



ORDER NUMBER
G-105-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations
Reconsideration of Order G-368-21 Directives 1 & 2

BEFORE:

D. M. Morton, Panel Chair
C. M. Brewer, Commissioner
T.A. Loski, Commissioner

on April 21, 2022

ORDER

WHEREAS:

- A. On January 14, 2022, pursuant to section 99 of the *Utilities Commission Act* (UCA), the Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations (KCFN) submitted to the British Columbia Utilities Commission (BCUC) an application to reconsider Directives 1 and 2 of Order G-368-21 on the grounds that the BCUC erred in law in finding that the flat administrative fee collected by KCFN constitutes compensation for an electrical service provided by KCFN. In the alternative, KCFN requests the BCUC exempt KCFN from all of Part 3 and s. 71 of the UCA (Reconsideration Application);
- B. On February 10, 2022, by Order G-27-22, the BCUC established a public hearing to review the Reconsideration Application and established a regulatory timetable seeking submissions on:
 - Whether nominal fees, such as those charged by KCFN to its citizens, can be considered compensation, as defined in the UCA; and
 - The applicability of the UCA to KCFN, as a Treaty Nation.
- C. By Order G-368-21 and accompanying reasons for decision dated December 10, 2021, the BCUC determined, in part, that KCFN is a public utility as defined in Section 1(1) of the UCA and directed KCFN and KPL to negotiate an agreement concerning the joint use of facilities within three months of issuance of the order;
- D. The KPL power distribution system (KPL System) is interconnected to the British Columbia Hydro and Power Authority (BC Hydro) electric system and supplies customers, including KCFN, the Village of Hupsitas and others on the outer coast of Kyuquot Sound, with electricity;
- E. Crown Corridor is defined in Chapter 7 of the Maa-nulth First Nations Final Agreement;

- F. On April 28, 2021, by Order G-129-21, the BCUC established a regulatory timetable seeking submissions on:
- Whether, with respect to the portion of the line on the Crown Corridor, KCFN meets the definition of a public utility; and
 - Submissions on the applicability of section 27 of the UCA on shared KCFN infrastructure.
- G. On May 28, 2021, pursuant to Order G-129-21, KCFN filed its submissions and stated that KCFN does not meet the definition of a public utility. KCFN further submitted that even if it did meet the definition of public utility under the UCA, the BCUC should recommend an exemption for KCFN from all portions of the UCA. On May 28, 2021, KPL filed its submissions pursuant to Order G-129-21;
- H. On June 2, 2021, KCFN submitted correspondence to KPL addressing a number of safety, reliability and legal matters, including concerns that KPL is transmitting power across KCFN's infrastructure on the Crown Corridor without appropriate legal agreements and KCFN's concerns over the safety of KPL's "fly-over" line through Houpsitas;
- I. On July 9, 2021, by Order G-212-21, the BCUC established a further regulatory timetable seeking submissions from parties on whether the BCUC has jurisdiction on treaty land, with respect to the fly-over line through Houpsitas on shared KCFN/KPL poles and KPL-owned poles and submissions on who is currently responsible for the maintenance of the fly-over line through Houpsitas on shared KCFN/KPL poles and KPL-owned poles;
- J. Section 88(3) of the UCA states: "the commission, may, on conditions it considers advisable, with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act";
- K. By March 2, 2022, KPL and Zone 1B Ratepayers Group registered as interveners and on March 23, 2022; KPL made submissions pursuant to Order G-27-22;
- L. On April 13, 2022, KCFN replied to intervener submissions pursuant to Order G-27-22; and
- M. The Panel has reviewed the submissions made pursuant to Order G-27-22 and determines that further regulatory process is warranted.

NOW THEREFORE the BCUC orders that the regulatory timetable attached to Order G-27-22 is amended as set out in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of April 2022.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations
Reconsideration of Order G-368-21 Directives 1 & 2

REGULATORY TIMETABLE

Action	Date (2022)
BCUC Information Request (IR) No. 1 to KCFN	Thursday, April 21
Intervener IR No. 1 to KCFN (if necessary)	Tuesday, April 26
KCFN responses to BCUC and Intervener IR No. 1	Thursday, May 5
KCFN Final Argument on the response to IR No. 1	Thursday, May 12
Intervener Final Arguments on the response to IR No. 1	Thursday, May 19
KFCN Reply Argument on the response to IR No. 1	Thursday, May 26