



LETTER NO. L-56-06

ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 16102

VIA E-MAIL

September 18, 2006

Mr. John Landry
Davis & Company
2800 Park Place
666 Burrard Street
Vancouver, B.C. V6C 2Z7

BCTC-VITR Registered Intervenor
and Interested Parties

Dear Sirs:

Re: British Columbia Transmission Corporation ("BCTC")
Certificate of Public Convenience and Necessity Application
Vancouver Island Transmission Reinforcement Project ("VITR")
Project No. 3698395/Order No. G-70-05
Application for Reconsideration of VITR Decision

We acknowledge receipt of your September 15, 2006 request on behalf of Sea Breeze Victoria Converter Corporation ("Sea Breeze") for a reconsideration of the VITR Decision dated July 7, 2006, on the grounds that the Commission erred in its assessment of the wheeling costs attributable to the Sea Breeze Juan de Fuca Project ("JdF Project") in the amount of \$10.2 million per year, the present value of which, coupled with system losses, was calculated to be \$153.5 million over 40 years, as well as in failing to properly take into account the revenues that will be attributable to the JdF Project, and which ought to have been considered as part of the Commission's cost-benefit analysis for the purpose of project comparison ("Application").

A copy of the Reconsideration and Appeals section of the Commission's Participant Guide, which identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists to allow a reconsideration, is enclosed with this letter.

An application for reconsideration by the Commission proceeds in two phases. As in the case for the previous application for reconsideration by Sutherland et al; and in the interest of both regulatory efficiency and fairness, and before the Commission proceeds with a determination on the merits of this application for reconsideration, the Application will be the subject of an initial screening phase. In this first phase, Sea Breeze must establish a prima facie case sufficient to warrant full consideration by the Commission. The Commission invites submissions from the other participants in the proceeding that led to the Decision that is the subject of the reconsideration request. The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

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

If the Commission determines that a reconsideration of its Decision is warranted, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the Application.

The Commission establishes a written comment process on the Application to address the first phase issue of whether a reasonable basis exists to allow a reconsideration. The first phase will be a preliminary examination to assess the application in light of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the Reconsideration Application, a subset of these items or additional items?
- If there is to be a reconsideration, what process should be established for the reconsideration?

The first phase assessment process for the Application will be as follows:

- BCTC, Intervenors and Interested Parties are to submit written comments, if any, to the Commission by Tuesday, September 26, 2006, with a copy to Sea Breeze.
- Sea Breeze submits a written reply, if any, to the Commission by Wednesday, October 4, 2006.

Written comments in the first phase should address whether the threshold for reconsideration has been met, rather than the substance of the issues. Following the completion of this written comment process, the Commission will decide whether or not a reconsideration should proceed. If the reconsideration proceeds to the second phase, the parties will be allowed subsequently to address the substance of the issues that the Commission approves for reconsideration.

Yours truly,

Original signed by:

Robert J. Pellatt

RJP/yl

Attachments

cc: Mr. Mr. Marcel Reghelini
Director, Regulatory Affairs
British Columbia Transmission Corporation

Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the

applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

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

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.