

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lil'Wat Nation v. British Columbia Hydro
and Power Authority*,
2026 BCSC 902

Date: 20260506
Docket: S261777
Registry: Vancouver

Between:

Lil'Wat Nation and Rockford Energy Corporation

Petitioners

And

**British Columbia Hydro and Power Authority and
Attorney General of British Columbia**

Respondents

Before: The Honourable Madam Justice J. Duncan

Oral Reasons for Judgment

(In Chambers)

Counsel for the Petitioners, Lil'Wat Nation
and Rockford Energy Corporation:

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E.K. Christie

Place and Date of Hearing:

Vancouver, B.C.
April 29, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 6, 2026

[1] **THE COURT:** This is an application by the petitioners, the Lil'Wat Nation and Rockford Energy Corporation ("Rockford"), for an injunction pending the hearing of the petition. The injunction sought would order the continuation of terms of an Energy Purchase Agreement ("EPA") between BC Hydro and Rockford. The EPA is set to expire today, May 6, 2026.

[2] The respondents, BC Hydro and the Province of British Columbia, oppose the injunction. The respondents maintain that Rockford has no standing, either in relation to the petition or to this application because it is not an entity contemplated in the jurisprudence concerning s. 35 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3.

[3] In relation to the petition relief sought by the petitioners, the respondents submit that what is sought - a commercial contract on the petitioners' terms - is not grounded in the Crown's duty to consult the Lil'Wat Nation.

Background

[4] I turn now to the background, mindful that I am hearing an application for an injunction, not the merits of the underlying petition, and I will only set out the facts necessary to determine the application.

[5] BC Hydro is a Crown corporation. Its business is generating, buying, distributing and selling electricity in British Columbia. It is a public utility and its rates are scrutinized by the Public Utility Commission.

[6] Rockford owns and operates the Brandywine project. It generates power from Brandywine Creek, which is on the traditional lands of the Lil'Wat and Squamish Nations. Rockford is wholly owned by Eco Flow Energy Corporation ("Eco Flow"). In July 2023, after several years of negotiations, Lil'Wat Capital Assets LP purchased a 51% ownership in Eco Flow.

[7] I will refer to the Lil'Wat Nation as the 51% owner of Rockford for ease of reference, although I note the observations of Ms. Christie, counsel for the Attorney

General of British Columbia, that the record does not contain evidence about the Lil'Wat Nation's relationship to Lil'Wat Capital Assets LP, which is the identified corporate shareholder of Eco Flow and, by extension, Rockford.

[8] In the early 2000s, BC Hydro entered into numerous EPAs with independent power producers, or IPPs. The IPPs generated hydro electric power from run-of-the-river operations. They built facilities to capture the energy created by the flow of rivers to sell to BC Hydro.

[9] Run-of-the-river operations do not generate a steady and predictable flow of energy. Their production is highest during the spring freshet, when snow melts and flows downstream, generating power. Most IPPs do not have the capacity to store water and release it in a planned fashion to generate a predictable stream of power, as happens with large dams and reservoirs.

[10] BC Hydro and Rockford entered into the Brandywine EPA in December 2001. The initial price paid for electricity was high, then cascaded down. The higher initial pricing reflected the capital cost of the new project, called a greenfield project in energy industry parlance.

[11] The Lil'Wat Nation confirmed their approval for the Brandywine project in a participation agreement with Rockford in June 2005. The agreement provided royalties to the Lil'Wat Nation.

[12] In 2021, BC Hydro began an EPA renewal program for existing IPP EPAs set to expire before April 1, 2026. BC Hydro discussed renewals with the IPPs and Indigenous nations, including the Lil'Wat Nation. They provided a draft to the B.C. Utilities Commission. In February 2022, BC Hydro began discussions with a view to offering all IPPs and EPA renewal on standard terms reflecting market conditions and BC Hydro's forecasted need for energy and capacity.

[13] I will not go into much detail concerning the discussions between BC Hydro and Rockford and the Lil'Wat Nation specifically, but Affidavit #1 of Bruce Chow speaks to the series of meetings between BC Hydro and affected parties concerning

renewal rates of the EPAs. The meetings took place in February, March, July and August 2022 as between BC Hydro and Rockford. The EPA renewal program rules were posted on the BC Hydro website in January 2023. In May 2023, Lil'Wat Capital Assets LP acquired a 51% interest in Rockford and notified BC Hydro of their acquisition.

[14] As a result of the EPA renewal program for existing IPP EPAs, BC Hydro offered two options:

Option A: a five-year contract with a variable price based on the day-ahead mid-C index (essentially the price of electricity on the Pacific Northwest trading hub); or

Option B: a 20-year term contract with a fixed price of \$58 per megawatt hour plus a 50% consumer price index escalation.

[15] BC Hydro entered into 11 EPAs under this program, including some involving Indigenous groups. The B.C. Utilities Commission has accepted them as being in the public interest.

[16] Rockford and Lil'Wat Nation maintain that BC Hydro has given them a “take it or leave it” price for power in the EPA renewal. Rockford has consistently taken the position that it merits a higher price for power, citing reconciliation objectives and BC Hydro's commitment to implement UNDRIP. Rockford maintains a higher price was needed for the Lil'Wat Nation to maintain its ownership interest in Rockford.

[17] BC Hydro denies a “take it or leave it” approach to negotiating with Rockford. Rockford was one of many IPPs who were consulted during the EPA renewal. BC Hydro was prepared to discuss a variation in the price of renewal if Rockford could demonstrate additional benefits, such as reliability of electricity supply.

[18] BC Hydro and Rockford went back and forth in the fall of 2025 on renewal. The Brandywine EPA expired on October 11, 2025. On November 7, 2025, the parties entered into a four month interim EPA, retroactive to October 11, 2025.

BC Hydro entered into the interim EPA to allow Rockford time to explore its options and allow more time for discussions. The interim EPA provided for \$50 per megawatt hour, which is above current market prices. The interim EPA was extended again to April 15, 2026, and finally to May 6, 2026 to allow the petitioners' injunction application to be heard.

[19] An interesting aspect of the interim EPA is that, while BC Hydro insisted on exclusivity – as in Rockford could only sell its electricity to BC Hydro - it included a clause that would allow Rockford out of the renewal if it found an alternative purchaser for its electricity.

[20] Rockford and the Lil'Wat Nation maintain that if this EPA that ends today is not continued with rates more favourable than market rates, Rockford's facility on Brandywine Creek will be useless and the Lil'Wat will lose a source of income. The petitioners assert that alternative purchasers are difficult to find.

[21] In addition, the Lil'Wat obtained financing to buy its share of Rockford and there is still a loan outstanding, adding additional financial stress to the situation.

[22] The petition is based on an allegation that BC Hydro failed in its duty to consult with Indigenous stakeholders.

The Injunction

[23] Test for granting an injunction was articulated in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [RJR]. There are three branches to the test:

1. whether there is a serious question to be tried, also referred to as the merits;
2. whether the applicant will suffer irreparable harm if the injunction is not granted; and

3. whether, in all the circumstances the balance of convenience weighs in favour of granting the injunction.

[24] The test in British Columbia has often been expressed as a two-part test pursuant to *A.G. (British Columbia) v. Wale*, (1987) 9 B.C.L.R. (2nd) 333:

1. whether there is a fair question to be tried as to the existence of the right alleged and a breach thereof; and
2. that the balance of convenience favours the granting of an injunction.

[25] Counsel in this matter focussed on the tripartite test from *RJR*, but the test from *Wale* is acknowledged to incorporate largely the same considerations.

[26] The nature of the injunction sought is at issue on this application. The applicant maintains the injunction is prohibitory. The respondents, BC Hydro and the Attorney General of British Columbia, submit it is mandatory. Characterizing the true nature of the injunction influences the rigour with which the first branch of the *RJR* test is to be applied to the circumstances.

[27] The importance, and the difficulty, in identifying the nature of an injunction was discussed by Justice Brown in *R. v. Canadian Broadcasting Corp.*, [2018] 1 S.C.R. 196:

[15] In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR-MacDonald* test is not whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima facie* case. A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial". The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR-MacDonald* as "extensive review of the merits" at the interlocutory stage.

[16] A final consideration that may arise in some cases is that, because mandatory interlocutory injunctions require a defendant to take positive action, they can be more burdensome or costly for the defendant. It must, however, be borne in mind that complying with prohibitive injunctions can also entail costs that are just as burdensome as mandatory injunctions. While holding that applications for mandatory interlocutory injunctions are to be subjected to a modified *RJR-MacDonald* test, I acknowledge that distinguishing between mandatory and prohibitive injunctions can be difficult, since an interlocutory injunction which is framed in prohibitive language may “have the effect of forcing the enjoined party to take ... positive actions”. For example, in this case, ceasing to transmit the victim’s identifying information would require an employee of CBC to take the necessary action to remove that information from its website. Ultimately, the application judge, in characterizing the interlocutory injunction as mandatory or prohibitive, will have to look past the form and the language in which the order sought is framed, in order to identify the substance of what is being sought and, in light of the particular circumstances of the matter, “what the practical consequences of the ... injunction are likely to be”. In short, the application judge should examine whether, in substance, the overall effect of the injunction would be to require the defendant to *do* something, or to *refrain* from doing something.

[28] Mr. Grant submits that the *CBC* decision engaged heightened considerations and burdens of proof, as the underlying action was contempt of court, which must be proven beyond a reasonable doubt. He maintains that the higher standard of a strong *prima facie* case should not apply to the circumstances before me as none of the harms or burdens discussed in *CBC* or elsewhere in the jurisprudence apply in this case.

[29] All the petitioners seek is a prohibition to prevent BC Hydro from cancelling the current EPA until this petition can be heard. In the alternative, Mr. Grant submits that even if it can be characterized as a mandatory injunction, all it does is maintain the *status quo* between the parties until the matter can be determined after a full hearing.

[30] Ms. Gilbride and Ms. Christie submit this is very much a mandatory injunction. The petitioners seek an order requiring BC Hydro to enter into an agreement with Rockford to purchase electricity on terms prejudicial to BC Hydro and in contradiction to the current round of EPAs entered into by other IPPs.

[31] Ms. Gilbride referred to *FPMG Hospitality Inc. v. Recipe Unlimited Corporation*, 2021 ONSC 7156, for its factual similarity to the present circumstances. In that case, which was a dispute between a franchiser and a franchisee, the Chambers judge observed:

[25] ... the franchise agreement by its own terms expires on August 31, 2021. This is not a case in which an existing franchise agreement has been terminated by the defendant; rather, the agreement has expired, and the plaintiff seeks to compel the defendant to keep it alive. The plaintiff's request is in substance a request to compel the defendant to renew the agreement.

[26] For these reasons, I find that the interlocutory motion before me today is the plaintiff's request for a mandatory injunction. Thus, for the first part of the *RJR-MacDonald* test, FPMG must show that it has a strong *prima facie* case.

[32] I am satisfied on the review of the authorities that this is an application for a mandatory injunction. The petitioners seek to compel BC Hydro to continue with a contract that expires today and has no renewal clause.

[33] I am not persuaded that the *CBC* test is less stringent when the subject matter is civil rather than criminal. I turn now to whether or not the applicant/petitioners have demonstrated a strong *prima facie* case.

Strong *Prima Facie* Case

[34] Mr. Grant submits that the petitioners can satisfy the strong *prima facie* case aspect of the test for a mandatory injunction. The Brandywine project is located entirely on the territory of the Lil'Wat Nation, and 20 years ago, they consented to the construction of the Brandywine project in exchange for participation which provided them with a modest annual revenue. In 2023, after several years of overtures, they acquired a majority interest in Rockford through a loan arrangement which is still outstanding.

[35] Mr. Grant submits that BC Hydro has a duty to consult with the Lil'Wat Nation, and their ownership interest in Rockford elevates the significance of that commercial relationship. BC Hydro and the Provincial Government have repeatedly emphasized that Indigenous ownership in Hydro projects is part of economic reconciliation with

First Nations. In BC Hydro's 2024 "Call for Power" presentation, it seeks more IPPs to provide power and awards more points to projects with Indigenous ownership. Consultation was required in these circumstances, but BC Hydro delivered a "take it or leave it" to the new EPA with Rockford.

[36] Ms. Gilbride disputes the demonstration of a strong *prima facie* case, or even a serious issue to be tried, and maintains the mandatory injunction sought should be denied by virtue of failing at this first stage.

[37] First, BC Hydro and the Attorney General of British Columbia dispute that Rockford has standing to advance a claim under this petition based on a breach of a duty to consult. The duty to consult is owed to collective rights-bearing Indigenous groups, not individuals or corporate entities.

[38] As well, Rockford does not assert that it represents a rights-bearing Indigenous collective for the purposes of consultation or in relation to the *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 [DRIPA]. Accordingly, under the authority of *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, Rockford lacks standing.

[39] As to Mr. Grant's submission that BC Hydro consulted the Lil'Wat Nation when the Brandywine project began but has abandoned consultation now, yet issued a "Call for Power" with emphasis on Indigenous projects, Ms. Gilbride and Ms. Christie both note that the "Call for Power" relates to new or greenfield projects. The Brandywine is an established project.

[40] The duty to consult rests on three mandatory elements:

1. the Crown's knowledge, actual or constructive, of a potential Aboriginal claim or right;
2. contemplated Crown conduct; and
3. the potential that the contemplated conduct may adversely affect an Aboriginal claim or right; *Haida Nation v. British Columbia (Minister of*

Forests), 2004 SCC 73, at para. 35, and *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010 SCC 43, at para. 31.

[41] Ms. Gilbride submits that Lil'Wat Nation's claim falls at the third branch of the test, because the negotiations between Rockford and BC Hydro about the price to be paid for electricity do not have the potential to adversely affect any Aboriginal right of the Lil'Wat Nation. Ms. Christie submits that commercial dealings do not engage the duty to consult, absent a decision with a potential adverse impact on Aboriginal or treaty rights. There must be a causal connection between a Crown conduct and potential adverse impact to s. 35 rights.

[42] Support for this proposition can be found in *Rio Tinto* where Madam Justice McLachlin said:

[49] The question is whether there is a claim or right that potentially may be adversely impacted by the *current* government conduct or decision in question. Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right. This is not to say that there is no remedy for past and continuing breaches, including previous failures to consult. As noted in *Haida Nation*, a breach of the duty to consult may be remedied in various ways, including the awarding of damages. To trigger a fresh duty of consultation — the matter which is here at issue — a contemplated Crown action must put current claims and rights in jeopardy.

[50] Nor does the definition of what constitutes an adverse effect extend to adverse impacts on the negotiating position of an Aboriginal group. The duty to consult, grounded in the need to protect Aboriginal rights and to preserve the future use of the resources claimed by Aboriginal peoples while balancing countervailing Crown interests, no doubt may have the ulterior effect of delaying ongoing development. The duty may thus serve not only as a tool to settle interim resource issues but also, and incidentally, as a tool to achieve longer term compensatory goals. Thus conceived, the duty to consult may be seen as a necessary element in the overall scheme of satisfying the Crown's constitutional duties to Canada's First Nations. However, cut off from its roots in the need to preserve Aboriginal interests, its purpose would be reduced to giving one side in the negotiation process an advantage over the other.

[Emphasis added.]

[43] Ms. Gilbride submits that the petition, and in effect the injunctive relief sought, is directed at giving Rockford and its majority shareholder, Lil'Wat Nation, a leg up in negotiations with BC Hydro when the Lil'Wat Nation was aware, at the time it

acquired a majority share in Rockford, of the EPA renewal process. As such, it does not constitute an adverse effect on an Aboriginal right.

[44] On the basis of the application record, I am not satisfied that Rockford has standing to seek injunctive relief because it does not have s. 35 standing.

[45] The Lil'Wat Nation has standing because the river in question flows through lands over which it claims title, but the petitioners have not satisfied me that the contemplated conduct by BC Hydro - a refusal to renew an EPA at a price that BC Hydro does not want to pay and which is higher than other similar EPAs have been renewed at - may adversely affect a claim or right of the Lil'Wat Nation. I do not accept that there is a strong *prima facie* case of a failure in the duty to consult that adversely affects a claim or right of the Lil'Wat Nation. The Lil'Wat Nation is not bound to sell its resources to BC Hydro. Their access to and control over the resources is unaffected.

[46] Nevertheless, I will go on to consider the second and third grounds of the *RJR* test.

Second Branch of *RJR* Test - Irreparable Harm

[47] The second branch of the *RJR* test is irreparable harm. The petitioners maintain that irreparable harm will be caused if BC Hydro does not continue to pay for electricity at the rate set in the interim EPA until the resolution of the petition. Mr. Grant submits that if Rockford does not obtain the injunction, it and by extension the Lil'Wat Nation, will have to decide whether to accept the 20-year deal offered by BC Hydro or the five-year deal, giving up their right to contest that they have been denied consultation, or decide not to enter into another EPA with BC Hydro and end up with an orphaned project. This is contrasted with the lack harm to BC Hydro if the agreement is extended until the petition is heard.

[48] Ms. Gilbride reiterates that this contract by its own terms, expires on May 6. The EPA renewal process was transparent and known to the Lil'Wat Nation before it acquired a majority interest in Rockford. It is analogous to the circumstances in

Northern Air Charter Inc. v. Alberta Health Services, 2019 ABQB 333. The plaintiff alleged irreparable harm would flow from the expiration of an agreement to provide air ambulance services because of employee lay-offs and surplus equipment sell-offs. The court found, however, that those potential consequences were known to the plaintiff when it became aware that its contract would not be renewed, well before it expired.

[49] Counsel further asserts that there is no hard evidence from the petitioners about the potential consequences if the EPA is not revived through injunctive relief. There is mention in some of the affidavits about water licence and land leases, but the materials lack specifics, and there is no evidence about other potential purchasers for Rockford's electricity. BC Hydro notes that two other IPPs opted to export their electricity rather than renew an EPA with BC Hydro, so there is a market for IPPs to sell to other buyers.

[50] There is a specter of the Lil'Wat Nation being unable to pay the loan they took out to purchase their interest in Rockford via Eco Flow, but if some connection was made at the hearing of the petition between that economic loss and any wrongful acts or omissions by BC Hydro, which BC Hydro maintains are speculative, damages would suffice.

[51] I am not satisfied that the petitioners have established irreparable harm. The Lil'Wat Nation purchased its interest in Rockford when the EPA renewal process had already begun. They went into the process with their eyes open and with knowledge that Rockford's contract with BC Hydro was coming to an end and would have to be renewed.

[52] At its worst, Rockford, and by implication the Lil'Wat Nation, will lose a few months of revenue if they are ultimately successful on the petition. The matter can be heard before the end of the summer. Short term economic losses do not, in my view, constitute irreparable harm.

[53] I turn now to the third branch of the *RJR* test, the balance of convenience.

Third Branch of RJR Test - Balance of Convenience

[54] In *Canadian Broadcasting Corp. (CBC) v. CKPG Television Ltd.* (B.C.C.A.), [1992] 64 B.C.L.R. (2nd) 96, Mr. Justice Lambert for the Court of Appeal summarized the approach to the balance of convenience from the decision of McLachlin J., as she then was, in *Wale*, and he said:

... in assessing the balance of convenience a judge should consider these points: - the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted; the likelihood that if damages are finally awarded they will be paid; the preservation of contested property; other factors affecting whether harm from the granting or refusal of the injunction would be irreparable; which of the parties has acted to alter the balance of their relationship and so affect the *status quo*; the strength of the applicant's case; any factors affecting the public interest; and any other factors affecting the balance of justice and convenience.

[55] Mr. Grant says the \$50 megawatt per hour rate in the interim contract which expires today does not prejudice ratepayers, which is a concern of BC Hydro, as its contracts must be approved by the B.C. Utilities Commission. The amount of electricity generated by the Brandywine project is miniscule compared to BC Hydro as a whole, and BC Hydro should not be allowed to stifle the petitioners' claims and force their hands on a new EPA without a hearing on the merits.

[56] Ms. Gilbride submits the petitioners' claim is weak. The injunction would compel BC Hydro to enter into an agreement to purchase electricity from Rockford at a price above market value during the freshet season when there is a surplus of energy. There is no compelling evidence of irreparable harm. Rockford has the option of entering into an EPA on a short or a long-term basis as other IPPs have. BC Hydro has not refused to purchase electricity from Rockford. The petitioners simply do not like the price. And rewarding them for holding out is unfair to the IPPs who have already renewed EPAs on the same bases as they were offered to Rockford. It will also cost BC Hydro money to the detriment of ratepayers.

[57] Stripped to its essence, Ms. Gilbride submits that the petitioners' claim is not for more consultation, but rather for a contract with BC Hydro to accommodate the

Lil'Wat Nation's interests in Rockford; in other words, they seek the court to dictate the specific outcome of consultation, which is contrary to the role of the courts and the process.

[58] As I noted earlier, the potential availability of damages as a remedy attenuates the notion of irreparable harm. BC Hydro is a large company. If damages are awarded, they will be paid.

[59] This case is not about the preservation of contested property. BC Hydro is not about to cut down timber or exploit minerals in a territory where there are Indigenous claims. This case is not about the preservation of the *status quo*. It is about an expired contract. The petitioners are asking this Court to wield its authority to grant injunctive relief, through the device of a mandatory injunction, and impose a new contract on two commercial entities at a rate that one of them does not agree to.

[60] The petitioners have not satisfied me that the relief sought is necessary or appropriate in these circumstances and the application for injunctive relief is dismissed.

[61] [Discussion about costs].

[62] THE COURT: Costs in the cause?

[63] CNSL B. GILBRIDE: Yes.

[64] THE COURT: All right. Ms. Zhang, any contrary view of that?

[65] CNSL W. ZHANG: No, Justice.

[66] THE COURT: Okay. All right.

[67] CNSL W. ZHANG: Justice, if I may, in light of the decision, the petitioners would like to seek an interim extension of the agreement for seven days in order to seek leave to appeal. I raise that for your consideration. I am aware obviously of your order and decision.

[68] THE COURT: Well, I have another matter at ten o'clock and I did not get notice that that would be sought today. I am not in a position right now to entertain the application. Ms. Gilbride?

[69] CNSL B. GILBRIDE: We not surprisingly would oppose that. This is the first I have heard of that --

[70] THE COURT: Yes.

[71] CNSL B. GILBRIDE: -- as well.

[72] THE COURT: Okay. So, Ms. Zhang, I understand that you are going to seek leave to appeal. I have made my view clear that the contract ends today. If you want to bring on a renewal application to revive it pending leave to appeal -- or pending going to the Court of Appeal, you will have to make arrangements through scheduling to speak to it. I have a sentencing today and I am off to Victoria tomorrow for two days for another matter. You may wish to consult with the rest of your team and decide what to do, but I am not in a position at this point to entertain a short fuse application for an interim injunction pending leave to appeal to the B.C. Court of Appeal.

[73] CNSL W. ZHANG: Understood.

[74] THE COURT: Okay?

[75] CNSL W. ZHANG: Thank you, Justice.

[76] THE COURT: Thank you. With respect to costs, BC Hydro and the -- I am gathering the Attorney General of British Columbia also seeks costs. Ms. Christie, what is your position on that?

[77] CNSL E. CHRISTIE: Sorry, Justice, I do not have my -- our application in front of me but we would be content even if we claimed costs that they be costs in the cause.

[78] THE COURT: Both BC Hydro and the Attorney General of British Columbia will have their costs of this application in the cause.

[79] I decline to deal with the interim application pending leave to appeal to the Court of Appeal, but, Ms. Zhang, if you can make arrangements to appear before me with your friends' participation to deal with that at some point, I will do my best to hear it.

[80] And lastly, I did raise at the hearing of the application the possibility or likelihood of a relatively quick hearing date. I am not inclined to do that if there is an application for leave to appeal. Simply put, I am not prepared to put the pressure on this court's resources when the petitioners may be seeking an alternate short-term remedy.

[81] If there is no application for leave to appeal, or if there is an unsuccessful application for leave to appeal, I would entertain counsel coming back before me. I am not sitting next week, but certainly if counsel seek to appear before me by MS Teams, I can make some time if necessary to make a direction about the hearing of the petition. I recall Mr. Grant said he thought it would be three days. Ms. Gilbride seemed to be in accordance with that.

[82] After the submissions on the last occasion, I did contact Supreme Court scheduling. They advised that July is somewhat busy with bumped matters and their preference is, if it is going to be set in July, that it be done at the end of the month. I did not check with them this morning about the current update. If you send a joint memorandum or request through scheduling, I can make a direction about the hearing date if counsel wish.

“Duncan J.”