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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-15-11

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

and

British Columbia Transmission Corporation
Reconsideration of the
Interior to Lower Mainland Transmission Project

BEFORE: A.J. Pullman, Commissioner February 3, 2011
A.A. Rhodes, Commissioner (dissenting in part)
P.E. Vivian, Commissioner

O R D E R

WHEREAS:

- A. On November 5, 2007, the British Columbia Transmission Corporation (BCTC) applied pursuant to sections 45 and 46 of the *Utilities Commission Act* (Act) for a Certificate of Public Convenience and Necessity (CPCN) for the Interior to Lower Mainland Transmission Project (ILM Project);
- B. On August 5, 2008 the British Columbia Utilities Commission (Commission) issued its Decision accompanied by Order C-4-08 that granted BCTC the CPCN for the ILM Project subject to conditions;
- C. The Court of Appeal for British Columbia released its decision in *Kwikwetlem First Nation v. British Columbia (Utilities Commission)* 2009 BCCA 68 on February 18, 2009. Madam Justice Huddart, on behalf of the Court, stated at paragraph 15:

"I would remit the scoping decision to the Commission for reconsideration in accordance with this Court's opinion, once certified, and direct that the effect of the CPCN be suspended for the purpose of determining whether the Crown's duty to consult and accommodate the Appellants had been met up to that decision point";

- D. The First Nations Interveners in order of intervention are: Hwlitsum First Nation (Hwlitsum), Kwikwetlem First Nation (Kwikwetlem), Nlaka'pamux Nation Tribal Council, Okanagan Nation Alliance, and Upper Nicola Indian Band (NNTC/ONA/Upper Nicola), Coldwater, Cook's Ferry, Siska and Ashcroft Indian Bands (Coldwater et al.), Stó:lō Tribal Council (STC), Stó:lō Hydro Ad Hoc Committee (SHAC), Seabird Island First Nation, Nicomen Indian Band, Nicola Tribal Association, and Nooiatch Indian Band;
- E. The other Interveners in order of intervention are: British Columbia Old Age Pensioners' Organization et al. (BCOAPO), British Columbia Hydro and Power Authority (BC Hydro), Donald Harris and Alan Casselman, and the Ministry of Attorney General for the Province of British Columbia (Attorney General of BC);

- F. The Oral Public Hearing commenced on January 11, 2010 and concluded on January 29, 2010;
- G. At the conclusion of the Oral Public Hearing, the Commission set the deadline for Arguments;
- H. The filing of Arguments was completed on May 4, 2010 with the filing of Reply by BCTC and BC Hydro to a part of the NNTC/ONA/Upper Nicola Argument that had been inadvertently omitted from the filed copy of their original Argument;
- I. By letter dated May 19, 2010 the Commission cancelled the Oral Phase of Argument that had been set for June 2, 2010;
- J. By letter dated May 20, 2010 the Chief of Kwikwetlem advised the Commission that Kwikwetlem now supported the ILM Project and wished to withdraw as an Intervener. Subsequently, on June 3, 2010 the Commission granted Kwikwetlem permission to withdraw. The Kwikwetlem evidence and submissions remained on the record;
- K. On July 3, 2010, pursuant to section 22 of the *Clean Energy Act*, all of BCTC's rights property, and assets, including the CPCN, became the property of BC Hydro, with the exception of contracts governed by or permits issued under the law of a jurisdiction other than British Columbia. Accordingly, BCTC's role in the ILM Reconsideration Proceeding was assumed by BC Hydro;
- L. One of the major issues raised by the First Nations Interveners during the Proceeding was whether BC Hydro ought to have consulted on infringements resulting from existing transmission assets;
- M. On October 28, 2010 the Supreme Court of Canada released its decision in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* 2010 SCC 43 (*Carrier Sekani*);
- N. By letter L-90-10 dated November 5, 2010, the Commission invited the parties to file written submissions on the effect, if any, of *Carrier Sekani* on their Final Arguments;
- O. By letters dated November 19, 2010 NNTC/ONA/Upper Nicola, Coldwater et al., STC, and Hwlitsum advised the Commission that they no longer sought any determination or relief from the question of whether the scope of consultation includes a consideration of the existing transmission assets;
- P. On November 22, 2010 BC Hydro and the Attorney General of BC filed their submissions on the effect of *Carrier Sekani* on their Final Arguments;
- Q. By letter dated November 24, 2010 SHAC advised the Commission that that the SHAC First Nations (Aitchelitz, Leq'á:Mel, Skawahlook, Skowkale, Tzeachten, and Yakweakwioose) now supported the ILM Project and wished to withdraw as Interveners. Subsequently, on November 29, 2010 the Commission granted the SHAC First Nations permission to withdraw. The SHAC evidence and submissions remained on the record;
- R. By December 6, 2010, NNTC/ONA/Upper Nicola, BCOAPO, Coldwater et al., Hwlitsum, and STC filed their submissions on the effect of *Carrier Sekani* on their Final Arguments;
- S. On December 20, 2010 BC Hydro and the Attorney General of BC filed their Reply to the submissions of the Interveners on the effect of *Carrier Sekani* on their Final Arguments;

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- T. On December 22, 2010 STC wrote with the consent of NNTC/ONA/Upper Nicola, Coldwater et al., and Hwlitsum to dispute the BC Hydro Reply and argue BC Hydro had split its case; and

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- U. The Commission has considered the evidence and Arguments on whether the Crown's duty to consult and accommodate the First Nations had been up to August 5, 2008 as set forth in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission, for the reasons stated in the Decision, orders that:

1. The Crown's duty to consult with certain First Nations for the ILM Project had not been adequately met as of August 5, 2008.
2. The ILM CPCN issued in Commission Order C-4-08 remains suspended.
3. BC Hydro is directed to comply with the directives of the Commission set out in the Decision issued concurrently with this Order.
4. BC Hydro is directed to file a compliance report, containing a comprehensive and detailed description of its consultation in respect of the directives, within 120 days from the date of this Order. The First Nation Interveners for whom consultation was found to be inadequate will have 21 days from the date of the filing of the report to file a written response to the report, and BC Hydro will then have 7 days from the date of the filing of the First Nation Interveners' responses to file a written reply to the responses. The Commission will review the submissions and, if the deficiencies in consultation have been remedied to the Commission's satisfaction, will lift the suspension of the CPCN.
5. Commission Order C-4-08 included a directive on Quarterly Progress Reports. BC Hydro is directed to include in its Quarterly Progress Reports detailed reporting on First Nations consultation similar to the Revelstoke Unit 5 Project Quarterly Progress Reports.
6. Commission Order C-4-08 included a directive on a Final Report. If the ILM CPCN suspension is lifted, BC Hydro is directed to include in its Final Report a comprehensive and detailed report on its consultation with First Nations.

DATED at the City of Vancouver, in the Province of British Columbia, this *Third* day of February 2011.

BY ORDER

Original signed by:

A.J. Pullman
Commissioner