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British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, B.C. V6Z 2N3

Attention: Erica M. Hamilton
Commission Secretary

Dear Sirs/Mesdames:

Re: Terasen Gas Inc.
Application for a Certificate of Public Convenience and Necessity for the Customer Care Enhancement Project

We enclose on behalf of Terasen Gas Inc. in respect of the above mentioned matter:

1. Final Submissions; and

2. Two cases cited in the Final Submissions.

Twenty hard copies of same will follow by courier.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Original signed by Matthew Ghikas

Matthew Ghikas

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Encs

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British Columbia Utilities Commission

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

and

An Application by Terasen Gas Inc. for a Certificate of Public Convenience and Necessity for the Customer Care Enhancement Project

Submissions of Terasen Gas Inc.

December 9, 2009

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1. INTRODUCTION

1. The customer care function of Terasen Gas Inc. ("TGI" or the "Company") is a vital part of providing service to customers. The circumstances faced by TGI have changed significantly in the eight years since the Company (then BC Gas) made the decision in 2001 to adopt Business Process Outsourcing ("BPO") as a customer care model.[1] The BPO model met its original objectives; however, TGI must now change its customer care delivery model to meet the evolving needs of customers and the Company, and to ensure continued service quality in an increasingly competitive and complex energy marketplace. The Amended Application demonstrates that these needs are best met by the proposed Customer Care Enhancement Project ("CCE Project" or "Project"), whereby TGI assumes direct control of customer facing processes and critical customer process technologies, supported by continued outsourcing of high volume, specialized transactional services. The Project represents the most cost effective means of delivering TGI's customer care requirements. It provides the foundation for TGI to deliver enhanced customer service after implementation in 2012, to be measured against updated service metrics. The Project will also generate appreciable economic benefits for the Province. TGI respectfully submits that the Project is in the public convenience and necessity. It should be approved under section 45 of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 (the "Act").

1.1 Overview

2. TGI has operated under a BPO model for customer care since 2002, when the Commission approved the Company's Client Services Agreement (“CSA”) with Customer Works LP (“CWLP”). Circumstances arising in the intervening period have necessitated revisiting the comprehensive BPO customer care model. TGI’s ability to deliver quality customer service on a consistent basis is important for retaining and attracting customers in the long term, which (all else equal) reduces overall delivery rates to the benefit of all customers.

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[1] As set out in the Amended Application (p. 14), in this submission “Business Process Outsourcing” refers to a customer care delivery model under which a third party outsource provider is responsible for the provision of all customer care services and has responsibility for managing and owning the business processes and CIS platform (see also B-1, Appendix A, p. 1). A model that provides for a combination of insourced and outsourced functions, with the utility retaining internal control and management responsibility for the key technologies and customer facing business processes, is referred to as “Strategic Sourcing”. Under a full insourcing model, all customer care functions are owned and operated by the utility.

3. The key developments since 2001 that drive the need to adopt a new customer care model relate to TGI's external operating environment and customer expectations. Recent changes in the policy environment and increased competitive pressures have reinforced the importance of TGI's customer service function. TGI's customers also increasingly expect to be able to interact with the Company through a broad range of communication channels that are presently unavailable under the current outsourcing arrangement. TGI's front line customer care staff must have the tools and training to provide meaningful responses to customer inquiries regarding, for instance, billing and energy use.

4. Outsourcing, by its very nature, limits the Company's ability to exercise direct control over critical, customer facing processes.[2] In the past, this was an acceptable trade-off for relative cost certainty and transfer of risk. However, the dynamics of the existing outsourcing relationship have changed such that the benefits of cost certainty and risk transfer are no longer present to the same degree. Necessary service improvements, such as adding service channels or updating service metrics that have remained static since 2001, come at an additional cost to customers (determined through "captive" negotiations with the incumbent) with no real assurance of success in meeting the challenges.[3] The declining state of customer service under the current arrangement, and the increasing disconnect between the level of service TGI is currently capable of providing and what customers expect to receive, represent long-term risks to the Company and its customers.

5. The Project is the culmination of analysis of TGI's customer care requirements and the available Project alternatives to meet those requirements as they arise. The evidence in this proceeding demonstrates that a Strategic Sourcing model in which the CIS, call center, and billing and back office functions are brought in-house, and high volume, specialized transactions[4] remain outsourced, will best serve TGI's customers. Bringing key customer service functions in-house allows the customer care function to be developed as a strategic asset, which can be used to alter existing services and implement new ones cost effectively. This transformation serves as the critical foundation for retaining customers and attracting new ones in the future.

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[2] B-10, BCUC 1.85.1.
[3] B-4, Amended Application, p. 100.
[4] For example, statement printing and credit card payment processing. See B-4, Amended Application, p. 93.

6. Specific benefits of the CCE Project include:

   (a) An immediate increase in functionality through the new CIS and new call centre technologies, including new communication channels such as email, online chat, and improved web self-serve capabilities that are desired by TGI's customers;[5]

   (b) Direct Company control over key technologies that are inherently more flexible, which in turn allows for more efficient change management, as and when needed to meet evolving customer expectations and Company requirements;[6]

   (c) Improved service quality through more detailed, flexible, and enhanced service metrics;[7]

   (d) Greater ability to manage activities and costs, with customers benefiting in future years from the resulting savings;[8]

   (e) Call centre representatives trained and equipped to respond to customer requests and inquiries on a range of issues of particular relevance to TGI's customers;[9] and

   (f) Immediate and sustained economic benefits for the Province, including the creation of hundreds of new in-Province jobs and .[10]

7. The Project benefits can be achieved cost effectively relative to a model that involves outsourcing of the CIS, call centre and/or billing and back office functions.[11] The levelized cost per customer of the Project compares favourably with the levelized cost per customer of the current arrangement calculated over the long term, with the latter being a proxy for the cost of any outsourcing arrangement lacking the additional functionality, flexibility and service enhancements to be achieved through the Project.

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[5] B-4, Amended Application, section 4.5.2.1.
[6] B-4, Amended Application, section 4.5.2.2.
[7] B-4, Amended Application, section 4.5.2.3.
[8] B-4, Amended Application, p. 7.
[9] B-4, Amended Application, p. 39.
[10] B-4, Amended Application, p. 104. KPMG identified the benefits from the Project implementation being: 650 new jobs; an increase to the Provincial GDP of approximately $40 million; and a tax revenue increase of over $7 million. From the perspective of the ongoing operations: 400 new jobs will be created by 2012; Provincial GDP in 2012 is expected to increase by over $25 million annually; and tax revenue at all levels will increase by approximately $4.5 million annually: B-4, Amended Application, Appendix W.
[11] B-4, Amended Application, p. 113.

Accounting for the investment customers would have to make to sustain an outsourcing arrangement beyond 2011 improves the levelized cost per customer advantage enjoyed by the Project.[12] The same is true if one considers the opportunities for cost savings associated with increased use of IVR and related self-serve call centre technologies facilitated by the Project.[13] Based on any reasonable assumptions, the levelized cost per customer associated with the Project is sufficiently close to what customers could expect to see under an alternative model involving outsourcing the CIS, call centre and/or billing and back office function (the range being between either modestly higher or modestly lower levelized cost per customer, depending on the assumptions used) that the public convenience and necessity is appropriately determined with reference to the Project benefits discussed in section 3.5 of these Submissions.

8. As discussed in section 5, TGI has undertaken a number of steps to ensure that the Project components are delivered in a cost effective manner.[14] In particular, through competitive processes guided by a third party expert, TGI selected a market leading SAP CIS implemented by HCL Axon as the CIS solution with the lowest overall cost (software, integration and maintenance). The primary cost components associated with the call centre and billing and back office functions - facilities, technologies, and labour - were subjected to third party review, benchmarking, and/or other forms of market analysis. TGI will have appropriate staff and processes in place to manage the Project risks discussed in section 7.

9. The Project is an integrated whole and should be approved as an overall package. The Project timeline is also dependent on the Project proceeding in the manner proposed.

10. In summary, TGI submits that the Project is an appropriate response to evolving customer expectations, changes in the Company's external operating environment, and shortcomings with the current model. The Project will place TGI's customer care function on a sustainable footing, with the requisite flexibility to meet the needs of customers and the Company for the foreseeable future.

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[12] B-10, BCUC 1.62.1.2., 1.62.1.3; B-21, 3.9.6.

[13] The cost per customer for the Project is higher if, as some BCUC IRs suggested, the benefits are calculated over an 8 or 10 year period. TGI submits that the use of an 8 or 10 year period does not reflect the reality of how long customers will continue to benefit from the Project. This is discussed in section 4.2.1 of these submissions.

[14] B-4, Amended Application, section 4.1-4.4; B-8, CEC 1.19.2; B-10, BCUC 1.111.1.

1.2 Organization of Submissions

11. These Submissions generally follow the outline of the Amended Application (Exhibit B-4). TGI will respond to any issues raised by Intervenors in Reply Submissions.

2. ISSUES FOR DETERMINATION

12. The primary legal issue that the Commission must address in this Application is whether the Project is in the public convenience and necessity pursuant to s. 45(1) of the Act. The public interest under s. 45 of the Act reflects the interests of customers, which involves consideration of cost effectiveness, as well as broader socio-economic factors.[15] The Commission must consider present and future requirements.[16]

13. There are subordinate issues of fact, which track the Commission's CPCN Guidelines, that the Commission must consider and determine in reaching the conclusion that the Project is in the public convenience and necessity. These issues of fact are set out below, together with a summary of TGI's position on each.

    (a) Do evolving customer expectations and developments in TGI's external operating environment since 2001, combined with increasingly frequent service shortfalls, warrant revisiting the current customer care solution at this time?

    Yes. The BPO arrangement with CWLP succeeded in meeting the original outsourcing objectives by providing customers and TGI with relative cost certainty and risk transfer, as well as delivering generally satisfactory customer service over much of the time since 2002.[17] However, the current model is not sustainable. The long-term best interests of customers and the Company will be served by adopting a new customer care model in 2012 that will permit TGI to exercise direct control over the quality of service and respond more effectively to change.

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[15] In the *VITR Decision*, July 7, 2006, p.15, the Commission stated: “The task is not to select the least cost project, but to select the most cost-effective project.” In *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetary Co.*, [1958] S.C.R. 353, p. 357, the Court held that there is no precise definition of what constitutes “public convenience and necessity”, and that the meaning in a given case should be ascertained by reference to the context. In *Tsawwassen Residents Against Higher Voltage Overhead Lines Society v. British Columbia*, 2006 BCCA 537, para. 29, the Court of Appeal made clear that when considering the “public convenience and necessity”, the Commission has a duty to consider all relevant factors, including a consideration of any relevant socioeconomic and non-financial factors.

[16] *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetary Co.*, [1958] S.C.R. 353, p. 356. The Court stated: "The term “necessity” has also been held to be not restricted to present needs but to include provision for the future… and this indeed would seem to follow from s. 12 of the Public Utilities Act, which provides that the certificate may issue where public convenience and necessity 'require or will require' such construction or operation." As with the CPCN provision before the Supreme Court in *Memorial Garden*, section 45 of the *Act* also uses the language “require or will require”.

[17] B-4, Amended Application, p. 52.

(b) If so, is a Strategic Sourcing model involving the insourcing of CIS, call centre and billing and back office functions, while continuing to outsource high volume transactional functions, the most appropriate customer care model going forward?

Yes. The Project will place TGI's customer care function on a sustainable basis, affording the necessary flexibility to keep pace with customer expectations, increased competition, and developments in policy and legislation.

(c) If so, does the Project represent a cost effective means of delivering the preferred Strategic Sourcing solution?

Yes. TGI has identified the most cost effective means of delivering the desired Strategic Sourcing model, through detailed costing analysis.

(d) If so, has TGI appropriately identified, and if possible, mitigated, Project risks?

Yes. While it is not possible to eliminate all risks, TGI has an appropriate Project management structure in place and has included appropriate contingencies.

The evidence on each issue, which supports approving the Project, is addressed in detail in subsequent sections of these submissions.

3. PROJECT JUSTIFICATION: DRIVERS FOR CHANGE

14. Circumstances have changed in the intervening eight years since the Company adopted BPO. TGI is once again at a decision point. It is in the best interests of customers and the Company to adopt a customer care model in 2012 that will enable enhanced functionality, flexibility, and improved customer service. The evidence reviewed in this section establishes the following facts:

(a) An evolving policy environment and increased competitive pressures have highlighted the importance of TGI's customer service.[18]

(b) A sizeable segment of TGI's customers increasingly expects to interact with the Company through a broad range of communication channels that are presently unavailable or limited in nature under the current outsourcing arrangement.[19]

(c) There are material implications and risks associated with continuing to operate under the existing BPO arrangement beyond 2011. Service shortfalls have occurred with increasing regularity. The service metrics established in 2001 are increasingly out of step with customer expectations. The current arrangement is no longer characterized by cost certainty, as potentially expensive "work arounds" intended to address functionality, or changes in contractual service metrics, are beyond the scope of services under the CSA. The costs of delivering on them would be to the account of customers.[20]

(d) TGI's adoption of a Strategic Sourcing model reflects the assessment of UtiliPoint, a third party expert, and echoes the move by other utilities previously operating under a BPO model towards Strategic Sourcing customer care models. Strategic Sourcing targets the optimal mix of outsourcing and insourcing for a particular business.

(e) The primary Project benefit is to place TGI's customer care function on a sustainable footing, affording the necessary flexibility to keep pace with customer expectations, increased competition, and developments in policy and legislation. The Project also provides broader economic benefits in the Province.

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18 B-4, Amended Application, s. 3.1.
19 B-4, Amended Application, s. 3.2.
20 B-22, BCUC 3.9.6.

15. Section three of these Submissions is organized accordingly.

3.1 Evolving Policy and Competitive Environment Challenge the Current Customer Care Model

16. Two recent developments represent critical challenges for TGI's current customer care model:

(a) Government policy and legislation has placed public utilities such as TGI in a position of having a more direct role in promoting energy efficiency and managing climate change;[21] and

(b) TGI's provision of natural gas as an energy source for heating and other applications is challenged by the gradual erosion of natural gas's cost advantage in B.C. over the cost of electricity, and a growing perception that natural gas is not a "green" solution.[22]

The customer care function must adapt to meet these challenges, and TGI's evidence (discussed in sections 3.5.1 and 4) is that the Project will best position TGI to accomplish this objective.[23]

3.1.1 Policy Developments and Amendments to the Act

17. Recent Government policy, as reflected, for instance, in the 2007 BC Energy Plan: A Vision for Clean Energy Leadership (the "Energy Plan") and amendments to the Act, has placed public utilities such as TGI in a position of having a direct role in addressing the issues of energy efficiency and climate change.[24]

18. The Energy Plan includes policy actions that contemplate public utilities taking on a broader role in promoting the efficient use of energy. For instance:

(a) Policy Action #3 – Encourage utilities to pursue cost effective and competitive demand side management opportunities; and

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[21] B-4, Amended Application, s. 3.1.1.
[22] B-4, Amended Application, s. 3.1.2.
[23] B-4, Amended Application, s. 3.1.3.
[24] B-4, Amended Application, p. 35.

(b) Policy Action #4 – Explore with BC utilities new rate structures that encourage energy efficiency and conservation.[25]

The Energy Plan sets out a strategy for making the Province self-sufficient and reducing carbon emissions. It also contemplates that advanced metering offers the potential for providing consumption information to energy consumers so that they are placed in a better position to conserve energy and make decisions concerning energy efficiency alternatives.[26]

19. In 2008, the Act was amended to ensure greater alignment with the Energy Plan. The amendments reinforce the role of public utilities in reducing GHG emissions; pursuing energy conservation and efficiency; and leveraging innovative energy technologies. In making various orders under the Act[27], the Commission is now required to consider “government’s energy objectives”. These objectives include:

> (a) to encourage public utilities to reduce greenhouse gas emissions;
>
> (b) to encourage public utilities to take demand side measures;
>
> …
>
> (e) to encourage public utilities to use innovative energy technologies
>
> > …
> >
> > (ii) that support energy conservation or efficiency or the use of clean or renewable sources of energy;[28]

20. The recent Throne Speech reiterates the Province's commitment to addressing climate change and GHG emissions.[29]

21. TGI’s evidence is that the Company is committed to expanding its role in supporting the Energy Plan. TGI has initiated a broad portfolio of Energy Efficiency and Conservation Programs that have been approved by the Commission, but TGI currently remains limited in its ability to provide customers with information regarding their energy

25 B-4, Amended Application, p. 35.
26 B-4, Amended Application, p. 35.
27 Including the CPCN provisions contained in the Act; specifically sections 46(3) and 46(3.1.).
28 *Act*, s. 1.
29 B-4, Amended Application, p. 35.

consumption. Improving these capabilities is important to advancing energy efficiency and conservation, but would require significant redevelopment and/or customization of the existing CIS as well as attracting and retaining a skilled workforce.[30]

22. TGI intends to implement a number of new initiatives aimed at providing customers with a range of energy solutions that are consistent with evolving government energy policy.[31] TGI's evidence is that the new initiatives contemplated would not be comprehensively supported by the current CIS, and implementing these initiatives in the context of the current outsourced model would require significant training and business process change.[32] The CIS currently in use will not accommodate advanced metering, and implementing a CIS that has the functionality to facilitate advanced metering is consistent with the obligation on the Commission under ss. 46(3) and 46(3.1) of the Act to consider government's goal of having advanced meters "and associated infrastructure".[33]

23. TGI's customer service staff must play an important role in explaining how the Company can assist customers with managing their energy consumption. In order to help customers make the most of the Company's initiatives, it must have representatives that understand regional issues and their implications.[34]

3.1.2 Competition Among Energy Providers

24. Natural gas has faced growing competition from other energy sources in the intervening eight years since the implementation of the current Business Process Outsourcing arrangement.[35] Improved customer care is an important part of meeting this challenge.

25. TGI's competitive challenge as a provider of energy for heating and other applications is the product of two main factors:

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[30] B-10, BCUC 1.19.1–1.19.4.
[31] See B-10, BCUC 1.18.1, for an overview of the specific new initiatives that TGI intends to provide its customers relating to the 2007 Energy Plan.
[32] B-10, BCUC 1.18.1, 1.18.1.1, 1.18.1.2, 1.37.1, and 1.37.2.
[33] Section 64.04(4) of the Act provides: "(4) If a public utility, other than the authority, makes an application under the Act in relation to advanced meters, the commission, in considering that application, must consider the government's goal of having advanced meters and associated infrastructure in use with respect to customers other than those of the authority." A flexible CIS is a precondition to adopting advanced metering technology, should that be the route ultimately pursued by TGI. As such, TGI submits that this enabling functionality represents "associated infrastructure".
[34] B-4, Amended Application, p. 37; B-10, BCUC 1.76.1.
[35] B-4, Amended Application, p. 36.

(a) First, the cost advantage of natural gas relative to the cost of electricity has eroded in British Columbia.[36] Natural gas market prices have improved relative to other energy commodities (such as oil) in the North American marketplace; however, natural gas faces challenges in the B.C. marketplace due to the differing nature of how natural gas and electricity costs are reflected in rates.[37] Natural gas is priced to reflect the marginal cost of supply. Electricity rates, by contrast, continue to reflect very low historic embedded costs to a significant extent. The gradual erosion of natural gas's cost advantage in B.C. over electricity impacts TGI's growth in new customer additions, and also impacts existing customers' throughput levels.[38]

(b) Second, there is a common perception in British Columbia, which is reinforced by some provincial policies, that natural gas is not a "green" solution because it is a fossil fuel.[39] The Commission has accepted as fact, on more than one occasion, that the use of natural gas in some end-use applications can result in lower GHG emissions and lower total energy use in the region by displacing electricity generated from fossil fuel. However, the issue is complex, and some British Columbians can be expected to make decisions about energy use based on an incomplete understanding of the issue.[40]

26. TGI’s customer care function is a primary point of interaction with customers, and accordingly represents a key opportunity to assist customers in understanding the different uses of energy, their own energy consumption, and how to use energy more efficiently. TGI's primary competitor in the delivery of energy to British Columbians, BC Hydro, offers broader online customer service capabilities through an SAP system, including transactions that TGI intends to implement through the CCE Project.[41] BC Hydro is expected to move toward a fully functional smart metering solution by the end of 2012,[42] which will enable BC Hydro to provide its customers with consumption information well beyond what TGI is capable of providing.

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[36] B-4, Amended Application, pp. 4, 36.
[37] B-4, Amended Application, p. 36.
[38] B-4, Amended Application, p. 36.
[39] B-4, Amended Application , p. 36
[40] *2008 LTAP Decision*, July 27, 2009
[41] B-8, CEC 1.17.2.
[42] For a more detailed discussion, see B-7, CWLP 1.6.1.

3.2 Evolving Customer Expectations

27. TGI's proposed change to its customer care delivery model is responsive to, and necessitated by, TGI's service requirements[43] and changing customer expectations.[44] While the specific needs of individual customers will vary, the results of focus groups, customer surveys, and third party studies suggest that there are some prevalent customer expectations that must be met if TGI is to retain and attract customers in the future. These key expectations, discussed below, are as follows:

    (a) TGI's customers increasingly expect multi-channel access to TGI including web-based usage and online self-serve options.[45] This is particularly notable among "Generation Y" or the "millennial" generation customers, who will become a progressively larger segment of TGI's customer base.[46]

    (b) Customers expect the Company to deliver quality customer service on a consistent basis. Negative customer experiences, such as those increasingly encountered under the current arrangement, can have a significant impact on TGI's ability to retain and attract customers in the future.[47]

    These customer expectations are best addressed by TGI implementing the CCE Project,[48] for the reasons discussed in sections 3.5 and 4 below.

3.2.1 CIS Functionality: Increasing Importance of Multi-Channel Service Options

28. TGI commissioned Ipsos-Reid Corporation to conduct seven customer focus groups on customer expectations and requirements, and retained Angus Reid Strategies to survey over 800 TGI customers on similar matters.[49] TGI also commissioned a report from the Taylor Reach Group (the "Taylor Reach Group Report")[50] and performed a literature

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[43] B-10, BCUC 1.12.1. For a summary of the Company's current status related to the service attribute requirements referenced in BCUC 1.12.1, see TGI's response to 1.12.3.1.
[44] B-4, Amended Application, s. 3.2.
[45] B-4, Amended Application, p. 42-44.
[46] B-4, Appendix M, The Taylor Reach Group, Inc., "Toward a Multi-Channel Contact Centre – Email and Chat: Emerging Contact Centre Technologies", p. 6.
[47] B-8, CEC 1.17.4, 1.17.9.
[48] B-4, Amended Application, s. 3.2.4.
[49] B-1, Application, Appendices F and G.
[50] The Taylor Reach Group, Inc., "Toward a Multi-Channel Contact Centre – Email and Chat: Emerging Contact Centre Technologies" (Amended Application, Appendix M).

review.[51] These resources provide objective evidence that a segment of TGI's customers expects the Company to offer service options that TGI cannot currently provide.

29. Ipsos-Reid's summary of findings based on the seven focus group sessions it conducted involving customers of TGI and non-customers highlighted the increasing use of e-mail and web-based options by the participants and suggested that the results provide a "clear direction" to TGI to pursue these service channels:

> Overall, the focus groups provide clear direction on which products and services to pursue to maintain and potentially increase customers' satisfaction with their customer care experience.
>
> While telephone is still the preferred method for communicating with businesses, primarily because of a comfort factor that consumers know the work will be completed, email and Internet options are becoming increasingly prevalent among participants. However, participants clearly saw an automated future for customer care. That being said, few saw the complete demise of the ability reach a real human, particularly in emergencies.[52] [Emphasis added.]

30. The results of the Angus-Reid survey augmented the focus group sessions by demonstrating that customers increasingly expect more diverse service delivery channels. Based on the survey results, Angus-Reid suggested that TGI may wish to focus on prioritizing the online and automated telephone services available to customers:

> Expectations and importance of online and automated telephone services: Factors related to customer service, current billing/consumption and transition (moving and contact info changes) consistently rated highly in both expectations and importance to Terasen Gas customers. Terasen may wish to focus on them in prioritizing the online and automated telephone services available to customers.

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[51] Benchmark Portal – Utilities Industry Benchmark Report (Amended Application, Appendix N); Andrea J. Ayers, President of Customer Management at Convergys, "Executives Have No Idea What Customers Want" (Amended Application, p. 43); KRC Research . (2008). Insurity/Microsoft "Millennials in Insurance Survey 2008" (Amended Application, p. 43); Terwilliger, C. & Lu, F. (2004), Getting utility customers to use online services. E-Source. Ebiz-F-14 (Amended Application, p. 42); Anton, Jon., Utilities Industry Benchmark Report Best in Class Call Center Performance (Amended Application, p. 43); Gogel, F. & Boys, M. (2000). Internet customer care. E-Source. Utility Customer Care Series. UCC-2 (Amended Application, p. 44).

[52] B-1, Application, Appendix F, pp. 2-3.

> Customer contact preference: Customers have contacted Terasen Gas recently primarily via website and automated phone menu followed-up by speaking to a live agent; these channels are also how they would most prefer to deal with Terasen. The proposed enhancements to these services align with customer preferences; Terasen Gas may also want to consider making it easier and more efficient for customers to reach a live agent if needed via the automated phone system.[53] [Emphasis added.]

31. The Taylor Reach Group Report prepared for TGI identified the following seven best practices related to the use of electronic media that best in class organizations provide for customers: (a) multiple communication channels; (b) single point of contact; (c) access choices and 7x24 service; (d) exceptional service levels across channels; (e) value add applications; (f) first contact resolution; and (g) intelligent work station and comprehensive knowledge base. These best practices represent a sizeable step upward from the service functionality currently provided to customers. The Project will permit TGI to adhere to all of the best practices noted in the Taylor Reach Report.[54]

32. Facilitating web-based and online self-serve delivery options will best position the Company to attract and retain "millennial" (or "Generation Y") customers, who are a growing segment of TGI's customer base.[55] The Taylor Reach Group Report stated, for instance:

> There is a growing generation of customers that is much more computer savvy. Use of the internet has also made customers more aware of their options in choosing products and services. At the same time, customers are now more comfortable with electronic media such as email and text messaging.
>
> This social training combined with a more competitive environment for most products and services has forced companies to rethink their communication strategy. Long gone are the days of canned/generic replies and restricted access and modes (and hours) of communication. Today's customers expect to be able to contact businesses at their own convenient time and by their own choice of channel technology such as phone, email and web chat.[56]

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[53] B-1, Application, Appendix G, p. 7.
[54] B-10, BCUC 1.14.1; B-4, Amended Application, Appendix M, p. 7.
[55] The term "necessity" in "public convenience and necessity" should consider present and future needs. See *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetary Co.*, [1958] S.C.R. 353, p. 356. In the context of the Project, this obligation means that the inevitable growth of the 'millennial' customer segment as a portion of TGI's total customer base should be given due weight.
[56] B-4, Amended Application, Appendix M, p. 6.

> …
>
> External forces are from customers who are demanding convenient multi media access and from competitors who are already offering multi-channel contact centres, hence attracting more customers. Customers such as generation Y, whose behaviour has been shaped by the events, technical developments and trends of their time are less patient than their parents and are looking for faster resolutions.[57] [Emphasis added]

33. The generational impact on customer care is well documented in other independent sources. In an article titled “Executives Have No Idea What Customers Want”, Andrea J. Ayers, President of Customer Management at Convergys, describes the impact of the “millennial” generation on customer service as follows:

> To compound matters, the "millennials" are here. The arrival of this younger generation has raised the stakes significantly for companies trying to build solid relationships with their customers. These young customers are tech-savvy and prefer to have their customer service needs met through a wider variety of channels--more than just the call center and the Web. Mobile applications, social networks and virtual worlds such as Second Life, to name a few, are their realms.
>
> Millennials are 43% more likely to seek assistance through their preferred automated channels. Nowhere is the preference for self-service more notable than among younger customers who have grown up in the Internet era. For millennials, online interaction is ingrained. They see value in social networks, perceive needs through viral communications with colleagues and order and pay through the Web. They want their service needs handled the same way. Actively embracing the value shift to social network-based service and multi-channel automation is mission critical now to ensure the loyalty of a new generation of customers.[58] [Emphasis added.]

34. TGI also referred to the research conducted by KRC Research regarding customer attitudes towards technology:

> A study conducted by KRC Research to investigate millennial generation attitudes towards technology and the internet, expectations and considerations related to the professional workplace, and perspectives on the insurance industry found that online technology to better serve

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57 B-4, Amended Application, Appendix M, p. 8.

58 Andrea J. Ayers, President of Customer Management at Convergys, “Executives Have No Idea What Customers Want”, referenced with web link at Amended Application, p. 43.

> customers is a priority among millennials. Eighty-nine percent felt insurance companies should adopt web-based support for customers, 86% believe it is important to offer web portals with complete account views, and 76% felt live online chat with agents is important to offer. These results indicate the preferences of the millennial generation that can be applied across other industries, including utilities.[59]

35. TGI has not forecasted a specific increase in the utilization of online services at this time; however, it anticipates that customers who prefer online service to the telephone channel will adopt the online services when they become available. TGI's research indicates that currently 24% of customers would most prefer to interact with TGI online through the Company's website.[60] This number can be expected to grow along with the increase in the number of Generation Y customers. As the preferred methods of communicating with the Company change over time, TGI's call centres will evolve into "contact centres" – a central point from which all customer contacts are managed, in whatever form they take.[61]

36. TGI submits that the focus groups, the customer survey, the Taylor Reach Group Report, and the literature addressed in the evidence, make clear that although the telephone remains the preferred means of contact, many customers already expect TGI to offer email and web-based service options. As discussed below in section 3.3.3, CWLP's existing CIS provides no online support for moves, payment plan applications, payment arrangements, or high bill resolution tools. Furthermore, the current Peace CIS has limited ability to support communication channels such email and online chat. All of these features are integrated into the preferred SAP CIS as part of its base functionality, as discussed in section 5.1 below.[62]

3.2.2 Call Centre and Billing and Back Office: The Importance of Quality Customer Care on a Consistent Basis

37. TGI's call centre and billing and back office functions also play an integral role in meeting customers' expectation that TGI will provide quality customer service on a consistent basis.

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59 B-4, Amended Application, p. 43.
60 B-10, BCUC 1.62.6.
61 B-10, BCUC 1.67.5.
62 B-10, BCUC 1.13.1, 1.61.1–1.61.3.2.

38. Convergys stresses the serious impacts of negative customer experiences on a company's ability to retain and attract customers:

> Nearly half of consumers (47%) say they don't believe company executives understand their experiences, citing problems such as rude customer service staff or employees who provide the wrong information or never solve the customer's problem. More than one-third (41%) of the customers who take the time to complain don't think companies listen to or act on their feedback.
>
> But that doesn't mean customers are doing nothing. On average, more than half will defect--leaving a company flatly--based on bad customer experiences, without ever telling the company why.
>
> And the problem doesn't end there. Nearly nine out of 10 customers will tell their friends and colleagues about their bad experiences, creating a negative ripple effect in the prospective customer base that has serious implications for a company's future success. Yet the executives we surveyed thought that only 20% of customers shared the news about their bad experiences--a significant mismatch with the customer view.
>
> And the biggest misunderstanding among executives? If customers don't complain to them, it means they don't have a problem and everything is fine. This is the silent but deadly company killer.
>
> This silence is masking broken feedback channels and customer attrition, which can be lethal for certain industries. Across all industries, 17% of interactions result in a customer leaving the company. In the credit card industry in particular, 43% of customers will stop doing business with a company after a bad experience they did not take the time to report. Our research found that hanging on to existing customers is critical, because their lifetime value increases exponentially over time. In the credit card industry, a small retention increase of 5% can have a huge profit impact of 125%.[63]

39. The Convergys article goes on to state:

> Service is paramount: No fewer than 78% of consumers believe service trumps personalized features, and 86% of customers say service defines the brand. Customers rate brands based on their own experience with a company, and virtually all leading brands

[63] Andrea J. Ayers, President of Customer Management at Convergys, "Executives Have No Idea What Customers Want", referenced at B-4, Amended Application, p. 43.

> can charge a premium by making service their defining characteristic.[64]

40. The Ipsos Reid Report stresses the importance of knowledgeable call centre representatives in meeting customer expectations as follows:

> Customers want knowledgeable representatives with the authority to act. However, most organizes have very high turnover rates in their call center operations making it difficult to meet customer expectations. Thus, employee retention and education are critical factors for any customer service organization.[65]

41. These remarks underscore: (a) the significant risk posed by the service issues TGI is currently experiencing with CWLP (discussed below in section 3.3.2); and (b) the need for TGI to have a customer care model capable of adapting to evolving customer needs by conferring upon TGI direct control over key customer care functions and related technologies.

42. As discussed in sections 3.5.1 and 4, the CCE Project will provide the Company with direct management control over customer care delivery and associated costs in the future. The control and flexibility facilitates customer care excellence on a sustained basis, which will improve TGI's ability to retain and attract customers.

3.3 The Current Model: Diminished Cost Certainty and Risk Transfer

43. The current customer care arrangement with CWLP, which has been in place since 2002 when the CSA was approved by the Commission,[66] exemplifies BPO. Under the CSA, CWLP owns and/or is responsible for TGI's entire customer care function.[67] The evidence in this section establishes the following facts:

    (a) TGI's decision in 2001 to adopt BPO immediately delivered the two key anticipated benefits: risk transfer and relative cost certainty.[68]

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[64] Andrea J. Ayers, President of Customer Management at Convergys, "Executives Have No Idea What Customers Want", referenced at B-4, Amended Application, p. 43.
[65] B-1, Application, Appendix F, p. 6; B-10, 1.73.3, 1.92.1, and 1.92.4.
[66] Commission Order No. G-29-02, dated April 17, 2002, approved the current CSA with CWLP and the transfer of TGI's customer care assets to CWLP.
[67] The implementation of the CWLP arrangement in 2002 involved the transfer of BC Gas's customer care assets to CWLP, and consequently, TGI does not currently own the customer care assets that are used to provide service to its customers: B-4, Amended Application, p. 15.
[68] B-4, Amended Application, p. 3.

(b) However, after eight years, the current model is not well equipped to keep pace with the rate of change of customer expectations and TGI's operating environment. These shortcomings give rise to new risks and the likelihood of significant investment to extend the life of the current model temporarily beyond 2011.[69]

3.3.1 Original Objectives of Business Process Outsourcing Achieved

44. In 2001, the Company was in a period of transition as it was absorbing Lower Mainland customers from BC Hydro. BC Gas was in the process of completing Program Mercury, a project involving the development and implementation of a CIS and call handling technologies. When it appeared that O&M costs for the Program Mercury project were going to be higher than anticipated, BC Gas explored outsourcing opportunities. The CSA with CWLP allowed BC Gas to reduce risk by transferring the partially completed Program Mercury to CWLP for completion. The cost to BC Gas customers for completing the project was capped on the basis of the utility cost of service customers would have otherwise paid using the best current estimates of delivery of Program Mercury.[70] The Commission granted a CPCN and approved the CSA on April 17, 2002.[71]

45. The CSA provided a guaranteed fixed price per customer for five years for delivering a specified scope of service and meeting specified service metrics. It included a limit on fee increases after the initial five year term.[72] The contractual service metrics were based on service level expectations and current practice in 2001, and were expected to remain relevant and appropriate going forward.[73] TGI negotiated the option to leave CWLP after five years if lower-cost services were available from another provider.[74]

46. The CSA continued to meet the original objectives of cost stability and risk transfer until relatively recently. In 2005, one year prior to the end of the initial five year term of the

[69] B-21, BCUC 3.9.6.
[70] Order No. G-29-02, Appendix A - Reasons for Decision, p.10, B-15, Attachment 2.1 to response to Commission Panel 1.2.1.
[71] Commission Order No. G-29-02.
[72] Order No. G-29-02, Appendix A - Reasons for Decision, pp. 9-10, B-15, Attachment 2.1 to response to Commission Panel 1.2.1.
[73] B-4, Amended Application, p. 100.
[74] CWLP had initially wanted a longer initial term to reflect the longer life of the assets it was acquiring. TGI succeeded in negotiating the shorter 5-year term, but CWLP demanded a right of first refusal in return. See B-15, Attachment 2.3 to response to Commission Panel 1.2.3 (B-15).

CSA, TGI engaged Douglas Louth Associates Inc. to evaluate (i) whether the current outsourcing model would support the conversion of Terasen Gas (Vancouver Island) Inc. customers, and (ii) whether there was value to customers in TGI transitioning to an alternate service provider.[75] On the basis of the assessment provided, TGI concluded that there was insufficient basis to conclude that transitioning the services provided by CWLP to another outsource provider would provide value to customers.[76] At the time, the collective focus was still on BPO; the industry recognition of the benefits of Strategic Sourcing largely post-dated 2005.[77] CWLP had also generally met the service metrics defined in the CSA during the initial term of the CIS.[78] The Commission accepted the extension of the CSA.[79]

3.3.2 Risk Transfer and Relative Cost Certainty Giving Way to Declining Service

47. Over the last approximately two years, the quality of service provided to customers has declined in relation to the contractual service metrics.[80] Declining service represents a long term risk to the Company and customers.

48. Examples of service issues outlined in the evidence are as follows:

(a) Table 3.2 of the Amended Application provides a summary of service level results for the period of July 2008 to June 2009.[81] The table shows that for this period there were a significant number of service failures in areas of call centre response and billing accuracy. These issues are highly visible to customers.[82]

(b) In Table 3.3, TGI provides a summary of service delivery failures by month for the life of the CSA (2003 – 2009).[83] The table shows a trend of increasing service delivery failures since 2006, with the number of failures in 2008 (21) more than twice as high as in any other year. The number of failures for 2009 (to June) indicates that 2009 will also see a high number of service failures.

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75 B-4, Amended Application, Appendix I.
76 B-4, Amended Application, p. 3.
77 B-1, Application, Appendix B, pp. 7-9.
78 B-4, Amended Application, p. 52.
79 Order No. G-15-05.
80 B-4, Amended Application, p. 52.
81 B-4, Amended Application, p. 54. See also B-10, BCUC 1.9.1, which provides a table of service level issues for 2008; and BCUC 1.9.2 which provides a summary of areas of concern for 2009.
82 See B-10, BCUC 1.8.5, 1.8.6 and 1.8.10 for TGI's discussion of the causes of these service level results.
83 B-4, Amended Application, p. 54.

(c) Since January 2008, TGI has had to address 26 Better Business Bureau complaints. Of these 26 complaints, 12 related to late stage collection action, and 14 related to billing issues. TGI's evidence is that many of these issues ought to have been capable of being addressed through the outsourced customer care function, without escalation to Better Business Bureau complaints.[84]

(d) Two issues with TGI's customer service were aired in the public forum on CTV's "Olsen on Your Side", relating to a billing error (aired March 9, 2009) and a switched meter situation (aired June 10, 2009). TGI linked these escalations directly to the level of service provided by CWLP.[85]

49. TGI's evidence is that the call centre activity metrics, which of late have not been met on a consistent basis, should be achievable. Under the CSA, CWLP is only required to meet monthly targets. These service levels are monitored daily, giving the provider ample opportunity to react to daily variances.[86]

50. Although TGI has seen temporary improvements as a result of escalating the issues described above, the Company is not confident that the improvements are sustainable over the longer term without significant investment in technologies within the outsourcer's operations, and redefining and renegotiating service quality expectations.[87] TGI's customer care functions are currently located in distant locations.[88] TGI believes that, as a result, call centre and billing and back office staff have insufficient understanding of regional issues faced by its customers.[89] TGI has been working with CWLP to address the service quality issues and has seen temporary improvement.[90] However, the continual reoccurrence of customer service issues calls into question the sustainability of the solutions that are being implemented. CWLP's willingness to invest

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84 B-10, BCUC 1.8.9.

85 B-10, BCUC 1.8.9, 1.8.10.

86 B-10, BCUC 1.8.2.

87 B-10, BCUC 1.8.6.

88 CWLP has call centers in New Brunswick, Oregon, and Ontario, and billing is done in Manila. See B-4, Amended Application, p. 38 and Appendix P, p. 3.

89 B-9, BCOAPO 1.7.5. When outsource providers seek these low cost means of providing service, the cost reductions realized by the outsourcer do not benefit the customer, but rather flow to the outsourcer: B-10, BCUC 1.107.1.

90 B-4, Amended Application, p. 55.

in implementing lasting solutions might depend on whether it is cost effective for them to do so relative to the cost of continuing to pay penalties.[91]

51. Regardless of the cause of the continued shortfalls, TGI believes that it is in the long term best interest of the Company and its customers to have a customer care model in place that ensures the needs of customers are consistently being met.[92] Highly visible customer service issues, such as the above examples, can have potentially significant negative consequences for customers over the long term. In a competitive energy marketplace, where customer service can be a key point of differentiation among energy providers, declining service levels are an impediment to TGI attracting and retaining customers that will contribute to the cost of operating the system.[93]

3.3.3 Contractual Service Metrics and Functionality Must Keep Pace

52. TGI is currently limited in the options that it can offer customers for conducting business through multiple channels. TGI also has limited ability to direct and control the training and knowledge of the customer representatives who deal with its customers. Contractual service metrics also require updating.

53. The current CIS has limited or no capability to provide customers with: electronic bill presentment; group billing; date file billing; direct electronic payments; improved billing of non-gas charges; improved data capture of customer premise information; third party billing; rate comparisons; support for mass refunds; alternate communication channels such as email and online chat; online moves; payment plan applications; payment arrangements; high bill resolution tools; access to consumption and billing history; self serve analytics; and enhanced IVR.[94] When considering, for instance, that a significant portion of TGI customers currently expect to have the ability to start, stop or transfer their service using the Company's online channel, and that transactions such as account information updates, moves, or closing an account are currently not provided, it is evident that there is a disconnect between expectations and deliverability that must be addressed.[95] The evolving expectations of customers regarding preferred customer

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[91] B-4, Amended Application, p. 3; B-10, BCUC 1.8.7.
[92] B-10, BCUC 1.9.2.1.
[93] B-8, CEC 1.17.4, 1.17.9.
[94] B-4, Amended Application, p. 44; B-10 BCUC 1.13.1.
[95] B-4, Amended Application, p. 40-44; B-1, Application, Appendix G, pp. 17-18; B-10, BCUC 1.61.3.

contact channels, and the fact that these expectations cannot be satisfied under the current arrangement, are discussed in section 3.2.

54. The CSA sets out services to be provided, and outcomes and metrics to be achieved. TGI can neither hire nor train staff, and cannot effectively influence the sufficiency of training and expertise.[96]

55. The service metrics negotiated in 2001 were indicative of industry standards, customer expectations, and current practice at the time the CSA was made.[97] The changes in TGI's business environment and to customer expectations regarding functionality, which are discussed in sections 3.1 and 3.2, have made service quality a "moving target" that needs to be revisited and refreshed regularly.[98] The metrics need to be adjusted to reflect current industry standards and /or be replaced with new industry standard metrics.[99]

56. Under the CSA, updated service metrics and improved functionality are subject to negotiating with CWLP the increased cost to be borne by TGI and customers. TGI is currently unable to make changes to customer care delivery or service metrics in response to, for example, a policy change from the government or changing customer expectations, without going through the process set out in the CSA.[100] The pace of changes to TGI's operating environment and customer expectations has accelerated since 2001. TGI's reasonable expectation is that future changes in scope will be required. The CSA no longer provides the same degree of cost certainty and risk transfer.[101] As discussed in section 3.5.1 below, the Project will provide TGI with greater flexibility for TGI to quickly and efficiently undertake needed changes.

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96 B-10, BCUC 1.85.1.
97 B-4, Amended Application, p. 100.
98 B-4, Amended Application, p. 100.
99 B-10, BCUC 1.8.1.
100 Should either party need to change the scope of the Agreement related to such things as increased functionality (beyond that contemplated under the agreements), change in company needs, changes in the law or through BCUC order, then the parties must go through the scope change process set out in section 15 of the CSA. The process is commenced through providing a notice setting out the need for the proposed scope change, the expected impact to fees, and the nature of the change required. The receiving party can accept, reject, or counter the proposed change. If the parties fail to agree on the proposed change set out in a notice, the matter is escalated through an internal dispute resolution process (as set out in clause 16 of the CSA), and if that fails to resolve the matter, to mediation or arbitration (as set out in clause 17 of the CSA).
101 B-21, BCUC 3.9.6.

3.4 Industry Trends and Recommendations of UtiliPoint

57. TGI is not unique in revisiting the value proposition of BPO. The evidence is that a number of North American utilities that were "early adopters" of BPO have reconsidered their BPO arrangements and elected to pursue Strategic Sourcing instead.[102] TGI submits that this evidence reflects a general recognition among the identified utilities that more direct control of key systems and processes is required to appropriately and cost effectively respond to changing business needs and customer expectations.[103] UtiliPoint characterizes this evolution as follows:

> In the past several years, due to changes in the outsourcing landscape in the first "wave" of utility business process and information technology outsourcing, many utilities are seeking to restructure, renew, and re-align their outsourcing contracts. Much of this renewal and re-alignment is aimed at outsourcing more discrete, self-contained, transaction oriented processes and information technology functions rather than holistic, multi-function business process or business units. Overall this approach reduces utility cost and risk and increases utility and customer satisfaction with outsourcing.[104]
>
> …
>
> Since 2001, Utilipoint International has performed an annual survey of over 300 utilities on the topic of customer service. One of the areas of concentration of the survey is on the important topic of outsourcing…
>
> While outsourcing has grown substantially since the survey's inception, this marks the second consecutive year that there has been a decline in the outsourcing numbers. This would suggest that utilities are learning to be more selective and strategic in the way they approach outsourcing.[105]
>
> …
>
> Much has been written and there is much to be said about the history and evolution of utility outsourcing in customer care and meter-to-cash processes. The most important takeaway of this history is the understanding that today's utility customer service and meter to cash outsourcing is positively dynamic, fluid and flexible. However, perhaps less positively, utility outsourcers are

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102 B-4, Amended Application, p. 49, Table 3.1.
103 B-9, BCOAPO 1.6.4 and 1.6.5.
104 B-1, Application, Appendix B, p. 7.
105 B-1, Application, Appendix B, p. 14.

> less standard, less sure-footed, less table, and less reliable than utilities and regulators might ideally prefer.
>
> Given this dynamism in utility customer care and meter-to-cash outsourcing are being challenged.[106]

58. The recent movement of these utilities to Strategic Sourcing models underscores the significance of the accelerating rate of business, legislative and regulatory changes that utilities have experienced in recent years.[107]

3.5 Project Benefits

59. The primary benefit associated with the Project is to place TGI's customer care function on a sustainable footing by addressing the Project drivers described previously. In particular, the Project will afford the necessary flexibility to keep pace with developments in TGI's operating environment including new policy initiatives and legislative changes. It will also position TGI to meet current and future customer service expectations, in terms of access to other communication channels, enhanced customer access to information, and service quality improvements through enhanced metrics.[108] The Project will also provide broader socio-economic benefits in the Province.

3.5.1 Placing Customer Care on a Sustainable Footing

60. The Project addresses evolving customer expectations and supports TGI's ability to compete in the current policy and competitive environment in several ways, each of which is addressed in this section:

    (a) it provides additional functionality necessary to offer customers access to additional service channels,[109] and greater access to information regarding their energy use and actions they can take to better manage their consumption.[110]

    (b) it provides TGI with control over customer interfaces and related technologies, thereby facilitating responsiveness to change;[111]

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[106] B-1, Application, Appendix B, p. 37.
[107] B-9, BCOAPO 1.6.4, 1.6.5.
[108] B-4, Amended Application, section 4.5.2.3.
[109] B-4, Amended Application, section 4.5.2.1.
[110] B-4, Amended Application, p. 37.
[111] B-4, Amended Application, section 4.5.2.2.

(c) it provides in-province customer service representatives with greater understanding of regional and Company-specific issues and their implications for customers;[112]

(d) it provides enhanced customer service through having the billing and back office staff in the same B.C. location as the primary call centre;[113] and

(e) it provides service quality improvements through enhanced metrics.[114]

<u>Functional Benefits: Communication Channels and Enhanced Access to Information</u>

61. The CIS product that TGI intends to implement through the CCE Project is a current and market leading CIS solution that includes broad capabilities in its base functionality. This CIS product will better position TGI to offer customers the information and programs that they require.[115] TGI described the difference between the previous generation of CIS (e.g. the incumbent CIS) and the current generation of CIS software, as follows:

> The implementation of new energy programs and solutions for customers requires a CIS system that includes capabilities to introduce and modify these programs. As CIS systems for utilities have evolved from "custom built" to "commercial off the shelf" solutions (this distinction is discussed in detail in Section 4.1), newer systems offer broader capabilities in recognition of change in the marketplace and the requirements of organizations to utilize systems that can respond effectively to that change in a cost effective manner. In the past, custom built systems were designed for a particular point in time based on the software and hardware technologies of the time. Adapting to the broad marketplace change that has occurred was not necessarily envisioned, making change implementation challenging and lengthy.
>
> Newer customer information systems have more inherent functionality. They are designed using more current technologies that allow for much greater onsite configuration capabilities, which make modifications easier and faster to execute. These technologies will support more timely and cost effective changes, such as the addition of new products, programs or services and mandated revisions including new taxes or tax rate adjustments. Looking forward the market-leading developers of these

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112 B-4, Amended Application, p. 37. See also B-10, BCUC 1.76.1 for the Company's definition of "regional knowledge".
113 B-4. Amended Application, p. 89; B-8, CEC 1.13.1, 1.13.3.
114 B-4, Amended Application, section 4.5.2.3.
115 B-4, Amended Application, pp. 37-38.

> applications have demonstrated their commitment to investment in product development and we anticipate they will continue to do so in the future to meet the needs of the evolving business environment.[116]

62. In the Amended Application, TGI described the recent challenges associated with implementing billing changes in response to government, tax and regulatory developments.[117] The SAP CIS proposed by TGI will better accommodate similar changes in the future. TGI anticipates, for instance, future additional billing and reporting changes in support of Energy Efficiency and Conservation programs, and the evolution and expansion of Customer Choice to currently non-qualifying service areas.[118] The new SAP CIS software as proposed in the Application will support the input of meter reading data from any origin, including smart meters.[119] TGI is not aware of any advancement in functionality for the current Peace CIS related to smart meters for a gas distribution installation that is in commercial use today.[120]

63. The SAP CIS can accommodate the integration of a greater number of customer care channels as part of its base functionality. These capabilities can be enabled cost-effectively at the option of TGI to facilitate the implementation and ongoing support of alternative contact channels such as IVR, web applications, and web applications.[121]

64. The functional benefits of the Project are set out in detail in the Amended Application in Table 4.3 and in the IR responses. A non-exhaustive list of these functional benefits includes:

    (a) **Billing -** expanded electronic bill presentment options; support for “best rate” analysis for qualifying customers; support for mass rate refund processing in the case of interim rates;

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[116] B-4, Amended Application, p. 38.

[117] In the Amended Application at p. 38, TGI identified examples of challenges with respect to billing and reporting in relation to the commercial and residential Customer Choice programs, the Innovative Clean Energy Levy in 2007, and the Carbon Tax in 2008.

[118] B-4, Amended Application, p. 38.

[119] B-10, BCUC 1.21.1–1.21.3. BC Hydro runs SAP’s CIS. Depending on the requirements associated with what is ultimately decided as the meter reading solution for TGI, additional software may be required, Any such software would be part of the distinct business case associated with any meter reading proposal brought forward to the Commission.

[120] B-10, BCUC 1.21.3.

[121] B-4, Amended Application, pp. 44-45.

(b) **Marketing** – the ability to target accounts for rate review automatically to move customers to the best qualifying rate;

(c) **Web –** auto-logging of email correspondence within the CIS application; potential for increased customer access to online transactions; enhanced ability to download account and consumption information from CIS;

(d) **Customer Choice** – Customer Choice program participation including enrolment details will be housed in the CIS and will be available to call handlers as well as to customers via the web;

(e) **Call Centre** – support for integrated communication channels including voice, email and online chat; enhanced IVR capabilities to support increased customer self-serve;

(f) **Integration** – the use of SAP will provide integrated refund processing for customers requiring cheques related to final credit balances; and

(g) **Other -** special interest customer benefits, such as expanded support for capturing landlord and owner information with the ability to default the service into the name of the landlord or owner in the event of a vacancy.[122]

65. TGI submits that the functional benefits enabled through the CCE Project will ensure that TGI is able to meet the evolving needs of its customers.

Access to Regional Knowledge

66. Customers also benefit from the insourcing of the call centre and billing and back office functions. An outsourcing model whereby front line customer care representatives are employed in distant or offshore locations inherently limits the ability for representatives to internalize regional issues and understanding when dealing with customers. Turnover issues in outsourced call centres, as has been experienced under the current outsourcing arrangement, leads to a significant degradation in local market and end-to-end business process knowledge.[123] An internally managed customer care organization based in B.C. will facilitate TGI's customer care representatives acquiring improved

[122] B-4, Amended Application, pp. 97-99.
[123] B-4, Amended Application, p. 39; B-9, BCOAPO 1.7.5.

knowledge of regional issues. TGI expressed confidence in the ability of those representatives to better understand and relate to customer experiences and respond to competitive factors.[124]

67. TGI customers will experience enhanced customer service through having the billing and back office staff in the same B.C. location as the primary call centre.[125]

Control Over Key Points of Interaction and Related Technologies

68. TGI will be better positioned to adapt to changes in its business environment and customer expectations by exercising greater control over the key, customer facing processes and technologies,

69. One area where this control is beneficial is in the training of customer service representatives. Based on the market research described above, ensuring that customer service representatives have appropriate product and service knowledge combined with regional understanding is an important element of customer service. With the direct ownership of representative training and ongoing management as set out in the Application, TGI will have the ability to build key knowledge and understanding within its representatives that will give them the tools to apply appropriate judgement when working to address a customer inquiry or concern.[126]

70. The Project will also give TGI the ability to exercise greater control over the cost and timing of future system and process changes, something TGI is unable to do under the current arrangement. TGI will be able to proactively identify new opportunities to improve customer service, and to achieve cost efficiencies.[127]

Service Quality Improvement Strategy

71. The Project will permit TGI to deliver enhanced customer service through updated service metrics.

72. Table 4.4 of the Amended Application sets out the utility industry best practice service metrics for a call centre, and compares those service metrics to the current service

[124] B-4, Amended Application, p. 39.
[125] B-4. Amended Application, p. 89; C-8, CEC 1.13.1, 1.13.3.
[126] B-4, Amended Application, p. 45.
[127] B-4, Amended Application, p. 99.

metrics under the CSA.[128] As the table demonstrates, the current service metrics for such key measures as “average speed to answer” and “customer satisfaction” are lagging behind industry best standards.[129] TGI believes that performance targets under the proposed customer care model implemented in 2013 and thereafter should, at a minimum, be comparable to “utilities industry average” targets. An ongoing process will be established to ensure that these metrics are reviewed and revised as required to reflect changing business needs and customer expectations.[130]

73. There are no standard utility industry service metrics for the billing and back office function.[131] TGI is, however, proposing improvement in this area in terms of expanding the metrics related to billing and back office to reflect more closely the discrete business processes that impact service quality.[132] TGI also proposes to make improvements to the service metrics related to support of the underlying technologies.[133]

74. TGI submits that the additional flexibility provided by the Project to change and adjust service metrics, and implement new ones on an ongoing basis is a significant benefit to TGI’s customers and the Company. Under the current model, TGI can only adjust metrics through contractual negotiation, which is more cumbersome, time consuming, and not necessarily cost effective.[134]

3.5.2 Socio-economic Benefits

75. The Commission must consider all relevant factors in determining this Application, including broader socio-economic benefits as circumstances require.[135] The CCE Project will bring broader benefits to British Columbians. The detailed results of these benefits are provided in the KPMG study, which is Appendix W to the Application. At a high level:

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128 See also B-19, BCUC 2.3.1.
129 B-4, Amended Application, p. 101-102.
130 B-22, BCOAPO 3.1.1.
131 B-4, Amended Application, p. 101.
132 B-4, Amended Application, p. 102.
133 B-4, Amended Application, p. 103-104.
134 B-4, Amended Application, Appendix L, section 15.
135 See footnote 15.

(a) The Project implementation itself gives rise to immediate benefits. In particular, it will: create 650 new jobs; increase the Provincial GDP by approximately $40 million; and increase tax revenue at all levels by over $7 million.[136]

(b) There will be ongoing benefits as well. 400 new jobs will be created by 2012. KPMG estimates that the Provincial GDP in 2012 will increase by over $25 million annually, and tax revenue at all levels will increase by approximately $4.5 million annually.[137]

76. TGI submits that these considerable socio-economic benefits enhance the case for issuing a CPCN for the Project.

3.6 Conclusion on Drivers for Change

77. TGI is at a crucial decision point regarding its customer care function. The current customer care delivery model has been in place since 2001, meaning that approximately 10 years will have passed by the time the new customer care delivery model is put in place. TGI faces a different set of circumstances, challenges, and needs from those faced by BC Gas in 2001. A change in the customer care delivery model and CIS is required to address evolving customer needs and external drivers that the current model is not well suited to meeting.[138] TGI's proposed enhancements to its customer care function will play an important role in retaining existing customers and attracting new ones. This is in the best interests of present and future customers because spreading TGI's fixed costs over a larger total number of customers will reduce delivery rates to individual customers, all other things being equal.[139]

[136] B-4, Amended Application, p. 104.
[137] B-4, Amended Application, p. 105.
[138] B-4, Amended Application, pp. 5-6, 55.
[139] B-10, BCUC 1.11.1; B-8, CEC 1.15.1.

4. SCREENING OF POTENTIAL CUSTOMER CARE MODELS

78. The primary decision in arriving at the proposed Project was the choice of customer care delivery model to address the evolving needs of TGI's customers and the Company.[140] The Company's decision to pursue Strategic Sourcing, rather than continue with a BPO model or adopt a fully-insourced model, was the product of a screening analysis informed by: (i) TGI's experience under the current BPO arrangement, (ii) the key business challenges faced by TGI, (iii) the Company's longer term strategic goals, and (iv) the recommendations of UtiliPoint. TGI has also provided evidence to support the cost effectiveness of the proposed customer care model.

79. The evidence discussed in this section establishes that:

(a) TGI appropriately screened the customer care model alternatives to identify the customer care models that met the functional and customer service objectives; and

(b) the selected Strategic Sourcing model is cost effective relative to other potential delivery models, including BPO.

These points are addressed in sections 4.1 and 4.2 respectively.

4.1 Assessing Customer Care Models Against TGI's Requirements

80. As with any project, TGI screened customer care model alternatives to identify the option(s) that will meet the functional and customer service objectives identified by TGI and discussed in sections 3.1 and 3.2 above. This section describes TGI's screening process. TGI identified the preferred solution as being a Strategic Sourcing model consisting of insourced CIS, call centre and billing and back office functions, with high volume transactional processes remaining outsourced.

4.1.1 Strategic Sourcing Preferred Over Business Process Outsourcing and Full Insourcing Options

81. Customer care models fall on a continuum ranging from comprehensive BPO, such as the current arrangement with CWLP, to full insourcing. Variants of the Strategic

[140] B-4, Amended Application, p. 6.

Sourcing model, representing a hybrid of insourcing and outsourcing, fall in between the two extremes. The customer care models available to, and considered by TGI were:

(a) maintaining the current BPO model and provider;

(b) pursuing alternative BPO providers;

(c) a Strategic Sourcing model with an insourced CIS and outsourced contact centre and/or billing and back office operations and high volume transactional processes;

(d) a Strategic Sourcing model that brings the key functions - the CIS, call centre and billing and back office functions - into TGI's direct control, with high volume transactional processes remaining outsourced; and

(e) full insourcing.[141]

82. Each of these models was screened for consistency with TGI's strategy, business, and operations objectives, namely: customer service; management excellence; operational performance; employees; and prudent cost management.[142] In addition, TGI took into consideration UtiliPoint's recommendation that a utility's assessment of the best customer care model should consider the following factors:

> The best business strategy for the utility customer service is one where the customer service group business strategy:
>
> - Supports the ownership of technologies that underpin business success
>
> - Enables the development of high quality business processes from those technologies according to business needs to delivery superlative customer service
>
> - Facilitates the management of outside vendors with strong management contracts that improve over time and change in flexible fashion with the needs of the utility business
>
> - Acts as a compliment to the business model of the enterprise.[143]

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[141] B-19, BCUC 2.2.1.
[142] B-10, BCUC 1.110.1.
[143] B-1, Application, Appendix B, p. 5.

83. TGI was able to screen out a fully insourced model at an early stage as it is impractical for the Company to insource functions such as statement printing and credit card payment processing, for which specialized equipment or tools are required. Moreover, these functions involve a large volume of transactions, allowing the outsourcer to benefit from economies of scale.[144] TGI's screening analysis thus focussed on BPO and the two variations of Strategic Sourcing noted above.

84. As between BPO and Strategic Sourcing, UtiliPoint favoured Strategic Sourcing (what it refers to as a "hybrid" model) over BPO:

> UtiliPoint believes the ideal customer service outsourcing model is a hybrid of industry experience combining the best of technology hosting, transactions processing, and the limited delivery of select business processes. This hybridized approach to outsourcing incorporates some innovative approaches where the utility and an outsourcing partner or partners to complete and optimize some back-office processes, while at the same time employing an outsourcer (not necessarily one provider) to take care of standardized "transactions" in the customer service back office, with predictability, reliability and low cost.
>
> The hybrid outsourcing model is a mix of technology, service, and business process capability that is flexible but also leverages the best of what the market currently has to offer.
>
> In addition, the hybrid outsourcing model has three important virtues that make it both more desirable and efficacious than other industry and business outsourcing models.
>
> 1. Within the hybrid model the outsourcing partner provides the additional services and complementary labour and technology necessary to maximize the output of selected processes and functions identified by the utility.
>
> 2. The hybrid approach enables the outsourcing partner providing the automation technology, equipment, and labour needed to perform many duties without controlling business process or dictating technology.
>
> 3. The model provides crucial flexibility where from the outside customers see one interface and a single integrated system. However, from the inside there are multiple levers through which business process change might be effected, additional capability might be added, and specific business initiatives can be accomplished.

[144] B-4, Amended Application, p. 93; B-19, BCUC 2.2.1.

> UtiliPoint believes that in today's market seeking the hybridized customer service outsourcing approach is not just possible but recommended.[145]

85. In the case of TGI, a Strategic Sourcing model can, in theory, involve a variety of different combinations of insourced and outsourced customer care functions - CIS, call centre, and billing and back office. However, considering all of the practical limitations, discussed later in this section, the two most plausible Strategic Sourcing alternatives (which were the model alternatives that garnered the greatest attention in the IRs) were:

(a) an insourced CIS and outsourced contact centre and/or billing and back office operations and high volume transactional processes; and

(b) an insourced CIS, call centre and billing and back office functions, with high volume transactional processes remaining outsourced.

The Company assessed these alternative models against the identified functional and customer service requirements. UtiliPoint's assessment played an important role in identifying whether or not the CIS, call centre and/or billing and back office Project components should be brought in-house.[146] The Strategic Sourcing analysis regarding each of these Project components, plus a discussion of types of transactions that TGI proposes to remain outsourced at this time, is set out below.

4.1.2 Strategic Sourcing Analysis - CIS

86. TGI's decision to own and operate the CIS, rather than have a CIS owned by a third party and delivered as a service,[147] is appropriate in light of TGI's evidence about the associated benefits and UtiliPoint's recommendation.

87. The CIS is the core information technology software used for managing customer accounts and meeting customer service needs.[148] It is the critical information source and business process enabler for customer contact and service used by everyone in the customer process, from front line customer service representatives, to back office billing

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[145] B-1, Application, Appendix B, p. 37.
[146] B-4, Amended Application, p. 6.
[147] For a description of the difference between these two options, see B-4, Amended Application, pp. 56-58.
[148] B-4, Amended Application, p. 18.

support staff.[149] TGI's evidence is that owning and exercising direct control of the CIS provides several benefits, including:

(a) greater flexibility to determine how and when changes are made to the system, such as upgrades, to meet TGI's needs;

(b) customers directly benefit from process improvements and efficiencies;

(c) greater control over service quality; and

(d) greater cost transparency to the ongoing operation and enhancement costs of the CIS that can be verified through market processes such as the RFQ process.[150]

88. As discussed in section 5.1 TGI held competitive processes for the market leading CIS software providers and software integrators, with TGI selecting the lowest overall cost CIS solution to replace the incumbent CIS owned and operated by CWLP. There is no evidence of any potential cost savings associated with outsourcing a market leading commercial off the shelf CIS.[151]

89. UtiliPoint "strongly" recommended that TGI insource its CIS:

> UtiliPoint's expert research and review of utility industry outsourcing arrangements shows that utilities are not seeking to completely dismantle or abandon outsourcing relationships. Rather some utilities based on the desire to reassert control over certain key customer service activities and business processes are choosing to:
>
> • Bring CIS in-house or back under the immediate control of utility management
>
> …
>
> UtiliPoint strongly recommends that Terasen take the same approaches in developing its new customer service model.[152]

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[149] B-4, Amended Application, p. 18.
[150] B-4, Amended Application, p. 57.
[151] The incumbent CIS has a number of shortcomings, making it undesirable to structure a new customer care model based on the continued use of the existing outsourced CIS. See for example, B-10, BCUC 1.13.1., 1.18.1.1, 1.19.1-1.19.3, 1.21.3, 1.37.1–1.37.6, and 1.61.3.
[152] B-1, Application, Appendix B, pp. 40-41.

UtiliPoint's recommendation for TGI is in line with industry practice. UtiliPoint identified in its report that only 7% of the over 200 utilities it had surveyed have outsourced their respective CIS, with the remaining 93% retaining direct control and ownership.[153]

4.1.3 Strategic Sourcing Analysis – Call Centre

90. The call centre is the primary point of interaction for TGI customers on a full range of inquiries relating to, for instance, energy use and billing. TGI carefully weighed the pros and cons of insourcing and outsourcing the call centre. TGI concluded that insourcing the call centre best addressed TGI's objectives.[154] This decision was consistent with UtiliPoint's recommendation regarding the preferred attributes of a call centre and industry trends.[155]

91. UtiliPoint's specific recommendations with respect to the call centre (or "contact centre") emphasized the importance of well-trained and well-equipped call centre staff. For instance, UtiliPoint recommended that TGI:

> Emphasize the contact center recognizing that a model, customer-focused call center that operates seamlessly, with motivated and well-equipped and trained employees is essential to supporting and coordinate all of the business services and processes within meter to cash and who meet every need of internal and external customers.
>
> Recognize that providing customers with flexible options to interact with the utility and make payments accuracy by leveraging technology is the key to being customer centric from a meter-to cash perspective, but there is more to outstanding customer service than an outstanding bill production and remittance transaction.[156]

92. TGI's own assessment was that these attributes identified by UtiliPoint could best be delivered through insourcing the call centre.[157] Specifically, an insourced, in-Province call centre provides a number of advantages.

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[153] B-1, Application, p. 47.
[154] B-10, BCUC 1.77.8. Outsourcing the call centre remained an option for consideration because it is technically feasible and permissible under the CSA to outsource the call centre while retaining ownership of and direct control over the CIS. B-14, CEC 2.4.1.
[155] B-1, Application, Appendix B, pp. 40-41.
[156] B-1, Application, Appendix B, p. 39.
[157] B-10, BCUC 1.77.8.

(a) It gives TGI the ability to focus on call centre service quality, including service delivery over and above metrics; outsourcers generally have limited focus on quality beyond the specific metrics in the outsourcing contract, and do not perceive (or receive) any benefit from exceeding service levels.[158]

(b) It provides greater control over the intellectual property and related assets generated through the delivery of the customer care function; outsourcers generally retain intellectual property in the assets created through the provision of service, which can result in a knowledge gap developing between an organization and its customers.[159]

(c) It provides TGI with the ability to control the costs of new services and/or introduce new services at no cost through increased efficiency; new services in an outsourcing arrangement come at additional cost.[160]

(d) It allows TGI to attract and retain a knowledgeable and skilled call centre workforce; outsourced call centres typically have high turnover rates which impacts service levels.[161]

(e) It streamlines escalation of complex inquires: under a BPO model, business process handoffs are required to transfer complex inquiries to the appropriate work group in the utility, which can result in delays and errors in processing and impacting service quality.[162]

(f) Service provided by the outsourcer may be impacted by the competing interests and priorities of other clients in a shared resources model;[163] similar issues do not arise when the call centre is operated in house.

[158] B-10, BCUC 1.77.8.
[159] B-10, BCUC 1.77.8.
[160] B-10, BCUC 1.77.8.
[161] B-10, BCUC 1.77.8. The CCE Project ensures that TGI will have a skilled and knowledgeable call centre and billing and back office workforce by providing for training costs as part of the project estimate, that will support a thorough and comprehensive training process for staff: See also BCUC 1.73.3 regarding turnover. TGI believes that the collective agreement with COPE will assist in ensuring that turnover rates remain at a manageable level. See B-10, BCUC 1.73.2, 1.92.4. TGI also notes that 20% of all inbound call inquiries are complex in nature, which further underscores the need for a skill and knowledgeable workforce: see B-7, CWLP 1.7.1.
[162] B-10, BCUC 1.77.8.
[163] B-10, BCUC 1.77.8.

(g) It increases management efficiencies: utilities that outsource must still maintain an internal management structure and expertise to interact with the provider and facilitate any needed changes to the arrangement.[164]

(h) TGI will exercise greater influence over the sufficiency of training and expertise of personnel.[165]

93. There is a declining trend in call centre outsourcing by utilities. Figure 2.16.1 in the response to BCUC IR 2.16.1 (prepared by UtiliPoint) shows that call centre outsourcing peaked in 2006 at approximately 22% and declined to approximately 12% in 2009. As set out in the response to this information request, this represents an approximate 45% decrease since 2007.[166]

94. The flexible and market competitive collective agreement between TGI and COPE (filed confidentially as Appendix V to the Amended Application) bodes well for success in meeting TGI's customer service objectives.[167]

95. Once TGI had identified the preferred delivery model, the Company undertook the steps described in section 5.2 to ensure the insourced call centre is delivered in a cost effective manner.

4.1.4 Strategic Sourcing Analysis – Billing and Back Office

96. TGI's decision to insource the billing and back office function was dictated by two considerations: (a) the complexity and specialized nature of the billing and back office function lends itself to insourcing;[168] and (b) the call centre and billing and back office functions are complementary and highly integrated.[169]

97. Independent of the decision to insource the call centre, insourcing the billing and back office function is advantageous. The business processes in the billing and back office area are among the most complex in TGI's meter to cash environment. They require

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[164] B-10, BCUC 1.77.8.
[165] B-10, BCUC 1.85.1.
[166] B-19, BCUC 2.16.1.
[167] See B-4, Amended Application, Appendix V, filed confidentially. The market competitiveness of the Collective Agreement is discussed in section 5.2.1 of these Submissions.
[168] B-4, Amended Application, p. 88; B-10, BCUC 1.102.3.
[169] B-4, Amended Application, p. 89; B-8, CEC 1.13.3.

specialized skills and a depth of Company and gas industry knowledge.[170] Complex billing and metering issues are key drivers for customer complaints and dissatisfaction under the current geographically distributed operating model, specifically with respect to switched and non-registering meters, meter pressure errors, and multi-premise billing. TGI's evidence is that an in-house billing and back office function will lead to a higher level of customer service, as a result of (i) a work force trained and managed by the Company, (ii) greater ability to update metrics, and (iii) having day-to-day oversight of the quality and timeliness of these activities.[171]

98. While it is feasible to operate billing and back office functions separately from call centres,[172] there are significant advantages from the perspective of customer service associated with co-locating and co-managing the billing and back office staff and the call centre, including:

(a) improved ability to direct inbound calls directly to billing experts when required in order to avoid a delay in responding through a future outbound call;[173]

(b) the ability for the billing area to proactively contact customers and discuss complex billing issues and have these interactions tracked and monitored through the call centre technology suite as well as the CIS;[174]

(c) the ability for the billing area to directly support agent training and refresher training related to business changes or customer impacting issues;[175] and

(d) the ability to support the migration of employees between the two work groups in order to ensure that employees have the opportunity to focus their career as they prefer within the Company.[176]

It is not desirable from the perspective of functionality and customer service to separate the call centre from the billing and back office functions. It is considered standard

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170 B-4, Amended Application, p. 88.
171 B-8, CEC 1.13.1.
172 In the current customer care arrangement, for instance, the call centres are located in New Brunswick and Ontario, while the billing and back office functions are housed in Manila. The transfer of billing and back office services to Manila occurred subsequent to 2002. See B-4, Amended Application, p. 38 and Appendix P, p. 3.
173 B-8, CEC 1.13.3.
174 B-8, CEC 1.13.3.
175 B-8, CEC 1.13.3.
176 See generally B-4, Amended Application, p. 89; B-8, CEC 1.13.2–1.13.3.

practice to have the call center and back office operations function out of one location.[177] Billing and back office operations for utilities are not a typical "stand alone" service offering, and there are no service providers in Canada that provide billing and back office service as a separate offering.[178] Due to the overlapping business processes of the call centre and billing and back office functions, these services are generally bundled together for the purposes of outsourcing.[179] As a result, the analysis favouring insourcing for the call centre ultimately drives the decision to insource the billing and back office functions.

99. In summary, although TGI has presented the call centre and billing and back office components separately in the Amended Application (and here) for the purposes of the screening analysis, the evidence supports keeping them together.[180] TGI submits that given the complex and highly specialized nature of the back office function, there is much to be gained from insourcing the billing and back office function.

4.1.5 Strategic Sourcing Analysis – Other Functions

100. TGI will continue to outsource at this time those areas where specialized equipment or tools are required and where the volume of transactions is large. The specific areas that TGI plans to continue to outsource are as follows:

(a) statement print and insert;

(b) Canada Post mailing;

(c) specialty stationary and letterhead print;

(d) remittance and processing;

(e) credit card payment processing;

(f) inactive or bad debt collections;

(g) electronic bill presentment;

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[177] B-10, BCUC 1.101.5.1.
[178] B-4, Amended Application, p. 88; B-10, BCUC 1.102.3.
[179] B-4, Amended Application, p. 88; B-10, BCUC 1.102.3.
[180] See generally B-4, Amended Application, section 4.4. See also B-10, BCUC 1.102.3, B-8, CEC 1.13.1–1.13.3.

(h) call centre translation services;

(i) Braille print services;

(j) new customer credit validations;

(k) manual meter reading services; and

(l) customer service fieldwork related to arrears and vacant premises.[181]

101. These are functions for which outsourcing providers do benefit from economies of scale as they are able to reuse equipment and processes across a wide range of clients. Generally speaking, they are also areas that do not involve direct customer interaction, but rather, serve as supporting functions.[182]

4.1.6 Summary Regarding Delivery Model Screening Analysis

102. TGI submits that the approach it has taken to identify and screen potential customer care delivery models is consistent with the approach endorsed by the Commission in the context of infrastructure projects of screening out options at an early stage that do not meet the intended objective.[183] It is not in the long-term best interest of customers for TGI to adopt a customer care model that continues to see key customer care components – the CIS, call centre, and billing and back office – controlled by third parties in the face of more rapid change in customer expectations and TGI's external environment; such an approach would be akin to installing a transmission line or pipeline that will not be able to serve existing or imminent load.[184] The quantitative comparison

181 B-4, Amended Application, p. 93.

182 B-4, Amended Application, p. 93.

183 In the *VITR Decision*, the Commission stated: "The Commission Panel accepts the concept of a staged assessment of alternatives, starting first with a screening assessment of available alternatives and proceeding to successively more detailed investigations only for those alternatives that are considered feasible or for which there is evidence that a more detailed and costly assessment should be undertaken prior to eliminating an alternative completely. However, the utility's decision to limit the investigation of certain alternatives or to eliminate alternatives from further investigation in its selection process should not be influenced by undisclosed and untested preferences for a project. Further, a utility's decision to limit the investigation of alternatives or eliminate alternatives from further investigation should not be influenced by prior commitments, particularly where such commitments will require regulatory approval. The Commission Panel considers factors such as technical infeasibility, significant legal impediments, and high costs may be sufficient reasons to eliminate alternatives during the screening process in order to limit the range of alternatives requiring more detailed assessment." *VITR Decision,* July 7, 2006, p. 32.

184 B-19, BCUC 2.2.1. TGI recognizes that in the context of a customer care project, the means of establishing the requirements may not be as obviously concrete or empirical as they are with traditional infrastructure projects. However, the Company has identified its requirements based on considerable analysis of, for instance, trends in

of the assessed customer care models, discussed in section 4.2 below, demonstrated that there is little potential to obtain a significant cost advantage from compromising key benefits associated with the preferred delivery model.

4.2 Quantitative Evidence Supporting the Selection of Customer Care Model

103. The Project must be cost effective, when considered in light of the benefits associated with the proposed customer care model and the anticipated cost of the alternative models available to TGI. The analysis of comparative levelized cost per customer is instructive.[185] The cost effectiveness of the proposed customer care model is evidenced by the following facts:

(a) The levelized cost per customer of the Project is lower than the notional levelized cost per customer under the current arrangement with CWLP when calculated over the long term (20 years) (see section 4.2.1).[186]

(b) The cost of the current customer care model based on outdated service metrics and limited functionality provides a suitable proxy for the *minimum* levelized cost per customer of any arrangement involving an outsourced CIS, call centre and billing and back office function. Incremental functionality and improved customer service metrics above this baseline will add to the levelized cost per customer of an outsourced arrangement (see section 4.2.2).[187]

(c) TGI's efforts, described in section 5, to arrive at the most cost effective means of delivering the selected Strategic Sourcing model confirm that a third party could not provide an outsourced CIS, call centre and/or billing and back office areas with the equivalent functional and customer service benefits contemplated in the Project for less than TGI's cost (see section 4.2.3).[188]

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customer behaviour, developments in TGI's policy and regulatory context, and the evolution of the outsourcing industry.

[185] B-21, BCUC 3.9.8. For the purposes of the Amended Application, a levelized cost is the average unit cost over the project period discounted to a present value expressed $ / GJ or $ / Customer. The result is a levelized cost per unit, which allows for a comparison of two or more alternatives. This approach to calculating a levelized cost per GJ has been used in other applications for projects that have been approved by the Commission, whereby the total annual costs and annual volumes over the project period are discounted to derive a levelized cost per GJ. See B-9, BCOAPO 1.14.1.

[186] B-8, CEC 1.1.1; B-19 BCUC 2.26.5; B-21, BCUC 3.9.8, 3.9.9.

[187] B-21, BCUC 3.9.6.

[188] See generally B-4, Amended Application sections 4.1 – 4.4. See also B-21, BCUC 3.9.6.

(d) The levelized cost per customer of the proposed Project will more than likely be lower than suggested in the most current analysis, as the calculation was based on conservative assumptions regarding call centre staffing over time.[189] This will also enhance the relative cost effectiveness of the Project (see section 4.2.4).

(e) The margin of error inherent in any comparison of levelized cost per customer reduces the significance of any modest favourable or unfavourable differential (after accounting for the above factors) among the customer care model alternatives. The levelized cost per customer comparison is, for all intents and purposes, a "wash" (section 4.2.5).

Considering all of the above factors, in tandem with the numerous benefits of the Project to both TGI's customers and the Province, the Project emerges as the most cost effective solution.

4.2.1 Project Levelized Cost Per Customer Compares Favourably With Current Arrangement

104. The levelized cost per customer of the Project is lower than the notional levelized cost per customer under the current arrangement with CWLP when calculated over 20 years.[190] When taking into consideration all updates and the impact of IFRS and the proposed ROE and capital structure,[191] the levelized cost per customer of the CCE Project is $68.14, which is $3.32 lower than the levelized cost per customer of the current arrangement ($71.46) when considered over a 20 year period.[192]

105. TGI submits that the 20 year period of time that the financial analysis was based on is appropriate for the comparative analysis because it represents the approximate foreseeable duration that the proposed solution will be used as the basis for providing customer care.[193] While an evaluation of the Project over 8 or 10 years is possible,[194]

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[189] B-21, BCUC 3.9.6.
[190] B-21, BCUC 3.9.8.
[191] TGI has presented its estimates with and without IFRS to permit a review of the impact of IFRS on the Project's cost. IFRS primarily impacts the Project, and not the current arrangement, with some exceptions noted in B-21, BCUC 3.9.8 (see Note 1 of response).
[192] B-21, BCUC 3.9.8.
[193] B-8, CEC 1.1.1; B-19 BCUC 2.26.5, 2.31.2; B-21, BCUC 3.9.9.
[194] The reference to 8 years comes from the fact that TGI has assumed an eight year depreciation for the new CIS platform in its cost of service calculation. The reference to 10 years is attributable to the fact that TGI commissioned Gannett Fleming to complete a depreciation review of CIS platforms and TGI's planned new CIS to determine if a change in the standard eight year depreciation for software is warranted. TGI does not believe that

these lengths of time do not reflect the duration that the proposed strategic sourcing solution will be used as the basis for providing customer care services, even though some of the core investments will be depreciated over a much shorter period of time.[195] For example, TGI has included in the analysis periodic upgrade capital to a best in class CIS to ensure an ongoing robust system for many years to come.[196]

106. Regardless, even employing much more pessimistic assumptions about the period over which Project benefits will accrue to customers (e.g. 8 or 10 years), the levelized cost per customer of the Project and the notional levelized cost per customer of the existing model (without accounting for any improvements required to make it sustainable) still fall within a relatively narrow band. This is illustrated by the summary table from the response to BCUC IR 3.9.8, included here for ease reference:

Levelized Cost per Customer	**20 Years**	**10 years**	**8 Years**	
Levelized Cost per Customer (existing)				
Exhibit B-19, IR 2.25.4	$ 71.70	$ 68.88	$ 68.34	
Under Accounting Changes & IFRS and Proposed Equity Return	$ 71.46	$ 68.85	$ 68.32	1
Levelized Cost per Customer (proposed)- Updated for FINAL results				
Proposed	$ 66.31	$ 68.24	$ 69.44	2
Reflecting Accounting Changes & IFRS	$ 67.25	$ 68.58	$ 69.79	3
Reflecting Accounting Changes & IFRS and Proposed Equity Return	$ 68.14	$ 69.78	$ 71.07	4

Notes:

1 The accounting changes and IFRS impacts and the Proposed Equity Return do not impact the costs associated with the levelized cost per customer of the existing arrangement; however the discount rate would change, thereby impacting the levelized cost per customer

2 Question preamble incorrectly referred to Exhibit B-19, IR 2.26.3

3 Question preamble incorrectly referred to Exhibit B-19, IR 2.26.3. This information was not requested in BCUC IR 2.26.3. Based on revised November 10, 2009 results, levelized cost per customer under the accounting changes and IFRS scenario has been updated and included in the table above.

4 Discount rate is different for this scenario as it reflects changes due to the Proposed ROE and Capital Structure

107. As these updated figures make clear, when factoring in IFRS and the proposed ROE and capital structure and considered over a 20 year period, the levelized cost per customer of the proposed Project is $3.32 lower than the existing model. Over an eight year period, the CCE Project is still only $2.75 more per customer, and over a 10 year period only $0.93 more per customer. As noted in the following sections, the benefit associated with the Project is understated, as is the levelized cost of the current model. These factors either increase the cost advantage enjoyed by the Project when calculated

it is appropriate to base the period over which customers will benefit on the depreciation period for software assets, as benefits will continue to accrue after the assets are fully depreciated. See B-19, BCUC 2.31.1, 2.31.2.

195 B-19, 1.26.5.

196 B-10, BCUC 1.23.1, 1.23.2; B-19, BCUC 2.31.5.

over the long term, or reduce any potential savings associated with alternative outsourcing models suggested by an eight or ten-year levelized cost per customer calculation.

4.2.2 Incremental Service Benefits and Functionality Increases Notional Levelized Cost Per Customer of Current Model

108. The notional levelized cost per customer of the current model presented in the Amended Application represents the levelized cost per customer for a customer care model that lacks the functionality and customer service enhancements required by TGI. The Company's evidence, described in section above, is that the CWLP arrangement in its current form is not sustainable.[197] Engaging CWLP or any other BPO outsourcer to provide the required incremental functionality and greater level of customer service to prolong the life of the current model beyond 2011 will materially add to the current customer care cost. Any costs associated with modifying and customizing the existing CIS to add customer service channels or improve service metrics would be substantial and would require additional operating cost to support workarounds.[198] As a result, TGI submits that for the purposes of considering the potential costs/benefits of a customer care model involving outsourcing of a CIS, call centre or billing and back office functions - whether the arrangement was with CWLP or otherwise - the Commission can reasonably conclude that it will involve a higher levelized cost per customer than the existing arrangement.

4.2.3 Outsourcer Could Not Provide Equivalent Benefits More Cost Effectively

109. As described previously, the Project provides functional benefits not available with the current arrangement. TGI has committed to update service metrics if the Project is approved.[199] The Project also generates socio-economic benefits in the Province.[200] In order to provide similar functionality, similar service levels on a sustained basis, and the equivalent socio-economic spin-offs to the Project, a hypothetical outsourcer would have to establish and operate call centres and billing and back office functions within the Province, and adopt an SAP CIS. In that case, the hypothetical outsourcer can reasonably be expected to be subject to the same cost requirements faced by TGI. As

[197] B-21, BCUC 3.9.6.
[198] B-21, BCUC 3.9.6.
[199] B-22, BCOAPO 3.1.1.
[200] B-4, Amended Application, p. 104.

discussed in detail in section 5, TGI used competitive processes and benchmarking to ensure that TGI has selected the most cost effective means of delivering each Project component.[201] This suggests that an outsourcer could not achieve further cost reductions on the same scope of services. Moreover, any potential outsourcing arrangement in respect of one or more of the CIS, call centre or billing and back office functions would of necessity include the third party provider's expected profit margin over all costs. TGI's shareholder only earns a fair return on the much smaller portion of the Project that is in rate base.[202] For these reasons, TGI submits that it is reasonable to conclude that a third party provider could not provide the equivalent functional and customer service benefits contemplated in the Project for less than TGI's cost.

110. One significant benefit associated with the Project that cannot be achieved to the same degree through outsourcing, even if the outsourcer were to offer the equivalent functionality and service metrics as contemplated in the Project, is the added flexibility TGI will have to respond to ongoing changes in customer expectations and external developments.[203]

4.2.4 Project Levelized Cost Per Customer Will Be Reduced by Adoption of Web Based Contact Channels

111. TGI has assessed the levelized cost per customer on a conservative basis by excluding the expected operating cost reductions that result from the adoption of self-serve channels by some customers.[204] Reducing the number of FTEs in the call centre or billing and back office areas, all else being equal, reduces the levelized cost per customer of the Project.[205]

112. Labour cost represents the largest variable cost in the operation of a call centre, and is a function of the number of call centre FTEs. The levelized cost per customer of the Project has been determined assuming 208 FTEs in the call centre and 92 in billing and back office.

113. The extent of the efficiencies that will be gained through customer uptake of these communication channels will be dependent on customer adoption rates, which at this

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201 B-19, BCUC 2.2.1; see generally B-4, Amended Application, sections 4.1-4.4.
202 B-21, BCUC 3.9.7, 3.9.9, 3.9.12.
203 See generally B-4, Amended Application, sections 4.5.2.2 and 4.5.2.3.
204 B-10, BCUC 1.62.1–1.62.1.3.
205 B-10, BCUC 1.69.1, filed confidentially.

time are unknown. TGI will begin promoting these channels once the CCE Project is implemented and will monitor the adoption rates. By the end of 2012, TGI expects that it will be able to more accurately forecast takeup of these channels based on participation to that point.[206] However, at this time, TGI expects that there will be a reduction in FTEs from the assumed number. TGI included in the Amended Application a sensitivity analysis performed by The Taylor Reach Group Inc. relating to the potential impact of alternate contact centre channels on the Project. Taylor Reach concluded that TGI can expect an increase in the utilization of alternate contact channels as follows:

(a) IVR self serve to increase by 9.7% to 26.9% of total contacts;

(b) email to increase from 2.9% of current contacts to 12.6%; and

(c) chat (a technology not currently in use) to represent 9.7% of total contacts.[207]

114. The sensitivity analysis performed by Taylor Reach indicates an anticipated reduction of 39 FTEs, which would amount to an estimated cost reduction of approximately $1.95 million per year.[208]

115. The functionality required to benefit from these efficiencies is built into the base functionality of the proposed CIS solution, including the proposed call centre technologies. Any efficiencies will be reflected in future revenue requirements processes, and customers will see the benefits.[209]

116. In sum, excluding these anticipated efficiencies has resulted in a conservative benefits analysis for the Project, and including those benefits when comparing the Project to the current arrangement will reduce the levelized cost per customer of the Project. The potential savings improve the cost advantage of the Project relative to the current arrangement when calculated over the long term.

4.2.5 Judgement in Levelized Cost Per Customer Calculation

[206] B-10, BCUC 1.62.1.
[207] B-4, Appendix Q, p. 3.
[208] The sensitivity analysis is not a specific estimate based on quantitative analysis. Rather, it is a reflection of trends in call centres and in the utilities sector in particular. Actual forecast takeup rates are not available at this time. B-10, BCUC 1.62.2.
[209] B-10, BCUC 1.62.1.2, 1.62.1.3. There could potentially be a sharing of benefits from efficiency gains under a future PBR, otherwise O&M increases go to the benefit of customers.

117. There will be a margin of error in the forecast O&M that drives the levelized cost per customer calculations for both the Project and an outsourced model, as future customer care requirements cannot be predicted with certainty.[210] Given the narrow band in which the levelized cost per customer calculations fall, this margin for error suggests that the levelized cost per customer comparison among model alternatives is too close to be a true differentiating factor. The non-economic, functional and service quality benefits to customers, the Company, and the "spin off" benefits to the Province as a whole dictate that the CCE Project is in the public convenience and necessity.[211]

4.2.6 Obtaining Quotations from Outsourcers

118. TGI appropriately declined to go to market, or to incur the cost of paying outsourcing providers to develop quotations, as approaches for augmenting the alternatives analysis outlined above. There are three reasons for this.

119. First, TGI's evidence was that there are practical and legal impediments to going to market formally for quotations from third parties for BPO arrangements, or a Strategic Sourcing arrangement involving an outsourced call centre and billing and back office functions, *in circumstances where insourcing those functions is considered necessary to properly address the Company's customer care requirements*.[212] The qualitative analysis that identifies the benefits of insourcing of key customer care functions would have to be disclosed to potential RFQ respondents. Failing to do so could reasonably be expected to adversely impact TGI's ability to attract bidders in future procurement processes, and could potentially attract legal liability.[213] If it were made known that the formal RFQ was issued for costing purposes only, with the preferred option being insourcing of those functions, it would not likely generate meaningful responses.

120. Second, a key risk consideration in soliciting any form of quotation is that CWLP has maintained that obtaining quotations opens the whole CSA to renegotiation. TGI does not share this view, but nonetheless recognizes that it is a risk to customers.[214] It was unnecessary to assume that risk in light of the information already available to assess

[210] B-19, BCUC 2.28.1.
[211] See generally B-4, Amended Application, section 4.5.2.
[212] B-15, Commission Panel 1.2.3; B-19, BCUC 2.2.1.
[213] The procurement process is governed by an extensive body of law that includes a "duty of fairness" to participants in certain types of procurement processes. Breaching that duty of fairness will attract legal liability.
[214] B-15, Commission Panel 1.2.3.

the cost effectiveness of the preferred Strategic Sourcing model relative to alternative models.

121. Third, there are practical obstacles to paying third parties to prepare a quotation merely for benchmarking purposes. Based on CWLP's interpretation of the CSA (described in the previous paragraph) and the ROFR, third parties may perceive a risk that their confidential costing information will be revealed to the incumbent provider—a direct competitor. TGI reasonably concluded that this risk may well deter any outsourcer that would otherwise have been willing to accept payment to prepare a benchmarking quotation because the competitive risk of doing so outweighs the relatively small fees to be earned from preparing the costing.[215]

122. TGI submits that the evidence identified in the prior sections regarding the screening analysis and levelized cost of service comparison was sufficient and appropriate for determining the cost effectiveness of the Project.

[215] B-15, Commission Panel 1.2.3. As described in the response to Commission Panel 1.2.3, the approach of paying bidders to provide quotations was contemplated in 2002 as a means of attracting bidders upon the expiry of the initial term of the CSA in 2007. This approach will work where the party preparing the quotation sees the potential to obtain the work itself. Unlike in 2002, however, when the concern identified was that the CSA not preclude TGI from switching to another Business Process Outsourcer after the expiry of the initial five year term of the CSA, TGI's current assessment is that it is now necessary to insource key customer care functions. In the present context, TGI appropriately weighed the potential benefit of paying potential bidders to participate in a costing RFQ, against the risk of doing so.

5. DELIVERING THE PROJECT COST EFFECTIVELY

123. TGI has undertaken significant steps to ensure that the Project provides the best overall solution in terms of cost and quality to address the customer care requirements identified in the Amended Application.[216] In particular:

(a) Through competitive processes guided by a third party expert, TGI selected a market leading SAP CIS implemented by HCL Axon as the CIS solution with the lowest overall cost (software, integration and maintenance).

(b) The primary cost components associated with the call centre and billing and back office functions are facilities, technologies, and labour. Each of these components was subjected to third party review, benchmarking, and/or other forms of market analysis.

124. TGI submits that its evaluation was appropriate, rigorous, and thorough, and ensured that TGI arrived at a cost effective Strategic Sourcing solution to address the requirements TGI has identified. Although the Project has been presented in the Amended Application as consisting of individual components for the purposes of the alternatives analysis and costing, the Project is really an integrated whole and should be approved as an overall package.

5.1 CIS Solution

125. TGI employed the following criteria in selecting the overall CIS solution:

(a) Product Vendor:

(i) Functional specifications met;

(ii) Vendor profile; and

(iii) Technical architecture / strategic fit.

(b) System Integrator qualifications:

[216] B-8, CEC 1.19.2; B-10, BCUC 1.111.1.

(i) SI company profile;

(ii) Relevant experience / reference calls;

(iii) Proposed personnel;

(iv) Implementation Methodology; and

(v) Resource Availability.

(c) System Integrator Work Plan:

(i) Estimated work days;

(ii) Level of detail; and

(iii) Use of Resources / resource mix with TGI.

(d) Pricing:

(i) Total implementation costs;

(ii) Transition / support costs; and

(iii) Ongoing software maintenance costs.[217]

126. SAP software, implemented by HCL Axon and maintained internally, was the lowest overall cost solution that met TGI's strategic, technical and functional requirements.[218]

5.1.1 CIS Vendor Profile, Functional Capability and Strategic Fit

127. TGI’s multi-stage market review process for CIS software is described in detail in Appendix C of the Amended Application. TGI engaged Micon Consulting, an experienced consultant, to assist with all stages of the CIS review process.[219] At the conclusion of this process, two CIS solutions - SAP and Oracle - were identified as providing an appropriate functional and technical foundation for the Company's future

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[217] B-4, Amended Application, Appendix C, pp. 11-12.

[218] B-4, Amended Application, Appendix C, p. 12.

[219] Micon has 22 years of experience through over 100 similar engagements. B-4, Amended Application, Appendix C, p. 2. See TGI’s confidential response to B-10, BCUC 1.45.1 for the terms of reference for the work performed by Micon.

provision of customer care.[220] The final selection of the SAP CIS software was appropriately made in conjunction with the assessment of CIS integrators and ongoing maintenance costs.[221]

Step 1 – develop CIS requirements and alternative solutions

128. Micon facilitated a series of workshops in which key TGI personnel identified functional and technical requirements for the CIS software. In total, TGI identified 2783 technical and functional requirements. These requirements were then incorporated into a detailed Request For Quotations ("RFQ"), to be provided to candidate CIS software vendors.[222]

Step 2 – determine software vendor candidates

129. TGI relied on a report on CIS software products prepared by Gartner Inc. (the "Gartner Report"), an independent leading technology research and advisory company, in identifying and shortlisting potential software vendor candidates.[223] The Gartner Report identified two software vendors, SAP and Oracle, as the market leaders. Gartner characterized the remainder of the CIS software providers (including the incumbent, Peace) as "niche" vendors:

> The CIS market continues to bifurcate into two product clusters. Two vendors that are part of the large enterprise application providers vertical offering (SAP IS-U/CR&B for Utilities and Oracle Utilities CC&B) have obtained a leadership position and have broken apart from the rest, while all others are trailing behind. The niche vendors are falling behind – not primarily based on the lack of functionality or inferior product quality; rather, their position is a consequence of the lower corporate and product viability.
>
> Niche vendors tend to have small market share, and their M&S revenue from the installed base does not allow for adequate R&D investment to address emerging needs. As a result, in the long run, they will functionally fall behind and will not be able to address emerging customer care and billing market needs.[224]

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[220] B-4, Amended Application, Appendix C, pp. 10.
[221] B-4, Amended Application, Appendix C, pp. 10.
[222] B-4, Amended Application, Appendix C, p. 3. Appendix D to Exhibit B-1 is the RFQ, which includes the technical and functional requirements.
[223] This report was discussed in Appendix C to the Application at pp. 4-5 (the version discussed in the Application was dated 21 May 2008). The most current version of the report (15 June 2009) was filed as Appendix O to the Amended Application.
[224] B-4, Amended Application, Appendix O, p. 6.

130. In identifying Oracle and SAP as market leaders, Gartner emphasized factors including their functionality, sizable investment in product research and development, proven performance, client base, and an extensive partner network. With respect to SAP, Gartner noted for example:

> SAP is a large enterprise software vendor that leads in the CIS space — with more than 600 utilities worldwide using its SAP IS-U/CR&B product (as reported by SAP). Because of its traditionally strong presence among large energy companies, SAP has the largest market share, defined by the aggregated number of end customers billed on its installations in production (450 million customers, compared with 127 million from its closest competitor). It has also signed the largest number of new contracts of all analyzed vendors (41, compared with 25 from its closest competitor) since the last Gartner CIS market assessment.
>
> Users looking for an integrated horizontal ERP solution and vertical billing solution may find the SAP offering conducive to their needs.
>
> SAP has put significant R&D effort into addressing CIS product integration with an AMI platform, and creating an off-the-shelf integration framework using Web services to support utility company needs for CIS and AMI integration.
>
> SAP has a well-developed network of implementation partners and technology product vendors that help cover the "white space" in the SAP utility offering.[225]

131. All of these factors are important considerations for TGI, as TGI expects the new CIS to continue to support the Company's customer care function for some time.[226] Based on the clear indication in the Gartner Report, TGI appropriately shortlisted SAP and Oracle as the target software providers.[227]

132. Peace is identified by Gartner as one of the "niche" players in the CIS market.[228] TGI submits that Peace did not represent a suitable CIS alternative for TGI and has been appropriately excluded from further consideration. There are several reasons for this, including:

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[225] B-4, Amended Application, Appendix O, p. 16. See p. 15 for Gartner's discussion of the favourable attributes of Oracle.
[226] B-8, CEC 1.1.1.
[227] B-4, Amended Application, Appendix C, p. 6.
[228] B-4, Amended Application, Appendix O, p. 4. Hansen's niche role is evidenced not only by its customer base, but also by the amount it invests on an ongoing basis, relative to the other major players SAP and Oracle.

(a) Hansen's strategic focus appears to be on a custom built product strategy emphasizing customization of the base product.[229] Commercial off the shelf products, such as the market leading SAP and Oracle products, provide TGI with several advantages over custom built solutions.[230] Developers of leading software packages have invested heavily in both system functionality and extensive capabilities for users to easily tailor the package to meet their requirements without compromising the integrity of the delivered solution. Functionality can exist in the package but does not actually have to be "turned on", and can be utilized at a later date if necessary. The only opportunity to increase the functionality of custom built software is for the utility to build the improvements itself. Companies employing a packaged solution are more readily able to find resources familiar with the software for maintenance and support.[231] Custom build products can be more cumbersome to maintain because the application is unique to the company.[232] TGI's preference for a commercial off the shelf product is consistent with the approach being taken by most utilities.[233]

(b) SAP and Oracle, unlike Hansen, have established formal partnership models. TGI sees a significant benefit in having greater flexibility to obtain support services, and in the fact that the partner model ensures a market competitive environment for future services.[234]

(c) TGI had access to insufficient information from Hansen to allow the Company to assess the Peace product against functional and technical requirements and permit a meaningful comparison of Peace to SAP and Oracle.[235] The Commission can infer, however, that Peace, unlike SAP and Oracle, did not meet

[229] B-4, Amended Application, p. 66.
[230] See B-4, Amended Application, pp. 58 – 60 for a detailed description of the distinction between the two options.
[231] B-4, Amended Application, p. 60.
[232] B-4, Amended Application, p. 59. For instance, system maintenance documentation can be a significant effort as all documentation must be manually maintained.
[233] B-4, Amended Application, p. 60.
[234] B-4, Amended Application, pp. 65-66.
[235] B-4, Amended Application, p. 66. A further concern was TGI's belief that supporting the Peace application locally is and will continue to be challenging: B-10, BCUC 1.3.1.1. TGI believes that CWLP has been challenged in being able to attract and retain knowledgeable resources to sustain the application. The limited use of the application by North American utilities is a concern as the available and knowledgeable workforce to support the system is declining. The same issues do not exist with SAP, which has a broad partner network and a significant and growing client base in North America.

the functional and technical requirements identified in the RFQ.[236] Based on the general and incomplete information provided by Hansen, the cost associated with acquiring additional functionality remains a moving target. TGI does not expect that there will be much advantage gained from enhancements made by other Peace clients.[237]

133. TGI's concerns were, in large measure, confirmed by the concerns expressed by Gartner about Hansen's Peace software in its report:

> Based on end-user feedback, utilities considering Peace deployments should scrutinize the product's online performance and usability.
>
> Hansen is actively seeking customer participation in its next product release (aka PeaceX), which prompted some customers' concern that PeaceX will be more akin to a "custom-built solution" fit to a particular customer's needs, rather than a COTS product.
>
> The previous owner's (First Data Utilities) focus on service offerings and revenue management resulted in inadequate R&D investments in integration with adjacent products and services, such as service order management, outage management and meter data management, which forced the product to fall behind leading competitors in those areas.
>
> Several Peace clients have informed Gartner that they are in the process of replacing or considering replacement of Peace software. Some of them started considering replacement before the Hansen acquisition.[238]

134. In light of TGI's reasonable concerns about adopting the Peace software, which were largely echoed by Gartner, there is no compelling reason to prefer the "niche" player Peace to the market leading SAP and Oracle software.

<u>Step 3 – conduct a detailed product assessment (the RFQ process and presentations)</u>

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[236] This adverse inference can be drawn, as a matter of law, not only from the general and incomplete nature of Hansen's response to TGI's original request for information, but also from Hansen's refusal on two occasions to produce the documents in this proceeding even after counsel for TGI had specifically requested that it be produced. C6-7. Letter from Hansen to counsel for TGI dated November 13, 2009.

[237] B-10, BCUC 1.4.1.

[238] B-4, Amended Application, Appendix O, pp. 13-14. Gartner also identified certain strengths related to the Peace product. The Company's choice of CIS is not affected by the strengths mentioned in the report regarding Peace, but the Company shares some of the concerns identified by Gartner: see B-10, BCUC 1.36.1.

135. TGI issued a detailed RFQ to both SAP and Oracle that required the two proponents to review and comment on their respective product's ability to meet TGI's extensive list of CIS functional and technical requirements.[239] In addition, TGI required proponents to perform an eight day detailed product demonstration.[240] The RFQ and vendor demonstrations were appropriate processes for ensuring that the shortlisted CIS vendors could address TGI's functional and technical requirements. Ultimately, TGI concluded that both market leading products met the functional and technical requirements. Neither could demonstrate an overwhelming advantage over the other.[241]

Step 4 - Combined Assessment

136. TGI selected SAP as the preferred CIS software only after assessing the CIS integrators, and considering the overall cost of the combined package of software, integrator, and the cost of ongoing maintenance.[242] TGI's assessment of the overall CIS solution is discussed in section 5.1.5 below. This approach ensured that TGI identified and selected the optimal package for customers and the Company.

5.1.2 System Integrator Qualifications

137. TGI, with the assistance of Micon, undertook a rigorous multi-step process to evaluate system integrators.[243] TGI also considered system integrators in tandem with the choice of CIS software, recognizing that the integration cost represents a material component of the total cost of a CIS solution.

138. The steps in the integrator selection process were as follows:

(a) TGI first identified system integrator candidates based on the recommendation of SAP and Oracle.[244]

(b) TGI issued a Request For Proposals ("RFP") to these candidates seeking information regarding the candidate's ability to meet TGI's functional and

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239 B-4, Amended Application, Appendix C, p. 6.
240 B-4, Amended Application, Appendix C, p. 7.
241 B-4, Amended Application, Appendix C, p. 10. See B-10, BCUC 1.40.1, 1.41.1, 1.41.2, 1.42.1., 1.42.2., and 1.60.1–1.60.3 for a further discussion of the comparison of the two products.
242 B-4, Amended Application, Appendix C, pp. 10-12.
243 B-4, Amended Application, Appendix C, pp. 10-12.
244 B-4, Amended Application, Appendix C, p. 10.

technical requirements, along with resourcing, time and cost estimates.[245] IBM, Accenture, Cap Gemini, and HCL Axon submitted bids for integration of the SAP product. Blue Heron submitted a bid for integration of the Oracle product. Deloitte and Wipro were also asked to submit bids, but declined to participate.[246]

(c) Following the RFP process, TGI conducted conference call debriefs with each short listed system integrator to clarify requirements, response details, and to highlight areas for specific focus in their responses to the RFQ that would follow.[247]

(d) TGI issued an RFQ to shortlisted candidates seeking more detailed information. The shortlisted candidates were Blue Heron proposing an Oracle implementation and HCL Axon proposing a SAP implementation.[248]

(e) TGI required HCL Axon and Blue Heron to make oral presentations regarding their respective quotations.[249]

139. As discussed in section 5.1.5, HCL Axon is an experienced integrator with a solid track record. The SAP software solution with HCL Axon as the system integrator represented the lowest overall cost solution that met functional and technical requirements.

5.1.3 CIS Maintenance and Support

140. TGI determined that CIS maintenance for the new CIS would be best carried out by internal TGI staff, rather than outsourcing maintenance. TGI concluded, based on its experience with outsourcing application support for over 20 years, that using internal staff allows TGI to maintain the appropriate balance of: (i) the number of people required to meet support level expectations of the business; (ii) control over the cost of that support; (iii) control over the skills of the support staff and the working environment; (iv) flexibility to respond to changes required in the support model in a cost effective manner; and (v) the ability to leverage existing resources to support other initiatives without compromising day to day support.[250]

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245 B-4, Amended Application, Appendix C, p. 10.
246 B-4, Amended Application, Appendix C, pp. 10-11.
247 B-4, Amended Application, Appendix C, p. 11.
248 B-4, Amended Application, Appendix C, p. 11.
249 B-4, Amended Application, Appendix C, p. 11.
250 B-4, Amended Application, p. 74.

141. There are savings associated with maintaining a SAP solution that are not present with Oracle, simply by virtue of the fact that TGI already operates a number of SAP-based software systems.[251] TGI's assessment of these potential benefits are discussed in section 5.1.5 below.

5.1.4 Combined Assessment: CIS Solution With Lowest Overall Cost

142. As outlined above, the procurement processes for software and integrators, and TGI's analysis regarding the benefits of using TGI staff to maintain the CIS software, yielded two potential overall CIS solutions: (i) SAP implemented by HCL Axon and maintained by TGI; and, (ii) Oracle implemented by Blue Heron[252] and maintained by TGI. In both cases, the software met TGI's functional and technical screening criteria and the integrators were capable. The final step in TGI's selection process involved considering the overall cost of software, integration and ongoing maintenance and support.[253] As discussed in section 5.1.5 below, SAP represents the lowest total cost CIS solution for customers.

5.1.5 SAP is the Best Overall Solution for TGI

143. SAP CIS software implemented by HCL Axon as system integrator and maintained by TGI staff is the best overall CIS solution for TGI for the following reasons:

(a) SAP is an industry recognized leader in the CIS space with over 600 utility installations worldwide representing a 66% market share of the global CIS market and 41 new sales in the last year.[254]

(b) SAP has a demonstrated record of significant investment in R&D to stay abreast of the evolving needs of utility customers.[255] SAP, as an industry leader, supports a broad range of similar clients and will continue to invest in research and development for the benefit of all clients, including TGI.[256]

(c) The SAP product met all of TGI’s functional and technical requirements.[257]

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[251] B-4, Amended Application, p. 75; B-10, BCUC 1.60.1, 1.60.2.
[252] Blue Heron was the only integrator to submit a quote for Oracle implementation.
[253] B-4, Amended Application, Appendix C, pp. 11-12.
[254] B-4, Amended Application, p. 67.
[255] B-4, Amended Application, p. 67.
[256] B-10, BCUC 1.4.1.
[257] B-4, Amended Application, p. 67.

(d) The SAP product has the capability to support the future functionality identified by TGI for no additional cost of the software.[258]

(e) The SAP environment is well understood at TGI with ten plus years of experience with various SAP products, SAP the company, and its support ecosystem.[259]

(f) Since TGI had already implemented an extensive SAP application footprint, the SAP CIS best meets TGI's requirements to support end-to-end business process integration.[260]

(g) The use of an SAP product allows TGI to leverage its existing SAP support infrastructure of servers and support personnel. By leveraging the existing SAP platform, TGI estimates the ongoing O&M costs to be approximately 25% lower for the SAP solution. TGI also estimates the cost of recurring capital to be approximately 50% lower for the SAP solution.[261]

(h) Because of the integrated architecture of SAP and TGI's current footprint, no less than fourteen interfaces or integration points with external systems become unnecessary, greatly simplifying the overall architecture and support effort in this area.[262]

(i) The SAP product allows for the elimination of reconciling meter data between SAP and a separate customer system.[263]

(j) The SAP product cost is market competitive, and total cost of ownership of an SAP CIS solution with HCL Axon as the system integrator is lower than an Oracle solution for TGI. Over a 20 year period, on a levelized cost basis, TGI estimates the total cost of ownership of the SAP / HCL Axon solution would result in an approximately $0.89 lower cost of service per customer per year compared

[258] B-4, Amended Application, p. 67.
[259] B-4, Amended Application, pp. 67 and 75.
[260] B-4, Amended Application, pp. 67 and 75.
[261] B-4, Amended Application, pp. 67 and 75. See also B-8, CEC 1.5.7, 1.8.1; B-10, BCUC 1.60.2. The ability to leverage these investments would not be possible with an Oracle solution, meaning that the Oracle solution, if chosen, would result in higher ongoing maintenance costs and a higher total cost of ownership: B-10, BCUC 1.41.1.
[262] B-4, Amended Application, pp. 67 and 75.
[263] B-4, Amended Application, pp. 67 and 75.

to an Oracle / Blue Heron solution.[264] The overall cost to maintain an Oracle solution would be greater than the cost for the SAP product, because TGI would not be able to leverage any of its existing infrastructure or support organization based on the SAP solution already installed at TGI.[265]

(k) HCL Axon has a very strong track record of implementing projects on time and on budget with requested functionality. In the last three years, HCL Axon has completed 10 CIS implementations, all of which have come in on budget.[266]

(l) In terms of TGI's overall solution criteria (Appendix C, p. 12), the HCL Axon / SAP solution was viewed to be stronger than the Blue Heron / Oracle solution as it had a closer technical architecture / strategic fit, was stronger in all of the SI qualification areas, and its work plan provided a significantly greater level of detail.[267]

5.1.6 Summary Regarding CIS Solution

144. In summary, TGI submits that the process described above resulted in TGI selecting the optimal combination of market leading CIS software, qualified system integrator, and maintenance solution, that meets all of TGI's functional and technical requirements for the lowest overall cost.

5.2 Call Centre

145. TGI ensured that the proposed call centre function represented the optimum combination of staffing, facilities, and technology by undertaking a variety of market studies, benchmarking reports, and competitive procurement processes.[268] This section outlines the evidence supporting the following facts:

(a) TGI appropriately assessed staffing requirements and negotiated a reasonable and fair collective agreement with COPE for call centre and billing and back office staff;

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[264] B-4, Amended Application, p. 67; B-10, BCUC 1.60.1.
[265] B-4, Amended Application, p. 63; B-10, BCUC 1.41.1. For further details regarding the evaluation of the Oracle product vs. the SAP product, see B-10, BCUC 1.38.1, 1.38.2, 1.39.1, 1.39.2, 1.40.1.
[266] B-10, BCUC 1.24.1.
[267] B-10, BCUC 1.60.3. See also the response to BCUC 1.29.1 for a further discussion of SAP.
[268] B-4, Amended Application, section 4.3.

(b) TGI identified the preferred facilities for housing the call centres at a favourable cost; and

(c) TGI adopted the lowest cost call centre technology meeting the Company's requirements.

5.2.1 Benchmarked Staffing Requirements and Market Competitive Collective Agreement

146. Staffing costs represent the most significant ongoing cost associated with operating a call centre. TGI submits that the modeling of the labour requirements for the call centre and the collective agreement with COPE provide the Commission and customers with the necessary assurance that the call centre requirements and costs have been appropriately determined, and the costs are reasonable.

147. TGI relied on the Taylor Reach Group, an independent call centre consulting firm, to determine the staffing requirement for the call centres. Taylor Research Group determined the labour requirements for the call centre to be approximately 200 full time equivalent (FTE) employees.[269]

148. TGI has negotiated a flexible and market competitive collective agreement with COPE which will support the staffing needs of the insourced call centre while providing cost certainty in the future.[270] The evidence confirming that the collective agreement is market competitive was provided in the confidential response to BCUC IR 1.81.1.

5.2.2 Cost Effective Facilities Identified With Assistance of Experts

[269] B-4, Amended Application, pp. 79-80 and Appendix P. See also TGI's confidential response to BCUC 1.69.1, for the Company's analysis regarding the financial impact should the number of FTE's be increased or decreased.
[270] B-4, Amended Application, pp. 80-81.

149. Facilities costs represent a second significant component of the call centre- related Project costs. TGI has, with the assistance of experts, identified alternative locations for the call centres, and assessed different ownership models for the facilities. TGI selected cost effective facilities options, located in areas that will allow TGI to attract and retain skilled labour.

150. TGI engaged Taylor Reach Group and CB Richard Ellis to conduct a thorough analysis of the market options available throughout Western Canada for housing call centres.[271] Within the potential sites identified, TGI considered and assessed all of the potential acquisition options, including:

(a) building new facilities on existing TGI owned property;

(b) finding a turnkey solution;

(c) buying suitable land and / or buildings to be configured for call centre use; and

(d) entering into long term lease arrangements for space in existing facilities.[272]

151. On the basis of the market research performed by its consultants, TGI determined that the optimal location for the primary call centre—the one that will also house the billing and back office function—is the Lower Mainland, as this area is able meet the specific staffing requirements of this facility.[273] Due to the very competitive nature of the real estate market in the Lower Mainland, a lease option for this call centre was determined to be the most cost effective option.[274] For the second call centre, TGI located a building for purchase in the B.C. Interior that, although not fitted to be a call centre, would provide an appropriate and cost effective "shell" for the facility.[275] Customers will benefit from the selection of the least cost facility option in each case.

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[271] B-4, Amended Application, section 4.3.2.2.2, and Appendices P, Q, R and S.
[272] B-4, Amended Application, p. 83.
[273] TGI describes the key attributes of the Lower Mainland that support this determination in the response to BCUC 1.100.1.
[274] B-4, Amended Application, p. 84. As discussed in B-10, BCUC 1.95.1, TGI respectfully submits that the fact that TGI selected the least cost facilities solution renders irrelevant the issue raised in some Staff IRs about the allocation of potential proceeds or losses from a sale of the call centre facility at some point in the future.
[275] B-4, Amended Application, p. 84.

152. Dividing the call centre work force between two call centres is an important part of the Project, and it is not in the interests of customers to seek to reduce facilities costs by operating a single call centre. There are two reasons for this.

(a) The provision of sustainable and uninterruptible customer service requires two call centres sufficiently far apart to reduce the likelihood that a specific event or disaster will impact both sites at the same time.[276] Operating two call centres accords with call centre industry standard practice.[277]

(b) TGI's evidence is that there would be no material savings in facilities costs by operating only one call centre. The second call centre (i.e. the interior call centre) will be fully operational in supporting customer calls.[278] The two call centres will operate in tandem, with calls being routed to the next available agent regardless of location. While consolidating the call centres would save the cost of the land and the building in Prince George, the Lower Mainland call centre would have to be larger to house the same overall staff levels. TGI would require additional facility space and infrastructure, resulting in higher capital costs with respect to that facility.[279]

5.2.3 TGI Adopted Lowest Cost Call Centre Technology

153. TGI issued a competitive RFQ to technology providers in order to ensure that TGI will have a call centre technology suite that will meet its needs and is cost effective.[280] TGI received four responses. From those responses, TGI short listed two for further participation in a vendor conference in which they were given the opportunity to demonstrate the functionality and usability of their product suites to TGI. As a result of this process, TGI selected Aspect Software Inc.'s Unified IP call centre suite. It

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[276] B-10, BCUC 1.75.1.
[277] TGI evidence was that it is not feasible to manage emergency calls through utilizing, for example, a district office as a "disaster recovery" alternative site, as emergency response requires fully trained staff who are required to handle emergency calls as a regular part of the their work responsibility in order to ensure their skills are maintained. B-10, BCUC 1.99.2. See also *Utilities Commission Act*, R.S.B.C 1996, c. 473, s. 38.
[278] TGI's description of the second call centre as "redundant" (see p. 77 of the Amended Application) intended to convey that in the event of a disaster, and assuming one of the call centres is not operational, all calls will automatically reroute to the active centre. As each call centre only fields a portion of the total calls received by TGI, there is no unused (or redundant) capacity in one of the call centres.
[279] B-10, BCUC 1.75.2.
[280] B-4, Amended Application, pp. 85-86.

represented the best combination of functional fit and implementation approach. It was also the lowest cost alternative that would meet all of TGI's requirements.[281]

5.2.4 Summary Regarding Call Centre

154. TGI undertook prudent and rigorous procurement processes and / or competitive benchmarking for each of the technology, labour and facilities elements making up the call centre.[282] The Commission should conclude that the call centre solution proposed in the Amended Application is cost effective and in the best interests of TGI's customers.

5.3 Billing and Back Office

155. The evidence supports TGI's determination to co-locate the billing and back office function with the Lower Mainland call centre, and supports the reasonableness of the estimated staffing requirement.

156. Due to the integrated nature of the new CIS application across all Company operations, the business processes related to billing and back office operations are best supported through direct relationships with TGI's operations functions and the call centre. Work location proximity that facilitates ongoing interaction between departments will enhance TGI's ability to both address issues and identify and implement opportunities for improvement or increased efficiencies.[283]

157. TGI estimates a staffing requirement of approximately 90 FTEs.[284] The estimate was appropriately verified against (i) past experience in supporting the billing and back office functions prior to outsourcing and (ii) what Terasen Gas believes is the current staffing requirement to perform the functions today in an outsourced model. The uniqueness of the utility-specific billing and back office processes, as well as the significant impact the CIS technology has on determining business processes, precludes the use of forecasting models akin to those used for call centre staffing.[285]

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[281] B-4, Amended Application, p. 86.
[282] B-10, BCUC 1.96.1, 1.96.2.
[283] B-4, Amended Application, p. 90; B-8, CEC 1.13.3.
[284] B-4, Amended Application, p. 89.
[285] B-10, BCUC 1.100.2. Until 2002 Terasen Gas performed the billing and back office functions in the Lower Mainland for the interior customer base, approximately 270,000 customers, with 28 staff. Extrapolating this to the current customer base of 930,000 customers provided an initial staffing estimate of 96.

158. In summary, TGI submits that the billing and back office operations proposal in the Application is in the best interests of customers.

5.4 Project is an Integrated Whole

159. In considering the alternatives analysis described in section 4.1 supporting TGI's selection of its Strategic Sourcing model, and the Project cost analysis in section 5, it is important to keep sight of the fact that the Project is an integrated whole. It should be assessed as a package. The costs associated with the CIS component of the solution are intimately connected to the decisions around the call centre and billing and back office locations, and the Project start and finish dates.

160. There were a number of information requests, for instance, directed at the feasibility of insourcing the CIS, while outsourcing the call centre and/or billing and back office functions. As discussed in the preceding sections, this option is technically feasible, albeit it does not provide the equivalent benefits to the Project. These alternatives, although feasible, would also not be capable of being delivered on the same timeline as contemplated for the Project. TGI's evidence is that, were the Commission to approve only a portion of the Project at this time (e.g. CIS only) TGI would essentially have to reconsider its customer care solution in its entirety.[286] TGI would, for instance, have to reconsider and evaluate whether the benefits inherent in an improved CIS would be worth the investment, given that the other two key customer facing processes would remain outsourced, with the consequent disadvantages and service shortcomings that could be expected to result from continued outsourcing. Put another way, the functional and technical benefits of the CIS are intimately connected to the call centre and back office functions, insofar as shortcomings with the latter might negate benefits obtained by the former.

161. A decision by the Commission approving only a portion of the Project at this time would give rise to a number of issues, including:

(a) If the particulars of the call centre and billing and back office function are unknown, there is no way to ensure accurate costs around individual resources and expenses to enable the CIS solution.[287]

[286] B-19, BCUC 2.4.6.
[287] B-19, BCUC 2.4.6.

(b) The delay in pursuing a modified customer care project will have implications for software costs.[288]

(c) Without the ability to definitively state a start and completion date, companies like HCL Axon cannot commit specific individuals. The absence of that commitment changes the factors that TGI has to consider when choosing a system integrator in the first place, which in turn can have an impact on cost certainty.[289]

162. The Project represents the best overall combination of functionality, enhanced customer service and cost, and should be approved in its totality at this time.

5.5 Conclusion on Delivering the Project Cost Effectively

163. TGI submits that its evaluation was appropriate, rigorous, and thorough, and demonstrates that TGI has arrived at a cost effective Strategic Sourcing solution to address the identified need. The Project is an integrated whole, and should be assessed on that basis.

[288] See response to B-4, BCUC 1.106.6, filed confidentially.
[289] B-19, BCUC 2.4.6.

6. PROJECT COST AND COST OF SERVICE IMPACT

164. In this section, TGI discusses the Project cost estimate and the cost of service impact. TGI submits that it has accounted for all items appropriately in the Project cost estimate, and that the cost estimate set out in the Amended Application and updated through responses to information requests provides the requisite degree of certainty for the issuance of a CPCN.

6.1 Implementation Capital and Deferred O&M Costs

165. TGI's estimate of the capital costs and total deferred O&M costs for the CCE Project is well developed and set out in detail in the Application. TGI's updated estimate is that the total CCE Project implementation costs will be $115.5 million, including AFUDC, comprised of the following three items:

(a) capital costs, including AFUDC, in the amount of $68.4 million;

(b) deferred O&M costs, including AFUDC, to be incurred prior to the go-live date of the Project on January 1, 2012, in the amount of $40.4 million; and

(c) capital lease costs of $6.7 million.[290]

166. The capital costs relate to the implementation of the new SAP CIS and the implementation of the new in-house service delivery organization.[291] The deferred O&M costs relate to the labour costs of the new customer service representatives, billing and back office operations personnel, and the new operating costs of the two new call centres that need to be ready for use starting July 2011 to train the new employees.[292] Given that service delivery under the new CCE Project will not commence until January 1, 2012, the cost of these resources needs to be deferred for the period leading up to January 1, 2012.[293]

[290] B-21, BCUC 3.9.11, Attachment 9.11a.
[291] B-4, Amended Application, p. 111.
[292] B-4, Amended Application, p. 111.
[293] B-4, Amended Application, p. 111.

167. Details of how TGI prepared its cost estimate for the CCE Project are provided in the response to BCUC IR 1.135.1.2. A detailed breakdown of the capital and deferred O&M costs of the CCE Project is provided in Appendix K of the Amended Application.[294]

168. In order to facilitate the Commission's review of the Project costs, TGI has prepared an annotated version of Schedule 1 from Appendix K (consolidated view of the Project cost). It provides cross references to responses to information requests that provide additional explanation of particular cost items. The annotated Schedule 1 is attached to these Submissions.

6.2 Ongoing Annual O&M Costs

169. TGI estimates that total O&M costs for the new customer care function resulting from the CCE Project will be approximately $46 million in 2012, combined for all three Terasen utilities. These costs are expected to increase primarily at the rate of inflation after 2012.[295]

170. TGI submits that it has presented a realistic estimate of the effort and cost to support the proposed CCE Project going forward from the go-live date. It is not possible for TGI to identify and mitigate all risk that impacts this estimate; however, as in all its operations, TGI will focus on prudent cost management related to the ongoing annual operating and maintenance costs following Project implementation. The O&M costs commencing in 2012 will be scrutinized in future revenue requirements proceedings.[296] O&M savings will flow to customers in the absence of any PBR.[297]

171. The estimates provided in the evidence represent a reasonable basis upon which to determine the Application and approve the Project.

6.3 Cost of Service and Rate Impact

172. In 2012, the implementation cost combined with the anticipated operating cost results in an annual cost of service of $64.81 per customer, compared to a notional cost of $65.53 per customer for the annual cost of service of the existing arrangement. In 2013, when the full capital cost of the project begins to depreciate, the annual cost per customer

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[294] See also B-21, BCUC 3.9.11, Attachment 9.11.
[295] B-4, Amended Application, p. 112; B-21, BCUC 3.9.11, Attachment 9.11a.
[296] B-8, CEC 1.11.1.
[297] B-10, BCUC 1.62.1.3.

increases to $74.85, and thereafter decreases each year. By 2017 the annual cost per customer will be below that of the notional cost of the current arrangement.[298] On a levelized basis over the 20 year analysis period starting in 2012, the annual cost per customer of the new customer care function, considering IFRS and the proposed return on equity, is estimated to be $68.14, compared with the notional $71.46 for the levelized cost per customer of the current arrangement.[299] TGI addressed in section 4.2 above the comparative evaluation of levelized cost per customer as between the current model and the Project. In light of the conservative assumptions used to perform these calculations, the Project is likely to compare even more favourably than the above figures would suggest.

173. From a rate impact perspective, the deferral accounts proposed in this Application result in there being no revenue requirement impact in 2010 or 2011.[300] The average burner tip change for a typical residential customer on the mainland of B.C. for the first eight years after the full implementation of the Project is complete would result in an average increase of approximately 0.06%, or approximately $0.64 annually. After the initial 8 years, the average burner tip change would be a decrease of approximately 0.85%, or approximately ($9.00) annually.[301] (All figures include the impact of IFRS and the proposed ROE and capital structure.) As customers could expect to have to invest to sustain the current model beyond 2011, the rate increases associated with the Project are not representative of an incremental amount relative to what customers would experience without the Project.

6.3.1 Rate Impact Mitigation

174. Although the rate impact associated with the CCE Project represents a relatively modest burner tip increase for most customers, TGI identified two options for moderating the rate increase, should the Commission consider it appropriate to do so.

175. The first option is to increase the depreciation period for the new CIS. TGI has assumed an eight year depreciation for the new CIS platform in its cost of service calculation. TGI commissioned Gannett Fleming to complete a depreciation review of CIS platforms and TGI's planned new CIS to determine if a change in the standard eight year depreciation

[298] B-21, BCUC 3.9.11, Attachment 9.11a.
[299] B-21, BCUC 3.9.8.
[300] B-4, Amended Application, p. 111.
[301] B-4, Amended Application, p. 113, and updated by B-21, BCUC 3.9.11, Attachment 9.11a.

for software is warranted.[302] Gannett Fleming recommended considering increasing the depreciation for the new CIS platform to ten years. TGI submits that Gannett Fleming's recommendation is a reasonable option to smooth the rate impact of the CCE Project.

176. The second option for moderating rate impact is the use of a deferral mechanism.[303]

177. TGI submits that the cost of service per customer for the CCE Project, and the corresponding rate impact, is commensurate with the significant benefits that customers will obtain from the CCE Project.

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[302] B-4, Amended Application, Appendix Y.
[303] B-4, Amended Application, p. 119.

7. PROJECT RISK / MITIGATION

178. TGI has identified key areas of focus with respect to each Project component and has put in place appropriate steps to mitigate potential risks.[304] A detailed list of risks and associated mitigation measures is included in section 2.5 of the Amended Application.[305] The primary risks are related to implementation and cost. In this regard, the evidence demonstrates the following facts:

(a) TGI has appropriate management and processes in place to address to ensure that the project is managed effectively;

(b) TGI has appropriate back up plans in place in the unlikely event that the Project go-live date is delayed;

(c) TGI's Project cost estimates are based to a significant extent on fixed price arrangements;

(d) TGI has also provided for appropriate contingencies, which TGI will manage judiciously according to established protocols.[306]

TGI has not identified any Project risks apart from those addressed in the Amended Application.[307]

7.1 Overall Approach to Risk Management

179. TGI's overarching risk mitigation strategy is to use an experienced team to implement the Project, with a proven methodology and a robust planning exercise. A key component of the risk mitigation methodology is the development of a detailed risk register. This document is reviewed by all of the Project leads of the various streams of work to ensure that there are no gaps in potential Project risks, regardless of how small, associated with their part of the Project and that detailed mitigation strategies are reviewed, discussed and documented. The risk register will be completed by May 1, 2010, and maintained throughout the life of the Project.[308]

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[304] B-4, Amended Application, section 2.5.
[305] B-4, Amended Application, pp. 29-33.
[306] B-13, BCOAPO 2.5.1.
[307] B-10, BCUC 1.104.1.
[308] B-4, Amended Application, pp. 29-30.

7.2 Implementation and Cost Risks

180. TGI has expressed its conviction that the Project will go-live on January 1, 2012, as planned. However, to address the potential that the implementation of the CCE Project is delayed beyond the January 1, 2012, go-live date, TGI has arranged that CWLP will continue to provide customer care services pending the final implementation of the Project.[309]

181. A material portion of the Project cost risk has been addressed through the use of fixed price arrangements. Currently, the percentage of fixed price arrangements is 35.1%, leaving approximately 64.9% exposed to variable cost arrangements, including AFUDC on the entire Project.[310]

182. The following steps will add cost certainty to the Project as they are completed:

(a) Detailed evaluation of the data quality of the existing legacy Peace system (forecasted to be completed in February 2010);[311]

(b) Negotiation of the leasing arrangements of the Lower Mainland call centre / back office facilities;[312] and

(c) Once detailed design or "blueprint" has been completed (currently estimated to be Oct, 2010) the Project scope will be finalized at a level of detail that will bring more cost certainty.

183. TGI has undertaken a number of successful IT system implementation projects in the past seven years, which gives TGI confidence in its ability to execute on a project of this nature.[313]

184. Contingencies are an appropriate means of address uncertainties due to a lack of detailed information at the time of the estimate creation or as a safeguard against unforeseen events. TGI has budgeted appropriate contingency amounts for each of the CCE Project components:

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309 B-10, BCUC 1.44.1.
310 See B-8, CEC 1.18.1. These percentages have been updated to reflect the most recent project estimates.
311 B-8, CEC 1.18.3.
312 B-8, CEC 1.18.3.
313 B-10, BCUC 1.47.1 – 1.47.3.

CIS software acquisition – $270,000

CIS implementation - $5,829,000

Call centre implementation - $4,734,000

Billing operations implementation - $773,000

Total - $11,606,000.[314]

TGI's evidence is that it intends to manage its contingency judiciously. Appropriate controls are in place. The use of contingency funds must be justified and approved by the Executive Steering Committee.[315]

7.3 Summary

185. The evidence establishes that TGI intends to take appropriate steps to mitigate the Project risk.[316]

[314] B-9, BCOAPO 1.5.2.
[315] B-10, BCUC 1.135.1.2; B-19, BCOAPO 2.5.1.
[316] B-10, BCUC 1.104.1.

8. CONCLUSION

186. Based on the evidence in this proceeding, TGI respectfully submits that the CCE Project is in the public convenience and necessity. TGI respectfully requests that the relief set out in the Amended Application[317] be granted by February 12, 2010 to permit the Project to proceed on the planned timetable.[318]

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

[Original signed by]

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Matthew T. Ghikas

[Original signed by]

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David H. Curtis

Counsel for Terasen Gas Inc.

[317] B-4, Amended Application, p. 1 and Appendix Z, Draft Order.
[318] B-10, BCUC 1.106.10.

Customer Care Enhancement Project - Implementation Cost Summary & IR Cross Reference

CCE Project CPCN

	2009	2010	2011	2012	Total Nov 27	Lines	IR Reference	Description
A. CIS Implementation								
1. IT Resources - Internal Labour	-	2,241,214	3,444,134	645,809	6,331,157	11 to 57	BCUC IR1.126.1	Confirms that all internal labour needed for the CIS implementation is included in this section.
							BCUC IR1.43.1	Confirms that the internal labour contingency is found on line 56.
							BCUC CF IR1.126.1.1	Describes the need for the internal labour contingency.
2. IT Resources - Consulting	1,345,773	12,947,381	16,439,022	3,537,342	34,269,518	60 to 91	BCUC IR1.126.2	Confirms that the consulting needed for the CIS implementation is included in this section, as well lines 96-103 and 146-153.
							BCUC IR1.22.1	Confirms that the cost to implement the SAP CRM model are included.
							BCUC IR1.51.2	Describes the need for post implementation transition activities (distinct from CWLP transition costs).
							BCUC IR1.45.2 (Confidential)	Confirms the cost of the work completed by Micon Consulting.
							BCUC IR1.43.1	Confirms that the consulting contingency is found on line 90.
							BCUC IR1.126.2.1 (Confidential)	Describes the need for the consulting contingency.
							BCUC IR3.3.1	Describes the services to be provided on lines 66, 70, 71, and 72.
							BCUC IR3.3.3	Describes the services to be provided on lines 66, 70, 71, and 72.
							BCUC IR3.4.2	Describes the services included on lines 76 and 150 and how they were calculated.
							BCUC IR3.5.1	Describes the US exchange exposure and how it will be managed.
3. IT Resources - Consulting	-	1,194,850	4,949,969	1,231,696	7,376,516	94 to 103	BCUC IR1.126.2	Confirms that the consulting needed for the CIS implementation is included in this section, as well lines 62-90 and 146-153.
							BCUC IR1.51.2	Describes the need for post implementation transition activities (distinct from CWLP transition costs).
							BCUC IR1.7.5.1	Confirms the CWLP transition cost amount included in this section.
							BCUC IR1.43.1	Confirms that the consulting contingency is found on line 102.
							BCUC IR3.5.1	Describes the US exchange exposure and how it will be managed.
4. IT Resources - Hardware	-	731,000	265,000	-	996,000	106 to 116	BCUC IR1.43.1	Confirms that the hardware contingency is found on line 115.
							BCUC IR3.8.1	Describes the potential impact on costs arising from the introduction of the HST in 2010.
5. IT Resources - Software	-	4,841,280	341,736	-	5,183,016	119 to 141	BCUC IR1.22.1	Confirms that the cost to acquire the SAP CRM model are included.
							BCUC IR1.130.1	Confirms that the cost of the initial license fee for SAP is located on lines 122 to 127 and 132.
							BCUC IR2.22.1 (Confidential)	Reconciles SAP's RFQ license fee amounts to the detailed Project cost.
							BCUC IR1.43.1	Confirms that the software contingency is found on line 139.
							BCUC IR3.6.1	Confirms the number of Opentext licenses and cost.
							BCUC IR3.8.1	Describes the potential impact on costs arising from the introduction of the HST in 2010.
6. IT Resources - Expenses	163,082	2,691,607	3,054,900	275,100	6,184,689	144 to 161	BCUC IR1.126.2	Confirms that the consulting needed for the CIS implementation is included in this section, as well lines 62-90 and 96-103.
	-						BCUC IR1.126.3 (Confidential)	Confirms that the expenses needed for the CIS implementation is included in this section and in rows 166 to 181.
							BCUC IR1.126.3.1	Describes the need for the expenses contingency.
							BCUC IR1.43.1	Confirms that the expenses contingency is found on line 181.
							BCUC IR3.4.1	Describes the expenses included on lines 146 to 149 and how they were calculated.

	2009	2010	2011	2012	Total Nov 27	Lines	IR Reference	Description
							BCUC IR3.4.2	Describes the services included on lines 76 and 150 and how they were calculated.
							BCUC IR3.8.1	Describes the potential impact on costs arising from the introduction of the HST in 2010.
7. IT Resources - Expenses	-	656,992	628,500	136,900	1,422,392	164 to 182	BCUC IR1.126.3 (Confidential)	Confirms that the expenses needed for the CIS implementation is included in this section and in rows 146 to 160.
							BCUC IR1.126.3.1	Describes the need for the expenses contingency.
Total CIS Capital	1,508,855	23,452,481	23,544,792	4,458,251	52,964,379	185		
Total CIS O&M per IFRS	-	1,851,842	5,578,469	1,368,596	8,798,907	187		
Total CIS Costs	1,508,855	25,304,323	29,123,261	5,826,847	61,763,286	189	BCUC IR3.2.1	Alternate breakout of CIS Implementation costs by major cost category.
B. Service Insourcing / Call Centre Build & Billing and Back Office								
1. SI Resources - Internal Labour	-	171,879	266,699	-	438,578	196 to 204		
2. SI Resources - New Internal CC&BO Labour	-	327,557	9,934,866	-	10,262,423	207 to 238	BCUC IR1.126.4	Confirms that the labour needed for the Call Centre and Billing & Back Office implementation is included in this section.
							BCUC IR1.126.4.1 (Confidential)	Describes the need for the labour contingency.
3. SI Resources - New Internal HR Support	-	76,598	420,261	-	496,860	240 to 253		
4. SI Resources - CC / BO Consulting	261,000	1,230,698	2,642,794	-	4,134,492	256 to 268	BCUC IR1.126.5 (Confidential)	Confirms that the consulting needed for the Call Centre and Billing & Back Office implementation is included in this section and in rows 273 to 280.
							BCUC IR1.133.2 (Confidential)	Reconciles the Aspect Software costs found on lines 258 and 259.
							BCUC IR1.133.3	Confirms that the location to test and install the Aspect Software is found on lines 258 and 259.
							BCUC IR3.5.1	Describes the US exchange exposure and how it will be managed.
5. SI Resources - Consulting	-	960,000	10,469,245	2,880,000	14,309,245	271 to 281	BCUC IR1.7.5.1	Confirms the CWLP transition cost amount included in this section.
							BCUC IR1.126.5 (Confidential)	Confirms that the consulting needed for the Call Centre and Billing & Back Office implementation is included in this section and in rows 258 to 267.
6. SI Resources - CC/BO Hardware	-	13,723	502,767	-	516,490	284 to 290	BCUC IR1.126.6 (Confidential)	Confirms that the hardware needed for the Call Centre and Billing & Back Office implementation is included in this section, and that personal computers and printers are included in rows 321 to 328.
							BCUC IR1.126.6.1	Describes the need for the hardware contingency.
							BCUC IR3.8.1	Describes the potential impact on costs arising from the introduction of the HST in 2010.
7. SI Resources - CC/BO Software	-	590,990	406,343	-	997,333	293 to 300	BCUC IR1.126.7 (Confidential)	Confirms that the software needed for the Call Centre and Billing & Back Office implementation is included in this section.
							BCUC IR1.126.7.1	Describes the need for the software contingency.
							BCUC IR2.24.1 (Confidential)	Reconciles quoted Aspect Software costs with the amount included in lines 295 to 298.
							BCUC IR3.5.1	Describes the US exchange exposure and how it will be managed.
							BCUC IR3.8.1	Describes the potential impact on costs arising from the introduction of the HST in 2010.
8. SI Resources - Facilities - Call Centres Set-Up	75,000	348,450	17,531,709	-	17,955,159	303 to 329	BCUC IR1.126.6 (Confidential)	Confirms that the hardware needed for the Call Centre and Billing & Back Office implementation that includes lines 286 to 289, also includes personal computers and printers included in lines 321 to 328.
							BCUC IR3.8.1	Describes the potential impact on costs as arising from the introduction of the HST in 2010.

	2009	2010	2011	2012	Total Nov 27	Lines	IR Reference	Description
8. SI Resources - Expenses	-	318,000	778,800	92,200	1,189,000	332 to 344	BCUC IR1.126.8 (Confidential) BCUC IR1.126.8.1	Confirms that the expenses needed for the Call Centre and Billing & Back Office implementation is included in this section. Describes the need for the expenses contingency.
Total CC / BO Capital	336,000	2,683,297	22,572,004	-	25,591,301	247		
		-						
Total CC / BO O&M per IFRS	-	1,354,598	20,381,481	2,972,200	24,708,279	349		
		-						
Total CC / BO	336,000	4,037,895	42,953,485	2,972,200	50,299,580	351		
		-						
TOTAL PROJECT COSTS	1,844,855	29,342,218	72,076,746	8,799,047	112,062,866	355		
Control Totals								
Traditional Capital	1,844,855	29,265,620	62,076,065	8,799,047	101,985,587	382	BCUC IR1.1.5	Confirms that the shareholder does not earn a return on work in progress.
Deferred O&M	-	76,598	10,000,681	-	10,077,279	383	BCUC IR1.1.1	Confirms the amount for the non-rate base deferral account.
Total Project	1,844,855	29,342,218	72,076,746	8,799,047	112,062,866	384		
Capital per IFRS	1,844,855	26,135,778	46,116,796	4,458,251	78,555,680	386		
O&M per IFRS & Deferred	-	3,206,440	25,959,950	4,340,796	33,507,186	387	BCUC IR1.114.1 BCUC IR1.114.6.1 (Confidential) BCUC IR1.114.6.2 (Confidential)	Confirms the difference in cost categorization as the result of treatment under IFRS. Provides the calculation of the levelized cost per customer as a result of IFRS. Describes the calculation of the change in the levelized cost per customer as a result of IFRS.
Subtotal	1,844,855	29,342,218	72,076,746	8,799,047	112,062,866	388		
AFUDC		916,998	2,563,638		3,480,636	389		
Total	1,844,855	30,259,216	74,640,384	8,799,047	115,543,503	390		

MEMORIAL GARDENS ASSOCIATION (CANADA) LIMITED ..... APPELLANT;

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AND

COLWOOD CEMETERY COMPANY, BOARD OF CEMETERY TRUSTEES OF GREATER VICTORIA, CORPORATION OF THE DISTRICT OF SAANICH, THE CORPORATION OF THE CITY OF VICTORIA, EDWIN J. FREEMAN, HELEN J. FREEMAN, A. C. KINNERSLEY, LOLA KINNERSLEY, H. M. PALSSON, JEAN LABAN, C. J. LABAN, SHIRLEY R. CROCKETT, B. I. CROCKETT, F. A. KINNERSLEY, VERNICE ROCKWELL, PETER C. SHARP, L. H. SHARP AND ALEXANDER HORBATUK AND PUBLIC UTILITIES COMMISSION ....

RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Public utilities—"Public convenience and necessity"—Meaning of phrase—Review of decision of Commission—The Public Utilities Act, R.S.B.C. 1948, c. 277, ss. 58, 72, 75, 100—The Cemeteries Act, R.S.B.C. 1948, c. 41, ss. 2, 3, as enacted by 1955, c. 7, s. 3.

Per Kerwin C.J. and Taschereau, Cartwright and Abbott JJ.: It is impracticable and undesirable to attempt a precise definition of the phrase "public convenience and necessity". It is clear from the American decisions that the word "necessity" as here used does not bear its strict dictionary meaning. Its meaning must be ascertained in each case by reference to the context and to the objects and purpose of the statute in which it is found; in particular, it has been held that the word is not restricted to present needs but includes provision for the future. *Wabash, C. & W. Ry. Co. v. Commerce Commission* (1923), 141 N.E. 212, referred to.

The Public Utilities Commission of British Columbia granted a certificate of public convenience and necessity to the appellant company for the operation, through a subsidiary company, of a cemetery on Vancouver Island. This certificate was set aside by the Court of Appeal.

Held: The judgment of the Court of Appeal should be set aside and the certificate should be restored.

Per Kerwin C.J. and Taschereau, Cartwright and Abbott JJ.: The Commission's decision that public convenience and necessity required the establishment of a new cemetery was not one of fact but was predominantly the formulation of an opinion based upon the facts established before the Commission. There was evidence to support

*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright and Abbott JJ.

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the findings of fact made by the Commission and its exercise of administrative discretion based on those findings should not be interfered with by the Courts. *Union Gas Company of Canada Limited v. Sydenham Gas and Petroleum Company Limited,* [1957] S.C.R. 185, applied.

Subsidiary grounds of attack on the Commission's decision should be disposed of as follows: (1) the fact that the appellant proposed to operate the cemetery by means of a subsidiary company to which the Commission agreed to grant a second certificate on incorporation was not an objection to the grant of the certificate to the appellant; (2) the fact that the appellant held only an option on the lands in question was not a ground for refusing the certificate, since the option, assuming it to be enforceable, made the appellant an "owner" within the meaning of the statute; (3) there was no ground, in the circumstances of the case, for saying that the Commission had unjustifiably received evidence without permitting the respondents to see it, thus preventing cross-examination and violating the rule *audi alteram partem. Toronto Newspaper Guild v. Globe Printing Company,* [1953] 2 S.C.R. 18, distinguished.

Per Locke J.: The option was produced for examination by the Commission with the express consent of counsel for the parties who now objected, and they should not now be heard to allege that the proceedings were invalidated by this circumstance. *Scott v. The Fernie Lumber Company, Limited* (1904), 11 B.C.R. 91 at 96, approved and applied. In other respects, the appeal failed for the reasons given by Sheppard J.A. in his dissenting judgment in the Court of Appeal.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], setting aside a certificate of public convenience and necessity granted by the Public Utilities Commission. Appeal allowed.

Alan B. MacFarlane and *E. A. Popham,* for the appellant.

D. M. Gordon, Q.C., for the respondents.

The judgment of Kerwin C.J. and Taschereau, Cartwright and Abbott JJ. was delivered by

ABBOTT J.:—The question raised on this appeal is whether a certificate of public convenience and necessity issued by the Public Utilities Commission of British Columbia, under the provisions of the *Public Utilities Act,* R.S.B.C. 1948, c. 277, as amended, was authorized in law.

By the *Cemeteries Act Amendment Act, 1955* (B.C.), c. 7, cemeteries in British Columbia were brought under the jurisdiction of the Public Utilities Commission as constituted under the *Public Utilities Act,* the relevant

[1] (1957), 22 W.W.R. 348, 9 D.L.R. (2d) 653, 75 C.R.T.C. 292.

sections of the *Cemeteries Act,* R.S.B.C. 1948, c. 41, as enacted by s. 3 of the 1955 statute, reading as follows:

Regulation of Cemeteries, Crematoria, and Columbaria.

2. A cemetery shall not be established or enlarged until the Minister of Health and Welfare has approved of the site of the cemetery as a fit and proper place for the interment of the dead and the owner thereof has obtained from the Commission a certificate of public convenience and necessity under the "Public Utilities Act."

3. (1) The Commission shall have jurisdiction over all cemeteries, columbaria, and crematoria, and the owners thereof, and shall exercise with respect thereto all the powers, duties, and functions relating to public utilities conferred or imposed by the "Public Utilities Act" on the Commission, to the extent to which such powers, duties, and functions are exercisable, and the provisions of the "Public Utilities Act" (other than Part IV thereof), so far as appropriate, shall aply to cemeteries, columbaria, crematoria, and the owners thereof.

(2) Without limiting the generality of subsection (1) and notwithstanding the provisions of the "Cemetery Companies Act," the "Cremation Act," or the "Municipal Cemeteries Act," the Commission may, with the approval of the Lieutenant-Governor in Council, make regulations:

(*a*) Respecting the burial, disinterment, removal, and disposal of the bodies or other remains of deceased persons;

(*b*) Respecting the plans, survey, arrangement, condition, care, sale, and conveyancing of lots, plots, and other cemetery grounds and property;

(*c*) Respecting the erection, arrangement, and removal of tombs, vaults, monuments, gravestones, markers, copings, fences, hedges, shrubs, plants, and trees in cemeteries;

(*d*) Respecting charges for the sale and care of lots and plots;

(*e*) Respecting the collection, amounts to be collected, and investment of funds for perpetual care and maintenance of cemeteries;

(*f*) Requiring the filing or registration of plans of cemeteries and prescribing the contents and details of such plans, and requiring that burials be made in accordance with such plans;

and such regulations may be general in their application or may be made applicable specially to any particular locality or cemetery.

(3) Every person who fails or refuses to obey a regulation of the Commission made under this section is guilty of an offence and liable, on summary conviction, to a penalty of not less than ten dollars and not more than five hundred dollars.

The appellant proposed to establish and operate a new cemetery in the vicinity of Victoria and, as required by the statute, applied to the Public Utilities Commission for a certificate of public convenience and necessity. There were at the time two cemeteries in the area, one, the Colwood Cemetery, operated by a privately-owned company, the other, the Royal Oak Cemetery, a municipally-operated cemetery controlled by the City of Victoria and the Municipality of Saanich. Appellant's application was

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opposed by those in control of the two existing cemeteries and by certain owners of property adjoining the site of the proposed new cemetery.

After a hearing at which evidence was taken as to the need for cemeteries in the Victoria area, both present and future, the Commission issued the certificate requested. Under s. 100 of the *Public Utilities Act* an appeal from a decision of the Commission lies to the Court of Appeal, by leave, only upon a question of law or as to the jurisdiction of the Commission. Appeal was taken to the Court of Appeal for British Columbia and by a majority decision the Court of Appeal[1] allowed the appeal and held that the certificate should be set aside. The present appeal is from that judgment. Sheppard J. A., while dissenting on the main issues raised, would have referred the matter back to the Commission for a rehearing on one matter.

The term "public convenience and necessity" appears to have been brought into the statute law in Canada from the United States and a great many decisions were cited to us indicating the meaning given to the term in that country. It is clear from these decisions that the word "necessity" as contained in these American statutes cannot be given its dictionary meaning in the strict sense: *Canton-East Liverpool Coach Co. et al. v. Public Utilities Commission of Ohio*[2]; *Wisconsin Telephone Co. v. Railroad Commission of Wisconsin et al.*[3]; *Wabash, C. & W. Ry. Co. v. Commerce Commission*[4]; *San Diego & Coronado Ferry Co. v. Railroad Commission of California et al.*[5] The meaning in a given case must be ascertained by reference to the context and to the objects and purposes of the statute in which it is found.

The term "necessity" has also been held to be not restricted to present needs but to include provision for the future: *Wabash, C. & W. Ry. Co. v. Commerce Commission, supra,* at p. 215, and this indeed would seem to follow from s. 12 of the *Public Utilities Act,* which provides that the certificate may issue where public convenience and necessity "require or *will require*" such construction or operation.

[1] (1957), 22 W.W.R. 348, 9 D.L.R. (2d) 653, 75 C.R.T.C. 292.

[2] (1930), 174 N.E. 244.

[3] (1916), 156 N.W. 615.

[4] (1923), 141 N.E. 212 at 214.

[5] (1930), 292 P. 640 at 643.

It is obvious I think, that the phrase "public convenience and necessity" when applied to cemeteries cannot be given precisely the same connotation as when it is applied to those operations more commonly looked upon as public utilities, such as electric power services, water-distribution systems, railway lines and the like, and this is borne out both by the terms of the statute which I have quoted and by the decisions of the American Courts to which we were referred.

The phrase also appears in *The Municipal Franchises Act,* R.S.O. 1950, c. 249 (considered by this Court in *Union Gas Company of Canada Limited v. Sydenham Gas and Petroleum Company Limited*[1]), in the *Aeronautics Act,* R.S.C. 1952, c. 2, and I have no doubt in other provincial and federal statutes, and it would, I think, be both impracticable and undesirable to attempt a precise definition of general application of what constitutes public convenience and necessity. As has been frequently pointed out in the American decisions, the meaning in a given case should be ascertained by reference to the context and to the objects and purposes of the statute in which it is found.

As this Court held in the *Union Gas* case, *supra,* the question whether public convenience and necessity requires a certain action is not one of fact. It is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest, the need and desirability of additional cemetery facilities, and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.

The findings of fact made by the Commission have been concisely set forth by Sheppard J.A. in his reasons[2], and are in part as follows:

(1) That there are two established cemeteries in the district in question, namely, Royal Oak and Colwood, and these have vacant space adequate for immediate needs;

[1] [1957] S.C.R. 185, 7 D.L.R. (2d) 65, 75 C.R.T.C. 1.
[2] 22 W.W.R. at p. 362.

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(2) That the services proposed by the appellant company are similar to those now available at Royal Oak; that Colwood is not a modern, but an older, type of cemetery; that Colwood has proposed modernizing but that may be reconsidered if the respondent [now appellant] company is permitted to establish a cemetery;

(3) That the established cemeteries, Royal Oak and Colwood, are not adequate for the future; that the available space at Royal Oak will be filled in 10 to 15 years; that the need for the future is recognized by both these cemeteries in that both are presently negotiating for additional land;

(4) That vacant cemetery spaces will be needed for the future; that the modern-type cemetery may, by reducing the public demand for cremation, increase the rate at which the available space will be filled.

There was evidence before the Commission upon which it could make the findings of fact which it did. In my opinion the majority of the Court of Appeal in holding that in law the Commission could not find necessity upon the facts recited in its judgment was merely substituting its opinion for that of the Commission. As this Court held in the *Union Gas* case, *supra,* this is not a question of law upon which an appeal is given, and the Court below was therefore without jurisdiction. It would have been otherwise if it had been shown that the Commission had given a meaning to the words of the statute which as a matter of law they could not bear.

Three subsidiary points were raised by respondents. As set out in their factum these are as follows:

1. The Commission went beyond the authority given by the statute by granting the appellant a certificate, though the appellant was not meant to establish or operate the cemetery itself, but to form a subsidiary to do that, to which the Commission bound themselves to give a second certificate;

2. The appellant had no basis for its application for a certificate except an option to buy a site, and the statute required it to be an "owner";

3. The Commission unjustifiably received evidence of the option without permitting the respondents to see it, thus preventing cross-examination and infringing the *audi alteram partem* rule.

As to points 1 and 2, I agree with the views expressed by Sheppard J.A. that the certificate appears to be within the powers conferred by the statute and that the option held by appellant, assuming it to be enforceable, did enable appellant to obtain and assert a control sufficient to constitute appellant an owner within the meaning of the statute.

As to the third point, at the hearing before the Commission appellant called as witnesses the persons from whom the option referred to had been obtained, and the option itself was filed with the Commission. Appellant was apparently unwilling to exhibit the document to respondents at that time since this would have involved disclosing the purchase-price and the transcript of evidence on this point reads in part as follows:

Mr. GORDON: Just one point, since the option itself has been the subject-matter of considerable discussion. I wonder if it might be produced for examination by the Commission? There have been certain representations regarding it as to detail, as to length of time and certain questions have now arisen. Could the Commission have it produced, merely to verify statements that have been made?

Mr. MACFARLANE: I am prepared to produce it to the Commission but not to my learned friends. Now, I state that that option has been executed by these people, Mr. and Mrs. Turner. These people have sworn under oath here to-day that they executed such an option. I state that the option is in favor of James H. Edwards, the President of Memorial Gardens Association of Canada Limited. They swear the property that it covers and they swear the expiry date. I have the option here but I am not going to tell my learned friends the price that Memorial Gardens Association Limited is paying for this property, which they would dearly like to know and which is Mr. and Mrs. Turner's private business. The company doesn't care if everybody knows but Mr. and Mrs. Turner are selling it for a price, it is up to them.

Mr. GORDON: It is essential to the jurisprudence to produce the document about which you are discussing. It is the document, the very basis of the matter which we are dealing with. Simply to make an oath on something when—

The CHAIRMAN: I think the document should be produced to the Commission, whose officers are under oath not to disclose confidential information, but if the document itself does contain certain information that is confidential, it needn't be disclosed to the public.

Mr. MACFARLANE: That is my point. I am quite happy to disclose the information to the Commission but I don't feel it is such that should be disclosed—

Mr. GORDON: May I just simply add this, that in respect to this option, certain statements were made as to when it was entered into, as to what period it was extended to, asking the Commission to make a hurried decision in order to meet with its requirements. If these things are all in the option, we know at least that is *bona fide* but having sworn statements made without the basic documents there at least to the Commission, is of little value.

The CHAIRMAN: The Commission will have the opportunity of comparing the statements with the document.

Mr. GORDON: Well, that is perfectly satisfactory to me.

It does not appear from the record that any person opposing the application other than Mr. Gordon asked for the production of the option and Mr. Gordon stated that he was satisfied with the procedure proposed by the Commission. These circumstances clearly distinguish this case

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from that of *Toronto Newspaper Guild v. Globe Printing Company*[1]. In these circumstances and in view of the provisions of ss. 58, 72 and 75 of the *Public Utilities Act* in my opinion this third point does not avail the respondents.

For the reasons which I have given, as well as for those of Sheppard J.A. as to the main issue, with which I am in substantial agreement, I would allow the appeal with costs here and below and restore the certificate.

LOCKE J.:—With the exception hereinafter mentioned, I agree with the reasons for judgment delivered by Mr. Justice Sheppard.

While the record does not disclose the fact, I assume that Mr. Gordon, who cross-examined certain of the witnesses on behalf of the Colwood Cemetery Company, is a member of the bar of British Columbia and that he acted in that capacity at the hearing before the Public Utilities Commission. We were informed at the hearing of this appeal that the person referred to was not Mr. D. M. Gordon, Q.C., who appeared for the respondents before us.

The passage from the transcript quoted in the reasons of my brother Abbott, which I have had the advantage of reading, shows that Mr. Gordon asked that the option might be produced for examination by the Commission "merely to verify statements that have been made". The chairman ruled that this should be done and counsel for the appellant at once agreed that the information should be disclosed to the Commission. When the chairman said that the Commission would have the opportunity of comparing the statements that had been made with the document, Mr. Gordon said that that was perfectly satisfactory. None of the other parties represented before the Commission appear to have evidenced any interest in the nature of the option. Having thus led the members of the Commission to understand that the course proposed was satisfactory to his clients, they should not now be heard to allege that the proceedings were invalidated by the

[1] [1953] 2 S.C.R. 18, [1953] 3 D.L.R. 561, 106 C.C.C. 225.

very course of conduct that they assented to: *Scott v. The Fernie Lumber Company, Limited*[1].

I would allow this appeal with costs in this Court and in the Court of Appeal.

Appeal allowed with costs.

Solicitors for the appellant: Clay, MacFarlane, Ellis & Popham, Victoria.

Solicitors for the respondent Colwood Cemetery Company: Crease & Co., Victoria.

Solicitors for the respondent cemetery trustees: Gregory, Grant, Cox & Harvey, Victoria.

Solicitors for the respondent District of Saanich: Manzer, Wootton & Drake, Victoria.

Solicitor for the respondent District of Victoria: T. P. O'Grady, Victoria.

Solicitor for the individual respondents: A. J. Patton, Victoria.

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EARL F. WAKEFIELD COMPANY (*Plaintiff*) .... APPELLANT;

AND

OIL CITY PETROLEUMS (LEDUC) LTD., PONOKA-CALMAR OILS LTD., AMERICAN LEDUC PETROLEUMS LIMITED, HARRY SZPILAK, KASPER HALWA, ALVIN M. DAVIS, PETER MATVICHUK, ALVIN M. BERG, JACOB B. GAUFF AND ALEX JOHN PYRCH (*Defendants*) ....RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPELLATE DIVISION.

Mechanics' liens—Arising of lien—Drilling of oil well—Proceedings to enforce lien—Appointment of receiver—Charge on moneys in receiver's hands—Effect of failure to file renewal statement—The Mechanics' Lien Act, R.S.A. 1955, c. 197, ss. 2(g), 29(7), 49-55.

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*PRESENT: Kerwin C.J. and Rand, Locke, Fauteux and Abbott JJ.

[1] (1904), 11 B.C.R. 91 at 96.

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COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Tsawwassen Residents Against Higher Voltage Overhead Lines Society v. B.C. Utilities Commission,***
2006 BCCA 537

Date: 20061130

Docket: CA034328; CA034336; CA034341; CA034342

Docket: CA034328

Between:

Tsawwassen Residents Against Higher Voltage Overhead Lines Society

Appellant

And

The British Columbia Utilities Commission and the British Columbia Transmission Corporation

Respondents

\- and -

Docket: CA034336

Between:

Island Residents Against Higher Voltage Overhead Lines Society

Appellant

And

The British Columbia Utilities Commission and the British Columbia Transmission Corporation

Respondents

\- and -

Docket: CA034341

Between:

Sea Breeze Victoria Converter Corporation

Appellant

And

British Columbia Transmission Corporation
British Columbia Utilities Commission and
British Columbia Hydro and Power Authority

Respondents

- and -

Docket: CA034342

Between:

Neil Atchison, P.Eng.

Appellant

And

The British Columbia Utilities Commission and the
British Columbia Transmission Corporation

Respondents

Before:	The Honourable Madam Justice Levine (In Chambers)
J.J. Arvay Q.C. and M.G. Underhill	Counsel for the Appellant (CA034328)
D. Austin	Counsel for the Appellant (CA034336)
P.J. Landry, J.K. Herbert and J.R. Devins	Counsel for the Appellant (CA034341)
N. Atchison	In-Person (CA034342)
D.G. Cowper, Q.C. A.W. Carpenter and C. Bystrom	Counsel for the Respondent B.C. Transmission Corporation
C.W. Sanderson, Q.C. and M. Storoni	Counsel for the Respondent B.C. Hydro and Power Authority
Place and Date of Hearing:	Vancouver, British Columbia October 25, 2006
Place and Date of Judgment:	Vancouver, British Columbia

November 30, 2006

Reasons for Judgment of the Honourable Madam Justice Levine:

Introduction

[1] The applicants sought leave to appeal from the decision of the British Columbia Utilities Commission made July 7, 2006 (the "Decision"), granting British Columbia Transmission Corporation ("BCTC") a Certificate of Public Convenience and Necessity ("CPCN") for the construction of the Vancouver Island Transmission Reinforcement Project ("VITR").

[2] The Decision may be found on the Commission's website at: *<<http://www.bcuc.com/Documents/Decisions/2006/1-VITR%20Decision-July%207%202006%20-%20Web.pdf>>.*

[3] On November 7, 2006, I released brief reasons for judgment granting leave to appeal on one ground and dismissing the applications for leave on all of the other grounds, with reasons to follow. These are those reasons.

[4] The applicants, Sea Breeze Victoria Converter Corporation ("Sea Breeze"), Tsawwassen Residents Against Higher Voltage Overhead Lines ("TRAHVOL"), Island Residents Against Higher Voltage Transmission Lines ("IRAHVOL"), and Neil Atchison, were intervenors in the proceedings before the Commission, including pre-hearing consultations and the seven-week oral public hearing held in February and March 2006.

[5] The respondent, BCTC, applied to the Commission for a CPCN to construct transmission facilities to Vancouver Island. British Columbia Hydro and Power Authority ("B.C. Hydro") intervened before the Commission on this application.

[6] The applications for leave were brought under s. 101(1) of the ***Utilities Commission Act***, R.S.B.C. 1996, c. 473, which provides that: "An appeal lies from a decision or order of the commission to the Court of Appeal with leave of a justice of that court". While not expressly stated in s. 101, it is accepted that an appeal from the Commission is restricted to questions of law: see ***Joint Industry Electricity Steering Committee v. British Columbia (Utilities Commission)***, 2005 BCCA 330 ("***JIESC***") at paras. 5 and 75.

[7] The applicants raised 21 grounds of appeal in their submissions on the applications for leave. Some of the grounds overlap, and I condensed them to 15 for the purposes of review. The condensed 15 grounds of appeal, and the applicant or applicants who raised each ground, are set out in Appendix A.

[8] With one exception, all of the grounds of appeal raise either issues of fact or mixed fact and law. The question on which I granted leave, raised by TRAHVOL and IRAHVOL, is a question of law. It is whether existing right of way agreements permit the construction of new overhead transmission lines under Option 1.

[9] While some of the remaining grounds of appeal, as originally expressed by an applicant, referred to jurisdictional, or statutory interpretation or application issues, on review, in the context of the Decision, I concluded that none of these grounds of appeal challenge the jurisdiction of the Commission or raise an issue of the interpretation or application of a statutory provision. All challenge the manner in which the Commission approached its decision-making in the circumstances of this particular case, including its review of the evidence and the factors it considered, the weight it gave to the relevant factors, and the analysis it undertook in reaching its decision. The Commission is entitled

to considerable deference in these matters. The remaining grounds of appeal raise no substantial questions of law to be argued, and there is no prospect of an appeal on any of those grounds succeeding on its merits. For those reasons, I dismissed the applications for leave to appeal on all of the grounds of appeal other than the question of the interpretation of the right of way agreements.

Background

[10] Vancouver Island's current electricity needs are being met by a combination of transmission and on-Island generation. Transmission provides approximately 70 percent of Vancouver Island's peak load, while on-Island generation provides the remaining 30 percent. Previous decisions of the Commission have recognized the need to upgrade the electricity supply system to the Island. Aging circuits resulting in decreased available transmission capacity mean that Vancouver Island's power supply system will no longer meet applicable reliability criteria after 2007. In September 2003, the Commission accepted that there would be a capacity shortfall on Vancouver Island commencing in the winter of 2007-2008. Several solutions have been proposed to remedy these energy concerns, including both energy transmission and energy generation alternatives.

[11] BCTC applied for a CPCN for VITR on July 7, 2005, under ss. 45 and 46 of the ***Act***. The purpose of VITR is to reinforce the transmission system serving Vancouver Island and the southern Gulf Islands. BCTC estimated the capital cost of VITR at $245 million and expected that it would be operational by October 2008.

[12] Under s. 45(1) of the ***Act***, a person may not begin the construction or operation of a public utility plant or system without first obtaining a CPCN from the Commission. Under s. 46, the Commission may issue, refuse to issue or issue a CPCN for such projects, subject to conditions as, in the Commission's "judgment, the public convenience or necessity may require".

[13] Under the ***Transmission Corporation Act***, S.B.C. 2003, c. 44, and a number of designated agreements with B.C. Hydro, BCTC is responsible for operating B.C. Hydro's transmission system. BCTC is also responsible for planning, constructing and obtaining all regulatory approvals for enhancements, reinforcement, and expansions to that system. This responsibility includes entering into commitments and incurring expenditures for capital investments. The VITR facilities were to be owned by B.C. Hydro, and operated and maintained by BCTC.

[14] The Commission began its review of VITR in August 2005. In September 2005, Sea Breeze, a private sector company, came forward to the Commission with two projects that would use new direct current technology. Sea Breeze applied for a CPCN for one of the projects, the Vancouver Island Cable Project ("VIC"). The other project, the Juan de Fuca Project ("JdF"), was not within the jurisdiction of the Commission, but was considered by it for purposes of comparison with VITR and VIC.

[15] The Commission encouraged participants to identify any issues that had been considered in previous Commission decisions that they wanted to have included within the scope of this proceeding. During the proceedings, project alternatives and routing options were identified by BCTC and intervenors.

[16] In March 2006, Sea Breeze withdrew from the proceedings as an applicant and became an intervenor. As an intervenor, Sea Breeze continued to provide evidence about projects using the new technology. B.C. Hydro also intervened before the Commission in connection with both applications.

[17] The intervenors against VITR opposed the project on the basis that there were other more reliable and cost-effective alternatives that would use new direct current electrical transmission technology. This new technology would allow the transmission lines to Vancouver Island to be entirely underwater or underground, whereas the technology used in VITR would require extensive overhead transmission lines.

[18] The task before the Commission was to select among competing project alternatives, and among route options and designs for VITR. After a seven-week oral public hearing, the Commission granted BCTC a CPCN for VITR with routing Option 1.

Proposed Project Alternatives

[19] The alternative proposals before the Commission were:

> ***VITR***: As proposed by BCTC, this project entailed constructing a new 230 kV alternating current electrical circuit, replacing one of two existing 138 kV transmission lines between BCTC's Arnott Substation in South Delta and its Vancouver Island Terminal Substation in North Cowichan on Vancouver Island. VITR would run partially overhead and partially underground, along the right of way of the existing 138 kV line. The line would run overhead from the Ingledow Substation in Surrey to the Arnott Substation in South Delta. It would continue through Tsawwassen, where it would be partly underground, and then underwater in the Strait of Georgia, passing in part through U.S. territorial waters. It would go overhead across Galiano and Parker Islands, then underwater to Salt Spring Island where it was to revert and remain as an overhead line until it terminated at the Vancouver Island Terminal in North Cowichan.
>
> The transmission line routing options for VITR, identified by BCTC and intervenors, included three routing options through Tsawwassen:
>
> **Option 1**: This option would involve the removal and replacement of all the existing 138 kV wooden H-frame transmission lines with a new 230 kV double-circuit line on single pole steel structures. The new line would be within the existing B.C. Hydro Right of Way ("ROW"), which passes through the backyards of more than 150 private residences. After significant opposition from TRAHVOL, BCTC announced, in March 2005, that it would not be recommending Option 1 to the Commission. The Commission ultimately selected this option.
>
> **Option 2**: This is the option that BCTC recommended to the Commission. It entailed burying the new lines in the backyards of the residents along the ROW. TRAHVOL also vigorously opposed this option on the basis of concerns about adverse health effects from electromagnetic field radiation ("EMF").
>
> **Option 3**: This option entailed the removal of one of the existing overhead lines and its replacement with an underground line under the city streets in Tsawwassen. This option was supported by TRAHVOL.
>
> ***VIC***: This project proposal involved the use of new technology using direct current that would allow for transmission lines to be entirely underground and underwater. An underground or underwater cable was to be laid between Pike Lake Substation near Victoria and Ingledow Substation in Surrey. In its application, Sea Breeze estimated that VIC would cost $325 million and be operational by January 2008.
>
> ***JdF***: This project also involved the use of direct current technology that would allow for the transmission line to be underground and underwater between the Port Angeles Substation on the Olympic Peninsula in the State of Washington and the Pike Lake Substation near Victoria. Because it is an international line, the National Energy Board, and not the Commission, has regulatory jurisdiction over it.

The Decision

[20] The Executive Summary of the 210-page Decision sets out the Commission's conclusions:

EXECUTIVE SUMMARY

In this Decision the Commission has concluded that VITR is a more cost-effective project to meet the load requirements of Vancouver Island than either VIC or JdF. The appropriate analysis for comparing the costs of the three projects is to compare total direct and indirect costs. For the purposes of comparing the total direct and indirect costs, Sea Breeze and BCTC do not agree on two fundamental aspects of the projects: 1) the system benefits and incremental losses from using HVDC Light® technology to meet the needs of Vancouver Island customers, and 2) how JdF will be used, and therefore the costs of using JdF.

The Commission has concluded that the system benefits of HVDC Light® technology are limited to the reduced need for synchronous condensers on Vancouver Island and VAr compensation on the Lower Mainland and accepts BCTC's calculation of incremental losses. Further, the Commission has concluded that additional firm transmission service must be purchased for the use of JdF in order to meet reliability planning criteria for Vancouver Island. A comparison of the total direct and indirect costs of the three projects turns on these three conclusions. The total direct and indirect costs of VIC and JdF have been found to be approximately $149 million and $126 million, respectively, more than the direct and indirect costs of VITR.

The project alternatives are compared on other project characteristics, including seismic risk, risks of delay, risks of financing, and environmental and health effects. These other project characteristics are not found to be determinative. However, a comparison of the total direct and indirect costs is found to be determinative. Therefore, the Commission has concluded that VITR is a more cost-effective project alternative than either VIC or JdF, and is in the public interest.

In this Decision the Commission has concluded that VITR should be modified, and that Option 1 should replace Option 2 as the route through South Delta. The route options through South Delta and the Gulf Islands are considered and ranked against financial, non-financial and socioeconomic criteria. Although the Commission has approved the least cost route option, the non-financial and socioeconomic criteria are significant considerations relevant to the selection of the preferred route option.

In this Decision non-financial and socioeconomic differences amongst route options are afforded little or no weight where the beneficiaries do not express a preference or the non-financial and socioeconomic differences are in dispute. For example, TRAHVOL does not express a preference for either Option 1 or 2 and views the use restrictions differently than BCTC does. Further, where there are significant financial differences amongst route options and less significant non-financial or socioeconomic differences amongst route options, then the financial differences are afforded considerable weight in this Decision. For example, the aesthetic benefits of undergrounding across the Gulf Islands need to be considered in the context of the significant costs for undergrounding. After considering financial, non-financial and socioeconomic criteria, the Commission has concluded that Option 1 in both South Delta and the Gulf Islands are the preferred route options.

In this Decision a cost control/incentive mechanism is found to be appropriate, in part, because a prudency review and a cost control/incentive mechanism serve different purposes for ratepayers. Further, a cost control/incentive mechanism designed to encourage good management is considered necessary, particularly given the recent management turnover at BCTC.

Factors Considered on Applications for Leave to Appeal

[21] All parties agree that the factors set out in ***Queens Plate Development Ltd. v. Vancouver Assessor, Area 09*** (1987), 16 B.C.L.R. (2d) 104 at 109 (C.A.), are those that the Court considers with respect to granting or refusing leave on an application for leave to appeal from the Commission:

> . . . it seems a justice may have regard for one or more of the matters listed below:
> (a) whether the proposed appeal raises a question of general importance as to the extent of jurisdiction of the tribunal appealed from ... ;
> (b) whether the appeal is limited to questions of law involving:
> (i) the application of statutory provisions ... ;
> (ii) a statutory interpretation that was particularly important to the litigant ... ; or
> (iii) interpretation of standard wording which appears in many statutes ... ;
> (c) whether there was a marked difference of opinion in the decisions below and sufficient merit in the issue put forward ... ;
> (d) whether there is some prospect of the appeal succeeding on its merits ... ; although there is no need for a justice before whom leave is argued to be convinced of the merits of the appeal, as long as there are substantial questions to be argued;
> (e) whether there is any clear benefit to be derived from the appeal ... ; and
> (f) whether the issue on appeal has been considered by a number of appellate bodies ....
>
> [Case citations omitted.]

See ***JIESC*** at para. 9; ***Ashton Mining of Canada Inc. v. Stornoway Diamond Corp.***, 2006 BCCA 406 at para. 2.

[22] Factors (c) and (f) apply to all of the grounds of appeal. The Commission Panel was unanimous in its decision, suggesting that an appeal is unwarranted. On the other hand, no other appellate body has considered the Decision, suggesting that leave should be granted. As B.C. Hydro suggests in its submissions, the other four factors are more relevant in considering whether leave should be granted on the grounds of appeal raised by the applicants in this case.

Analysis

[23] The applicants do not dispute that in the Decision, the Commission considered and discussed at length the evidence, arguments and issues raised by the applicants and intervenors. The applicants' grounds of appeal must be considered in the context of the whole of the Decision.

Chapter 1: The Certificate of Public Convenience and Necessity and the Regulatory Process

[24] The Commission began the Decision in chapter one with a discussion of the need for reinforced transmission supply to Vancouver Island, the relevant determinations from past Commission decisions, and the alternative solutions proposed. None of the grounds of appeal challenge this discussion.

Chapter 2: Jurisdiction and Other Legal Issues

[25] In the second chapter of the Decision, the Commission discussed issues relating to its jurisdiction to issue a CPCN. This included references to cases relied on by the applicants on these leave applications, including ***Memorial Gardens Assn. (Can.) Ltd. v. Colwood Cemetery Co.***, [1958] S.C.R. 353 and ***Sumas Energy 2 Inc. v. Canada (National Energy Board)***, 2005 FCA 377, for the test of what constitutes public convenience and necessity. The Commission quoted (at 11) from ***Memorial Gardens*** (at 357):

> …it would…be both impracticable and undesirable to attempt a precise definition of general application of what constitutes public convenience and necessity….the meaning

> in a given case should be ascertained by reference to the context and to the objects and purposes of the statute in which it is found.
>
> As this Court held in the Union Gas case, supra, the question whether public convenience and necessity requires a certain action is not one of fact. It is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission, but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest, the need and desirability of additional cemetery facilities, and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.

[26] The Commission noted (at 15) that it had previously concluded that "…the test of what constitutes public convenience and necessity is a flexible test", a conclusion with which none of the applicants disagreed.

[27] The Commission also considered (at 11) ***Nakina (Township) v. Canadian National Railway Co.*** (1986), 69 N.R. 124 (F.C.A.) (cited with approval in ***Sumas Energy 2***), which dealt with the jurisdiction of the Railway Transport Committee. The Court in ***Nakina*** found that the Committee had erred in law in failing to consider, where it was required to have regard to the public interest, evidence of the effect of the closing of a railway station on the economy of the local community. The Court said (at para. 5):

> …I would have thought that, by definition, the term "public interest" includes the interests of all the affected members of the public. The determination of what is in the public interest involves the weighing and balancing of competing considerations. Some may be given little or no weight; others much. But surely a body charged with deciding in the public interest is "entitled" to consider the effects of what is proposed on all members of the public. To exclude from consideration any class or category of interests which form part of the totality of the general public interest is according, in my view, an error of law justifying the intervention of this court.

The Commission quoted (at 11) the following passage from ***Nakina*** (at para. 10):

> For clarity, however, I would emphasise that the error lies simply in the failure to consider. Clearly the weight to be given to such consideration is a matter for the discretion of the Commission, which may, in the exercise of that discretion, quite properly decide that other considerations are of greater importance. What it could not do was preclude any examination of evidence and submissions as to the adverse economic impact of the proposed changes on the affected community.

[28] After a discussion of further submissions on the content of the public interest, the Commission's determination on this part of the Decision (at 16) was:

> **Given the need for a project to provide adequate and reliable power to Vancouver Island customers, the Commission Panel concludes that it is in the public interest that the most cost-effective alternative be selected from amongst the competing alternatives. Further delay in finding a solution for Vancouver Island customers is not an option that is in the public interest. Moreover, all the alternative solutions for Vancouver Island customers have adverse impacts. The alternatives, including VITR with its several route options, VIC, and JdF, need to be compared to determine the best, most cost-effective means of supplying power to Vancouver Island. Each alternative has different impacts on interests; some of those interests may be considered public interests and others are private**

> **interests. The Commission Panel is of the opinion that both public and private interests should be considered in selecting the project alternative and route option that is in the public interest, although the relative weight placed on the different interests may vary.**

[Bold in original.]

[29] The Commission's discussion and conclusion of the content of the public interest and the test of public convenience and necessity are relevant to the claims by Sea Breeze, TRAHVOL, and IRAHVOL that the Commission erred in holding that public convenience and necessity is to be determined by the most cost-effective option rather than what is in the public interest (Appendix A, 1). The Commission was clearly alive to its obligation to consider all relevant factors, and to determine the appropriate balance in the context of identifying a viable alternative to meet the needs of Vancouver Island residents. An analysis of the Decision as a whole demonstrates that it did so. Had the Commission limited its consideration of the factors put before it by the participants in the proceedings to matters of cost only, that would have been an error of law, as demonstrated by ***Nakina***, and a question of general importance as to the jurisdiction of the Commission. However, the discussion of the relevant factors in determining public convenience and necessity in chapter two and the consideration of socioeconomic and other non-financial factors in subsequent chapters, described below, demonstrates that there are no substantial questions to be argued that the Commission failed to consider any relevant factor. For these reasons, leave to appeal on this ground was not granted.

Chapter 3: BCTC Project Selection and Consultation Process

[30] In chapter three of the Decision, the Commission reviewed and criticized the public consultation process undertaken by BCTC, including the commitment made by BCTC to TRAHVOL that it would not recommend Option 1. The Commission found that the commitment had conveyed a wrong impression of the alternative routes available for VITR, with the result that the preferences of those most directly affected by the choice of routes were not fully developed. The Commission concluded (at 40-41), however, that:

> Although a better consultation process may have provided more support for the Application and helped to focus the Commission's process, the Commission Panel also concludes that the issues raised by stakeholders have been adequately explored in this proceeding in order for it to make a determination regarding BCTC's CPCN Application.

[31] TRAHVOL raises the issue of the sufficiency of BCTC's consultation with stakeholders in its claims that the Commission erred in failing to attach any weight to the promise made by BCTC not to recommend Option 1 (Appendix A, 9), and in failing to require and consider additional evidence on the non-financial considerations of Option 3 (Appendix A, 11). I will address these grounds of appeal in the context of that part of the Commission's Decision which dealt with its reasons for approving Option 1 over Options 2 and 3.

[32] In chapter three, the Commission also discussed the necessity to consider socioeconomic and other non-financial considerations, including safety, reliability, health, aesthetic, recreation, habitat, First Nations and construction impacts. While the Commission agreed with BCTC that a detailed review of socioeconomic impacts was not necessary, because any project approved by the Commission was subject to a comprehensive environmental review, the Commission concluded (at 36) that "a high-level review of the relative socioeconomic impacts of project alternatives is still necessary for the Commission to determine whether a particular project is in the public interest." It gave four reasons for such a review: to ensure that BCTC had considered other alternatives with similar costs but lower socioeconomic impacts or better non-financial performance; to allow the Commission to make determinations, in the overall public interest, among projects with similar costs but different non-financial and socioeconomic impacts; to be assured that the recommended alternative is likely to receive environmental approvals in a timely fashion and that expected compensation or mitigation costs

would not render the alternative more costly than another viable alternative; and to consider modest increases to project costs to reduce socioeconomic impacts and provide other non-financial benefits that may reduce financial or schedule risks associated with the project.

[33] This discussion demonstrates the Commission's consideration of factors other than cost-effectiveness in determining public convenience and necessity, contrary to the claims of Sea Breeze, TRAHVOL, and IRAHVOL (Appendix A, 1).

Chapter 5: Socioeconomic Impacts

[34] The fifth chapter of the Decision addressed socioeconomic impacts, including safety and health issues, the impact of transmission lines on property values, and environmental and archaeological impacts. TRAHVOL raises two grounds of appeal which focus on the Commission's analysis and conclusion with respect to health concerns associated with EMF exposure from both the existing and proposed transmission lines: that the Commission erred in law by giving little weight to EMF concerns in determining Option 1 was in the public interest, while giving substantial weight to those concerns in rejecting Option 3 (Appendix A, 10); and that the Commission erred in law by failing to apply the precautionary principle or the principle of prudent avoidance in interpreting ss. 45 and 25 of the ***Act*** (Appendix A, 14). IRAHVOL raised one ground of appeal with respect to property values: that the Commission erred in concluding that VITR will have no significant incremental impact on average property values over the long term (Appendix A, 13).

EMFs

[35] The Commission's analysis of the EMF health concerns noted that the conclusions of Health Canada and the International Commission on Non-Iodizing Radiation Protection ("ICNIRP") (which develops safety guidance for the World Health Organization, the International Labour Organization and the European Union) were that "there is insufficient evidence to support the development of standards to address concerns about possible health effects from long-term exposure" (at 63).

[36] The Commission summarized its conclusions from previous decisions concerning health concerns from EMF exposure (at 63):

> [The Commission] concluded that the scientific evidence regarding EMF effects is inconclusive and does not support the theory that power line EMF is a health hazard. In view of the lingering uncertainty and until science is able to provide more definitive evidence, the Commission has previously concluded that a strategy of prudent avoidance and low cost attenuation where possible is appropriate, and has expressed an intention to keep itself apprised of EMF research….

[37] The Commission considered (at 64-70) BCTC's evidence concerning EMF levels and mitigation measures, the intervenors' views about the possible health risks of EMF exposure, and the evidence of two experts, for TRAHVOL and BCTC. In its determination on this subject, it concluded (at 70):

> …that the EMF exposure guidelines established by organizations such as the World Health Organization, ICNIRP, and Health Canada provide a relevant and useful reference point for considering the safety of EMF levels from the existing transmission lines and the proposed VITR.

[38] The Commission did not accept TRAHVOL's submission that EMF levels in the homes and yards along the ROW were "uniquely high" (at 70), and noted (at 71) "that the residents living along the ROW purchased their homes after the existing lines were installed and that the benefits of large lots and/or low prices were weighed against the presence of the transmission lines".

[39] The Commission criticized TRAHVOL's expert's conclusions because she had not reviewed

scientific literature published since 2000. The Commission concluded (at 71):

> **In the absence of convincing new evidence that indicates that change is warranted and/or imminent, the Commission Panel concludes that it should not impose lower EMF exposure standards on VITR.**
>
> [Bold in original.]

[40] The Commission discussed “the precautionary principle” and “prudent avoidance”. It found that these terms are open to a range of interpretations, and for that reason did not adopt them in its determinations. It concluded that the cost of additional mitigation measures to further reduce EMF exposure along the existing ROW was not justified by the evidence. It found (at 71):

> Mitigation measures may reduce the level of concern and worry experienced by nearby residents. However, while this benefit is not insignificant, **the Commission Panel concludes that it does not warrant actions beyond the very low cost measures that BCTC has included in its VITR design.**
>
> [Bold in original.]

[41] TRAHVOL claims that the Commission erred in failing to apply the “precautionary principle” or “the principle of prudent avoidance” in interpreting ss. 45 and 25 of the ***Act*** (Appendix A, 14). TRAHVOL points to evidence, not all of which was before the Commission, where the application of these principles has been recommended, and to other jurisdictions where these principles have been applied. Counsel referred to ***114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)***, [2001] 2 S.C.R. 241 (“***Spraytech***”) at paras. 30-32, (quoted in ***Wier v. British Columbia (Environmental Appeal Board)***, 2003 BCSC 1441 at paras. 33-38), where L'Heureux-Dubé J., for the majority, noted that the precautionary principle has been accepted internationally and was relevant in the interpretation of domestic statutes. She cited the definition at para. 7 of the *Bergen Ministerial Declaration on Sustainable Development* (1990):

> In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

[42] I do not interpret the comments of L'Heureux-Dubé J. in ***Spraytech*** as setting out a principle of statutory interpretation that applies to every determination by a tribunal or court concerning environmental matters or issues of public interest, and in particular to determinations by the Commission of public convenience and necessity. TRAHVOL’s ground of appeal does not, therefore, raise an issue of law. While the Commission declined to use the terms “precautionary principle”, it did refer to a “strategy of prudent avoidance” (at 63), and its analysis was consistent with these principles. It spoke of “convincing new evidence”, not scientific certainty, and weighed the costs of mitigation measures against the clearly identifiable benefits. For these reasons, leave to appeal on this ground was not granted.

Property Values

[43] The Commission considered the evidence concerning the effect of transmission lines on property values. Its conclusion (at 77) was:

> **The Commission Panel concludes that the evidence of the impacts of VITR on property values in Tsawwassen and the Gulf Islands supports a finding that the approved VITR will have no significant incremental impact on average property**

> **values over the long-term. If there are any short-term impacts, the Commission Panel concludes that they will decline over time and should be afforded little or no weight in this Decision.**
>
> [Bold in original.]

[44] IRAHVOL claims that the Commission erred in concluding that VITR will have no significant incremental impact on average property values over the long term (Appendix A, 13). The Commission considered the evidence and gave it the weight it determined appropriate in the context of the Decision. This ground of appeal raises no issue of law, and leave to appeal was not granted.

Chapter 6: VITR Route Options

<u>Comparison of Options 1, 2 and 3</u>

[45] In chapter six (at 88-94), the Commission discussed and compared the impacts of Options 1, 2 and 3.

[46] The comparison of the three options was coloured by the Commission's criticisms of BCTC's public consultation process, and the resulting lack of clear statements of preference from stakeholders, including TRAHVOL and Delta.

[47] TRAHVOL rejected both Options 1 and 2; its objective was the ultimate removal of the transmission lines from residential properties. The Commission concluded that in deciding between Options 1 and 2, it should give "considerable weight" to TRAHVOL's lack of an expressed preference.

[48] Delta strongly opposed Option 3. The Commission accepted that Option 3 had "considerable merit", and commented (at 92) that "if both Delta and TRAHVOL had preferred Option 3 to Option 1 or 2, further consideration of Option 3 would have been necessary, and additional evidence regarding Option 3 may have been available and valuable."

[49] BCTC recommended Option 2, because it had committed to Tsawwassen residents that it would not recommend Option 1, and Delta would not cooperate with respect to Option 3. The Commission stated (at 92) that when BCTC did not get support for Option 2 from the intended beneficiaries (the Tsawwassen ROW residents), and considering the potential for delay and significantly increased costs of Option 2 over Option 1 (from acquisition of new ROW rights to put the transmission lines underground as opposed to replacing the existing lines), it should have recommended Option 1. For these reasons, in deciding the preferred route based on a consideration of the public interest, the Commission concluded that the commitment by BCTC not to recommend Option 1 should be given "no weight" (at 93).

[50] The Commission noted (at 92) that EMF and safety concerns would have been determinative if they were supported by the evidence, but since they were not, the Commission concluded that it should give considerable weight to two considerations: (1) the existing ROW, particularly where residents bought their properties with knowledge of the existing ROW, and (2) the limited incremental impacts associated with upgrading the existing transmission lines.

[51] The Commission concluded (at 94) that Options 1, 2 and 3 had a similar non-financial rating, but Option 1 was preferred to Options 2 and 3 because it was more cost-effective than either of the other two options.

[52] Four of TRAHVOL's grounds of appeal address the Commission's comparison of Options 1, 2 and 3 (Appendix A, 9, 8, 10, 11). TRAHVOL claims:

> The Commission erred in law in failing to attach any weight to the promise made by the BCTC not to recommend Option 1.

> The Commission erred in law in effectively giving the Corporation of Delta a "veto" over Option 3, but not extending that same right or privilege to Tsawwassen residents.
>
> The Commission erred in law in giving little weight to EMF concerns in determining Option 1 was in the public convenience and necessity, while giving substantial weight to those concerns in rejecting Option 3.
>
> The Commission erred in failing to require and consider additional evidence on the non-financial considerations of Option 3.

[53] All of these are questions of fact. It is within the jurisdiction of the Commission, and it is uniquely qualified, to determine the weight to be given to factors considered in the determination of public convenience and necessity, consistent with the principles set out in ***Memorial Gardens*** and ***Nakina***.

[54] TRAHVOL's claim that the Commission erred in failing to attach any weight to the promise made by BCTC not to recommend Option 1 does not raise any question of law. It is the Commission, not BCTC, which must determine what is in the public convenience and necessity in the circumstances of the application and evidence before it.

[55] It would be an error of law, as described in ***Nakina***, if the Commission had failed to consider the implications of BCTC's promise. The Decision sets out, however, the Commission's consideration of those implications, and its reasons for determining that it should be given no weight in the circumstances. It found BCTC's promise not to be in the public interest, as it was "a commitment to one stakeholder that is contrary to the interests of other stakeholders" (at 93).

[56] TRAHVOL argued that as a result of BCTC's promise not to recommend Option 1, some of the residents who would have been affected by Option 1 may not have participated in the Commission's deliberations. TRAHVOL claimed that the consultation process was thus undermined by the promise, and was not corrected, as the Commission found (at 40-41, see para. 30 of these reasons for judgment), by the issues raised during the hearing.

[57] The Commission recognized that the promise had affected the consultation process, and that clear expressions of preference for Options 2 or 3 would have been helpful in its consideration of those alternatives. The stated preferences of stakeholders were among many factors that the Commission took into account in choosing which of the routing options to approve. It is for the Commission to determine whether, on the evidence before it, it has the information it required to make a decision in the public interest. It is not a question of law for this Court.

[58] The Commission accurately described its duty, and set out its conclusion (at 93):

> The Commission Panel concludes that it must decide the preferred route option based on a consideration of the public interest, and the BCTC commitment should be given no weight in that determination.

[59] TRAHVOL sought to introduce affidavit evidence on this application to support its claim that, had they been asked, Tsawwassen residents would have expressed a preference for Option 3. This evidence is not relevant to this leave application, but TRAHVOL may apply to the Commission, under s. 99 of the ***Act***, to reconsider its Decision based on new evidence.

[60] A review of the Decision as a whole reveals that the claims that the Commission gave Delta a "veto" over Option 3, and gave more weight to EMF concerns in the context of Option 3 than Option 1, cannot be supported. Those claims are interpretations by TRAHVOL of certain of the Commission's words which simply do not stand up to scrutiny.

[61] As already discussed, whether the Commission should have required additional evidence on Option 3 is not a question of law. TRAHVOL raises no issues of natural justice or procedural fairness. It is within the Commission's discretion to determine, on a hearing, the scope of the consultation process, and whether any further evidence is required.

[62] For these reasons, leave was not granted to appeal on these four grounds raised by TRAHVOL.

ROW Agreements

[63] The Commission considered whether the ROW agreements provide BCTC with the right to build Option 1, which would give Option 1 an advantage over the other options. The Commission noted (at 105) that: "this issue is a contractual matter for the courts", but continued: "However, the advantages provided by the ROW agreements regarding Option 1 are relevant to this decision."

[64] BCTC argued that the issue of the scope of the ROW was dealt with by this Court in ***Hillside Farms Ltd. v. British Columbia Hydro and Power Authority***, [1977] 3 W.W.R. 749 (B.C.C.A.). In ***Hillside***, the Court determined that a ROW agreement granted in perpetuity did not restrict its use to structures and voltage in place or technologically possible when the agreement was entered into. The appeal from the trial decision, finding that there was no liability for breach of contract, was dismissed.

[65] TRAHVOL and other intervenors sought to distinguish ***Hillside*** on the ground, among others, that the language in the ROW in ***Hillside*** is different from that in the ROW agreements in Tsawwassen. In October 2005, in response to an information request by TRAHVOL, BCTC supplied copies of the ROW agreements for the properties in Tsawwassen. The grant in those agreements is similar to that considered by the Court in ***Hillside***, except that the words "from time to time" do not appear in the Tsawwassen ROW agreements. The Commission quoted from both agreements and noted the different wording (at 105-106).

[66] The Commission concluded (at 106) that the "ROW agreements can reasonably be assumed to provide BCTC with the right to build Option 1", accepting BCTC's reply submissions that the rights were granted in perpetuity and were not limited to existing facilities.

[67] TRAHVOL and IRAHVOL claim that the Commission erred in holding that the existing ROW agreements permit the construction of new overhead transmission lines.

[68] The Commission considered this issue in its response, dated October 6, 2006, to a Reconsideration Application brought by Ms. Pamela D. Sutherland and others. It stated:

> Similar submissions to those made by Sutherland et al and others in this reconsideration proceeding have previously been made and considered by the Commission, and do not now provide a prima facie case of error. Therefore, on this ground the reconsideration application is denied. Ultimately, this is a matter for the courts. If the Commission erred in concluding that it could assume the TSW ROW Agreements provide BCTC with the right to build Option 1, then this error would be material to the Decision.

[69] The Commission invited either BCTC or the applicants to file a further reconsideration application if the courts conclude that BCTC does not have the right to build Option 1 as is assumed in the VITR Decision.

[70] Whether the ROW agreements permit the replacement of the existing poles and lines with the larger, higher voltage poles required by VITR Option 1 is a question of law. The Commission has answered the question of significance and importance: it has determined that if it is wrong that the Tsawwassen ROW agreements do not allow BCTC to replace the existing overhead transmission lines with taller, higher voltage poles, that would be material to its decision to approve Option 1. It is not for

me to be convinced of the merits of an appeal; it is sufficient, to grant leave, if there is some prospect of success – an arguable case. There is, in my opinion, an argument to be made. Given its importance to the Decision, there would be a clear benefit in having this question determined on a timely basis. The question of whether the ROW agreements permit the construction of new overhead transmission lines under Option 1 satisfies the criteria set out in ***Queens Plate***, and leave to appeal was granted on that question.

Chapter 7: Comparison of VITR, VIC and JdF

[71] In chapter seven, the Commission compared the three proposals on criteria of project schedules and obstacles to completion, reliability, capital costs and other financial aspects, and other systems costs and benefits. In part 7.8 (160-171), the Commission discussed "Other Costs and Benefits of JdF".

[72] Sea Breeze and IRAHVOL claim that the Commission erred in its assessment of wheeling costs (charges for transmitting power over another party's transmission system) and system losses (Appendix A, 2), and failed to consider Sea Breeze's evidence concerning the assessment of compensation for the use of the JdF Project (Appendix A, 3).

[73] These claims raise no questions of law, and cannot be supported on a review of the Decision as a whole. The Commission reviewed Sea Breeze's evidence in detail, and concluded that the payments Sea Breeze could potentially receive from BCTC for the use of JdF would not satisfy Sea Breeze's requirements to obtain financing. The uncertainties surrounding the calculation of the price Sea Breeze would have to charge for the use of JdF, and whether it would be able to obtain financing in the time required, affected the reliability of the proposal. All of these were findings of fact. Leave was not granted on these grounds of appeal.

[74] Sea Breeze claims that the Commission erred by failing to consider evidence related to trade benefits that would accrue to the Province as the result of the construction and operation of JdF and the resulting enhancement of electricity exports (Appendix A, 4). Sea Breeze argued that the Commission erred by imposing an evidential standard of proof of trade benefits higher than the normal standard of the balance of probability, and by accepting submissions made by counsel for B.C. Hydro as evidence. IRAHVOL also raises these two claims as grounds of appeal (Appendix A, 5, 6).

[75] Sea Breeze and IRAHVOL object to the Commission's conclusions dismissing Sea Breeze's claims that the JdF Project would result in trade benefits from the export by B.C. Hydro or its subsidiary, Powerex, of excess power from JdF. The Commission said (at 170):

> With respect to the trade benefits of JdF, the Commission Panel accepts that in theory there may be incremental benefits to the province from increased trading activity by third parties. However, the Commission Panel finds no *compelling evidence on the record* regarding the likelihood or magnitude of these benefits. The Commission Panel share BC Hydro's concerns that the purported beneficiaries of these benefits *have not confirmed or corroborated such benefits*. Nor was this evidenced in the response to the Open Season conducted by Sea Breeze. Even if these benefits could be demonstrated, the Commission Panel does not necessarily view incremental trade benefits to the province as a relevant consideration in the comparison of VITR and JdF, unless those benefits accrue directly to ratepayers (in terms of third party wheeling revenue) or competing projects are otherwise comparable in terms of costs to ratepayers. *The Commission Panel accepts BC Hydro's submission that neither it nor Powerex are forecasting any substantial trade benefits from increased transfer capabilities between Canada and the United States*, *and is not aware of any proposals by BC Hydro to increase the transfer capability of the BCTC system to the U.S. in order to facilitate additional arbitrage and trade.* Neither does BC Hydro have a mandate or commitment for long-term firm exports beyond the optimization of existing hydroelectric storage

capability.

[Italics added.]

[76] There is simply no basis for the claim that the Commission did not consider the evidence relating to trade benefits. It rejected the evidence as not proving that trade benefits would be available. This is not a question of law.

[77] I agree that the Commission's use of the term "compelling evidence" and reference to confirmation and corroboration could imply a higher standard than the normal balance of probabilities, but in the context of the Commission's consideration of Sea Breeze's evidence of trade benefits, there is no substantial question to be argued that a higher standard was in fact imposed. The Commission may have used more categorical language than necessary to explain its reasons for rejecting Sea Breeze's evidence, but that does not support the application for leave to appeal.

[78] Similarly, there is no substantial question raised with respect to the alleged acceptance of B.C. Hydro's submissions as evidence. There was no evidence of potential trade benefits, other than that put forward by Sea Breeze. The reference to B.C. Hydro's submissions was merely a confirmation of that.

[79] These grounds of appeal and arguments raise no issues of general importance. The Commission rejected the JdF Project because of issues of reliability and certainty. The rejection of the benefits that could be obtained from potential trade was one factor in its consideration. However, a review of all of the Decision on JdF makes it clear that the trade benefits were not material. An appeal on this ground would be of no clear benefit. Leave was not granted on this ground of appeal.

Neil Atchison

[80] Mr. Atchison's submissions were directed to an additional alternative route option he has identified since the Commission's Decision. He calls his proposal Option 5B. He claims that the Commission erred in failing to consider that option (Appendix A, 15).

[81] Mr. Atchison's application for leave to appeal is misplaced. This Court has no role in considering an alternative proposal that has not been considered by the Commission. The Commission has the jurisdiction, under s. 99 of the ***Act***, to reconsider a decision. That would appear to be a more appropriate proceeding for a review of Mr. Atchison's Option 5B.

[82] Leave was not granted on Mr. Atchison's ground of appeal.

Rate Impacts

[83] IRAHVOL and Mr. Atchison claim that the Commission erred in failing to consider the actual impact on rates in determining public convenience and necessity (Appendix A, 7).

[84] This claim is contrary to the Decision. The Commission expressly considered the rate impacts of each of VITR, VIC, and JdF in comparing the three projects (at 172-174).

[85] Leave was not granted on this ground of appeal.

Summary and Conclusions

[86] The four applicants raised a total of 21 grounds of appeal, condensed into 15 grounds for the purposes of analysis on these applications for leave.

[87] Leave was granted on one question: whether the existing right of way agreements permit the construction of new overhead transmission lines under Option 1.

[88] Leave was denied on all other grounds.

“The Honourable Madam Justice Levine”

APPENDIX A

CONDENSED GROUNDS OF APPEAL

Consideration of Non-Financial Factors

1. The Commission erred in holding that public convenience and necessity in section 45 of the Act is to be determined by the most cost-effective option rather than what is in the public interest.

   SEABREEZE (d); TRAHVOL (b); IRAHVOL (d)

Wheeling Costs

2. The Commission erred in arriving at an insupportable assessment of wheeling costs and system losses associated with JdF. This assessment was based on a misunderstanding and misconstruction of the evidence, thereby amounting to a palpable and overriding error.

   SEABREEZE (a); IRAHVOL (c)

3. The Commission erred by failing to consider Sea Breeze's evidence concerning the assessment of compensation for the use of JdF.

   SEABREEZE (b)

Assessment of Benefits

4. The Commission erred by failing to consider evidence related to the benefits that would accrue to the Province, ratepayers and the BCTC as a result of the construction and operation of JdF and the resulting enhancement of electricity exports.

   SEABREEZE (c)

5. The Commission erred in holding that the incremental benefits to the province from increased trading activity using JdF are a matter of compelling evidence on the record and that these benefits have not been confirmed or corroborated by the purported beneficiaries.

   SEABREEZE (argument re: (c)); IRAHVOL (a)

6. The Commission erred in accepting BC Hydro's submission that neither it, nor Powerex are forecasting any substantial benefits from the increased transmission transfer capabilities between Canada and the United States.

   SEABREEZE (argument re (c)); IRAHVOL (b)

Rate Calculation

7. The Commission erred in failing to consider the actual impact on rates in determining public convenience and necessity under s. 45 of the Act.

IRAHVOL (e); ATCHISON (b)

Routing of Transmission Lines through Tsawwassen

8. The Commission erred in law in effectively giving the Corporation of Delta a "veto" over Option 3, but not extending that same right or privilege to Tsawwassen residents.

TRAHVOL (c)

9. The Commission erred in law in failing to attach any weight to the promise made by the BCTC not to recommend Option 1.

TRAHVOL (supplementary memorandum of argument)

10. The Commission erred in law in giving little weight to EMF concerns in determining Option 1 was in the public convenience and necessity, while giving substantial weight to those concerns in rejecting Option 3.

TRAHVOL (d)

11. The Commission erred in failing to require and consider additional evidence on the non-financial considerations of Option 3.

TRAHVOL (a)

12. The Commission erred in holding that the existing right of way ("ROW") agreements permit the construction of new overhead transmission lines.

TRAHVOL (e); IRAHVOL (g)

Routing over Gulf Islands

13. The Commission erred in concluding that VITR will have no significant incremental impact on average property values over the long-term.

IRAHVOL (f)

Precautionary Principle

14. The Commission erred in law by failing to apply the precautionary principle or the principle of prudent avoidance in interpreting sections 45 and 25 of the Act.

TRAHVOL (f)

Alternative Routing – Option 5B

15. The Commission erred in failing to consider an alternative routing for overhead transmission lines, referred to as Option 5B.

ATCHISON (a)

Note: The letter in brackets indicates the identification of the ground of appeal in the applicant's written memorandum of argument on the application for leave to appeal.