



ORDER NUMBER
G-251-22

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

and

Kyuquot Power Ltd.
Investigation into the Safety and Reliability of the KPL System

BEFORE:

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

on September 12, 2022

ORDER

WHEREAS:

- A. On May 15, 2020, by Order G-115-20, the British Columbia Utilities Commission (BCUC) established a hearing to review the safety and reliability of the Kyuquot Power Ltd. (KPL) system, following a complaint by a representative of the Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations (KCFN);
- B. 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;
- C. By Orders G-115-20, G-182-20, G-221-20, G-296-20, G-29-21, G-39-21, G-79-21, G-94-21, G-129-21, G-212-21, G-368-21 and G-382-21, the BCUC established, amended and furthered a regulatory timetable to review the safety and reliability of the KPL System;
- D. On October 19, 2020, by Order G-261-20, the BCUC directed KPL to provide a vegetation management plan identifying urgent vegetation work on the KPL system (Vegetation Plan) and a maintenance plan identifying all outstanding maintenance work on the KPL system (Maintenance Plan). On January 27, 2021, by Order G-29-21, the BCUC directed KPL to file quarterly progress reports outlining the status of completion of the remaining items identified in the Vegetation and Maintenance Plans (Quarterly Report);
- E. In January 2020, KCFN installed a gang-operated load break Switch S3 (GOLB S3) on a KCFN-owned structure to respond to safety concerns;
- F. Crown Corridor is defined in Chapter 7 of the Maa-nulth First Nations Final Agreement;

- G. On April 28, 2021, by Order G-129-21, the BCUC established a regulatory timetable seeking submissions from parties on the need for access to GOLB S3, 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 *Utilities Commission Act* (UCA) on shared KCFN infrastructure;
- H. 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 a 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;
- I. 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;
- J. 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. Order G-212-21 also directed KPL to follow Section 24 of its Electric Tariff with respect to providing notice to Customers when suspending service for repairs or improvements on the KPL system;
- K. 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";
- L. On December 10, 2021, by Order G-368-21, the BCUC determined 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 the facilities within the Crown Corridor within three months of issuance of the order. Order G-368-21 also established a further regulatory timetable seeking Panel Information Request No. 1 from KPL and submissions from KCFN and KPL on reasons why an exemption granted to KCFN from each of the specific sections of the UCA is warranted;
- M. On December 31, 2021, KPL filed its latest Quarterly Report and on January 6, 2022, KPL submitted a request to the BCUC that it no longer be required to submit Quarterly Reports as all action items detailed in the Vegetation Plan and Maintenance Plan are now complete. The BCUC granted KPL relief from filing Quarterly Reports;
- N. On January 14, 2022, KCFN submitted an application with the BCUC for reconsideration of Directives 1 and 2 of Order G-368-21 (Reconsideration Application) and on February 10, 2022, by Order G-27-22, the BCUC established a hearing to review KCFN's Reconsideration Application;
- O. On February 11, 2022, by Order G-30-22, the BCUC adjourned the proceeding investigating the safety and reliability of the KPL system pending the outcome of the Reconsideration Application;
- P. By Order G-157-22 dated June 10, 2022, the BCUC reconsidered order G-368-21 and rescinded the directives that KCFN is a public utility as defined in Section 1(1) of the UCA and that KCFN was required to negotiate a joint use agreement with KPL and provide submissions on its exemption from sections of the UCA;

- Q. By Order G-177-22, dated June 29, 2022, the BCUC established the remainder of the regulatory timetable and directed KPL to negotiate an agreement with KCFN regarding the use of KCFN facilities within the Crown Corridor or otherwise on KCFN-owned structures or land and to file an agreement with the BCUC within 6 months from the date of the order. If KPL is unable to negotiate such an agreement with KCFN, the BCUC directed KPL to submit a plan explaining how KPL intends to access land and KPL equipment as necessary to perform maintenance activities and ensure the ongoing safe and reliable operation of its system;
- R. On July 14, 2022, KPL submitted its Final Argument Submission;
- S. On July 28, 2022, KCFN submitted its Final Argument Submission (KCFN Final Submission). The KCFN Final Submission included new evidence that was not previously part of the evidentiary record in this proceeding, including a 2008 BC Hydro Report related to the KPL line (2008 BC Hydro Report) that was submitted confidentially;
- T. By Order G-220-22, dated August 11, 2022, the BCUC adjourned the proceeding pending review of the new evidence and follow-up on confidential information with BC Hydro;
- U. On August 25, 2022, KPL submitted its reply to KCFN's final argument submission and submitted that KCFN has filed new evidence without applying to the BCUC to reopen the evidentiary record. KPL further submitted that KCFN Final Argument goes beyond the bounds of the BCUC's Rules of Practice and Procedure;
- V. On August 26, 2022, BC Hydro submitted a redacted version of the 2008 BC Hydro Report to be shared with the parties in this proceeding; and
- W. The BCUC, after considering the submissions made, find that the following determinations are warranted.

NOW THEREFORE for the reasons attached as Appendix A to this order, the BCUC orders the following:

1. The hearing to review the safety and reliability of the KPL system is resumed.
2. The new evidence contained in KCFN's Final Submission is excluded from the evidentiary record in this proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of September 2022.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

Kyuquot Power Ltd.
Investigation into the Safety and Reliability of the KPL System

REASONS FOR DECISION

1.0 Introduction

On July 28, 2022, pursuant to Order G-177-22, the Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations (KCFN) filed its Written Final Argument Submission (KCFN Final Submission). KCFN's Final Submission includes new evidence that was not previously part of the evidentiary record in this proceeding, including a 2008 British Columbia Hydro and Power Authority (BC Hydro) Report related to the Kyuquot Power Ltd. (KPL) line (2008 BC Hydro Report) that was submitted confidentially.

By Order G-220-22, dated August 11, 2022, the British Columbia Utilities Commission (BCUC) adjourned the proceeding pending review of the new evidence and follow-up on confidentiality of the information with BC Hydro.

On August 25, 2022, KPL filed a letter in reply to KCFN's Final Submission and submitted that KCFN have filed new evidence without applying to the BCUC to reopen the evidentiary record. KPL further submitted that KCFN Final Submission goes beyond the bounds of the BCUC's Rules of Practice and Procedure.

On August 26, 2022, BC Hydro submitted a redacted version of the 2008 BC Hydro Report to be shared with parties involved with this proceeding.

1.1 Background

The KPL power distribution system (KPL System) is interconnected to the BC Hydro electric system and supplies customers, including KCFN, the Village of Hupsitas and others on the outer coast of Kyuquot Sound, with electricity. By Order G-115-20, the BCUC established a regulatory timetable to review the safety and reliability of the KPL System.

By Orders G-115-20, G-182-20, G-221-20, G-296-20, G-29-21, G-39-21, G-79-21, G-94-21, G-129-21, G-212-21, G-368-21 and G-382-21, the BCUC established, amended and furthered a regulatory timetable to review the safety and reliability of the KPL System.

By Order G-177-22, dated June 29, 2022, the BCUC established the remainder of the regulatory timetable, which included written final submissions. The BCUC requested that final argument submissions be limited to topics that parties did not already address in argument submissions dated March 1, 8 and 15, 2021.

2.0 Legislative and Regulatory Framework

The BCUC Rules of Practice and Procedure establishes the process for the participation of interveners and document filing in a BCUC proceeding.

3.0 New Evidence introduced by KCFN as part of its Final Submission

As part of its Final Submission, KCFN includes the following:

- Photographs taken July 17 & 18, 2022;
- A BC Hydro Report titled “Cost Estimate for the Upgrade, Operation and Maintenance of the Kyuquot Line” dated March 25, 2008; and
- A letter to KCFN from SBR Consulting regarding the Long-Term Sustainability of KPL Power Supply to Housitas, dated June 21, 2022.

The BCUC requested that final submissions be limited to topics that parties did not already address in argument submissions dated March 1, 8 and 15, 2021. The filing of new evidence is not in compliance with this request. Further, KCFN has not provided any explanation on why this new evidence could not have been submitted earlier in the proceeding.

The Panel addresses the new evidence in the following sections.

3.1 Photographs taken July 17 & 18, 2022

In its Final Submission, KCFN submits that KPL’s vegetation management remains deficient and provides 11 photographs taken on July 17 & 18, 2022.¹ KCFN states that these are recent examples of burnt vegetation along the KPL power line as a result of KPL’s failure to maintain vegetation clearances. KCFN submits that many of these locations show vegetation growing around the neutral line and contacting the high voltage line above.²

Panel Determination

Vegetation management has been a key issue in this proceeding and the Panel notes that KCFN have previously filed numerous photos during the proceeding.³

The Panel is not persuaded that the new photographs submitted by KCFN provides any new compelling evidence, beyond that already submitted as evidence in this proceeding. The Panel therefore determines that these new photographs will not form part of the evidentiary record in this proceeding.

3.2 BC Hydro Report titled “Cost Estimate for the Upgrade, Operation and Maintenance of the Kyuquot Line” dated March 25, 2008

In its final argument, KCFN states:

The various safety and reliability issues with the KPL system are chronic and longstanding. In 2008, BC Hydro drafted a report on the safety and reliability of the KPL line, related to the possibility of BC Hydro taking over the line (see Enclosure 2, Redacted BC Hydro Report).

¹ KCFN Final Argument, Enclosure 1.

² KCFN Final Argument

³ Exhibit A2-13; Exhibit C2-4-1; Exhibit C2-15.

The BC Hydro report titled “Cost Estimate for the Upgrade, Operation and Maintenance of the Kyuquot Line” is dated March 25, 2008 and was prepared by BC Hydro. The stated purpose of the report is to determine BC Hydro’s cost to take over, own and operate the line built and currently operated by KPL serving the KCFN in response to a letter from Mr. Peter Ostergaard, Assistant Deputy Minister for the Ministry of Energy and Mines, dated December 28, 2007.⁴

Panel Determination

The Panel is not persuaded that the 2008 report, which analyzes the costs for BC Hydro taking over the KPL line, has any bearing on this Panel’s determinations in this proceeding on the safety and reliability of the current KPL System. Further, KCFN have not provided any compelling reason how this report relates within the current context of the BCUC’s Investigation of the safety and reliability of the KPL System.

The costs considered in the report largely relate to bringing the single-phase line up to BC Hydro’s three-phase standards and we note that there is no requirement for KPL to adhere to BC Hydro standards. KPL has stated during this proceeding that the original electrical design of the KPL system was to meet the Canadian Electrical Code, which includes CSA Standards, where applicable.⁵

For the above reasons, the Panel determines that the Redacted BC Hydro Report will not form part of the evidentiary record in this proceeding.

3.3 Letter to KCFN from SBR Consulting regarding Long-Term Sustainability of KPL Power Supply to Houpsitas, dated June 21, 2022

In its final argument, KCFN submits:

KCFN has identified concerns about upcoming load exceedances, which may lead to service disruptions and other problems (see Enclosure 3, enclosed letter dated June 21, 2022, from SBR Consulting).

The letter is regarding the long-term sustainability of KPL power supply to Houpsitas. The letter includes:

- A description of KPL’s system and limitations based on KPL’s electric service agreement with BC Hydro.⁶ This information is already part of evidence in this proceeding.⁷
- A description of load growth observed on the KPL system.⁸ This information is already part of evidence in this proceeding.⁹
- SBR’s assessment of the potential for overloading on the KPL system and potential timeframes by which this may occur. KPL has provided its own assessment,¹⁰ which varies slightly from SBR’s assessment.

⁴ KCFN Final Argument, Enclosure 2, p. 1.

⁵ Exhibit D-48, pp. 7-8.

⁶ KCFN Final Argument, p. 1.

⁷ Exhibit D43, PDF p. 11.

⁸ KCFN Final Argument, enclosure 3, p. 2.

⁹ Exhibit D-32.

¹⁰ Exhibit D-32, p. 7.

- SBR's assessment of options for KPL service area power sharing. This section does not appear to contain any information that is not already part of this proceeding.
- The report concludes by recommending that KCFN play a key role in determining how the anticipated local energy deficit is addressed.¹¹

Panel Determination

Parties have previously submitted evidence with respect to the load capacity of the KPL System in this proceeding and the Panel notes that KPL filed its updated Electric Service Agreement with BC Hydro on July 30, 2021.¹²

The Panel is not persuaded that the letter from SBR Consulting includes any new evidence, beyond that previously submitted. The Panel will make its overall determinations on load capacity of the KPL System at a later date and determines that the letter from SBR Consulting will not form part of the evidentiary record in this proceeding.

¹¹ KCFN Final Argument, Enclosure 3, p.4.

¹² Exhibit D-40, pp. 3-4.