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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-54-10

TELEPHONE: (604) 660-4700
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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by British Columbia Transmission Corporation
for a Certificate of Public Convenience and Necessity
for the Columbia Valley Transmission Project**

BEFORE: M.R. Harle, Panel Chair/Commissioner
L.A. O'Hara, Commissioner March 24, 2010
R.K. Ravelli, Commissioner

O R D E R

WHEREAS:

- A. On January 22, 2010, the British Columbia Transmission Corporation (BCTC) applied (the Application), pursuant to sections 45 and 46 of the *Utilities Commission Act* (the Act), to the British Columbia Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Columbia Valley Transmission Project (the CVT Project) as described in its Application; and
- B. BCTC is proposing the CVT Project as the preferred solution to serve load growth in Upper Columbia Valley area over a 30 year period; and
- C. The CVT Project has an estimated capital cost of approximately \$154 million to construct: a 112 kilometer (km) long 230 kilovolt (kV) transmission line between Invermere and Golden, British Columbia; a new 230/69 kV substation near Golden including a new 3 km long 69 kV transmission line connection to the existing Golden substation; and related upgrades at existing substations in Cranbrook, Invermere and Golden. The new facilities are scheduled to go into service in October 2012; and
- D. By Order G-18-10 dated February 8, 2010, the Commission established a Procedural Conference in Vancouver, BC on March 17, 2010 to seek input on the regulatory process for the review of the Application; and
- E. The Procedural Conference took place as scheduled on March 17, 2010; and
- F. By letter dated March 19, 2010, BCTC stated that it wishes to obtain the CPCN by the August 1, 2010, in order to complete the project by the desired date of October 2012 (BCTC Letter); and
- G. The Commission has considered the submissions received at the Procedural Conference together with the written submissions on process filed prior to the Procedural Conference and the BCTC Letter.

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NOW THEREFORE the Commission, for the Reasons for Decision that are attached as Appendix A to this Order, orders as follows:

1. The British Columbia Old Age Pensioners Organization *et al.* is granted leave to intervene.
2. The Commission establishes a written public hearing for the review of the Application, according to the Regulatory Timetable that is attached as Appendix B.
3. A Workshop on "Working with the Commission" and how to effectively participate in its review of the Application will be held at the Columbia Valley Chamber of Commerce Lions Hall in Invermere, commencing at 7:30 p.m. on Wednesday, April 14, 2010.
4. A Community Input Session will be held in the Town of Invermere, BC on April 15, 2010 regarding the Application. This will be held at the Columbia Valley Chamber of Commerce Lions Hall in Invermere, commencing at 10:00 a.m. and 7:00 p.m.
5. BCTC will publish in display-ad format, the Notice of the Workshop and of the Community Input Session attached as Appendix C to this Order, in the Vancouver Sun, the Province and such appropriate local news publications as many properly provide adequate notice to residents in the vicinity of the Columbia Valley Transmission Project.
6. The Commission requires BCTC to provide a copy of this Order to the First Nations considered to be relevant for inclusion in the consultation activities on the Project through their Chief and Council contacts.
7. Parties wishing to make a presentation to the Commission Panel or attend the Workshop should contact Gordon Fulton, Q.C., Commission Counsel, at gfulton@boughton.ca or 604-647-4104 by Monday April 12, 2010. If fewer than ten presentations are scheduled by Monday, April 12, 2010 the Community Input Session and Workshop will be cancelled.
8. Any party intending to file for a Participant Assistance Cost Award (PACA) must submit to the Commission its PACA budget pursuant to the PACA Guidelines attached to Order G-72-07, by Tuesday, April 6, 2010. The PACA Guidelines are available at the Commission's web site: http://www.bcuc.com/Documents/Guidelines/Participant_Guide.pdf.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of March 2010.

BY ORDER



M.R. Harle
Panel Chair/Commissioner

Attachments



IN THE MATTER OF

AN APPLICATION BY

BRITISH COLUMBIA TRANSMISSION CORPORATION
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR THE COLUMBIA VALLEY TRANSMISSION PROJECT

REASONS FOR DECISION

March 24, 2010

BEFORE:

M.R. Harle, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
R.K. Ravelli, Commissioner

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1.0 BACKGROUND

The Procedural Conference for this Application took place on March 17, 2010. In addition to the Applicant, the following Interveners appeared: British Columbia Hydro and Power Authority (BC Hydro), Ktunaxa Nation Council (KNC), Sexqueltkemc - The Lakes Division (Lakes Division) and the British Columbia Old Age Pensioners Organization et al. (BCOAPO). BCOAPO applied for leave to intervene at the time appearances were being entered and leave was granted by the Panel.

The Commission had previously received written submissions on process from the following Interveners who did not appear at the Procedural Conference: Wildsight, Lake Windermere District Rod and Gun Club, Paul Bauman, Zehnder Farms LTS and the Métis Nation BC (MNBC). The Regional District of East Kootenay (RDEK), an Interested Party, had also filed comments on process.

At the Procedural Conference BCTC placed issues raised by Interveners into two categories: environmental and First Nations interests. The environmental issues were described as relatively discrete which BCTC believed could be dealt with through a written process. Many of these issues related particularly to the manner that the proposed transmission line routing would cross Toby Creek near the southern end of the line near the Town of Invermere.

A number of First Nations matters were also identified. One related to the concerns of the MNBC outlined in Exhibit C-9. BCTC questioned whether a duty is owed to the MNBC, or not. BCTC submitted that whether or not a duty is owed to the MNBC is primarily a question of law. While BCTC acknowledged that the issue needs to be addressed, it submitted that there is no reason to believe that determination of the issue would either require an oral hearing or justify an oral hearing process for all issues.

BCTC submitted that the Application should proceed by written process, but also suggested that there should be at least one and possibly more public input sessions, one of which should take place in the Columbia Valley.

The KNC has raised issues related to environmental concerns, cultural heritage and archaeological resources, and economic opportunities. In identifying its issues in its written submission the KNC states that “the BCUC must first ensure that the Crown’s duty to consult and accommodate First Nations is discharged before deciding whether or not an application under the *Utilities Commission Act* is in the public interest.” (Exhibit C7-1). In support of that statement it relies on two decisions of the British Columbia Court of Appeal: *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2009 BCCA 67, and *Kwikwetlem First Nation v. BCUC (Utilities Commission)* 2009 BCCA 68 (*Kwikwetlem*).

There are current negotiations underway between the KNC and BC Hydro, who is charged with First Nations consultation on behalf of BCTC, regarding an impact management and benefit agreement. The KNC is hoping to complete the negotiations in May, prior to the issuance of a decision on BCTC’s Application. KNC is concerned with the BCUC making a final pronouncement on the adequacy of consultation and accommodation prior to the completion of these negotiations and urges that written evidence not having to be submitted before the end of these negotiations. While the KNC is comfortable with the BCUC setting out timelines, they would like these to be respectful of the negotiating timelines between KNC and BC Hydro.

The Lakes Division outlined how it has a process of engagement for participating in projects, while simultaneously addressing their underlying traditional and cultural values and practices, including its Four Pillars, Governing Principles. It recommended an oral hearing for the review of the Application (Exhibit C-8). The consultation efforts with the three member bands of the Lakes Division by BCTC/BC Hydro are described in the Application (B-1, pp 166-170).

RDEK requested “oral proceedings” (Exhibit D-1-1).

BC Hydro supports a written process. Neither KNC nor BCOAPO take a firm position on preference for a written or an oral process. A public input session is acceptable to BC Hydro and BCOAPO agreed such sessions are important.

2.0 COMMISSION DETERMINATION

The Commission Panel has not been persuaded by those seeking an oral hearing that such a hearing is required for this Application. It is of the view at this time that other than providing for a Community Input Session, all matters can be addressed in a written process which includes provision for the filing of evidence by Interveners.

The Commission Panel notes the desire by Interveners in the area of the south end of the proposed transmission line for an oral hearing. A Community Input Session is, therefore, ordered to be held on April 15 in the Town of Invermere for the purpose of directly hearing, in an informal setting, the issues and concerns of the community in relation to the Application. There appears to be general support for such a session and no Intervener objected to it. Individual presentations will be limited to 15 minutes.

The Commission Panel has considered KNC’s statement that “the BCUC must first ensure that the Crown’s duty to consult and accommodate First Nations is discharged before deciding whether or not an application under the *Utilities Commission Act* is in the public interest”. This has the potential of holding up the Application process until the KNC/BCTC/BC Hydro parallel negotiations are complete.

In the Commission Panel’s view the KNC position is not consistent with *Kwikwetlem*. As noted by counsel for BCTC in his reply submissions, paragraph 70 of *Kwikwetlem* states “The question the Commission must decide is whether the consultation efforts *up to the point of its decision* were adequate” [Emphases added]. Accordingly, the Commission is not required to defer its decision until the parallel negotiations are complete. It need only assess the adequacy of consultation up to the time of its decision.

Further, the Commission Panel agrees with counsel for BC Hydro that there is no obligation to agree. As stated at paragraph 42 of *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73 “...there is no duty to agree; rather, the commitment is to a meaningful process of consultation”.

BCTC provided its Recommended Regulatory Timetable at page 16 of the Application. That Timetable contemplated a Commission Decision by June 30, 2010. As noted above, counsel for KNC asked that the timelines set by the Commission be respectful of the process the parties themselves had agreed to. Counsel for BCOAPO, while acknowledging he could manage the April 1st deadline for Intervener information requests, said he would be “rather grateful” for a postponement of the present deadline given the number of other Commission matters in which he is involved in the period between now and April 1st.

Subsequent to the Procedural Conference, BCTC filed a letter dated March 19, 2010, advising that it required a decision from the Commission by August 1, 2010.

The Commission is of the view that the new date by which a decision is required by BCTC allows the Commission greater flexibility in setting a Regulatory Timetable going forward for the Application and also addresses some of the timing concerns raised by counsel for KNC and BCOAPO.

Therefore, the Application will proceed through the written process outlined in Appendix B to the Order issued concurrently with these Reasons.

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REGULATORY TIMETABLE

ACTION	DATE (2010)
Participant Assistance Cost Award Budget Submission	Tuesday, April 6
Intervener Information Request No. 1 and Commission Information Request No. 2	Friday, April 9
BCUC "Working with the Commission" Workshop (commencing at 7:30 p.m. in Invermere)	Wednesday, April 14
Community Input Session (commencing at 10:00 a.m. and 7:00 p.m. in Invermere)	Thursday, April 15
BCTC Response to Commission Information Request No. 2 and Intervener Information Request No. 1	Friday, April 30
Intervener Written Evidence, including Evidence on First Nations Issues	Friday, May 7
BCTC/BC Hydro Evidence on Adequacy of Consultation	Friday, May 7
Information Requests to Interveners and to BCTC/BC Hydro on Adequacy of Consultation	Friday, May 14
Responses to Information Requests	Friday, May 21
BCTC Final Submission	Friday, May 28
Intervener Final Submission	Monday, June 7
BCTC Reply Submission	Wednesday, June 16

Workshop location:
Columbia Valley Chamber of Commerce
Lions Hall
Invermere, BC

Community Input Session location:
Columbia Valley Chamber of Commerce
Lions Hall
Invermere, BC



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NOTICE OF WORKSHOP

DATE:	Wednesday, April 14, 2010
TIME:	Commencing 7:30 p.m.
LOCATION:	Columbia Valley Chamber of Commerce Lions Hall, Invermere, BC

NOTICE OF COMMUNITY INPUT SESSION

DATE:	Thursday, April 15, 2010
TIME:	Commencing 10:00 a.m. and 7:00 p.m.
LOCATION:	Columbia Valley Chamber of Commerce Lions Hall, Invermere, BC

THE APPLICATION

On January 22, 2010, the British Columbia Transmission Corporation (BCTC) filed an application (Application) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Columbia Valley Transmission Project (the CVT Project) pursuant to the *Utilities Commission Act* (the Act).

BCTC proposes the CVT Project as the preferred solution to capacity constraints in the Upper Columbia Valley. The CVT Project has an estimated capital cost of approximately \$154 million to construct: a 112 kilometer (km) long 230 kilovolt (kV) transmission line between Invermere and Golden, British Columbia; a new 230/69 kV substation near Golden including a new 3 km long 69 kV transmission line connection to the existing Golden substation; and related upgrades at existing substations in Cranbrook, Invermere and Golden.

BCTC wishes to obtain the CPCN by August 1, 2010, in order to complete the project by the desired date of October 2012.

Following a Procedural Conference in Vancouver on March 17, 2010, the Commission issued Order G-54-10 establishing the Regulatory Timetable, a Workshop and a Community Input Session for the review of the Application.

THE WORKSHOP

In order to facilitate an understanding of the Regulatory Process for the review of the Application, the Commission will hold a Workshop on "Working with the Commission", on Wednesday, April 14, 2010 at the Columbia Valley Chamber of Commerce Lions Hall, in Invermere, BC commencing at 7:30 p.m.

THE COMMUNITY INPUT SESSION

The Community Input Session will provide an opportunity for parties who are not otherwise actively involved in the proceeding to advise the Commission Panel of their views and concerns on the CVT Project. A transcript will be made of the presentations and this will form part of the record of the proceeding. Each presentation will be limited to 15 minutes. All parties making submissions at the Community Input Session are encouraged to provide a hard copy of their submissions. Panel members may have questions of those making presentations.

Parties wishing to make presentations to the Commission Panel, or attend the Workshop should contact Mr. Gordon Fulton, Q.C., Commission Counsel, at gfulton@boughton.ca or (604) 647-4104 by Monday, April 12, 2010 to register their intention to make a presentation or attend the Workshop. If by April 12, 2010 ten or less presentations are scheduled for the Community Input Session, or the Workshop, then the Community Input Session and Workshop will be cancelled. Notice of cancellation will be provided to those who have advised Commission Counsel of their intention to make a presentation or attend the Workshop.

All submissions and/or correspondence received from active participants or the public relating to the Application, will be placed on the public record and posted to the Commission's web site.

PUBLIC INSPECTION OF THE DOCUMENTS

The Application and supporting documents will also be available for view on BCTC's website at <http://www.bctc.com> and on the Commission's website at <http://www.bcuc.com>, and at public libraries in communities in the vicinity of the CVT Project.

For further information, please contact Ms. Erica Hamilton, Commission Secretary, as follows:

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