



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

and

An Application for Reconsideration of the Commission's Decision
Approving the Application by West Kootenay Power Ltd.
to Rebuild the No. 44 Transmission Line from Oliver to Osoyoos

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair) October 29, 1998
C.J. Kinsley, Commissioner)

O R D E R

WHEREAS:

- A. On November 19, 1997, West Kootenay Power Ltd. ("WKP") applied to the Commission, pursuant to Section 45 of the Utilities Commission Act ("the Act"), for a Certificate of Public Convenience and Necessity ("CPCN") to rebuild the No. 44 Transmission Line ("Line No. 44") from Oliver to Osoyoos generally along the existing route; and
- B. In June 1998, the Commission held a public hearing into WKP's application and, on August 5, 1998, issued its Decision and Order No. C-13-98 granting a CPCN for the rebuild of Line No. 44; and
- C. On September 11, 1998, Mr. Hans Karow, on behalf of the Coalition to Reduce Electropollution ("CORE"), made an application to the Commission for reconsideration of its August 5, 1998 Decision and Order No. C-13-98. On September 16, 1998, Mr. Karow submitted a revised application (collectively, the "Reconsideration Application"); and
- D. On September 23, 1998, the Commission, pursuant to Section 99 of the Act, issued Order No. G-84-98 requesting Intervenor comments and setting a timetable to determine if the Reconsideration Application met the standards for a reconsideration; and
- E. Comments on the Reconsideration Application were received from the Town of Osoyoos, Mrs. Beryl Slack, Mr. and Mrs. Warman, Mr. and Mrs. Demolo, Mr. and Mrs. Nelson, Mr. Winchester and School District No. 53 - Okanagan Similkameen, all in support of a reconsideration, and from WKP who argued that Mr. Karow had not demonstrated any basis for reconsideration; and

F. On October 9, 1998, Mr. Karow responded to those comments; and

G. The Commission has considered the Reconsideration Application and other submissions received and has arrived at the following determination.

NOW THEREFORE the Commission orders that the Reconsideration Application into the Commission's August 5, 1998 Decision and CPCN Order No. C-13-98, submitted by Mr. Karow on behalf of CORE, be denied. The Commission's Reasons for Decision is attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of October, 1998.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

Attachment

An Application by Mr. Hans Karow, on behalf of the Coalition to Reduce Electropollution,
for Reconsideration of the Commission's Decision and Order No. C-13-98 approving an
Application by West Kootenay Power Ltd. for a Certificate of Public Convenience and Necessity to
Rebuild the No. 44 Transmission Line from Oliver to Osoyoos

REASONS FOR DECISION

1.0 BACKGROUND

A public hearing into an application by West Kootenay Power Ltd. ("WKP") to rebuild the No. 44 Transmission Line ("the No. 44 Line"), from Oliver to Osoyoos, was held in Osoyoos, B.C. on June 24, 1998.

Mr. Hans Karow, on behalf of the Coalition to Reduce Electropollution ("CORE"), intervened at the public hearing. He argued against the present location of the line and Osoyoos substation on the grounds that electromagnetic fields ("EMF") presented a carcinogenic risk to humans.

On August 5, 1998, the British Columbia Utilities Commission ("the Commission") granted a Certificate of Public Convenience and Necessity ("CPCN") to WKP to rebuild the No. 44 Line, to 63 kV standards, in its present location. The Commission determined that a rebuild of the line was necessary to maintain adequate and safe service to Osoyoos and that the existing corridor was the best routing, given all of the evidence, including EMF concerns.

Mr. Karow wrote to the Commission on September 11, 1998, and filed a further letter on September 16, 1998, requesting that the Commission reconsider its Decision and CPCN Order No. C-13-98 (collectively, the "Reconsideration Application"). The grounds for reconsideration are paraphrased in these Reasons.

On September 23, 1998, the Commission issued Order No. G-84-98. The Order requested Intervenor comments on Mr. Karow's request, and set a timetable to deal with the Reconsideration Application.

The Commission received written comments from the Town of Osoyoos, Mrs. Beryl Slack, Mr. and Mrs. Warman, Mr. and Mrs. Demolo, Mr. and Mrs. Nelson, Mr. Winchester, and School District No. 53 - Okanagan Similkameen. These parties supported the Reconsideration Application but did not argue the reasons for the necessity of reconsideration. In its written submission, WKP argued that Mr. Karow's arguments had not demonstrated any basis for reconsideration.

Mr. Karow responded to those comments on October 9, 1998.

2.0 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 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 circumstances or facts since the decision in question;
3. A basic principle that had not been raised in the original proceedings; or
4. A new principle has arisen as a result of the decision in question.

In addition, if an application for reconsideration is to be granted on the basis of an allegation of error, the application is required to meet the following criteria:

1. The claim of error is substantiated on a prima facie basis, and
2. 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. The decision to allow 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. A reconsideration is not a vehicle for applicants or intervenors to reargue their submissions from a hearing simply because they do not agree with the decision.

3.0 THE RECONSIDERATION APPLICATION

The Reconsideration Application has 38 points or “reasons for appeal”. However, many of the reasons are redundant, while others are difficult to interpret as “reasons” and are considered to be complaints or requests.

The grounds for the Reconsideration Application are paraphrased and grouped as follows:

3.1 Lack of Evidence/Failure to Disclose

Mr. Karow claims a lack of evidence arising from insufficient responses to his information requests or failure to disclose information on cross-examination. In this regard, he claims that WKP did not:

- (a) Provide a complete list of affected landowners and renters;
- (b) Provide complete correspondence between the various authorities;
- (c) Provide EMF studies for the Osoyoos nursery school;
- (d) Testify that there is a buried conduit under the Pioneer Walkway;
- (e) Admit knowledge of all the previous requests by the Town of Osoyoos to move the substation;
- (f) Admit knowledge of property devaluation by power lines;
- (g) Give him a copy of the Draft Acres Report;
- (h) Calculate the maximum EMF readings on Exhibit 9 (by not calculating the field strength at a 90-degree corner); and
- (i) Testify that the right-of-way agreements were, in fact, agreements for access in exchange for the use of the land for farming.

3.2 Errors in Relying on EMF Reports and Conclusions on EMF Research

Mr. Karow also claims that the Commission erred in fact by:

- (a) Coming to the conclusion that the body of research on EMF, to date, has failed to establish a positive link between EMF and cancer; and
- (b) Relying on reports by the National Cancer Institute and National Academy of Sciences (which, in his interpretation, state a different conclusion than characterized by the Commission and, in any case, are not trustworthy).

3.3 Absence of Jurisdiction

It appears that Mr. Karow is claiming that the Commission is not qualified to make decisions regarding EMF evidence and has exceeded its authority by violating the U.N. Declaration of Human Rights, the Nuremberg Code, and the Utilities Commission Act.

3.4 New Material Evidence

Mr. Karow claims that there is new material evidence that should be considered by the Commission. He cites a recently published report by the National Institute of Environmental Health Sciences as supporting his position that EMF is harmful.

3.5 Failure to Address a Basic Principle

Mr. Karow claims that certain basic principles have not been addressed because of a lack of intervention by the Osoyoos Indian Band, the Town of Osoyoos, and the Ministry of Transportation and Highways.

4.0 COMMISSION DETERMINATION

It is now necessary to apply the Commission's principles for reconsideration to the grounds for the reconsideration set forth in the Reconsideration Application.

4.1 Has the Commission made an error in fact or law?

4.1.1 Lack of Evidence/Failure to Disclose

These grounds for reconsideration can be dealt with on a point-by-point basis in the order enumerated in Section 3.1 of these Reasons.

- (a) WKP did provide a list of affected landowners. While it is possible that this list does not contain renters or that the scope of this list does not meet Mr. Karow's definitions, the Commission cannot see that an expanded list would have made a difference. A full and complete public notification of the hearing was made (Exhibits 12 and 20) and those affected landowners, or others who wished to be heard, either appeared at the hearing or submitted their concerns in writing.
- (b) The positions of the Ministry of Transportation and Highways, (Exhibit 7); the Ministry of Environment, Lands & Parks, (Exhibit 13); the Osoyoos Indian Band, (Exhibits 14 and 44); and the Town of Osoyoos, (Exhibits 7 and 41) were filed with the Commission. The Reconsideration Application does not explain what other correspondence might be available, or its relevance.
- (c) WKP did not provide a study of the EMF readings near the school; however, it did testify that it had taken readings near the school and could not distinguish the EMF levels from normal background readings.

- (d) The issue of the buried conduit along the Pioneer Walkway has arisen in the context of the 9L tap line option. This line option was not applied for and, therefore, not examined in detail except for the basis on which it was rejected as an option by WKP. The Commission concludes that this issue was not material to determinations on this CPCN.
- (e) WKP was never asked if the Town of Osoyoos had previously requested WKP to move the substation. Both Mr. Karow and Mrs. Slack raised the issue of location of the substation during cross-examination and the Commission heard and dealt with the issue in the hearing. The fact that WKP was never asked if the Town had previously requested a substation relocation is not relevant to the No. 44 Line Decision and this Reconsideration Application.
- (f) In cross-examination, WKP was asked if they were aware of any property devaluation caused by the transmission line. WKP's witness stated that he was not a real estate appraiser and could not comment on the impact of transmission lines on property values. The fact that Mr. Karow was not satisfied with this response does not constitute a sufficient basis for reconsideration.
- (g) The Draft Acres Report was filed as Exhibit 21 at the hearing. This evidence was taken into account in the Commission's Decision.
- (h) In Exhibit 9, WKP's calculation of EMF levels made certain assumptions regarding line loadings and spatial configurations. Actual readings of EMF levels may vary slightly from the calculated values for different spatial configurations. In the case of the 90-degree corner the values may increase or decrease slightly depending on the phase arrangements. However, in determining the maximum values of EMF, WKP used the maximum design capacity of the line and testified that these values would not be exceeded in a 20-year planning horizon and beyond. To recalculate the EMF levels for the 90-degree spatial anomaly would not make a material difference to the evidence before the Commission and, in these circumstances, it would be unreasonable to have WKP recalculate EMF levels for every spatial anomaly possible.

This issue was well canvassed at the hearing. For these reasons the Commission rejects this ground for reconsideration.

- (i) In cross-examination, WKP testified that it owned some of the land outright and had agreements with landowners for access. This issue was dealt with at the hearing.

4.1.2 Errors in Relying on EMF Reports and Conclusions on EMF Research

Mr. Karow is essentially claiming that the Commission made an error in fact by coming to the conclusions it did on EMF based on the evidence that it relied upon. The subject of EMF and the evidence that the Commission relied upon is dealt with in Section 4 of the Commission's Decision. This ground is essentially a complaint about the weight that the Commission attached to the evidence before it. It is for the Commission to determine the degree of weight to be attached to any evidence before it. This ground for reconsideration is therefore rejected.

4.1.3 Absence of Jurisdiction

The Commission's statutory authority is found in the Utilities Commission Act which provides broad powers of general supervision over the activities of public utilities. The Commission's Decision on Line No. 44 was made pursuant to the authority given to the Commission under the Utilities Commission Act. This ground for reconsideration is therefore rejected.

4.2 Has there been a fundamental change since the Decision?

Mr. Karow cited the recently published report by the National Institute of Environmental Health Sciences ("NIEHS") as resulting in a fundamental change in circumstances or facts since the Commission's Decision.

The report, entitled "Assessment of Health Effects from Exposure to Power-Line Frequency Electric and Magnetic Fields" represents the views and opinions of a Working Group of about 29 experts, who met in Minnesota in June 1998. The Working Group was organized by the NIEHS with the support of the Electromagnetic Field Research and Public Information Dissemination ("EMFRAPID") Program, a program that has received \$50 million in funding through the U.S. Department of Energy, industry, and the NIEHS. Members of the Working Group voted 19 to 9 for the "possible human carcinogen" designation, as defined by the International Agency for Research on Cancer ("IARC"). No members of the working group supported the two stronger categories of "probable" or "known" human carcinogen designations.

The EMFRAPID research, consisting primarily of animal exposure studies and other laboratory research, was found to be largely negative. Rather, the Working Group's conclusion was primarily based on "limited evidence" in some epidemiological studies that examined disease incidence in human populations. The report states that:

"'Limited evidence' is not an unusual finding for epidemiological data in the *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*. This degree of evidence is generally provided by studies for which there is credible evidence of an association and for which a causal linkage cannot be established with a high degree of certainty. This does not mean the effect is weak, nor does it mean there is clearly an effect, although these issues enter into the evaluation. In most cases, this degree of evidence is associated with one or more of the following problems: questionable identification of the exposure factor(s) associated with the disease outcome (either a dose surrogate was used or individuals were misclassified as to their exposure category); bias may have played a small role in the finding; confounders were not ruled out to the satisfaction of the original investigator and/or the Working Group, the observed effect was small, making clear detection of effect difficult, and/or there is little information on dose-response in the available report."

(Chapter 5, Final Summary and Evaluation), Assessment of Health Effects from Exposure to Power-Line Frequency Electric and Magnetic Fields, July 1998.

The results of this report are not inconsistent with or materially different from previous reports and the evidence of Mr. Gallager in the hearing. Mr. Gallager, who has reviewed the extensive literature on EMF and conducted EMF studies in British Columbia, stated in the hearing: "I would think that we are going to continue with a number of studies over the next few years which show equivocal results, that is to say very slightly positive or very slightly negative." (Transcript p. 185) On this basis the Commission is not persuaded that this report provides a fundamental change in circumstance or fact from previous evidence considered by the Commission. Therefore, there are no grounds for reconsideration based on the NIEHS report.

4.3 Was there an omission of a basic principle during the original hearing?

Mr. Karow claims that an omission of a basic principle occurred because a number of organizations did not participate in the hearing. All interested parties had the opportunity to participate in the hearing and, therefore, it is not clear what principle is being referred to. The hearing was properly established with public notification (Exhibits 12 and 20). This ground for reconsideration is therefore rejected.

4.4 Has a new principle arisen as a result of the Decision?

Mr. Karow does not claim that a new principle has arisen.

5.0 COMMISSION CONCLUSION

The Commission finds that Mr. Karow has not provided a sufficient basis to warrant a reconsideration of the No. 44 Line Decision and Order No. C-13-98. Much of Mr. Karow's Reconsideration Application attempts to reassert his views presented at the hearing, which were considered by the Commission in reaching its decision.

The Commission will reconsider a Decision when the guiding principles have been met or it finds that there is just cause for a review. The Commission finds that Mr. Karow's Reconsideration Application has not met these criteria and, therefore, is denied.

DATED at the City of Vancouver, in the Province of British Columbia this 30th day of October, 1998.

Original signed by:

Peter Ostergaard
Chair

Original signed by:

Lorna R. Barr
Deputy Chair

Original signed by:

Colin Kinsley
Commissioner