



LETTER No. L-50-08

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VIA E-MAIL

regulatory@fortisbc.com

October 22, 2008

Mr. David Bennett
Vice President, Regulatory Affairs & General Counsel
Regulatory Affairs Department
FortisBC Inc.
1290 Esplanade
PO Box 130
Trail, BC V1R 4L4

Intervenors (*FBC-EllisonCPCN-RI*)
Interested Parties (*FBC-EllisonCPCN-IP*)

Dear Madam and Sirs:

Re: FortisBC Inc. ("FortisBC")
Ellison Substation Project 3698442
Applications for Reconsideration of Commission Orders C-04-07 and G-75-07

In letters dated September 18, 2008 and September 23, 2008, counsel for the Concerned Citizens of Quail Ridge and Lochrem Road ("CCQRLR") and Quail Ridge Residents Association ("QRRRA") respectively, requested that the Commission reconsider the above noted Decision (the "Reconsideration Applications", enclosed).

By the enclosed letter dated October 21, 2008, FortisBC provided executed copies of an Operating Agreement and Statement of Work Agreement with NAV CANADA. In the letter, FortisBC submits that compliance with the NAV CANADA guideline or adherence to the Agreements does not introduce new information of a nature material enough to impact the previous Decision, and requests that the Commission not accept the applications for reconsideration.

By letters dated October 21 and 22, 2008, counsel for QRRRA submitted comments regarding the matters raised in the October 21, 2008 letter from FortisBC.

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.

An application for reconsideration by the Commission proceeds in two phases. In the interest of both regulatory 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 first phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The Commission usually invites submissions from the other participants in the proceeding that led to the Decision that is the subject of the reconsideration request, or may consider that comments from the parties are not

necessary. 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.

The Commission anticipates that an issue needs to have significant material implications under the other criteria, as well, in order for a reconsideration to proceed.

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

The Commission hereby establishes a written comment process on the Reconsideration Applications filed by CCQRLR and QRRRA 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 Applications, a subset of these items or additional items?
- If there is to be a reconsideration, what process should be established for the reconsideration?

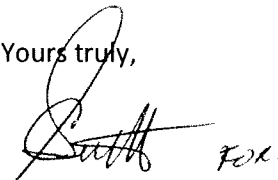
The first phase assessment process for the Reconsideration Applications will be as follows:

- FortisBC, Intervenor and Interested Parties will submit written comments to the Commission by Tuesday, October 28, 2008, with a copy to CCQRL and QRRRA.
- CCQRL and QRRRA will submit written reply comments to the Commission by Friday, October 31, 2008.

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,



Erica M. Hamilton

JBW/rt

Attachments

cc: Mr. William J. Andrews (wjandrews@shaw.ca)
Kelly Cairns (kac@cairnslaw.ca)

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Reply Attention of: Robert J. McDonell
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Our File No.: 05497-144-1

October 21, 2008

BY E-MAIL AND COURIER

B.C. Utilities Commission
 Sixth Floor, 900 Howe Street
 Box 250
 Vancouver, BC V6Z 2N3

Attention: Erica M. Hamilton
Commission Secretary

Dear Ms. Hamilton:

Re: FortisBC Inc. ("FortisBC") Ellison Substation Project 3698442
Application for Reconsideration of Commission Orders C-04-07 and G-75-07

In letters dated September 18, 2008 and September 23, 2008 counsel for the Concerned Citizens of Quail Ridge and Lochrem Road ("CCQRLR") and Quail Ridge Residents Association ("QRRRA") respectively, have requested that the Commission reconsider the above noted Decisions.

FortisBC respectfully submits that there are no grounds for reconsideration of these decisions as there has been no fundamental change in the circumstances on which the decisions were based.

As noted in the *Participants' Guide to the B.C. Utilities Commission*, "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."

Both the CCQRLR and QRRRA base their Applications on the emergence of a project risk associated with guidelines provided by NAV CANADA regarding the erection of permanent structures in the vicinity of the Kelowna airport.

FortisBC can confirm that NAV CANADA has stated that it has no objections to the Project. Attached to this letter are copies of two executed Agreements between FortisBC and NAV CANADA, an Operating Agreement (Attachment A), and Statement of Work Agreement (Attachment B), which govern conditions at the substation, and effectively ensure that no situation will arise that cannot be effectively mitigated or resolved. The Agreements between FortisBC and NAV CANADA are identical to agreements between AltaLink and NAV CANADA for the 138 kV Blackmud substation which is located near the Edmonton International Airport. AltaLink has confirmed that there have been no interference concerns or "Operating Agreement" alarms to date. FortisBC has voluntarily agreed to adhere to the guidelines and does not expect to have any difficulty in doing so.

Based on both its own experience, and that of neighbouring utilities, the likelihood of the substation ever producing interference significant enough to even require mitigation is small enough to reduce any risk cited by the intervenor groups to virtually nil.

For example, Enmax Power Corporation operates five substations all within approximately 800 meters to 7 kilometers of the Calgary International Airport. Each of the substations is at least 138 kV, has a capacity between 158 and 800 MVA and has been operating without any concerns from NAV CANADA. Four of the five substations have been in operation for over 25 years. The proximity of the closest substation, with a comparison to Ellison is shown on Attachment C. This substation operates at 138/ 25 kV and 138 / 13.8 kV with 4 transformers totaling 200 MVA. Attachment D shows the wider Calgary airport area including the substations mentioned above and others in a larger radius.

Also attached as Attachment E is a photograph of the BC Hydro Kidd No. 2 Substation, which lies inline with the north runway (26R/8L) at the Vancouver International Airport at a distance of approximately 3.3 kilometers. Aircraft landing on this runway from the east pass almost directly over this station at an altitude of approximately 200 meters. Again, FortisBC understands that no concerns have been expressed by NAV CANADA and no interference has been encountered. This substation contains three 230 / 69 kV, 75 MVA transformers. The placement of the Ellison Substation is not inconsistent with good utility practice.

The proximity of the Ellison substation to the Kelowna airport is consistent with conditions that exist in other cities, which also have NAV CANADA Agreements in place, and have had decades of problem-free operation. In

October 21, 2008

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addition, readings taken at FortisBC's Duck Lake substation, which is of similar size to Ellison, are at levels that would not cause the receipt of an alarm for even the most minor of triggers contained in the Operating Agreement. The Duck Lake substation, which is located approximately 5 kilometers in a direct line of the Kelowna Airport has been in service since 1994. FortisBC is not aware of this substation causing any interference, and readings taken during the summer of 2008 were recorded well below the levels of NAV CANADA's concern. Planes landing at the Kelowna Airport pass approximately 300 meters directly over the Duck Lake substation; whereas the closest they will come to the proposed Ellison Substation is 600 meters.

With respect to Transport Canada Regulation TP 1247, also raised by CCQRLR in its letter, FortisBC can also confirm that it has received a response from Transport Canada effectively deferring the matter to NAV CANADA, stating, "If Nav Canada determines there will be no signal interference than (sic) we would have no aviation based reason to object to the proposed site."

FortisBC does not believe that compliance with the NAV CANADA guideline, or adherence to the attached Agreements, introduces any new information of a nature material enough to impact the previous Decision and hereby requests that the Commission not accept the applications for reconsideration.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Robert J. McDonell

RJM/jss

Enclosures

c.c.: Kelly Cairns
William Andrews



OPERATING AGREEMENT

Monitoring Program at FortisBC's Ellison Substation

Between

**NAV CANADA
77 Metcalfe Street
Ottawa, Ontario K1P 5L6**

And

**FortisBC Inc.
Suite 100, 1975 Springfield Road
Kelowna, British Columbia V1Y 7V7**

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APPENDIX A: EQUIPMENT LIST

SCHEDULE "A": DISPUTE RESOLUTION

OPERATING AGREEMENT

THIS AGREEMENT dated the 8th day of October, 2008.

BETWEEN:

NAV CANADA, a company incorporated under the laws of Canada with head office at the City of Ottawa in the Province of Ontario (hereinafter referred to as "NAV CANADA"),

OF THE FIRST PART,

- and -

FORTISBC INC., a corporation established by a special Act of the Legislature of the Province of British Columbia, having its head office at Suite 100, 1975 Springfield Road, Kelowna, British Columbia, (hereinafter referred to as "FortisBC"),

OF THE SECOND PART.

WHEREAS NAV CANADA is the private sector, non-share capital corporation that owns and operates Canada's civil air navigation service (ANS).

WHEREAS FortisBC is an integrated electric utility that owns an electrical substation located at N49 57 44, W119 23 14 (the "Ellison Substation") with voltage exceeding 100 kV that is located closer than 3.2 kilometers from the centerline or sixteen (16) kilometers from the ends of Runway 16/34 of the Kelowna Airport and may therefore cause television and FM interference (TVI) and electromagnetic interference (EMI) to aircraft instrument landing systems operated by NAV CANADA.

AND WHEREAS the parties wish to provide clarity of their respective accountabilities for the enhanced preventative maintenance and monitoring programs which shall be established at the Ellison Substation;

AND WHEREAS FortisBC and NAV CANADA agree to said accountabilities under the following terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the premises hereof and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 In this Agreement the expressions below shall respectively have the following meanings:

- 1.1.1** "Agreement" means this Operating Agreement, including the recitals and all Appendices and Schedules attached hereto, as may be amended from time to time;
- 1.1.2** "Applicable Laws" means any law, statute, rule or regulation or any ruling, writ, injunction, restriction, order, judgment, decree or other official written act of any governmental or regulatory authority having appropriate jurisdiction over the Parties or matters contemplated herein;

- 1.1.3 "BCUC" means the British Columbia Utilities Commission continued under the *Utilities Commission Act*, R.S.B.C. 1996, c. 473, as amended, or its successors;
- 1.1.4 "Business Day" means a day other than a Saturday, Sunday, or statutory holiday in the Province of British Columbia;
- 1.1.5 "FortisBC's Facilities" means those facilities associated with the Ellison Substation;
- 1.1.6 "Good Electric Operating Practices" means the standard of practice attained by exercising that degree of knowledge, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and which is expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety of the public, safety of personnel, and expedition, but is not restricted to the optimum practice or course of action to the exclusion of all others but rather to the spectrum of reasonable practices, methods or acts;
- 1.1.7 "Party" means either NAV CANADA or FortisBC, as the case may be, and "Parties" means both of them;
- 1.2 The following are attached hereto and form part of this Agreement:
Appendix A - Equipment List
Schedule "A" - Dispute Resolution (the "Schedule")
- 1.3 In the event of an inconsistency between the body of this Agreement and any Schedule or Appendix, the body of this Agreement shall govern. In the event of an inconsistency between any Schedule and an Appendix thereto, the Schedule shall govern. Except as otherwise provided in any Schedule, the Parties may substitute revised Schedules to this Agreement at any time by agreeing to, signing and attaching a dated copy to this Agreement, which revised Schedules shall from such date be the applicable Schedule.

2. GOVERNING PRINCIPLES AND PROVISIONS

- 2.1 FortisBC shall comply with, and shall perform its obligations under this Agreement in accordance with:
- 2.1.1 the *Safety Standards Act* (British Columbia), the Canadian Electrical Code, the *Electricity and Gas Inspection Act* (Canada), the *Utilities Commission Act* (British Columbia), and any other applicable legislation and regulations, including safety codes and standards promulgated thereunder;
- 2.1.2 any and all BCUC orders and directives, as approved by the BCUC from time to time, which shall, to the extent applicable to the subject matter of this Agreement, take precedence over and supersede the provisions of this Agreement to the extent of any inconsistency.
- 2.2 In the event of a conflict in interpretation or application among any of the operating standards set forth in Subsections 2.1.1 through 2.1.2, the most stringent shall apply.
- 2.3 FortisBC recognizes that the applicable standards imposed by Section 2.1 may change from time

to time, and it shall act in accordance with any such change.

3. TERM AND TERMINATION

3.1 Except as may otherwise be agreed to by the Parties in writing, this Agreement will commence on the date hereof and continue in full force and effect until the date on which:

3.1.1 FortisBC's Facilities have been physically removed, such that FortisBC no longer has an electrical substation of voltage greater than 100 kV within 3.2 km of the centerline or closer than 16 km from the ends of Runway 16/34 of the Kelowna Airport;

3.1.2 the parties mutually agree to terminate this Agreement, or

3.1.3 this agreement is terminated by NAV CANADA.

3.2 Notwithstanding any termination of this Agreement, all rights and obligations of the Parties that have accrued prior to termination shall continue in effect until satisfied.

4. NOTICE

4.1 Any demand, notice or other communication ("Notice") required or permitted to be given in connection with this Agreement shall be given in writing and must be given by personal delivery, registered mail or facsimile transmittal as follows:

4.1.1 Notice to FortisBC shall be addressed to:
FortisBC Inc.
Suite 100, 1975 Springfield Road
Kelowna, British Columbia, V1Y 7V7

Attention: Corporate Secretary
Fax: (866) 266-7976

4.1.2 Notice to NAV CANADA shall be addressed to:
NAV CANADA
Suite 200, 9925 - 109 Street
Edmonton, Alberta T5K 2J8

Attention: Manager of CNS Engineering
Fax: (780) 413-5449

4.2 or to such other address, facsimile number or individual as may be designated by Notice by either Party to the other. Any Notice given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, five Business Days following the deposit thereof in the mail, and if given by facsimile, on the day of proof of transmittal thereof. If the party giving any Notice knows or ought reasonably to have known of any difficulties with the postal system that might affect the delivery of mail, any such Notice shall not be mailed but shall be given by personal delivery or facsimile.

5. ACCOUNTABILITIES OF FORTISBC

5.1 FortisBC shall operate the Ellison Substation at a nominal operating voltage of 138 kV.

- 5.2 FortisBC shall design, supply, construct, maintain and operate FortisBC's Facilities in such a manner that FortisBC can monitor and, if necessary, modify its facilities to reduce television and FM interference (TVI) and electromagnetic interference (EMI) to aircraft Instrument Landing Systems (ILS) operated by NAV CANADA.
- 5.3 Specifically, FortisBC shall design, supply, construct, maintain and operate the equipment identified in Appendix A within the Ellison Substation.
- 5.4 With reference to the electric noise floor, calculated to be a maximum of -46.56 dBm at the Ellison Substation, FortisBC shall monitor the following noise levels:
- 5.4.1 Level 1 (-90 dBm). This level is 2 dBm above the normal electrical noise found on a transmission line. The purpose of this threshold is to record instances where electrical noise is above normal level at the Ellison Substation. Values shall be captured for 30-day periods to provide a database for detecting emerging trends.
- 5.4.2 Level 2 (-76 dBm). This level is -10 dB below the maximum -66 dBm observed during field tests.
- 5.4.3 Level 3 (-56 dBm). This level is +10 dB above maximums observed during field tests.
- 5.5 In addition to the above noise levels, the monitoring system contemplated by this Agreement shall be capable of recording the following parameters and outputting them in the manner described onto a password-protected Internet URL (over-write of existing data after 6 months):
- 5.5.1 Parameter 1: Receiver Automatic Gain Control (AGC) level, magnitude, time and date. The receiver AGC level shall be converted to dBm. Monitoring software shall be capable of storing and displaying a maximum receiver AGC level with time and date stamp in a 24-hour day as well as providing time and date of occurrences of noise exceeding noise Levels 1, 2 and 3 (per Section 5.4). Monitoring software shall indicate response taken when the noise exceeds each level and be capable of independently setting Levels 1 to 3;
- 5.5.2 Parameter 2: 90 Hz output, equivalent DC level, time and date.
- 5.5.3 Parameter 3: 150 Hz output, equivalent DC level, time and date. Monitoring software shall sum Parameters 2 and 3 and display a "flag current" in microamperes with time and date stamps for this output. The flag current shall be for the values of the 90 Hz and 150 Hz detected outputs. Monitoring software shall also provide the difference of Parameters 2 and 3 and display current in microamperes (the equivalent of an ILS position) and Difference of Depth of Modulation (DDM) with time and date stamp for this output.
- 5.6 FortisBC shall correct the cause of the alarm as follows:
- 5.6.1 Upon receipt of a Level 3 alarm at FortisBC's Control Centre, a response shall be initiated immediately.
- 5.6.2 If the cause of the Level 3 alarm cannot be identified or rectified within 72 hours, FortisBC will contact NAV CANADA's Manager CNS Engineering at (780) 890-3015. If the Air Traffic Control System ILS is being compromised a mutually agreed on plan of action must be developed to resolve the situation.

5.7 NAV CANADA shall be advised of alarms as follows:

5.7.1 Upon receipt of a Level 2 alarm and a component of 90 Hz and/or 150 Hz, FortisBC shall send an e-mail to the NAV CANADA Manager CNS Engineering at LechnS@navcanada.ca.

5.7.2 Upon receipt of a Level 3 alarm and a component of 90 Hz and/or 150 Hz, FortisBC shall telephone NAV CANADA's Manager of CNS Engineering at (780) 890-3015 and send an e-mail to the NAV CANADA Manager of CNS Engineering at LechnS@navcanada.ca.

5.8 FortisBC shall maintain a complete standby monitoring system consisting of:

5.8.1 Aircom Electronics Portable Localizer Test-Set DMM 1001 with Rockwell Collins VIR-351 (receiver).

5.9 FortisBC shall have each of the active and standby Aircom Electronics Portable Localizer Test-Set DMM 1001 with Rockwell Collins VIR-351 (receiver) units calibrated annually by a company approved by NAV CANADA.

6. ACCOUNTABILITIES OF NAV CANADA

6.1 NAV CANADA shall contact FortisBC's Control Centre at (250) 368-0547 if it assesses that the monitoring system contemplated by this Agreement is not functioning as designed in Sections 5.4 and 5.5.

7. CHANGES TO THE AGREEMENT

7.1 The noise levels to be monitored, the parameters to be recorded and output and the resulting action described in Sections 5.4 to 5.7 may be modified at any time by mutual agreement of the Parties.

7.2 Any changes shall be documented as an amendment to this agreement.

8. RIGHT OF WAY ACCESS AND OWNERSHIP

8.1 FortisBC grants to NAV CANADA and its tenants, officers, agents, servants, employees, contractors, subcontractors and licensees during the term of this Agreement and for a reasonable period of time after the termination or expiry of this Agreement until all rights and obligations of the Parties under this Agreement have been satisfied, the right to access FortisBC's Facilities for the purposes and in the manner, if any, outlined below, and the fulfillment of any other rights or obligations of NAV CANADA under this Agreement.

8.2 Access to FortisBC's Facilities is subject to the following guidelines:

8.2.1 Access shall be coordinated within 5 Business Days of a request made by calling FortisBC Control Centre at (250) 368-0547.

8.2.2 In the case of a Level 3 alarm and a component of 90 Hz and/or 150 Hz, NAV CANADA shall be granted access as soon as possible to respond to/validate the alarm. Access shall

be arranged through FortisBC employees, contractors or agents on site or by calling FortisBC's Control Centre at (250) 368-0547.

8.2.3 NAV CANADA personnel, contractors, or agents working in, or present in, FortisBC's fenced yard must comply with all of FortisBC's environmental and occupational health and safety policies and procedures as may be provided by FortisBC to NAV CANADA, from time to time. For the avoidance of doubt, NAV CANADA's personnel, contractors or agents working in, or present in, FortisBC's fenced yard shall have access to FortisBC's buildings.

8.2.4 NAV CANADA personnel, contractors, or agents working in, or present in, FortisBC's fenced yard must be accompanied at all times by a FortisBC employee, contractor or agent. For the avoidance of doubt, NAV CANADA's personnel, contractors or agents working in, or present in, FortisBC's fenced yard shall have access to FortisBC's buildings.

9. FORCE MAJEURE

9.1 If, at any time during the term of this Agreement, the operations of either of the Parties are suspended, curtailed or interfered with owing to an act of God, war, rebellion, sabotage, terrorism, fire or other causes beyond the reasonable control of any Party, such as strikes, differences with workmen or like causes (excepting and excluding however lack of finances or of market for the product of either of the Parties), the Party whose operations are suspended, curtailed or interfered with shall be relieved of its obligations and shall not be liable to the other under this Agreement until the cause or causes thereof have been removed, provided that:

9.1.1 the Party seeking to invoke the benefit of this clause promptly notifies the other Party in writing of the occurrences of the cause or causes and promptly and diligently proceeds to rectify such occurrence;

9.1.2 each Party shall take all reasonable precautions and adopt all reasonable measures to prevent or remove the cause of such suspension, curtailment or interference; and

9.1.3 the Party having invoked this Section under clause 9.1.1 shall give prompt notice of cessation of the cause thereof.

10. LIABILITY AND INDEMNITY

10.1 FortisBC (as applicable, the "Indemnitor") will indemnify and hold harmless NAV CANADA and its directors, officers, employees, subcontractors, agents and representatives ("Indemnatee(s)") from and against any loss, expense, injury, death or damage to Indemnatee and also from all actions, causes of action, suits, claims and demands by any other third party against Indemnatee(s) in respect of loss, expense, injury, death or damage, and any cost and expense relating thereto (including reasonable legal fees) which results from or arises out of the Indemnitor's accountabilities or failure to perform any of its obligations under this Agreement or the negligence or willful act of the Indemnitor or anyone for whom the Indemnitor is responsible in law.

10.2 For the purpose of Section 10.1 "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under this Agreement.

10.3 The following provisions will apply to any claim for indemnification pursuant to Section 10.1 (hereinafter, in this Section, called an "Indemnity Claim"):

- 10.3.1 Promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Indemnitee will provide to the Indemnitor written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly;
- 10.3.2 If an Indemnity Claim relates to an alleged liability to any other person who is not a Party (hereinafter, in this Section, called a "Third Party Liability"), the Indemnitee shall not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior written consent of the Indemnitor (which consent shall not be unreasonably withheld or delayed). The absence of such prior written consent shall release the Indemnitor from liability in respect of such claim, unless the Indemnitor has unreasonably withheld its consent;
- 10.3.3 With respect to any Third Party Liability, provided the Indemnitor first admits the Indemnitee's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:
- 10.3.4 The Indemnitor will have the right to assume carriage of negotiations respecting the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Indemnitee shall have the right and shall be given the opportunity to participate in the defence of the Third Party Liability, to consult with the Indemnitor in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel); and
- 10.3.5 The Indemnitee, at the Indemnitor's expense, will co-operate with the Indemnitor in relation to the Third Party Liability, will provide it with copies of all relevant documentation as it becomes available, will provide it with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Indemnitor at all reasonable times to discuss the Third Party Liability;
- 10.3.6 If, with respect to any Third Party Liability, the Indemnitor does not admit the Indemnitee's right to indemnification within thirty (30) days or declines to assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:
- 10.3.7 Notwithstanding Subsection 10.3.2 above, the Indemnitee, at its discretion, may assume carriage of negotiations respecting the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings and may defend or settle the Third Party Liability on such terms as the Indemnitee, acting in good faith, considers advisable; provided that the Indemnitor shall have the right and

shall be given the opportunity to participate in the defence of the Third Party Liability, to consult with the Indemnatee in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel);

10.3.8 The Indemnitor, at the Indemnatee's expense and using reasonable efforts, will co-operate with the Indemnatee in relation to the Third Party Liability, will provide it with copies of all relevant documentation as it becomes available, will provide it with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Indemnatee to the extent reasonable to discuss the Third Party Liability, provided however that the Indemnatee acknowledges and agrees that any such co-operation by the Indemnitor shall not constitute nor shall it be construed as constituting an admission of the Indemnatee's right to indemnification; and

10.3.9 If the Indemnatee's right to indemnification is established, any cost, loss, damage or expense incurred or suffered by the Indemnatee in the settlement of such Third Party Liability and the conduct of any legal, administrative or other proceedings including, without limitation, legal fees and disbursements on a solicitor and own client basis, shall be paid promptly by the Indemnitor.

11. LIMITATION ON LIABILITY

11.1 Nothing contained within this Agreement is intended to abrogate, alter or diminish the statutory liability protection granted to FortisBC under the *Utilities Commission Act* (British Columbia). Where, as a result of Section 10 of this Agreement or otherwise, the Indemnitor is liable to the Indemnatee, then the Indemnitor is liable only for direct loss or damage suffered or incurred by the Indemnatee. As used herein, "direct loss or damage" does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever arising out of or in any way connected with this Agreement.

12. INSURANCE

12.1 FortisBC (as applicable, for the purposes of this Section 12, referred to as an "Insured Party") shall, without limiting any of its obligations and liabilities under this Agreement, procure and maintain, at its own expense, with respect to and for the duration of this Agreement, appropriate insurance covering its obligations with respect to this Agreement, or such other insurance as FortisBC may be required by law to provide, including the following minimum insurance coverages (collectively, the "Policies"):

12.1.1 Workers' Compensation, to the full extent required in the jurisdiction in which the obligations arise from this Agreement and wherever such Insured Party's contracts of employment with its personnel are made or expressed to be made, or Employer's Liability Insurance covering each of the personnel and providing limits of not less than two million (\$2,000,000) dollars where such personnel are not covered by applicable Worker's Compensation coverage;

12.1.2 Automobile Liability Insurance, covering all owned, leased and hired vehicles used by the Insured Party to perform its obligations hereunder, and providing limits of not less than two million (\$2,000,000) dollars per occurrence for bodily injury, death and property damage; and

- 12.1.3 Commercial General Liability Insurance providing coverage for a combined single limit of not less than five million (\$5,000,000) dollars (plus associated defense costs) for each occurrence resulting in bodily injury, including death, sustained by any person or persons, or resulting in injury to or destruction of property arising out of or in connection with the operations of the Insured Party, their officers, directors, employees and agents. Coverage shall include, but is not limited to, Employer's Liability, Contractual Liability, Owners and Contractor's Protective Liability, Broad Form Property Damage, Cross-Liability, Blanket Contractual Liability, Non-Owned Automobile and Broad Form Products and Completed Operations Liability, and Forest and Prairie Fire Fighting Costs for a sub limit of not less than two million (\$2,000,000) dollars (plus associated defense costs).
- 12.2 With respect to this Agreement, an Insured Party's Policies shall include the other Party and its employees, officers, directors, agents and contractors, as additional insureds, but only with respect to the operations of the Insured Party hereunder. The insurance extended or otherwise afforded to the additional insured under the Policies shall be limited only to the vicarious liability arising from the operations of the named insured.
- 12.3 The Policies shall contain a provision that the insurance thereunder shall be primary and shall not call into contribution any other insurance available to the other Party.
- 12.4 The Policies shall provide that thirty (30) days written notice shall be given to the other Party prior to any material change adversely affecting the Insured Party, or cancellation of any Policy.
- 12.5 If requested to do so, the Insured Party shall provide to the other Party, evidence of renewal of all Policies, within thirty (30) days following the date upon which the applicable Policy must be renewed.
- 12.6 If requested to do so, the Insured Party shall provide a Certificate of Insurance to the other Party evidencing compliance with the insurance requirements set forth in this Section 14, including its certificate number from the appropriate Workers' Compensation Board or Commission, showing that such Insured Party has registered and is in good standing with such Board or Commission.

13. GOVERNMENT APPROVALS

- 13.1 FortisBC shall use all reasonable efforts to obtain and maintain all applicable government orders, permits, approvals, and consents required by law to perform its obligations under this Agreement.

14. DISPUTE RESOLUTION

- 14.1 Except as otherwise stated herein, all disputes arising with respect to the subject matter of this Agreement shall be resolved in accordance with the provisions of Schedule "A".

15. CONFIDENTIALITY

- 15.1 During the term of this Agreement, each Party (the "Recipient") agrees to keep confidential all data and information relating to this Agreement and the business and affairs of the other Party (the "Disclosing Party") (including, without limitation, any data and information obtained from the Disclosing Party or exchanged between the Parties) ("Confidential Information"), except as expressly provided herein and to the extent that such Confidential Information otherwise is in the

public domain, or the Recipient can prove was previously known to the Recipient, is at any time lawfully obtained by the Recipient from a third party without breach of any obligations of confidentiality or was independently developed by the Recipient, or is disclosed with the prior written consent of the Disclosing Party (such consent not to be unreasonably withheld), or the Recipient is compelled to disclose Confidential Information to the ISO pursuant to applicable ISO Rules and policies, or is legally compelled to disclose to a court, government department or agency, or regulatory authority in the proper exercise of its jurisdiction.

- 15.2** In the event that a Recipient is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or other process) to disclose any Confidential Information, it is agreed that the Recipient will provide the Disclosing Party with reasonable notice of any such request or requirement so the Disclosing Party may seek an appropriate protective order or waive compliance by the Recipient with Section 15.1. If, failing the obtaining of a protective order and failing the receipt of a waiver hereunder, the Recipient is obligated to disclose Confidential Information, the Recipient may disclose only that portion of the Confidential Information which the Recipient is obligated to disclose, and the Recipient will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be afforded such Confidential Information.
- 15.3** Each Recipient agrees that it shall make all reasonable efforts to limit internal disclosure of Confidential Information received from the Disclosing Party to only those of its employees, representatives, directors, contractors or agents who have a reasonable need to know the same to fulfill the obligations of such Recipient under this Agreement.
- 15.4** Each Recipient agrees that it shall take reasonable precautions to ensure that its employees, representatives, directors, contractors or agents (and any third persons to whom such Recipient discloses Confidential Information with the consent of the Disclosing Party) abide by the obligations of confidentiality hereunder, and that it shall be liable to the Disclosing Party for any improper use or disclosure of Confidential Information by such persons.
- 15.5** Each Recipient agrees that it shall not use any Confidential Information received from the Disclosing Party other than for the purposes contemplated by this Agreement.
- 15.6** Notwithstanding the provisions of this Section 15, either Party may disclose Confidential Information to the Board, but shall exercise reasonable efforts to obtain reliable assurance that confidential treatment, to the extent available and practicable, will be accorded the Confidential Information so disclosed.

16. GENERAL

- 16.1** This Agreement, together with the Statement of Work Agreement between the Parties dated of even date herewith, and any Appendices and Schedules hereto, represents the entire agreement between the Parties with respect to the matters contemplated herein and supersedes and replaces all prior agreements, oral or written, made by the Parties relating to their respective accountabilities for the enhanced preventative maintenance and monitoring programs which have been established at the Ellison Substation. Except as expressly provided for herein, this Agreement may be amended or superseded only by written agreement of the Parties.
- 16.2** This Agreement shall be construed according to the laws of the Province of British Columbia and the laws of Canada applicable therein. Subject to Section 14, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia.

- 16.3** Neither Party shall assign this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, FortisBC may assign this Agreement to an affiliate, to a transferee of ownership of FortisBC's Facilities, or to any other party assuming ownership or operation of FortisBC's operations including FortisBC's Facilities, where the transfer of ownership or operation has been approved by the BCUC pursuant to the Applicable Laws.
- 16.4** This Agreement shall enure to the benefit of and be binding upon the Parties, their successors and permitted assigns. The rights and remedies of the Parties under this Agreement are cumulative and in addition to any other rights and remedies that the Parties may have at law or in equity.
- 16.5** No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.
- 16.6** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof, and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 16.7** This Agreement may be executed in any number of counterparts and delivered by facsimile, and all such counterparts together shall constitute one agreement.

(continued)

- 16.8 The liabilities of the Parties for breach of any covenants, representations or warranties, and any obligations of the Parties under any indemnity contained in this Agreement shall survive termination of this Agreement except as otherwise expressly provided.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under the hands of their proper officers as of the day and year first above written by their duly authorized representatives in that behalf.

NAV CANADA

Per: 

OCT 08 2008

Name:

Title:

Sid Lechner

**Manager, CNS Engineering
Engineering Services - West**

Per:

Name:

Title:

NAV CANADA

FortisBC Inc.

Per: 

Name:

Title:

Doyle Sam
VP, ENGINEERING & OPERATIONS

APPENDIX A

Attached to and forming part of

the Operating Agreement dated _____

BETWEEN

**NAV CANADA
"NAV CANADA"**

AND

**FortisBC Inc.
("FortisBC")**

EQUIPMENT

ELLISON SUBSTATION

EQUIPMENT LIST

<u>PART NO.</u>	<u>DESCRIPTION</u>	<u>QTY</u>
779562-01	PPC-2015 15" PANEL PC, 2.0 GHZ WITH WINDOWS XP	2
779065-01	NI PCI-6220, M SERIES DAQ (16 ANALOG INPUTS, 24 DIGITAL I/O)	2
192061-02	SHC68-68-EPM SHIELDED CABLE 68- POSITION .050 SERIES D-TYPE TO 68-POS VHDCI OFFSET, 2M	2
776844-01	SCB-68 SHIELDED COMMECTOR BLK	2
778389-03	VI LOGGER, DATALOGGING SOFTWARE FOR WINDOWS	2
779574-01	PPC-2015 RACK MOUNT KIT	2
ICT4812-10A	ICT WIDE RANGE SERIES 10	2
DDM1001	AIRCOM ILS REC SYSTEM	2
FCC-2 (2312)	AH SYSTEM INC. DIPOLE ANTENNA	1
FXM1100	ALPHA TECHNOLOGIES 48 VOLTS DC TO 110AC CONVERTER	2

SCHEDULE "A"

Attached to and forming part of the Operating Agreement

dated _____

BETWEEN

NAV CANADA

AND

FortisBC Inc.

DISPUTE RESOLUTION

DISPUTE RESOLUTION

1. GENERAL

1.1 Purpose and Sequence of Dispute Resolution

1.1.1 The purpose of this Schedule "A" is to set forth the framework and procedure pursuant to which each Party agrees to use reasonable efforts to resolve disputes that arise under or in connection with this Agreement, given the Parties' shared goal of resolving such disputes without resort to litigation. The Parties agree to use a two-step process to achieve this goal, which process shall be undertaken in the following order:

1.1.1.1 first, by negotiation pursuant to the negotiation procedure set out below (the "Negotiation Procedure"); and

1.1.1.2 second, either by way of an application to the Commission for resolution or by binding arbitration pursuant to the arbitration procedure set out below (the "Arbitration Procedure").

1.2 Confidentiality

1.1.2 All information disclosed by a Party pursuant to the Negotiation Procedure or the Arbitration Procedure shall be treated as privileged, confidential, and without prejudice, and neither the delivery nor disclosure of such information shall represent any waiver of privilege by the Party disclosing the same. Each Party agrees not to disclose information provided by the other Party for the purposes hereof to any other person for any other purpose. Further, such information shall not be used in any subsequent proceedings without the consent of the Party who has made disclosure of the same. The Parties agree that any arbitrator appointed hereunder shall not be subpoenaed or otherwise compelled or compellable as a witness in any proceedings for any purpose whatsoever in relation to this Agreement.

2. NEGOTIATION PROCEDURE

2.1 Except for interlocutory proceedings for the immediate performance or cessation of conduct, all disputes which arise with respect to this Agreement that cannot be resolved at the operating level shall promptly be referred to senior representatives appointed by each Party with authority to resolve the dispute upon either Party requesting such a reference in writing.

2.2 The senior representatives shall promptly meet and attempt, with reasonable diligence, to resolve the dispute. If the senior representatives of the Parties have not resolved the dispute within ten (10) Business Days of the dispute being referred to them, either Party may refer the dispute to the Arbitration Procedure.

3. ARBITRATION PROCEDURE

3.1 Location and Rules

3.1.1 If the Parties are unable to resolve the dispute through the Negotiation Procedure, either Party (the "Initiating Party") may elect to either (i) make application to the Board to

resolve the dispute or (ii) refer the dispute to binding arbitration, in each case by giving the other Party (the "Receiving Party") written notice of the Initiating Party's intention. If the Initiating Party elects to refer the dispute to binding arbitration, the Receiving Party may, within ten (10) Business Days of the receipt of such notice, either (i) confirm in writing its agreement to submit the dispute to binding arbitration or (ii) elect in writing to have the dispute referred to the Board for resolution. If the Receiving Party does not confirm in writing its agreement to submit the dispute to binding arbitration within such ten (10) day period, then the Receiving Party shall be deemed to have elected to have the dispute referred to the Board for resolution. If the Receiving Party elects (or is deemed to elect) to have the dispute resolved by the Board, the dispute shall be so resolved.

3.1.2 If the Parties agree to submit the dispute to binding arbitration, the arbitration shall be before a board of three (3) arbitrators (unless the Parties concur in the appointment of a single arbitrator) at the offices of the Initiating Party.

3.1.3 Unless otherwise agreed between the Parties in writing the arbitration shall be administered by the ADR Institute of Canada, Inc. (the "Institute") in accordance with its National Arbitration Rules (the "Rules"), except as modified in this Section 3. The "Act" referred to in the Rules shall be the *Commercial Arbitration Act* (British Columbia). If there is a conflict between the Rules (as modified by this Section 3) and the provisions of such Act, the Rules shall prevail.

3.2 Appointment of Arbitrators

3.2.1 Upon agreement of the Receiving Party to refer the dispute to binding arbitration, the Initiating Party shall select one (1) arbitrator and shall send a request to arbitrate in the form prescribed by the Rules (the "Arbitration Notice") to the Receiving Party setting out the name of its arbitrator. The Initiating Party shall be responsible for notifying the Institute of the arbitration under its Rules and for paying the administrative fee for the arbitration to the Institute.

3.2.2 The Receiving Party shall have ten (10) Business Days from receipt of the Arbitration Notice to select its own arbitrator and to notify the Initiating Party of the name of the arbitrator selected by the Receiving Party.

3.2.3 Promptly upon their selection, and in any event within twenty-one (21) Business Days of notification of the appointment of the Initiating Party's arbitrator, the two arbitrators then appointed shall appoint a third arbitrator.

3.2.4 If the Receiving Party fails to appoint an arbitrator, or the selected arbitrators fail to agree upon a third arbitrator within the time limits set forth above, then, pursuant to the Rules, either Party or its representative may request the Institute to promptly appoint the Receiving Party's arbitrator and/or the third arbitrator, as the case may be, and to notify the Parties of such appointment(s). If the Institute or a successor or replacement body no longer exists, the selection of the arbitrator(s) shall be made by the Supreme Court of British Columbia.

3.2.5 The arbitrators appointed pursuant to Subsection 3.2.1, 3.2.2, 3.2.3 or 3.2.4, as the case may be, shall be qualified by education and experience to determine the matter in dispute.

- 3.2.6** Each arbitrator appointed must be independent and sign a certificate to that effect in accordance with the Rules.

3.3 Procedure

- 3.3.1** The Parties shall agree in advance as to the manner in which the arbitrators shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration procedures. Failing such agreement within ten (10) Business Days from the date of selection or appointment of the third arbitrator, the arbitrators shall use the Rules and promptly commence and expeditiously conduct the arbitration proceedings.
- 3.3.2** Nothing in this Section 3.3 shall prevent a Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with this arbitration procedure or to prevent manifestly unfair or unequal treatment of any Party to the arbitration.
- 3.3.3** In no event shall the arbitrators have the jurisdiction to amend or vary the terms of the Arbitration Procedure or the Rules without the Parties' prior written consent.

3.4 Awards

- 3.4.1** The arbitration award shall be given in writing, shall be final and binding on the Parties, shall not be subject to any appeal and shall deal with the question of costs of the arbitration and all other related matters.
- 3.4.2** Judgment upon the arbitration award may be entered in any court having jurisdiction, or, application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- 3.4.3** Subject to Subsection 3.3.2 of this Schedule, and except for interlocutory proceedings for the immediate performance or cessation of conduct, the Parties agree that arbitration pursuant to this Arbitration Procedure shall be the final and exclusive forum for the resolution of a dispute.



STATEMENT OF WORK AGREEMENT

Monitoring Program at FortisBC's Ellison Substation

Between

NAV CANADA

77 Metcalfe Street
Ottawa, Ontario K1P 5L6

And

FORTISBC Inc.

Suite 100, 1975 Springfield Road
KELOWNA, BRITISH COLUMBIA V1Y 7V7

Version 2.0
September 24, 2008

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STATEMENT OF WORK AGREEMENT

THIS AGREEMENT dated the 8th day of October, 2008.

BETWEEN:

NAV CANADA, a company incorporated under the laws of Canada with head office at the City of Ottawa in the Province of Ontario (hereinafter referred to as "NC"),

OF THE FIRST PART,

- and -

FORTISBC INC., a corporation established by a special Act of the Legislature of the Province of British Columbia, having its head office at Suite 100, 1975 Springfield Road, Kelowna, British Columbia, (hereinafter referred to as "FT"),

OF THE SECOND PART.

WHEREAS NC is the private sector, non-share capital corporation that owns and operates Canada's civil air navigation service (ANS).

AND WHEREAS FortisBC is an integrated electric utility that owns an electrical substation located at N49 57 44, W119 23 14 (the "Ellison Substation") with voltage exceeding 100 kV that is located closer than 3.2 kilometers from the centerline or sixteen (16) kilometers from the ends of Runway 16/34 of the Kelowna Airport and may therefore cause television and FM interference (TVI) and electromagnetic interference (EMI) to aircraft instrument landing systems operated by NAV CANADA.

AND WHEREAS NC has a requirement for installation of an EMI (Electromagnetic Interference) Monitoring System (the "Monitoring System") at the Ellison Substation.

AND WHEREAS the Parties wish to provide clarity of their respective accountabilities relating to the performance of the work required by NC to facilitate the installation of the antennas, Aircom ILS Receiver System, VI Logger, PC and associated software and other components comprising such Monitoring System.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the premises hereof and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 In this Agreement the expressions below shall respectively have the following meanings:

- 1.1.1 "Agreement" means this Statement of Work Agreement, including the recitals and all Appendices and Schedules attached hereto, as may be amended from time to time;
- 1.1.2 "Party" means either NAV CANADA or FortisBC, as the case may be, and "Parties" means both of them;

2. GENERAL ROLES AND RESPONSIBILITIES

2.1 NC covenants and agrees that it shall:

- 2.1.1 provide a Statement of Work (the "SoW") detailing the work (the "Work") NC requires for the installation of new antenna mounts, antennas, coaxial cables Aircom ILS Receiver System, VI Logger, PC and associated software and other components as required;
- 2.1.2 review and inspect the Work as required; and
- 2.1.3 complete and submit Industry Canada Radio Communication Licence as required.

2.2 FT covenants and agrees that it shall:

- 2.2.1 complete the Work as detailed in the SoW;
- 2.2.2 bear all costs for the Work as detailed herein;
- 2.2.3 supply all materials as detailed in the SoW including but not limited to equipment, antennas, antenna clamps, coaxial cables, connectors, ground kits, and surge protectors (it being acknowledged by the Parties that product supplied may vary from what is defined in the SoW);
- 2.2.4 ship all materials as specified by NC;
- 2.2.5 provide all required resources for testing the Monitoring System;
- 2.2.6 order telecommunication circuits from the service provider as specified by NC;
- 2.2.7 provide design and engineering resources to complete the work as required to establish monitoring from NC to the Ellison Substation;
- 2.2.8 install all material as required by NC (the cost of all such equipment installation, together with rental of space and any other costs incurred as a result of such installation to be solely for FT's account);
- 2.2.9 provide NC with floor space within the Ellison Substation as detailed herein;

- 2.2.10 be solely responsible for the means, methods, techniques and procedures to complete the Work;
- 2.2.11 meet NC design requirements; and
- 2.2.12 coordinate with NC any activities that may impact the existing NC systems and operations.

3. ELLISON SUBSTATION MONITORING PROGRAM

- 3.1 NC's intent is to monitor the EMI generated from the Ellison Substation for aviation safety operation in the Kelowna airport. To achieve such monitoring requires FT to install antennas, coaxial cables, Aircom ILS Receiver System, VI Logger, PC and associated software and other components as required. The detailed requirements are described in this Section 3.
- 3.2 In relation to DESIGN works, FT shall:
 - 3.2.1 provide all design and engineering resources to complete the Work as required by NC; and
 - 3.2.2 supply all material required as listed in Product Specification.
- 3.3 In relation to ANTENNA works, FT shall provide one Dipole VHF antenna (AH system inc, or equivalent). The antenna shall be mounted as shown in the Antenna Layout Drawings shown in Section 1.2 of Schedule A. The antenna specification is also referenced in Schedule B.
- 3.4 In relation to COAXIAL CABLE works, FT shall:
 - 3.4.1 supply adequate quantities of the following: coaxial cable, connectors, coaxial cable ground kits, etc.;
 - 3.4.2 install the coaxial cable and components as per the industry standard; and
 - 3.4.3 install the coaxial cable connectors as required. All exterior cable connections shall be weatherproofed with two wraps of quality vulcanizing rubber tape and two wraps of quality vinyl tape.
- 3.5 In relation to EQUIPMENT works, FT shall:
 - 3.5.1 complete the system design as per NC's requirement and obtain the approval of NC;
 - 3.5.2 use at least one (1) rack to install all the equipment and interconnect them as per industry standard; and
 - 3.5.3 install the interface between the Monitoring System and telecommunication carriers as per industry standard.

- 3.6 In relation to GROUNDING, FT shall install all grounding as per industry standard.
- 3.7 In relation to SYSTEM TESTING, FT shall provide NC 5 days notification as to when the Monitoring System will be ready for testing.

4. TECHNICAL REQUIREMENT AND DATA

- 4.1 FT shall design, supply, construct, maintain and operate FT's facilities in such a manner that FT can monitor and, if necessary, modify its facilities to reduce television and FM interference (TVI) and electromagnetic interference (EMI) to aircraft instrument landing systems (ILS). Specifically, FT shall, design, supply, construct, maintain and operate the following equipment as part of the Monitoring System within the Ellison Substation:

Aircom electronics portable localizer test-set DMM 1001
with Rockwell Collins VIR-351 (receiver).

FCC-2 dipole antenna.

- 4.2 With reference to the electric noise floor, calculated to be a maximum of -46.56 dBm at the Ellison Substation, FortisBC shall monitor the following noise levels:

4.2.1 Level 1 (-90 dBm). This level is 2 dBm above the normal electrical noise found on a transmission line. The purpose of this threshold is to record instances where electrical noise is above normal level at the Ellison Substation. Values shall be captured for 30-day periods to provide a database for detecting emerging trends.

4.2.2 Level 2 (-76 dBm). This level is -10 dB below the maximum -66 dBm observed during field tests.

4.2.3 Level 3 (-56 dBm). This level is +10 dB above maximums observed during field tests.

- 4.3 In addition to the above noise levels, the Monitoring System shall be capable of recording the following parameters and outputting them in the manner described onto a password-protected Internet URL (over-write of existing data after 6 months):

4.3.1 Parameter 1: Receiver Automatic Gain Control (AGC) level, magnitude, time and date. The receiver AGC level shall be converted to dBm. Monitoring software shall be capable of storing and displaying a maximum receiver AGC level with time and date stamp in a 24-hour day as well as providing time and date of occurrences of noise exceeding noise Levels 1, 2 and 3 (per Section 4.2). Monitoring software shall indicate response taken when the noise exceeds each level and be capable of independently setting Levels 1 to 3;

4.3.2 Parameter 2: 90 Hz output, equivalent DC level, time and date.

4.3.3 Parameter 3: 150 Hz output, equivalent DC level, time and date. Monitoring software shall sum Parameters 2 and 3 and display a "flag current" in

microamperes with time and date stamps for this output. The flag current shall be for the values of the 90 Hz and 150 Hz detected outputs. Monitoring software shall also provide the difference of Parameters 2 and 3 and display current in microamperes (the equivalent of an ILS position) and Difference of Depth of Modulation (DDM) with time and date stamp for this output.

4.4 FortisBC shall correct the cause of the alarm as follows:

4.4.1 Upon receipt of a Level 3 alarm at FortisBC's Control Centre, a response shall be initiated immediately.

4.4.2 If the cause of the Level 3 alarm cannot be identified or rectified within 72 hours, FortisBC will contact NAV CANADA's Manager CNS Engineering at (780) 890-3015. If the Air Traffic Control System ILS is being compromised a mutually agreed on plan of action must be developed to resolve the situation. The FT representative must have the authority to put plan into action.

4.5 NAV CANADA shall be advised of alarms as follows:

4.5.1 Upon receipt of a Level 2 alarm and a component of 90 Hz and/or 150 Hz, FortisBC shall send an e-mail to the NAV CANADA Manager CNS Engineering at LechnS@navcanada.ca.

4.5.2 Upon receipt of a Level 3 alarm and a component of 90 Hz and/or 150 Hz, FortisBC shall telephone NAV CANADA's Manager of CNS Engineering at (780) 890-3015 and send an e-mail to the NAV CANADA Manager of CNS Engineering at LechnS@navcanada.ca.

4.6 FortisBC shall maintain a complete standby monitoring system consisting of:

4.6.1 Aircom Electronics Portable Localizer Test-Set DMM 1001 with Rockwell Collins VIR-351 (receiver).

4.7 FortisBC shall have each of the active and standby Aircom Electronics Portable Localizer Test-Set DMM 1001 with Rockwell Collins VIR-351 (receiver) units calibrated annually by a company approved by NAV CANADA.

4.8 FT shall provide NC as-built documents after 15 days after successfully passing the Monitoring System performance test.

5. PROJECT SCHEDULE

5.1 INSTALLATION SCHEDULE

5.1.1 FT shall provide NC with appropriate notice of installation activities and completion dates.

5.1.2 NC shall make all reasonable effort to meet the FT schedule(s).

6. LIMITATION OF LIABILITY

- 6.1 Nothing contained within this Agreement is intended to abrogate, alter or diminish the statutory liability protection granted to FT under the *Utilities Commission Act* (British Columbia). If, for any reason, FT is liable to NC under or in connection with this Agreement, then FT is liable only for direct loss or damage suffered or incurred by NC. As used herein, "direct loss or damage" does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever arising out of or in any way connected with this Agreement.

7. **GENERAL**

- 7.1 This Agreement, together with the Operating Agreement between the Parties dated of even date herewith, and any Appendices and Schedules hereto, represents the entire agreement between the Parties with respect to the matters contemplated herein and supersedes and replaces all prior agreements, oral or written, made by the Parties relating to their respective accountabilities for the enhanced preventative maintenance and monitoring programs which have been established at the Ellison Substation. Except as expressly provided for herein, this Agreement may be amended or superseded only by written agreement of the Parties.
- 7.2 This Agreement shall be construed according to the laws of the Province of British Columbia and the laws of Canada applicable therein. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia.
- 7.3 Neither Party shall assign this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, FortisBC may assign this Agreement to an affiliate, to a transferee of ownership of FortisBC's Facilities, or to any other party assuming ownership or operation of FortisBC's operations including FortisBC's Facilities, where the transfer of ownership or operation has been approved by the BCUC.
- 7.4 This Agreement shall enure to the benefit of and be binding upon the Parties, their successors and permitted assigns. The rights and remedies of the Parties under this Agreement are cumulative and in addition to any other rights and remedies that the Parties may have at law or in equity.
- 7.5 No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.
- 7.6 This Agreement may be executed in any number of counterparts and delivered by facsimile, and all such counterparts together shall constitute one agreement.


IN WITNESS WHEREOF the Parties hereto have executed this Agreement under the hands of their proper officers as of the day and year first above written by their duly authorized representatives in that behalf.

NAV CANADA

Per:  OCT 08 2008
Name: Sid Lechner
Title: Manager, CNS Engineering
Engineering Services - West
NAV CANADA

Per: _____
Name: _____
Title: _____

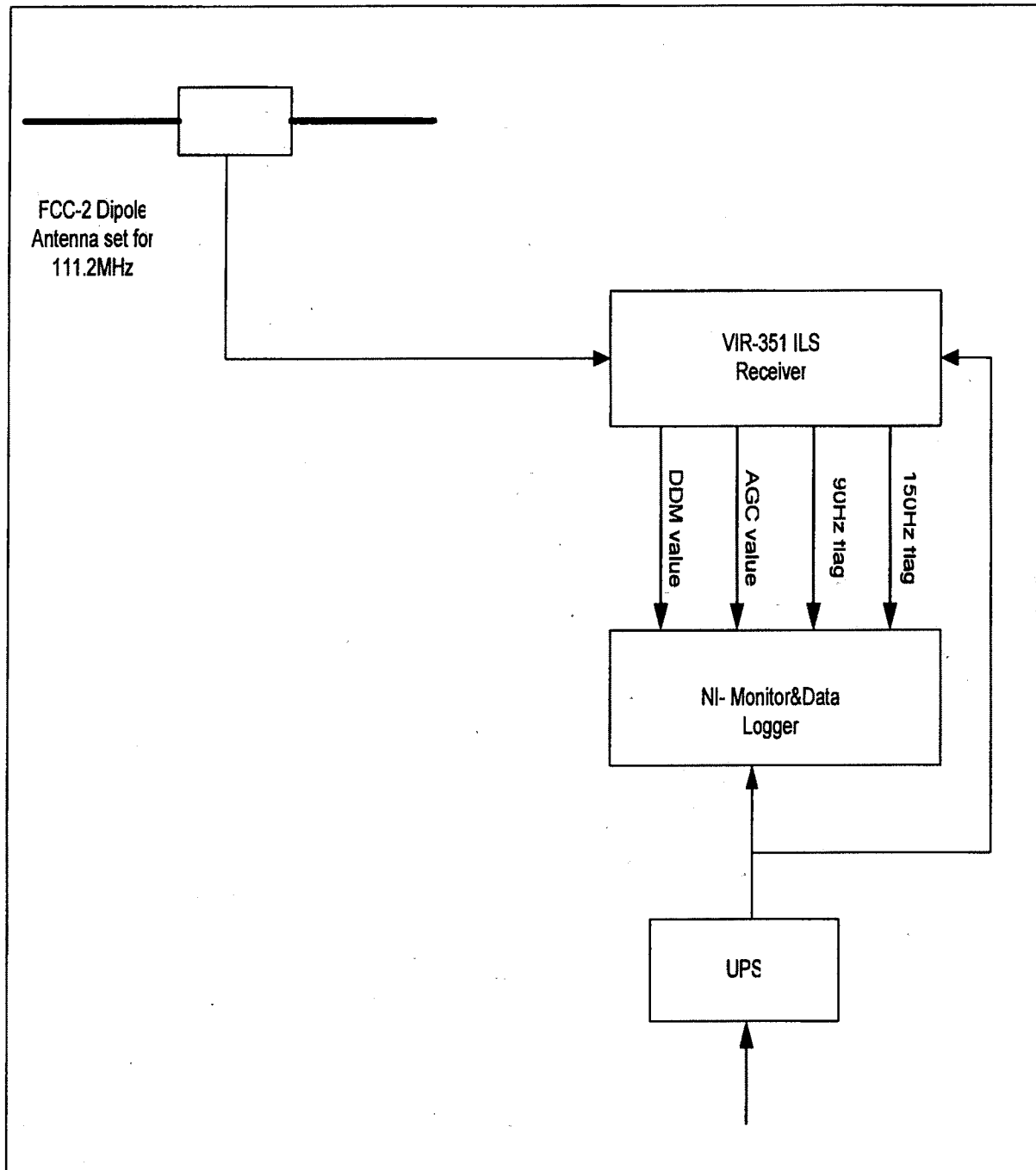
FortisBC Inc

Per:  _____
Name: Doyle Sam
Title: VP, ENGINEERING & OPERATIONS

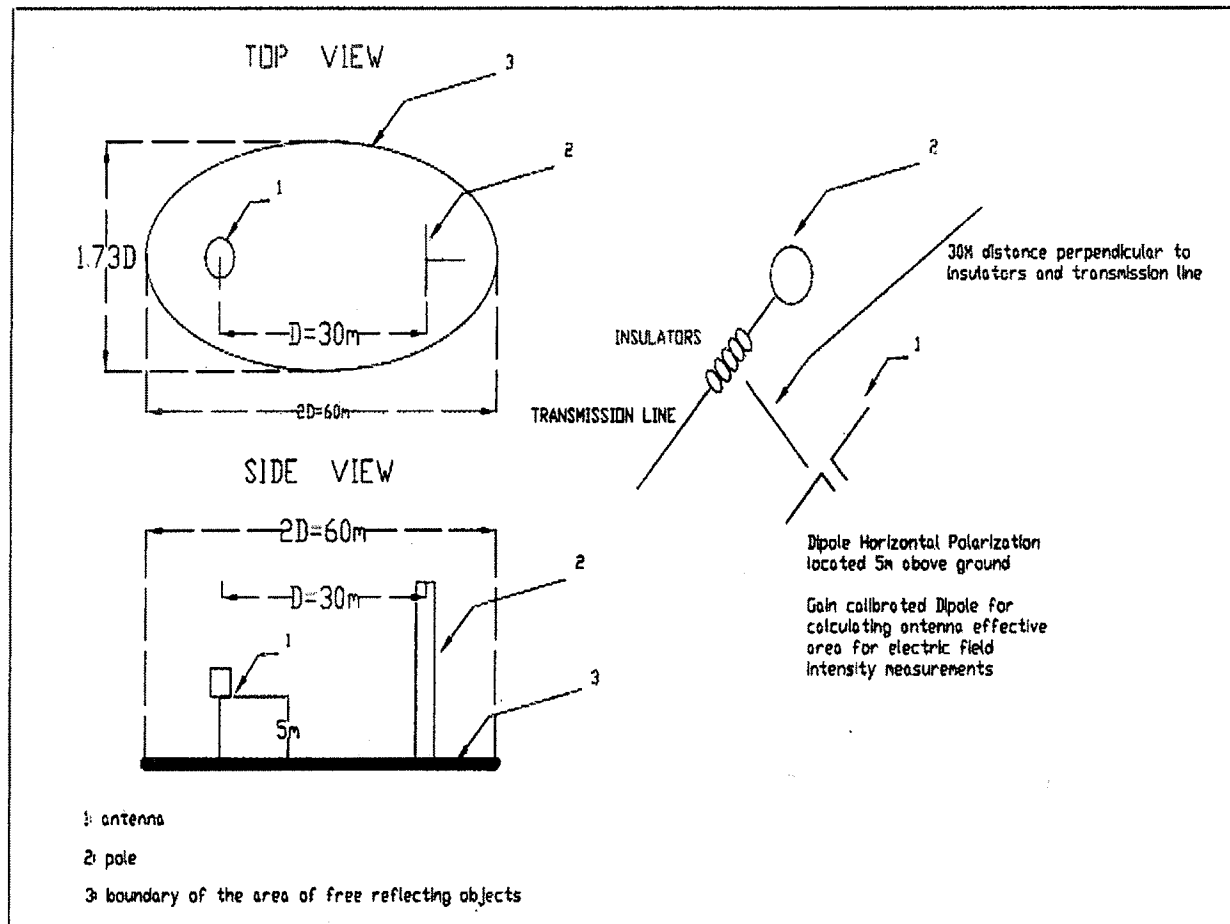
SCHEDULE "A"

DRAWINGS

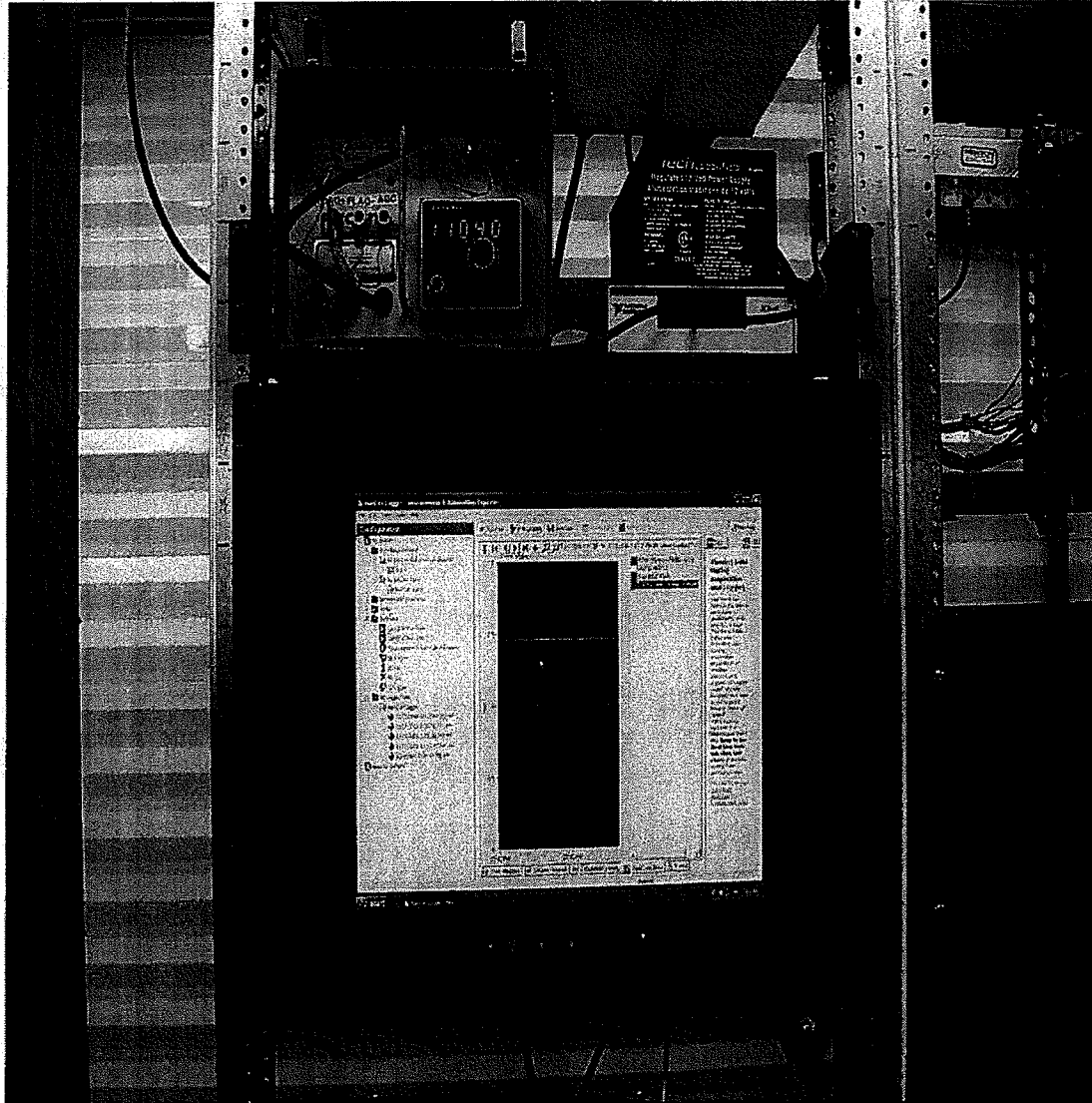
1.1 SYSTEM LAYOUT DRAWING



1.2 ANTENNA LAYOUT DRAWING



1.3 TYPICAL INSTALLATION LAYOUT



SCHEDULE "B"

EQUIPMENT SPECIFICATIONS

TI PPC 2015 PANEL PC, 2.0GHZ WITH WINDOW XP (OR EQUIVALENT)

NI PCI 6220, M SERIES DAQ (16 ANALOG INPUTS, 24 DIGITAL I/O) (OR EQUIVALENT)

SHC68-68-EPM SHIELEDED CABLE 68-POSITION .050 SERIES D-TYPE TO 68-POS .050 SERIES D-TYPE TO 68-POS VHDCI OFFSET, 2M

SCB-68 SHIELDED CONNECTOR BLK

VI LOGGER, DATALOGGING SOFTWARE FOR WINDOWS XP

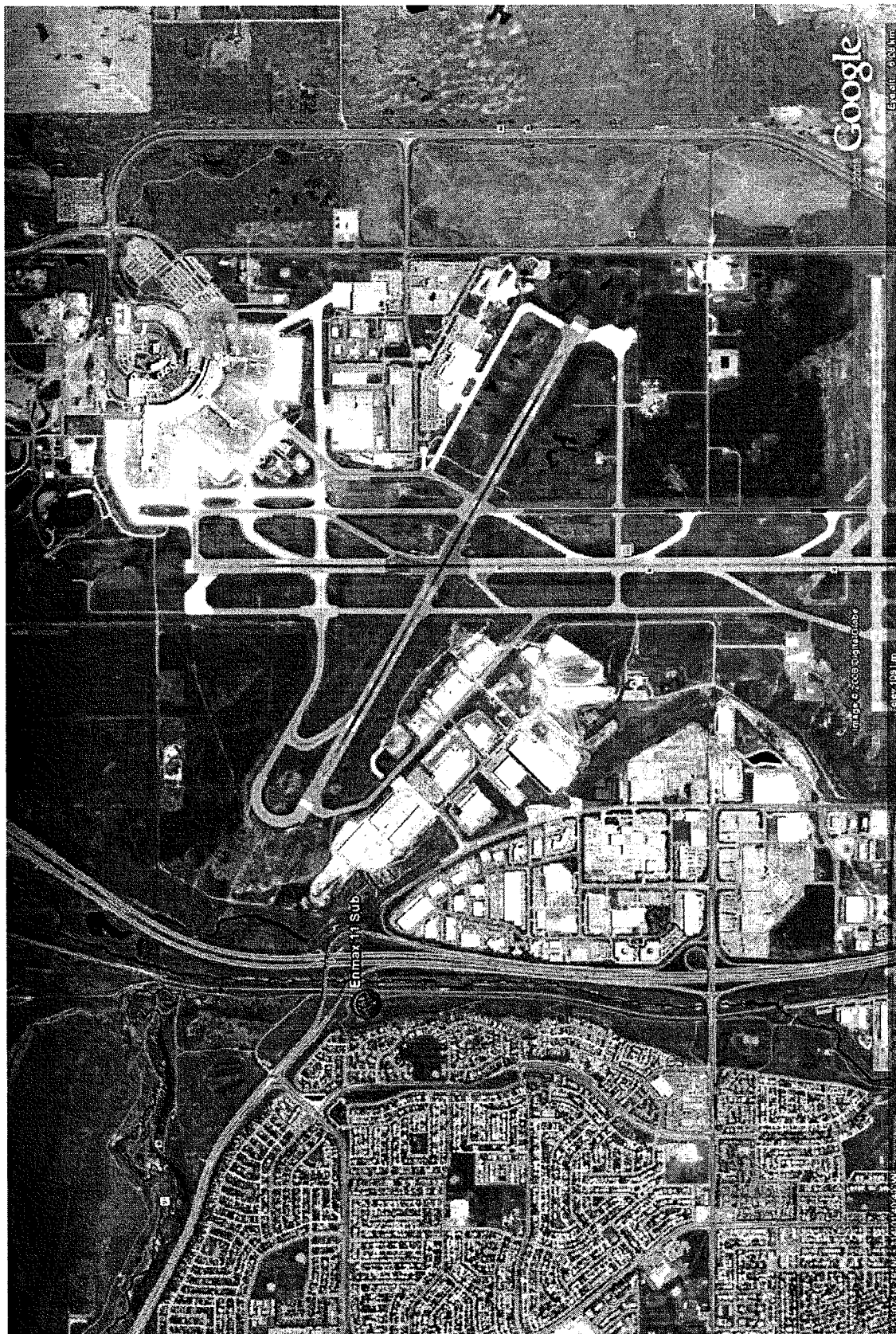
PPC 2015 RACK MOUNT KIT

ICT WIDE RANGE SERIES 10

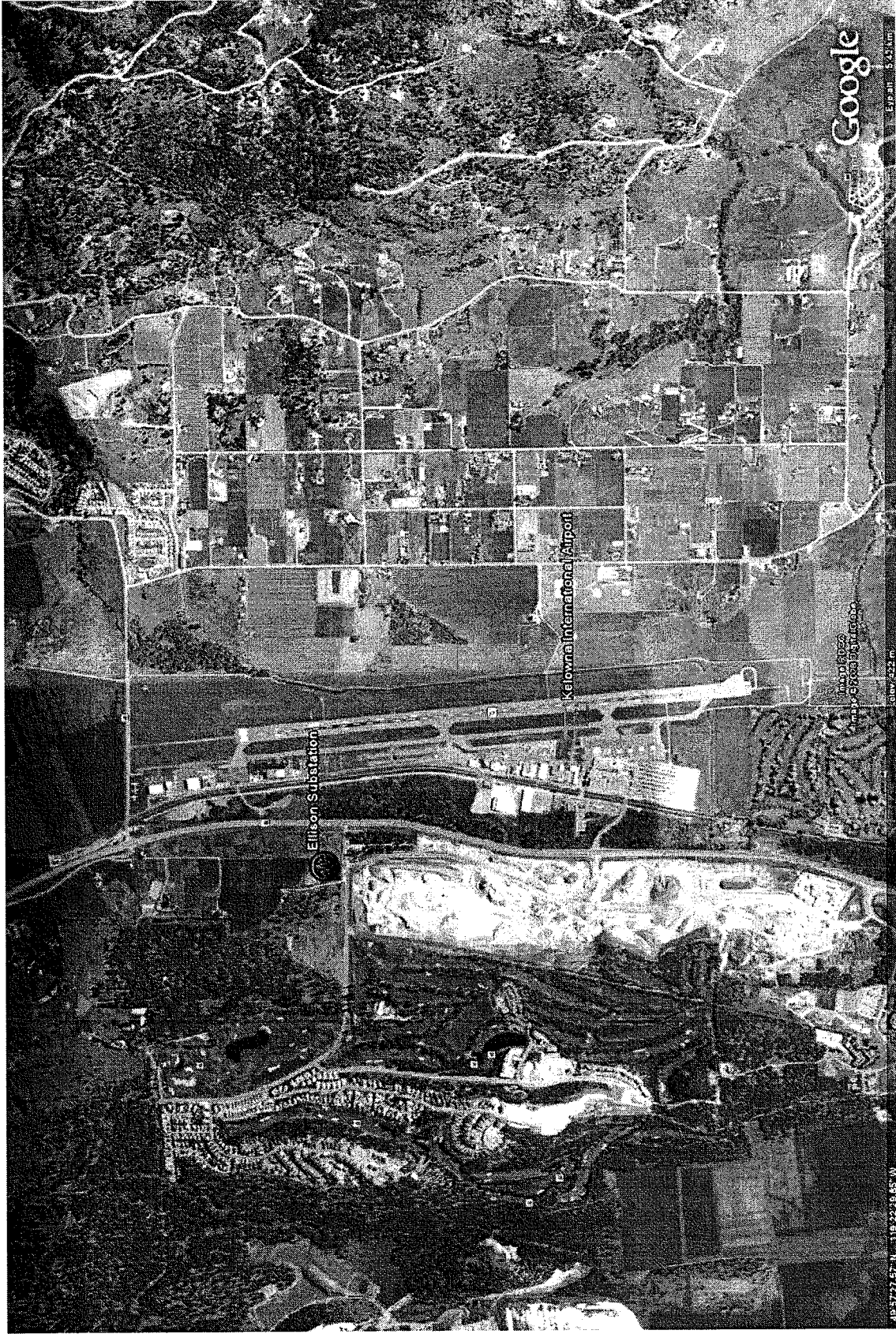
AIRCOM ILS REC SYSTEM (OR EQUIVALENT)

AH SYSTEM INC. DIPOLE ANTENNA (OR EQUIVALENT)

ALPHA TECHNOLOGIES UPS TO 110 AC CONVERTER



Enmax 11 Substation and Calgary International Airport (Eye Altitude ~5km)



FortisBC Ellison Substation and Kelowna International Airport (Eye Altitude ~5km)

LEGEND

- 138kV / 69kV & 13.8kV
- 138kV / 25kV & 13.8kV
- 69kV / 25kV & 13.8kV
- 138kV / 25kV
- 138kV / 13.8kV
- 69kV / 13.8kV
- 13.8kV / 25kV
- 13.8kV / 13.8kV
- 50kV / 13.8kV PROPOSED
- ALTA LINK INFEED SUBSTATIONS
- 138kV / 240kV
- 69kV DE-ENERGIZED
- 138kV
- CITY LIMITS
- ALTA LINK DISTRIBUTION LIMIT
- ALTA LINK 240kV
- ALTA LINK 138kV
- PROPOSED APPROPRIATION AREA

TRANSMISSION & SYSTEM CORRIDOR

- AIRPORT AREA (DASH LINE)
- TRAIL AREAS
- TRAIL AREA PARTIAL MISFEED
- ENHANCEMENT & SENSITIVE AREAS ROAD

NOTES

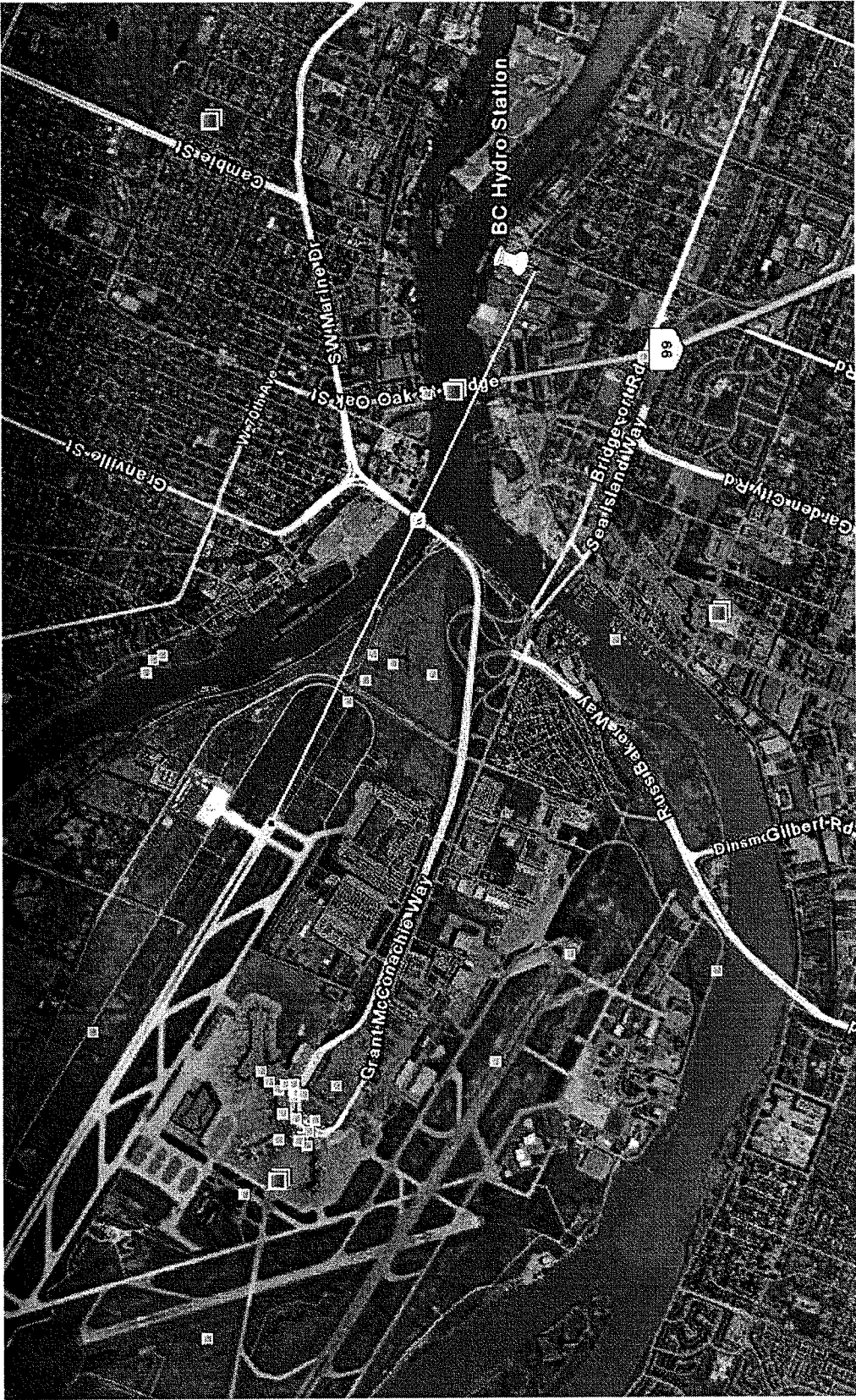
- THIS MAP IS SUBJECT TO CHANGE AND DOES NOT REPRESENT A GUARANTEE OF ANY KIND.
- THE LOCATION OF LINES AND SUBSTATIONS MAY BE MODIFIED.
- THE LOCATION OF LINES AND SUBSTATIONS MAY BE MODIFIED.

ENMAX

LONG RANGE SYSTEM PLANNING MAP

TRANSMISSION PLANNING & DESIGN
05-01-2000

Attachment E – Proximity of BC Hydro Kidd #2 Substation to YVR



BC Hydro Kidd #2 Substation

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.

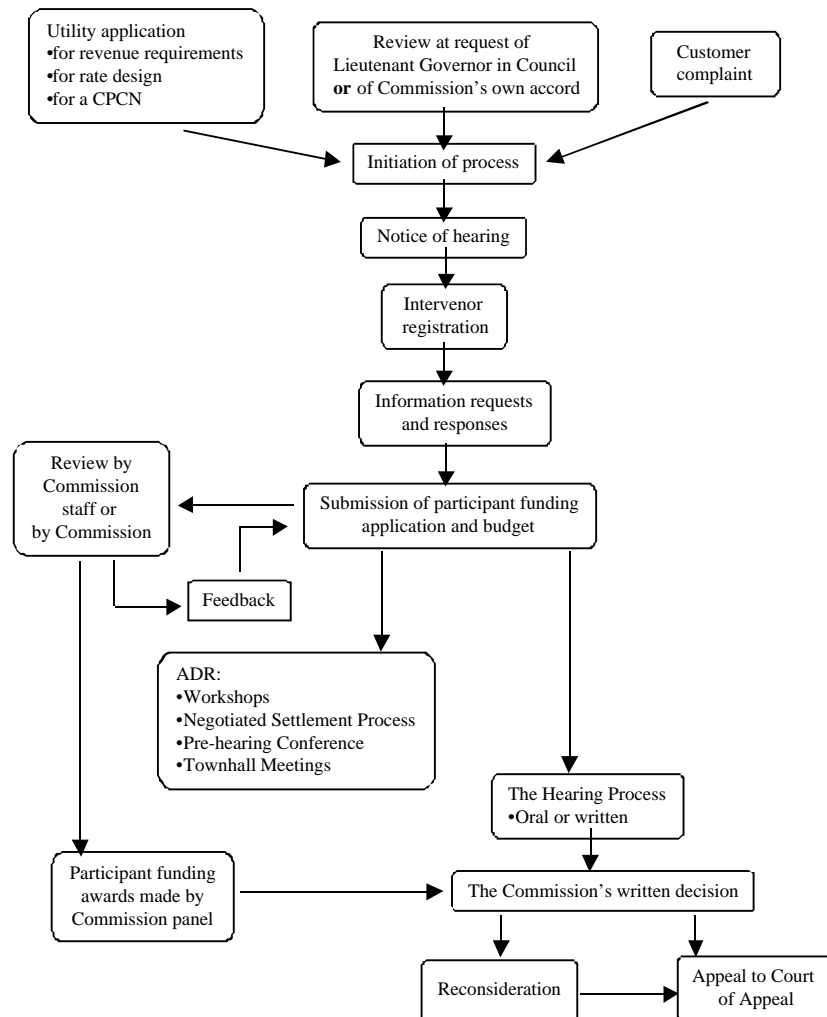
An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for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

**Figure 4-2
OPPORTUNITIES AND MECHANISMS
FOR PARTICIPATING IN COMMISSION ACTIVITIES**



THOMAS BUTLER LLP

BARRISTERS ♦ SOLICITORS

700 – 1708 Dolphin Avenue,

Landmark II Tower

Kelowna, BC, V1Y 9S4

*Kelly Cairns, Partner

Email: kacairns@thomasbutlerllp.com

*Law Corporation (www.cairnslaw.ca)

Telephone: 250.763.0200

Facsimile: 250.762.8848

VIA EMAIL: Commission.secretary@bcuc.com

September 18, 2008

BC Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, B.C. V6Z 2N3

Attention: Commission Secretary, Erica M. Hamilton

Re: Commission Order C-4-07 and G-75-07; FortisBC Inc. Ellison Project (No. 3698442)

Dear Ms. Hamilton:

This letter is an application for reconsideration of the above-noted Commission Decisions pursuant to sections 99 and 100 of the Utilities Commission Act.

As the Commission may recall, in the proceedings I represented the Concerned Citizens of Quail Ridge and Lochrem Road (“CCQRLR”) including Judy Clayton. My clients have become aware of something that we respectfully submit is a material new development that was not known to the Commission during the application and public hearing.

Attached is a letter from NAV CANADA to FortisBC in which conditional approval is granted to construct the Ellison substation at the Lochrem Road location. One of those conditions, set out in the third bullet, requires that if the substation emits electromagnetic noise that interferes with “...NAV CANADA systems which are critical for aviation safety” which interference cannot be eliminated by remedial steps taken at the Lochrem Road site, FortisBC must agree, among other things, to completely relocate or shut down the entire substation. It appears to my clients that FortisBC cannot make such a commitment to NAV CANADA without Commission approval and that a reconsideration of this new development may be required.

As well, it appears from NAV CANADA’s letter that no one, including the Commission, FortisBC and NAV CANADA, will know whether the Lochrem Road substation will interfere with the airport’s aviation safety systems until after construction is complete. It is our respectful submission that this is a material risk that may have affected the Commission’s decision in choosing among the various options proposed by FortisBC, had any of the parties been aware of it. For example, if the Commission had been aware that the Lochrem Road substation might have to be removed and relocated or shut down at ratepayer expense, the Commission may have instead selected Option 2, the Sexsmith location.

My client also brought to my attention Transport Canada Regulation TP 1247, attached, which provides that electrical noise generators such as electrical switching gear and high tension line leakage “...should be kept at least 1.6 km from the radio antennae; in no circumstance should they be closer than 500 m.” In order to construct anything that might interfere in some way with aviation, the proponent must receive approval from

both Transport Canada and NAV CANADA. We are not aware whether FortisBC has received Transport Canada approval for the proposed substation. Whether such approval has been received, we submit, would also be a material factor for the Commission to consider in deciding whether reconsideration is appropriate in these circumstances.

We look forward to your reply and remain,

Yours truly,
Thomas Butler LLP

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Kelly A. Cairns
cc: CCQRLR, Judy Clayton, R. McDonell, P. Miller



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TP 1247

- [Abstract](#)
- [Introduction](#)
- [Definitions](#)
- [Part I - Obstacle Limitation Surfaces](#)
- [Part II - Protection of Telecommunications and Electronic Systems](#)
- [Part III - Bird Hazards](#)
- [Part IV - Aircraft Noise](#)
- [Part V - Restrictions to Visibility](#)
- [Part VI - Site Protection and Line of Sight Requirements](#)
- [Appendix A](#)

Abstract

This publication describes the operational characteristics of airports which may influence land uses outside the airport property boundary and recommends, where applicable, guidelines for land use in the vicinity of airports.

The publication was prepared by Planning and Operations Requirements division of Air Navigation System Requirements. Enquiries relating to this document's content and suggested amendments should be directed to:

Chief
Transport Canada
Air Navigation Planning and Operational Requirements
Tower C, 7A Place de Ville
Ottawa, Ontario K1A 0N8

[Previous](#)

[Next](#)

Last updated: 2007-12-11

[Important Notices](#)



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[Civil Aviation Home](#)

Part II - Protection of Telecommunications and Electronic Systems



2.3 VHF/UHF RADIO COMMUNICATION SYSTEMS

TP 1247

- [Abstract](#)
- [Introduction](#)
- [Definitions](#)
- [Part I - Obstacle Limitation Surfaces](#)
- [Part II - Protection of Telecommunications and Electronic Systems](#)
- [Part III - Bird Hazards](#)
- [Part IV - Aircraft Noise](#)
- [Part V - Restrictions to Visibility](#)
- [Part VI - Site Protection and Line of Sight Requirements](#)
- [Appendix A](#)

VHF/UHF transmitters and receivers must be located in an environment as free as possible from sources of electrical noise. This noise can be caused by engine ignitions, electric motors, electrical switching gear, high tension line leakage, diathermic and industrial heating generators and many household appliances. Such electrical noise generators should be kept at least 1.6 km from the radio antennae; in no circumstance should they be closer than 500 m.

Intermodulation problems which can be caused by high powered AM, FM and TV stations can be avoided by locating such equipment at least 8 km from the transmitters and receivers.

To prevent the screening of airspace, all structures shall not subtend a vertical angle of more than within 1.5 km of the radio antenna or extend more than 1.2° above the horizontal.

Metallic structures, which may cause reflection of communication signals, should not be constructed within 300 m of a transmitter/receiver installation without prior consultation with the Technical Services Branch of the Department.

[Previous](#)

[Next](#)



May 29, 2008

Your file
Ellison Substation and Transmission Line
Our file
08-0774

Mr. Ed Robinson
FortisBC Inc.
2850 Benvoulin Road
Kelowna, BC V1W 2E3

RE: Other Permanent Structures: Electrical Substation (N49° 57' 44" W119° 23' 14") - Kelowna, BC

Dear Mr. Robinson,

We have evaluated the captioned proposal and NAV CANADA has no objection to the project as submitted provided the following criteria are met:

- Agree to use and to provide details on state-of-the-art design techniques, hardware, construction practices and maintenance practices for minimizing the generation of electromagnetic noise.
- Agree to conduct electromagnetic noise measurements before and after energization of the new facility, and to provide test results and analysis to NAV CANADA. The measurement technique and the length of the monitoring period are to be mutually agreed upon. As a minimum, measurements should be made in fair weather (to maximize interference effects from gap discharges) and in foul weather (to maximize effects from corona noise).
- Agree to take immediate corrective action should interference be caused by radiated electromagnetic noise from power lines of substations. Corrective action could consist of relocation, re-design, improved maintenance procedures, replacement, shut-down of power system facility, etc.

Adherence to these conditions is required to mitigate the risk of interference to NAV CANADA systems which are critical for aviation safety. You may contact Jim Stetson at 780-890-3041 or stetsoj@navcanada.ca to coordinate. Please note that all three of these conditions must be met in order to be accepted by NAV CANADA.

Also, in the interest of aviation safety, it is incumbent on NAV CANADA to maintain up-to-date aeronautical publications, and issue Notices to Airmen (NOTAM) as required. To assist us in that end, we ask that you notify us on completion of construction. This notification requirement can be satisfactorily met by returning a completed, signed copy of the attached form to us by mail, or fax at (613) 248-4094. In the event that you should decide not to proceed with this project, please advise us accordingly so that we may formally close the file.

NAV CANADA's land use evaluation is valid for a period of 12 months. It neither constitutes nor replaces any approvals or permits required by Transport Canada, Industry Canada, other Federal Government departments, Provincial or Municipal land use authorities or any other agency from which approval is required.

If you have any questions, contact the Land Use Department by telephone at 1-866-577-0247 or e-mail at landuse@navcanada.ca



Yours truly,

A handwritten signature in dark ink, appearing to read "D. Peralta", written over a light blue horizontal line.

Darrell Peralta
for
Tom Hollinger
Manager, Data Collection
Aeronautical Information Services

cc Yuko Suo, Pacific Region, Transport Canada
cc Jim Stetson, NAV CANADA, Engineering West
cc Paul England, NAV CANADA, Site Manager, Kelowna Tower
cc Sam Samadder Airport Manager, Kelowna (CYLW)

William J. Andrews

Barrister & Solicitor

1958 Parkside Lane, North Vancouver, BC, Canada, V7G 1X5
Phone: 604-924-0921, Fax: 604-924-0918, Email: wjandrews@shaw.ca

September 23, 2008

Ms. Erica Hamilton, Secretary
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
BY WEBPOSTING

Dear Madam:

Re: Commission Order C-4-07 and G-75-07; FortisBC Inc., Ellison Transmission and Substation Project, BCUC Project No. 3698442

This is an application by the intervenor Quail Ridge Residents Association for reconsideration¹ of Commission Orders C-4-07 and G-75-07. Order C-4-07 issued a Certificate of Public Convenience and Necessity to FortisBC for "Ellison Project – Option 1" and Order G-75-07 approved the Lochrem Road site.

I confirm receipt of a September 18, 2008 letter from counsel for the intervenor CCQRLR to the Commission making an application for reconsideration of Orders C-4-07 and G-75-07. QRRA supports CCQRLR's application.

The basis for QRRA's application for reconsideration is that there has been fundamental change in circumstances or facts since the decision.²

Specifically, QRRA has come into possession of a 29 May 2008 letter from NAV CANADA to FortisBC Inc., a copy of which is attached for convenience.³ The NAV CANADA letter concerns FortisBC's Ellison Substation and Transmission Line project. The letter provides FortisBC with NAV CANADA's referral comments upon evaluation of the Ellison project.

The letter states that "NAV CANADA has no objection to the project as submitted provided the following criteria are met:..." The first two criteria require FortisBC to agree to use state-of-the-art techniques and to conduct electromagnetic noise measurements before and after construction. Of particular concern is the third criterion, which requires FortisBC to:

"Agree to take immediate corrective action should interference be caused by radiated electromagnetic noise from power lines or substations. Corrective action

¹ The Commission's authority to reconsider an order is provided by s.99 of the *Utilities Commission Act*.

² *A Participant's Guide to the B.C. Utilities Commission, Commission Reconsideration*, p.35.

³ This is the same 29 May 2008 NavCanada letter that is attached to the CCQRLR letter of 18 September 2008.

could consist of relocation, re-design, improved maintenance procedures, replacement, shut-down of power system facility, etc.”

The letter goes on to state that “Adherence to these conditions is required to mitigate the risk of interference to NAV CANADA systems which are critical for aviation safety.”

QRRRA has no information regarding a response, if any, from FortisBC Inc. to NAV CANADA regarding this topic.

On its face, NAV CANADA requires FortisBC to agree in advance to take corrective measures up to and including shut-down of the Ellison substation in the event that the substation or transmission line cause electromagnetic interference with NAV CANADA systems. The need for such corrective measures, if any, would be determined only after the substation is constructed and operational. Thus, it appears that there is some degree of risk that FortisBC would be required to shut down the Ellison substation after it becomes operational.

This risk was not raised during the proceeding that led to Orders C-4-07 and G-75-07. In the Information Request stage, QRRRA IR2.17.3 asked FortisBC to “Please provide a copy of any NavCanada requirements that would limit the siting of a new substation near the Kelowna International Airport.” FortisBC’s 31 January 2007 response⁴ was “Please see Appendix A2.17.2.” Appendix 2 contained only a copy of the Kelowna Airport Zoning Regulations.⁵ The implication of FortisBC’s response was that there were no other NAV CANADA requirements applicable to the siting of the substation near the Airport. That understanding was part of the factual basis on which Orders C-4-07 and G-75-07 were made.

In conclusion, QRRRA respectfully submits that NAV CANADA’s 29 May 2008 letter creates a fundamental change in circumstances or facts since the Commission’s decision, thereby meeting the criterion for the Commission to allow a reconsideration. In the absence of new evidence from FortisBC on this topic, it appears, *prima facie*, that the CPCN was granted without consideration of a material risk that the Ellison substation would have to be shut down after commencing operations. Accordingly, QRRRA requests that the Commission allow reconsideration of Orders C-4-07 and G-75-07 and move to Phase 2 in which the Commission would hear evidence and argument on the merits of the application.

In terms of timing, I am informed by QRRRA that the City of Kelowna is currently in the process of considering a rezoning application for the Ellison substation at Lochrem Road. QRRRA would very much like to see the Commission’s decision-making regarding the substation resolved before the City proceeds with the rezoning process. QRRRA would ask that the Commission’s handling of the reconsideration applications proceed expeditiously.

⁴ Exhibit B-8.

⁵ Exhibit B-8, pdf pp.128-139 of 146.

All the above is respectfully submitted.

Yours truly,

William J. Andrews

A handwritten signature in black ink, appearing to be 'WJ Andrews', with a horizontal line extending from the end of the signature.

Barrister & Solicitor

Encl. 29 May 2008 NAV CANADA letter to FortisBC Inc.

cc. Distribution List by email



May 29, 2008

Your file
Ellison Substation and Transmission Line
Our file
08-0774

Mr. Ed Robinson
FortisBC Inc.
2850 Benvoulin Road
Kelowna, BC V1W 2E3

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Yours truly,

A handwritten signature in dark ink, appearing to read "D. Peralta", written in a cursive style.

Darrell Peralta
for
Tom Hollinger
Manager, Data Collection
Aeronautical Information Services

cc Yuko Suo, Pacific Region, Transport Canada
cc Jim Stetson, NAV CANADA, Engineering West
cc Paul England, NAV CANADA, Site Manager, Kelowna Tower
cc Sam Samaddar Airport Manager, Kelowna (CYLW)