



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-154-06

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

and

Applications by Big White Ski Resort Ltd. and FortisBC Inc.
for Reconsideration, Rescission and Variance of Order No. C-17-06 and
accompanying Reasons for Decision for Approval of a
Certificate of Public Convenience and Necessity for the Big White Supply Project

BEFORE:

L.F. Kelsey, Commissioner and Panel Chair
R.J. Milbourne, Commissioner
K.A. Anderson, Commissioner

December 6, 2006

O R D E R

WHEREAS:

- A. On March 9, 2006 FortisBC Inc. ("FortisBC") applied (the "Application") to the British Columbia Utilities Commission (the "Commission") for a Certificate of Public Convenience and Necessity ("CPCN"), pursuant to Sections 45 and 46 of the Utilities Commission Act ("UCA"), for the Big White Supply Project ("the Project"); and
- B. The Commission, on April 13, 2006 by Order No. G-44-06, ordered that an Oral Public Hearing be held to review the Application and set down a Regulatory Timetable; and
- C. The Oral Public Hearing proceeded as set down in the Regulatory Timetable; and
- D. The Commission, on September 14, 2006 by Order No. C-17-06 with accompanying Reasons for Decision, granted a CPCN to FortisBC for the construction of the Project subject to a condition, and FortisBC was further required to follow all directions given in the Reasons for Decision; and
- E. Big White Ski Resort Ltd. ("BWSR") by letter dated October 4, 2006, applied to the Commission pursuant to Section 99 of the UCA for reconsideration, rescission and variance of Order No. C-17-06 and the Reasons for Decision ("BWSR Reconsideration Application"); and
- F. BWSR, on October 10, 2006, filed Notice of Application for Leave to Appeal the Order and the Decision in the Court of Appeal of British Columbia; and

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- G. FortisBC, by letter dated October 12, 2006, applied to the Commission pursuant to Section 99 of the UCA for reconsideration and variation of Order No. C-17-06 and the Reasons for Decision (“FortisBC Reconsideration Application”); and
- H. By letter dated October 13, 2006 the Commission, in accordance with its two phase process for dealing with a reconsideration application, established a written comment process for the BWSR Reconsideration Application and the FortisBC Reconsideration Application for the initial screening phase to address the issue of whether a reasonable basis exists to allow a reconsideration. If the Commission determines in the first phase that a reconsideration is warranted, the reconsideration would proceed to the second phase where the Commission hears full arguments on the merits of the reconsideration application; and
- I. The Commission received submissions from Beryl Slack, the BC Old Age Pensioners Organization *et al.* with respect to both applications and from BWSR and FortisBC with respect to each others applications; and
- J. BWSR and FortisBC filed written reply submissions on October 30, 2006; and
- K. The Commission has considered the BWSR Reconsideration Application, the FortisBC Reconsideration Application and the written submissions received in relation to its first phase process and the criteria for determining whether a reasonable basis exists to allow the reconsideration and has determined that neither BWSR nor FortisBC have established a prima facie case that is sufficient to warrant full reconsideration of the matters by the Commission, as set out in the Reasons for Decision that are attached as Appendix A to this Order.

NOW THEREFORE the Commission denies the BWSR Reconsideration Application and the FortisBC Reconsideration Application, as set out in the Reasons for Decision that are attached as Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of December 2006.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner and Panel Chair

Attachment

Applications by Big White Ski Resort Ltd. and FortisBC Inc.
for Reconsideration, Rescission and Variance of Order No. C-17-06 and
accompanying Reasons for Decision for Approval of a
Certificate of Public Convenience and Necessity for the Big White Supply Project

REASONS FOR DECISION

1.0 INTRODUCTION

1.1 FortisBC Inc. Application and Order No. C-17-06

On March 9, 2006 FortisBC Inc. (“FortisBC”, “Company”) applied to the British Columbia Utilities Commission (“Commission”) for a Certificate of Public Convenience and Necessity (“CPCN”) for the Big White Supply Project (“Project”) pursuant to Sections 45 and 46 of the Utilities Commission Act (“UCA”) (the “Application”). The Project involves the construction of 23 km of new 138 kV line, the reinsulation of 11.3 km of an existing section of line from the Joe Rich substation, a new substation located at the Big White development area (“Big White”) and distribution upgrades at Big White. The capital cost associated with the Project is estimated by FortisBC at \$20.32 million.

Following receipt of the Application by the Commission, the Commission by Order No. G-44-06 established a regulatory agenda and Oral Public Hearing to review the Application.

The Oral Public Hearing commenced on July 4, 2006 and concluded on July 5, 2006. The hearing process allowed for two sets of information requests (“IR”) to FortisBC prior to the Oral Public Hearing, and for arguments to be submitted in writing following the Oral Public Hearing. FortisBC’s Reply Argument was submitted to the Commission on July 28, 2006.

Commission Order No. C-17-06 (“Order”) with accompanying Reasons for Decision (“Decision”), issued on September 14, 2006, granted FortisBC a CPCN for Option 1 upon meeting the condition set out in the attached Decision. That condition required FortisBC to, within ten business days on the date of the Decision, provide written confirmation that the risk sharing mechanism, as described in the Decision at page 18, is acceptable to it.

In addition, the Order required the Company to follow all directions given in the attached Decision. Those directions included:

“FortisBC is directed to file, within 90 days of this Decision, an application for a rate design for the Project which considers the circumstances and conditions pertaining to this Project. That application will be the subject of a separate proceeding and a determination by the Commission as to how the costs of the Project will be recovered.

FortisBC is directed to establish a deferral account for the Project. The deferral account will accumulate the costs of the Project, together with related AFUDC, to be recovered by FortisBC as determined by the Commission in conjunction with the application for a rate design for the Project.” (Project Decision, p. 35)

1.2 Big White Ski Resort Ltd. Reconsideration Application

By letter dated October 4, 2006, Big White Ski Resort Ltd. (“BWSR”) applied to the Commission pursuant to Section 99 of the UCA for reconsideration, rescission and variance of Order No. C-17-06 and the Decision (the “BWSR Reconsideration Application”).

On October 10, 2006, BWSR filed Notice of Application for Leave to Appeal the Order and Decision in the Court of Appeal of British Columbia.

1.3 FortisBC Reconsideration Application

By letter dated October 12, 2006, FortisBC applied to the Commission pursuant to Section 99 of the UCA for reconsideration and variation of Order No. C-17-06 and the Decision with respect to the Cost Collar as a condition of approval of the CPCN, the directions with regard to the rate design application to be filed by FortisBC and the establishment of a deferral account for the accumulation of the costs of the Project (the “FortisBC Reconsideration Application”).

1.4 Regulatory Process

By letter dated October 13, 2006, the Commission established a written comment process on the BWSR Reconsideration Application and the FortisBC Reconsideration Application, to address the first phase issue of whether a reasonable basis exists to allow a reconsideration. An application for reconsideration by the Commission proceeds in two phases. In the initial screening phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. Based on the submissions in the first phase, 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 proceeding; 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 in the first phase that a reconsideration is warranted, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the reconsideration application.

The Commission also requested comments on the extent to which the processes for the two reconsideration applications should be combined, in the event both reconsiderations proceed to the next phase.

The Commission received written submissions dated October 20, 2006 from Buryl Slack, with respect to both applications, and October 23, 2006 from the BC Old Age Pensioners Organization *et al.* (“BCOAPO”), with respect to both applications, and BWSR and FortisBC with respect to each others application.

Ms. Slack’s submissions, while generally supportive of the process that led to the Decision and Order, were in part directed towards matters that could or might arise from the reconsideration process or the subsequent rate hearing as specified in the Decision and Order. In particular Ms. Slack noted at paragraph 6, that error on the part of the Commission is not alleged.

Submissions from BWSR, FortisBC, and the BCOAPO were generally directed towards the grounds for reconsideration proposed, and are dealt with as particulars in each Application below.

On October 30, 2006 both BWSR and FortisBC provided written replies to their respective reconsideration applications.

1.5 Stay Application

In parallel with the reconsideration applications and subsequent submissions, BWSR separately applied to the Commission on October 12, 2006 for a stay of the Decision and Order until the BWSR Reconsideration Application had been dealt with and any reconsideration completed. By letter dated October 13, 2006, the Commission requested that parties comment on whether the Commission should stay the Decision and Order, and hence work on the Project, while the reconsideration processes are in progress.

Submissions were received October 23, 2006 from FortisBC and the BCOAPO and BWSR filed a reply submission on October 30, 2006.

2.0 RECONSIDERATION APPLICATIONS

2.1 BWSR Reconsideration Application

In the BWSR Reconsideration Application, BWSR states that the reconsideration order should be directed at:

- “(a) determining whether the Application as submitted, with all Fortis ratepayers sharing the cost should be approved;
- (b) rescinding or staying the Order/Decision;
- (c) providing the Big White ratepayers with proper notice of any subsequent proceeding, which notice includes notice of the risk to them of payment of the costs of the Project;
- (d) allowing the Big White ratepayers to provide input on which option should be selected;
- (e) determining how the costs of the Project should be recovered; and
- (f) if Fortis’ [FortisBC] existing tariff is to be changed, approving an applicable rate design.”

2.1.1 Ground 1, The Order Does Not Accord With the Application

In the BWSR Reconsideration Application, BWSR states “On March 9, 2006, FortisBC Inc. (“Fortis”) applied to the Commission in the Application for a Certificate of Public Convenience and Necessity (“CPCN”) for the Big White Supply Project (the “Project”), the costs of which would be rolled into Fortis’ rate base and shared by all of its ratepayers” (Exhibit 2, para. 4).

BWSR then quotes the Commission Determination:

“The Commission Panel approves the CPCN Application for the Project subject to the condition in Section 5.0 and FortisBC is authorized to proceed with the Project, subject to the following directions. FortisBC is directed to file, within 90 days of this Decision, an application for a rate design for the Project which considers the circumstances and conditions pertaining to this Project. That application will be the subject of a separate proceeding and a determination by the Commission as to how the cost of the Project will be recovered. FortisBC is directed to establish a deferral account for the Project. The deferral account will accumulate the cost of the Project, together with related AFUDC, to be recovered by FortisBC as determined by the Commission in conjunction with the application for a rate design for the Project” (Exhibit 2, para. 6).

BWSR compares the Application and Decision and observes that the “nature of the Application was different than the Order and Decision which were made, and no reasonable notice was given indicating that would occur”.

BWSR submits that a “decision should not have been made to approve the CPCN or to authorize Fortis to proceed with the Project unless and until such time as the Commission determined that the costs of the Project would be shared by all of Fortis’ ratepayers as contemplated in the Application. In making the Order and Decision that it did, the Commission erred in law and exceeded its jurisdiction” (Exhibit 2, para. 9-10).

In its submissions FortisBC points out, among other things, that “the Commission has not gone beyond the scope of the original CPCN Application” and, in particular, that BWSR’s submission that the Commission has jurisdiction only to approve a CPCN Application as proposed by the Applicant is “without merit, and is contrary to the express terms of the Act in Section 45(9), which provides that the Commission may impose conditions in its approval of a CPCN, including conditions regarding rates”.

BCOAPO points out in its submissions, among other things, that “there is no requirement that the order made by the Commission must conform to the Application” and further that “If the Commission were to simply rubber stamp applications made by utilities, there would be no point to holding hearings at all”.

BCOAPO also notes that if BSWR felt the Commission had no jurisdiction to approve the Project if the issue of who was to pay for it is to be determined in a subsequent proceeding in which all stakeholders will be allowed to participate, then BSWR should have raised the issue during the proceeding, as the issue was discussed at length.

The submissions of both Parties draw attention to FortisBC's expert evidence of Gary Saleba, "Requirements to set Equitable Line Extension and Regional Retail Extension Policies June 30 2006" as confirming that the possibility that an Order regarding the CPCN might not be in accord with the Project funding proposal in the Application.

In reply, BWSR makes extensive submissions as to the potential unfairness that may result from the subsequent rate design process to determine how the costs of the Project are best recovered. The Commission Panel believes that these are more clearly relevant to the subsequent proceeding itself, rather than the ground contemplated as the basis for reconsideration.

BWSR also emphasizes the notion of "affordability" in terms of the number of potentially contributing ratepayers and the quantum of their contribution to the selection of the preferred option. The Commission Panel notes that the opportunity to make argument with respect to such considerations was available to BWSR throughout the regulatory proceeding, but was not seized. BWSR does not point to any reference in the record of the proceedings where its support for the preferred option was contingent upon the Application being unconditionally approved by the Commission.

The Commission Panel agrees with the submissions of FortisBC and the BCOAPO and finds that **the Commission made no error in law in respect of Ground 1.**

2.1.2 Ground 2, Inadequate Notice

In the BWSR Reconsideration Application, BWSR states "The Commission is under a duty to act in accordance with the rules of natural justice and has a duty of fairness. The Commission is under a legal duty to afford to interested persons a fair opportunity to participate in the decision-making process before any action is taken that is detrimental to their interests, including being liable to pay money" (Exhibit 2, para. 21). At paragraph 23 BWSR states "A failure to provide adequate notice constitutes a breach of natural justice and a duty of fairness, which is an error of law resulting in an excess of jurisdiction".

Among other things, in its October 23, 2006 written comments on the BWSR Reconsideration application, FortisBC submits that "because the issue of cost recovery of the Project has been deferred, no issue was decided in the order and decision that was beyond the notice provided" and, in addition, that "BWSR's submission is without merit and is contrary to the provisions of the Act which are deemed to provide notice to all persons in BC

with notice that the Commission may attach conditions to the approval of a CPCN including conditions pertaining to rates to be determined in a future process”.

FortisBC also notes that “BSWR was fully accorded the opportunity to put forward evidence regarding other options and alternatives in the context of the issue regarding the costs of the project and possible customer contribution,” and further that “BSWR will have the opportunity to participate in the future rate design process.”

The BCOAPO points out, among other things, the adequacy of notice of the issue as confirmed by numerous IRs, the above referenced Expert Evidence, the evidence of BWSR’s witnesses, the Oral Public Hearing opening statement of FortisBC and the questioning of FortisBC’s witness panel as documented in the Hearing Transcript, and the references to the subject in the Final Arguments of FortisBC and the Intervenors including BWSR.

In particular, BCOAPO points out BWSR’s submission of July 21, 2006, at paragraphs 76-87, where the subject of customer contribution and regional rates is addressed, in part as follows: “76. The issue of who pays for the estimated \$20.3 Million in costs for the Project has been raised during the course of the proceeding. It has been suggested that the Resort bear these costs...”.

In reply, BWSR largely relies on its position that “BSWR is entitled to deal with the application as filed. It is entitled to assume that when an application is made by a public utility to build a facility, and the public utility says that all its ratepayers will pay the cost of the facility, the Commission will either agree or it will turn the application down” (Exhibit 16, para. 18). The Commission Panel believes this matter has been well canvassed by FortisBC’s reference to the express terms of the UCA in Section 45(9) in its submissions with respect to BWSR’s first ground above.

The Commission Panel agrees with the submissions of FortisBC and the BCOAPO and finds that **the Commission made no error in law in respect of Ground 2.**

2.1.3 Ground 3, Lack of Jurisdiction to Order Contribution

In the BWSR Reconsideration Application, BWSR states “The Commission concluded that there does not currently exist in Fortis’ tariff schedules a provision to require a contribution from one or more specific customers. The Commission then directed Fortis to file a rate design for the Project. In making the Order and the

Decision, the Commission appears to have proceeded on the basis that the *Act* permits the Commission to require a contribution from one or more specific customers in these circumstances” (Exhibit 2, para. 41). BWSR submits that the Commission lacks the jurisdiction to order BWSR or other Big White ratepayers to make a “contribution” to the capital costs of the project and that the Application for a CPCN was made pursuant to Sections 45 and 46 of the UCA and neither those sections or other provisions of the UCA enable the Commission to order a person to make a contribution to the capital costs of facilities in such circumstances (Exhibit 2, para. 42).

In its submissions, FortisBC points out, among other things, that “Neither the Decision nor the Order requires BWSR or any other customer to contribute [disproportionately] to the costs of the project. The issue is deferred to a future hearing in which all customers will have an opportunity to participate” and further, that “The Commission has jurisdiction in the Act, in Sections 45(6), 45(9), and 58, at any time, to establish a regulatory timetable and a process whereby the rates recoverable from FortisBC’s customers will be considered and determined” and that “The Commission in the Order has not made any determination as to rate design or recovery of the costs of the project that is in any way prejudicial, procedurally or substantively, to BWSR”.

In its submissions, the BCOAPO concurs with these views.

In reply, BWSR submits that by virtue of having ordered a separate process to follow “... the Commission was proceeding on the basis that such a contribution could be ordered. Otherwise it would not have embarked upon such a process”.

The Commission Panel rejects BWSR’s thesis as being unsupported by the Record of the proceeding or the Decision and Order. The Commission Panel agrees with the submissions of FortisBC and the BCOAPO, and finds that **the Commission made no error in law in respect of Ground 3 and in any event, did not order a contribution from any party.**

2.1.4 Ground 4, Description of the Role of BWSR Is In Error

In the BWSR Reconsideration Application, BWSR states that the “findings that the Big White area is under the direction and control of a single commercial entity (BWSR), and that the single commercial entity is required to provide infrastructure services, including electricity to the lot line of parceled out land, are in error” (Exhibit 2, para. 51). BWSR states that these findings by the Commission could be of significance in any later proceeding and it is submitted that it is appropriate for the Commission to rectify these errors.

In its submissions, FortisBC notes that “[T]he characterization of Big White [as] being unique has not resulted in an incorrect or unfair decision of the Commission as the decision on who should bear the costs of the Project has been deferred. Whether or not Big White’s character, unique or otherwise, will influence the future rate design application is yet to be seen.”

The BCOAPO notes that “... the Commission’s characterization at paragraph 2(a) on page 33 of the Decision is supported by the evidence” and further “even if the description in that paragraph does not accord with BWSR’s view, the error is not of any material significance”. BCOAPO also makes reference to Order No. G-124-06, in respect of a recent reconsideration proceeding where error was alleged, noting at pages 2 and 3 of the Order “Therefore, even if the Commission erred it does not necessarily follow that the error would be material to the decision”.

In reply, BWSR directs its submissions to more general matters than the particulars of the ground on which it has based the request for reconsideration.

The Commission Panel agrees with the submissions of FortisBC and the BCOAPO and finds that **the Commission made no error in fact in respect of Ground 4.**

2.1.5 Summary

On the basis of BWSR’s Phase 1 submissions and argument in support of its application for reconsideration of the Decision, the Commission Panel finds that BWSR has not established a reasonable basis for concluding that:

- the Commission made an error in factor law;
- there has been a fundamental change in circumstances or facts since the Decision
- a basic principle had been raised in the original proceeding; or
- a new principle has arisen as a result of the decision.

Further, in the case of the alleged error in the Decision, BWSR’s submissions and argument do not establish that the alleged error has material implications.

The Commission Panel finds that proceeding to the second phase of the reconsideration process has not been justified, and the request is denied.

2.1.6 Project Contingency Plan

In the BWSR Reconsideration Application, BWSR states that FortisBC should not be able to proceed with the Project at this stage of the process. The Big White ratepayers are entitled to meaningful participation in a process which will determine their liability for the costs of the Project. BWSR states further “To allow a project of this magnitude to proceed without knowing how it will be funded, when viable alternatives exist, is not in accordance with sound business practice or regulatory principles” (Exhibit 2, para. 61).

Given the Commission Panel’s findings in 2.1.5 above and the BWSR separate request for a stay of the Project the substance of this matter will be addressed in a later section.

2.1.7 Reconsideration Order Sought

Given its findings at 2.1.5 above, and BWSR’s separate application for a stay, the Commission Panel need not deal with the matters detailed in Section 2.1.

2.2 FortisBC Reconsideration Application

2.2.1 Reconsideration of the Cost Collar Order

In section 5.4 of the Decision at page 18, the Commission determined as follows:

“... the Commission Panel finds that the costs allowed into rate base for the Project should be capped at 110 percent of the estimated Option 1 cost, adjusting for the average annual rate of inflation provided by the Consumer Price Index published by Statistics Canada. As an incentive, if this work is completed at less than 90 percent of the estimated Option 1 cost in nominal dollars at the time the expenditures are incurred, the savings will accrue to the benefit of FortisBC.

The Commission Panel approves for FortisBC the CPCN requested in the Application on condition that, within ten business days of the date of this Decision, FortisBC provides, in writing, confirmation that the foregoing risk sharing mechanism is acceptable to it.”

In the FortisBC Reconsideration Application, at paragraph 18, FortisBC states that the Company accepts, subject to certain conditions and without prejudice to future capital project applications, a cost collar for the Big White Supply Project. By way of Reconsideration, the Company asks the Commission to consider two amendments to the Cost Collar Order.

The first amendment is:

“The Company must have the right to apply to the Commission to subsequently approve any individual cost component that for reasons beyond the control of the Company, acting prudently, results in an escalation of total Project costs beyond the 10% threshold.

Conversely, in order to be fair to its customers, the Company would agree that the Commission may order that the Company not be entitled to the savings if any individual cost component that for reasons beyond the control of the Company, acting prudently, results in a decrease of total Project costs below the 10% threshold” (Exhibit 4, para 19).

The second amendment is:

“All costs that are within the control of the Company, acting prudently, but outside the +/- 10 percent collar be shared equally between customers and the shareholders; that is, rate base will be augmented by 50% of the amount of cost savings below 90 percent of the cost estimate, or will be reduced by 50% for amounts greater than 110 percent. The principle of equal and symmetrical sharing of risks and benefits is embedded in the Company’s Performance-Based Rate Mechanism and should, in FortisBC’s submission, also be applied to incentives with respect to capital expenditures” (Exhibit 4, para 25).

With respect to the first amendment, BWSR is of the view that as FortisBC did not meet the condition imposed by the Commission, and that FortisBC proposed an arrangement different than that stipulated by the Commission, the CPCN has not been approved and the Project cannot proceed at this time. BWSR makes additional comments concerning the cost collar. However, it states that it does so in the context of BWSR’s position as to the principal errors in the Order and the Decision. BWSR then summarizes the key points of its Reconsideration Application (Exhibit 11, para 10) and states at paragraph 12 “Once the issues in paragraph 10 herein are determined, the Commission could decide on a cost collar”.

BWSR does not comment specifically on whether a reasonable basis exists to allow FortisBC’s Reconsideration Application.

BCOAPO states “While FortisBC may be unhappy with the Commission’s decision to impose a cost collar, the decision is consistent with other decisions regarding other utilities” (Exhibit 12, p. 8). BCOAPO is of the view that the only conceivable ground in which FortisBC could be seeking a reconsideration of the Commission’s determination regarding the cost collar, is that the Commission has made an error in fact or law and states, “The Commission in our submission has made no error in deciding on the cost collar. What FortisBC is attempting to do is have the issue reheard” (Exhibit 12, p. 9).

In reply argument, FortisBC states “the Company was willing to accept a cost collar for this Project provided the mechanism did not impose unreasonable risks on the shareholder that were beyond the control of the Company acting prudently” (Exhibit 14, p. 5).

In both the IR process and the hearing FortisBC was asked about the accuracy of the cost estimates for the Project. FortisBC confirmed its satisfaction with the cost estimates.

“The total cost estimate was compiled based on historical data and experience from past projects using contractors and consultants. FortisBC is comfortable that the estimate submitted is within plus/minus 10% of actual costs based on current market conditions” (Exhibit 8-3, BCUC IR 12.3).

“We stand by our estimate as a plus/minus ten percent estimate based on current market conditions” (T1:30).

With respect to the second amendment, neither BWSR nor BCOAPO made comments on this part of the FortisBC Reconsideration Application.

Analysis

The Commission generally applies the criteria outlined at 1.4 to determine whether or not a reasonable basis exists for allowing reconsideration. In the FortisBC Reconsideration Application, **the Commission Panel finds that FortisBC did not identify any action on the part of the Commission or any circumstances, facts or principles not raised in the hearing that the Commission should consider in respect of this application.**

However, FortisBC raised several issues in the course of the Reconsideration Application that the Commission will address by way of clarification.

In its letter of September 28, 2006, FortisBC referred to the eventuality of the in-service date of the Project being delayed with resulting mitigation costs, the example used being onsite generation to meet peak winter 2007-08 load. FortisBC further clarifies its concern at paragraph 24 of Exhibit 4 “If the required in-service date becomes at risk during the course of the Project, for non procedural reasons, further notice will be provided. In such an event, mitigation measures including the temporary use of on-site generation to meet the peak winter 2007/08 load may be required. If such mitigation costs result from events beyond the control of the Company acting prudently, the Company may apply to the Commission for the approval of such costs outside of the scope of the cost collar”.

The Commission Panel, in arriving at the decision to impose a cost collar stated: “FortisBC expresses confidence in both its knowledge of the scope of work and the estimated costs to complete it. As a result, the Commission Panel expects that FortisBC should be able to manage costs and complete this work within the \$20.3 million estimate provided” (Decision, p. 18). The possible mitigation measures FortisBC describes above were not included in the estimate and therefore would not be subject to cost collar containment. However, FortisBC is reminded that this type of cost could be subject to a prudence review.

For cost categories within the estimate as presented, FortisBC provided numerous assurances in IRs and under oath as to the accuracy and validity of the estimate. The Commission Panel, in imposing the cost collar, which provides for a Consumer Price Index adjustment mechanism, as a condition of approving the CPCN, accepted FortisBC’s assurances. If the cost of an individual component of the Project increases for reasons that are, in FortisBC’s view, beyond the control of FortisBC so as to result in an escalation of total project costs beyond the 10 percent threshold, FortisBC is at liberty to apply to the Commission for special consideration on any issue it wishes.

However, it would be inappropriate, in this reconsideration, to prejudge how the Commission might respond to such an application.

With the benefit of this clarification, FortisBC is directed to comply with the Commission Determination at page 18 of the Decision, without qualification, within ten business days of this decision.

2.2.2 Reconsideration of the Rate Design and Deferral Account

In its Decision, the Commission Panel directed FortisBC:

“... to file, within 90 days of this Decision, an application for a rate design for the Project which considers the circumstances and conditions pertaining to this Project. That application will be the subject of a separate proceeding and a determination by the Commission as to how the costs of the Project will be recovered.

FortisBC is directed to establish a deferral account for the Project. The deferral account will accumulate the costs of the Project, together with related AFUDC, to be recovered by FortisBC as determined by the Commission in conjunction with the application for a rate design for the Project” (Decision, p. 35).

In the FortisBC Reconsideration Application, FortisBC requests that the Commission vary the directions in the Decision as follows:

- i) FortisBC will file, within 90 days, a proposal for the filing of a cost of service study and a rate design application. This will be followed by a Commission Order setting down a regulatory schedule for the filing of the cost of service study and an application for a rate design in accordance with the two step process described by Mr. Gary Saleba in Exhibit B-9 and FortisBC’s application for reconsideration; and
- ii) The costs of the Project be accounted for as any other capital expenditure and recovered in customer’s rates when placed into service, instead of accumulated in a deferral account (Exhibit 4, para 40).

BWSR supports FortisBC’s Reconsideration Application with respect to rate design insofar as it deals with the process to be followed in the rate design (Exhibit 11, para. 33).

BCOAPO states that the issues raised by FortisBC regarding the rate design are not properly the subject of reconsideration, but a matter of clarifying the process for the rate design hearing.

“The Commission, in its Decision and Order, did not set out the process for the rate design, other than saying that it should be filed within 90 days” (Exhibit 12, p. 9).

FortisBC in its Reply Argument states “BCOAPO further submits the “rate design issue” can be resolved by simply clarifying the process for the rate design application. The Company agrees with this position” (Exhibit 14, para. 23).

Analysis

The Commission generally applies the criteria outlined at 1.4 to determine whether or not a reasonable basis exists for allowing reconsideration. In the FortisBC Reconsideration Application, **the Commission Panel finds that FortisBC did not identify any action on the part of the Commission or any circumstances, facts or principles not raised in the hearing that the Commission should consider in respect of this application and accordingly, the Commission Panel denies the application.**

However, FortisBC raised several issues in the course of the Reconsideration Application that the Commission Panel will address by way of clarification.

To clarify the issues raised by FortisBC, the Commission Panel will review and expand upon the points that led to the decision of the Commission Panel. In the public meetings leading up to the Application, the issue of whether the cost of the Project would be borne by area developers was raised (Decision, p. 19). FortisBC in the Application and during the hearing was of the view that because of similarities of Big White with other communities, it was obliged to provide the electrical supply and share the cost between all ratepayers. After considering the evidence before it, the Commission Panel determined that:

“... the circumstances and conditions found at Big White are sufficiently unique that it should not be considered a community in the same sense as many other communities in the FortisBC service area.

Accordingly, for purposes of determining the appropriateness of sharing the costs of the Project amongst all ratepayers, special consideration is warranted” (Decision, p. 27).

In other words, the Commission Panel found FortisBC’s contention that Big White was substantially similar to other communities unsupported by the evidence. In the view of the Commission Panel, much of the evidence supported a view that Big White is unique when compared to other communities. Specifically, the Commission Panel notes that BWSR controls, albeit under the terms of an agreement with the BC Government, the development of new lots (and therefore most load growth) at Big White, and that many new units are entered

into the rental pool supporting BWSR. To reiterate: "...accommodation at Big White must be developed that will serve the long run business model of the Resort and the Province" (Decision, p. 21).

Nevertheless, the Commission Panel did conclude that the need for the Project had been established as had the preferred option. There was also general agreement as to the urgency for the Project. It was this set of circumstances that led the Commission Panel to approve the Project with certain conditions. However, the Commission Panel did not receive sufficient evidence on which to make a decision on the appropriateness of, and/or a methodology for, sharing the costs of the Project amongst all or any specific group of ratepayers or customers. Consequently, the Commission Panel ordered that the issue of recovery of some or all of the costs of the Project should be brought forward by way of an application by FortisBC and be determined by the Commission in a separate hearing. Therefore, the Decision called for **"an application for a rate design for the Project which considers the circumstances and conditions pertaining to this Project"** (Decision, p. 35).

The term "rate design" as used in the Decision was generic and was purposefully non-specific regarding what FortisBC should bring forward, other than it should focus on "...the circumstances and conditions pertaining to this Project". Because of the unique aspects of this application, the Commission Panel is not persuaded that a Fully-Allocated Cost of Service study leading to a general consideration of regional rates is required at this time. Simply put, FortisBC is enhancing its service to Big White in large part by upgrading a distribution service to a transmission service, to service a discrete area that appears to be unique insofar as the enhanced service appears to primarily support continued development driven by BWSR. Therefore, the direction of the Commission was intended that FortisBC, in a first stage of the process, would make an application to the Commission addressing two primary questions:

1. Should some or all customers of the Big White area, as distinct from all FortisBC ratepayers, be required to fund some or all of the costs of the project?
2. If total funding from all FortisBC ratepayers is not required, then how should the funding from the customers of the Big White area be determined and allocated?

FortisBC may wish to consider the cost of the Project and the degree to which those costs are likely to be recovered from the ratepayers in Big White in the future. FortisBC may also wish to consider the basis on which the project costs for the initial and/or enhanced distribution and/or transmission services to like areas and facilities in its service territory have been recovered in the past.

With the benefit of this clarification, FortisBC is directed to comply with the Commission determination at page 35 of the Decision, without qualification, within 90 days of the date of this decision.

Because of the established urgency for the Project, FortisBC should proceed with the Project and hold the Project costs in a deferral account to be disposed of in accordance with the outcome of the deliberations described above.

3.0 BWSR STAY APPLICATION

BWSR's application for a stay of the Project is based on its position that since FortisBC failed to comply with the conditions under which the CPCN was approved, the Project is not approved, and that funds expended in continuing work on the Project would be wasted if, as a result of BWSR's reconsideration application a different option were selected. BWSR noted that FortisBC had a contingency plan to deal with any delay in the course of executing the Project.

FortisBC submits that the Decision should not be stayed while the reconsideration processes are in progress, and that in order to persuade the Commission to exercise its discretionary powers, BWSR would be obliged to establish a very strong case that its rights are irreparably harmed by the regulatory process continuing as prescribed by the Commission. FortisBC further points out that "the costs associated with missing the in-service date and having to mitigate the effect of delays may well be more than any costs being incurred on the Project now."

The BCOAPO submits in the normal course, decisions and orders are not stayed pending reconsideration applications, and that there should be no stay pending completion of the BSWR Reconsideration Application.

In reply, BWSR reaffirms its position that a CPCN for the project is not approved and further submits it is a breach of Section 45(1) of the UCA for work to be being performed on an unapproved project.

The Commission Panel finds that this issue is now moot, in light of the Commission Panel's findings at 2.1.5 above.