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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-141-06

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

**An Application by
The Tsawwassen Residents Against Higher Voltage Overhead Lines
for a Reconsideration of the July 7, 2006 Commission Decision and Order No. C-4-06
relating to the British Columbia Transmission Corporation
Application for a Certificate of Public Convenience and Necessity
for the Vancouver Island Transmission Reinforcement Project**

BEFORE: R.H. Hobbs, Chair
N.F. Nicholls, Commissioner November 9, 2006
L.A. O'Hara, Commissioner

O R D E R

WHEREAS:

- A. By application dated July 7, 2005, the British Columbia Transmission Corporation ("BCTC") requested that the British Columbia Utilities Commission (the "Commission") grant a Certificate of Public Convenience and Necessity ("CPCN") pursuant to Sections 45 and 46 of the Utilities Commission Act (the "Act"), for the Vancouver Island Transmission Reinforcement Project (the "VITR") to reinforce the electricity transmission system serving Vancouver Island and the Southern Gulf Islands (the "VITR Application"); and
- B. The Public Hearing commenced on February 6, 2006 in Vancouver and the evidentiary phase of the proceeding closed on March 23, 2006. The Written Argument phase of the proceeding was completed when BCTC filed its Reply Submission on May 16, 2006, and the Oral Phase of Argument, including submissions regarding motions by a number of parties, was heard on May 30 and 31, 2006; and
- C. On July 7, 2006 the Commission issued its Decision ("VITR Decision") pursuant to Sections 45 and 46 of the Act granting a CPCN to BCTC for the VITR Project; and

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- D. By letter dated October 11, 2006 (“Reconsideration Application”), the Tsawwassen Residents Against Higher Voltage Overhead Lines (“TRAHVOL”) applied for a reconsideration of the VITR Decision dated July 7, 2006 (“VITR Decision”); and
- E. By letter dated October 12, 2006, the Commission established a first phase process for the Reconsideration Application. The first phase process provided an opportunity for written comments from BCTC, Intervenors and Interested Parties on October 23, 2006 with written reply from TRAHVOL by October 30, 2006; and
- F. The Commission has reviewed the submissions and has prepared its Reasons for Decision.

NOW THEREFORE the Commission denies the Reconsideration Application and issues its Reasons for Decision attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of November 2006.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

An Application by the Tsawwassen Residents Against Higher Voltage Overhead Lines
for a Reconsideration of the July 7, 2006 Commission Decision and Order No. C-4-06
relating to the British Columbia Transmission Corporation
Application for a Certificate of Public Convenience and Necessity
for the Vancouver Island Transmission Reinforcement Project

REASONS FOR DECISION

By letter dated October 11, 2006 (“Reconsideration Application”), the Tsawwassen Residents Against Higher Voltage Overhead Lines (“TRAHVOL”) applied for a reconsideration of the Vancouver Island Transmission Reinforcement (“VITR”) Decision dated July 7, 2006 (“VITR Decision”). By letter dated October 12, 2006 the Commission established a first phase process for the Reconsideration Application. The first phase process provided an opportunity for written comments from British Columbia Transmission Corporation (“BCTC”), Intervenor and Interested Parties by October 23, 2006, with written reply from TRAHVOL by October 30, 2006. The Commission has reviewed the submissions and provides the following reasons for denying the Reconsideration Application.

The Reconsideration Application alleges that the Commission erred by not giving adequate consideration to the non-financial evidence on Option 3, in accepting BCTC’s position that Option 5 is infeasible, and in its conclusions about EMF health effects. TRAHVOL also submits new evidence on each of the foregoing subjects, specifically on preferences for Option 3, on a route identified as modified Option 5B, and on the application of the precautionary principle. Finally, TRAHVOL submits that significant financial and non-financial benefits could be realized by removing 1L18 between the Arnott and Salt Spring Substations.

Option 3

TRAHVOL submits new evidence regarding Option 3 in the form of the results of a Street Option Petition and letters from the Corporation of Delta and Delta School District (Appendices A, B and C), and alleges that the Commission made several errors in its consideration of Option 3. This section of the Reasons first addresses the new evidence, and then the alleged errors.

TRAHVOL submits a recent survey and a petition concerning residents’ preferences and argues that it could not have provided that evidence during the proceeding because it believed Option 1 was not a possible outcome. TRAHVOL submits that the VITR Decision resulted in a change of circumstances.

TRAHVOL was a very active and informed Intervenor in the VITR proceeding and was therefore aware that Option 1 remained a possible outcome, despite BCTC's decision not to recommend that route. Early in the oral hearing, the Chair clearly indicated that Option 1 would be considered (T8:996), and therefore the Commission's approval of Option 1 should not have been considered an unanticipated change in circumstances. TRAHVOL could have produced the survey and the petition that it now submits, a year ago.

However, even if the survey and petition had been submitted during the proceeding it would not have had a material impact on the VITR Decision. TRAHVOL was not prevented from providing evidence of route preferences during the VITR proceeding and, in fact, did indicate that it preferred Option 3 to Option 1 or Option 2 (T42A:7958). The Commission considered TRAHVOL's view as well as issues related to transmission lines in residential properties in the VITR Decision (pp. 82-88, 94).

TRAHVOL submits a letter from the Corporation of Delta as new evidence. The Corporation of Delta ("Delta") was an active participant in the VITR proceeding and had ample opportunity to express its views on route options. It consistently opposed Option 3 and makes it clear in its recent submission in response to the Reconsideration Application that the letter submitted by TRAHVOL "should not be interpreted as supporting Option 3 over Options 1 or 2" (Delta Submission, p. 2). The Commission concludes that the letter is not a fundamental change in circumstances or facts since the Decision.

TRAHVOL also submits a letter from the Delta School District expressing concern about the safety of the overhead lines and poles, particularly in the case of an earthquake. These safety concerns were clearly and comprehensively articulated by the SDSS PAC during the VITR proceeding, and considered by the Commission. The VITR Decision concluded that the likelihood of those safety concerns materializing was extremely low. Therefore, costly measures such as removing the line completely from the area are not warranted; however, the Commission directed BCTC to specifically address seismic loading in the design of the overhead segments of VITR (p. 62).

TRAHVOL submits that the Commission erred in not providing residents and other stakeholders with the opportunity to state a preference between Option 1 and Option 3. During the proceeding, TRAHVOL did have an opportunity to express preferences. TRAHVOL and other members of the public also had full opportunity at the Town Hall meeting held on January 14, 2006 in Tsawwassen to express any opinions and preferences they had regarding routes, but did not suggest that Option 3 was preferable to other options. Pre-filed evidence and opening statements also provided avenues for expressing any preferences.

BCTC addresses the issue of stakeholder preferences in its submission:

“While evidence of stakeholders preferences may be of some value if it is provided, BCTC is not under any legal obligation to present evidence on the preferences of local stakeholders and, in particular, is not under any obligation, as TRAHVOL suggests, to present either formal or informal survey results on the preferences of these stakeholders between and amongst alternative route options. There is also no legal requirement under section 45 or 46 of the *Utilities Commission Act* for the Commission to have this information: this lies wholly within the Commission’s discretion.” (BCTC Submission, p. 3)

The Commission concurs with BCTC’s statement of the law and concludes that neither BCTC nor the Commission had an obligation to ask the TRAHVOL members or other Intervenors, such as the Delta School District, for their preferences between each pair of options. The Commission therefore concludes that it did not err in fact or law in not specifically asking for TRAHVOL’s preference between Options 1 and 3.

TRAHVOL submits that the Commission erred in not directing BCTC to consider other possible street routes for Option 3. However, as BCTC correctly submits:

“...the Commission was well aware of the general non-financial and financial considerations regarding Option 3 regardless of where it might be located and expressly determined that it did not require any further refinements of Option 3 to address the choice between construction in city streets versus overhead construction on the existing ROW” (BCTC Submission, p. 7).

TRAHVOL submits that this determination was based on errors. TRAHVOL alleges that there is no evidence that present property owners along the ROW benefited from lower prices when purchasing their homes. The Commission considered the evidence on property value impacts before concluding that “the current owners realized the benefit of the reduced cost of their properties when they purchased them” (VITR Decision, pp. 74-77). TRAHVOL may not agree with the Commission’s conclusion, but it does not follow that an error was made in fact or law.

TRAHVOL submits that another error underlies the Commission’s failure to direct BCTC to consider other street routes. TRAHVOL submits that the Commission was inconsistent in finding that EMF would impact residents along an Option 3 route while also concluding that it should give little or no weight to concerns arising from EMF. The Commission agrees with BCTC’s submission that TRAHVOL misconstrues or mischaracterizes the VITR Decision on this matter and notes that in Reply TRAHVOL continues to misconstrue the Decision on this point. The Commission clearly concluded that EMF health concerns were not determinative (VITR Decision,

p. 92). In addressing TRAHVOL's suggestion that Option 3 would mitigate EMF exposure, the Commission noted that "a different, and possibly larger, group of Tsawwassen residents would experience EMF exposure" (VITR Decision, p. 72). The two findings are consistent and do not constitute an error in fact or law.

TRAHVOL raises a further point in its Reply, seeming to suggest that because the Commission approved Option 1, the forty-seven TRAHVOL members who live off of the ROW were not given adequate notice or were not given an opportunity to be heard (TRAHVOL Reply, p. 8, para. k). As the Commission found above, the VITR Decision should not have been an unanticipated change in circumstances. Notice was provided, reasonable opportunities to participate were afforded, and the TRAHVOL members were well-represented throughout the proceeding.

TRAHVOL also submits that the "Commission erred in giving Delta what amounted to a veto over Option 3..." (TRAHVOL Reply, p. 4, para. c). The VITR Decision recognized the Corporation of Delta's opposition to Option 3 but did not state, nor assume, that its approval is required for Option 3. In fact, the VITR Decision assumed that municipal approval was not required for Option 3. Therefore, the Commission did not make an error as TRAHVOL submits regarding "what amounted to a veto over Option 3".

Options 5 and 5B

TRAHVOL submits a modified Option 5B as new evidence (Appendix D) and alleges that Option 5B would be more cost-effective than Option 1. TRAHVOL also submits that the Commission erred in accepting BCTC's opinion that Option 5 is infeasible.

TRAHVOL suggests that its modified Option 5B route could be an option that impacts neither residential properties nor First Nations interests and is comparable on cost and reliability criteria. However, BCTC submits that TRAHVOL "had the full opportunity to lead evidence on this Option if they had chosen to do so" and "that TRAHVOL should not be given the opportunity to now bring forward alternatives that could have been explored during the Commission process" (BCTC Submission, pp. 7-8).

Similarly, BC Hydro submits that there is no fundamental change in circumstances or facts with respect to the new Option 5B since the Decision was issued. The potential for TRAHVOL to develop information with respect to Option 5B was available at the time of the oral hearing. BC Hydro further argues that TRAHVOL's submissions do not support an allegation that the Commission made an error in fact or law on the evidence

relating to all of the options that were put before it at the time of the Decision. Accordingly, in BC Hydro's view, TRAHVOL'S submissions with respect to route Option 5B do not form a basis for reconsideration (BC Hydro Submission, p.3).

The Commission acknowledges TRAHVOL's significant efforts to develop an additional route option with few resources. More significantly, however, the evidence submitted by TRAHVOL could have been developed during the period following BCTC's filing of the VITR CPCN application and filed during the evidentiary phase of the VITR proceeding so that it could have been tested through Information Requests and cross-examination, as were the other options. In its letter dated October 12, 2006, the Commission described the criteria that it generally applies to determine whether or not a reasonable basis exists for allowing reconsideration. TRAHVOL has not established that any of those criteria have been met and therefore the Commission accepts BCTC's argument that TRAHVOL should not now be given the opportunity to bring forward alternatives.

TRAHVOL further submits that the recent issuance of an Environmental Assessment Certificate for the Deltaport Container Terminal Third Berth is new evidence that "confirms that the Environmental Assessment Office ("EAO") finds the level of environmental concerns in this area acceptable". The Commission does not consider the EAO's approval of the Deltaport project a reliable indication of the acceptability of the environmental impacts of cable installation, a cable terminal station, overhead wires and other structures associated with Option 5B. The Environmental Assessment Certificate is not a fundamental change in circumstances or facts since the VITR Decision.

Regarding the alleged error, TRAHVOL submits that the Commission erred in accepting BCTC's assessment of the feasibility of Option 5. The Reconsideration Application does not clearly identify the nature of the alleged error, but it appears to relate to BCTC's claims of seismic, environmental and TFN concerns and the risk of anchor damage. Option 5 was explored during the VITR proceeding and BCTC's evidence was challenged in cross-examination.

The Commission summarized BCTC's evidence on Option 5 on pages 99-100 of the VITR Decision:

"BCTC believes that the seismic risk is unacceptable, and the risk of damage from anchors is unnecessarily high. Further, BCTC believes that Option 5 has an impact on native lands in Tsawwassen because a portion of Option 5 crosses land under negotiation for proposed TFN settlement lands. In addition, BCTC believes that Option 5 would have additional impacts on wetlands and shore areas along Deltaport Way and north along the dike toward Canoe Pass."

Due to the combination of these factors BCTC concluded that Option 5 is infeasible. The Commission accepted the conclusion that Option 5 is infeasible (VITR Decision, pp. 100-101).

In response to the Reconsideration Application, BCTC notes the various references TRAHVOL makes to support its claim and submits that the majority of these considerations were before the Commission when it made its Decision. The only evidence that was not available at the time of the VITR proceeding is the issuance of an Environmental Assessment Certificate for the Deltaport Project by the Environmental Assessment Office (“EAO”). BCTC submits that this is irrelevant as it never argued that the environmental considerations regarding Option 5 were insurmountable (BCTC Submission, p. 7).

In summary, the Commission concurs with BCTC’s submission that TRAHVOL has not established a reasonable basis for suggesting that the Commission erred in fact or law in accepting BCTC’s conclusion that due to a combination of factors Option 5 was infeasible. The Commission considered all the evidence before concluding that, although seismic considerations should carry little weight in project or route selection, Option 5 is infeasible. Furthermore, the EAO’s approval of the Deltaport Project alone does not establish that reasonable basis.

EMF and The Precautionary Principle

TRAHVOL submits that the Canadian Cancer Society (“CCS”) letter of September 8, 2006 to the Commission and the Benevento Resolution of September 19, 2006 constitute new evidence about the health effects of EMF and the application of the precautionary principle. TRAHVOL also alleges that the Commission erred in concluding that scientific evidence does not establish health impacts from EMF and in not applying the precautionary principle.

The purpose of the CCS letter was to clarify the CCS’s position because the CCS believed that it had been quoted without sufficient context by critics of VITR and may have been misunderstood. Therefore the Commission finds it unfortunate that TRAHVOL selectively quotes from a press release and a newspaper story to interpret the CCS position. The CCS’s summary of the scientific evidence and the application of the precautionary principle is consistent with the evidence that was before the Commission during the VITR proceeding, and therefore cannot be considered new evidence.

The CCS letter could not have a material impact on the VITR Decision, because it does not raise any new issues that were not already considered by the Commission. The Commission acknowledged the concerns of residents but concluded that the science does not support their fears. The Commission approved the mitigation measures that BCTC has included in its VITR design in order to reduce the residents' level of concern and worry (VITR Decision, pp. 71-72). The CCS recognized the "tradeoffs inherent in any choice" and acknowledges that actions to avoid a risk may create risks and costs of their own, as did the Commission when it noted that TRAHVOL's suggestion of Option 3 as an EMF mitigation measure would expose a different, and possibly larger, group of Tsawwassen residents to increased EMF (VITR Decision, p. 72).

TRAHVOL also submits the Benevento Resolution as new evidence. The Commission finds that the Benevento Resolution is not significant new evidence and therefore it does not create a fundamental change in facts or circumstances since the Decision. The Benevento Resolution endorses and extends the 2002 Catania Resolution and focuses primarily on wireless communication. In its Decision, the Commission considered the EMF exposure guidelines established by organizations such as the World Health Organization, ICNIRP and Health Canada. Nothing in the CCS or Benevento materials indicates that these organizations have changed their conclusions or guidelines concerning EMF exposure.

TRAHVOL alleges that the Commission erred in concluding that scientific evidence does not establish health impacts from EMF. The Commission reached a different conclusion than TRAHVOL about the health impacts from EMF, and it did so after consideration of the evidence before it. The Reconsideration Application does not support TRAHVOL's allegation of an error in fact or law.

TRAHVOL also submits that the Commission erred in not applying the precautionary principle. The Commission considered the concept of prudent avoidance and the precautionary principle in its Decision and, although it did not adopt either term, it approved the EMF mitigation measures that BCTC had included in its VITR design as a reasonable means of addressing residents' health concerns (VITR Decision, pp. 67, 71). TRAHVOL submits that the Commission should have applied the precautionary principle by approving Option 3, but the Commission considered that suggestion and expressly rejected it in the Decision because, as noted above, Option 3 would not mitigate EMF exposure but would merely transfer it to another group of residents. Although TRAHVOL alleges that Option 3 would result in EMF levels that are low at the curb and negligible in homes, the Commission accepts BCTC's evidence is that under Option 3, the cable could be closer to some homes than with Option 2, and that EMF exposure could be higher (T19:3479).

Removal of 1L18

TRAHVOL submits that the Commission erred in not selecting the most cost-effective alternative and that an additional cost saving of \$13-17 million as well as a significant number of non-financial benefits could be derived by removing 1L18. TRAHVOL's proposal was explored during the VITR proceeding and it does not make any new submissions in its Reconsideration Application. The Commission can find no basis for TRAHVOL's allegation of error.

Chapter 4 of A Participant's Guide to the British Columbia Utilities Commission identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists to allow a reconsideration. An application for reconsideration 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. For the reasons stated above, the grounds set forth in the Reconsideration Application do not meet the criteria for a reconsideration application.