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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-34-98

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

and

An Application by West Kootenay Power Ltd.
for a Certificate of Public Convenience and Necessity to Relocate its
No. 49 Transmission Line from Penticton to Summerland
and a Request for Reconsideration by Mr. R. Chapman into Commission Order No. G-17-98
and Reasons for Decision

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair) April 1, 1998
K.L. Hall, Commissioner)

O R D E R

WHEREAS:

- A. Commission Order No. C-9-97, approved for West Kootenay Power Ltd. ("WKP") its application for a Certificate of Public Convenience and Necessity ("CPCN") to relocate and rebuild its No. 49 Transmission Line from Penticton to Summerland, B.C.; and
- B. Following complaints into the routing of the No. 49 Transmission Line, the Commission issued a stop-work order for the 10.6 km section near Penticton, B.C. and set the matter down for Public Inquiry that was held on December 19, 1997; and
- C. The Inquiry Officer received submissions from the public and issued his Inquiry Report on January 8, 1998. The Commission accepted the Report and, by Order No. G-12-98, released the stop-work order on the portion of the line from the Huth Avenue substation to the West Bench substation. Further comments were requested to be received by January 28, 1998; and
- D. The Commission received and reviewed comments and, by Order No. G-17-98, approved the rebuilding of the No. 49 Transmission Line in the West Bench and Sage Mesa areas using Option 5 as the preferred route or Option 1 as the alternative route, in accordance with the Reasons for Decision attached to the Order; and

- E. On February 19, 1998, Mr. Richard Chapman requested the Commission to reconsider the Option 5 and Option 1 routes and presented a further option, a modification to Option 6; and
- F. The Commission has received information from WKP regarding the reliability considerations for the modified Option 6 route and finds that a decision on the application for reconsideration is required.

NOW THEREFORE the Commission orders as follows:

1. The Commission has reviewed the information submitted and finds that the request for a reconsideration of Order No. G-17-98 and its Reasons for Decision by Mr. Chapman of the Sage Mesa Golf Centre should be denied. The Commission's Reasons for Decision are attached as Appendix A.
2. A copy of this Order and Reasons for Decision will be sent to all parties registered with the Commission.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of April, 1998.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

Attachment

An Application by West Kootenay Power Ltd.
for a Certificate of Public Convenience and Necessity to Relocate its
No. 49 Transmission Line from Penticton to Summerland
and a Request for Reconsideration by Mr. R. Chapman of Commission Order No. G-17-98
and Reasons for Decision

BACKGROUND

On October 15, 1997, West Kootenay Power Ltd. ("WKP") applied to the Commission for a Certificate of Public Convenience and Necessity ("CPCN") for the relocation and reconstruction of its No. 49 Transmission Line ("No. 49 Line"). On November 12, 1997, the Commission approved the CPCN. Subsequently, the Commission received a number of complaints concerning the routing of the line and, on December 11, 1997 by Order No. G-130-97, issued a stop-work order and set down a Public Inquiry to hear the concerns of the public. Following the December 11, 1997 Public Inquiry the Commission, by Order No. G-12-98 dated January 15, 1998, ordered the commencement of the construction of No. 49 Line for Sections 1 and 3 and requested further submissions on the routing options of Section 2 through the Sage Mesa Golf Centre and subdivision.

After a review of the submissions, on February 12, 1998, Order No. G-17-98 was issued and directed WKP to attempt to secure a routing option which would see an early exit from the Sage Mesa Golf Centre and thence along the Highway or failing that, to continue across the golf course on the present alignment and exiting to Highway 97 along Sage Mesa Drive. These two options were described in the Reasons for Decision accompanying the Order as Option 5 and Option 1 respectively.

During the submission phase of the proceedings Mr. Richard Chapman objected to these two options and put forward another option which involved using the gully (Option 4) near the entrance to the Golf Course or failing that, an alignment skirting the top of the gully (Option 6). Mr. Chapman and WKP submitted geotechnical reports on the pros and cons of using these routes.

In the Reasons for Decision accompanying Order No. G-17-98, the Commission rejected these options on the basis of the geotechnical reports prepared for WKP by Golder and Associates, and for Sage Mesa Golf Centre by Dr. Fletcher.

THE RECONSIDERATION APPLICATION

Mr. Chapman wrote to the Commission on February 19, 1998 requesting a reconsideration of the above Order and in particular requested the Commission to reconsider the Gully option put forward in his earlier submissions. He again wrote to the Commission on March 9, 10, and 11 describing a further option he wished the Commission to consider. He described this option as a modification to Option 6 which traversed the top of the gully. The modified option involved the relocation of several poles at an unspecified distance from the edge of the gully.

GUIDING PRINCIPLES FOR RECONSIDERATION

Section 99 of the Utilities Commission Act ("the Act") states:

"The Commission may reconsider, vary or rescind a decision, order, rule or regulation made by it, and may rehear an application before deciding it."

Under Section 99 of the Act the authority of the Commission to allow a reconsideration is discretionary.

According to principles established in a number of reconsideration hearings, the applicant must demonstrate, on a prima facie basis, the existence of one or more of the following:

1. An error in fact or law;
2. A fundamental change in circumstance or facts since the decision in question;
3. A basic principle that had not been raised in the original proceedings; and
4. A new principle that has arisen as a result of the decision in question.

In addition if a reconsideration is to be considered on the basis of an allegation of error then:

- The claim of error is substantiated on a prima facie basis; and
- The error has significant material implications.

The Commission will exercise its discretion to reconsider in other situations where it considers there to be just cause. However, the decision to allow a reconsideration is not taken lightly. The Commission's discretion to reconsider and vary a decision or order is applied with a view to ensuring there is consistency and predictability in the Commission's decision making process.

MR. CHAPMAN'S APPLICATION

In the correspondence sent to the Commission, Mr. Chapman described seven reasons for his appeal as paraphrased below:

- He claimed the submission by WKP contained erroneous statements.
- Statements made to him by WKP officers indicated wood poles would be contemplated for the gully route.
- The geotechnical reports prepared by Dr. Fletcher assumed the use of wood poles in the gully.
- A copy of Dr. Fletcher's resume confirms his qualifications.
- The Golder reports are based on the use of concrete based structural towers.
- WKP did not state any preference for structural towers for the gully route.
- There is a Letter of Agreement between Sage Mesa and WKP which requires WKP to remove the transmission and distribution lines by March, 1998.

Subsequent to these reasons Mr. Chapman's correspondence has focused on the merits and disagreements he has had with WKP about the modified Option 6 route.

WKP EVIDENCE

In response to an information request for comments on the merits of the proposed modification, WKP has replied that it is in opposition to the modified proposal as it still violates the geotechnical advice of its consultants and would place the line in an area where the reliability would be compromised.

COMMISSION DETERMINATION

The following applies the principles for a reconsideration to test the seven reasons plus the argument for consideration of the new option given by Mr. Chapman.

1. Is the Applicant claiming the Commission made an error in fact or law?

Mr. Chapman is not claiming that the Commission made an error in fact or law. He is claiming the Commission made a mistake by not considering his arguments more carefully. He is, however, claiming that the Commission omitted important evidence by not considering the "Letter of Agreement" of 1996 between Sage Mesa and WKP. However, the Letter of Agreement allows WKP to change its options if required.

2. Did a fundamental change occur since the Decision?

The Commission would define a "fundamental change" as one which would require a change in the criteria for the Commission's original decision. In this respect nothing has happened to change the Commission's original criteria, which was:

- The route selection must satisfy sound geotechnical advice and not impair the reliability of the line.
- The construction schedule must not be unduly compromised.
- The costs of construction should not be significantly different from the original application.
- To the greatest extent possible, poles should not be placed in congested areas, and impacts on individual land owners should be mitigated if possible.

Mr. Chapman implies that the geotechnical information relied on by the Commission, with respect to construction down the gully or close to the edge of the bluff, was unduly conservative. However, further information from soils experts does not support this assertion.

3. Was there an omission of a basic principle during the original hearings?

None of the seven "reasons" stated by Mr. Chapman would suggest a basic principle was omitted.

4. Has a new principle arisen as a result of the Decision?

None is apparent or argued.

In the circumstances of this application, the Commission finds that the Applicant has not provided a sufficient basis to warrant a reconsideration of Order No. G-17-98.