



ORDER NUMBER

E-8-25

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
2024 Call for Power Electricity Purchase Agreements

BEFORE:

T. A. Loski, Panel Chair
B. A. Magnan, Commissioner
W. E. Royle, Commissioner

on August 25, 2025

ORDER

WHEREAS:

- A. On February 12, 2025, British Columbia Hydro and Power Authority (BC Hydro) filed an application (Application) with the British Columbia Utilities Commission (BCUC) pursuant to section 71 of the *Utilities Commission Act* (UCA) for acceptance of ten electricity purchase agreements (the EPAs) with the successful proponents of BC Hydro's 2024 call to acquire clean or renewable electricity from greenfield generating facilities in British Columbia. The EPAs are:
1. the Boulder and Elkhart Wind Project EPA between BC Hydro and Elkhart Wind Limited Partnership;
 2. the Brewster Wind Project EPA between BC Hydro and Brewster Wind Inc.;
 3. the Highland Valley Wind Project EPA between BC Hydro and Highland Valley Wind Inc.;
 4. the K2 Wind Project EPA between BC Hydro and K2 Wind Power Inc.;
 5. the Mount Mabel Wind Project EPA between BC Hydro and Mount Mabel Wind Inc.;
 6. the Nilhts'i Ecoener Wind Project EPA between BC Hydro and Nilhts'i Ecoener Energy Corp.;
 7. the Nithi Mountain Wind Project EPA between BC Hydro and Nithi Mountain Power General Partnership;
 8. the ShTSaQU Solar Project EPA between BC Hydro and Logan BC Solar Project Limited Partnership;
 9. the Stewart Creek Wind Project EPA between BC Hydro and Stewart Creek Power Inc.; and
 10. the Taylor Wind Project EPA between BC Hydro and Taylor Wind Project Inc.;
- B. By Order G-61-12 dated May 25, 2012, the BCUC approved the Rules for Energy Supply Contracts for Electricity (Rules). The Rules, attached as Appendix A to Order G-61-12, are intended to facilitate the BCUC's review of energy supply contracts for electricity, pursuant to section 71 of the UCA;

- C. By Order G-58-24 dated March 6, 2024, the BCUC accepted the BC Hydro 2021 Integrated Resource Plan which describes BC Hydro's long-term energy needs and supply alternatives to meet future demand, and conclusively determined for the purposes of any future hearing or proceeding to be conducted by the BCUC that there is a need for BC Hydro to acquire:
1. approximately 3,000 GWh of clean or renewable energy from greenfield generation facilities in the province for delivery to BC Hydro as early as fiscal 2029; and
 2. approximately 700 GWh of clean or renewable energy from existing generation facilities in the province for delivery to BC Hydro prior to fiscal 2029;
- D. By Order G-51-25 dated February 26, 2025, and as amended by Orders G-72-25, G-114-25, G-122-25, G-131-25, G-155-25, G-164-25 and G-165-25, the BCUC established a regulatory timetable for review of the Application, which included, among other things, public notice, one round of BCUC information requests (IRs), letters of comment, Panel IRs, and BC Hydro responses to letters of comment and final argument;
- E. BC Hydro requests that the EPAs and the redacted information in the Application be held confidential as the information contained is commercially sensitive and confidential to BC Hydro and/or the independent power producers, and the public disclosure of such information would harm BC Hydro's negotiating position with respect to further EPAs; and
- F. The BCUC has considered the Application and evidence submitted in this proceeding and makes the following determinations.

NOW THEREFORE pursuant to section 71 of the UCA and for the reasons outlined in the decision accompanying this order, the BCUC orders as follows:

1. The EPAs are accepted for filing.
2. The BCUC will hold the unredacted EPAs and the unredacted version of the Application and submissions confidential unless the BCUC determines otherwise, due to their commercially sensitive nature.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of August 2025.

BY ORDER

Electronically signed by Tom Loski

T. A. Loski
Commissioner

British Columbia Hydro and Power Authority
2024 Call for Power Electricity Purchase Agreements

DECISION

Table of Contents

	Page no.
Executive Summary.....	i
1.0 Introduction and Background	1
1.1 Legislative Framework.....	2
1.2 Regulatory Process	3
2.0 The 2024 Call for Power and EPAs.....	4
3.0 Review of the 2024 Call for Power EPAs.....	6
3.1 Alignment with UCA Section 71 Criteria.....	6
3.2 First Nations Consultation	10
3.3 Overall Panel Determination	16
4.0 Confidentiality	16

APPENDICES

APPENDIX A	LIST OF ACRONYMS
APPENDIX B	EXHIBIT LIST

Executive Summary

On February 12, 2025, the British Columbia Hydro and Power Authority (BC Hydro) filed an application (Application) with the British Columbia Utilities Commission (BCUC) pursuant to section 71 of the *Utilities Commission Act* (UCA) for acceptance of ten electricity purchase agreements with the successful proponents of BC Hydro's 2024 call to acquire clean or renewable electricity from greenfield generating facilities in British Columbia (the EPAs).

In total, the EPAs represent a contracted volume of approximately 4,830 gigawatt hours of energy per year and have an average weighted levelized bid price of \$74 per megawatt hour.

The BCUC has completed a comprehensive review of the EPAs and determined that they are aligned with the factors the BCUC must consider under section 71 of the UCA, including British Columbia's energy objectives and BC Hydro's most recently approved integrated resource plan.

The BCUC considered BC Hydro's 2024 call for power to have been a fair, transparent, and competitive process for procuring additional energy required to meet BC Hydro's customer needs, and found that the price of the energy was reasonable. The EPAs will further the province's goal of achieving energy self-sufficiency with electricity generated from 100 percent clean or renewable resources and, with locations across the province and First Nations equity partnerships ranging from 49 percent to 51 percent, will encourage economic development and the creation and retention of jobs for First Nations and rural communities in British Columbia.

BC Hydro has a duty to consult with First Nations prior to entering into the EPAs because the decision to enter into the EPAs is Crown conduct with a potential to adversely impact Aboriginal interests. The BCUC is required to assess the adequacy of BC Hydro's consultation with First Nations as part of the review of the EPAs.

Given the early stage of project development at which the EPA decisions are taking place, the BCUC found that the level of potential adverse effect on First Nations' claimed rights or title is low – several permitting, financing, and construction steps remain before the projects can reach commercial operation, and the BCUC's acceptance of the EPAs does not, in itself, permit the development of the projects nor the undertaking of any physical activity on the lands. As such, the BCUC determined that the consultation requirements for entering into each of the EPAs falls on the low to moderate side of the *Haida* spectrum.

Having reviewed BC Hydro's consultation process, the BCUC determined that BC Hydro's decision to delegate procedural aspects of First Nations consultation to project proponents was appropriate in this case. The BCUC also found BC Hydro's approach to examining the sufficiency of First Nations consultation by each project proponent to have been appropriate. Based on review of the steps that had been taken to consult with each First Nation, the BCUC determined that BC Hydro adequately consulted with potentially affected First Nations with respect to the decision to enter into the EPAs.

Overall, the BCUC concluded that the EPAs are in the public interest and accepted each of the EPAs for filing pursuant to section 71 of the UCA.

1.0 Introduction and Background

In March 2024, the British Columbia Utilities Commission (BCUC) completed a comprehensive review of the 2021 Integrated Resource Plan (IRP) filed by the British Columbia Hydro and Power Authority (BC Hydro). The IRP, which looks at a 20-year timeframe, is a guidebook for what BC Hydro will do to meet its customers' evolving electricity needs.¹

As part of the IRP, system and regional-level energy shortfalls were identified as early as fiscal 2029 under the reference load forecast scenario, and a near-term action to acquire new clean or renewable energy to address the deficit was identified. The BCUC found that a conclusive determination in the IRP proceeding regarding the timing and need of the energy acquisitions was appropriate, and would facilitate an effective and efficient review of future energy supply contract filings made by BC Hydro pursuant to section 71 of the *Utilities Commission Act* (UCA).²

Specifically, the BCUC ordered that:

Pursuant to section 44.1(9) of the UCA, the following matters are conclusively determined for BC Hydro for the purposes of any future hearing or proceeding to be conducted by the BCUC under the UCA:

- a. That there is a need for BC Hydro to acquire approximately 3,000 [gigawatt hours (GWh)] of clean or renewable energy from greenfield generation facilities in the province for delivery to BC Hydro as early as fiscal 2029; and
- b. That there is a need for BC Hydro to acquire approximately 700 GWh of clean or renewable energy from existing generation facilities in the province for delivery to BC Hydro prior to fiscal 2029.³

On June 15, 2023, BC Hydro announced a call for power to acquire new clean or renewable energy (2024 Call for Power). The 2024 Call for Power concluded with the award of an electricity purchase agreement (EPA) to nine wind projects and one solar project (together, the EPAs). In total, the EPAs comprise a contracted volume of approximately 4,830 GWh of energy per year. They include:⁴

- the Boulder and Elkhart Wind Project EPA between BC Hydro and Elkhart Wind Limited Partnership (Boulder and Elkhart 2024 EPA);
- the Brewster Wind Project EPA between BC Hydro and Brewster Wind Inc. (Brewster 2024 EPA);
- the Highland Valley Wind Project EPA between BC Hydro and Highland Valley Wind Inc. (Highland Valley 2024 EPA);
- the K2 Wind Project EPA between BC Hydro and K2 Wind Power Inc. (K2 2024 EPA);
- the Mount Mabel Wind Project EPA between BC Hydro and Mount Mabel Wind Inc. (Mount Mabel 2024 EPA);
- the Nilhts'i Ecoener Wind Project EPA between BC Hydro and Nilhts'i Ecoener Energy Corp (Nilhts'i Ecoener 2024 EPA);

¹ BC Hydro 2021 Integrated Resource Plan, Decision and Order G-58-24 dated March 6, 2024, (2021 IRP Decision) p. i; Exhibit B-1, p. 7.

² Ibid., pp. 23–24, 26; Exhibit B-1, p. 7.

³ Ibid., Directive 2; Ibid.

⁴ Exhibit B-1, p. 1.

- the Nithi Mountain Wind Project EPA between BC Hydro and Nithi Mountain Power General Partnership (Nithi Mountain 2024 EPA);
- the ShTSaQU Solar Project EPA between BC Hydro and Logan BC Solar Project Limited Partnership (ShTSaQU 2024 EPA);
- the Stewart Creek Wind Project EPA between BC Hydro and Stewart Creek Power Inc. (Stewart Creek 2024 EPA); and
- the Taylor Wind Project EPA between BC Hydro and Taylor Wind Project Inc. (Taylor 2024 EPA).

On February 12, 2025, BC Hydro filed an application with the BCUC pursuant to section 71 of the UCA for acceptance of the EPAs (Application). Sections 1.1 and 1.2 of this decision provide an overview of the legislative framework for the BCUC's review of the EPAs, as well as the regulatory process undertaken. Further details on the 2024 Call for Power and the terms of the executed contracts follow in Section 2.0. The BCUC's review of the merits of the Application is discussed in Section 3.0. Finally, BC Hydro's request that the EPAs and the redacted information contained in the Application be held confidential is addressed in Section 4.0.

1.1 Legislative Framework

The BCUC reviews EPAs pursuant to section 71 of the UCA and the BCUC's Rules for Energy Supply Contracts for Electricity (ESC Rules).

Subsection 71(1) of the UCA provides that a person who enters into an energy supply contract must:

- file a copy of the contract with the BCUC under rules and within the time it specifies, and
- provide to the BCUC any information it considers necessary to determine whether the contract is in the public interest.

In accordance with section 71(2.21) of the UCA, when determining whether an energy supply contract filed by BC Hydro is in the public interest, the BCUC, in addition to considering the interests of persons in British Columbia (BC) who receive or may receive service from BC Hydro, must consider:

- BC's energy objectives;
- the most recent integrated resource plan approved under section 4 of the *Clean Energy Act* or long-term resource plan filed by BC Hydro under section 44.1 of the UCA;
- the extent to which the energy supply contract is consistent with the requirements under section 19 of the *Clean Energy Act*;⁵
- the quantity of the energy to be supplied under the contract;
- the availability of supplies of the energy referred to in paragraph (d);
- the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (d); and
- in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (d).

⁵ Section 19 of the *Clean Energy Act* provides that to facilitate achievement of BC's energy objectives, BC Hydro, and other prescribed public utilities, must pursue actions to meet the prescribed targets in relation to clean or renewable resources. At this time, no regulations have been issued for the purposes of section 19 of the *Clean Energy Act*.

A list of BC's energy objectives can be found under section 2 of the *Clean Energy Act* and in BC's Clean Energy Objectives Regulation.⁶ The BC energy objectives include, among others, the following:

- to achieve electricity self-sufficiency;⁷
- by 2030, to ensure that 100 percent of the electricity generated in BC and supplied to the integrated grid is generated from clean or renewable resources, and to ensure that the infrastructure necessary to transmit that electricity is built;⁸
- to ensure BC Hydro's rates remain among the most competitive of rates charged by public utilities in North America;⁹
- to reduce BC greenhouse gas emissions by certain specified amounts and to ensure BC Hydro holds rights to a sufficient amount of clean or renewable electricity to enable BC to meet these reduction targets;¹⁰ and
- to foster the development of First Nation and rural communities through the use and development of clean or renewable resources.¹¹

Rule 1.2 of the BCUC's ESC Rules states that in reviewing an energy supply contract filed by BC Hydro the BCUC will "rely on all information it considers necessary to determine whether an [energy supply contract] is in the public interest" and, in doing so, will "consider and be guided by the factors in section 71(2.21) of the [UCA]."¹²

1.2 Regulatory Process

On February 26, 2025, the BCUC established a regulatory timetable for review the Application.¹³ The regulatory timetable included, among other things, public notice by BC Hydro, BCUC information requests (IRs), and an opportunity for letters of comment.

The BCUC received a total of 19 letters of comment from the following parties:

- K'ómoks First Nation (K'ómoks);
- Deputy Minister of Energy and Climate Solutions, Mr. Peter Pokorny;
- Doig River First Nation (DRFN);
- BC Sustainable Energy Association (BCSEA);
- The Association of Major Power Consumers (AMPC);
- Taylor Wind Inc.; and
- Capstone Infrastructure Corporation (Capstone) jointly with Wei Wai Kum First Nation (Wei Wai Kum).

⁶ *Clean Energy Act*, SBC 2010, Chapter 22, section 2, retrieved from http://www.bclaws.ca/civix/document/id/complete/statreg/10022_01#section2 and BC's Energy Objectives Regulation, B.C. Reg. 234/2012 retrieved from https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/234_2012

⁷ BC's Energy Objective (a).

⁸ BC's Energy Objective (c).

⁹ BC's Energy Objective (f).

¹⁰ BC's Energy Objectives (g) and (g.1).

¹¹ BC's Energy Objective (l).

¹² ESC Rules attached to BCUC Order G-61-12 dated May 25, 2012.

¹³ BCUC Order G-51-25 dated February 26, 2025. This regulatory timetable was subsequently furthered and amended by Orders G-72-25, G-114-25, G-122-25, G-131-25, G-155-25, G-164-25 and G-165-25.

On May 28, 2025, the BCUC issued a set of Panel IRs to BC Hydro. BC Hydro filed its response to these IRs on June 13, 2025. BC Hydro’s final argument and responses to letters of comment followed on June 24, 2025.

Subsequently, on June 26, 2025, K’ómoks filed two letters of comment regarding BC Hydro’s response to Panel IRs and BC Hydro’s final argument. BC Hydro filed a response to these letters of comment on July 8, 2025.

2.0 The 2024 Call for Power and EPAs

BC Hydro states that the 2024 Call for Power was a competitive request for proposals (RFP) process, and that it awarded EPAs to the projects with the lowest Evaluation Prices¹⁴ of the eligible and compliant proposals received through the process.¹⁵

BC Hydro notes that it retained an independent fairness monitor for the 2024 Call for Power process to ensure that all proponents were treated fairly in accordance with the RFP rules. The fairness monitor concluded that the procurement process was operated in a transparent and fair manner.¹⁶

BC Hydro states that the 2024 Call for Power process and the standard form of contract to be executed with successful proponents (the Specimen EPA) was designed through engagement with First Nations, independent power producers (IPPs), and other stakeholders. Between June 2023 and January 2024, BC Hydro undertook a two-phased engagement process. BC Hydro explains that the first phase of the engagement process reviewed initial design elements, the proposed schedule, eligible resource types, location requirements, desired volume, and the development and inclusion of First Nations economic participation. The second phase focused on gathering input and feedback on the Specimen EPA and RFP documents, and on developing the First Nations economic participation model in collaboration with First Nations.¹⁷

BC Hydro explains that the First Nations economic participation model that was ultimately adopted for the 2024 Call for Power consisted of three components: (i) an eligibility requirement of a minimum 25 percent First Nations equity ownership in the project; (ii) an evaluation credit for ownership in excess of the minimum 25 percent (up to 51 percent); and (iii) an evaluation credit for non-equity economic benefits accruing to First Nations other than those holding equity in the project.¹⁸

In addition to the First Nations equity ownership requirement, proponents were also required to meet certain other eligibility and conformity requirements including, but not limited to, having a plant capacity of between 40 megawatts (MW) and 200 MW, qualifying as a “clean or renewable resource” as defined in the *Clean Energy Act*, and being reasonably expected to achieve a commercial operation date between October 1, 2028 and October 1, 2031.¹⁹

BC Hydro issued the RFP documents and Specimen EPA in April 2024. BC Hydro states that following the evaluation phase of the RFP process, individual EPAs were not subject to negotiation or modification other than to update the EPA with project specific information as provided in a preferred proponent’s proposal.²⁰

¹⁴ “Evaluation Price” means the price that results from BC Hydro applying adder or credit adjustments (e.g. a network update adder, First Nations equity credit, and/or resource integration adder, etc.) to the 2024 Call for Power proponent’s bid price for evaluation purposes. Exhibit B-1, pp. 22, 26.

¹⁵ BC Hydro Final Argument, p. 4.

¹⁶ Exhibit B-1, pp. 22–23.

¹⁷ Ibid., p. 17; BC Hydro Final Argument, p. 4.

¹⁸ Ibid., pp. 17–18.

¹⁹ Ibid., pp. 19–20, 23.

²⁰ Ibid., pp. 14, 21.

BC Hydro described the Specimen EPA key terms and conditions in section 4.2 of the Application. These include, but are not limited to, those summarized in Table 1 below.

Table 1: Select Key Terms of the Specimen EPA²¹

Term	Description
EPA Term	Energy delivery obligations expire 30 years after Commercial Operation Date.
Product	Non-Firm Energy.
Energy Price	<p>\$●/MWh, escalated annually on January 1 of each year following the Effective Date:</p> <ul style="list-style-type: none"> At BC consumer price index (BC CPI) until the earlier of Commercial Operation Date and Guaranteed Commercial Operation Date; and At 30 percent of BC CPI after Commercial Operation Date. <p>Energy price is adjusted for a monthly time of delivery factor.</p>
Commercial Operation Date Incentives/Bonuses	BC Hydro will pay a bonus payment if the Seller's Plant achieves its Commercial Operation Date between specified dates.
Delivered Energy	BC Hydro will purchase and accept delivery of Energy from the Seller's Plant provided by Seller at the Point of Interconnection subject to an Hourly Limit. BC Hydro has no obligation to accept or pay for Delivered Energy in excess of the Hourly Limit. BC Hydro's obligation to accept delivery of Energy is excused during certain events, including Force Majeure, Emergency Condition, BC Hydro System Constraint, Turn-Down Period, disconnection of the BC Hydro System unless attributable to BC Hydro, and failure to comply with Project Standards.
First Nations Equity Ownership Energy Price Reduction	If the Seller is not compliant with the First Nations Equity Ownership in the first three years of operations post Commercial Operation Date, the Energy Price is reduced by 5 percent for that year or until the condition is rectified.
Termination Payment	If the Seller is in material default and BC Hydro exercises its termination right, the Seller will pay a termination payment to BC Hydro.

BC Hydro reports that it received 21 proposals by the RFP closing date, representing more than 9,000 GWh of energy per year. Of these proposals, BC Hydro determined that 18 met the applicable eligibility and conformity requirements. These 18 proposals advanced to the quantitative evaluation phase, where BC Hydro ranked them based on Evaluation Price and assessed the collective impact of multiple generating resources on its regional transmission grid. The clustering analysis revealed additional cost factors and risks, such as any additional network upgrades required to connect the project to the BC Hydro system, requiring adjustment of the Evaluation Price.²²

Subsequently, BC Hydro conducted a risk assessment process to evaluate each proposal for risk of project non-completion, under-delivery of the proposed energy volume, and failure to meet the proposed Guaranteed Commercial Operation Date.²³ BC Hydro reports that it eliminated one project due to unacceptable risk.²⁴

²¹ Exhibit B-1, pp. 38–39.

²² Ibid., pp. 24–28.

²³ BC Hydro states that, in general terms, the Commercial Operation Date means the date that a project achieves commercial operation, and the Guaranteed Commercial Operation Date means the Commercial Operation Date included in each project proposal. Exhibit B-1, p. 2.

²⁴ Exhibit B-1, p. 28.

Finally, BC Hydro evaluated the adequacy of First Nations consultation undertaken by the project proponents.

The 2024 Call for Power RFP stated that BC Hydro would review proponents' consultation records at the time of proposal submission, and that BC Hydro would not enter into an EPA with a proponent unless BC Hydro considered that consultation was adequate. BC Hydro states that, given the early stages of the projects, it also required proponents to document any remaining First Nations concerns and how they intend to address them. If deficiencies in the proponent's consultation approach were identified, BC Hydro states it directed proponents to address the deficiencies.²⁵

BC Hydro states that at the conclusion of the RFP process it awarded EPAs to the ten eligible and compliant projects with the lowest Evaluation Price. The EPAs have an average weighted levelized bid price of \$74/MWh and include First Nations equity interests ranging from 49 percent to 51 percent. The earliest Guaranteed Commercial Operation Date for the projects is fiscal 2031. BC Hydro reports that it and the BC Government are advancing efforts to accelerate project timelines to enable earlier in-service dates.²⁶

Finally, BC Hydro states that the successful projects will provide a seasonal energy profile that is well-suited to its needs and will complement its existing resources, noting, for example, that wind and solar resources can provide valuable diversity to BC Hydro's system during low water years that can result in lower BC Hydro generation and lower energy deliveries from IPP hydro resources.²⁷

3.0 Review of the 2024 Call for Power EPAs

As discussed in Section 1.1, above, to determine whether the EPAs are in the public interest, the BCUC must consider the criteria set out in section 71(2.21) of the UCA, including BC's energy objectives, BC Hydro's most recently approved IRP, and the extent to which the EPAs are consistent with requirements under section 19 of the *Clean Energy Act*. Further, the BCUC must consider the quantity, availability and price of energy under the EPAs, as well as the price and availability of any other form of energy that could be used instead. The BCUC must also be satisfied that BC Hydro has met its duty to consult with First Nations with respect to its decision to enter into the EPAs.

In its analysis of the key considerations referenced above, the Panel first focuses, in Section 3.1, on the EPAs' alignment with the criteria set out in section 71(2.21) of the UCA. Next, in Section 3.2, the Panel assesses the adequacy of consultation with First Nations related to the EPAs. Finally, in Section 3.3, the Panel sets out its overall determination regarding the acceptance of the EPAs.

3.1 Alignment with UCA Section 71 Criteria

BC Hydro submits that the EPAs align with the applicable of BC's energy objectives, as well as the BCUC's conclusive determinations on the timing and need for energy acquisitions in the IRP. BC Hydro's views regarding the applicable energy objectives are summarized in Table 2 below.²⁸

²⁵ Exhibit B-1, pp. 29–30; BC Hydro Final Argument, p. 5.

²⁶ Ibid., p. 2; Ibid., p. 4.

²⁷ Ibid., p. 11.

²⁸ Ibid., Table 8, pp. 43–44; BC Hydro Final Argument, p. 3.

Table 2: BC's Energy Objectives²⁹

Energy Objective	BC Hydro Commentary
(a) To achieve electricity self sufficiency.	The generation facilities are in the province, and BC Hydro has exclusive rights to the electricity from them to satisfy domestic need.
(c) By 2030, to ensure that 100 percent of the electricity generated in BC and supplied to the integrated grid is generated from clean or renewable resources, and to ensure that the infrastructure necessary to transmit that electricity is built.	The generation facilities are in the province and will supply electricity generated from clean or renewable resources to the integrated grid. Electricity purchased under the EPAs helps BC Hydro meet the 100 percent clean or renewable generation energy objective.
(d) To use and foster the development in BC of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources.	All of the generating facilities will use proven technologies that utilize clean or renewable resources.
(f) To ensure BC Hydro's rates remain among the most competitive of rates charged by public utilities in North America.	The 2024 Call for Power RFP was an open and transparent competitive process that identified the lowest evaluation price proposals for greenfield clean or renewable generating projects in the province available in the required timeframe.
(g.1) To ensure BC Hydro has sufficient clean or renewable electricity to meet BC's greenhouse gas emission objectives.	Electricity purchased under the EPAs helps BC Hydro meet demand, including demand associated with fuel switching, from clean or renewable resources. The 2024 Call for Power is intended to help position BC Hydro to meet potential electrification load associated with the BC Government's greenhouse gas reduction targets as represented by the IRP accelerated electrification load scenario.
(k) To encourage economic development and the creation and retention of jobs.	It has been estimated that the development and construction of new clean energy projects in response to the 2024 Call for Power will generate an estimated \$5 billion to \$6 billion in private capital investment and create approximately 800 to 1,500 construction jobs annually on average.
(l) To foster the development of First Nation and rural communities through the use and development of clean or renewable resources.	The EPAs include an equity interest for First Nations ranging from 49 percent to 51 percent. In addition, local communities in the regions will obtain economic benefits from the construction and development of these generating facilities.
(o) To achieve BC's energy objectives without the use of nuclear power.	The EPAs are either wind or solar resources and achieve the energy objectives without the use of nuclear power.

With respect to the requirements under section 19 of the *Clean Energy Act* that deals with meeting prescribed targets and guidelines in relation to clean or renewable resources, BC Hydro submits that as the BC Government has not issued any regulations for the purposes of section 19, this consideration is not applicable to the Application.³⁰

²⁹ Table prepared by BCUC Staff based on Exhibit B-1, Table 8, pp. 43–44.

³⁰ Exhibit B-1, p. 44.

With regards to consistency with the IRP, BC Hydro notes that its most recently approved IRP was accepted by the BCUC in March 2024. The IRP identified a need for BC Hydro to acquire approximately 3,700 GWh per year of new clean or renewable energy from generating facilities in the province for delivery as early as fiscal 2029. BC Hydro states that the total contracted volume under the EPAs of 4,830 GWh is consistent with the energy need that was conclusively determined in the IRP as, based on its previous experience with calls for power and that of other jurisdictions, BC Hydro anticipates that 30 percent of the contracted volumes will not be delivered as planned.³¹

Further, BC Hydro states that even in the event that there is no attrition and the full 4,830 GWh per year of energy is delivered, acquiring the EPA volumes would still be consistent with the load resource balances of the IRP. According to BC Hydro, the supply deficit forecast in the IRP increases by approximately 2,000 GWh from fiscal 2029 to fiscal 2031 under the reference load forecast, and to a greater extent under electrification scenarios. As the earliest Guaranteed Commercial Operation Date of the EPAs is fiscal 2031, BC Hydro anticipates needing the full volume of energy by that time.³²

Under lower load growth scenarios where full delivery of the contracted amounts under the EPAs results in an energy surplus, BC Hydro estimates a maximum relative ratepayer cost of \$94 million annually, noting that this impact would generally decline over time as load increases and because the weighted average unit energy cost of the EPAs escalates at a lower rate than the forecast price of market energy.³³

Finally, with regards to the price of the energy being supplied, BC Hydro submits that the 2024 Call for Power process identified the lowest evaluation price proposals that would meet BC Hydro's needs, and that the selected EPAs are the most cost-effective proposals received in the call. Overall, the EPAs have an average weighted Levelized Bid Price³⁴ of \$74/MWh, which BC Hydro states is around 45 percent lower than the price from the 2010 Clean Power Call when adjusted for inflation, and compares favourably to an estimated average levelized price of \$80/MWh for a recent similar call for power by Hydro Quebec.³⁵

Letters of Comment

BCSEA submits that it supports BCUC acceptance of the EPAs as being in the public interest under section 71 of the UCA. BCSEA notes that the wind and solar power to be delivered under the EPAs will be clean or renewable, and that the contracted volume is consistent with the BCUC's determination regarding the need for, and timing of, new energy supplies.³⁶

AMPC submits that BC Hydro's justification for cost-effectiveness of its EPAs is inadequate. AMPC asserts that there are flaws in BC Hydro's public procurement process that undermine a conclusion that it achieved market prices. First, AMPC notes that BC Hydro's comparison to the recent Hydro Quebec call for power, and its own 2010 call, ignore other relevant examples and the fact that the 2010 call reflected much higher than market rates.

Next, AMPC submits that the prices for the EPAs are higher than BC Hydro's recent planning forecast and the estimates provided as part of the 2021 IRP. AMPC also questions the values used for the Evaluation Price adder of incorporating intermittent and variable resources.³⁷

³¹ 2021 IRP Decision; Exhibit B-1, pp. 8–9, 44–45; Exhibit B-4, BCUC IR 1.2.1.

³² Exhibit B-1, pp. 10–13.

³³ Exhibit B-4, BCUC IR 1.2.2.

³⁴ Levelized Bid Price is the bid price submitted by the proponents and converted to a levelized price over the 30-year term of the EPAs.

³⁵ Exhibit B-1, pp. 1, 36.

³⁶ Exhibit D-4, pp. 1–2.

³⁷ Exhibit D-5, pp. 7–8.

In addition, AMPC questions whether the 2024 Call for Power was truly competitive as it submits BC Hydro prioritized timing over pricing. AMPC submits that although BC Hydro states that its process identified the lowest Evaluation Price proposals, it does not say that the proposals with the lowest prices were the ones selected. Further, AMPC states that there was significant commonality between the project proponents and that BC Hydro's strict eligibility requirements for compliant proposals likely excluded the development of a larger pool of bidders.³⁸

In addition to concerns with the price of the EPAs, AMPC raises concerns that BC Hydro is acquiring too much non-dispatchable intermittent energy, with limited capacity benefits, and that the risk to ratepayers posed by all of the contracts coming into service and/or delivering more energy than forecast is material.³⁹

Finally, AMPC submits that the BCUC should retain its own independent expert on utility EPA procurements to provide an independent assessment of best RFP practices that BC Hydro should engage in when contracting and establishing its evaluation methods, and to review BC Hydro's practices against those best practices. AMPC suggests that the results of this assessment should then be codified as rules or guidance for future procurements that will inform any future reviews of BC Hydro's calls for power.⁴⁰

In response to AMPC's letter of comment, BC Hydro submits that any suggestion that the 2024 Call for Power was not competitive is unfounded and based on anecdotal evidence in other jurisdictions. BC Hydro argues that the process was fair and competitive, and it discovered the best prices available for the electricity product sought as defined by the eligibility criteria.⁴¹

With regards to the levelized cost of the EPAs versus the estimates provided for new energy resources in the IRP, BC Hydro submits that the difference is readily explained and in no way indicates that the 2024 Call for Power was not competitive. Specifically, BC Hydro states that the long run marginal cost (LRMC) of energy used in the IRP was based on the lowest-cost wind resource options characterized in the 2020-vintage Resource Options Database and differences between this and the EPA costs could be due to: (i) higher capital costs; (ii) a differing portfolio of projects (e.g. different project locations, size, and wind resource quality); and (iii) unaccounted for risk tolerances in the Resource Options Database.⁴²

Finally, BC Hydro submits that the proposal for the BCUC to establish parameters to guide BC Hydro's future calls for power is not necessary. BC Hydro argues that it has access to advice and feedback on call design from experts, First Nations, the IPP industry and stakeholders, and engaged them in designing the 2024 Call for Power and Specimen EPA. In BC Hydro's view, the expert engagement proposed by AMPC likely would not provide significant value.⁴³

Panel Determination

For the reasons discussed below, the Panel finds that the EPAs are aligned with the criteria the BCUC must consider under section 71(2.21) of the UCA.

The proceeding record shows that the EPAs will support the applicable BC energy objectives, including furthering the province's goal of achieving energy self-sufficiency with electricity generated from 100 percent clean or renewable resources. Additionally, by selecting projects to be developed in locations across BC and with First

³⁸ Exhibit D-5, pp. 8–10.

³⁹ Exhibit B-1, pp. 14–16.

⁴⁰ Exhibit D-5, p. 17.

⁴¹ BC Hydro Final Argument, pp. 15–16.

⁴² Ibid., pp. 16–17.

⁴³ Ibid., p. 17.

Nations equity partnerships ranging from 49 percent to 51 percent, the EPAs will encourage economic development and the creation and retention of jobs for First Nations and rural communities in BC.

The Panel is satisfied with the quantity and availability of energy from the EPAs, noting that the EPAs give BC Hydro exclusive rights to the expected energy to be produced. The need for BC Hydro to acquire approximately 3,700 GWh of clean or renewable energy by as early as fiscal 2029 was conclusively determined by the BCUC in the IRP Decision. While the total volume of energy contracted for under the EPAs is slightly higher than this amount, at approximately 4,830 GWh, the Panel considers BC Hydro's expectation of a 30 percent attrition rate on delivered volumes to be reasonable, in light of BC Hydro's experience with previous calls for power and the attrition rates seen in other Canadian jurisdictions. Further, the load and resource balances set out in BC Hydro's most recently approved IRP show BC Hydro's energy deficit growing over time, with approximately 2,000 GWh of additional energy needed under the reference load forecast scenario by the earliest Guaranteed Commercial Operation Date of the EPAs. As such, the Panel considers the type and volume of energy contracted under the EPAs to be consistent with the conclusive determinations made in the IRP.

The Panel is not persuaded by AMPC's assertions that the 2024 Call for Power was not competitive. The record shows that the call was a fair and open process for soliciting bids. The Panel considers the submission of 21 proposals from multiple proponents, totalling over 9,000 GWh of energy from projects of varying generation types and locations across the province, to be evidence of a sufficiently robust and competitive process. While the total adjusted cost of energy for the EPAs is somewhat higher than BC Hydro's inflation-adjusted estimate of the LRMC of energy in the IRP, the difference between the forecast cost and actuals is not unreasonable nor unexpected. BC Hydro's estimated LRMC relied on the lowest-cost wind resource included in its Resource Options Database. Differences in the technology mix of the EPAs (i.e. a mix of wind and solar generation), the location of the projects (i.e. across the province rather than all in the Peace region), and the capital and other costs of greenfield projects today versus 2020, all reasonably contribute to the variance observed.

Overall, the Panel views the approach taken by BC Hydro in the 2024 Call for Power to have been a fair, transparent and competitive market-based process. As such, we see no merit at this time in AMPC's proposal that the BCUC retain an independent expert and establish rules or guidelines to govern BC Hydro's future procurement processes.

3.2 First Nations Consultation

BC Hydro states that the decision to enter into the EPAs constitutes Crown conduct with a potential to adversely impact Aboriginal interests. As such, BC Hydro has a duty to consult with First Nations regarding that decision.⁴⁴

BC Hydro submits that the Crown's obligation to First Nations regarding the projects arises at a number of points during the development process, as the Crown will be making a series of decisions that enable the projects to advance through the development stage and, ultimately, decisions as to whether the projects may be constructed and operated.⁴⁵

In BC Hydro's view, its decision to enter into the EPAs is an important early step in the projects' development processes, but it is not the only important step. By entering into the EPAs, BC Hydro has agreed to pay for electricity delivered from the projects if and when they reach commercial operation. The EPAs, in and of themselves, do not permit project proponents to disturb Aboriginal interests. Prior to project development activities, proponents will need to secure permits from the applicable federal and provincial governments. The federal and provincial governments will be responsible for consulting with First Nations on the potential adverse impacts arising from their decision to issue the respective permits.⁴⁶

⁴⁴ Exhibit B-1, pp. 39–40; BC Hydro Final Argument, p. 9.

⁴⁵ BC Hydro Final Argument, p. 9.

⁴⁶ Ibid., pp. 9–10.

BC Hydro argues that the Supreme Court of Canada (SCC) decision in *Rio Tinto Alcan Inc v. Carrier Sekani Tribal Council*, 2010 SCC 4333 (Rio Tinto Alcan) confirms that in this proceeding the BCUC is to focus on the narrow issue of “whether and what impacts on First Nations interests arise from BC Hydro’s decision to enter into these EPAs.”⁴⁷

BC Hydro states that it accepted that First Nations have interests in the respective project areas. Based on an analysis of the potential impacts on Aboriginal interests relating to BC Hydro’s decision to enter into an EPA under the framework set out in the Supreme Court of Canada case *Haida Nation v. British Columbia Minister of Forests (Haida)*, BC Hydro determined that the consultation required at the stage of deciding to enter into the EPAs is at the low to moderate level based on the *Haida* spectrum. BC Hydro submits that the decision to enter into an EPA through the 2024 Call for Power occurred early in each project’s development and that “the potential impact of entering into the EPA on Aboriginal title or rights or treaty rights is indirect in that the decision does not authorize any physical impacts such as may arise from physical works, including entering onto lands, building access roads, removing trees, or constructing and operating facilities.”⁴⁸

BC Hydro notes that First Nations will have further and more substantial opportunities to provide input and have their concerns addressed as each project advances through the provincial and federal permitting processes. According to BC Hydro, federal and provincial government agencies will be responsible for First Nations consultation regarding their respective permits, while BC Hydro will be responsible for consultation on any BC Hydro interconnection projects required to connect the projects to its system. The specific depth and scope of this further consultation will depend on the particulars of the projects, permits, and the First Nations interests potentially impacted.⁴⁹

BC Hydro states that, in order to fulfill its obligations, it incorporated into the 2024 Call for Power a requirement for proponents to undertake aspects of the consultation process, reasoning that proponents have access to more detailed information on the projects and are best placed to respond to First Nations’ questions and concerns.⁵⁰

As part of the RFP process, proponents were required to provide consultation documentation including, but not limited to:

- A chronology of meetings and other communications with each First Nation and any actions relating to the consultation;
- A description of potential project impacts on First Nations’ Aboriginal rights and title or treaty rights, how the proponent has addressed those potential project impacts, and how the proponent incorporated feedback from the First Nation(s); and
- Copies of any documents that substantiate the proponent’s consultation activities (including all written correspondence with First Nations).⁵¹

BC Hydro states that it undertook an initial assessment of each proponent’s consultation information based on the following four questions:⁵²

1. Have all potentially impacted First Nations been notified and received all the information necessary for them to determine concerns and potential impacts?

⁴⁷ BC Hydro Final Argument, pp. 9–11.

⁴⁸ Ibid., p. 12.

⁴⁹ Ibid.

⁵⁰ Exhibit B-1, pp. 29–30, 39–40; BC Hydro Final Argument, p. 9.

⁵¹ Exhibit B-4, BCUC IR 1.10.2.

⁵² Ibid.

2. Has the proponent responded appropriately to all questions, concerns, and comments from First Nations?
3. Has the proponent followed up on all commitments or have a plan to do so?
4. Is the proponent proactively seeking input and facilitating the process, including in the future?

If after this initial assessment BC Hydro considered a proponent's consultation to be insufficient to meet BC Hydro's consultation obligations, it directed the proponent to undertake further consultation and submit supplemental consultation information. BC Hydro states that it offered an EPA to a proponent only after being satisfied that it had met its legal obligations for the EPA.⁵³

BC Hydro states that proponents consulted with each potentially impacted First Nation either directly or as a member of an organization such as a tribal council.⁵⁴ BC Hydro explains that, in its experience, some First Nations prefer to be consulted via the tribal council or sub-Nation group to which they belong instead of being consulted directly, while others prefer to be consulted directly as well as through the tribal council or sub-Nation group or directly without consulting the tribal council or sub-Nation group. BC Hydro states that it reviewed proponents' consultation information with this in mind and based on BC Hydro's experience working with those First Nations and reviewing the BC Government's Profiles of Indigenous Peoples.

BC Hydro submits that proponents identified and consulted with all potentially impacted First Nations across all ten projects and that BC Hydro concludes that the level of consultation undertaken by each proponent was sufficient for BC Hydro to consider its consultation obligations met.⁵⁵

Letters of Comment

Both K'ómoks and DRFN do not agree that BC Hydro has satisfied its duty to consult, specifically pertaining to the Brewster Wind Project and Stewart Creek and Taylor Wind Projects respectively. Both parties state that BC Hydro failed to consult with them prior to entering into the EPAs with the projects' respective proponents.⁵⁶ While K'ómoks acknowledges that BC Hydro, as a representative of the Crown, can delegate procedural aspects of its duty to a proponent, it states that the responsibility and obligation to consult still rest with BC Hydro. DRFN echoes this sentiment.⁵⁷

Both K'ómoks and DRFN state that deep consultation is required by BC Hydro on these projects.⁵⁸ K'ómoks makes the specific argument that the level of consultation is on the high or deep end of the *Haida* spectrum and bases its argument on its strength of claim due to its ongoing negotiations to enter into a treaty with the Crown.⁵⁹ DRFN states that "there is a requirement for deep consultation, where the Crown has signed agreements with DRFN to address cumulative effects of industrial development and develop a joint land use plan containing protection and conservation measures for the same lands that will be impacted by the wind projects."⁶⁰

⁵³ Exhibit B-4, BCUC IR 1.10.2.

⁵⁴ Specifically, BC Hydro states that proponents directly consulted all potentially impacted First Nations identified in Appendix C of the Application except for the member Nations of the Nlaka'pamux Nation Tribal Council (Boothroyd Indian Band, Lytton First Nation, Oregon Jack Creek Band, and Skuppah Indian Band) on the ShTSaQU Solar Project. In that case First Nations were consulted via the Nlaka'pamux Nation Tribal Council, which represents its member Nations with respect to Aboriginal rights and title and so is the appropriate body to be consulted. Exhibit B-8, BCUC Panel IR 1.1.1.

⁵⁵ Exhibit B-1, Appendix C; Exhibit B-4, BCUC IR 1.10.2.

⁵⁶ Exhibit D-1, PDF pp. 2–3; Exhibit D-3, pp. 3–4.

⁵⁷ Exhibit D-1-3, p. 7; Exhibit D-3, p. 8.

⁵⁸ *Ibid.*, p. 8; *Ibid.*

⁵⁹ Exhibit D-1-3, pp. 1–2.

⁶⁰ Exhibit D-3, p. 8.

In response to the confidential consultation logs submitted by BC Hydro to both K'ómoks and the BCUC recording the consultation undertaken between K'ómoks and the proponent of the Brewster Wind Project, K'ómoks asserts that the logs are incomplete and misleading. K'ómoks argues that the proponent did not record the concerns raised by K'ómoks in its consultation log and did not communicate those concerns to BC Hydro prior to entering into the EPA contract for the Brewster Wind Project.⁶¹ Overall, K'ómoks argues that BC Hydro has not adequately demonstrated that it has fulfilled its duty to consult K'ómoks and hence the BCUC cannot be sure that it is in the public interest to approve the Brewster Wind EPA.⁶²

Capstone and Wei Wai Kum also jointly submitted a letter of comment regarding the Brewster Wind EPA, responding to concerns raised by K'ómoks. Capstone and Wei Wai Kum, as partners in the Brewster Wind Project, confirm their commitment to ongoing and meaningful engagement with K'ómoks through a robust consultation process as the project's proponents seek federal and provincial permits to develop the project.⁶³

In response to DRFN's assertions that the level of consultation undertaken on the Taylor Wind Project was inadequate, Taylor Wind submitted a letter of comment describing its engagement with DRFN and other Treaty 8 Nations, including a communication log with DRFN. In its letter, Taylor Wind states that its engagement efforts are ongoing, and that it remains committed to continuing to share information on the project and seek feedback from DRFN and other First Nations as the project moves through the upcoming permitting phases.⁶⁴

The BC Ministry of Energy and Climate Solutions (Ministry) submitted a letter of comment outlining the BC Government's intention at that time to introduce legislative and regulatory changes to remove environmental assessment requirements for current and future land-based wind energy projects and to enable a new regulatory framework for such projects, including wind energy projects awarded EPAs pursuant to the 2024 Call for Power, with the BC Energy Regulator (BCER) as the primary permitting agency. The Ministry submitted that the BC Government is committed to working in cooperation with First Nations affected by the wind projects from the 2024 Call for Power and has begun consulting with First Nations on the development of regulations that would identify the types of projects and the scope of the BCER's authority. The Ministry submits that the BCER will be responsible for engaging and consulting potentially impacted First Nations regarding the subsequent permitting decisions and implementation of additional regulations for renewable energy projects.⁶⁵

BC Hydro notes that the BC Government recently enacted the *Renewable Energy Projects (Streamlined Permitting) Act*⁶⁶, which provides for regulation of renewable energy projects by the BCER at one of three levels of intensity and modification of the application of the *Energy Resource Activities Act* and other statutes in relation to those projects. BC Hydro further notes that the BCER as an agent of the Crown, fulfils the Crown's obligation to consult with First Nations prior to the authorization of activities under enactments for which the BCER is the responsible decision maker.⁶⁷

In response to claims made by K'ómoks and DRFN contesting the adequacy of its delegation of certain First Nations consultation responsibilities to proponents, BC Hydro states it developed robust consultation standards against which BC Hydro assessed proponents' consultation records in order to satisfy itself that BC Hydro had met its consultation obligations.⁶⁸ This was done from June 2023 to January 2024 during the RFP process in which it conducted engagement in two phases that included information sessions, First Nations discussions and

⁶¹ Exhibit D-1-11-1, pp. 1–2.

⁶² Exhibit D-1, PDF p. 7.

⁶³ Exhibit D-7, p. 1.

⁶⁴ Exhibit D-6, pp. 1–3.

⁶⁵ Exhibit D-2, p. 2.

⁶⁶ *Renewable Energy Projects (Streamlined Permitting) Act*:

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/25012>.

⁶⁷ BC Hydro Final Argument, p. 13.

⁶⁸ *Ibid.*, p. 22.

workshops, industry focus groups, engagement on draft terms and call processes, draft EPA term sheet, Specimen EPA and RFP drafts. BC Hydro further states that, as stated in the RFP, it would not enter into an EPA with a proponent unless BC Hydro considered that consultation was adequate. As a result, BC Hydro argues that all of the successful proponents in the 2024 Call for Power were assessed to have conducted consultation with the respective First Nations sufficient to ensure that BC Hydro has met its obligation.⁶⁹

Panel Determination

The Panel finds that BC Hydro’s consultation with potentially affected First Nations regarding the decision to enter into the EPAs has been adequate.

The BCUC is required to assess the adequacy of consultation with First Nations as part of the review of the EPAs.⁷⁰ In deciding whether the duty to consult has been adequate up to the point of its decision, the Panel is guided by the test set out in the Supreme Court of Canada’s decision in *Haida*,⁷¹ and guidance from other applicable case law.

In considering whether the duty to consult has been triggered, the Panel notes to the following passage from *Haida*:⁷²

...the duty [to consult] arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it...

BC Hydro acknowledges that it has a duty to consult prior to entering into the EPAs because the decision to enter into an EPA is Crown conduct with a potential to adversely impact Aboriginal interests. No letters of comment submitted in this proceeding dispute this point, and the Panel agrees.

Given the existence of the duty to consult, the Panel turns to the scope of consultation required in this instance. *Haida* introduced the concept of a spectrum to determine the scope of the duty to consult, as follows:⁷³

The content of the duty to consult and accommodate varies with the circumstances. Precisely what duties arise in different situations will be defined as the case law in this emerging area develops. In general terms, however, it may be asserted that the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed.

...

[...] 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...

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

⁶⁹ BC Hydro Final Argument, pp. 4–6; Exhibit B-4, BCUC IR 10.

⁷⁰ *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43.

⁷¹ 2004 SCC 73.

⁷² *Haida*, paragraph 35.

⁷³ *Haida*, paragraphs 39 and 43–44.

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...

BC Hydro argues that the consultation required at the point of deciding to enter into the EPAs is at the low to moderate level based on the *Haida spectrum* because the decision to enter into an EPA occurred early in each project's development. BC Hydro also argued that the potential impact of entering into the EPA on Aboriginal title or rights or treaty rights is indirect in that the decision does not authorize any physical impacts such as may arise from physical works, including entering onto lands, building access roads, removing trees, or constructing and operating facilities. Further, BC Hydro states that the provincial and federal permitting processes constitute a meaningful stage where projects are shaped, including through more substantial consultation with affected First Nations.

On the other hand, K'ómoks and DRFN argue that the level of consultation required is on the high or deep end of the spectrum, as a result of the advanced stage of K'ómoks' ongoing treaty negotiations with the Crown and signed agreements between the Crown and DRFN respecting cumulative effects of industrial development and development of a joint land use plan, respectively.

As set out in *Haida*, the scope of the duty to consult in a given case is proportionate to a preliminary assessment of the strength of the case supporting the existence of an Aboriginal right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed. Based on an assessment of these criteria, the Panel does not share K'ómoks' and DRFN's views that BC Hydro's decision to enter into the EPAs requires consultation at the high end of the *Haida spectrum*.

The BCUC accepts that certain First Nations, including K'ómoks and DRFN, have a reasonably strong *prima facie* claim to rights or title that may be impacted by the projects contemplated by the EPAs. However, the Panel finds that, given the stage of project development at which the EPA decisions are taking place, the "seriousness of the potentially adverse effect" on First Nations' claimed rights or title is low. Each of the projects is in the early pre-development phase, and several permitting, financing, and construction steps remain before the projects can reach commercial operation. While the EPAs represent a binding commitment by BC Hydro to pay for electricity generated by any of the facilities that do come into service, the BCUC's acceptance of the EPAs does not, in itself, permit the development of the projects nor the undertaking of any physical activity on the lands.

For the projects that advance to further development phases, federal and provincial permitting processes will offer further opportunity for meaningful First Nations consultation. At that time, project details that are not currently finalized will have been refined to a much greater extent, allowing for superior information sharing and engagement with potentially impacted First Nations.

In light of the above, the Panel finds that the consultation requirements for entering into each of the EPAs fall on the low to moderate side of the *Haida spectrum*.

The Panel now turns to whether BC Hydro's consultation efforts were adequate.

The Panel considers that BC Hydro's delegation of procedural aspects of First Nations consultation to project proponents was appropriate in this case due to the proponents' access to more detailed project information making each proponent best placed to respond to questions and concerns from First Nations holding claims within the boundaries of each particular project. This approach is supported in the case law which holds that the ultimate legal responsibility for consultation and possible accommodation rests with the Crown, but it may delegate procedural aspects of consultation to industry proponents.⁷⁴

⁷⁴ *Haida*, paragraph 53.

The Panel also considers BC Hydro’s approach to examining the sufficiency of First Nations consultation by each project proponent to be appropriate. The Panel is satisfied that BC Hydro, through delegation to proponents, has identified the First Nations and Indigenous groups potentially affected by the EPAs and has made adequate efforts to contact, consult and engage with these groups regarding BC Hydro’s decision to enter into the EPAs. In particular, the Panel notes that project proponents, including the proponent for the Brewster Wind Project, engaged in continued dialogue with potentially affected First Nations through mail, email, phone calls and meetings, and were generally responsive to requests made by such First Nations. Therefore, in the circumstances, BC Hydro’s consultation efforts with potentially impacted First Nations regarding its decision to enter into the EPAs was adequate.

3.3 Overall Panel Determination

Having found that the EPAs are aligned with the factors the BCUC must consider under section 71 of the UCA, and that BC Hydro has adequately consulted with potentially affected First Nations with respect to the decision to enter into the EPAs, the Panel finds that the EPAs are in the public interest and accepts each of the EPAs resulting from the 2024 Call for Power for filing.

4.0 Confidentiality

BC Hydro seeks confidential treatment of the EPAs and the redacted information contained in the Application and its IR responses and other submissions. BC Hydro states that this information is commercially sensitive and confidential to BC Hydro and/or the IPPs, and that if publicly disclosed would harm BC Hydro’s negotiating position with respect to further EPAs.⁷⁵

Given the commercially sensitive nature of the information contained in the redacted documents, the Panel finds that a grant of confidential treatment to the EPAs and the unredacted version of the Application and submissions filed in this proceeding is warranted unless the BCUC determines otherwise.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of August 2025.

Electronically signed by Tom Loski

T. A. Loski
Panel Chair/Commissioner

Electronically signed by Bernard Magnan

B. A. Magnan
Commissioner

Electronically signed by Wendy Royle

W. E. Royle
Commissioner

⁷⁵ Exhibit B-1, PDF p. 3; Exhibit B-4-1; Exhibit B-8; Exhibit B-11.

British Columbia Hydro and Power Authority
2024 Call for Power Electricity Purchase Agreements

LIST OF ACRONYMS

Acronym	Description
AMPC	The Association of Major Power Consumers
BC Hydro	British Columbia Hydro and Power Authority
BCER	British Columbia Energy Regulator
BCSEA	British Columbia Sustainable Energy Association
BCUC	British Columbia Utilities Commission
Capstone	Capstone Infrastructure Corporation
CPI	consumer price index
EPA	electricity purchase agreement
ESC Rules	Rules for Energy Supply Contracts for Electricity
GWh	gigawatt hour
Haida	Haida Nation v. British Columbia Minister of Forests, 2004 SCC 73
IPP	independent power producer
IR	information request
IRP	Integrated Resource Plan
K'ómoks	K'ómoks First Nation
LRMC	long run marginal cost
Ministry	British Columbia Ministry of Energy and Climate Solutions
MW	megawatts
RFP	request for proposals

Acronym	Description
Rio Tinto Alcan	Rio Tinto Alcan Inc v. Carrier Sekani Tribal Council, 2010 SCC 4333
SCC	Supreme Court of Canada
UCA	<i>Utilities Commission Act</i>
Wei Wai Kum	Wei Wai Kum First Nation

British Columbia Hydro and Power Authority
2024 Call for Power Electricity Purchase Agreements

EXHIBIT LIST

Exhibit No.	Description
-------------	-------------

COMMISSION DOCUMENTS

A-1	February 26, 2025 – Panel Appointment
A-2	February 26, 2025 – BCUC Order G-51-25 establishing a regulatory timetable
A-3	March 19, 2025 – BCUC Order G-72-25 amending the regulatory timetable
A-4	March 28, 2025 – BCUC response to K'ómoks First Nation Letter of Comment
A-5	April 10, 2025 – BCUC Information Request No. 1 to BC Hydro
A-6	May 7, 2025 – BCUC Order G-114-25 amending the regulatory timetable
A-7	May 14, 2025 – BCUC Order G-122-25 further amending the regulatory timetable
A-8	May 28, 2025 – BCUC Order G-131-25 establishing a further regulatory timetable
A-9	May 28, 2025 – Panel Information Request No. 1 to BC Hydro
A-10	June 23, 2025 – BCUC Order G-155-25 further amending the regulatory timetable
A-11	June 27, 2025 – BCUC Order G-164-25 further amending the regulatory timetable
A-12	June 30, 2025 – BCUC Order G-165-25 further amending the regulatory timetable

APPLICANT DOCUMENTS

B-1	PUBLIC – February 12, 2025 – BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO) – 2024 Call for Power Electricity Purchase Agreements (EPAs) Application – Redacted
B-1-1	CONFIDENTIAL – February 12, 2025 – BC Hydro 2024 Call for Power EPAs Application
B-1-2	CONFIDENTIAL – February 12, 2025 – BC Hydro 2024 Call for Power EPAs Contracts
B-2	March 6, 2025 – BC Hydro submitting confirmation of public notice in compliance with Order G-51-25

B-3	March 24, 2025 – BC Hydro submitting response to K'ómoks First Nation Letter of Comment
B-4	PUBLIC – April 24, 2025 – BC Hydro submitting response to BCUC Information Request No. 1
B-4-1	CONFIDENTIAL – April 24, 2025 – BC Hydro submitting response to BCUC Information Request No. 1
B-5	May 12, 2025 - BC Hydro submitting response to K'ómoks First Nation Confidentiality Declaration and Undertaking
B-6	PUBLIC – May 15, 2025 – BC Hydro submitting revised response to BCUC Information Request No. 1
B-6-1	CONFIDENTIAL – May 15, 2025 – BC Hydro submitting revised response to BCUC Information Request No. 1
B-7	May 16, 2025 – BC Hydro submitting response to K'ómoks First Nation comments regarding May 9 call in compliance with Order G-122-25
B-8	PUBLIC – June 13, 2025 – BC Hydro submitting response to BCUC Panel Information Request No. 1
B-8-1	CONFIDENTIAL – June 13, 2025 – BC Hydro submitting response to BCUC Panel Information Request No. 1
B-9	June 24, 2025 – BC Hydro submission regarding confidential documents in compliance with Order G-155-25
B-10	June 30, 2025 – BC Hydro submitting Extension Request on Response to K'ómoks First Nation Letters of Comment
B-11	PUBLIC – July 8, 2025 – BC Hydro submitting response to the June 26th K'ómoks letters of comment
B-11-1	CONFIDENTIAL – July 8, 2025 – BC Hydro submitting response to the June 26th K'ómoks letters of comment

LETTERS OF COMMENT

D-1	March 17, 2025 – K'ÓMOKS FIRST NATION (K'ÓMOKS FIRST NATION) – Letter of Comment
D-1-1	March 26, 2025 – K'ómoks First Nation further letter of comment
D-1-2	April 7, 2025 – K'ómoks First Nation further letter of comment
D-1-3	May 1, 2025 - K'ómoks First Nation further letter of comment

D-1-4	May 6, 2025 - K'ómoks First Nation Confidentiality Declaration and Undertaking Form
D-1-5	May 12, 2025 - K'ómoks First Nation submitting Confidentiality Declaration and Undertaking Forms
D-1-6	May 14, 2025 - K'ómoks First Nation submitting Confidentiality Declaration and Undertaking Forms
D-1-7	May 26, 2025 - K'ómoks First Nation response to BC Hydro submission on May 9 call
D-1-8	CONFIDENTIAL – May 26, 2025 - K'ómoks First Nation response to BC Hydro confidential Information Request responses
D-1-9	PUBLIC – June 11, 2025 - K'ómoks First Nation further submission
D-1-9-1	CONFIDENTIAL – June 11, 2025 - K'ómoks First Nation further submission
D-1-10	June 20, 2025 - K'ómoks First Nation submitting request for unredacted information relating to BC Hydro Confidential Response to BCUC Panel information request No. 1
D-1-11	PUBLIC – June 26, 2025 - K'ómoks First Nation further letter of comment
D-1-11-1	CONFIDENTIAL – June 26, 2025 - K'ómoks First Nation further letter of comment
D-1-12	June 26, 2025 - K'ómoks First Nation submission on BC Hydro Final Argument
D-2	March 26, 2025 – PETER POKORNY, DEPUTY MINISTER OF ENERGY AND CLIMATE SOLUTIONS (DEPUTY MINISTER PETER POKORNY) – Letter of Comment
D-3	April 17, 2025 – DOIG RIVER FIRST NATION (DRFN) – Letter of Comment
D-4	May 1, 2025 – BC SUSTAINABLE ENERGY ASSOCIATION (BCSEA) – Letter of Comment
D-5	May 1, 2025 – ASSOCIATION OF MAJOR POWER CUSTOMERS OF BC (AMPC) – Letter of Comment
D-6	May 1, 2025 – TAYLOR WIND PROJECT (TAYLOR WIND) – Letter of Comment
D-7	May 26, 2025 – CAPSTONE INFRASTRUCTURE CORPORATION AND WEI WA KUM FIRST NATION (CAPSTONE-WEI WA KUM) – Letter of Comment