



LETTER NO. L-14-07

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March 1, 2007

Ms. Therese Smith
Chief Councillor
Ka:'yu:'k't'h/Che:k:tl7et'h First Nations
General Delivery
Kyuquot, B.C. V0P 1J0

Re: Kyuquot Power Ltd. ("KPL")
Complaint by Ka:'yu:'k't'h/Che:k:tl7et'h First Nations – Power Supply

This is in response to the January 19, 2007 complaint from Ka:'yu:'k't'h/Che:k:tl7et'h First Nations ("KCFN") regarding the utility power supply to KCFN and the community at Kyuquot, B.C. The KCFN stated that during this past winter there have been an inordinate number and hours of outages that has affected supply to KCFN and local community groups in KPL's service area. As a result, the letter from KCFN requested that the Commission revoke the Certificate of Public Convenience and Necessity ("CPCN") issued to KPL, as the supply has been expensive and unreliable. Subsequently, the Commission received a January 23, 2007 letter from KCFN stating that funding from the Department of Indian and Northern Affairs Canada ("INAC") will be forthcoming that totals \$3 million in 2006/2007 and future years, which could be utilized to reduce the cost of power in Kyuquot, B.C.

By letter dated January 23, 2007, the Commission stated that it is treating the January 19, 2007 letter as a complaint and established a written submissions process to obtain comments on the matter.

Also, in a letter dated February 5, 2007, KPL stated that it understands that an application to INAC has been approved under which KCFN will make a payment of \$1,000,000 to KPL prior to March 3, 2007, and requested Commission approval of certain rate schedules. The Commission has the February 5, 2007 application under review as a separate matter, and will respond to it at a future date.

With respect to the KCFN complaint, KPL submitted written comments on January 31, 2007. The Commission has also received a letter from KPL dated January 28, 2007, to which was attached an e-mail dated January 22, 2007 from KCFN to KPL, and letters dated January 22 and 26, 2007 from KPL to KCFN replying to this e-mail. The Commission's January 23, 2007 letter provided that KCFN had two weeks after February 7, 2007 to reply to

KPL's response to the complaint, but the Commission has received no reply comments from KCFN.

The Commission recognizes that the provision of adequately reliable and reasonably priced electrical service to Kyuquot is challenging. However, this was acknowledged by the parties when KPL proposed its project to construct and operate an electrical distribution extension to the area. CPCN No. C-18-01 dated November 28, 2001 states:

“On July 3, 2001, B.C. Utilities Commission staff requested Synex to provide more definitive information on the level of interest by potential customers. Synex subsequently notified its potential customers advising them of the details of its proposal relating to the potential rate, reliability limitations, and the fact that B.C. Hydro will not assume ownership of the Project or take over utility service; and

Based on expected rates for electricity of up to 35 cents/kWh, Synex received expressions of intent to become customers from 12 of 23 residents, from 4 of 6 commercial operations, from School District No. 84 and the Kyuquot First Nations;”

Going forward, KPL states that it plans to do additional clearing in spring 2007, and to try to arrange a higher priority with line contractors for the repair of outages. Furthermore, a significant portion of the outages experienced in November 2006 through January 2007 occurred on the British Columbia Hydro and Power Authority (“BC Hydro”) system that supplies power to KPL. Moreover, funding from INAC appears likely to reduce rates for KCFN. As a result, service from KPL will be considerably less expensive than diesel generation, as well as having less environmental impact.

In addition, KPL indicates it is willing to discuss and work to resolve a number of matters that KCFN identifies are important to it. These include metering within Houpsitas, generation of electricity in a small hydro facility owned by KCFN, net metering of power to and from KCFN and access to BC Hydro's Remote Community Electrification program. These matters appear to be somewhat inter-related, and the Commission encourages further discussion in order to reach solutions that meet the objectives of all parties. It is likely that some of the matters may be the subject of future applications to the Commission.

With respect to its request that the CPCN held by KPL be revoked, KCFN did not identify the Section of the Utilities Commission Act (the “UCA”) under which it made the request. Section 99 of the UCA 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.”

However, the Commission believes the more applicable Section to consider revoking the CPCN would be Section 48, which states:

- “(1) If the commission, after a hearing, determines that a public utility holding a franchise, licence or permit has failed to exercise or has not continued to exercise for use the right and privilege granted by the franchise, licence or permit, the commission may
- (a) cancel the franchise, licence or permit, or
 - (b) suspend for a time the commission considers advisable the rights, or any of them, under the franchise, licence or permit.
- (2) If a franchise, licence or permit is cancelled, the utility must cease to operate.
- (3) If a right under a franchise, licence or permit is suspended, the utility must cease to exercise the suspended right during the period of suspension.”

The Commission concludes that KCFN has not provided sufficient justification for a hearing into the matter. KPL is providing service generally consistent with its CPCN and tariff, appears to be making reasonable efforts to be responsive to the interests of its customers and to improve its service, and deserves a reasonable opportunity to continue to serve its customers and to earn a fair return on its investment in utility facilities. Therefore, the Commission denies the request of KCFN for the CPCN held by KPL to be revoked, and closes its file on the KCFN complaint.

Yours truly,

Original signed by

Constance M. Smith
for: Robert J. Pellatt

JBW/rt

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