be 888 kVA, which is based on 100 residential lots at 8 kW each with an operating factor of 0.9.<sup>64</sup>

### System Design

The Project will connect to BC Hydro's 25 kV distribution system near Highway 97. BC Hydro will be responsible for constructing a 650m extension between the existing 25 kV distribution system near Highway 97 and the interface location with the CBP Project (the PSC).<sup>65</sup> Equipment required at the interface between BC Hydro and CBP, such as a load break switch, fused cut-outs, surge arrestors, and revenue metering, will be located on three

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<sup>58</sup> Exhibit B-1, p. 38.

<sup>59</sup> Exhibit B-6, BCUC IR 4.1.1.1.

<sup>60</sup> Exhibit B-6, BCUC IR 4.1.1.1.

<sup>61</sup> Exhibit B-6, BCUC IR 4.1.1.1.

<sup>62</sup> Exhibit B-6, BCUC IR 16.6.

<sup>63</sup> Exhibit B-6, BCUC IR 16.6.

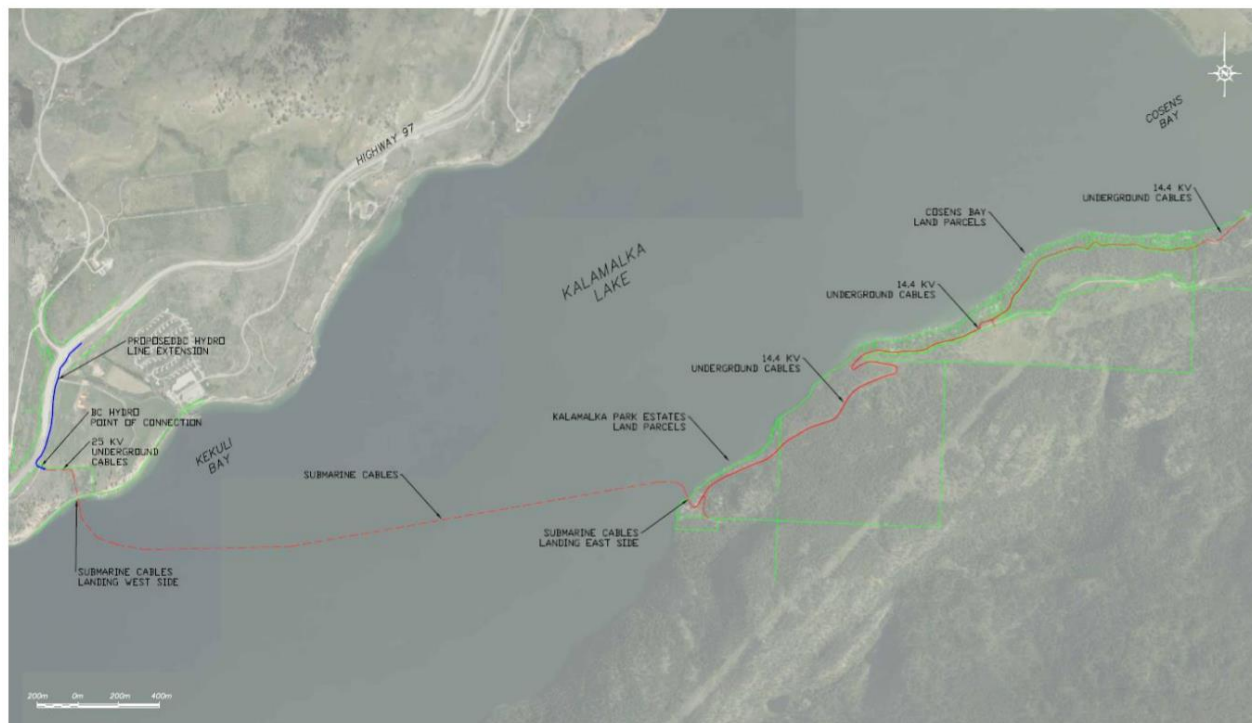
<sup>64</sup> Exhibit B-6, BCUC IR 16.6.

<sup>65</sup> Exhibit B-1, p. 41.



wooden power poles.<sup>66</sup> From the PSC to the Submarine Cable Landing location, the electrical cables will be direct buried to a minimum depth of 1000mm. Figure 2 below shows the location of the PSC on the west side of Kalamalka Lake, as well as the overall layout of the Project distribution system infrastructure.

**Figure 2: Project Layout<sup>67</sup>**



At the Submarine Cable Landing location on the west side of Kalamalka Lake, CBP proposes to install three high density polyethylene (HDPE) pipes as conduit to facilitate the installation of the electrical cables. The HDPE pipes will be installed using the horizontal directional drilling method at a minimum buried depth of 1000mm below private lands, however will cross under the Okanagan Rail Trail at a depth agreed to between CBP and the Regional District of Okanagan.<sup>68</sup> The total length of the horizontal directional drill of HDPE pipe is approximately 150m, starting approximately 55m from a marsh area on the west shore of Kalamalka Lake and finishing approximately 15m to 20m from the shore at a water depth of 4m to 7m.<sup>69</sup> CBP submits that the directional drilling method has been chosen to enter the west side of the lake to minimize environmental effects on sensitive fish and wildlife habitat and to avoid impacts to the Okanagan Rail Trail.<sup>70</sup>

The submarine portion of the distribution line will consist of three individual concentric neutral armoured submarine power cables laid on the bottom of Kalamalka Lake. The submarine cable installation route may vary somewhat depending on factors including lake bottom hazards, changing grade, cable tension requirements, and weather during installation.<sup>71</sup>

<sup>66</sup> Exhibit B-1, p. 38.

<sup>67</sup> Exhibit B-1, Figure 5, p. 37.

<sup>68</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>69</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>70</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>71</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.



HDPE conduit pipes will be installed at the landing location on the east side of Kalamalka Lake, however due to shallow bedrock, directional drilling is not a feasible option.<sup>72</sup> The HDPE conduit pipe on the east side of Kalamalka Lake will be buried to a depth of 750mm based on experience installing a community water line in the same area.<sup>73</sup> The HDPE pipe will exit the lake underground and continue through to a transition box on-shore. All exposed HDPE pipe will be protected with concrete covers which will then be covered with native rock to match the existing shoreline and with materials selected which are suitable for shore-zone fish spawning.<sup>74</sup>

The portion of the distribution system between the landing location on the east side of Kalamalka Lake and the community of Cosens Bay will consist of three individual single-phase feeders, each feeder supplying approximately one-third of the system load. The cables will be direct buried to a minimum depth of 1000mm below grade.<sup>75</sup> CBP submits that electing to bury the distribution cables provides additional safety and reliability compared to overhead installations.<sup>76</sup> The Project consists of underground cables installed using direct burial in some areas and cables installed in electrical ducts within areas where there is adequate space for pull boxes.<sup>77</sup>

CBP has defined the Delivery Point to each customer as a location on the property line of the customer's lot. The PPA further outlines that the customer will be responsible for the supply and installation of the power cable from the Delivery Point to the meter base. CBP will provide and install the revenue meter for each customer.<sup>78</sup>

Prior to the start of commercial operation, CBP intends to prepare and distribute a net metering plan to its customers.<sup>79</sup> CBP envisions that the net metering plan will support distributed generation installations by outlining the customer application process and establishing the connection requirements.<sup>80</sup>

The engineering and design of the Project will follow all applicable codes, standards, and reference guides.<sup>81</sup>

### **3.3 Safety and Reliability**

CBP engaged with its consultant MRS Management and the Department of National Defence (DND) to conduct an UXO risk assessment of the northern portion of Kalamalka Lake and the surrounding areas.<sup>82</sup> The assessments determined that there was no risk of UXO, but recommended mitigation measures such as the development of procedures to follow should a UXO be uncovered.<sup>83</sup>

The design of the Project incorporates reliability features such as the ability to shift load to different circuits in case of a prolonged outage.<sup>84</sup> In addition to full compliance with applicable codes and standards, CBP submits it has included several design elements to enhance safety. For example, the burial depth of the underground

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<sup>72</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>73</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>74</sup> Exhibit B-1, Appendix Exhibit 2.6.1, p. 4.

<sup>75</sup> Exhibit B-1, p. 38.

<sup>76</sup> Exhibit B-1, p. 39.

<sup>77</sup> Exhibit B-6, BCUC IR 18.2.

<sup>78</sup> Exhibit B-6, BCUC IR 16.11.

<sup>79</sup> Exhibit B-7, BCUC IR 39.3.

<sup>80</sup> Exhibit B-6, BCUC IR 32.20.

<sup>81</sup> Exhibit B-1, p. 39.

<sup>82</sup> Exhibit B-1, p. 39.

<sup>83</sup> Exhibit B-1, p. 39.

<sup>84</sup> Exhibit B-6, BCUC IR 18.5.

cables exceeds code requirement.<sup>85</sup> As stated in Section 3.4 below, the forecast operation costs also include funds to support targeted safety, reliability, and emergency response efforts.

Indicative major equipment inspection and maintenance intervals have been proposed by CBP.<sup>86</sup> A plan to document inspection and maintenance activities will be prepared prior to the start of commercial operations.<sup>87</sup>

CBP submits an Emergency Response Plan Framework with its Application, which it expects will be adopted and enhanced by the third-party ultimately selected to provide emergency response services.<sup>88</sup>

### **3.4 Operations**

The operating costs, both fixed and variable, have been forecast for operating years 1 through 20.<sup>89</sup> The forecast operating costs include the replenishment of the \$200,000 working capital fund that has been established to assist day-to-day cost management and support targeted safety, reliability, and emergency response efforts.<sup>90</sup>

CBP has designed the Project in such a way as to minimize operating requirements, and therefore has proceeded on the basis of not employing any full-time or part-time employees.<sup>91</sup> Nonetheless, CBP has created and budgeted for a staff equivalent role for the operational phase of the Project that will be responsible for cost controls, safety and risk management, contract and third-party management, stakeholder relations and general assistance to the CBP Board of Directors.<sup>92</sup> CBP has retained Pinter Electrical Consulting Inc. (PEC) for this role through to the end of year two of operations.<sup>93</sup> Beyond year two of operation, CBP notes that it anticipates either renewing its agreement with PEC or tendering for the staff equivalent role services from a different provider. CBP submits that qualified operational services are readily available in the region.<sup>94</sup>

### **3.5 Project Schedule**

CBP submits a development and construction schedule with its Application. The schedule shows a 12-month period from “mobilization & site preparation” to “clean-up, restoration & demobilization,” based on a Q3 2021 start.

Engineering and construction items on CBP’s critical path for the schedule are heavily dependent on regulatory approvals, most notably water sustainability and crown land tenure permits, federal Fisheries and Oceans Canada (DFO) Letter of Advice, and CPCN and tariff approvals.<sup>95</sup>

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<sup>85</sup> Exhibit B-6, BCUC IR 18.6.

<sup>86</sup> Exhibit B-6, BCUC IR 21.4.2.

<sup>87</sup> Exhibit B-6, BCUC IR 21.4.2.2.

<sup>88</sup> Exhibit B-1, p. 40.

<sup>89</sup> Exhibit B-1, Appendix Exhibit 7.5.2.

<sup>90</sup> Exhibit B-1, p. 40.

<sup>91</sup> Exhibit B-6, BCUC IR 3.2.

<sup>92</sup> Exhibit B-1, p. 6.

<sup>93</sup> Exhibit B-1, p. 6.

<sup>94</sup> Exhibit B-6, BCUC IR 3.5.

<sup>95</sup> Exhibit B-6, BCUC IR 19.1.

### 3.6 Project Risks

CBP's development and construction Risk Management Plan (RMP) was prepared in alignment with the Association of Advancement of Cost Engineering International (AACE International) Recommended Practices.<sup>96</sup> CBP notes that the objective of the RMP was "To develop a common understanding of Project risk such that risk is managed efficiently considering cost, schedule and safety elements." In support of this objective, the RMP was developed by first identifying risks and second by qualitatively analysing them.<sup>97</sup>

The qualitative analysis of the identified risk drivers determined that several resulted in major risks to the Project and required appropriate risk mitigations. CBP then further analyzed the probability and severity of these specific risk drivers following implementation of risk mitigations. The following six risk drivers remained above CBP's acceptable risk threshold despite implementation of risk mitigations:<sup>98</sup>

1. Regulatory delays;
2. Cost increase, for example, due to changes in project definition, work in winter vs autumn, contractor market;
3. Crown consultation delays;
4. Inability to obtain preferred private easement;
5. BC Hydro point of connection delays; and
6. Schedule delays.

CBP submits that the total forecast cost of all risk response measures is \$55,000, and these costs have been included within the Project's capital budget.<sup>99</sup>

A further \$10,000 risk contingency cost has been integrated into the Project's budget.<sup>100</sup> CBP also notes that in the unlikely event that contingencies are exceeded, an additional \$293,555 of capital support is available through the commitments of the Grid Promissory Notes.<sup>101</sup> The Grid Promissory Notes are discussed in greater detail in Subsection 4.4 below.

CBP also identified and assessed multiple risks that could occur during the operational phase of the electrification Project. The probability and severity of all identified operational risks were determined to be below the Project's risk threshold and no additional funds were added to the operational cost forecast.<sup>102</sup>

### 3.7 Project Permits

CBP provided a summary of the key federal, provincial and municipal permits and approvals required for the Project. The status of these permits and approvals were subsequently updated by CBP throughout this

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<sup>96</sup> Exhibit B-1, p. 45.

<sup>97</sup> Exhibit B-1, Appendix Exhibit 4.6, p. 3.

<sup>98</sup> Exhibit B-1, Appendix Exhibit 4.6, pp. 8–9.

<sup>99</sup> Exhibit B-1, Appendix Exhibit 4.6, p. 7.

<sup>100</sup> Exhibit B-1, p. 45.

<sup>101</sup> Exhibit B-6, BCUC IR 22.1.1.

<sup>102</sup> Exhibit B-1, p. 45.

proceeding.<sup>103</sup> Table 1 below lists the permits and approvals that CBP has received, while Table 2 below lists the permits and approvals that remain outstanding:

**Table 1: Completed Permits / Approvals / Private Agreements<sup>104</sup>**

<b>Permits / Approvals / Private Agreements - Completed</b>			
<b>Permit/Approval</b>	<b>Responsible Agency</b>	<b>Start or Application Date</b>	<b>Approval date</b>
Okanagan Rail Trail Crossing Agreement	RDNO	Q4 2019	July 2020
Road use agreement	MOTI	Q4 2019	August 2020
Water Sustainability Act (WSA) Sturt Creek	FrontCounter BC	Q3 2020	Q4 2020
Primary Service Connection	BC Hydro	Q3 2019	Q2 2021
ALR Permit	ALC	Q4 2019	Q1 2020
Revenue Metering	Measurement Canada	Q1 2020	Q2 2021
West Lake Landowner SRW Agreement	CBP	Q2 2020	Q3 2020
East Lake Landowner SRW Agreement	CBP	Q2 2020	Q3 2020

**Table 2: Outstanding Permits / Approvals / Private Agreements<sup>105</sup>**

<b>Permits / Approvals / Private Agreements - Outstanding</b>			
<b>Permit/Approval</b>	<b>Responsible Agency</b>	<b>Start or Application Date</b>	<b>Anticipated Approval Date</b>
Water Sustainability Act (WSA) Kalamalka Lake	FrontCounter BC	Q4 2019	Q3 2021
Crown Land Tenure for Kalamalka Lake crossing	FrontCounter BC	Q4 2019	Q3 2021
Crown Land Tenure for KPE to Cosens Bay	FrontCounter BC	Q1 2020	Q3 2021
Fish and Fish Habitat	Fisheries and Oceans Canada (DFO)	Q1 2020	Q3 2021

<sup>103</sup> Exhibit B-1, Appendix Exhibit 2.6.5; Exhibit B-6, BCUC IR 11.1 – 11.5; Exhibit B-7, BCUC IR 34.2; Exhibit B-15, BCUC IR 44.3

<sup>104</sup> Exhibit B-15, BCUC IR 44.3.

<sup>105</sup> Exhibit B-15, BCUC IR 44.3.

## *Positions of the Parties*

CBP submits it has the financial and technical capacity to undertake the Project and has the ability to ensure its safe and reliable operation.<sup>106</sup> CBP also submits it has demonstrated, through third party assessments, that there is no UXO safety risk within the Project area.<sup>107</sup>

## *Panel Discussion*

The Panel is persuaded that the scope of work as proposed under the preferred routing option is appropriate to address the Project need. The Panel notes that the approach taken by CBP in sizing its electrical system is reasonable.

The Panel is satisfied that CBP has addressed concerns raised in the Exemption Application relating to Public Safety and aspects of Long-Term viability. Public Safety concerns were primarily related to the risk of UXO within the Project Area. The Panel considers the evidence on the record regarding CBP's efforts to mitigate this risk, through its work with its consultant and with the DND, to be satisfactory.

Long-term viability concerns were focused on operation and maintenance planning which appeared at risk of being unsustainable, due to the dependence on community resources. The Panel considers CBP's approach to safe and reliable operations, as described in the evidence of this proceeding, to be acceptable. However, the Panel remains concerned that finalized Maintenance and Emergency Response plans have not yet been completed.

The Panel also notes that the BCUC's review and approval of CBP's net metering program are required prior to its implementation.

The Panel acknowledges that CBP submitted a CPCN Workplan and that it has therefore satisfied the requirements of Order G-71-20.

## **4.0 Project Costs and Rate Impact**

### **4.1 Project Cost Estimate**

The total anticipated cost of the Project is \$4.5 million.<sup>108</sup> PEC prepared the Project cost estimate, in consultation with CBP, to an AACE International Class 3 definition which has an accuracy range of -10 percent to +15 percent, with an 80 percent confidence interval.<sup>109</sup> A summary of the Project capital cost estimate is provided in Table 3 below.

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<sup>106</sup> CBP Final Argument, para 28.

<sup>107</sup> CBP Final Argument, para 27.

<sup>108</sup> Exhibit B-1, p. 54.

<sup>109</sup> Exhibit B-1, p. 54; Exhibit B-6, BCUC IR 25.5; Exhibit B-7, BCUC IR 40.11.

**Table 3: Summary of Estimated Project Capital Costs<sup>110</sup>**

<b>Cosens Bay Community Electrification Project</b>		
	<b>Estimate</b>	<b>Disbursed</b>
<b>On Land Works</b>		
BC Hydro Connection Costs	\$100,000	\$0
Electrical Distribution System	\$2,040,000	\$0
<b>In Lake Works</b>		
Submarine Cable Supply and Install	\$872,000	\$0
<b>Construction Sub-Total</b>	<b>\$3,012,000</b>	<b>\$0</b>
2% Escalation	\$60,000	\$0
<b>Construction Total</b>	<b>\$3,072,000</b>	<b>\$0</b>
<b>Soft Costs</b>		
Project Development	\$686,000	\$335,979
Legal	\$140,000	\$72,483
BCUC Applications	\$30,000	\$5,940
<b>Soft Costs Total</b>	<b>\$856,000</b>	<b>\$414,402</b>
<b>Project Total</b>	<b>\$3,928,000</b>	<b>\$414,402</b>
Contingency	\$372,000	\$0
Working Capital Fund	\$200,000	\$0
<b>Project Funding Requirement</b>	<b>\$4,500,000</b>	

Since the Exemption Application, CBP states that it has advanced the Project cost estimate from feasibility considerations to budget control considerations resulting in an increase to the Project cost estimate of approximately \$2 million.<sup>111</sup> CBP notes that the cost estimate in the Exemption Application was based on project feasibility information along with high level discussions with contractors, whereas the CPCN Project cost estimate is based on pricing provided by contractors following a detailed review of the Project, including constructability reviews.<sup>112</sup> CBP provided copies of the budgetary quotations received from third parties used to inform the cost estimate of the Electrical Distribution System, Submarine Power Cable supply and Submarine Cable Installation.<sup>113</sup>

In the event that CBP is required to suspend the Project for a period of time, it estimates the total cost of temporary environmental controls is less than \$75,000. In the event of a Project wind-down prior to construction completion, CBP estimates the cost to be less than \$150,000. This cost estimate of a Project wind-down includes abandonment of below grade and under water infrastructure, the removal of above ground infrastructure and other site clean-up and reclamation activities.<sup>114</sup>

The Project capital cost estimate does not currently include a reserve for suspension or wind-down of the Project. However, CBP submits that a reserve fund is not needed to ensure proper suspension or wind-down, as the Project already includes allowances that could cover the potential costs (i.e., excess Grid Promissory Note capacity of \$293,555 and the working capital fund of \$200,000.)<sup>115</sup>

<sup>110</sup> Exhibit B-1, p. 55.

<sup>111</sup> Exhibit B-6, BCUC IR 25.2; CBP provides a breakdown of the cost estimate increase of approximately \$2,011,000.

<sup>112</sup> Exhibit B-7, BCUC IR 40.1.

<sup>113</sup> Exhibit B-7, BCUC IR 40.4.

<sup>114</sup> Exhibit B-9, Panel IR 1.1.

<sup>115</sup> Exhibit B-9, Panel IR 1.2.

In making the final determination to proceed with construction of the Project, CBP will undertake a final cost estimate to check the bid offers compared to the Project cost estimate.<sup>116</sup>

## **4.2 Shareholder and Power Purchase Agreements**

Participation in the Project by community members of Cosens Bay is established through a Shareholder Agreement (SA) and a PPA. CBP submits that these agreements are to be read concurrently.<sup>117</sup>

The SA describes the terms and conditions of community member participation in the Project, for example addressing governance issues, shareholder rights, liabilities, indemnity conditions and basis for agreement termination.<sup>118</sup>

CBP submits that the PPA contains terms and conditions typical for such an agreement, as well as processes for establishing the Contract Price element of the rate, CBP's intention to avoid rate-shock, principles of energy reduction by CBP's customers, and processes for dispute resolution—including appeal to the BCUC.<sup>119</sup>

CBP has included the SA in its Application as evidence for the BCUC to consider as part of its review of the requested CPCN, however CBP is not seeking approval of the SA in this Application. CBP acknowledges that some of the terms within the SA could be construed as matters affecting the rate for the service to be offered by the Project, and therefore CBP intends to seek the BCUC's approval of the relevant terms in the SA in a separate rate application, pursuant to sections 60 and 61 of the UCA.<sup>120</sup> CBP submits it similarly intends to file for approval of the relevant terms of the PPA in a future rates application.<sup>121</sup>

Upon execution of the SA and PPA, CBP's corporate counsel will issue one common share in CBP to the customer (i.e., one common share per SA).<sup>122</sup> CBP submits that although section 50(2) of the UCA requires all public utilities to obtain approval of the BCUC prior to issuing securities, this approval is not currently required from the BCUC because CBP does not currently fall under the definition of a public utility under the UCA.<sup>123</sup> However, CBP notes that it will require BCUC approval to issue securities to new customers on an on-going basis and intends to request that the BCUC provide advance approval for all issuance of common shares pursuant to the terms of the PPA to customers of the Project.<sup>124</sup>

## **4.3 Funding Commitment Levels**

CBP submits that following extensive consultation with Cosens Bay community members, it has developed SAs and PPAs which define three different series of CBP customers. Each series includes a commitment level that sets the limit on the capital contributions to be made by each customer.<sup>125</sup>

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<sup>116</sup> Exhibit B-6, BCUC IR 25.2.

<sup>117</sup> Exhibit B-1, p. 60.

<sup>118</sup> Exhibit B-1, p. 60.

<sup>119</sup> Exhibit B-1, pp. 60–61.

<sup>120</sup> Exhibit B-6, BCUC IR 28.3.

<sup>121</sup> Exhibit B-6, BCUC IR 29.4.

<sup>122</sup> Exhibit B-1, p. 69.

<sup>123</sup> Exhibit B-6, BCUC IR 29.17.1.

<sup>124</sup> Exhibit B-6, BCUC IR 29.17.1.

<sup>125</sup> Exhibit B-1, pp. 59–60.

Based upon the shareholder Commitment Levels and 55 executed PPAs, CBP states that it has a total development capital availability of \$2,793,555.<sup>126</sup> Details regarding customer series and commitment levels are provided in Table 4 below.

**Table 4: Customer Series & Commitment Levels<sup>127</sup>**

Customer Series	Lifecycle Stage	Commitment Levels	Composition
Series 1	community members who executed an Expression of Interest in 2017 ("EOI")	up to \$50,000	Funding Cap calculated as: \$2,500 from the EOI phase and up to \$47,500 under the PPA
Series 2	community members who did not execute an EOI, but who execute a SA and PPA prior to the start of commercial operations	up to \$90,000	Funding Cap calculated as: (\$2,500 + final average all-in capital cost / shareholder) x 1.4 to a maximum of \$90,000
Series 3	community members who execute a SA and PPA following the start of commercial operations	up to \$100,000 + COLA	Funding Cap calculated as: (\$2,500 + final average all-in capital cost / shareholder) x 1.5 to a maximum of \$100,000 plus a cost of living adjustment ("COLA")  The COLA is established at 2% (representative of the CPI over the past 18 years), beginning in operating year 2

CBP states it undertook extensive community consultation in establishing the terms and conditions of the SA and PPA. The following factors were identified during the consultation process and were incorporated into the SAs and PPAs:<sup>128</sup>

- Risk exposure: those community members who contribute to the initial capital required are exposed to the greatest amount of development risk compared to those joining later in the Project's lifecycle;
- Time allocation: given that risk exposure diminishes over time, the point in time a customer joins the Project should be recognized;
- Design consideration: given the small number of potential customers in the Cosens Bay community, it was considered not practical to construct the Project in phases based only on committed load;
- Capital recovery: a reasonable expectation for capital recovery should be recognized; and

<sup>126</sup> Exhibit B-1, p. 7.

<sup>127</sup> Exhibit B-1, pp. 59–60.

<sup>128</sup> Exhibit B-1, pp. 58–59.



- Future connection costs: connection costs for new joiners to the electrification Project should be recovered directly from new customers and should not impact existing customer rates.

Based upon input received by CBP, it was decided that the most reasonable and direct approach was to escalate the entry cost according to risk, and thereafter treat each customer/shareholder equally. Further, CBP notes that every owner of the finite set of land parcels in the Cosens Bay community was made aware of the opportunity to participate from the outset, so no party has been unfairly treated throughout the process. To date, CBP states that it has not received any negative feedback on the chosen structure.<sup>129</sup>

CBP notes that feedback it received during its consultation activities with the Cosens Bay community indicated that prospective participants in the Project understood and accepted that the greatest risk fell to Series 1 customers and that progressive levels of capital commitment were critical to securing Series 1 customer support.<sup>130</sup>

The two percent cost of living adjustment (COLA) for Series 3 customers noted in Table 4 above was established by CBP considering historical rates of inflation and the Bank of Canada's target rate.<sup>131</sup> The COLA will be applied in each year of the 40-year term of the PPA, with decisions beyond year 40 to be made by CBP shareholders at the time, subject to regulatory requirements.<sup>132</sup> CBP believes that the two percent COLA will not result in the Series 3 funding cap becoming too expensive for customers to enter the Project in the future, as demonstrated by its Net Present Value (NPV) analysis provided in the Application.<sup>133</sup>

#### **4.4 Grid Promissory Notes**

As mentioned above, the total development capital available to CBP is \$2,793,555. As the total cost estimate for the Project is \$4,500,000, CBP was faced with a projected capital shortfall of \$1,706,445. CBP states that it elected not to pursue bank or third-party financing, and alternatively canvassed all shareholders to inquire whether they would be willing to provide additional capital funding on a voluntary basis.<sup>134</sup> Eight Series 1 shareholders subsequently agreed to contribute a total of \$2,000,000 of additional capital support to be used in the construction phase of the Project in the form of Grid Promissory Notes.<sup>135</sup>

The Grid Promissory Note form, submitted by CBP with its Application and executed by each shareholder providing this additional capital funding, outlines the terms for accessing the funds and for the timing of their repayment. The \$2 million in Grid Promissory Notes can only be accessed following the start of construction and any undrawn credit that remains after the Project has achieved commercial operations will expire and no longer be available to CBP. Any credit drawn from the Grid Promissory Notes will bear an annual compound interest rate of three percent.<sup>136</sup>

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<sup>129</sup> Exhibit B-6, BCUC IR 26.2.

<sup>130</sup> Exhibit B-6, BCUC IR 4.1.

<sup>131</sup> Exhibit B-6, BCUC IR 26.1.2.

<sup>132</sup> Exhibit B-6, BCUC IR 26.1.4.

<sup>133</sup> Exhibit B-6, BCUC IR 26.1.4.1

<sup>134</sup> Exhibit B-1, p. 64.

<sup>135</sup> Exhibit B-1, p. 64.

<sup>136</sup> Exhibit B-1, pp. 64–65.

Any additional capital support drawn from the Grid Promissory Notes will be repaid in full to the participating shareholder creditors within 15 years.<sup>137</sup> Over the first 10 years of the Grid Promissory Notes term, repayment will be made from a portion of capital contributions received from new customers; if no new customers join the Project during this period, then no repayment will be made.<sup>138</sup> Over years 11 to 15 of the Grid Promissory Notes term, repayment will be made on a straight-line basis and recovered from all customers as part of the Contract Price established in the PPA. CBP states that repayment of the Grid Promissory Notes will rank in priority to any capital recovery for its customers.<sup>139</sup>

CBP submits that should it consider that the rate impact in Operating year 11 is too onerous, if for example no new customers have joined the Project, it would consider other financing alternatives such as new debt or refinancing from shareholders in order to limit rate shock.<sup>140</sup>

In the event that the final cost estimate of the Project exceeds the current available capital funding amount of \$4,793,555 (i.e., customer commitment levels and Grid Promissory Notes combined), CBP would return to its shareholders with an analysis of options and seek a decision on whether to proceed with the Project or not.<sup>141</sup> CBP notes that it has strong support from its shareholders and is confident that in this scenario additional funds will be made available.<sup>142</sup>

#### **4.5 Capital Recovery**

CBP states that the SA provides the Board with the discretion, but not the obligation, following the commencement of commercial operations and after all the Grid Promissory Notes have been repaid, to undertake targeted capital recovery depending on CBP's financial position and working capital needs.<sup>143</sup>

CBP submits that any capital recovery would be equally distributed, pro-rata, among all current shareholders, regardless of when they joined the Project, to a maximum of their respective commitment level.<sup>144</sup> CBP further submits that with all shareholders treated equally for any future capital recovery, the program is just and fair.<sup>145</sup>

#### **4.6 Indicative Rates**

In the Application, CBP provides a summary of the indicative costs of service and the associated customer rates for operating years 1 to 5 based on an assumed customer load of 4,000 kWh per year, as reproduced in Table 5 below.<sup>146</sup>

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<sup>137</sup> Exhibit B-1, p. 65.

<sup>138</sup> Exhibit B-1, p. 65; Exhibit B-6, BCUC IR 31.7.

<sup>139</sup> Exhibit B-1, p. 65.

<sup>140</sup> Exhibit B-7, BCUC IR 42.11.

<sup>141</sup> Exhibit B-7, BCUC IR 41.1.

<sup>142</sup> Exhibit B-7, BCUC IR 41.1.

<sup>143</sup> Exhibit B-1, p. 61.

<sup>144</sup> Exhibit B-1, p. 61.

<sup>145</sup> Exhibit B-6, BCUC IR 27.4.

<sup>146</sup> Exhibit B-1, p. 67.

**Table 5: Indicative Cost of Service & Customer Rates**

Input	Operating Year				
	1	2	3	4	5
Procurement Price	\$28,218	\$21,811	\$23,500	\$25,287	\$27,180
O&M Fee	\$77,551	\$77,379	\$79,841	\$70,252	\$79,306**
Recovery Amount	\$0	\$0	\$0	\$0	\$0
<b>Total Cost of Service</b>	<b>\$105,769</b>	<b>\$99,190</b>	<b>\$103,341</b>	<b>\$95,539</b>	<b>\$106,487</b>
No. of Customers	55	56	57	58	59
Cost of Service/Customer	\$1,923.07	\$1,771.25	\$1,812.99	\$1,647.22	\$1,804.86
<b>Contract Price (¢/kWh)^</b>	<b>48.08</b>	<b>44.28</b>	<b>45.32</b>	<b>41.18</b>	<b>45.12</b>

\*\* a \$6,000 allocation was included in Operating Year 5 to account for a paid, external Board member position.

^ customer load included as 4,000 kWh/yr<sup>15</sup>

CBP conducted sensitivity analyses to assess the impact of varied customer growth rates on the annual cost of service per customer.<sup>147</sup> The results of CBP's analysis of cost of service impacts based on half the base case customer growth rate are provided in Table 6 below.<sup>148</sup>

**Table 6: Indicative Cost of Service & Customer Rates**

Input	Operating Year				
	1	5	10	15	20
Base Case					
No. of Customers	55	59	64	69	74
Cost of Service/Customer	\$1,923.07	\$1,804.86	\$1,660.82	\$1,852.15	\$2,020.48
Half Case					
No. of Customers	55	57	60	62	65
Cost of Service/Customer	\$1,923.07	\$1,868.18	\$1,771.54	\$2,061.26	\$2,300.23
<b>Annual Delta (\$)*</b>	--	<b>63.33</b>	<b>110.72</b>	<b>209.11</b>	<b>279.76</b>

\* costs include inflation at 2% annually.

CBP submits it is not aware of any direct comparable benchmark rates from other systems and that, in any case, benchmark rates may not be relevant as there are no other viable alternatives to the Project.<sup>149</sup>

Further, CBP submits that the indicative rates are just and reasonable and not unduly discriminatory as all customers will pay the same rate, regardless of when they join the Project; there is no mark-up on expenses; and there has been extensive shareholder/customer consultation.<sup>150</sup> Further, CBP states that rate determination will be the subject of a future rates application with the BCUC.<sup>151</sup>

<sup>147</sup> Exhibit B-6, BCUC IR 32.3.

<sup>148</sup> Exhibit B-1, p. 68.

<sup>149</sup> Exhibit B-1, p. 69.

<sup>150</sup> Exhibit B-1, pp. 66–67.

<sup>151</sup> CBP Final Argument, p 14.

## *Positions of the Parties*

CBP submits it has prepared a robust cost estimate that is based on appropriate costs and contains acceptable consideration of risk and allocation of contingency for that risk.<sup>152</sup>

## *Panel Determinations*

**The Panel finds the Project cost estimate is reasonable.** The Project cost estimate was prepared to an AACE International Class 3 level of accuracy in accordance with the CPCN Guidelines.

**The Panel finds the funding commitment levels and capital recovery proposals reasonable. The Panel also finds the Grid Promissory Notes to be a reasonable source of additional financing for the Project.**

The Panel notes that CBP does not require BCUC approval for shares issued prior to a CPCN; however, it will require BCUC approval to issue securities to new customers on an on-going basis once the Project is constructed, should a CPCN be issued, and therefore directs CBP to seek BCUC approval prior to the issuance of any additional security. Once a CPCN has been issued, CBP may submit an application for approval of CBP's PPA and SA.

In the event of the Project being wound down prior to becoming operational or otherwise, the Panel is not sanctioning the abandonment of underwater infrastructure in place. CBP will need to follow the abandonment procedures required by all federal and provincial regulations.

In the event that the Project commences and is subsequently suspended or wound down, the Panel considered the need for a reserve fund to cover the resulting costs. CBP submits that a reserve fund is not needed to ensure proper suspension or wind-down, as the Project already includes allowances that could cover the potential costs, such as excess Grid Promissory Note capacity of \$293,555.<sup>153</sup> The Panel is satisfied that there are currently enough allowances available to cover the associated costs.

The Panel reminds CBP that a revenue requirement application is required to be filed before charging any rates to customers.

## **5.0 Environment & Archaeology**

### **5.1 Environment**

CBP engaged Arsenault Environmental Consulting to prepare an Environmental Impact Assessment (EIA) and an Environmental Management Plan (EMP) for the Project.<sup>154</sup> The EIA includes a site risk assessment along the Project routing corridor to identify and address environmental concerns, such as impacts to aquatic life and vegetation.<sup>155</sup> The EMP provides a framework to manage the environmental risks of the Project and to reduce the potential for adverse impacts by, for example, establishing the roles and responsibilities of all parties involved in the construction of the Project and also by documenting best practices to mitigate or reduce adverse

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<sup>152</sup> CBP Final Argument, paras 30–31.

<sup>153</sup> Exhibit B-9, Panel IR 1.2.

<sup>154</sup> Exhibit B-1, p. 26.

<sup>155</sup> Exhibit B-1, Appendix Exhibit 2.6.1, pp. 6–10.

environmental impacts.<sup>156</sup> Both the EIA and EMP documents were submitted to FrontCounter BC in November 2019 in support of Project permitting processes, and CBP states that both documents were accepted as complete by FrontCounter BC in March 2020.<sup>157</sup> CBP also states that only those areas classified as Crown Land or protected under the *Water Sustainability Act* (WSA) were included in the Project EMP.<sup>158</sup> Nevertheless, CBP submits it is committed to appropriate mitigation of environmental impacts in the construction of the Project.<sup>159</sup>

Contractors selected by CBP to work on the Project will be familiar with all aspects of the Project EMP and with the recent best management practices when working around water bodies.<sup>160</sup> CBP notes that its construction monitoring plans align with the BC Natural Resource Best Management Practices, and further submits that monitoring of the horizontal directional drilling will exceed these Best Management Practices through the use of underwater video cameras to track sediment disruption and settlement.<sup>161</sup>

CBP submits that the EIA and EMP have been undertaken in-line with the applicable regulatory requirements, outlined in part by the requirements of the Crown Land Tenure applications submitted and the WSA approvals being sought.<sup>162</sup> CBP submits that the *Environmental Impact Assessment Regulation* (Regulation) does not apply to the Project, as the Minister of Environment and Climate Change Strategy has not requested an Environmental Impact Assessment be completed.<sup>163</sup> CBP further states that although the assessment requirements outlined in the Regulation do not apply in this case, the EIA and EMP documents prepared for the Project have considered the assessment categories required by the Regulation and have incorporated associated mitigation measures.<sup>164</sup> These include mitigation measures to avoid and minimize potential adverse impacts to water quality, air quality, land use, water use, aquatic ecology and terrestrial ecology. CBP also submits that environmental assessment requirements under the *Environmental Assessment Act* (EAA) similarly do not apply to the Project, as the Project scope and effects do not meet the criteria threshold defined in the *Reviewable Project Regulation* under the EAA.<sup>165</sup>

Construction of the Project will be timed to minimize disruption to breeding birds and aquatic ecologies.<sup>166</sup> CBP states that other than these, there are no timing windows which may restrict construction activities.<sup>167</sup>

OKIB submitted evidence into the proceeding, including a technical memorandum written by a professional engineer which assesses the EIA and EMP documents submitted by CBP. The technical memorandum states that the EIA and EMP rely on incomplete and/or out-of-date citations regarding regulatory requirements and performance standards.<sup>168</sup> The technical memorandum also notes that horizontal directional drill schematic drawings significantly understate the potential disturbance to soils/vegetation and that some information is

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<sup>156</sup> Exhibit B-1, Appendix Exhibit 2.6.1, pp. 11–19.

<sup>157</sup> Exhibit B-1, p. 26.

<sup>158</sup> Exhibit B-13, OKIB IR 2.1.10

<sup>159</sup> Exhibit B-13, OKIB IR 2.1.10

<sup>160</sup> Exhibit B-13, OKIB 2.6.2.

<sup>161</sup> Exhibit B-13, OKIB IR 2.5.1.

<sup>162</sup> Exhibit B-13, OKIB IR 2.1.13.

<sup>163</sup> Exhibit B-13, OKIB IR 2.1.1.

<sup>164</sup> Exhibit B-13, OKIB IR 2.1.1.

<sup>165</sup> Exhibit B-13, OKIB IR 2.1.13.

<sup>166</sup> Exhibit B-13, OKIB IR 2.1.2.

<sup>167</sup> Exhibit B-13, OKIB IR 2.1.2.

<sup>168</sup> Exhibit C1-6, Appendix A, p. 1.

missing.<sup>169</sup> As a recommendation, the technical memorandum states that the EMP ought to be revised to address the identified deficiencies and omissions.<sup>170</sup>

OKIB subsequently confirmed that the specific information relating to the horizontal directional drilling activity that the technical memorandum stated as missing had been previously provided by CBP.<sup>171</sup>

CBP confirmed that it has submitted the EIA and EMP documents to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), to DFO and to the Regional District of North Okanagan as part of permit applications under review by these authorities.<sup>172</sup> CBP submits that it has not received any requests to update or revise the EIA and EMP.<sup>173</sup>

## 5.2 Archaeology

CBP retained Ursus Heritage Consulting (Ursus) to complete an archaeological Preliminary Field Reconnaissance (PFR) of the Project site. The work was conducted in April 2020 by an archaeologist from Ursus and was assisted by a member of OKIB.<sup>174</sup> The purpose of the PFR was to identify and evaluate any areas of archaeological potential within the Project area and to provide recommendations regarding the need and appropriate scope of further archaeological studies.

The PFR did not identify any archaeological resources within the Project area, however it did identify one area of high archaeological potential on the western bank of Kalamalka Lake.<sup>175</sup> The PFR report by Ursus further recommended that CBP conduct an archaeological impact assessment (AIA) level study requiring a Heritage Conservation Act (HCA) Section 12.2 Heritage Inspection Permit issued by the Archaeology Branch of the FLNRORD.<sup>176</sup>

CBP proceeded to commence the AIA process, and retained Ursus to file the necessary HCA permits, which it did on October 1, 2020.<sup>177</sup> On July 6, 2021, CBP submitted a draft AIA report on a confidential basis.<sup>178</sup>

### *Positions of the Parties*

CBP submits that through its detailed design, environment, and engagement efforts, CBP has identified substantive environmental protection and mitigation measures to minimize any potential effects of the Project.<sup>179</sup> CBP states that appropriate plans and controls will be implemented during the Project construction that focus on aquatic ecology, terrestrial ecology, invasive plant species management, spill response and protection, noise control, air quality, water use, and fire and wildlife.

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<sup>169</sup> Exhibit C1-6, Appendix A, p. 1.

<sup>170</sup> Exhibit C1-6, Appendix A, p. 2.

<sup>171</sup> Exhibit C1-8, CBP IR 1.1–1.2.

<sup>172</sup> Exhibit B-15, BCUC IR 44.1.

<sup>173</sup> Exhibit B-15, BCUC IR 44.1.1.

<sup>174</sup> Exhibit B-1, Appendix Exhibit 2.6.3, p. 1.

<sup>175</sup> Exhibit B-1, Appendix Exhibit 2.6.3, p. 13.

<sup>176</sup> Exhibit B-1, Appendix Exhibit 2.6.3, p. 13.

<sup>177</sup> Exhibit B-6, BCUC IR 23.1.1.

<sup>178</sup> Exhibit B-14-1.

<sup>179</sup> CBP Final Argument, para 11.

CBP submits the AIA that it conducted adequately addresses archaeological and heritage issues and that the extensive environmental and archaeological reviews undertaken demonstrates that it is committed to best practices to protect archaeological and heritage resources.<sup>180</sup>

OKIB states that CBP misunderstands its concerns regarding the EIA and EMP.<sup>181</sup> OKIB is not concerned that the EIA and EMP documents violate regulatory requirements for this type of project. OKIB states that the EIA and EMP documents do not meet the typical requirements or expected standards of such documents, and that they are incomplete assessments.<sup>182</sup> OKIB submits that it is left without important information regarding potential environmental impacts of the Project since the EIA defers many issues to the EMP, which then defers to the drilling contractor's environmental protection plan.<sup>183</sup> OKIB submits it is not clear, as a result, what environmental protection measures CBP is actually committing to put in place.

OKIB submits that although no regulatory authority has requested changes to CBP's EIA or EMP, it is OKIB's understanding that the review of the relevant permit applications remains in very early stages based on the slow pace of consultation.<sup>184</sup>

Regarding the AIA, OKIB submits that it has not been finalized by CBP, making it difficult for OKIB to assess archaeology-related impacts on its Aboriginal title and rights or other cultural impacts in this area.<sup>185</sup> OKIB further states that CBP's draft AIA was completed in advance of the completion of OKIB's Culture and Heritage Policy, which will provide guidance on what to do when heritage artifacts and sites are discovered.<sup>186</sup> OKIB submits that the AIA should not be finalized until the OKIB Culture and Heritage Policy has been approved by OKIB council.<sup>187</sup>

In reply, CBP submits that it has been extremely clear on the mitigation measures that will be employed, particularly in the most important areas such as the entry of the Project into Kalamalka Lake on both the East and West Shores.<sup>188</sup> CBP also states that FLNRORD has had significant opportunity to request updates to the Project EIA/EMP if it felt that such updates were necessary.<sup>189</sup>

CBP also states that it is committed to implementing the results of the AIA as it is finalized, and to developing the Project in a way that minimizes archaeological impact.<sup>190</sup> CBP is also committed to full compliance with the applicable regulatory scheme under the HCA, as well as the HCA protocols which necessitate involvement from OKIB as the nearest First Nation to the Project should any archaeological remains be discovered.<sup>191</sup>

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<sup>180</sup> CBP Final Argument, para 84.

<sup>181</sup> OKIB Final Argument, para 51.

<sup>182</sup> OKIB Final Argument, para 51.

<sup>183</sup> OKIB Final Argument, para 51.

<sup>184</sup> OKIB Final Argument, para 53.

<sup>185</sup> OKIB Final Argument, para 49.

<sup>186</sup> OKIB Final Argument, para 50.

<sup>187</sup> OKIB Final Argument, para 50.

<sup>188</sup> CBP Reply Argument, para 41.

<sup>189</sup> CBP Reply Argument, para 42.

<sup>190</sup> CBP Reply Argument, para 36.

<sup>191</sup> CBP Reply Argument, para 37.

## Panel Discussion

The Panel is satisfied, based on the evidence, that CBP has provided adequate information regarding the environmental and archaeological studies it has completed, the risk and mitigation measures identified, as well as the future work it has committed to.

The Panel acknowledges that the Project is not considered a Reviewable Project under the EAA, nor does the *Environmental Impact Assessment Regulation* apply to the Project. The Panel is satisfied that the EIA and EMP are to be assessed as part of CBP's other permitting processes and that CBP has committed to implement similar practices outlined in the EMP to private lands upon which construction activities may not require permitting.

The Panel accepts CBP's commitment to implement the final results of the AIA. The Panel is also satisfied that CBP's compliance with the HCA, as may be applicable, is sufficient to safeguard archaeological resources that may be uncovered by the Project. The Panel notes that further information regarding OKIB's concerns regarding archeological impacts are presented in Section 6 below.

## 6.0 Public Engagement and Indigenous Consultation

This Section of the decision focuses on the adequacy of Public Engagement and Indigenous Consultation on the Project. Three distinct sub-sections are included:

- Section 6.1 addresses CBP's efforts to inform and engage with potentially affected stakeholders regarding the Project;
- Section 6.2 addresses CBP's own efforts to engage with potentially impacted Indigenous communities regarding the Project, in particular OKIB;
- Section 6.3 addresses Crown consultation with potentially impacted Indigenous communities regarding the Project. Prior to discussing the adequacy of the Crown's consultation regarding the Project, this sub-section explores the duty to consult, the BCUC's role with respect to consultation and the scope of the consultation owed to Indigenous communities based on the specific context of the Project.

The Indigenous consultation portion of this section focuses specifically on consultation with OKIB, as this was the only Indigenous community which intervened in this proceeding.

### 6.1 Public Engagement

CBP identified a list of key stakeholders with whom information disclosure and consultation activities have been completed. The list of key stakeholders includes the following parties:<sup>192</sup>

- Cosens Bay community members
- Cosens Bay Property Owners Society
- Local area private and public land holders
- Regional District of North Okanagan
- Greater Vernon Advisory Committee

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<sup>192</sup> Exhibit B-1, pp. 34–35.



- BC Ministry of Transportation and Infrastructure
- BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNROD)
- Technical Safety BC
- BC Parks
- BC Hydro
- FortisBC Inc
- Local construction contractors and equipment suppliers
- Telus
- Shaw
- Agricultural Land Commission (ALC)
- Department of National Defence (DND)
- Measurement Canada
- Fisheries and Oceans Canada (DFO)
- Transport Canada, Navigable Waters

CBP submits it has been actively creating awareness of the Project within the community and amongst the identified stakeholders. CBP provides a full summary of its consultation activities with each stakeholder, dating back to in some instances 2017.<sup>193</sup> Over this time, CBP has developed a Project website that continues to disclose information about the Project, receive and respond to stakeholder input, and provide other relevant information.<sup>194</sup>

### *Panel Discussion*

Based on the evidence, the Panel is satisfied with CBP's consultation within its community and with affected non-indigenous stakeholders.

## **6.2 Indigenous Engagement**

In 2019, CBP undertook a review of relevant resources, such as the Province's Crown Land Tenure Application Portal's Consultative Areas Database (CAD), to identify Indigenous communities who may be interested in the proposed Project activities.<sup>195</sup> CBP was not able to identify any communities using the available resources, and therefore decided to include in its engagement activities the closest Indigenous community to the Project, the Okanagan Indian Band (OKIB).<sup>196</sup> In 2020, CBP expanded its Indigenous engagement activities to include the Okanagan Nation Alliance (ONA) and its seven member Nations (the Okanagan Indian Band, Upper Nicola Band, Westbank First Nation, Penticton Indian Band, Osoyoos Indian Band and Lower and Upper Similkameen Indian Bands).<sup>197</sup>

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<sup>193</sup> Exhibit B-1, Appendix Exhibit 3.3–3.3.1.

<sup>194</sup> Exhibit B-1, Appendix Exhibit 3.3.

<sup>195</sup> Exhibit B-1, p. 28.

<sup>196</sup> Exhibit B-1, p. 29.

<sup>197</sup> Exhibit B-1, p. 29.

CBP submits that it engaged with OKIB between July and December 2019, prior to any Crown involvement, by means of in-person visits and information exchanges. CBP continued its efforts to engage with OKIB in 2020, which included offering to attend meetings, distributing Project Newsletters and providing Project regulatory notices. At this time, OKIB notified CBP that there would be no formal response until the Crown referral is received.<sup>198</sup> CBP states that actionable outcomes resulted from their engagement efforts, such as OKIB's recommendation to retain the consultant Ursus to complete the Archaeological Overview Assessment and OKIB's identification of in-house capability to support a UXO field assessment, if such an assessment is required in the future.<sup>199</sup>

CBP similarly engaged with ONA in 2020. Through discussion with the ONA Executive Director, CBP was informed that there will be no formal response from ONA until the Crown referral is received.<sup>200</sup> A full chronological summary of CBP Indigenous engagement activities is provided within the Application.<sup>201</sup>

### *Positions of the Parties*

CBP submits that its engagement efforts with OKIB to date have been extensive and should be considered as part of the determination of the adequacy of consultation. In summarizing its efforts, CBP states it began communication with OKIB in 2019, provided information to OKIB specific to the Project design, kept that information up to date, and followed up with phone calls, offers to meet, and emails to OKIB staff. CBP further submits that engagement efforts have been meaningful in that, for instance, CBP has incorporated OKIB and OKIB member recommendations and expertise into Project design through the archaeological work completed and the involvement of OKIB members in that work.<sup>202</sup>

OKIB acknowledges that CBP has reached out and made efforts to provide information to OKIB, and that OKIB and CBP met on May 13, 2021.<sup>203</sup> However, OKIB states that it requires funding and resources, including experts and consultants, to compile and analyse OKIB knowledge and identify the interaction between rights and cultural practices and the Project's expected impacts.<sup>204</sup> Since OKIB has not been provided the necessary capacity support to assess impacts to its Syilx<sup>205</sup> Aboriginal title and rights, Crown consultation is inadequate.<sup>206</sup> OKIB distinguishes between the scope of funding for its participation in the BCUC proceeding and the scope of funding for its participation in Crown consultation.<sup>207</sup>

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<sup>198</sup> Exhibit B-1, p. 30.

<sup>199</sup> Exhibit B-1, p. 30.

<sup>200</sup> Exhibit B-1, p. 30.

<sup>201</sup> Exhibit B-1, Appendix Exhibit 3.2.

<sup>202</sup> CBP Reply Argument, para 21.

<sup>203</sup> OKIB Final Argument, para 42.

<sup>204</sup> OKIB Final Argument, para 39.

<sup>205</sup> OKIB is a member community of the Syilx people, who assert the unextinguished Aboriginal Title and Rights to lands and resources within the Okanagan (Syilx) Territory; Exhibit C1-1, p.4.

<sup>206</sup> OKIB Final Argument, paras 42 & 47.

<sup>207</sup> OKIB Final Argument, para 41.

## Panel Discussion

The Panel acknowledges CBP's sustained efforts to engage with OKIB, as demonstrated by the evidence on the record, and is persuaded that CBP will continue to engage with OKIB and other Indigenous communities throughout the construction and operation phases of the Project.

The Panel however does distinguish between what will satisfy Indigenous engagement led by CBP that is part of public consultation and the Crown's duty to consult with First Nations. As noted in the evidence, the Crown has not delegated procedural aspects of consultation to CBP.<sup>208</sup> Therefore, the Panel must make a determination on the adequacy of Crown consultation, which is provided in the following sections of this decision.

### 6.3 Indigenous Consultation

#### 6.3.1 Duty to Consult

The Crown has a legal duty to consult First Nations when making decisions that may affect Aboriginal and treaty rights or title. The Crown's duty is guided by numerous court decisions, most notably the Supreme Court of Canada's decision in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (Haida). As noted in *Haida*, in part:

"The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown." (para. 16);

"...the duty [to consult] 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..." (para. 35);

As part of the Project, CBP has filed for two applications under the WSA, two Crown Land Tenure applications and one permit from DFO—as discussed in Section 3.7. These permitting processes require Crown consultation with impacted Indigenous groups.<sup>209</sup>

#### 6.3.2 BCUC's Role

### Positions of the Parties

OKIB states that several of the permits and approvals being sought by CBP trigger the duty to consult and that the Province has acknowledged this.<sup>210</sup> While it understands that the BCUC is not itself carrying out consultation, OKIB submits that the BCUC must determine whether the Crown has properly discharged its duty to consult in order to assess whether this Project conserves the "public interest."<sup>211</sup> OKIB further submits that Crown consultation has not concluded, and as a result the BCUC is not in a position to conclude that the Project conserves the public interest. OKIB concludes by stating that its position is that the CPCN cannot be granted until Crown consultation is complete.

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<sup>208</sup> Exhibit B-1, p. 28.

<sup>209</sup> CBP Reply Argument, para 25.

<sup>210</sup> OKIB Final Argument, para 30.

<sup>211</sup> OKIB Final Argument, para 2.

In reply, CBP states that OKIB's requirement for Crown consultation to be complete prior to CPCN issuance fails to take into account the BCUC's role in British Columbia's regulatory framework and the particular circumstances of this Application. CBP agrees with OKIB that the BCUC has a responsibility as part of its consideration of the Application to assess potential impacts to Indigenous communities as part of the general public interest, and a specific duty to assess the adequacy of consultation. However, CBP submits that the BCUC has no independent duty to consult regarding its decision and further, that the BCUC has held that its role in the CPCN process is to assess consultative efforts to the date of close of the record.<sup>212</sup> CBP refers to previous BCUC CPCN decisions in which other regulatory approvals that attract an independent duty of Crown consultation remained ongoing and the BCUC determined consultation was adequate.<sup>213</sup>

CBP further submits that other Crown decision makers continue to be responsible for the adequacy of consultation with respect to the Project; primarily FLNRORD through both the Crown Land Tenure and Kalamalka Lake WSA applications.<sup>214</sup> CBP reiterates that the BCUC's acceptance of ongoing Crown consultation is also consistent with the fact that the BCUC is determining the adequacy of consultation up to the date of the CPCN decision and does not require all other regulatory processes to be completed in order for a CPCN to be granted.<sup>215</sup>

#### Supplementary Argument

On November 9, 2021, OKIB submitted supplementary argument regarding a recent Alberta Court of Appeal (ABCA) decision in *Altalink Management Ltd. v Alberta (Utilities Commission)*, 2021 ABCA 342 (*Altalink*) issued October 15, 2021. OKIB states the *Altalink* decision supports OKIB's position that CBP's Project cannot be found in the public interest at this time.<sup>216</sup> OKIB states that *Altalink* affirms that the Alberta Utilities Commission must consider the honour of the Crown and Reconciliation as factors in determining the public interest whenever they are relevant and raised by the parties.<sup>217</sup>

By letter dated November 16, 2021, CBP replied to OKIB's Supplemental Argument stating that OKIB's delay in bringing *Altalink* to the BCUC's attention will contribute to the growing costs which CBP has incurred and that the prejudice caused by OKIB's delay should lead the BCUC to strike OKIB's supplementary argument from the record.<sup>218</sup> CBP further submits that should the BCUC accept the OKIB Supplementary Argument on the record of the Proceeding, then the BCUC should disregard the submission in its entirety because *Altalink* is not relevant to the BCUC's understanding of the issues in the Proceeding.<sup>219</sup> CBP submits that a decision in *Altalink* should not displace the existing jurisprudence of the British Columbia Court of Appeal and the Supreme Court of Canada or BCUC precedent.<sup>220</sup>

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<sup>212</sup> CBP Reply Argument, para 8.

<sup>213</sup> CBP Reply Argument, para 9.

<sup>214</sup> CBP Reply Argument, para 10.

<sup>215</sup> CBP Reply Argument, para 10.

<sup>216</sup> Exhibit C1-11, p. 3.

<sup>217</sup> Exhibit C1-11, p. 2.

<sup>218</sup> Exhibit B-19, p. 2.

<sup>219</sup> Exhibit B-19, p. 2.

<sup>220</sup> Exhibit B-19, p. 2.

## Panel Determinations

BCUC's role is to assess the scope of the Crown's duty to consult First Nations and to make a determination as to the adequacy of consultation with potentially affected Indigenous groups up to the point of its decision.

This role has been confirmed by the Supreme Court of Canada in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (*Rio Tinto Alcan*, paras. 66 to 75) and by the BC Court of Appeal in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 (*Kwikwetlem*, paras. 13, 15 and 70).

The Panel acknowledges that prior to the construction of a capital project, public utilities must typically seek approval from other regulatory authorities in addition to approval of a CPCN. Where the duty to consult is triggered, and the public utility applicant is not itself an agent of the Crown, Crown consultation may be conducted by other independent regulatory authorities vested with the duty to consult as part of their permitting processes (e.g. British Columbia Oil and Gas Commission) or the Crown itself (e.g. FLNRORD, DFO). At the point of the BCUC's decision on a CPCN application, these other permitting processes can be at varying stages of progress; they may be complete, they may not have begun or they may be under review.

The Panel reiterates that in this matter, its only role with respect to consultation is to assess the scope of the Crown's duty to consult Indigenous groups and to make a determination as to the adequacy of consultation up to the point of the BCUC's decision on a CPCN application. In practice, this may result in the BCUC in some cases assessing the adequacy of ongoing consultation. If the BCUC determines that consultation has been inadequate to the point of its decision, then the BCUC may make a finding as to what aspect of the consultation has been inadequate. In other words, what ought to have occurred to the point of the BCUC's decision which has not occurred.

**The Panel accepts OKIB's Supplementary Argument dated November 9, 2021. The Panel similarly accepts CBP's reply argument to the Supplementary Argument dated November 16, 2021.** In accepting OKIB's supplemental argument on the record, the Panel accepts that it takes some time between the issuance of the *Altalink* decision and a review of that decision, including preparation of its Supplementary Argument submissions in respect thereof. In the circumstances, the Panel finds the timing of the filing of the Supplementary Argument to be reasonable. Further, the Panel provided CBP with an opportunity to file reply argument. Finally, the Panel considers it important to consider court of appeal decisions from across the country.

The Supreme Court of Canada and the BC Court of Appeal decisions referenced above directly relate to the BCUC's role regarding Indigenous consultation and its considerations in determining the public interest. The Panel affirms that the principles of the honour of the Crown, and reconciliation are accepted law in BC. **Therefore, the Panel finds that *Altalink* has no bearing on its decision regarding CBP's Project.**

### 6.3.3 Scope of Duty to Consult

The scope of consultation and accommodation owed to potentially impacted Indigenous groups will vary case by case along a spectrum from low to high (the Haida spectrum). The level of consultation along the spectrum in a given case depends on the strength of the Aboriginal right and the severity of the potential impact on those

rights, although each case should be approached individually because the level of consultation may change as information is discovered in the consultation process.<sup>221</sup>

The following sections summarize the submissions made by CBP and OKIB regarding OKIB's strength of claim to Aboriginal title and rights to the lands occupied by CBP and the subject of the potential Project, and the severity of the potential impacts of the Project on those rights.

### **6.3.3.1 Strength of Claim to Aboriginal Title and Rights**

On June 9, 2021, OKIB filed an "Indigenous Land Use Desktop Review and Gap Analysis" memorandum as evidence in this proceeding on a confidential basis.<sup>222</sup>

#### *Positions of the Parties*

OKIB provides its submissions regarding strength of claim as evidence on the record on a confidential basis.<sup>223</sup>

CBP does not challenge OKIB's evidence of its Syilx claim to the lands required for the Project, but notes that this evidence covers a broad geographic area.<sup>224</sup>

### **6.3.3.2 Project impacts**

#### *Positions of the Parties*

OKIB submits that there remain significant gaps in the information and analysis necessary to assess the Project's impacts on OKIB Syilx Aboriginal title and rights.<sup>225</sup>

OKIB makes the following statements in its Final Argument regarding Project impacts:

The potential impacts of the Project are, to the best OKIB has been able to assess, significant. The project has the potential to impact species that are important to the exercise of OKIB's Syilx Aboriginal rights like kokanee, mussels and ungulates...<sup>226</sup>

Assessing impacts to rights requires more than a technical understanding of a project's expected environmental impacts. A rights-focused impact assessment demands a reliable and credible assessment of an Indigenous community's rights, the lands and resources upon which their rights rely, and the context for the community's exercise of their rights and the proposed project...<sup>227</sup>

It is not appropriate to assume information about the exercise of rights is readily available to a First Nation or can simply be provided on demand... OKIB requires funding and resources,

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<sup>221</sup> CPCN for the Dawson Creek/Chetwynd Area Transmission Project, BCUC Decision, p. 146.

<sup>222</sup> Exhibit C1-6-1, Appendix B.

<sup>223</sup> OKIB Final Argument, paras 8–11.

<sup>224</sup> CBP Reply Argument, para 12.

<sup>225</sup> OKIB Final Argument, para 2.

<sup>226</sup> Ibid, para 33.

<sup>227</sup> Ibid, para 35.

including experts and consultants, to compile and analyse OKIB knowledge and identify the interaction between rights and cultural practices and the Project's expected impacts...<sup>228</sup>

Providing technical documents regarding a project, meeting with OKIB, and asking OKIB to identify impacts, without full capacity funding and other necessary supports, is unfair and unrealistic.<sup>229</sup>

In its Final Argument, OKIB outlines its concerns with respect to archaeological impacts and environmental impacts of the Project.

Regarding archaeological impacts, OKIB states that the draft Archeological Impact Assessment (AIA) completed by CBP was done in advance of OKIB's completion of its Culture and Heritage Policy. OKIB submits the AIA should not be finalized until the OKIB Culture and Heritage Policy has been approved by OKIB Council, to ensure that the final version of the AIA and any steps taken in response to it will be in accordance with the Policy.<sup>230</sup>

Regarding environmental impacts, OKIB remains concerned that, with the exception of kokanee, mussels and wetlands, no inventories or surveys have been done to confirm presence/absence of fish, wildlife, Species and Ecosystems at Risk (SEAR) or their habitats onsite or in the surrounding areas. OKIB submits that while it still lacks the necessary information to assess impacts to its rights, these gaps leave OKIB concerned about potential impacts to its Aboriginal title and rights, in particular rights to harvest kokanee and ungulates in the Kalamalka Lake area.<sup>231</sup> OKIB submits, on a confidential basis, the scope of studies required to ascertain the potential impacts of the Project on its Aboriginal title and rights.<sup>232</sup>

OKIB also raises concerns regarding the cumulative effects of development in its territory. OKIB notes that much of the development in OKIB's territory, when viewed alone, is considered by proponents to have only minor to moderate environmental impact.<sup>233</sup> OKIB further states that these numerous medium sized projects chip away at OKIB's Syilx Aboriginal title and rights by reducing the land and resources available for the exercise of rights, and undermine Syilx ability to exercise sovereignty over their territory.<sup>234</sup>

CBP submits that impacts to OKIB rights and title will not be significant, not because these impacts are equivalent to environmental or archaeological effects, but because environmental and archaeological effects are the only vectors through which those impacts to OKIB rights and title could be caused.<sup>235</sup> CBP further submits that environmental and archaeological effects will be so minimal that impacts to OKIB rights and title are likely to also be minimal.<sup>236</sup>

CBP further notes that the long-term effects of the Project on the Kalamalka Lake Area will be negligible. CBP states the Project power lines will generally be buried on land, buried in the near-shore areas of Kalamalka Lake,

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<sup>228</sup> Ibid, para 37 & 39.

<sup>229</sup> Ibid, para 40.

<sup>230</sup> OKIB Final Argument, para 50.

<sup>231</sup> OKIB Final Argument, para 52.

<sup>232</sup> OKIB Final Argument, paras 41 & 61 (f)

<sup>233</sup> OKIB Final Argument, para 56.

<sup>234</sup> Ibid, para 55–59.

<sup>235</sup> CBP Reply Argument, para 15.

<sup>236</sup> CBP Reply Argument, para 15.

and laid on the bottom of Kalamalka Lake, with the exception of the point of connection adjacent to Highway 97. These specific design considerations create little to no lasting barriers to the use of the Lake and surrounding areas.<sup>237</sup>

CBP states in its Reply Argument that the finding of “minimal adverse effects and no serious harm to aquatic species and habitat along the alignment” is not an unsupported assertion—rather it is the considered conclusion of the qualified professional who conducted the environmental assessment and prepared the environmental mitigation plan for the Project. CBP submits the minimal impact of the Project is due both to its design and to mitigation measures which shall be employed.<sup>238</sup>

In response to concerns of the Project’s archeological impact, CBP states that it is committed to full compliance with the applicable regulatory scheme under the HCA and is committed to implementing the results of the AIA as it is finalized. CBP further submits that the potential for any archaeological impact is low and therefore there is no need to align the Project approach to archaeological impact with the OKIB Culture and Heritage Policy, which has yet to be provided to CBP or be finalized.<sup>239</sup>

Regarding cumulative impacts, CBP notes that while the background against which a Project occurs may be necessary to understand in order to contextualize project impacts, in the case of the CBP Project, the impacts are minimal such that their magnitude is unlikely to change significantly if a regional context is considered.<sup>240</sup>

### *Panel Determinations*

**The Panel finds that for the purposes of this proceeding OKIB has adequately demonstrated that it has a strong claim to Aboriginal rights in the Project footprint area. Therefore, there is a duty to consult OKIB.**

**The Panel finds, at this time, there is insufficient evidence to conclude that the Project will not potentially impact OKIB’s Aboriginal rights.**

CBP and OKIB present significantly different views on the issue of Project impacts. CBP submits that the Project will have minimal impact and that the long-term effect on the Kalamalka Lake Area will be negligible. Based on its view that the Project will have minimal impact and negligible long-term effect, CBP submits impacts to OKIB’s rights and title are also likely to be minimal.

OKIB states its concerns regarding the potential significant archaeological and environmental impacts to their Aboriginal rights resulting from this Project. In addition, OKIB submits its concerns regarding cumulative impacts on their rights from further development in their territory. Critically, however, OKIB submits it has not been able to identify the interactions between its rights and the potential impacts of the Project, since it lacks the means to undertake the necessary studies to properly assess the potential impacts on its Aboriginal rights.

The Panel is persuaded by OKIB’s argument with respect to the need for OKIB to complete the studies it requires to establish the impacts of the Project on its ability to exercise its rights. Without this information, the Panel has no way of assessing this and therefore is not convinced that CBP’s assertions that the design and planned

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<sup>237</sup> CBP Reply Argument, para 17.

<sup>238</sup> CBP Reply Argument, para 40.

<sup>239</sup> CBP Reply Argument, para 37.

<sup>240</sup> CBP Reply Argument, para 44.



mitigations for the Project will not impact on or will reasonably accommodate OKIB's rights. The assessment of Project impacts on OKIB's ability to exercise its rights has not been completed, because as the evidence demonstrates, OKIB has not been given the suitable support to complete the studies needed to properly assess the potential impacts.

#### **6.3.4 Crown Consultation**

CBP states that the Crown began its consultation activities by issuing the Project referral notice to Indigenous communities in August 2020.<sup>241</sup> Should the Crown identify any potentially interested Indigenous communities through its consultation activities in addition to the OKIB and ONA, CBP submits it is willing to include those communities in its engagement efforts. Similarly, should the Crown seek to delegate procedural aspects of its consultation requirements to CBP, CBP states it is willing to reasonably act upon the request.<sup>242</sup>

OKIB states it has been in contact with FLNRORD regarding OKIB's undertaking of a Traditional Land Use Study for the Project area in relation to the ancillary authorizations being sought by CBP.<sup>243</sup> OKIB advised the BCUC that it intended to file the Traditional Land Use as evidence in this proceeding. On June 9, 2021, OKIB filed an "Indigenous Land Use Desktop Review and Gap Analysis" memorandum as evidence in this proceeding on a confidential basis.

#### *Positions of the Parties*

CBP submits that Crown consultation on the additional regulatory approvals (e.g. WSA and Crown Land Tenure Applications) is ongoing and submits that the evidence on the record of this proceeding indicates that the consultation that has taken place to date is adequate.<sup>244</sup>

OKIB submits that consultation with the Crown is not complete and remains inadequate. A timeline of consultation, as described by OKIB, was submitted as evidence on a confidential basis.<sup>245</sup> OKIB further submits that it has had minimal discussions with the Crown so far, OKIB's request for capacity funding from the Crown is outstanding, and there remain significant gaps in the information and analysis necessary to assess the Project's impacts on OKIB's Syilx Aboriginal title and rights.<sup>246</sup>

OKIB submits that the Crown did not conduct any consultation with OKIB on the authorizations that have already been granted to CBP.<sup>247</sup>

In reply, CBP submits that what funding is necessary is a decision the Crown must make and that necessary funding is proportionate to the depth of the duty to consult, which may not be as extensive in this case as suggested by OKIB.<sup>248</sup> CBP states it has already provided appropriate funding for OKIB to participate in this proceeding and will provide further funding if ordered to do so by the BCUC, following the normal BCUC

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<sup>241</sup> Exhibit B-1, p. 28.

<sup>242</sup> Exhibit B-1, p. 28.

<sup>243</sup> Exhibit C1-4, p. 3.

<sup>244</sup> CBP Reply Argument, para 25.

<sup>245</sup> Exhibit C1-6-1.

<sup>246</sup> OKIB Final Argument, para 3.

<sup>247</sup> OKIB, para 46.

<sup>248</sup> CBP Reply Argument, paras 28–29.

participant assistance/cost award process which incorporates the ability to assess the reasonableness of costs incurred.<sup>249</sup>

### *Panel Determinations*

**The Panel determines that Crown consultation with OKIB on the Project is inadequate to date because OKIB has not yet been provided with the necessary support to sufficiently assess the potential impacts of the Project on its ability to exercise its claimed Aboriginal title and rights to the Project area, nor has the Crown consulted the OKIB on those impacts.** The Panel bases its determination that consultation has been inadequate largely due to the lack of response to OKIB's request for capacity funding from the Crown and OKIB's assertion that no Crown consultation with OKIB has occurred on authorizations already granted to CBP for the Project. The Panel acknowledges that Crown consultation on the additional regulatory approvals is ongoing, however the Panel cannot find this consultation process to be adequate without capacity funding having been provided to OKIB to allow its full participation.

To the point of this decision, OKIB states it does not have adequate information to assess the potential impacts of this Project on its rights nor has it received adequate capacity funding. The Panel recognizes that CBP is committed to this Project and to ongoing consultation with OKIB. The Panel also notes that OKIB has stated the scope of studies required for it to establish the interactions between its rights and the potential impacts of the Project.<sup>250</sup> **Accordingly, the Panel directs CBP to demonstrate to the BCUC that OKIB has been adequately consulted no later than six months from the issuance of this Order. The Panel expects this evidence to show the impacts of the Project on OKIB's claimed rights and title including any mitigation or accommodation that may be necessary regarding any potential impacts.**

## **7.0 Alignment with BC Provincial Government Energy Objectives**

Section 46 (3.1) of the UCA states that in deciding whether to issue a CPCN, the BCUC must consider:

- a) the applicability of British Columbia's energy objectives;
- b) the most recent long-term resource plan filed by the public utility under section 44.1, if any; and
- c) the extent to which the application for the certificate is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act* (CEA).

CBP states that the Project is consistent with the energy objectives as set out under the CEA in a number of ways. Primarily, the Project will allow CBP customers to reduce their greenhouse gas emissions by switching from using fossil fueled generators to using electricity procured from BC Hydro.<sup>251</sup> Further, CBP states that terms within the PPA encourage its signatories to continuously work to reduce their energy demand and to continue to, where possible, expand the use of solar power generation.<sup>252</sup>

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<sup>249</sup> CBP Reply Argument, para 30.

<sup>250</sup> OKIB Final Argument, para 61 (f)

<sup>251</sup> Exhibit B-1, p. 56.

<sup>252</sup> Exhibit B-1, p. 56.

The Project is also expected to promote the development of distributed clean energy generation, as CBP notes all customers whose electricity generators meet its connection policy would be able to interconnect to the distribution system.<sup>253</sup> CBP anticipates implementing a net metering plan.<sup>254</sup>

### *Positions of the Parties*

CBP submits that sections 6 and 19 of the CEA are not applicable to CBP and the Project.<sup>255</sup>

### *Panel Discussion*

The Panel is satisfied that the Project is consistent with the applicable energy objectives of the CEA.

## **8.0 CPCN Determination**

### *Positions of the Parties*

CBP submits that the Project is a needed service to the community of Cosens Bay and is required for the public convenience and necessity. In support of its position, CBP states that the Project:<sup>256</sup>

- i. services a discrete and limited service area, meeting the longstanding need of the Cosens Bay community for stable, year-round electricity;
- ii. provides that electricity in a cost-effective and low-carbon form;
- iii. provides participation in the Project, via the Power Purchase Agreement and Shareholder Agreement, on a voluntary basis;
- iv. is financed in a way that is non-discriminatory and financially viable;
- v. has been designed to typical utility standards and minimizes potential environmental and archaeological effects; and
- vi. has been responsibly planned, with input and CBP submits that Section 6 and 19 of the CEA are not applicable to CBP and the Project.

OKIB submits that the BCUC is not in a position to find that the Project conserves the public interest, and therefore requests that the BCUC refrain from issuing a CPCN until Crown consultation, which must include adequate capacity funding, is complete and OKIB has an opportunity to grant or withhold its free, prior and informed consent to the Project.<sup>257</sup> However, OKIB states that if the BCUC decides to issue the CPCN, then OKIB requests that the CPCN be made subject to the following conditions, as summarized below:<sup>258</sup>

- Environment
  - CBP commitment that all current Best Management Practices and environmental mitigation measures identified by CBP throughout the course of the proceeding be implemented.

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<sup>253</sup> Exhibit B-1, p. 56.

<sup>254</sup> Exhibit B-1, p. 56, footnote 13.

<sup>255</sup> CBP Final Argument, para 6.

<sup>256</sup> CBP Final Argument, para 87.

<sup>257</sup> OKIB Final Argument, para 60.

<sup>258</sup> OKIB Final Argument, para 61.

- CBP commitment that an OKIB environmental monitor or consultant attend the Project site during construction.
- Archaeology
  - The AIA will not be finalized until OKIB's Culture and Heritage Policy is approved by OKIB council; CBP commitment that all work undertaken shall be in compliance with the Policy.
  - CBP commitment to comply with all recommendations of the AIA.
  - CBP commitment to include an OKIB heritage monitor attend on site for the period of construction.
- Consultation
  - Adequate consultation must be completed by the Crown, which must include sufficient capacity funding for OKIB to fully participate in a way that is free, prior and informed, in order to determine whether to grant its consent to the Project.

In reply, CBP submits that there is nothing before the BCUC to suggest that the Project is not in the public interest or that a denial of the Application is warranted or necessary in the circumstances. CBP further submits that the conditions requested by OKIB duplicate commitments already made by CBP or are unnecessary or inappropriate.<sup>259</sup>

### *Panel Determinations*

As the Crown's duty to consult has been inadequate to the point of this decision, the Panel is unable to find that the Project is in the public interest. To be clear, this is the Panel's only concern with the Project. However, if CBP can provide evidence within six months of this decision, to the satisfaction of the BCUC, that Crown consultation with OKIB regarding the Project is adequate then the BCUC will issue a CPCN to CBP for the Project.

In Sections 2, 3 and 4, the Panel made the findings that there is a need for electric service to the community of Cosens Bay, that this need is best served by the proposed distribution system proposed by the CBP Project and that the capital cost for the Project is reasonable. Further, the Panel finds that CBP's proposed Project financing, through shareholder capital commitments and Grid Promissory notes, to be reasonable. The Panel is similarly satisfied with CBP's shareholder capital recovery proposal.

In Section 5 of this decision, the Panel finds it is satisfied that CBP has provided adequate information regarding the environmental and archaeological studies it has completed and the mitigation measures and future work it has committed to undertaking.

Section 6 summarizes the opposing positions of OKIB and CBP with respect to the adequacy of consultation on the Project. The Panel finds that OKIB has adequately demonstrated its strength of claim to Aboriginal rights to the Project footprint area. The Panel further finds that, at this time, there is insufficient evidence to conclude that the Project will not potentially impact OKIB's Aboriginal rights.

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<sup>259</sup> CBP Reply Argument, para 3.

**DATED** at the City of Vancouver, in the Province of British Columbia, this    17<sup>th</sup>    day of December 2021.

*Original signed by:*

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T. A. Loski Panel Chair / Commissioner

*Original signed by:*

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C. M. Brewer Commissioner

*Original signed by:*

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W. M. Everett, QC Commissioner



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**ORDER NUMBER  
G-383-21**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

CB Powerline Ltd.  
Application for a Certificate of Public Convenience and Necessity

**BEFORE:**

T. A. Loski, Panel Chair  
C. M. Brewer, Commissioner  
W. M. Everett, QC, Commissioner

on December 17, 2021

**ORDER**

**WHEREAS:**

- A. On September 11, 2020, CB Powerline Ltd. (CBP) filed an application to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (Application);
- B. In seeking a CPCN for the Project, CBP requests approval to build, own, operate and maintain an electrical distribution system servicing the community of Cosens Bay on Kalamalka Lake, Regional District of North Okanagan, B.C.;
- C. By Orders G-248-20, G-317-20, G-18-21 and G-47-21, the BCUC established and amended the regulatory timetable for the review of the Application, which included two rounds of information requests (IRs) to CBP from the BCUC, one round of IRs to CBP from the Panel and one round of IRs to CBP from the intervener, Okanagan Indian Band (OKIB);
- D. By Orders G-101-21 and G-128-21A, the BCUC further established the regulatory timetable for the review of the Application to include a second round of IRs to CBP from OKIB, the filing of evidence by OKIB, one round of IRs to OKIB from CBP and the BCUC on the evidence filed by OKIB;
- E. By Order G-229-21, the BCUC further established the regulatory timetable to include CBP and OKIB written final arguments, as well as CBP written reply argument; and
- F. The BCUC has reviewed the evidence and submissions in this proceeding and finds that certain approvals are warranted.

**NOW THEREFORE** pursuant to sections 45 to 46, and section 90 of the UCA and for the reasons set out in the Decision issued concurrently with this order, the BCUC orders as follows:

1. Subject to the following:
  - a. Within 6 months of the date of this order, CBP shall file with the BCUC evidence demonstrating that OKIB has been adequately consulted on the Project as outlined in the Decision.
  - b. OKIB will have 30 days from the date of the filing of the evidence to file a written response.
  - c. CBP will then have 10 days from the date of the filing of OKIB's response to file a written reply and
  - d. a BCUC determination that the Crown's duty to consult has been met,the CPCN will be issued.
2. If the CPCN is issued, the BCUC will provide any directions about reporting requirements of CBP for the Project and construction at the time the BCUC issues a CPCN.
3. CBP is directed to comply with all other directives of the BCUC set out in the Decision issued concurrently with this order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 17<sup>th</sup> day of December 2021.

BY ORDER

*Original signed by:*

T. A. Loski  
Commissioner

## List of Acronyms

Acronym	Description
AACE International	Advancement of Cost Engineering International
ABCA	Alberta Court of Appeal
AIA	Archaeological impact assessment
ALC	Agricultural Land Commission
Application	CB Powerline Ltd. application for a Certificate of Public Convenience and Necessity for the Cosens Bay community electrification project
<i>Altalink</i>	<i>Altalink Management Ltd. v Alberta (Utilities Commission)</i> , 2021 ABCA 342
Bay	Jim Bay
BC Hydro	British Columbia Hydro and Power Authority
BCUC	British Columbia Utilities Commission
CAD	Consultative Areas Database
CBP	CB Powerline Ltd.
CEA	<i>Clean Energy Act</i>
COLA	Cost of living adjustment
CPCN	Certificate of Public Convenience and Necessity
DFO	Fisheries and Oceans Canada
DND	Department of National Defence
EAA	<i>Environmental Assessment Act</i>
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EOI	Expressions of Interest
FBC	FortisBC Inc.
FLNRORD	Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Haida	<i>Haida Nation v. British Columbia (Minister of Forests)</i> , 2004 SCC 73
Harden	Hugh Harden
HCA	Heritage Conservation Act
HDPE	High density polyethylene



IRs	Information requests
OKIB	Okanagan Indian Band
ONA	Okanagan Nation Alliance
PEC	Pinter Electrical Consulting Inc.
PFR	Preliminary Field Reconnaissance
PPA	Power Purchase Agreement
Project	Cosens Bay community electrification project
PSC	Primary Service Connection
RMP	Risk Management Plan
SA	Shareholder Agreement
UCA	<i>Utilities Commission Act</i>
Ursus	Ursus Heritage Consulting
UXO	Unexploded ordinances
WSA	<i>Water Sustainability Act</i>

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

CB Powerline Ltd.  
Application for a Certificate of Public Convenience and Necessity

**EXHIBIT LIST**

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter dated September 23, 2020 – Appointing the Panel for the review of the CB Powerline Ltd. Application for a Certificate of Public Convenience and Necessity dated September 11, 2020
A-2	Letter dated October 5, 2020 – BCUC Order G-248-20 establishing the regulatory timetable
A-3	Letter dated November 12, 2020 – BCUC Information Request No. 1 to CBP
A-4	Letter dated November 20, 2020 – BCUC letter to CBP Requesting Confirmation of Notice of Application
A-5	Letter dated December 4, 2020 – BCUC Order G-317-20 establishing an amended regulatory timetable
A-6	Letter dated January 19, 2021 – BCUC Order G-18-21 establishing a further regulatory timetable
A-7	Letter dated February 3, 2021 – BCUC Information Request No. 2 to CBP
A-8	Letter dated February 19, 2021 – BCUC Order G-47-21 establishing a further regulatory timetable
A-9	Letter dated March 18, 2021 – BCUC Panel Information Request No. 1
A-10	Letter dated April 1, 2021 – BCUC Order G-101-21 establishing an amended regulatory timetable

- A-11 Letter dated April 28, 2021 – BCUC Order G-128-21 establishing an amended regulatory timetable
- A-11-1 Letter dated May 4, 2021 – BCUC Order G-128-21A amending the regulatory timetable
- A-12 Letter dated June 22, 2021 – BCUC Information Request No. 3 to CBP
- A-13 **CONFIDENTIAL** - Letter dated June 22, 2021 – BCUC Confidential Information Request No. 1 to CBP
- A-14 Letter dated June 22, 2021 – BCUC Information Request No. 1 to OKIB
- A-15 **CONFIDENTIAL** - Letter dated June 22, 2021 – BCUC Confidential Information Request No. 1 to OKIB
- A-16 Letter dated July 15, 2021 – BCUC Submission Request regarding Procedural Process to OKIB
- A-17 Letter dated July 29, 2021 – BCUC Order G-229-21 establishing a further regulatory timetable
- A-18 Letter dated August 17, 2021 - BCUC Submission Request regarding Procedural Process to CBP
- A-19 Letter dated August 18, 2021 – BCUC Order G-247-21 establishing a further regulatory timetable
- A-20 Letter dated November 12, 2021 – BCUC request for a submission from CBP regarding OKIB Supplementary Argument

#### *APPLICANT DOCUMENTS*

- B-1 **CB POWERLINE LTD. (CBP)** – Application for a Certificate of Public Convenience and Necessity dated September 11, 2020
- B-1-1 Letter dated October 22, 2020 – CBP submitting revised Application
- B-1-2 **CONFIDENTIAL** - Letter dated October 22, 2020 – CBP submitting request for confidentiality
- B-2 Letter dated October 16, 2020 – CBP submitting confirming publication of Public Notice of the Application
- B-3 Letter dated October 20, 2020 – CBP submitting confirmation of Notice of the Application

B-4	Letter dated November 27, 2020 – CBP submitting additional confirmation of Notice of the Application
B-5	Letter dated December 9, 2020 – CBP submitting additional confirmation of Notice of Regulatory Timetable
B-6	Letter dated December 10, 2020 – CBP submitting responses to BCUC IR No. 1
B-7	Letter dated February 22, 2021 – CBP submitting responses to BCUC IR No. 2
B-7-1	<b>CONFIDENTIAL</b> - Letter dated February 22, 2021 – CBP submitting confidential response to BCUC IR No. 2 Question 40.4
B-8	Letter dated March 24, 2021 – CBP submitting response to OKIB Information Request No. 1
B-9	Letter dated March 25, 2021 – CBP submitting responses to BCUC Panel IR No. 1
B-10	Letter dated March 29, 2021 – CBP submitting response to OKIB extension request to Submission for Further Procedural Process
B-11	Letter dated March 30, 2021 – CBP submitting response on Further Process
B-12	Letter dated April 26, 2021 – CBP submitting response on OKIB submission on Further Process
B-13	Letter dated May 25, 2021 – CBP submitting responses to OKIB Information Request No. 2
B-13-1	Letter dated August 6, 2021 - CBP submitting additional response to OKIB's Information Request 2.9.1
B-14	<b>CONFIDENTIAL</b> - Letter dated June 22, 2021 – OKIB submitting Confidential Information Request to OKIB on Written Evidence
B-14-1	<b>REDACTED</b> - Letter dated June 22, 2021 – CBP submitting Confidential Information Request to OKIB on Written Evidence - Redacted Version
B-15	Letter dated July 6, 2021 – CBP submitting responses to BCUC IR No. 3
B-15-1	<b>CONFIDENTIAL</b> - Letter dated July 6, 2021 – CBP submitting confidential Draft Archeological Impact Assessment
B-16	<b>CONFIDENTIAL</b> - Letter dated July 6, 2021 – CBP submitting confidential response to BCUC IR No. 1

- B-17 Letter dated July 9, 2021 – CBP submitting confirmation it does not intend to provide rebuttal evidence
- B-18 Letter dated August 18, 2021 – CBP submitting response to OKIB extension request
- B-19 Letter dated November 16, 2021 - CBP submitting response to OKIB supplementary argument submission

#### *INTERVENER DOCUMENTS*

- C1-1 **OKANAGAN INDIAN BAND (OKIB)** - Letter dated February 18, 2021 – Request to Intervene by Claire Truesdale, JFK Law Corporation
- C1-2 Letter dated March 11, 2021 – OKIB submitting Information Request No. 1 to CBP
- C1-3 Letter dated March 26, 2021 – OKIB submitting extension request regarding submissions on further process
- C1-4 Letter dated April 23, 2021 – OKIB submitting response on Further Process
- C1-5 Letter dated May 13, 2021 – OKIB submitting Information Request No. 2 to CBP
- C1-6 Letter dated June 9, 2021 – OKIB submitting Evidence
- C1-6-1 **CONFIDENTIAL**- Letter dated June 9, 2021 – OKIB submitting Confidential Evidence
- C1-7 Letter dated July 6, 2021 – OKIB submitting responses to BCUC IR No. 1
- C1-7-1 **CONFIDENTIAL** - Letter dated July 6, 2021 – OKIB submitting confidential response to BCUC IR No. 1
- C1-8 Letter dated July 6, 2021 – OKIB submitting responses to CBP IR No. 1
- C1-8-1 **CONFIDENTIAL** - Letter dated July 6, 2021 – OKIB submitting confidential response to CBP IR No. 1
- C1-9 Letter dated July 22, 2021 – OKIB submitting response on Process and the Regulatory Timetable
- C1-10 Letter dated August 16, 2021 – OKIB submitting extension request regarding Final Argument

- C1-11 Letter dated November 9, 2021 – OKIB submitting a recent court decision of the Alberta Court of Appeal in support of OKIB’s Final Argument

*INTERESTED PARTY DOCUMENTS*

- D-1 **FORTISBC INC. (FBC)** – Letter dated November 4, 2020 – Request for Interested party status by Diane Roy
- D-2 **BC HYDRO AND POWER AUTHORITY (BCH)** – Letter dated November 18, 2020 – Request for Interested Party status by Fred James
- D-3 **HARDEN, HUGH (HARDEN)** – Interested Party registration dated December 10, 2020
- D-3-1 Harden – Letter of Comment dated December 10, 2020
- D-4 **BAY, JIMMY (BAY)** – Interested Party registration dated December 13, 2020
- D-4-1 Bay, J. – Letter of Comment dated December 13, 2020

*LETTERS OF COMMENT*

- E-1 Rook, P. - Letter of Comment dated November 18, 2020
- E-2 Blumer, J. – Letter of Comment dated December 10, 2020
- E-3 Johnston, R. – Letter of Comment dated December 10, 2020
- E-4 Vaughan, E. – Letter of Comment dated December 10, 2020
- E-4-1 Vaughan, E. – Additional Letter of Comment dated December 16, 2020
- E-5 Twerdoff, R & D. – Letter of Comment dated December 10, 2020
- E-6 Willis, B. – Letter of Comment dated December 10, 2020
- E-7 Hauberg, B. – Letter of Comment dated December 10, 2020
- E-8 Hildebrandt, K. – Letter of Comment dated December 10, 2020
- E-9 Tracey, D. – Letter of Comment dated December 10, 2020
- E-10 Johnston, C – Letter of Comment dated December 10, 2020
- E-11 Tracey, C & M. – Letter of Comment dated December 10, 2020

E-12	REMOVED now Exhibit D-3-1
E-13	Kalanchey, G. – Letter of Comment dated December 11, 2020
E-14	Herrington, S. – Letter of Comment dated December 12, 2020
E-15	Herrington, D. – Letter of Comment dated December 12, 2020
E-16	Herrington, W. – Letter of Comment dated December 12, 2020
E-17	Nicholson, S. – Letter of Comment dated December 12, 2020
E-18	REMOVED now Exhibit D-4-1
E-19	Winskowski, D. – Letter of Comment dated December 13, 2020
E-20	Saunders, W. – Letter of Comment dated December 14, 2020
E-21	Saunders, B. – Letter of Comment dated December 15, 2020
E-22	Froats, G. – Letter of Comment dated December 15, 2020
E-23	Robinson, A. and G. – Letter of Comment dated December 15, 2020
E-24	Steeves, B. and Mathers, J. – Letter of Comment dated December 15, 2020
E-25	Floyd, B. – Letter of Comment dated December 16, 2020
E-26	Melenko, L. & L. – Letter of Comment dated December 16, 2020
E-27	Vaughan, H. – Letter of Comment dated December 16, 2020
E-28	Goncalves, D. – Letter of Comment dated December 16, 2020
E-29	Hauberg, E. and M. – Letter of Comment dated December 17, 2020
E-30	Switzer, C. and T. – Letter of Comment dated December 17, 2020
E-31	Ethier, D. – Letter of Comment dated December 21, 2020
E-32	Keating, J. – Letter of Comment dated December 17, 2020
E-33	Bresciani, R. – Letter of Comment dated December 19, 2020
E-34	Mathers, Jana – Letter of Comment dated December 22, 2020
E-35	Mathers, D. – Letter of Comment dated December 23, 2020

E-36	Nicholson, Maesa – Letter of Comment dated December 22, 2020
E-37	Nicholson, Mia – Letter of Comment dated December 22, 2020
E-38	Twerdoff, N. – Letter of Comment dated December 22, 2020
E-39	Allan, G. – Letter of Comment dated December 23, 2020
E-40	Allan, J. – Letter of Comment dated December 23, 2020
E-41	Ballauf, F. – Letter of Comment dated December 24, 2020
E-42	Melenko, S. – Letter of Comment dated December 29, 2020
E-43	Goodrich, M. – Letter of Comment dated December 28, 2020
E-44	Markus – Letter of Comment dated December 26, 2020
E-45	Twerdoff, B. – Letter of Comment dated December 30, 2020
E-46	Way, P. – Letter of Comment dated December 30, 2020
E-47	Way, A. – Letter of Comment dated December 30, 2020
E-48	Vaughan, C. – Letter of Comment dated January 2, 2021
E-49	Goodrich, S. – Letter of Comment dated January 2, 2021
E-50	Hembling, I. – Letter of Comment dated January 1, 2021
E-51	Grant, D. – Letter of Comment dated January 1, 2021
E-52	Grant, S. – Letter of Comment dated January 1, 2021
E-53	Ethier, G. – Letter of Comment dated January 9, 2021
E-54	Shaw, R. – Letter of Comment dated January 26, 2021
E-55	Jamie – Letter of Comment dated January 27, 2021
E-56	Watson, B. – Letter of Comment dated January 20, 2021
E-57	Hinds, M. – Letter of Comment dated February 28, 2021