

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



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER C-5-10**

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

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

and

An Application by British Columbia Transmission Corporation
for a Certificate of Public Convenience and Necessity
for the Columbia Valley Transmission Project

BEFORE: M.R. Harle, Panel Chair/Commissioner
L.A. O'Hara, Commissioner September 3, 2010

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. On January 22, 2010, the British Columbia Transmission Corporation (BCTC) applied (the Application), pursuant to sections 45 and 46 of the *Utilities Commission Act*, RSBC 1996, c. 473 (the Act), to the British Columbia Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Columbia Valley Transmission Project (CVT Project) as described in the Application;
- B. BCTC proposed the CVT Project in order to meet the immediate load growth as well as load growth forecast over a 30-year period in the upper Columbia Valley region;
- C. By Order G-18-10 dated February 8, 2010, the Commission established a Procedural Conference in Vancouver, BC on March 17, 2010 to seek input on the regulatory process for the review of the Application;
- D. The Procedural Conference took place in Vancouver on March 17, 2010;
- E. By Order G-54-10 dated March 24, 2010 the Commission, among other matters, established a written public hearing process for the review of the Application and a Regulatory Timetable that included a Workshop and Community Input Session, to take place respectively on April 14 and 15, 2010 in Invermere, BC;
- F. By letter also dated March 24, 2010, the Commission provided information on the Community Input Session and advised that the Session would be held if four or more presenters registered for the evening Session by April 12, 2010;
- G. By letter dated April 13, 2010, the Workshop and Community Input Session were cancelled as not enough participants had registered with the Commission;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER C-5-10**

2

- H. By Order G-71-10 dated April 15, 2010, the Commission issued a Revised Regulatory Timetable in response to a request by the Ktunaxa Nation Council for a change to the Regulatory Timetable;
- I. On April 20, 2010, BCTC filed the Toby Creek Diversion Supplement to the Application (the Supplement together with the Application, now collectively the Application);
- J. The CVT Project has an estimated total capital cost of approximately \$154.1 million, and consists of construction and operation of the following, all of which is further described in the Application:
- a) a new 230 kV transmission line, approximately 112 km in length generally following Route Corridor B using the Moonraker West Route and the Toby Creek Diversion route;
 - b) a new substation (referred to as the Kicking Horse Substation);
 - c) a new 69 kV transmission line approximately 3 km in length, as follows:
 - i. Segment 1, using the South Crossing of the Columbia River as described in the Application;
 - ii. Segment 2, using the route described in BCTC's response to the BC Old Age Pensioners Organization Information Request 1.9.1;
 - d) related upgrades at existing substations in Cranbrook, Invermere and Golden;
- K. By Order G-94-10 dated June 2, 2010, the Commission further revised the Revised Regulatory Timetable to extend the time for the filing of the Ktunaxa Nation Council's Information Requests;
- L. On June 3, 2010, the *Clean Energy Act*, SBC 2010, c. 22 (*CEA*), received Royal Assent. Pursuant to Part 7 of that *CEA*, all of BCTC's interests in the Application and in the CVT Project have been transferred to and become vested in the British Columbia Hydro and Power Authority (BC Hydro) as of July 5, 2010;
- M. Pursuant to the Revised Regulatory Timetable, BCTC filed its Final Submission on June 10, the Interveners filed their Final Submissions on June 17 and BCTC filed its Reply on June 24, 2010;
- N. The BCTC Final Submission anticipated that the Commission's decision on the Application would not be made before the coming into force of Part 7 of the *CEA* and requested that if the decision was made after that date, the CPCN should be issued in the name of BC Hydro;
- O. The Commission Panel has reviewed and considered the Application, the evidence and the submissions and has determined, as set out in the Reasons for Decision attached as Appendix A to this Order, that the CVT Project is in the public interest and that a Certificate of Public Convenience and Necessity should be issued to BC Hydro for the CVT Project.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER C-5-10**

3

NOW THEREFORE pursuant to sections 45 and 46 of the *Utilities Commission Act* the Commission orders that:

1. A Certificate of Public Convenience and Necessity is granted to BC Hydro for the entirety of the CVT Project as described in the Application.
2. BC Hydro shall file with the Commission quarterly progress reports on the CVT Project showing planned versus actual schedule, planned versus actual costs, and any variances or difficulties that BC Hydro may be encountering in implementing the Project. The quarterly progress reports will be filed within 30 days of the end of each reporting period.
3. BC Hydro shall file with the Commission within six months of the end or substantial completion of the CVT Project, a Final Report that provides a complete breakdown of the final costs of the CVT Project, compares these costs to the cost estimate, and provides a detailed explanation and justification of all material cost variances.
4. The format and content of the quarterly reports and the final report will be determined by BC Hydro in consultation with Commission staff, or by determination of the Commission.

DATED at the City of Vancouver, in the Province of British Columbia, this *Third* day of September 2010.

BY ORDER

Original signed by:

M.R. Harle
Panel Chair/Commissioner

Attachment



IN THE MATTER OF

BRITISH COLUMBIA TRANSMISSION CORPORATION CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE COLUMBIA VALLEY TRANSMISSION PROJECT

REASONS FOR DECISION

September 3, 2010

BEFORE:

M.R. Harle, Panel Chair/Commissioner
L.A. O'Hara, Commissioner

TABLE OF CONTENTS

	PAGE NO.
1.0 INTRODUCTION	4
1.1 The Application	4
1.2 Key Participants	4
1.3 Key Issues	5
1.4 Overview of the Decision	5
2.0 PROJECT JUSTIFICATION	7
2.1 Load Growth	7
2.2 Existing System Capacity Constraints	7
2.3 Commission Determination	8
3.0 PROJECT ALTERNATIVES	9
3.1 The Alternatives	9
3.2 Alternatives Evaluation Criteria	10
3.3 Evaluation of Alternatives and the Preferred Alternative	10
3.4 Commission Determination	11
4.0 THE COLUMBIA VALLEY TRANSMISSION PROJECT	12
4.1 Project Components	12
4.2 Routing	12
4.3 Project Costs and Revenue Requirements	13
4.4 Project Management	14
4.5 Other Observations	14
5.0 ENVIRONMENTAL ASSESSMENT, ELECTRIC AND MAGNETIC FIELDS	15
5.1 Environmental Assessment	15
5.2 Electric and Magnetic Fields	16
5.3 Commission Determination	16
6.0 PUBLIC CONSULTATION	17
6.1 Key Stakeholders	17
6.2 BCTC Public Consultation Activities	18
6.3 Issues and Concerns Raised	18
6.4 Commission Determination	19
7.0 FIRST NATIONS CONSULTATION	20
7.1 Division of Responsibilities for First Nations Consultation	20
7.2 The Commission's Duty to Assess the Adequacy of Consultation	20

TABLE OF CONTENTS

	PAGE NO.
7.3 Criteria by Which Consultation is Assessed	21
7.4 BC Hydro's Consultation Approach	22
7.5 BC Hydro's Consultation with the Ktunaxa Nation Council	23
7.6 BC Hydro's Consultation with the Shuswap Indian Band	31
7.7 BC Hydro's Consultation with Shuswap Nation Tribal Council	31
7.8 BC Hydro Consultation with Sexqéltkemc, Lakes Division of the Secwépemc (Shuswap) Nation	32
7.9 BC Hydro Consultation with Métis Nation BC	36
7.10 Commission Determination	37
8.0 RISK MANAGEMENT	38
8.1 Risks Identification and Mitigation	38
8.2 Commission Determination	38
9.0 CONCLUSION AND COMMISSION DETERMINATIONS	40
APPENDIX 1 – BACKGROUND AND REGULATORY PROCESS	41
1.1 The Applicant	41
1.2 The Order Sought	41
1.3 The Regulatory Process	42
APPENDIX 2 - JURISDICTION OF THE COMMISSION	43
2.1 Jurisdiction	43
2.2 Public Convenience and Necessity and the Public Interest	43

1.0 INTRODUCTION

1.1 The Application

On January 22, 2010 the British Columbia Transmission Corporation (BCTC) filed an application (the Application) with the British Columbia Utilities Commission (Commission) pursuant to sections 45 and 46 of the *Utilities Commission Act* RSBC 1996, c. 473 (*UCA*) for a Certificate of Public Convenience and Necessity (CPCN) for its Columbia Valley Transmission (CVT) Project. BCTC filed a Supplement to the Application on April 20, 2010 for a proposed Toby Creek Diversion alternative route. In this Decision references to CVT Project or Project include the Toby Creek Diversion alternative.

BCTC asserts that the Project is required to serve load growth in the upper Columbia Valley to address constraints in the existing transmission system serving the area. After reviewing several alternatives, it concluded that the CVT Project was the preferred solution as it:

- will be capable of meeting the load forecast of the area over the 30 year planning period;
- would free transmission capacity on existing assets to meet forecast load growth at other substations for the foreseeable future; and
- would allow supply from Golden to backfeed the existing system in the upper Columbia Valley during outages on the existing system between Invermere and Radium.

On June 3, 2010 the *Clean Energy Act*, SBC 2010, c. 22 (*CEA*) received Royal Assent. Part 7 of the *CEA* came into force on July 5, 2010. Accordingly, BCTC's interest in the Application became vested in the British Columbia Hydro and Power Authority (BC Hydro) as of that date.

Since the evidence was closed and final arguments were received prior to BCTC's interest in the Application vesting in BC Hydro, these Reasons for Decision will refer to BCTC as the Applicant. The Commission Order, however, will now be issued to BC Hydro.

Appendix 1 describes the background of the Application and the Order sought by the Applicant, and the regulatory process by which the Application was heard.

Appendix 2 discusses the Commission's jurisdiction for this Project under sections 45 and 46 of the *UCA* as well as the public convenience and necessity test, which includes consideration of cost-effectiveness. This provides the basis for our ultimate determination.

1.2 Key Participants

Ten registered Interveners were involved with the Application. They were:

- BC Hydro, the owner of the transmission system;
- Lake Windermere District Rod & Gun Club with concerns on routing of the Project, particularly in the Toby Creek area;
- Wildsight with concerns related to the extent of public consultations and the implications of the Project for the development of independent power producers in the region;

- Mr. Paul Bauman and Zehnder Farms Ltd. with concerns related to the routing of the project near Toby Creek;
- British Columbia Old Age Pensioners Organization et al (BCOAPO) representing the interests of BC Hydro's residential ratepayers;
- Purcell Green Power Inc., a company involved in the development of a 230 kV transmission line in the Invermere area) as part of the Glacier/Howser Hydroelectric Project; and
- Three First Nations with concerns related to environmental, social, and economic impacts of the Project, in general, as well as specific concerns on the nature and extent of consultations and accommodations regarding the impacts on First Nations rights. The three First Nations were the Ktunaxa Nation Council (KNC); Sexqéltkemc, Lakes Division of the Secwepemc (Shuswap) Nation (Lakes Division); and the Métis Nation BC (MNBC). The Shuswap Indian Band (SIB) and the Shuswap Nation Tribal Council (SNTC) also had interests in the proceeding.

1.3 Key Issues

Intervenors did not take exception to the fundamental need for the Project. However, a number of key issues did emerge and were addressed during the proceeding. These include, for example:

- the rationale for a proposed solution that continues to provide electricity to the upper Columbia Valley through a lineup from Cranbrook, through Invermere, to the Golden area, rather than one that closes a loop such as might exist with a routing from Mica to Golden. This longer route would likely incur higher transmission line losses when electricity is routed from Mica through the Okanagan and Cranbrook to Golden, than would be incurred when taking a direct route from Mica to Golden;
- the rationale for a proposed solution that requires a new right-of-way on the west side of the Columbia River rather than utilizing the existing right-of-way on the east side of the Columbia River;
- the initial routing for the proposed solution that required two crossings across Toby Creek, that impacted private property and recreational areas, and, of particular concern, that could seriously impair the habitat of a local mountain goat herd; and
- the adequacy of public consultations for airing concerns regarding the relationship of the CVT Project, the Transmission Expansion Policy (TEP), and independent power producers (IPPs).

First Nations identified several issues related to the assessment of Aboriginal rights claims and the level of consultation and accommodation required by the different groups.

Such issues are addressed in the following sections of the Reasons for Decision.

1.4 Overview of the Decision

Section 2 of this Decision overviews the need for the CVT Project and its justification. Section 3 reviews the alternatives considered to meet the need, and the conclusion that the CVT Project is the preferred alternative.

Section 4 describes the CVT Project including its components, proposed routing, project costs and revenue requirement impacts, and project management matters. Section 5 reflects environmental assessment, and electric and magnetic field considerations.

Section 6 discusses public consultation and Section 7 addresses First Nations consultation matters.

Section 8 reviews risk management considerations.

Section 9 summarizes our overall conclusions and Commission determinations.

After having carefully considered and weighed the evidence and arguments of all parties participating in this proceeding, the Commission Panel concludes that the CVT Project is needed to reliably serve BCTC's load in the upper Columbia Valley region. For the reasons given in this Decision, we find the CVT Project to be necessary and in the public interest as it is the most cost-effective long term solution. We also find that public consultation has been adequate. We further find First Nations consultation to be adequate to the point of issuing this Decision. Subject to the directions contained in these Reasons for Decision and the related Order, the Commission Panel grants BC Hydro a CPCN for the CVT Project.

2.0 PROJECT JUSTIFICATION

Section 2 describes the present transmission supply arrangements for the upper Columbia Valley, the implications of load growth in the area, existing system constraints, and the need to address such constraints.

2.1 Load Growth

The Golden area is presently supplied by a single distribution substation via a 69 kV line (60L271) approximately 129 km in length, which originates near Invermere at the Invermere Substation. This system also supplies four other distribution substations in the upper Columbia Valley area.

Two 230/69 kV transformers at the Invermere Substation supply the upper Columbia Valley via 60L271, as well as the area south of Invermere to Kimberly via a 69 kV line (60L270). The Invermere Substation is supplied via a 230 kV line (2L258) from Cranbrook Substation.

The upper Columbia Valley is forecast to experience significant load growth over the next thirty years. It is primarily peak load growth in the Golden area at the end of the 69 kV radial system that is driving the urgency to reinforce the transmission system. While a 2007/2008 load forecast indicated the Invermere to Golden load supply capability would be exceeded in 2012/2013, system planning studies now indicate that load growth in the Golden area is forecast to exceed the capability of the existing 69 kV system by the winter of 2010/2011.

2.2 Existing System Capacity Constraints

Constraints have been identified with:

- Circuit 60L271;
- 230/69 kV transformation at the Invermere Substation; and
- 69/25/12 kV transformation at the Golden Substation.

As indicated above, 60L271 will exceed its capacity limit by the winter of 2010/2011. If peak load levels continue to increase, the upper Columbia Valley could experience system voltage instability; there is virtually no remaining stability margin. Furthermore, without upgrades to line 60L271, the amount of any future IPP generation north of Golden that could potentially be connected to the Golden Substation and transmitted south to Invermere is limited.

The load supplied through line 60L271 from the Invermere Substation was forecast to exceed its firm transformation capacity by approximately 10 percent by winter 2009/2010.

Transformer upgrades will be required at the Golden Substation prior to 2021 according to recent load forecasts.

The supply of energy to the upper Columbia Valley is via the 69 kV line 60L271 from Invermere to Golden and the 230 kV line 2L258 from Cranbrook to Invermere. Evidence indicates that the 230 kV line enjoys superior reliability to the 69 kV line (Exhibit B-1, p. 31). BCTC identified increasing reliability of supply as a BCTC operational objective.

BCTC identified other approaches to alleviate the impact of the supply constraints. These include, for example, demand side management (DSM) and local generation initiatives. Even with DSM initiatives, maximum supply capacity of the 69 kV

line is expected to be exceeded by winter 2012/2013. According to BCTC, no alternative energy sourcing solutions have been demonstrated to be capable of providing dependable power, be economically feasible, or be in service by October 2012. Indeed, a Transmission Expansion Policy study in response to a directive in the July 10, 2008 Commission Decision on BCTC's F2009-2018 Capital Plan examined projects that could integrate potential IPPs within the region. It concluded that all three TEP alternatives examined fail to demonstrate a positive ratepayer benefit, but a "decision to proceed with a transmission system upgrade to meet projected electricity demand in the Golden area does not undermine potential future investment in a TEP project." (Exhibit B-1, Appendix D, p. 4)

BCTC asserts that there is the need to resolve the constraints of the existing transmission system and meet the planning objective of enhancing reliability at the earliest possible in-service date.

No Intervener challenged whether BCTC adequately demonstrated the need for a project to meet the pending supply constraints to the upper Columbia Valley. BCOAPO submits that "BCTC has adequately demonstrated the need to improve the supply capability to the Golden area." However, BCOAPO also submits that "the appropriate treatment for DSM in load forecasts used for planning purposes requires more consideration," and this should be addressed in a future Capital Plan review. (BCOAPO Argument, p. 4)

Several Interveners expressed concerns with the nature and adequacy of consultation related to the Project. For example:

- Chief Nelson Leon, Chief of the Adams Lake Band (representing the Lakes Division of the Secwepemc Nation, which includes the Neskonlith, Splatina, and Adams Lake Indian Bands) stated: "... I have no doubts that there is the need for more efficient distribution of electricity within our territory, that the growth and promotion of economy and industry is tied to that, that I don't believe that the economic interests should outweigh addressing the aboriginal interest in title." (T1:27).
- Wildsight, while not directly challenging the evidence that has been provided regarding the concerns with supply capacity for the upper Columbia Valley, expressed a concern that "BCTC did not present and make clear all relevant knowledge relating to the project to the public. Wildsight submitted that "...a formal extension to the project's approval period be granted and more public consultations on IPP development and the cumulative impact both ecologically and socially is required." (Wildsight Argument, Section 5)

Such concerns will be discussed in Section 6.0 Public Consultation, and Section 7.0 First Nations Consultation.

2.3 Commission Determination

The Commission Panel accepts BCTC's evidence that the load in the upper Columbia Valley is growing and that the capacity constraints on the existing transmission system need to be addressed. We concur with BCOAPO's view that the treatment of DSM in load forecasts used for planning purposes should be carefully considered in a future Capital Plan review.

3.0 PROJECT ALTERNATIVES

Section 3 identifies three alternatives considered as potential solutions to meet the transmission system needs for the upper Columbia Valley. It sets out the criteria used to evaluate the options, outlines the evaluation of the options against the criteria, and describes the preferred alternative.

3.1 The Alternatives

BCTC identified three possible alternatives for addressing the system capacity constraints in the upper Columbia Valley. In identifying these options, it considered supply capability, reliability, financial factors, design requirements for a substation and the right-of-way corridor, environmental impacts, and input from the general public and First Nations. Several other alternatives were dismissed because of their inability to provide reliable capacity to meet long range supply requirements or are not considered cost-effective. The three alternatives are:

1. construct a new 138 kV transmission line from Invermere to Golden, approximately 120 km in length;
2. construct a new 230 kV transmission line from Invermere to Golden approximately 120 km in length; and
3. construct a 138 kV transmission line from Mica to Golden approximately 220 km in length.

Each of these alternatives requires a new substation in the Golden area (the Kicking Horse Substation) and a new 69 kV line to interconnect the new substation to the existing Golden Substation.

Alternative 1 – 138 kV Transmission Line from Invermere to Golden

This option consists of a radial transmission line from Invermere to the Golden area. It will meet the upper Columbia Valley load requirements for the next 30 years under normal conditions and during critical transformer outages. It reduces line losses and improves system reliability as compared to the existing 69 kV transmission line. It has no capability to meet demands of any additional load growth beyond the 30-year period. It carries a present value cost of \$114.6 million.

Alternative 2 – 230 kV Transmission Line from Invermere to Golden

This option also consists of a radial transmission line from Invermere to the Golden area. It will meet the upper Columbia Valley load requirements for the next 30 years under normal conditions and during critical transformer outages. It reduces line losses and improves system reliability as compared to the existing 69 kV transmission line. It alleviates existing system constraints. It provides a stronger system at Golden with higher fault levels and improved voltage regulation in comparison with the other alternatives and the existing system. It is also able to provide for an additional 17 MVA of load growth at the Golden Substation beyond the 30-year planning period. It carries a present value cost of \$115.6 million.

Alternative 3 – 138 kV Transmission Line from Mica to Golden

This option would close a transmission loop starting at Mica by connecting Mica to Golden. It will meet the upper Columbia Valley load requirements for the next 30 years under normal conditions and during critical transformer outages. It reduces line losses and improves system reliability as compared to the existing 69 kV transmission line. This option would require a new 500/138 kV switchyard at or near the Mica Substation. It has no capability to meet demands of any additional load growth beyond the 30-year period. It carries a present value cost of \$186.1 million.

Other

A number of other supply configurations were suggested by the Commission and Interveners during the Information Request process. These have been dismissed by BCTC as not providing adequate transfer capacity for long term needs, addressing reliability improvements, or yielding significant cost benefits. Also, certain other suggestions could compromise sensitive environment.

3.2 Alternatives Evaluation Criteria

Both financial and non-financial factors have been considered by BCTC in evaluating the alternatives. Financial analysis is based on the present value of life cycle costs of each alternative. Such costs include capital costs, operating costs, and line losses over the study period.

Other factors considered include technical capability, reliability outcomes, transmission energy losses, operational and performance impacts, environmental, and social considerations.

3.3 Evaluation of Alternatives and the Preferred Alternative

The Lake Windermere District Rod & Gun Club questions why Alternative 2 is preferred over Alternative 3 "...we would ask why the route from Invermere to Golden was chosen when the generating source of the power is just a short distance away to the North, Mica Dam, Revelstoke Dam, and other dams along the Columbia. A line from the source to Golden of approx 100 km. with a line loss of X% per kilometer over a line a existing line [sic] west through the Okanagan, then back east through the west Kootenay, to Cranbrook, then north to Invermere, then the new proposed line to Golden, a total of over 1,000 [sic] with a line loss of X% per kilometer would surely be much more power efficient over a very few years and with our present power saving program this should be a first choice." (Exhibit C1-1) It further does not consider Alternative 2 the best option for several reasons, including one that the Project is: "A very round about of approximately 700 kms where the Mica to Golden route would be only 220 kms. At .9 kw per km power losses this would be a very inefficient line (over 3 times the line loss) compared to the other option." (Exhibit C1-4)

Wildsight submits that the three alternatives considered in the Application relate to information that was not adequately canvassed through public and community consultations prior to the filing of the Application, particularly in relation to IPP development. As noted in Section 2.2 above it, therefore, seeks further public consultations. This request is addressed in Section 6.0.

BCOAPO submits that "BCTC has adequately canvassed the range of potential alternatives." (BCOAPO Argument, p. 4)

Other Intervener comments on the alternatives being considered only relate to the nature and adequacy of First Nations consultations. These are addressed in Section 7.0.

While Alternative 1 has a total project cost slightly lower than Alternative 2 (\$114.6 million vs. \$115.6 million), Alternative 2 has a significantly lower capacity cost/MVA (1.30 vs. 1.55) (Exhibit B-1, p. 40). Furthermore, Alternative 2 is able to provide more capacity to meet unexpected growth requirements, while Alternative 1 is not. Also, Alternative 1 will require an additional expenditure of \$8.4 million in 2037 which is avoided with Alternative 2.

Alternative 3 is significantly more costly than either of the other alternatives.

While all three alternatives have the ability to meet load forecast requirements, only Alternative 2 is able to supply for growth beyond the study period, and only Alternative 2 is able to meet higher growth scenarios assessed under load growth rate sensitivity analysis.

Further, Alternative 2 has greater capacity than Alternative 1 to supply Columbia Valley communities south of Golden during outages between Invermere and Radium because of backfeeding capability from the Golden Substation. Alternative 2 has the highest reliability resulting from lowest projected failure rates and unavailability compared to other alternatives. Alternative 3 is deemed to have the lowest reliability due to the transmission line traversing rugged, remote terrain and exposure to extreme weather conditions.

Since Alternative 3 is both significantly longer than Alternatives 1 and 2 and it traverses significantly more rugged and remote terrain, it is likely to encounter greater construction risks, give rise to more public and First Nations concerns, and entail more environmental concerns.

Operationally, Alternative 2 avoids bringing a third voltage level into the region (138 kV) and provides a higher fault level and improved voltage regulation.

BCTC has concluded that on the basis of financial, technical, and all other considerations Alternative 2 – the new 230 kV line from Invermere to Golden – is the preferred alternative to meet load growth in the upper Columbia Valley and to relieve constraints on the existing transmission system. According to BCTC, it provides greater capacity to transmit power to the Golden area, enhances reliability, provides higher fault level and better voltage regulation, and has a relatively attractive financial cost.

BCOAPO submits that “it is reasonable to adopt Alternative #2 based on its superior performance in terms of reliability and long term supply capability.” (BCOAPO Argument, p. 5)

3.4 Commission Determination

The Commission Panel accepts BCTC’s assessment of the various alternatives to address capacity constraints in the upper Columbia Valley. We accept that Alternative 2 provides improved system reliability and the ability to accommodate future growth better than Alternative 1 for a relatively modest additional cost. While Alternative 3 may have attractive characteristics, we accept that it is significantly more costly, represents major additional project risks as well as operational challenges due to severe terrain and its remote location.

Accordingly, **we determine that Alternative 2, the new 230 kV transmission line from Invermere to Golden, is the most cost-effective solution.** We also note that it is not inconsistent with the Transmission Expansion Policy and potential IPP development in the region as is discussed later in Section 6.0

4.0 THE COLUMBIA VALLEY TRANSMISSION PROJECT

Section 4 more fully describes the Columbia Valley Transmission Project, the preferred alternative, which the Panel has determined in Section 3.4 to be the most cost-effective solution. It sets out the Project components and infrastructure, discusses various routing considerations, reviews project costs and financial impacts, and describes project management.

4.1 Project Components

The CVT Project consists of a new approximately 112 km 230 kV transmission line starting at the existing Invermere Substation and travelling north on the west side of the Columbia River to the new Kicking Horse Substation. A three km long 69 kV circuit takes the new energy supply across the Columbia River to the existing Golden Substation. The Golden, Invermere, and Cranbrook Substations will also require upgrading to accommodate the new 230 kV line, the proposed Kicking Horse Substation, and the new 69 kV transmission line.

The new 112 km 230 kV transmission line will use standard wooden H-frame structures. It will require a dedicated right-of-way for reliability and safe operation and maintenance of the line. The right-of-way will be approximately 40 to 50 meters wide to accommodate construction and operation.

The new Kicking Horse Substation is located to help minimize the total length of transmission lines. It is required because the existing Golden Substation cannot accommodate the 230 kV voltages. The substation will provide the 230/69 kV transformation required to supply the Golden Substation. The proposed configuration has been designed to satisfy N-1 planning criteria during peak load conditions. The location of the substation considered such factors as land tenure type, location of existing distribution lines, appearance impacts, noise or electrical effects, public and site security, and nearby telecommunications facilities.

The three km 69 kV line has taken account of the proposed length of the line, potential impacts to customers and to the Town of Golden during construction, impacts to a nearby CP Rail Yard, and environmental and costs concerns.

4.2 Routing

The New 112 km 230 kV Transmission Line

The new 230 kV transmission line requires a dedicated right-of-way for reliability and safe operation and maintenance. Several possible routing options were considered including a dedicated right-of-way on the east side of the Columbia River. This would have required passing through a First Nations Reserve and Kootenay National Park, as well as expansion of the existing right-of-way over private lands. This would have triggered a formal assessment under the *Canadian Environmental Assessment Act*, and extended negotiations and discussions thereby compromising the Project schedule and required in-service date. It also would have adverse impacts for the tourist area at Radium Hot Springs, and give rise to reliability concerns due to the risks of forest fires, avalanches, and the steep rough terrain in the area. Given these factors, routing on the east side of the Columbia River has not been pursued and a number of routing options on the west side of the Columbia River have been considered.

The west side of the Columbia River offered routes which took into account considerations such as the fact that the area is mainly Provincial Crown land; there are some existing transmission rights-of-way; parts of the area have been logged, include grasslands, and have been impacted by recreational use; there are numerous access trails; and the terrain is moderate for construction, operation, and maintenance of the transmission line.

Three potential options were considered on the west side of the Columbia River. In developing these, BCTC sought to avoid potential adverse environmental, public, and First Nations impacts. As a result of public consultations, one proposed option was discarded early because of potential impacts on this environmentally sensitive area. The other two options initially proposed crossing Toby Creek twice near Invermere, one of which was in the vicinity of the habitat frequented by a small herd of mountain goats.

After receiving both written and oral input from the First Nations, Interveners, and interested parties in submissions and through consultation, BCTC modified the Application with the Toby Creek Diversion Supplement. This proposed a route that avoided crossing Toby Creek and did not disturb the mineral lick habitat of the mountain goat herd. Taking account of technical, environmental and cost factors, together with results of public and First Nations consultations, BCTC deemed the proposed Toby Creek Diversion route as preferable to that which had been originally proposed.

One of the remaining route options (Corridor A) was discarded because it:

- required acquisition of more right-of-way;
- had greater engineering requirements for topography, conductor loading, and right-of-way preparation;
- did not offer the same potential to avoid impacts on recreational lakes; and
- did not lend itself to the same potential to assess archaeological impacts.

Routing utilizing the Moonraker west Corridor and the Toby Creek Diversion became BCTC's preferred corridor for the new 230 kV transmission line.

The New 69 kV Transmission Line

Several options were considered for the routing of the 69 kV transmission line between the new Kicking Horse Substation and the Golden Substation. Factors considered in assessing these options included capital cost, the potential impact to the Columbia River, the location of a crossing of the Columbia River, operations of the Town of Golden Airport, the CP Rail crossing, potential impacts on existing customers, distance of the proposed location of the new Kicking Horse Substation from the Golden Substation, impact to private properties, constraints imposed by the existing distribution system, and the ease of construction.

The preferred route has been selected because, while having similar environmental, physical, and cost assessments as other alternatives, it also enjoys support of the Town of Golden, CP Rail, and the Ministry of Transportation and Infrastructure.

4.3 Project Costs and Revenue Requirements

The capital cost estimate for the CVT Project is \$154.1 million. This includes engineering, procurement and construction, property acquisition, contingency and overheads, interest during construction, and inflation adjustments. It includes regulatory, legal, and environmental reviews, and public consultation. It includes First Nations consultation, including capacity funding engagement costs; it does not include impact management and benefits agreement (IMBA) costs.

This cost translates to a forecast \$18.2 million in F2014 or .60 percent on BC Hydro's annual revenue requirement, or a present value revenue requirement impact of \$193.8 million and .41 percent on the BC Hydro revenue requirement. (Exhibit B-1, Appendix E, pp. 9-10)

4.4 Project Management

BCTC has identified various risks that potentially impact the completion of the Project. These include project schedule delays, cost uncertainties, and construction and procurements risks. It has developed various plans for managing and mitigating each of these risks. It proposes to provide the Commission with quarterly reports in a format prescribed by the Commission.

At this stage, the procurement strategy for the CVT Project is to award fixed price contracts for construction work based on a public competitive bidding process.

4.5 Other Observations

BCOAPO submits that “the modified Route Corridor B [as proposed by BCTC] represents a reasonable balance of cost, technical, and public interest considerations and should be accepted.” (BCOAPO Argument, p. 5)

The KNC identified certain matters in respect of project routing but not on the technical components or costs of the Project.

No other Intervener has commented on the technical components, routing, or costs associated with the CVT Project.

5.0 ENVIRONMENTAL ASSESSMENT, ELECTRIC AND MAGNETIC FIELDS

Section 5 addresses environmental assessment, electric and magnetic field considerations.

5.1 Environmental Assessment

The CVT Project as proposed does not require an environmental assessment under either the *Environmental Assessment Act* (BC) or the *Canadian Environmental Assessment Act*.

However, BCTC commissioned an environmental assessment of the Project to provide an environmental review of the Project in compliance with the Commission's CPCN Guidelines. The purpose of the assessment was to identify whether various routing options or substation sites under consideration would have adverse effects on the environment or the public, taking into account potential mitigation strategies.

The assessment considered the potential effects of the CVT Project on fish, fish habitat and aquatic resources, wildlife and wild life habitat, vegetation, land use, aesthetics, socio-economics and communities, and archaeological resources. It proposed measures to avoid, reduce, or otherwise mitigate potential adverse effects of the Project components. Construction, operation, and maintenance phases of the Project have been considered. The assessment concluded that the CVT Project is unlikely to result in significant adverse environmental effects with the implementation of recommended mitigation measures.

Several Interveners and interested parties had expressed concerns over the initial routing proposed for the approximate 120 km 230 kV transmission line, particularly in the Invermere and Toby Creek areas because of wildlife, habitat, and aesthetic concerns. These have largely been relieved with the Toby Creek Diversion. For example, Lake Windermere District Rod & Gun Club states: "We would like to state that we are pleased that the Toby Creek alternate route was dealt with and approved to protect the wildlife especially the mountain goats" (Exhibit C1-6, p. 1); and Paul Bauman states that "I would like to express my satisfaction with the Toby Creek Diversion as described in the 20 April 2010 Supplement." (Exhibit C4-5)

The KNC expressed its view that environmental impacts will be medium to high considering that "(a) the impacts will generally be permanent; (b) mitigation measures will reduce, but not eliminate, project impacts to riparian areas, fish habitats and populations, noxious weed ingress, loss of traditional use plants, and wildlife, and associated Ktunaxa harvesting rights..." (Exhibit C7-4, p. 2)

The KNC acknowledges that, "While consultation [between BCTC and BC Hydro, and the KNC] is far from complete, it has been helpful in identifying potential project impacts on Ktunaxa interests, including Ktunaxa Title and Rights, and initiating discussions regarding possible mitigation and other accommodation measures." However, the KNC also states: "Further work is required in order to support consultation generally and, more specifically, site-specific determinations of potential project impacts on Ktunaxa traditional and current uses." (Exhibit C7-4, p. 2) The adequacy of the consultation efforts with the KNC is discussed further in Section 7.0.

BCTC has committed to continuing to work with the KNC on issues related to the impact of increased access on wildlife habitat and populations, on concerns related to riparian areas, on the archaeological impact assessment, and on the environmental management plan.

The Lakes Division observed that, “Suffice to say that many environmental impacts will be felt as a result of this project, some of which have had proposed mitigative measures proposed to lessen the net impact. We do not have the resources to re-analyze this ... However we do believe that each impact could be temporarily dealt with by ensuring No Net loss of habitat and way of life for All our Relations (e.g. a tree for a tree, a stream for a stream).” (Exhibit C8-3, p. 5) The adequacy of consultation with the Lakes Division on such matters is addressed in Section 7.0.

5.2 Electric and Magnetic Fields

It is BCTC’s evidence that expected levels of electric and magnetic fields (EMF) of the CVT Project fall well under accepted guidelines. No Intervener has taken exception to this evidence.

5.3 Commission Determination

The Commission Panel accepts BCTC’s evidence that the CVT Project is unlikely to result in significant adverse environmental effects with the implementation of recommended mitigation measures, and that expected levels of electric and magnetic fields (EMF) of the CVT Project fall well under accepted guidelines. BCTC’s modification of the proposed project routing with the Toby Creek Diversion was an important consideration in this determination.

6.0 PUBLIC CONSULTATION

Section 6 describes how BCTC has addressed requirements for public consultation. It describes the stakeholders identified, public consultation activities, and issues and concerns raised.

By Order G-50-10 the Commission issued new guidelines on March 18, 2010 to assist utilities applying for a Certificate of Public Convenience and Necessity (Guidelines).¹ Although the information requirements regarding public consultation have not materially changed since the previous guidelines were issued in 2004, the 2010 CPCN Guidelines are more descriptive. Accordingly, the Commission Panel will rely on the Guidelines to assess the adequacy of public consultation activities of BCTC with respect to the CVT Project.

Under the Guidelines CPCN applications should contain the following information regarding public consultation:

- (i) Overview of the community, social and environmental setting in which the project and its feasible alternatives will be constructed and operated, and of the public who may be directly impacted by the project and its feasible alternatives;
- (ii) Description of the information and consultation programs with the public, including the organizations, agencies and individuals consulted, the information provided to these parties, and a chronology of meetings and other communications with members of the public and their representatives. This includes consultation with both the public who may be directly impacted by the project and the public that may experience impacts on their rates and service;
- (iii) Description of the issues and concerns raised during consultations, the measures taken or planned to address issues or concerns, or an explanation of why no further action is required to address an issue or concern;
- (iv) Identification of any outstanding issues or concerns; and
- (v) Applicant's overall assessment as to the sufficiency of the public consultation process with respect to the project, in the context of the decision which is being sought from the Commission.

(Order G-50-10, Appendix A, p. 8)

6.1 Key Stakeholders

At the outset, BCTC identified the following key stakeholder groups:

- Community organizations, environmental/recreational organizations and user groups, as well as the general public in the Project area;
- Property owners along proposed routing options;
- Chairs, Area Directors and staff of the Regional District of East Kootenay and the Columbia Shuswap Regional District; and
- Mayors, councillors and staff of Town of Invermere, Village of Radium Hot Springs, Town of Golden and Community of Field, as well as Members of the Provincial Legislative Assembly.

(Exhibit B-1, pp. 112-113)

¹ 2010 Certificates of Public Convenience and Necessity Application Guidelines, Order G-50-10, March 18, 2010.

Active Interveners representing some of the above groups included the Lake Windermere District Rod & Gun Club, Wildsight, Paul Bauman and Zehnder Farms Ltd.

6.2 BCTC Public Consultation Activities

BCTC developed a comprehensive public consultation plan for the CVT Project. To reach the communities in the vicinity of the Project BCTC used various means such as direct mailing, meetings, Open Houses, newspaper advertisements, and the creation of a website. BCTC sent notices to 6,142 residents, businesses, and institutions in nine communities and letters to all 63 individuals or companies who have Crown land tenures and/or licenses along the proposed route corridor. All 43 property owners identified for Corridors A and B were directly contacted by the properties representative. Finally, BCTC sent letters to 42 property owners in the Town of Golden specifically to provide information about the proposed route for Segment 2 of the 69 kV transmission line through Golden. (Exhibit B-1, pp. 109-110, 114-123, Appendix P, BCUC 1: 1.44.2 and 144.3)

6.3 Issues and Concerns Raised

The single most contentious issue was the proposed route crossing in the vicinity of salt/mineral licks important to a small herd of mountain goats on the west side of the Toby Creek Canyon. Furthermore, BCTC's initial proposal included two Toby Creek crossings. In response to these concerns, BCTC committed to reviewing a particular alternative route that would avoid the Toby Creek crossings. Consequently, BCTC filed a Toby Creek Diversion Supplement on April 20, 2010. (Exhibit B-6).

Another concern raised was the possibility that the transmission line right-of-way could facilitate increased access to certain areas along the proposed route thereby increasing human disturbance to those areas. To mitigate this concern, BCTC intends to use existing access and trails as much as possible and maintain natural barriers to limit access.

Some members of the public were concerned that the transmission line would hamper recreational activities. BCTC's response was to reroute the corridor around the Moonraker Trails and Cedar Lakes recreational areas to keep the proposed 230 kV transmission line further west of these areas and thereby to avoid any impact on the key recreational areas. (Exhibit B-1, pp. 125-138)

Wildsight submits that the Application contains information that was not presented at the Open House consultations; namely, information pertaining to potential IPP development in the Northern Selkirk region, which would open up a new geographical area of concern. Wildsight further alludes to the juxtaposition of information that was presented to the public within the CVT Project description versus the Transmission Expansion Policy. Wildsight notes that the CVT Project description makes no mention of the fact that the line would be used for IPP development, while the TEP report highlights a possible secondary function of the CVT line. Therefore, Wildsight submits "...if the knowledge that the CVT line will be used for a secondary function exists, and the stated Project Justification does not underscore the fact of the dual use of the line, then full disclosure of the project has not been made known and the adequacy of public consultation is insufficient." (Wildsight Argument, para 7)

In Reply, BCTC submits that Wildsight's suggestion regarding the new geographical area of concern is incorrect. BCTC points out that the proposed transmission line will increase the capacity of the transmission system to transfer electricity to or from Golden and that it will not extend the system any further north. With regard to the Transmission Expansion Policy, BCTC submits that Wildsight has not been deprived of an opportunity to canvass the relationship between the TEP, IPPs, and the CVT Project. BCTC notes that the TEP is on the public record, that all Interveners including Wildsight received

explicit notice of the consideration of TEP in the evaluation of alternatives for the CVT Project, and that the relationship of IPP development to the CVT Project was discussed in public consultation. In summary, BCTC submits that Wildsight had sufficient notice of the consideration of TEP, has had an opportunity to canvass issues of concern through the information request process and the filing of evidence. (BCTC Reply, pp. 2-7)

6.4 Commission Determination

The Commission Panel first notes that the Workshop and Community Input Session it had planned to conduct at Invermere were cancelled because an insufficient number of participants had registered. The Panel believes that this low level of interest in the community at least partially reflects positively on BCTC's efforts to resolve and/or mitigate issues and concerns expressed by stakeholder groups. Especially, the Toby Creek Diversion plan has been welcome.

With regard to the submission of Wildsight, the Commission Panel finds that Wildsight has misunderstood the linkage between this CPCN Application, the TEP, and IPP development and is persuaded by arguments put forward by BCTC. The TEP was developed to specifically address transmission expansion in anticipation of demand in response to Special Direction 9. The primary purpose for TEP analysis in the CVT Project context was to ensure that the transmission system was neither underbuilt nor over-built vis-à-vis anticipated need. Ultimately, the purpose of the CVT Project is to meet the identified needs in the upper Columbia Valley. The Panel also notes that since Wildsight's registration as an Intervener on February 9, 2010, it has had the opportunity to participate by way of information requests and the filing of evidence, and final argument.

In summary, the Commission Panel finds BCTC developed and executed a comprehensive public consultation plan for the CVT Project and has been responsive in terms of measures taken or has plans to address issues or concerns expressed by stakeholders. **The Panel finds that the overall public consultation efforts have been adequate.** We further find that the public consultation plan adopted by BCTC also meets the requirements of the Guidelines.

7.0 FIRST NATIONS CONSULTATION

Section 7 describes the nature and adequacy of consultations with First Nations. It covers the responsibilities for First Nations consultation, the Commission's duty to assess the adequacy of consultation, the criteria by which consultation is assessed, and BC Hydro's consultation approach. It reviews consultation activities with various relevant First Nations entities including the Ktunaxa Nation Council, Shuswap Indian Band, Shuswap Nation Tribal Council, Sexqéltkemoc - Lakes Division of the Secwepemc Nation, and Métis Nation BC.

On March 18, 2010, by Order G-51-10, the Commission issued First Nations Information Filing Guidelines for Crown Utilities which outline the information to be filed in a CPCN application by BCTC or BC Hydro.² The Commission Panel has used these Guidelines to assess the completeness of information filed by BCTC in respect of its First Nations consultation activities for the CVT Project.

7.1 Division of Responsibilities for First Nations Consultation

As of the date of the hearing of this Application, BCTC and BC Hydro were parties to an Asset Management and Maintenance Agreement signed in 2003. The agreement gave BC Hydro the responsibility for First Nations consultation with respect to the transmission system. (Exhibit B-3, p. 139) Although BCTC was responsible for the Project as a whole, engaged with First Nations at various times on the CVT Project, and had ultimate responsibility for the adequacy of consultation for the CVT Project, BC Hydro undertook the consultation activities. This division of responsibility was communicated by letter to all First Nations identified as potentially affected by the Project. Notwithstanding this, as indicated in Section 1.1, BCTC's interest in the Application became vested in BC Hydro as of July 5, 2010.

7.2 The Commission's Duty to Assess the Adequacy of Consultation

With regard to the Application, the Commission must determine three issues relating to First Nations consultation:

1. whether BCTC and BC Hydro, as Crown Corporations, owe a duty to consult to any or all of the First Nations who say they are adversely affected by the Project;
2. if a duty to consult exists, what is the extent of that duty; and
3. if a duty exists, have BCTC and BC Hydro adequately fulfilled their duty to consult the First Nations who may be adversely affected by the CVT Project to the date of this Decision.

The foundational decision on the duty to consult is the Supreme Court of Canada's decision in *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73 (*Haida*) which provides a framework for assessing the adequacy of consultation.

The Crown's duty to consult First Nations is triggered by the Crown having knowledge, real or constructive, of the potential existence of Aboriginal rights or title when it contemplates conduct that might adversely affect them (*Haida*, para 64). BCTC and BC Hydro acknowledged the relevance of this duty in relation to the Project by commencing consultation with First Nations in November 2008.

First Nations rights are protected by Section 35(1) of the *Constitution Act, 1982*, which states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

² 2010 First Nations Information Filing Guidelines for Crown Utilities, Order G-51-10, March 18, 2010
BCTC Columbia Valley Transmission Project

Thus, the adverse impacts to Aboriginal rights discussed in *Haida* and other caselaw refer, in large part, to impacts on constitutionally protected Aboriginal rights considered in the *Constitution Act, 1982*. This creates an obligation upon the Commission to determine whether the consultation efforts of BCTC and BC Hydro, up to the point of the Commission's Decision on the Application, have been adequate: *Kwikwetlem First Nation v. British Columbia (Utilities Commission)* 2009 BCCA 68, para 70.

7.3 Criteria by Which Consultation is Assessed

Haida describes the scope of the duty to consult and accommodate as variable according to the circumstances. Generally, it is "proportionate to a preliminary assessment of the strength of the cases supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed" (*Haida*, para 39).

In *Haida* Chief Justice McLachlin addresses the types of duty that may arise as follows:

Against this background, I turn to the kind of duties that may arise in different situations. In this respect, the concept of a spectrum may be helpful, not to suggest watertight legal compartments but rather to indicate what the honour of the Crown may require in particular circumstances. At one end of the spectrum lie cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor. In such cases, the only duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice. "[C]onsultation' in its least technical definition is talking together for mutual understanding": T. Isaac and A. Knox, "The Crown's Duty to Consult Aboriginal People" (2003), 41 *Alta. L. Rev.* 49, at p. 61.

At the other end of the spectrum lie cases where a strong *prima facie* case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases deep consultation, aimed at finding a satisfactory interim solution, may be required. While precise requirements will vary with the circumstances, the consultation required at this stage may entail the opportunity to make submissions for consideration, formal participation in the decision-making process, and provision of written reasons to show that Aboriginal concerns were considered and to reveal the impact they had on the decision. This list is neither exhaustive, nor mandatory for every case. The government may wish to adopt dispute resolution procedures like mediation or administrative regimes with impartial decision-makers in complex or difficult cases.

Between these two extremes of the spectrum just described, will lie other situations. Every case must be approached individually. Each must also be approached flexibly, since the level of consultation required may change as the process goes on and new information comes to light. The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake. Pending settlement, the Crown is bound by its honour to balance societal and Aboriginal interests in making decisions that may affect Aboriginal claims. The Crown may be required to make decisions in the face of disagreement as to the adequacy of its response to Aboriginal concerns. Balance and compromise will then be necessary. (*Haida*, paras 43-45)

Thus, the level or scope of consultation is a product of the strength of claim or the seriousness of the impact.

In matters involving asserted First Nations claims, "the honour of the Crown requires that the Crown act with good faith to provide meaningful consultation appropriate to the circumstances." Good faith is required by the Crown and First Nations at all stages but there is no duty to agree (*Haida*, paras 41-42).

In considering the claims asserted by First Nations in the context of the Application, the Commission must, therefore, take account of the strength of the claim by, and the seriousness of the potential impact on each First Nation that asserts it may be affected by the Project, in order to determine where the claim lies within the *Haida* spectrum and whether BCTC and BC Hydro have adequately consulted with the First Nation to the point of the Commission's Decision.

7.4 BC Hydro's Consultation Approach

Identification of First Nations Potentially Affected by the CVT Project

BC Hydro began its consultation efforts by first identifying First Nations that could possibly be affected by the CVT Project. To identify the First Nations who assert traditional territory in the CVT Project area BC Hydro reviewed maps submitted to the BC Treaty Commission and maps provided by the First Nations themselves, and took account of experience from past consultations in the area. The identification process determined that the CVT Project is in the asserted traditional territory of the Shuswap Indian Band and the Ktunaxa Nation as represented by the Ktunaxa Nation Council. The Project lies in an area where other members of the Shuswap Nation also may have interests. (Exhibit B-3, p. 140) Consultation activities with these First Nation entities are elaborated upon in Sections 7.5 - 7.8.

The Shuswap Nation consists of ten member Bands, all of which are represented by the Shuswap Nation Tribal Council. Three of these Shuswap Nation member Bands have come together to intervene separately in this proceeding as Sexqéltkemc, Lakes Division of the Secwepemc (Shuswap) Nation. Following the organization of BCTC's application the Commission has assessed the adequacy of consultation for three groupings of the Shuswap Nation: the Shuswap Indian Band alone, the Lakes Division and the remaining six members of the SNTC. Consultation activities with these organizations are elaborated upon later in this section.

During the proceeding the Métis Nation BC registered as an Intervener asserting that MNBC harvesting and traditional land use rights in British Columbia were sufficient to trigger an obligation to consult with them in relation to the CVT Project. This is addressed in Section 7.9.

General Engagement with First Nations

This section provides an overview of the consultation activities that took place with all identified First Nations for the CVT Project. Details of the interactions unique to each First Nation are discussed later in this section.

BC Hydro began its consultation in November and December of 2008 with the identified First Nations: the KNC, the SIB, the Lakes Division, and the SNTC members. Consultation began with an initial contact letter providing information on the relationship between BC Hydro and BCTC, as well as information on the CVT Project including its rationale and expected timelines. The letter indicated that the final route alignment would be determined through consultation and further study. The letter also requested feedback from First Nations on whether their interests would be impacted and on whether they would like to be consulted. (Exhibit B-1, Appendix Q)

In May 2009 BC Hydro sent two letters to all identified First Nations. The first letter dated May 15, 2009 provided project information and offered initial capacity funding to review the Project. The second letter dated May 25, 2009 invited the First Nations to the Open Houses BCTC would be holding in June 2009. (Exhibit B-1, Appendix Q)

In September 2009 BC Hydro sent another two letters; one dated September 15, 2009 invited the First Nations to the second round of Open Houses to be held in September 2009, and the second dated September 17, 2009 provided a Project update. (Exhibit B-1, Appendix Q)

In December 2009, prior to BCTC's January 22, 2010 filing of the Application with the Commission, BC Hydro sent letters dated December 30, 2009 to the First Nations assuring them that BC Hydro will continue to consult with First Nations during the definition and implementation phases of the Project.

Identified Impacts on Aboriginal Rights

BC Hydro identified the following potential impacts on First Nations' rights from the CVT Project:

- short-term impacts on environmental values from the construction of the transmission line, including initial vegetation clearing on the right-of-way and construction of transmission towers and facilities, and construction of or upgrades to access roads and trails;
- long-term impacts from the Project were identified as environmental impacts from regular maintenance activities for the right-of-way and the transmission line after completion;
- impacts on archaeological and heritage resources due to the placement of the transmission poles; and
- impacts to hunting and food gathering rights as the Project crosses hunting and gathering areas and trap lines.

BC Hydro assessed the short-term impacts to be low to medium. (Exhibit B-1, p. 176; Exhibit B-8, p. 14)

It assessed the long-term impacts as being low to medium with mitigation measures because the impacts would be geographically limited to the cleared right-of-way. However, the impacts are likely to be permanent because the transmission line will remain in use well into the reasonably foreseeable future. (Exhibit B-1, p. 176; Exhibit B-8, p. 14)

BC Hydro submits that the mitigation measures it will use will be developed as part of its Environmental Management Plan and Archaeological Impact Assessment, which will both be completed with the KNC and the SIB. (Exhibit B-1, p. 176)

BC Hydro identified impacts on specific First Nations' rights through consultation with the specific Bands. These specific impacts are discussed later in this section.

BCTC's Submission on the Adequacy of Consultation

Based on its engagement of First Nations and BC Hydro's overall consultation activities, BCTC concluded that consultation for the CVT Project was reasonable and adequate. (BCTC Final Submission, para 241)

7.5 BC Hydro's Consultation with the Ktunaxa Nation Council

The Ktunaxa Nation Council represents the Ktunaxa Aboriginal Nation in Canada, commonly referred to as the Kootenay people. The Ktunaxa Nation is comprised of four Indian Bands in Canada including the Yaqa nu'kiy (Lower Kootenay), ?akisq'nuk (Columbia Lake), ?aq'am (St. Mary's), and ?akink'um'asnuq'i?it (Tobacco Plains). (Exhibit C7-4, para 10) The ?akisq'nuk community is situated 10 kilometres from the Invermere Substation (Exhibit C7-4, para 19) and is the closest KNC reserve to the CVT Project. (Exhibit B-1, p. 140)

The Ktunaxa Nation asserts traditional territory over an area roughly bordered by Missoula, Montana in the south, Yellowhead Mountain in the north, Revelstoke, BC in the west, and Calgary, Alberta in the east. The Ktunaxa are currently in the BC Treaty Commission negotiation process with the Province of British Columbia. The Ktunaxa's asserted territory includes the area of southeastern British Columbia where the CVT Project is located. (Exhibit C7-4, paras 1, 2, 4, 5) The KNC asserts that it has used the Project area for extensive fishing, hunting, gathering, and spiritual/ceremonial purposes. (Exhibit C7-4, paras 25-31)

The KNC asserts that the Kinbasket people, now known as the Shuswap Indian Band, relocated to Ktunaxa territory in the 1800s and the Ktunaxa agreed to their settlement in Ktunaxa territory. (Exhibit C7-4, paras 13-14) The Shuswap Indian Band was in treaty negotiations jointly with the Ktunaxa as part of the Ktunaxa-Kinbasket Tribal Council but withdrew in 2005 and the council was subsequently renamed the KNC. (Exhibit C7-4, para 13)

KNC Interactions with BC Hydro and BCTC

BC Hydro first met with the KNC in November 2008 and followed-up by sending the general introductory letter in December 2008. The KNC responded to the letter in January 2009 by email requesting to negotiate a consultation and capacity funding agreement. It also indicated that the ʔakisq'nuk Band requested a meeting to discuss the Project. The KNC commented that the ʔakisq'nuk had concerns over potential increased hunting from the access roads for the Project. As well, the KNC suggested its economic arm, the Ktunaxa Kinbasket Development Corporation (KKDC), should be considered for contracting opportunities for the Project. The KKDC later changed its name to Nupuq Development in May 2009. (Exhibit B-1, pp. 143-144)

On March 3, 2009 BCTC and BC Hydro met with the KNC, the Chief of the ʔakisq'nuk Band and members of the ʔakisq'nuk Band Council. The First Nations raised a number of concerns about the Project including its potential to cause increased hunting due to clearing, its affect on riparian areas, the use of locally sourced wooden poles, and having no input into the selection of a contractor for the environmental assessment work. (Exhibit B-1, p. 145)

From March 2009 to May 2010 when BCTC filed its final evidence on First Nations consultation in the proceeding, BC Hydro, BCTC, and the KNC met regularly (every two weeks to three months). The KNC did not attend any of the Open Houses organized by BCTC. Discussions at the meetings included project information and updates, information on the regulatory process, employment opportunities, capacity funding, and KNC interests in the CVT area.

As part of the process surrounding these meetings BC Hydro provided capacity funding in May 2009 and late October 2009. BC Hydro also funded a Traditional Use Study (TUS), an initial, overview version of which was presented to BC Hydro and BCTC in November 2009. The initial TUS identified 28 places of traditional use in the CVT Project area, and indicated that the risk of "showstoppers" was low. In a December 2009 meeting BC Hydro tabled an Impact Benefits Agreement and Contracting Agreement which, according to the record for this proceeding, is still at the negotiation stage.

The KKDC/Nupuq has attended some of the meetings between BC Hydro, BCTC, and the KNC. BC Hydro and BCTC have also met multiple times with the KKDC/Nupuq in a business capacity. The meetings were held to discuss the KKDC/Nupuq's participation in environmental contracting work.

Scope of the Duty to Consult with the KNC

As noted in Section 7.3, *Haida* has determined that the scope of the duty to consult is proportionate to an assessment of the strength of claim and the seriousness of the potential adverse impact on the right or title claimed (*Haida*, para 39). Thus, to consider the scope of the duty to consult, the strength of claim and impacts on rights must be assessed.

Strength of Claim

BCTC submits that the Ktunaxa's strength of claim to the CVT Project area is "reasonable" (Exhibit B-9, IR 3.128.1). To inform this determination BC Hydro commissioned a report by historians Bouchard and Kennedy on the known and available evidence on First Nations' claims in the Project area. (Exhibit B-8, Appendix A, pp. 1-86) To clarify the meaning of "reasonable," BCTC submits that reasonable indicates "the claim is not weak but the available information is not considered sufficient to conclude that a claim is a 'strong *prima facie*' claim." (BCTC Final Submission, para 163)

In the process of this proceeding, the KNC submitted a report by ethnographer Brian Robertson on the First Nations claims to the Project area. (Exhibit B-8, Appendix A, pp. 143-194; Exhibit C7-4, Appendix 2) Both the Bouchard and Kennedy report and the Robertson report compiled historical data, including accounts from journals of the first European explorers, in to discussions of the occupation of the land around the Project.

BC Hydro interpreted the evidence in both reports to show that the KNC has a reasonable Aboriginal rights claim in the CVT area, not a strong claim, due to the overlapping claims of other First Nations and BC Hydro's interpretation of the Robertson report as showing seasonal hunting and fishing practices. (BCTC Final Argument, paras 163 and 165; Exhibit B-8, p. 13)

The KNC submit they have a strong *prima facie* claim based on evidence including historical documentation, the Bouchard and Kennedy report, the Statement of Intent presented to the BC Treaty Commission, the Ktunaxa Creation story, the Kootenay Land Claim Declaration presented to the Government of Canada in 1981, and the fact that the ʔakisq'nuk community is within 10 km of the Invermere Substation. (KNC Final Submission, para 55)

The KNC takes issue with BC Hydro's reliance on overlapping claims, and specifically those of the Shuswap Indian Band. The KNC asserts that the historical, archaeological, and ethnographic evidence supports the conclusion that the Kinbasket [Shuswap Indian Band] migrated and settled in the CVT area in the mid-1800s. The KNC further assert that the Shuswap Indian Band was granted permission to stay in Ktunaxa territory by the Ktunaxa. (KNC Final Submission, para 56)

The KNC cite paragraph 157 of the Supreme Court of Canada's decision in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 which states "A consideration of the aboriginal perspective may also lead to the conclusion that trespass by other aboriginal groups does not undermine, and that presence of those groups by permission may reinforce, the exclusive occupation of the aboriginal group asserting title..." The KNC submits that evidence of the Ktunaxa granting permission to the Kinbasket people to reside in their area strengthens, rather than undermines, the KNC's claim to the CVT area. (KNC Final Submission, para 58)

In response, BCTC submits that the Shuswap Indian Band has not acknowledged that it was granted permission to occupy land by the Ktunaxa. (BCTC Reply Submission, para 70)

Impacts on the KNC's Aboriginal Rights

As described above in Section 7.4 BCTC views the short-term impacts of the Project as low to medium and the long-term impacts as low to medium with appropriate mitigation measures.

The KNC's view is that the CVT Project will have medium to high short and long-term impacts on Ktunaxa rights (Exhibit C7-4, para 9), and will prejudice Ktunaxa title. The KNC view the CVT Project as having impacts on terrestrial ecosystems and fish habitat creating potential impacts on rights to harvest plants for food, medicinal and material purposes, and the right to harvest fish and wildlife. The KNC also assert the Project will prejudice Ktunaxa title by preventing the Ktunaxa from choosing how their land should be used and, without revenue sharing in place, preventing the realization of economic benefits from the land. (Exhibit C7-4, para 46) The KNC also submit an interest in protecting sacred use areas and their archaeological record.

Specific elements of the Project which the KNC view as causing impacts to their rights are: 1. the creation or upgrade of access roads; 2. removal of riparian habitat; 3. construction of the Project causing impacts to plants; and 4. the archaeological record. These are discussed below:

1. Access Management

Regarding access roads, the KNC views that the construction of new or the upgrade of existing access roads in the Project area will facilitate access, especially motorized access, to wilderness areas. This will impact the KNC's right to hunt and trap wildlife. The KNC views the impacts to wildlife, especially moose and elk, as likely to be permanent because moose and elk are already in short supply. There is already hunting pressure and the displacement caused by the clearing of the right-of-way will extend more broadly than the width of the right-of-way. Overall, the KNC assesses the impact to their right to harvest wildlife as high. (KNC Final Submission, paras 63 and 66)

To accommodate for these impacts, the KNC sought BCTC and BC Hydro to:

- request the Integrated Land Management Bureau (ILMB) of the Provincial government to authorize BC Hydro to restrict access along the Project corridor;
- prepare an Access Management Plan for the transmission line corridor; and
- provide long-term funding for maintenance of access management controls.

(Exhibit C7-4, para 56).

BCTC responded to this concern by stating neither it nor BC Hydro have the legal authority to control access along the right-of-way and noting that there is already considerable development in the CVT Project area. (BCTC Final Submission, paras 186 and 170)

BCTC and BC Hydro provided a commitment to minimize access to the best of their ability by designing the Project to limit the access, installing gates, working with other ministries with more authority over access management, and developing a local stakeholder group to discuss access management). As evidence of its commitment BC Hydro arranged meetings with the stakeholder group, the KNC and the Ministry of the Environment on May 6, 2010 and with the ILMB on May 27, 2010 to discuss access management issues. (BCTC Final Submission, paras 186-187)

In response, the KNC submits that at the May 6, 2010 meeting it learned that BC Hydro could request the ILMB to grant BC Hydro the legal authority to control access. Also, the KNC submits that BC Hydro's representation that the area has considerable development is misleading as the community, industry, and business development is largely at the ends of the right-of-way while the lands along the transmission line are used for mainly for forest harvesting and to a lesser degree for ranching. (KNC Final Submission, paras 63 and 64)

BCTC responded by stating counsel is instructed that the May 6 meeting included discussion of the Province restricting access, not authorizing BC Hydro or BCTC to do so. As well, BCTC submits that the development along the right-of-way includes extensive logging and existing access roads that are currently used for recreational access to the area. (BCTC Reply Submission, para 72(d))

2. Riparian Habitat

The KNC views removal of riparian habitat, especially tall trees, as creating an impact on stream and fish productivity. (Exhibit C7-4, para 53)

BCTC and BC Hydro responded by developing best management practices for vegetation clearing with the Canadian Department of Fisheries and Oceans (Exhibit B-9, IR 3.129.2), and committing to consult with the KNC on the application of these practices (BCTC Final Submission, para 188). The KNC view these practices as applying to vegetation management once initial clearing is done but not dealing with the initial removal of riparian habitat. (KNC Final Submission, para 67)

3. Plants

The KNC has concerns about the loss of scarce food, and medicinal and material plants from the clearing for the right-of-way. BCTC and BC Hydro plan to address these impacts by developing an Environmental Management Plan (EMP) for revegetation with the KNC.

The KNC see no certainty in BCTC/BC Hydro's plan that the KNC will be able to re-grow the scarce plants in the cleared right-of-way. It requests a commitment for the KNC's review and approval of the EMP and ongoing vegetation management plans. (KNC Final Submission, para 62)

4. Archaeological Record

The KNC seeks deep consultation on the protection of archaeological resources and submits it has yet to secure a commitment to the protection that it deems adequate. (KNC Final Submission, para 70)

BCTC submits that an Archaeological Overview Assessment has been completed and that it will offer the KNC participation in fieldwork for an Archaeological Impact Assessment. BCTC also submits that archaeological resources will be included in the EMP which will be developed in consultation with the KNC.

In relation to all the impacts identified, the KNC justifies its medium to high impact rating based on its assertion that the impacts will generally be permanent, mitigation measures will reduce but not eliminate many impacts, the permanent removal of forest ecosystems for the Project will exceed 5.5 sq. km, access roads will be required along much of the 114 km corridor, and the impacts are cumulative with the impacts of existing development in the area (Exhibit C7-4, paras 9 and 59). The KNC views many of these impacts as permanent and non-compensable and many relate to resources that are in limited supply. (KNC Final Submission, para 61)

BCTC disagrees with the KNC's assessment of medium to high impacts and states "there is no support for the proposition that the residual impacts of the Project, after appropriate measures are taken as intended, will lead to high impacts on any of the KNC's asserted rights." (BCTC Final Submission, para 174) BCTC submits that the permanent impacts will be limited to the 50 metre wide right-of-way. (Exhibit B-9, BCTC Response to BCUC IR 3.132.1) Furthermore, BCTC submits:

"...[T]he evidence in this proceeding does not support the suggestion that there is any likelihood of a 'serious' impact to these ecological resources. BCTC's consultant has concluded the the [sic] CVT Project is unlikely [sic] to result in a significant adverse environmental effect...It is BCTC's submission that conclusions of the KNC's consultants i) confirm that ecological risk can be managed through the development and implementation of the construction Environmental Management Plan and ii) do not in any event support a finding that the CVT Project would result in a 'serious' impact to the ecological resources in any event, particularly after taking into [sic] the mitigation measures." (BCTC Reply Submission, para 72(b))

Level of Consultation Required with the KNC

BC Hydro assesses the level of consultation for the KNC as medium to high on the *Haida* spectrum based on its preliminary assessment of the KNC's strength of claim and the seriousness of the potential impacts which it considers to be, on balance, low to medium. (BCTC Final Submission, para 172)

In contrast, the KNC views the level of consultation owed as being high based on a strong *prima facie* strength of claim and medium to high impacts. (Exhibit C7-4, para 47)

BCTC disagrees with the KNC's assessment of a strong *prima facie* strength of claim because there are overlapping claims from the Shuswap Indian Band and the SNTC members. BCTC also submits that the evidence filed in this proceeding shows no support that the impacts of the Project, after mitigation, will be high. Therefore, BCTC submits there is no basis to determine a high level of consultation is required. (BCTC Final Submission, para 174)

Other KNC Concerns with the CVT Project

In addition to impacts on Aboriginal rights, the KNC raised other concerns about the CVT Project consultation including:

- BCTC's schedule which the KNC view as abbreviated and required accommodation by them. The KNC asserts that a high level of consultation requires a schedule to be developed and mutually agreed upon by the First Nation and the proponent (Exhibit C7-6, IR 1.1). The KNC views BCTC's tight time restrictions as detrimental to the effectiveness of consultation (Exhibit C7-4, para 50);
- the Bouchard and Kennedy report was not shared with the KNC before it was filed with the Commission (Exhibit C7-4, para 51); and
- the potential impacts of the Project on the Toby Creek mountain goat population. (Exhibit C7-4, para 52)

In response, BCTC disagrees that the schedule has been compressed since the KNC was first informed of the Project in November 2008. BCTC further submits that a high level of consultation does not require a mutually-agreed upon schedule. (BCTC Final Submission, para 182)

The KNC replies that unilateral determinations by the Crown are not consistent with the honour of the Crown. The compressed schedule has placed the KNC at risk of a decision being made by the Commission prior to consultation and accommodation being complete. (KNC Final Submission, para 73)

Regarding the Bouchard and Kennedy report, BCTC submits that there is no case law that requires the Crown to share its preliminary strength of claim assessment and BC Hydro's view is that sharing these assessments can negatively affect consultation. (BCTC Final Submission, para 177) In response, the KNC submits that the law does direct the Crown to share strength of claim assessments. Failure to share the assessment precludes the First Nation from providing further information it may have or clarifying evidence used. The KNC further submits that not sharing or delaying sharing is not in the spirit of collaborative consultation. (KNC Final Submission, para 38)

In response to the KNC and other parties' concerns about the Toby Creek mountain goats, BCTC changed the route alignment and filed the Toby Creek Diversion for review by the Commission. (BCTC Final Submission, para 198)

Adequacy of Consultation

BCTC submits that, even if the Commission should find consultation should be at the high end of the *Haida* spectrum, the consultation that has taken place has been reasonable and adequate to this stage). BCTC submits that it has made changes to the Project based on consultation including changing the route alignment and pursuing employment and purchasing opportunities with the First Nations. (BCTC Final Submission, paras 178, 193, 202, and 239)

The KNC views BCTC and BC Hydro's consultation as at the medium to high range. (Exhibit C7-6, IR 1.1) The KNC points out specific actions BC Hydro would have to take to achieve a high level, including:

- finding solutions to address the KNC's concerns about access management measures, riparian areas, plants, and archaeological resources;
- ensuring that the KNC is adequately compensated for the impact on its Aboriginal title (Exhibit C7-6, IR 1.1); and
- considering ongoing consultation needs as the Project is designed, constructed, and operated. (KNC Final Submission, para 74)

In response, BCTC submits that there has been extensive consultation to date including transmission route changes, and negotiations for an Impact Benefits and Contracting Agreement (BCTC Final Argument, para 160). BC Hydro's view is that the adequacy of consultation would not change if its negotiations with the KNC do not result in the signing of the Impact Benefits and Contracting Agreement. (Exhibit B-9, IR 3.129.1)

BCTC also submits that there is no direction in *Haida* to provide monetary compensation for impacts on Aboriginal title. (BCTC Final Submission, paras 194 and 196)

BCTC further submits that it has committed to ongoing consultation, specifically on employment and purchasing contracts during construction, on mitigation of impacts, and by sharing information through the EMP and further archaeological studies. (Exhibit B-7, KNC IR 1.5.1)

In support of its view that consultations are not complete on the CVT Project, the KNC requests that if the Commission makes a decision on the Project before the KNC or BCTC notify it that consultations are complete, the Commission should attach conditions to the CPCN and approve it in phases. The conditions requested include requiring BC Hydro to continue

consulting and negotiating the Impact Benefits and Contracting Agreement, and reporting on the status of these negotiations to the Commission. (KNC Final Submission, para 81) Specifically, the KNC requests the Commission direct BC Hydro to develop long-term access, vegetation, and riparian management plans with the KNC. The KNC requests that if no agreement can be reached between the parties, the Commission can appoint an independent mediator to move the parties towards accommodation. (KNC Final Submission, para 12) The KNC submit that conditions are required because the issuance of a CPCN before negotiations are complete gives BC Hydro an advantage in its negotiations. (KNC Final Submission, para 80)

As well, the KNC requests that the CPCN be phased for a design and pre-construction phase, and a construction and operation phase. (KNC Final Submission, para 11).

In response, BCTC submits that the Commission cannot impose the conditions requested and does not have the jurisdiction under the *Utilities Commission Act* to phase a CPCN approval or appoint a mediator. (BCTC Reply Submission, paras 80, 87, 89) BCTC submits that the Commission's role as a quasi-judicial body is to assess the adequacy of consultation, but decisions on how consultation are undertaken is the role of BC Hydro management, not the Commission. (BCTC Reply Submission, para 88)

BCTC understands the KNC position to be that a CPCN should not be issued until the KNC and BC Hydro reach agreement on a number of issues. BCTC responds with the assertion that there is no duty to agree. (BCTC Reply Submission, para 36)

The KNC asserts that it does not require the CPCN approval to be contingent on agreement between the parties but that the Commission does have the authority to require BC Hydro to uphold the honour of the Crown which can be demonstrated in its reports back to the Commission. (KNC Final Submission, para 83)

Commission Determination on the Adequacy of Crown Consultation with the KNC

The Commission Panel determines BCTC and BC Hydro's consultation with the KNC to be adequate for the CVT Project CPCN.

The KNC has outstanding concerns and BC Hydro's consultation is still ongoing at this time. Despite this, we are able to judge the adequacy of consultation to the point of the CPCN decision.

BC Hydro and the KNC differ on the strength of claim and scope of duty to consult. In its review of the evidence, the Commission Panel's view is that duty to consult the KNC is high, based on an assessment that the KNC has a high strength of claim to at least part of the CVT Project area and that the impacts from the Project could potentially be high, as they are effectively permanent, even with mitigation measures.

While the Commission Panel finds that the duty to consult the KNC is high, we also note BCTC's alternative submission that the consultation that has occurred and the commitments that have been made meet the high level standard. (BCTC Final Submission, para 178) We agree with this submission. Overall, BC Hydro has consulted in good faith with the KNC and has either mitigated or has plans to mitigate every identified impact to the KNC's rights. For issues it cannot mitigate, BC Hydro has offered to fairly compensate the KNC through an Impact Benefit and Contracting Agreement.

BC Hydro has made changes to the Project routing to accommodate the KNC's and others' interests. In addition to mitigation measures it has already taken, BC Hydro created plans for the management of access, riparian habitat, revegetation, and archaeological resources. The KNC will either be consulted on the creation of these plans or participate

in the deployment of the planned actions. BC Hydro organized meetings with the KNC and the appropriate government agencies for the issue of access control, an issue that it does not have the authority to mitigate directly.

The KNC's submission that consultation has been inadequate to date is based on its view that solutions to the KNC's concerns have not been found and the KNC has not been adequately compensated. The Commission Panel's view is that BC Hydro has attempted to find solutions to the KNC's concerns and to compensate the KNC for impacts it cannot mitigate. The KNC's lack of acceptance of these measures at this point does not cause the actions of BC Hydro to be inadequate. As noted in Section 7.3 above, the law does not require an agreement. Rather, BC Hydro's actions to date and its offer to mitigate and accommodate impacts to the KNC, in the Commission Panel's view, adequately fulfills the duty to consult the KNC to this point.

Recognizing that the Crown's duty to consult continues until the Project is complete, **the Commission Panel directs BC Hydro in its Project updates to the Commission, to report on its ongoing consultation with the KNC.** The reports should include updates on the mitigation measures for the CVT Project impacts, and status updates on the negotiation for the Impact Benefit and Contracting Agreement for the Project.

7.6 BC Hydro's Consultation with the Shuswap Indian Band

The Shuswap Indian Band is a member of the Shuswap Nation and a member of the Shuswap Nation Tribal Council. The SIB's only reserve is located about one kilometre from Invermere and is the closest Indian Reserve to the CVT Project.

BC Hydro first engaged the SIB in December 2008. On March 11, 2010, BC Hydro and the SIB signed a Benefits Agreement for cash payments to the Band and a Contracting Agreement for work opportunities on the CVT Project.

By confidential letter the SIB has since confirmed to the Commission that it has been adequately consulted and accommodated with respect to its Aboriginal rights and title in respect of the CVT Project.

Commission Determination on the Adequacy of Crown Consultation with the SIB

In view of the SIB letter to the Commission, **the Commission Panel determines that BC Hydro's and BCTC's consultation with the Shuswap Indian Band is adequate.**

7.7 BC Hydro's Consultation with Shuswap Nation Tribal Council

The Shuswap Nation Tribal Council represents all ten members of the Shuswap Aboriginal Nation including the Shuswap Indian Band discussed in Section 7.6 above. Three members of the Shuswap Nation (Adams Lake, Splatshin, and Neskonlith Indian Bands) have come together to intervene separately in this proceeding as the Lakes Division which is discussed in Section 7.8. This section discusses BCTC's and BC Hydro's consultation with the six remaining members of the SNCT: the Little Shuswap, Simpcw, Bonaparte, Kamloops, Skeetchestn and Whispering Pines/Clinton Indian Bands.

Six of the members (Adams Lake, Shuswap, Little Shuswap, Splatshin, Neskonlith and Simpcw) were contacted by BC Hydro in regard to the CVT Project in December 2008. (Exhibit B-1, p. 162) BC Hydro followed up in February 2009 to confirm receipt of the letter.

In May 2009, BC Hydro sent introductory letters to the remaining four members of the SNTC (Bonaparte, Kamloops, Skeetchestn and Whispering Pines/Clinton). BC Hydro was delayed in introducing the Project because the four Bands are distant from the Project area, but as members of the SNTC, BC Hydro recognized their affiliation with the Shuswap Indian Band that is located in close proximity to the Project area.

BC Hydro offered capacity funding to all SNTC member Bands. It received a request from Simpcw and provided funding May 2009.

In July 2009 BC Hydro contacted the SNTC directly and was advised that the SNTC's member Bands should be consulted directly.

As a result of consultation with the SNTC member Bands BC Hydro received letters of support in May 2010 for the SIB's role in the negotiations with BCTC on the CVT Project from six of the SNTC Bands. The six included Kamloops, Little Shuswap, Simpcw, Skeetchestn, Splat sin, Whispering Pines/Clinton (BCTC Final Submission, para 208). As well, the Bonaparte Indian Band indicated in July 2009 that it would support the SIB in its lead role on the Project. (BCTC Final Submission, para 210) The remaining members of the SNTC, the Neskonlith, and Adams Lake consulted collectively through the Lakes Division and have intervened in this proceeding separately.

BCTC submits that the Project has little to no impact on the members of the SNTC other than the SIB because of the Bands' distances from the Project area. Accordingly, BCTC assessed its consultation duty at the low end of the *Haida* spectrum. BCTC further submits that the duty to consult has been fulfilled by BC Hydro providing notice, regular updates, capacity funding, and responding to requests. Therefore, BCTC submits that consultation has been adequate. (BCTC Final Submission, paras 206, 211) Other than the letters of support for the SIB, BC Hydro has received no comment on the CVT Project from the Little Shuswap, Simpcw, Bonaparte, Kamloops, Skeetchestn, and Whispering Pines/Clinton Indian Bands.

Commission Determination on the Adequacy of Crown Consultation with SNTC

The Commission Panel determines that BCTC's consultation with the Little Shuswap, Simpcw, Bonaparte, Kamloops, Skeetchestn, and Whispering Pines/Clinton Indian Bands has been adequate.

BC Hydro received written or verbal confirmation of each of these Bands' support for the Shuswap Indian Band during its consultation process. The Bands effectively deferred consultation leadership to the SIB for the CVT Project. Despite the deferral, BC Hydro provided information about the Project, responded to requests, offered capacity funding, and provided funding in response to the one request received. Given the actions of BC Hydro and the approach taken by these Bands in response to the Application, the Commission Panel concludes that consultation with these Bands has been adequate.

7.8 BC Hydro Consultation with Sexqéltkemoc, Lakes Division of the Secwépemc (Shuswap) Nation

As noted in Section 7.7 the Lakes Division represents three of the ten members of the SNTC: the Adams Lake, Splat sin, and Neskonlith Indian Bands. The three communities have signed a resource sharing agreement, consult as a group, and are acting together in this proceeding.

Lakes Division Interactions with BC Hydro and BCTC

The three member Bands were first contacted by BC Hydro in December 2008 with the general introductory letter which included an offer for capacity funding. In response BC Hydro received a request from the Adams Lake and Splatshin Bands for funding which it provided in February and June, respectively. Neskonlith did not respond to BC Hydro's initial contact attempts.

BC Hydro communicated by telephone and email directly with Adams Lake and Splatshin but did not meet in-person. Also, BC Hydro sent its general information materials, including project updates, and invitations to Open Houses to each of the Lakes Division member Bands.

In a July 2009 phone call to Splatshin, BC Hydro was advised that Splatshin, Adams Lake, and Neskonlith would deal with referrals collectively through the Lakes Division. BC Hydro subsequently received written confirmation of this arrangement and began consulting directly with the Lakes Division.

In late July and August 2009, BC Hydro discussed capacity funding with the Lakes Division. In a July telephone call with the Lakes Division, BC Hydro understood the purpose of the funding was to support coordination between the Lakes Division and the SIB on how to engage on the CVT Project. In a subsequent email in August from the Lakes Division to BC Hydro, the Lakes Division stated the funding was to engage directly with the BC Hydro on the CVT Project.

On August 19, BC Hydro was copied on a letter from the three Chiefs of the Lakes Division Bands which stated that the SIB had agreed in principle to join the Lakes Division protocol group. In response, on September 8, 2009, the SIB informed BC Hydro that it was not a member of the Lakes Division and its claims to the CVT Project area are independent of any other First Nation. Further, it stated that the assertions of the Lakes Division would be dependent on the claim of the SIB.

At a September 10, 2009 meeting of BCTC, BC Hydro, and the Lakes Division Technical Working Group, the Lakes Division confirmed it would use the BC Hydro capacity funding to facilitate discussions with the SIB. The Lakes Division again confirmed this at a meeting on September 25, 2009 and in writing on September 29, 2009 when the Lakes Division received the capacity funding. (Exhibit B-1, Appendix Q)

At the September 25, 2009 meeting BC Hydro also reports that the Lakes Division Technical Coordinator recognized the Shuswap Indian Band as the lead Shuswap community on the CVT Project. On December 10, 2009, the Lakes Division sent BC Hydro a letter stating full support for the SIB and its leadership role in the CVT Project. (Exhibit B-1, Appendix Q)

Despite its understanding that the Lakes Division was effectively deferring consultation responsibilities to the SIB, BC Hydro continued to send correspondence to the Lakes Division through January and February 2010. The Lakes Division did not respond to the correspondence.

At the March 17, 2010 Procedural Conference for the CVT Project, the Lakes Division stated that it had not been adequately consulted. BC Hydro submits it was surprised by this statement because of the discussions and letters with the Lakes Division from September to December 2009 regarding the SIB's leadership role.

In follow-up BC Hydro sent a letter to the three Chiefs of the Lakes Division on March 19, 2010, stating it was still open to discussions. On April 14, 2010, the Lakes Division Technical Coordinator sent BC Hydro an email saying it had not made as much progress with the SIB as expected. BC Hydro responded and between April 15 and May 6, sent various emails trying to set up a meeting.

On May 6, 2010, BC Hydro received a letter from the Splatst Chief confirming support for the SIB's leadership role regarding the CVT Project. (BCTC Final Submission, para 213)

Scope of the Duty to Consult with the Lakes Division

As indicated previously, the strength of claim and impacts on rights must be assessed when considering the scope of duty to consult.

Strength of Claim

BCTC submits that the Lakes Division strength of claim is comparatively weaker to that of the SIB because its three communities are a significant distance from the Project and there is a lack of evidence on the Lakes Division's exercise of Aboriginal rights in the Project area. (Exhibit B-9, IR 3.130.1)

In response, the Lakes Division criticizes the findings of one of the bases upon which BC Hydro made its strength of claim determination, the Kennedy and Bouchard report. The Lakes Division submitted a 2008 ethnographic report: *"Our Oral Histories are our Iron Posts"* by Dr. Ron Ignace which supports the Lakes Division's assertion of Shuswap rights on a nation basis, rather than on a Band by Band basis. The Lakes Division asserts that Shuswap title is collective and every Shuswap person has rights to all lands in Shuswap traditional territory. (Exhibit C8-2, p. 2)

In reply BCTC submits that when BC Hydro approached the SNTC to consult as a collective, it was advised to consult with the individual member Bands directly (BCTC Final Submission, para 215). BCTC further submits that the Ignace report provides no evidence to contradict BC Hydro's preliminary assessment of the Lakes Division's claim to the CVT area as comparatively weaker to that of the Shuswap Indian Band. (BCTC Reply Submission, para 31)

Adverse Impacts on the Lakes Division Rights

BCTC submits there is a lack of evidence of the Lakes Division Aboriginal rights in the CVT Project area. (Exhibit B-9, IR 3.130.1)

The Lakes Division states it has not been provided with capacity funding to properly study the Project and the nature of the impacts. The Lakes division identifies general impacts including impacts on Shuswap title without adequate compensation, impacts on the right of the Shuswap to exercise rights of self government, and other possible social, environmental, cultural, and economic impacts. (Exhibit C8-3, IR 4.1)

BCTC states that the impacts identified by the Lakes Division do not alter BC Hydro's assessment that the impacts to the Lakes Division asserted rights will be low at most. (BCTC Final Submission, paras 217)

Level of Consultation Required with the Lakes Division

Considering its strength of claim determination and impacts to asserted rights, BC Hydro views the duty to consult the Lakes Division at the low end of the *Haida* spectrum. (Exhibit B-9, IR 1.130.1)

Adequacy of Consultation

BCTC submits that its consultation has been adequate to this stage to meet the low end of the *Haida* spectrum. (BCTC Final Submission, para 231)

The Lakes Division submits that consultation has not been adequate based on its assertions that the Crown failed to consult with the Shuswap Nation as a whole and that BCTC failed to accommodate the Lakes Division, as members of the Shuswap Nation, for the CVT Project. (Exhibit C8-2, p. 2) Further, the Lakes Division takes issue with the Kennedy and Bouchard report since it was not provided in enough time for the Lakes Division to review and rebut its findings. The Lakes Division views the Kennedy and Bouchard report as flawed because no elders were interviewed for its preparation. (Exhibit C8-2, pp. 1-2).

BCTC submits that the Lakes Division's assertion that BCTC and BC Hydro failed to consult the Shuswap Nation as a whole "seems to be centred on their concerns about the development and role of the Columbia River generating facilities...BCTC submits this is not relevant to the issue of impacts." (BCTC Final Submission, para 229) Regarding accommodation, BCTC submits there is no requirement to accommodate because the CVT Project will not have significant adverse impacts on the Lakes Division. (BCTC Final Submission, para 227-228)

BCTC further states that the Lakes Division effectively deferred consultation to the leadership role of the SIB (Exhibit B-9, IR 3.130.1), which they communicated verbally and in writing, multiple times to BC Hydro.

As an explanation for its previous position the Lakes Division states:

"The Lakes Division were provided with capacity funding to pursue an agreement or protocol with the Shuswap Indian Band. This was actively pursued by the Lakes Division from August to December 2009. Up until this point Lakes Division were in support of SIB taking the lead on this project with the understanding that they would communicate and share information with the Lakes Division. Unfortunately negotiations and a lack of communications have led the Lakes Division to take a separate position and process which started in early 2010 just prior to the CVT CPCN application." (Exhibit C8-3, BCUC IR 2.1)

The Lakes Division further states that in its September 2009 meeting with BCTC the Lakes Division said that it wished to be engaged separately for the CVT Project and required funding to do so. (Exhibit C8-3, BCUC IR 2.2)

Commission Determination on the Adequacy of Crown Consultation with the Sexqéltkmc, Lakes Division

The Commission Panel assesses BCTC and BC Hydro's consultation with the Lakes Division to be adequate.

BCTC submits that the three Lakes Division Bands are located a significant distance from the CVT Project and have not provided evidence of their Bands' asserted rights in the area. The Panel agrees with BCTC's and BC Hydro's assessment that the duty to consult the Lakes Division is at the low end of the *Haida* spectrum.

While the Commission Panel recognizes the Lakes Division submission that Shuswap title is collective, BC Hydro was instructed by the SNTC to consult with its individual member Bands directly. Further, the SIB clearly stated it was the lead on the CVT Project for the Shuswap Nation, a position which the Lakes Division supported verbally and in writing. This subjugates the Lakes Division position that consultation should be with the nation as a whole because the SIB has a stronger

strength of claim to rights in the area due to its proximity to the CVT Project compared to the members of the Lakes Division who are a considerable distance from the Project area.

Furthermore, the Lakes Division came to the proceeding as a Division of the Shuswap Nation, not as a representative of all members of the Shuswap Nation. The Commission Panel, therefore, does not accept the assertions that consultation with the Lakes Division was inadequate because BCTC and BC Hydro failed to consult with the Shuswap Nation as a whole.

7.9 BC Hydro Consultation with Métis Nation BC

Métis Nation BC is an organization that represents Métis people from 35 communities in BC and is one of five provincial Métis organizations that make up the Métis National Council. MNBC represents Métis people that live in the CVT Project Area, including one of its subset organizations, the Columbia Valley Métis Association.

In its evidence, MNBC submits that Métis people have lived in the Columbia Valley since 1800 when two Métis men came to live with the Ktunaxa people. Métis people settled in the area over time and the MNBC assert, continue to harvest and undertake traditional land use in the Columbia Valley. (Exhibit C9-1, p. 1)

Regarding the CVT Project, MNBC has concerns about the impacts to fish, wildlife, and plants which could adversely affect Métis harvesting and traditional land uses. MNBC's primary concern is that it has never been contacted by BCTC regarding the Project.

In response, BCTC submits that the duty to consult MNBC has not been triggered because the Métis residence in the Columbia Valley does not meet the legal test for a rights-bearing community. (BCTC Final Submission, para 234)

The assessment of adequacy of consultation with MNBC turns on the assessment of whether Métis people and the MNBC have Aboriginal rights as per section 35(1) of the *Constitution Act*, 1982 in the CVT Project area. The Supreme Court of Canada established a test for Métis rights in its decision in *R. v. Powley*, 2003 SCC 43, which states at paragraph 24:

"Aboriginal rights are communal rights: They must be grounded in the existence of a historic and present community, and they may only be exercised by virtue of an individual's ancestrally based membership in the present community."

BCTC submits that because Métis peoples have resided in the Columbia Valley since 1800 does not, in itself, establish a historic rights-bearing community, or a continued distinctive existing Métis community as established by the test in *Powley*. (BCTC Reply Submission, paras 27-29) Furthermore, BCTC submits that MNBC has not established a basis for section 35 of the *Constitution Act* rights in the CVT Project area. (BCTC Final Submission, para 238)

MNBC cites caselaw including *Powley* and *Haida* to assert that Aboriginal peoples do not have to prove their rights before the Crown consults them and as such, "the Crown must at very least assess the strength of a claimed assertion of rights." (Exhibit C9-1, p. 3) MNBC states BCTC has not contacted the MNBC to assess the assertion of rights and have therefore failed to consult and uphold the honour of the Crown.

In response to an Information Request to identify traditional Métis territories or communities in the CVT Project area, MNBC provided further evidence of Métis residents in the area, but no evidence of a community as established by *Powley*. (Exhibit C9-3, IR 2.1)

Commission Determination on the Adequacy of Crown Consultation with Métis Nation BC

The Commission Panel finds that BCTC and BC Hydro's duty to consult the MNBC on Aboriginal rights was not triggered. Therefore, the adequacy of consultation with respect to Aboriginal rights does not need to be determined.

Residence in an area does not create a Métis community with Aboriginal rights protected by Section 35 of the *Constitution Act, 1982*. *Powley* is clear in directing that Aboriginal rights must be grounded in an established historic and continuing Métis community and without proving this type of community exists, MNBC cannot assert Métis rights to the area. Thus, BCTC did assess the strength of claim for the MNBC by assessing the legal test for Aboriginal rights.

The Commission Panel finds that the Métis residents have not demonstrated that they have an asserted territory in the CVT Project area in which they can exercise their Aboriginal rights. Thus, the Commission Panel determines that the duty to consult the MNBC on the CVT Project was not triggered and BCTC did not have a duty to consult.

While the Commission Panel has found that the duty to consult the MNBC has not been triggered in the case of the CVT Project, the Panel encourages BC Hydro to engage with the MNBC as part of its ongoing public consultation process for the CVT Project. As an established organization with members who harvest and use the land for traditional uses, MNBC warrants consultation as an impacted member of the public.

7.10 Commission Determination

The Commission Panel finds that BCTC's and BC Hydro's consultation with First Nations affected by the CVT Project has been adequate to uphold the honour of the Crown.

For the KNC, SNTC, and Lakes Division, BCTC and BC Hydro assessed the strength of claims and levels of impact on the First Nation. They determined the levels of consultation required and conducted consultations accordingly. The SIB provided the Commission with direct confirmation that it had been adequately consulted and accommodated.

Métis Nation BC did not provide evidence of a community within the area as established by case law. Therefore, no duty to consult on Aboriginal rights was triggered for them.

8.0 RISK MANAGEMENT

Section 8 describes project risks and mitigation.

8.1 Risks Identification and Mitigation

BCTC has identified and assessed project risks and developed mitigation plans to manage these. Risk identification and mitigation will evolve as the Project proceeds. Risks have been considered in relation to activities such as engineering, design, procurement, stakeholder consultation, First Nations consultation, environmental assessment, construction, and safety.

Key risks identified include opposition by the public and opposition by First Nations, both of which could impact meeting the scheduled in-service date and the Project cost. Such risks have been assessed as moderate. Monitoring and mitigation strategies will take place as the Project proceeds.

BCOAPO submits that “the main risks identified with the project relate to potential delays due to either public or First Nation opposition.” BCOAPO further submits that “BCTC has made reasonable efforts to consult with the public and respond to public concerns.” (BCOAPO Argument, p. 5)

BCOAPO notes that “BCTC has acknowledged that a number of First Nations may be affected by the CVT project. With the exception of the Métis Nation BCTC has provided information regarding the CVT project to all other First Nations expressing an interest in the project. BCTC has also proactively sought input from these groups and responded to their requests and concerns.”

BCOAPO identifies the two primary risks relating to First Nations consultation to be:

1. divergent views on whether the CVT Project triggers a medium-high or high level of consultation and accommodation on the *Haida* scale in the case of the KNC; and
2. the consultation or lack thereof in the case of the Métis Nation.

BCOAPO submits that “Given the evidence on the record, BCOAPO is satisfied that these risks are moderate.” (BCOAPO Argument, p. 6)

No other Intervener commented on risk identification, management, and mitigation.

8.2 Commission Determination

The Commission Panel concurs with BCTC’s and BCOAPO’s views that the key project risks relate to public and First Nations opposition and that these could impact project schedule and costs. Further we find that **the assessment that these risks are moderate is reasonable and they should be manageable through appropriate monitoring and mitigation.**

BCTC has actively engaged in public consultation throughout the Project and has committed to ongoing communication and consultation as it proceeds. This will allow it to maintain a finger on the pulse of the public to develop mitigations to concerns should they be warranted. Furthermore, BCTC has demonstrated its willingness to respond to concerns when raised by the public as evidenced by the rerouting of the transmission line with the Toby Creek diversion.

BC Hydro and BCTC have committed to ongoing consultations with First Nations throughout the remainder of the definition and implementation phases of the Project. They will continue to:

- provide timely information and updates regarding the Project;
- provide timely responses to questions or information requests in relation to the Project;
- seek to understand First Nations concerns respecting the Project and consider such concerns in the Project's final design and delivery; and
- engage in discussions to further identify means to avoid, mitigate, or otherwise accommodate any potential impacts by the Project on Aboriginal interests.

9.0 CONCLUSION AND COMMISSION DETERMINATIONS

The Commission Panel has carefully considered and weighed the evidence and arguments of all parties participating in this proceeding. We have considered the Project justification and alternatives assessed by BCTC. We have concluded that the CVT Project is required to address the growing load and capacity constraints in the upper Columbia Valley. For the reasons given, we find the CVT Project necessary and in the public interest. Subject to the Directions contained in this Decision and the related Order, **the Commission Panel grants BC Hydro a CPCN for the CVT Project.**

The Commission Panel finds that the level of consultation with First Nations to the date of this Decision has been adequate to uphold the honour of the Crown.

DATED at the City of Vancouver, in the Province of British Columbia, this *Third* day of September 2010.

Original signed by:

M.R. HARLE,
PANEL CHAIR/COMMISSIONER

Original signed by:

L.A. O'HARA
COMMISSIONER

APPENDIX 1 – BACKGROUND AND REGULATORY PROCESS

Appendix 1 of the Decision sets out the background of the Application, describes the Order sought, and the regulatory process by which the Application was heard.

1.1 The Applicant

At the time of the filing of the Application BCTC, formed under the *Transmission Corporation Act* in 2003, was the provincial Crown Corporation responsible for operating and managing the transmission assets of BC Hydro. Its responsibilities included the planning, constructing and obtaining the necessary regulatory approvals for investment in the transmission system. It was the Applicant for the CPCN for the CVT Project.

BCTC had the technical capability to plan for, construct, and manage the operation of the CVT Project. BCTC also had access to BC Hydro's experience and engineering expertise under support services agreements between BCTC and BC Hydro. Specialized consultants would also be retained by BCTC to advise on various aspects of the CVT Project, including environmental assessments. BC Hydro had the primary responsibility to carry out First Nations consultation.

The Application contemplated that BC Hydro would own the transmission assets, if approved and constructed, and would be responsible for making the capital expenditures required. BC Hydro would provide the financing for the CVT Project. It has the financial capability to undertake the Project by borrowing guaranteed by the Province, borrowing directly from the Province, and generating funds internally from its operations.

Part 7 of the *Clean Energy Act*, SBC 2010, c. 22 came into force on July 5, 2010. As a result of the coming into force of Part 7, BCTC's interest in the Application became vested in BC Hydro as of that date.

1.2 The Order Sought

The initial Order requested by BCTC was for the Commission to grant a CPCN to BCTC for the CVT Project pursuant to sections 45 and 46 of the *UCA*. BCTC's Final Argument anticipated the coming into force of Part 7 of the *Clean Energy Act* prior to the Commission releasing its decision on the Application. It therefore requested that if the Commission granted the CPCN, the CPCN should be issued in the name of BC Hydro. Accordingly, BCTC included a revised form of Order as Schedule A to its Final Argument. In particular, the revised Order seeks the following relief in the following terms:

"1. A Certificate of Public Convenience and Necessity is granted to BC Hydro for the entirety of the CVT Project as described in the Application.

2. BC Hydro shall file quarterly progress reports on the CVT Project showing planned versus actual schedule, planned versus actual costs, and any variances or difficulties that BC Hydro may be encountering in implementing the project. The quarterly reports will be filed within 30 days of the end of each reporting period.

3. BC Hydro shall file with the Commission a Final Report, within six months of the end or substantial completion of the CVT Project, that provides a complete breakdown of the final costs of the CVT Project, compares these costs to the cost estimate, and provides a detailed explanation and justification of all material cost variances.

4. The format and content of the quarterly reports and the final report will be determined by BC Hydro in consultation with the Commission staff, or by determination of the Commission.”

(BCTC Final Argument, Schedule A)

1.3 The Regulatory Process

By Order G-18-10 dated February 8, 2010 the Commission established a preliminary regulatory timetable and agenda . The timetable established a Procedural Conference in Vancouver on March 17, 2010 to seek input from the Applicant and interested parties on the principal issues arising from or relating to the Application, and the process for its review. The Order required BCTC to publish in display-ad format a Notice of Application and Procedural Conference in a number of publications, and to provide copies of the Order to the First Nations considered to be relevant for inclusion in the consultation activities on the Project.

At the Procedural Conference some parties expressed preference for a written process, while others took no position on a written or oral process. Wildsight filed a letter dated March 15, 2010 requesting oral hearings . (Exhibit C3-2) No other party advocated an oral hearing process. First Nations Interveners were concerned that adequate consultations take place through the proceedings to address their interests. The Ktunaxa Nations Council (KNC) expressed the view that there may not be adequate time for BCUC to assess the adequacy of consultations given that written submissions might have to be prepared while ongoing negotiations were continuing between BCTC, BC Hydro, and the KNC. (T1:20-22, 24)

Several parties supported the position that some form of public or community input session should be held in the Columbia Valley as part of the proceedings. (T1:9, 15, 33)

Following the Procedural Conference, on March 24, 2010 by Order G-54-10, the Commission established a Regulatory Timetable. It provided for a written public hearing for the review of the Application. It also provided for a Workshop on “Working with the Commission” on April 14, 2010 and a Community Input Session to be held on April 15, 2010, all to take place in Invermere, BC. The Order required BCTC to publish in display-ad format the Notice of the Workshop and Community Input Sessions in several publications, and to provide copies of the Order to the First Nations considered to be relevant for the inclusion in the consultation activities on the Project.

On April 13, 2010, the Commission issued a cancellation notice for the proposed Workshop and Community Input Sessions because an insufficient number of participants had registered with the Commission.

On April 15 the Commission issued Order G-71-10 establishing a Revised Regulatory Timetable to take account of concerns raised by the KNC regarding the date required to file Intervener evidence. By letter dated June 1, 2010, the Commission granted the KNC’s request for a two day extension in the filing of the KNC’s responses to Information Requests. In response to a request by BCTC the Commission issued Order G-94-10 on June 2, 2010 establishing a Revised Regulatory Timetable. The following dates were established in that Order:

BCTC Written Final Submission	Thursday June 10, 2010
Intervener Written Final Submissions	Thursday June 17, 2010
BCTC Written Reply Submission	Thursday June 24, 2010

APPENDIX 2 - JURISDICTION OF THE COMMISSION

2.1 Jurisdiction

Sections 1 (in part), 45, and 46 of the *UCA*, and sections 1(1) (in part), 2, 4, and 19 of the *CEA* which came into force on June 3, 2010 inform as to matters that the Commission “must consider and be guided by” in deciding whether to issue a certificate of public convenience and necessity to BC Hydro for the CVT Project.

In addition to considering the interests of persons in British Columbia who receive or may receive service from BC Hydro, the Commission Panel is required pursuant to section 46(3.3) of the *UCA* to consider and be guided by the following matters in deciding whether to issue a CPCN:

- (a) British Columbia’s energy objectives,
- (b) an applicable integrated resource plan approved under section 4 of the *CEA*, and
- (c) the extent to which the application for a CPCN is consistent with the requirements under section 19 of the *CEA*.

British Columbia’s energy objectives are defined in section 1 of the *UCA* to have the same meaning as in section 1(1) of the *CEA* which in turn references section 2 of the *UCA*.

BCTC provided the only submission on the *CEA* matters that the Commission must consider and be guided by under section 46(3.3) of the *UCA*. It submitted that the CVT Project is consistent with the British Columbia energy objective found in section 2(c) of the *CEA*:

- (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity; [emphasis in the original]
(BCTC Final Submission, para 6)

No applicable integrated resource plan has been approved to date under section 4 of the *CEA*. Therefore, section 4 of the *CEA* does not apply to this Application.

Further, the prescribed targets or guidelines referred to in section 19 of the *CEA* have not yet been established and therefore section 19 does not apply to the CVT Project.

2.2 Public Convenience and Necessity and the Public Interest

The Commission previously concluded *In the Matter of Vancouver Island Energy Corporation (A Wholly –Owned Subsidiary of British Columbia Hydro and Power Authority), Vancouver Island Generation Project, Application for a Certificate of Public Convenience and Necessity*, Decision dated September 8, 2003 (*VIGP Decision*) that “...the test of what constitutes public convenience and necessity is a flexible test.” (*VIGP Decision*, p. 76)

In the Matter of British Columbia Transmission Corporation, An Application for a Certificate of Public Convenience and Necessity for the Vancouver Island Transmission Reinforcement Project, Decision (VITR Decision) dated July 7, 2006 the Commission discussed public convenience and necessity and the public interest, in the context of sections 45 and 46 of the *UCA*. It adopted the statement of the Supreme Court of Canada in *Memorial Gardens Assn.(Can.)Ltd. v. Colwood Cemetery*

Co. [1958] S.C.R. 353 at para 8 that it would be "...both impractical and undesirable to attempt a precise definition of what constitutes public convenience and necessity." It also adopted the statement in the *VIGP Decision* that the test was a flexible test. (*VITR Decision*, pp. 1, 15)

In the Matter of An Application by Terasen Gas Inc. for a Certificate of Public Convenience and Necessity for the Tilbury Property Purchase, Order G-28-10 dated February 23, 2010 (*Tilbury Decision*),³ the Commission applied the test of public convenience and necessity articulated in the *VIGP* and *VITR Decisions*.

The Commission Panel also noted in the *Tilbury Decision* (consistent with the *VIGP Decision* at p. 76 and the *VITR Decision* at p. 15) that it considered cost-effectiveness to be one of a number of factors that it could consider in deciding whether to issue or refuse a CPCN. "Cost-effectiveness" is defined at p. 77 of the *VIGP Decision* as follows:

"Safety, reliability and other impacts are relevant factors [in the determination of what is the most cost-effective project], along with the cost to ratepayers and the impact on the financial ability of the utility."

No party made any submissions on the test for public convenience and necessity. Accordingly, the Commission Panel will apply the test that it has previously used in the decisions referenced above in considering the Application.

³ Varied on other grounds by Commission Order G-68-10, April 9, 2010.