



**ORDER NUMBER
G-206-25**

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

and

British Columbia Hydro and Power Authority
Terms of Use of Municipal Land in the City of Surrey

BEFORE:

E. B. Lockhart, Panel Chair
W. E. Royle, Commissioner

on August 22, 2025

ORDER

WHEREAS:

- A. On February 7, 2025, British Columbia Hydro and Power Authority (BC Hydro) made an application to the British Columbia Utilities Commission (BCUC) pursuant to sections 32 and 36 of the *Utilities Commission Act* (UCA) for an order setting the terms upon which BC Hydro will continue to use a highway dedication in the City of Surrey for high voltage transmission facilities (Application);
 - B. The Application states that the City of Surrey has indicated that it intends to construct an extension of 72nd Avenue on an unpaved gazetted road (Highway Dedication). Three of BC Hydro's overhead high-voltage circuits, installed in 1952, 1967 and 1976, pass over the Highway Dedication. One lattice steel tower installed in 1952 to support the high-voltage transmission line is on the Highway Dedication (collectively, the Electric Transmission Facilities);
 - C. The Application states that the City of Surrey has filed a Notice of Civil Claim in the Supreme Court of British Columbia, alleging that BC Hydro's facilities and maintenance employees are trespassing on the Highway Dedication and seeking an injunction requiring BC Hydro to completely remove its infrastructure, at BC Hydro's cost, located on and passing over the Highway Dedication;
 - D. The Application states that BC Hydro remains willing to sign a standard Transmission Line Relocation Agreement to modify the Electric Transmission Facilities in a way that accommodates the City of Surrey's road project (Relocation Project), at the City of Surrey's cost;
 - E. By Order G-34-25 dated February 20, 2025, the BCUC issued a regulatory timetable for review of the Application which included, evidence filing by the City of Surrey, rebuttal evidence filing by BC Hydro, one round of information requests to both the City of Surrey and BC Hydro, final argument from BC Hydro and the City of Surrey, and reply argument from BC Hydro;
 - F. By letter dated May 9, 2025, in response to BC Hydro's reply argument, the City of Surrey requested permission to submit a sur-reply submission. By letter dated May 12, 2025, BC Hydro expressed that it did
-

not oppose the City of Surrey's sur-reply application provided that BC Hydro is afforded the opportunity to respond. By Order G-124-25 dated May 15, 2025, the BCUC issued a further regulatory timetable for review of the Application, which included the sur-reply submission from the City of Surrey and a response from BC Hydro; and

- G. The BCUC has reviewed the evidence and submissions filed in the proceeding and makes the following determination.

NOW THEREFORE for the reasons outlined in the Decision accompanying this order, the BCUC orders as follows, pursuant to section 32 of the UCA:

1. If the Relocation Project proceeds, BC Hydro is directed to:
 - a. Submit to the BCUC a copy of the executed Transmission Line Relocation Agreement for acceptance, within 30 days of signing; and
 - b. Comply with all other directives in the Decision accompanying this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of August 2025.

BY ORDER

Electronically signed by Blair Lockhart

E.B. Lockhart
Commissioner

British Columbia Hydro and Power Authority
Terms of Use of Municipal Land in the City of Surrey

DECISION

Table of Contents

Page no.

Executive Summary.....	i
1.0 Introduction	1
1.1 Approvals Sought	1
1.2 Background.....	1
1.3 Regulatory Process	3
1.4 Legislative and Regulatory Framework	3
1.5 Decision Framework.....	4
2.0 Does BC Hydro have the right to place the Electric Transmission Facilities in Surrey, and therefore meet the criteria of section 32(1)?	4
3.0 The BCUC's Jurisdiction to Resolve Disputes Between Municipalities and Public Utilities Regarding Use of Land.....	9
4.0 The Transmission Line Relocation Agreement.....	17
4.1 Scope and Cost of Proposed Transmission Line Relocation	17
4.2 Terms of Draft Transmission Line Relocation Agreement.....	19

APPENDICES

APPENDIX A	LIST OF ACRONYMS
APPENDIX B	EXHIBIT LIST

Executive Summary

On February 7, 2025, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC), pursuant to sections 32 and 36 of the *Utilities Commission Act* (UCA), seeking an order setting the terms on which BC Hydro's high voltage transmission facilities will continue to cross a section of gazetted road (Highway Dedication) that the City of Surrey (Surrey) has targeted for development. Surrey objected to the BCUC's jurisdiction to hear this matter as Surrey considers the dispute to be a tort matter that should be decided in the courts. The BCUC established a regulatory timetable for review of the application, which included evidence from Surrey, rebuttal evidence from BC Hydro, one round of BCUC information requests to both Surrey and BC Hydro, and final and reply arguments.

Surrey plans to extend 72nd Avenue from 144th Street to 196th Street, onto the Highway Dedication that is currently used as farmland. Three BC Hydro high-voltage overhead transmission lines (Electric Transmission Facilities), constructed between 1952 and 1976, have towers located on or adjacent to the Highway Dedication. The height of the overhead wires and the location of the transmission towers prevent Surrey from completing its road project unless the wires are raised and the tower is relocated (Relocation Project).

BC Hydro and Surrey had preliminary discussions to modify the transmission infrastructure to accommodate Surrey's road project. However, Surrey filed a Notice of Civil Claim in BC Supreme Court alleging BC Hydro's infrastructure and employees are trespassing on the Highway Dedication and seeking removal of the infrastructure at BC Hydro's cost.

Pursuant to section 32 of the UCA, the BCUC may allow BC Hydro to use the Highway Dedication and specify the manner and terms of use if two criteria are met. First, that BC Hydro has the right to place the Electric Transmission Facilities on the Highway Dedication. Second, that the parties cannot agree on the use or terms of use of the municipal space. The Panel finds that BC Hydro has both a Certificate of Public Convenience and Necessity (CPCN) and a deemed CPCN that authorize the Electric Transmission Facilities and therefore the first criteria is satisfied. That there is no dispute that the parties cannot come to an agreement, satisfies the second criteria.

Further, the Panel finds that the BCUC has the jurisdiction to determine this application, which is about public utility use of municipal public lands, and is not, as Surrey characterizes it, about property rights. We also find that section 121 of the UCA expressly subordinates Surrey's municipal rights where those rights conflict with the BCUC's jurisdiction or – in this case – BC Hydro's CPCN for the Electric Transmission Facilities. Contrary to Surrey's submissions, the Panel finds no evidence of abuse of process and declines to stay the proceeding.

BC Hydro's standard Transmission Line Relocation Agreement includes items such as the work to be performed, timing, liability and payment of the relocation costs by the requesting party. Based on preliminary engineering work, BC Hydro estimates the Relocation Project may cost up to \$39 million. Surrey submits BC Hydro ratepayers should pay the costs of the Relocation Project.

The Panel finds that the Transmission Line Relocation Agreement, which BC Hydro has used in prior similar situations, including with Surrey, represents reasonable terms for the modification of the Electric Transmission Facilities for Surrey's road project. In addition, the Panel finds that Surrey must pay the full cost of the Relocation Project should it proceed. Should the Relocation Project proceed, the Panel directs BC Hydro to file: (i) a copy of the executed Transmission Line Relocation Agreement with the BCUC for acceptance, within 30 days of execution; (ii) an Association for the Advancement of Cost Engineering Class 3 cost estimate; and (iii) a final report within 12 months of substantial project completion.

1.0 Introduction

British Columbia Hydro and Power Authority (BC Hydro) operates high voltage transmission facilities that cross an unpaved gazetted¹ road (Highway Dedication) that the City of Surrey (Surrey) has targeted for a road project. The road project requires modification to BC Hydro's infrastructure to proceed. Surrey filed a Notice of Civil Claim in BC Supreme Court alleging BC Hydro's infrastructure and employees are trespassing on the Highway Dedication and seeking removal of the infrastructure at BC Hydro's cost. BC Hydro states that it has a standard process for requests to modify its infrastructure to accommodate road projects, at the cost of the requester, and is willing to modify its infrastructure on and above the Highway Dedication using its Transmission Line Relocation Agreement (TLRA).

1.1 Approvals Sought

On February 7, 2025, BC Hydro filed an application (Application) with the British Columbia Utilities Commission (BCUC), pursuant to sections 32 and 36 of the *Utilities Commission Act* (UCA), seeking an order setting the terms on which BC Hydro's high voltage transmission facilities will continue to cross the Highway Dedication that Surrey has targeted for development. BC Hydro states that since being gazetted in 1875, the Highway Dedication has never been used as a road and appears to be used for agricultural purposes.²

1.2 Background

BC Hydro states that the electric transmission facilities at issue (Electric Transmission Facilities), which BC Hydro or its predecessor has operated and maintained since construction, include the following three overhead high-voltage transmission circuits all running in parallel in a single corridor:³

- Circuit 5L040 – a 500 kilovolt (kV) circuit constructed in approximately 1967 between Ingledow substation and Clayburn substation;
- Circuit 5L081 – a 500 kV circuit constructed in approximately 1976 between Ingledow substation and Nicola substation; and
- Circuit 2L075 – a 230 kV circuit constructed in approximately 1952 between Fleetwood substation and McLellan substation.

BC Hydro notes that the overhead wires for all three circuits pass over the Highway Dedication and a transmission tower installed in 1952 to support the high-voltage transmission lines is on the Highway Dedication.⁴

Surrey states the Highway Dedication, which it refers to as the 72nd Avenue Road Allowance,⁵ is 66 feet wide and is shown in aerial photographs to have been used as a dirt road in the 1950s.⁶ Surrey intends to extend 72nd Avenue on the Highway Dedication,⁷ such that 72nd Avenue is continuously paved from 144th Street to 196th Street (Road Project).⁸ It explains that the overhead power lines crossing the Highway Dedication are strung at a height that, unless raised, prevents the use of the 72nd Avenue Road Allowance as a highway. In addition, the

¹ Declared a highway in the provincial gazette.

² Exhibit B-1, p. 6.

³ Ibid., p. 8.

⁴ Ibid., p. 8.

⁵ In this Decision, we use the term Highway Dedication.

⁶ Exhibit C1-2, PDF p. 4.

⁷ Exhibit B-1, p. 1.

⁸ Exhibit C1-2, PDF p. 9.

area in the vicinity of the transmission tower cannot be developed or accessed by vehicle traffic. As such, BC Hydro's high-voltage transmission facilities will need to be modified.⁹ Figure 1 shows an aerial photograph of the Electric Transmission Facilities in 2022.

Figure 1: Aerial Photograph of the Electric Transmission Facilities¹⁰



BC Hydro expects that the modification of the transmission infrastructure necessary to accommodate the Road Project would involve relocating the tower on the Highway Dedication and the necessary work to maintain adequate clearances between the overhead transmission conductors and vehicles, street lighting fixtures and other installations on the new road (Relocation Project).¹¹ BC Hydro estimates the cost range for the work to be \$18 million to \$39 million.¹² BC Hydro has a process for requests by third parties, including municipalities, to modify and/or relocate transmission infrastructure, which includes a standard TLRA that addresses items such as the work to be performed, timing, liability and payment of the relocation costs by the requesting party.¹³

BC Hydro states that the parties had some discussion to modify the transmission infrastructure to accommodate the Road Project. After these preliminary discussions, however, Surrey filed a Notice of Civil Claim in the BC Supreme Court, alleging that BC Hydro's facilities and maintenance employees are trespassing on the Highway Dedication and seeking an injunction requiring BC Hydro to completely remove its infrastructure located on and passing over the Highway Dedication at BC Hydro's cost. BC Hydro states that it believes the lawsuit is without merit given its statutory authorizations and the BCUC's jurisdiction over public utility use of municipal lands.¹⁴

⁹ Exhibit C1-2, PDF p. 11.

¹⁰ Exhibit B-1, Appendix E, p. 5.

¹¹ Exhibit B-1, p. 2.

¹² Ibid., p. 34.

¹³ Ibid., p. 2.

¹⁴ Ibid., pp. 2-3.

1.3 Regulatory Process

On February 14, 2025, Surrey filed a letter objecting to the BCUC's jurisdiction because BC Hydro had filed a response to Surrey's lawsuit and therefore had attorned to the jurisdiction of the BC Supreme Court.¹⁵

BC Hydro replied to Surrey's objection by letter dated February 18, 2025, noting that it had proposed a timetable that would afford the parties an opportunity to make legal arguments, including jurisdictional arguments, at the conclusion of the proceeding.¹⁶

Surrey states "While Surrey has participated in this proceeding, in accordance with the BCUC's procedural order, Surrey maintains its objection to the jurisdiction of the BCUC to grant relief in this matter and reserves all jurisdictional arguments."¹⁷

On February 20, 2025, the BCUC established a regulatory timetable for the review of the Application, which included evidence from Surrey, rebuttal evidence from BC Hydro, one round of BCUC information requests to both Surrey and BC Hydro, and final and reply arguments.¹⁸

On May 9, 2025, Surrey objected to elements of BC Hydro's reply argument and requested leave to file a sur-reply.¹⁹ On May 12, 2025, BC Hydro stated that it did not oppose Surrey's request, provided that it was afforded the opportunity to respond.²⁰ On May 15, 2025, the BCUC established a further regulatory timetable allowing for Surrey's sur-reply submission and BC Hydro's response.²¹

1.4 Legislative and Regulatory Framework

BC Hydro filed the Application pursuant to section 32, or alternatively section 36, of the UCA.

Section 32 provides the BCUC with statutory authority, in certain circumstances, where a public utility and municipality are unable to resolve an impasse regarding the utility's use of municipal public spaces, to allow the public utility to use the public spaces and to specify the manner and terms of such use, as follows:

32 (1) This section applies if a public utility

- (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and
- (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

¹⁵ Exhibit C1-1, p. 1.

¹⁶ Exhibit B-2, p. 2.

¹⁷ City of Surrey Final Argument, para. 5, p. 3.

¹⁸ Order G-34-25 dated February 20, 2025.

¹⁹ Exhibit C1-5.

²⁰ Exhibit B-6.

²¹ Order G-124-25 dated May 15, 2025.

Section 36 of the UCA provides as follows:

36 Subject to any agreement between a public utility and a municipality and to the franchise or rights of the public utility, and after any hearing the commission considers advisable, the commission may, by order, specify the terms on which the public utility may use for any purpose of its service

- (a) a highway in the municipality, or
- (b) a public bridge, viaduct or subway constructed or to be constructed by the municipality alone or jointly with another municipality, corporation or government.

Section 121 of the UCA provides as follows:

121 (1) Nothing in or done under the *Community Charter* or the *Local Government Act*

- (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or
- (b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*.

(2) In this section, “authorization” means

- (a) a certificate of public convenience and necessity issued under section 46,
[...]

1.5 Decision Framework

The first issue we address, in Section 2.0, is whether BC Hydro has established, as set out in section 32 of the UCA, that it has the right to enter the municipality to place the Electric Transmission Facilities. Then we consider, in Section 3.0, Surrey’s submissions that the BCUC lacks jurisdiction to hear the Application. Finally, in Section 4.0 we consider the scope and cost of the Relocation Project and the terms of the draft TLRA.

2.0 Does BC Hydro have the right to place the Electric Transmission Facilities in Surrey, and therefore meet the criteria of section 32(1)?

This section examines whether BC Hydro has the right to continue to place the Electric Transmission Facilities on the Highway Dedication, where they have been for decades. BC Hydro argues the Electric Transmission Facilities are lawfully placed and therefore it has the right, meeting the criteria for section 32(1) of the UCA to apply, whereas Surrey argues the Electric Transmission Facilities are trespassing because BC Hydro had no right in the first place and therefore BC Hydro has no right to continue to keep the Electric Transmission Facilities on the Highway Dedication. In this section, we review the historical background to the Electric Transmission Facilities to determine whether BC Hydro has the right to place the Electric Transmission Facilities in Surrey.

BC Hydro Submissions

BC Hydro submits it has a deemed Certificate of Public Convenience and Necessity (CPCN) for, among other things, all infrastructure installed before September 11, 1980, including the Electric Transmission Facilities. BC Hydro explains that the Electric Transmission Facilities were installed between 1952 and 1976, at a time when the area was rural and the provincial Crown owned the Highway Dedication. In other words, BC Hydro submits, “the existing Electric Transmission Facilities, in their current location and configuration, have been statutorily

deemed – expressly – as being in the public convenience and necessity and their continued operation is deemed to be authorized.”²²

BC Hydro describes the Electric Transmission Facilities as part of the backbone of the province’s electricity system. It submits that Surrey’s lawsuit seeking an injunction requiring the removal of the Electric Transmission Facilities, has significant implications for BC Hydro, its customers and the province in general if BC Hydro were unable to continue using the Highway Dedication for these circuits. BC Hydro states it is amenable to modifying the Electric Transmission Facilities in a manner that will allow the Road Project to proceed on terms proposed in the TLRA; however, there is no practicable way for the circuits to operate without continuing to cross the Highway Dedication in this general alignment.²³

BC Hydro submits that it has had, and continues to have, the necessary rights to use the Highway Dedication for the Electric Transmission Facilities. First, it has a deemed CPCN for the Electric Transmission Facilities under both section 45(2) of the UCA and section 33 of the *Hydro and Power Authority Act* (HPAA).²⁴ BC Hydro argues that its deemed CPCN represents a statutory determination that all public utility systems and plants in place on September 11, 1980 and extensions thereto are in the public convenience and necessity.²⁵

In addition, BC Hydro states that its predecessor, the BC Electric Company (BC Electric), obtained a CPCN from the BCUC’s predecessor for Circuit 2L075.²⁶

BC Hydro submits that the CPCN for the Electric Transmission Facilities establishes that it has the right to enter Surrey to place the Electric Transmission Facilities.²⁷

Surrey Submissions

Surrey disputes that BC Hydro has the right to use the Highway Dedication for the Electric Transmission Facilities. Surrey argues that BC Hydro has failed to establish it has a deemed CPCN granting any property rights over municipal property including the use of 72nd Avenue to place infrastructure, and states “Once this argument falls away, so does the rest of BC Hydro’s case.” Surrey submits that without a CPCN granting property rights, BC Hydro is clearly trespassing on municipal property, which is something the BCUC does not have the power to remedy.²⁸

Further, Surrey states that BC Hydro has not sought from Surrey permission to locate its infrastructure in the Highway Dedication, the soil and freehold of which are vested in Surrey.²⁹

Surrey disputes that BC Hydro has a deemed CPCN for the Electric Transmission Facilities. It explains that BC Electric applied for a CPCN in 1950 for the 230 kV transmission line, Circuit 2L075, to Surrey, which was approved by an Order in Council on December 30, 1950, and subsequently amended in 1957 to increase the line to 345 kV (the 1950’s CPCN). Surrey states that it has no record of a CPCN being issued that specifically approves the location of the existing transmission lines. Surrey states that it has no knowledge of a public hearing or consultation taking place in respect of the amendment, and the application and order related to that CPCN do

²² BC Hydro Final Argument, p. 1.

²³ Exhibit B-1, pp. 10-11.

²⁴ *Ibid.*, p. 1.

²⁵ BC Hydro Final Argument, p. 28.

²⁶ BC Hydro Rebuttal Evidence, p. 1.

²⁷ BC Hydro Final Argument, p. 54.

²⁸ City of Surrey Final Argument, pp. 16-17.

²⁹ Exhibit C1-2 PDF, p.3.

not include detail on the location of the transmission line. Further, to the extent the 1950's CPCN was granted, it only approved the project at large and not the location and layout of the project infrastructure.³⁰

Surrey states that records from the 1950s indicate that BC Electric secured various statutory rights of way along the transmission lines' route through Surrey. Surrey notes that while many of the BC Electric survey plans from the time include the Highway Dedication, the survey plan that encompasses the specific area at issue does not indicate the Highway Dedication. Surrey states that BC Electric located its towers to avoid other gazetted roads such as 152 Street, 160 Street, 168 Street, 180 Street and 64 Avenue; however, it did not do so for 72nd Avenue. Surrey states that this leaves the impression that BC Hydro failed to account as it should have for the Highway Dedication, likely because its survey plan failed to properly identify and exclude the road allowance.³¹

Surrey submits that BC Hydro has failed to establish it has a deemed CPCN that grants any property rights over municipal property including a right to use 72nd Avenue to place infrastructure, particularly when its CPCN from the 1950s does not grant such property rights. Surrey states that the UCA is silent on any conferral of property rights or an authorization to use any real property for any purpose from a deemed or express CPCN.³² Instead, it asserts that BC Hydro seemingly relies on the lines being deemed approved. Surrey submits BC Hydro is in a position to provide evidence of authorization to place the Electric Transmission Facilities on 72nd Avenue but has failed to do so. Surrey therefore asks the BCUC to draw an adverse inference.³³

Surrey acknowledges that BC Hydro did have an express CPCN granted in 1950 and amended in 1957 such that it could operate in the Lower Mainland. However, it submits that this CPCN does not authorize the placement of the Electric Transmission Facilities on and over 72nd Avenue. Further, Surrey states that BC Hydro agrees that this CPCN does not authorize the placement of the Electric Transmission Facilities and instead asserts that it holds a deemed CPCN under section 45(2) of the UCA and under section 33 of the HPA that authorizes the encroachment of the Electric Transmission Facilities on 72nd Avenue.³⁴

Surrey provides an additional interpretation of why infrastructure authorized by a CPCN prior to 1980 cannot be 'converted' into a broader, deemed, CPCN under the UCA. It states that section 45(2) of the UCA does not apply since the section presumes that there is infrastructure without a CPCN that requires a deemed CPCN to operate lawfully. However, Surrey argues, BC Hydro was already granted the 1950's CPCN so it does not require a deemed CPCN. Surrey argues that the deeming provision of section 45(2) of the UCA is inherently backwards looking, in that if a person or a public utility already has a CPCN to operate a particular public utility plant system, then section 45(2) is of no effect since its scope is limited to authorizing the operation and extension of works that had not received a CPCN.³⁵

Surrey observes that the issuance of a CPCN has not, in other contexts, removed the need for BC Hydro to secure property rights in respect of its projects, including from Surrey. For example, in 1973, BC Hydro sought consent from Surrey to run aerial lines over the Serpentine River to upgrade a power line.³⁶

Surrey further argues that if BC Hydro's reading of section 45(2) of the UCA were accepted, it would effectively convert a regulatory deemed certificate into a mass expropriation, authorizing the occupation of land without consent, without process, and without compensation. In effect, Surrey summarizes, BC Hydro says that section 45(2) wiped the slate clean in 1980 and all prior CPCNs were replaced by more powerful deemed CPCNs that

³⁰ Exhibit C1-2, PDF p. 5-6.

³¹ Ibid., PDF p. 6-7.

³² City of Surrey Final Argument, p. 20.

³³ Ibid., p. 6.

³⁴ Ibid., p. 19.

³⁵ Ibid., p. 20.

³⁶ Ibid., p. 8.

blessed all its existing infrastructure. There is no basis for this in the legislation and to read the provision in this way overwhelms any reasonable interpretation of section 45(2).³⁷

BC Hydro Reply Submission

BC Hydro responds to Surrey as follows. With respect to the accounting of the Highway Dedication in the survey plans, BC Hydro argues that irrespective of how the land surveyor depicted the lands on the one document, it is clear from the other contemporaneous documents that BC Hydro's predecessor was aware that the Highway Dedication existed because it appears in other documents.³⁸

BC Hydro notes that while it tries to work with the municipality to find a mutually acceptable solution where infrastructure is required to be located on municipal roads, as it did in the 1973 situation Surrey describes over the Serpentine River, BC Hydro does not agree that municipalities have a veto over the placement of such infrastructure.³⁹

Insofar as Surrey argues that the UCA is silent on any conferral of property rights or an authorization to use any real property for any purpose from a CPCN, BC Hydro emphasizes that "there can be no real debate that the Electric Transmission Facilities are authorized: they are authorized by the 1950/1957 CPCN, they are authorized by section 45(2) of the UCA, and they are authorized by section 33 of the HPAA."⁴⁰

BC Hydro also argues that Surrey's assertion that section 45(2) of the UCA is intended to apply only where there were no previous CPCNs issued, and not where BC Hydro was already granted the 1950's CPCN, cannot be the case because:⁴¹

- (i) Had the legislature intended to limit the application of section 45(2) in that manner, it could have said so;
- (ii) Section 45(2), in respect of pre-existing infrastructure, only authorizes "(a) to operate the plant or system." If the deeming only applied in respect of infrastructure that lacked a prior CPCN, then that would leave a gap in the authorization for infrastructure without a prior BCUC-issued CPCN – i.e., while the operation would be authorized, the initial construction of the pre-existing infrastructure would remain unauthorized;
- (iii) There is much to support an interpretation that the legislature was intending to re-validate all infrastructure in place prior to September 11, 1980. The date selected marked the introduction of a new statutory framework in many respects, and a blanket deeming provision offered clarity moving forward; and
- (iv) Previous BC Court of Appeal decisions noted the existence of both BCUC-issued and deemed CPCNs under section 45(2) of the UCA.

Panel Determination

For the following reasons, **the Panel finds that BC Hydro has both a CPCN as well as a deemed CPCN pursuant to section 45(2) of the UCA that authorizes the Electric Transmission Facilities. Therefore, this means that BC**

³⁷ City of Surrey Final Argument, p. 20.

³⁸ BC Hydro Reply Argument, p. 6.

³⁹ Ibid., p. 6.

⁴⁰ Ibid., p. 28-29.

⁴¹ Ibid., p. 26.

Hydro has the right to place the Electric Transmission Facilities on the Highway Dedication, and section 32 is applicable. We reject Surrey's arguments that BC Hydro lacks a CPCN for the Electric Transmission Facilities.

This turns primarily on whether BC Hydro is deemed to have a CPCN to operate the public utility plant or system in question, namely the Electric Transmission Facilities, on September 11, 1980.

BC Hydro describes the Electric Transmission Facilities as part of the Bulk Electric System.⁴² As BC Hydro observes, and which observation the Panel finds compelling, there is much to support an interpretation that the legislature intended to validate all infrastructure in place as of September 11, 1980 and a blanket deeming provision offered clarity moving forwards. We also find Surrey's summary of BC Hydro's position to be clear as well as compelling: "In effect, BC Hydro says that section 45(2) wiped the slate clean in 1980 and all prior CPCNs were replaced by more powerful deemed CPCNs that blessed all its existing infrastructure."⁴³ Contrary to Surrey's assertion, we are persuaded that reading the provision in this way is a reasonable interpretation of section 45(2) of the UCA.

Therefore, regardless of whether a portion of the Electric Transmission Facilities, Circuit 2L075 and the associated transmission tower, is covered by the 1950's CPCN, the Panel finds that Circuit 2L075 is covered by a deemed CPCN because the circuit pre-dates 1980.

Surrey concedes that BC Hydro's predecessor was granted the 1950's CPCN, allowing it to operate in the Lower Mainland, although it disputes there is any proof that it encompasses the location of the Electric Transmission Facilities. Moreover, it asserts, the CPCN could have – but by some oversight does not – encompassed the Electric Transmission Facilities. Therefore, while Surrey concedes that those portions of the 230 kV line referred to in the 1950's CPCN are subject to a deemed CPCN, it argues that the 72nd Avenue facilities are not, because the 1950s CPCN does not refer to them. Further, it argues that these facilities cannot claim a deemed CPCN because they are supposed to be covered by the 1950's CPCN.

The Panel rejects Surrey's position. Foremost, this interpretation relies on the assumption that either the government of the day intended to exclude the Electric Transmission Facilities from being authorized as a deemed CPCN, or else that these facilities somehow slipped through the legislative crack, in other words, that Surrey has discovered a loophole. Moreover, Surrey's interpretation requires us to conclude that a portion of BC Hydro's province-wide transmission system is unauthorized, which we consider unreasonable.

Because Surrey's position is based on the lack of a CPCN, which the Panel has rejected, Surrey does not address whether a CPCN constitutes the right, as set out in section 32(1) of the UCA, to place the Electric Transmission Facilities in Surrey. **The Panel finds that the deemed CPCN meets the criteria set out in section 32(1)(a), to authorize BC Hydro to place the Electric Transmission Facilities on, along, across, over or under 72nd Avenue in Surrey.**

The second criterion of section 32(1), subsection (b) refers to the parties' lack of agreement on the use or terms of use of the municipal space. That the parties cannot come to an agreement is not in dispute. **The Panel therefore finds that BC Hydro has met the criteria set out in section 32(1),** such that the Panel can move to section 32(2) to consider whether to allow the use of the street or other place by the public utility and specify the manner and terms of use.

⁴² The Bulk Electric System is defined as the generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 kV or higher.

⁴³ Surrey Final Argument, p. 20.

3.0 The BCUC's Jurisdiction to Resolve Disputes Between Municipalities and Public Utilities Regarding Use of Land

This section addresses Surrey's objection to the BCUC's jurisdiction to hear the Application. Surrey's position is that this dispute is fundamentally a matter of property rights, which is why it commenced an action in trespass in the BC Supreme Court. Moreover, Surrey submits that since BC Hydro filed a response to civil claim on the merits, that means that BC Hydro has attorned to the jurisdiction of the BC Supreme Court. Having attorned to the jurisdiction of the BC Supreme Court, Surrey argues that the BC Supreme Court is the correct forum for this dispute. Further, Surrey argues that the fact that BC Hydro then commenced a parallel proceeding, requesting the BCUC to set the terms of use of municipal land under section 32 of the UCA, is an abuse of process and a fundamental impediment to the adjudication of Surrey's civil claim. Surrey submits that the BCUC should stay BC Hydro's application.⁴⁴

There are various aspects to Surrey's objections to BC Hydro's Application; however, the key issue is the jurisdiction of the BCUC to deal with disputes between municipalities and public utilities regarding public utility use of municipal public lands. Although this section addresses Surrey's arguments regarding the BCUC's jurisdiction, BC Hydro is the applicant and therefore this section is structured by first outlining BC Hydro's submissions in favour of the BCUC's jurisdiction, followed by Surrey's submissions opposing the BCUC's jurisdiction.

BC Hydro Submissions

BC Hydro submits there is clear and express legislative intent to give priority to the BCUC's jurisdiction relative to municipal rights and powers. It cites the Supreme Court of Canada decision in *ATCO Gas and Pipelines v. Alberta* (ATCO Gas),⁴⁵ which noted that a statutory tribunal obtains its jurisdiction over matters from both express grants of jurisdiction under various statutes as well as the common law. Therefore, BC Hydro submits, the proper approach to interpreting the BCUC's jurisdiction involves: (i) an examination of the express wording of section 32, (ii) the broader statutory framework; and (iii) the purpose of the UCA; in other words, the BCUC's core mandate.⁴⁶

BC Hydro notes that the Supreme Court of Canada in *ATCO Gas* described the Alberta Energy and Utilities Board's main function as fixing just and reasonable rates (rate setting) and protecting the integrity and dependability of the supply system. It submits that deciding whether and on what terms a public utility like BC Hydro must remove, relocate or modify long-standing electric transmission assets to accommodate a municipal project engages the BCUC's main function.⁴⁷

Of the first element, the express wording of section 32, BC Hydro submits that section 32 of the UCA confers broad express powers on the BCUC to determine disputes regarding public utility use of municipal public lands. BC Hydro explains that these sections apply where a public utility has a CPCN conferring the right to enter and place utility infrastructure within a municipality, and the public utility and the municipality cannot agree on the use of public lands, or terms of its use, for that utility's infrastructure.⁴⁸

Of the second element, the broader statutory framework, BC Hydro observes that other sections of the UCA expressly subordinate municipal rights in so far as they conflict with the BCUC's jurisdiction or CPCNs held by

⁴⁴ Surrey Final Argument, p. 3.

⁴⁵ 2006 SCC 4.

⁴⁶ BC Hydro Final Argument, pp. 4-5.

⁴⁷ *Ibid.*, p. 13.

⁴⁸ Exhibit B-1, p. 17.

public utilities.⁴⁹ For example, it points to section 121 of the UCA and section 36(2) of the *Community Charter*, the relevant portions of which are reproduced below.

From section 121 of the UCA:

121 (1) Nothing in or done under the *Community Charter* or the *Local Government Act*

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility,

(2) In this section, "authorization" means

(a) a certificate of public convenience and necessity issued under section 46

From section 36(2) of the *Community Charter*:

36 (2) The authority of a municipality in relation to highways under any provision of this Act is subject to the following:

(e) authority in relation to all electrical transmission and distribution facilities and works that are on, over, under, along or across a highway is subject to the *Utilities Commission Act* and to all orders, certificates and approvals issued, granted or given under that Act.

BC Hydro submits that section 121 thus precludes Surrey's statutorily conferred property rights, the *Community Charter* or Surrey's assertions based on them, from superseding or impairing the BCUC's ability to exercise its powers under sections 32, 36 and 92 of the UCA. It also precludes Surrey's statutorily conferred property rights from superseding or impairing BC Hydro's ability to operate the Electric Transmission Facilities in accordance with its CPCN.⁵⁰ BC Hydro also refers to the corresponding limitation set out in section 36 of the *Community Charter*.

BC Hydro points to two recent BC Court of Appeal decisions on appeals from BCUC orders under section 32 of the UCA, which it submits confirm: (1) BC Hydro's right, by virtue of its longstanding CPCN, to place its infrastructure in municipal public places, and (2) the BCUC's jurisdiction to determine this dispute relating to the terms of BC Hydro's continued use of the Highway Dedication in light of a municipal project.⁵¹

With respect to *City of Coquitlam v. British Columbia Utilities Commission* (Coquitlam Appeal Decision),⁵² BC Hydro submits that the BC Court of Appeal confirmed that, consistent with its express wording, section 32 of the UCA applies to disputes where a public utility has a CPCN conferring the right to enter and place utility infrastructure within a municipality.⁵³ Further, BC Hydro submits that the BC Court of Appeal emphasized the centrality of determining what happens with utility infrastructure to the BCUC's core mandate, and held that the BCUC was the only authority that could address this issue. BC Hydro notes that the BC Court of Appeal confirmed that the public utility's right to enter, which is a threshold to the application of section 32 of the UCA, was conferred by the utility's CPCN. That is, the public utility had the right by virtue of its prior CPCN to not only place its assets in a municipal highway but also to leave decommissioned assets in the highway over the objections of the municipality. BC Hydro further submits that the BC Court of Appeal rejected Coquitlam's

⁴⁹ Exhibit B-1, p. 18.

⁵⁰ *Ibid.*, p. 19.

⁵¹ BC Hydro Final Argument, p. 2.

⁵² 2021 BCCA 336.

⁵³ BC Hydro Final Argument, p. 7

argument that its soil and freehold property rights conferred by section 35 of the *Community Charter* (a) precluded the utility's use of the municipal road pursuant to the terms of its CPCN, and (b) limited the BCUC's jurisdiction to set terms of use under section 32 of the UCA.⁵⁴

With respect to *City of Richmond v. British Columbia Utilities Commission* (Richmond Appeal Decision),⁵⁵ BC Hydro submits that the BC Court of Appeal cited section 121 of the UCA as reflecting a clear intention, where necessary, to give priority to the BCUC's jurisdiction relative to municipal rights and powers.⁵⁶ Further, BC Hydro submits that the BC Court of Appeal re-affirmed the BCUC's broad discretion under section 32 to set terms upon which a public utility with a CPCN can use municipal lands.⁵⁷

The third element of the process of statutory interpretation of the BCUC's jurisdiction, according to BC Hydro, requires an examination of the BCUC's core mandate. Setting just and reasonable rates is central to the BCUC's core mandate. Although this is not a rate setting application, BC Hydro submits it has direct implications for the electricity rates that BC Hydro's customers will pay in the future.⁵⁸

BC Hydro summarizes that this analysis supports the BCUC having jurisdiction to determine a public utility's use of municipal public lands or to set the terms of use.⁵⁹ Further, municipal rights and powers are expressly subordinated to the rights conferred on a public utility by a CPCN to construct and operate public utility facilities.⁶⁰

BC Hydro submits that Surrey's lawsuit is not an impediment to the BCUC's jurisdiction and notes that it intends to dispute the trespass lawsuit in the BC Supreme Court. BC Hydro submits the fact that it filed a Response to Civil Claim in Surrey's trespass lawsuit, however, is legally irrelevant to the BCUC's statutory jurisdiction. It observes that the BCUC is a statutory tribunal, with powers conferred by the legislature and that it is not possible at law for the BCUC to have been deprived of its statutory jurisdiction because of a civil claim.⁶¹

BC Hydro also points to section 81 of the UCA, which provides that the BCUC maintains its jurisdiction notwithstanding the existence of another court proceeding.⁶²

Section 81: The fact that a suit, prosecution or other proceeding in a court involving questions of fact is pending does not deprive the commission of jurisdiction to hear and determine the same questions of fact.

Surrey Submissions

Surrey objects to the BCUC hearing the Application because this is "fundamentally a tort matter that should be decided in the courts."⁶³ Surrey has commenced an action in the BC Supreme Court, and BC Hydro has filed a response on the merits. Therefore, it submits, BC Hydro has attained to the jurisdiction of the BC Supreme

⁵⁴ BC Hydro Final Argument, p. 17.

⁵⁵ 2024 BCCA 16.

⁵⁶ BC Hydro Final Argument, p. 9.

⁵⁷ *Ibid.*, p. 19.

⁵⁸ *Ibid.*, p. 36.

⁵⁹ BC Hydro Final Argument, p. 5, referring to the ATCO Gas decision.

⁶⁰ Exhibit B-1, p. 19.

⁶¹ Exhibit B-2, p. 1.

⁶² BC Hydro Final Argument, p. 25.

⁶³ City of Surrey Final Argument, p. 3.

Court. Surrey submits that starting a parallel proceeding, such as this, while the matter is before the courts, is an abuse of process, and a stay of this proceeding should follow.⁶⁴ Surrey argues that the action by BC Hydro vexes Surrey with proceedings in two forums, creates the risk of inconsistent findings and places the BCUC in the “unenviable position” of deciding whether to prefer its own jurisdiction over the jurisdiction of the BC Supreme Court during an active lawsuit.⁶⁵ Surrey argues that if BC Hydro wished to proceed before the BCUC based on the argument that the BC Supreme Court has no jurisdiction over this dispute or that the BCUC’s jurisdiction should be preferred, then it was incumbent on BC Hydro to apply to stay the BC Supreme Court action.⁶⁶

In the alternative, Surrey summarizes BC Hydro’s argument as requiring “the BCUC to find that [sections] 32 and 36 of the UCA confer the determination of, essentially, all private law claims between municipalities and utilities concerning municipal property to the BCUC to the exclusion of the BC Supreme Court’s original jurisdiction over all claims in BC.” Surrey submits that the starting point for the analysis as to the BCUC’s jurisdiction is to determine the essential character of the dispute, which it describes as the use of municipal property by a utility. Surrey argues that this requires a determination of the relative property rights of the parties and that, *prima facie*, by virtue of its plenary jurisdiction, the BC Supreme Court would have jurisdiction over such claims.⁶⁷

Surrey relies on the BC Court of Appeal’s decision in *Princeton Light*⁶⁸ for the proposition that “clear, specific language is required to oust the court’s jurisdiction over private law disputes.” It submits that, following the reasoning in *Princeton Light*, neither section 32 nor section 36 of the UCA, which BC Hydro relies on in the Application, would allow the BCUC to retroactively bless BC Hydro’s trespass or resolve the issue of BC Hydro’s liability for damages caused by the trespass.⁶⁹

Surrey refers to *Howes v. FortisBC*⁷⁰, where two FortisBC Inc. (FortisBC) transmission posts and transmission lines were found to be encroaching on a private lot without lawful authority. FortisBC admitted the trespass and the only remaining issues concerned damages and whether an injunction was warranted. Surrey submits there “is no reason a different analysis should apply in this case.”⁷¹

Surrey asserts that whether the BCUC has jurisdiction in this case is a question of statutory interpretation. It cites the following six principles set out in the leading judicial review decisions that are instructive and relevant to the BCUC’s task:⁷²

- a) A decisionmaker must justify its interpretation of its jurisdiction in light of the surrounding context and governing scheme;
- b) In addition to being harmonious with the text, context and purpose, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative rules arising from other sources of law;
- c) It is impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting;
- d) Decisionmakers must consider binding or relevant precedent;

⁶⁴ City of Surrey Final Argument, p. 12.

⁶⁵ *Ibid.*, p. 14.

⁶⁶ *Ibid.* p. 14.

⁶⁷ *Ibid.*, p. 15.

⁶⁸ *Princeton Light & Power Co. Ltd. v. MacDonald*, 2005 BCCA 296.

⁶⁹ City of Surrey Final Argument, pp. 15-16.

⁷⁰ *Howes v. Fortis Inc.*, 2021 BCSC 2271.

⁷¹ City of Surrey Final Argument, p. 18.

⁷² *Ibid.*, pp. 17-18.

- e) If the decisionmaker's interpretation is not justified in light of the text, context and purpose of the provision or scheme at issue, it is unreasonable, even though it may be a plausible interpretive option on the face of the wording alone; and
- f) When a decision departs from past practices, the decisionmaker must explain why in its reasons and failing to do so will render the decision unreasonable.

Surrey notes that the basis of BC Hydro's position is that it has a deemed CPCN that permits the Electric Transmission Facilities to encroach on the Highway Dedication and that the deemed CPCN is what allows BC Hydro to seek an order under section 32 of the UCA 'blessing' the trespass and requiring Surrey to fund the relocation of the Electric Transmission Facilities. Surrey asserts, however, that BC Hydro has failed to establish it has a deemed CPCN that grants any property rights over municipal property including a right to use 72nd Avenue to place infrastructure. Since BC Hydro has no pre-existing right to use 72nd Avenue, Surrey submits that the condition for an order under section 32 is simply not met.⁷³

Surrey asserts that section 32 does not create a freestanding power for the BCUC to authorize a utility to occupy municipal property. It applies only where a utility already possesses a legal right to enter the municipality to place its infrastructure and where the dispute concerns the terms of use, not the existence of that right. BC Hydro has no right to encroach on 72nd Avenue to place the Electric Transmission Facilities. Accordingly, the pre-condition in section 32(1)(a) is not met and no BCUC order can follow.⁷⁴

Surrey states that without a CPCN granting property rights, BC Hydro had no pre-existing right to use 72nd Avenue and the pre-conditions for sections 32 or 36 of the UCA are not met because they presuppose a right to enter and use the land, but they cannot create that right. In this context, where BC Hydro is in trespass, the various statutory provisions, which BC Hydro claims subordinate municipal authority to that of a public utility or the BCUC, do not apply.⁷⁵

Surrey argues that BC Hydro overreads both the Coquitlam Appeal Decision and the Richmond Appeal Decision and risks leading the BCUC into an error in principle. Surrey submits that the Coquitlam Appeal Decision turned on two findings:⁷⁶

- (i) Removing the decommissioned pipes may never be necessary and would represent a significant waste of money, but leaving the pipes in place would represent significant cost savings and environmental benefit; and
- (ii) Leaving the pipes in place would not impair Coquitlam's use of municipal property.

Surrey argues that these facts make the outcome of the Coquitlam Appeal Decision distinguishable as allowing the continued trespass of the Electric Transmission Facilities would significantly interfere with Surrey's use of 72nd Avenue, prevent the development of 72nd Avenue and deprive the public of the benefits therefrom.⁷⁷ Surrey also submits that the abandoned pipes were installed under a CPCN granted to the utility that was expressly authorized by legislation to carry on business in a municipality and to place its pipes and equipment on or under any public street in a municipality. Surrey argues that, in contrast, BC Hydro lacked the authority to place the Electric Transmission Facilities on 72nd Avenue and therefore the prerequisite for the BCUC to exercise its jurisdiction under sections 32 and 36 of the UCA is absent.⁷⁸

⁷³ City of Surrey Final Argument, pp. 16-17.

⁷⁴ Ibid., p. 24.

⁷⁵ Ibid., p. 17.

⁷⁶ Ibid., p. 29.

⁷⁷ Ibid., pp. 29-30.

⁷⁸ Ibid., p. 30.

With respect to the Richmond Appeal Decision, Surrey argues that the appeal that was the subject of that decision concerned only a limitation of liability clause imposed by the BCUC and its jurisdiction to do so. At most, Surrey argues, the court confirmed that the BCUC has discretion to impose contractual terms on the parties concerning the use of municipal land when section 32 of the UCA is engaged.⁷⁹

Surrey submits that section 121 of the UCA does not apply to deemed CPCNs:

Importantly, s. 121 of the UCA subordinates (in some respects) the *Community Charter* only in relation to CPCNs that have been “issued under section 46” not deemed CPCNs under s. 45(2), indicating that the legislature deliberately excluded deemed CPCNs from s. 121; if the legislature intended deemed CPCNs to subordinate municipal laws, it would have said so explicitly. Therefore, even if a deemed CPCN granted BC Hydro the authority to encroach on 72nd Avenue, it would not trump Surrey’s title over the highway.⁸⁰

Surrey acknowledges that section 121 of the UCA states that the *Community Charter* does not “supersede or impair a power conferred on the BCUC.” [emphasis in original] Surrey also notes that section 36 of the *Community Charter* restricts “the authority of a municipality in relation to highways.” [emphasis in original] Surrey submits, however, that when these two provisions are read together, it is clear they do not obviate a municipality’s freehold title to highways and therefore, the “legislature’s choice to vest freehold title to highways and not just authority over highways to municipalities must be given effect.”⁸¹

Surrey distinguishes section 81 of the UCA on the basis that the current situation involves questions of law or mixed fact and law, and “nor does section 81 say that the BCUC should exercise jurisdiction when faced with a parallel proceeding.” [emphasis in original]⁸²

Surrey submits that the UCA “must be construed in a manner consistent with the common law unless the legislature has clearly expressed an intention to the contrary. Courts presume that legislation does not abrogate common law rights – especially fundamental rights such as property ownership – absent clear and unambiguous language.”⁸³

BC Hydro Reply Submission

BC Hydro states that its attornment to the BC Supreme Court was in respect of a dispute over which the BC Supreme Court has jurisdiction – a tort claim – not the public interest determination about prospective use and terms of use of the Highway Dedication. Further, BC Hydro states that it does not dispute that the BC Supreme Court has jurisdiction to adjudicate a trespass claim. However, the BC Supreme Court’s private law determination of rights as between these two parties differs from the multifactorial public interest assessment required for the BCUC’s determination of prospective use rights and terms of use. BC Hydro indicates that it intends to take the position in the litigation that the same CPCN that triggers section 32 also provides a defence to a trespass claim; however, the legal question in each case is different – one is a retrospective private law determination, and the other is a prospective public interest assessment.⁸⁴

BC Hydro also points out that its Response to Civil Claim stated that the use and terms of use of the Highway Dedication should be addressed by the BCUC.⁸⁵

⁷⁹ Ibid., p. 31.

⁸⁰ City of Surrey Final Argument, pp. 27-28.

⁸¹ Ibid., pp. 28-29.

⁸² Ibid., p. 14.

⁸³ Ibid., p. 22.

⁸⁴ BC Hydro Reply Argument, p. 13.

⁸⁵ Ibid., p. 13.

BC Hydro states that it is not asking the BCUC to resolve private law claims and disagrees with Surrey's interpretation of its position that "BC Hydro's argument requires the BCUC to find that [sections] 32 and 36 of the UCA confer the determination of, essentially, all private law claims between municipalities and utilities concerning municipal property to the BCUC to the exclusion of the BC Supreme Court's original jurisdiction over all claims in BC." Instead, BC Hydro describes a determination by the BCUC under section 32 of the UCA as addressing use and that such a determination does not grant property rights.⁸⁶ Therefore, BC Hydro submits, the essential character of the matter before the BCUC is the use and terms of use of the Highway Dedication for the Electric Transmission Facilities, and not the "relative property rights" of the parties as suggested by Surrey.⁸⁷

BC Hydro argues that Surrey's arguments regarding section 32, 36 and 121 of the UCA are incompatible with both the express words and purpose of each section, and that the Coquitlam and Richmond Appeal Decisions are dispositive of the jurisdictional issue.⁸⁸

BC Hydro disputes Surrey's interpretation that section 121 of the UCA does not apply to a deemed CPCN. It submits that the proper interpretation is that BC Hydro has a CPCN that is, by virtue of section 45(2), deemed to have been issued by the BCUC under section 46. Thus, it is an "authorization" for the purposes of section 121.⁸⁹ Further, to the extent there are parallel proceedings, BC Hydro submits that the UCA explicitly contemplates that concurrent court and BCUC proceedings can take place dealing with the same subject matter. The UCA resolves the potential for inconsistent findings by giving priority to the BCUC's findings of fact.⁹⁰

BC Hydro challenges the distinction that Surrey makes between Surrey's "authority over highways" and its property rights, suggesting that section 121 of the UCA and section 36(2) of the *Community Charter* only apply to the former. The City is saying, in effect, that its rights as owner of soil and freehold interest will always limit the powers of the BCUC to specify the use or terms of use of highways for public utility infrastructure. This argument is unsustainable given the expansive wording of section 121 which states "Nothing in or done under the *Community Charter*..." BC Hydro submits that section 121 explicitly applies to the entire *Community Charter*, which necessarily includes the section conferring soil and freehold.⁹¹

BC Hydro disagrees that the Application is an abuse of process. BC Hydro maintains that the Application is instead a valid exercise of BCUC authority and that Surrey's civil claim does not oust the jurisdiction of the BCUC to address the use of municipal lands. It submits that the BCUC's jurisdiction is determined by the scope of its authorizing statute, not whether a party files a Notice of Civil Claim or a Response to Civil Claim.⁹²

BC Hydro notes that the UCA contemplates concurrent court and BCUC proceedings and gives priority to the BCUC's findings of fact in section 81 of the UCA, which provides "The fact that a suit, prosecution or other proceeding in a court involving questions of fact is pending does not deprive the commission of jurisdiction to hear and determine the same questions of fact." In addition, section 79 of the UCA which states that the BCUC's determinations are "binding and conclusive on all persons and all courts." As such, BC Hydro submits that to the extent that there is any basis for the concerns raised by Surrey in relation to proceedings in multiple forums, they have been considered by the legislature and addressed in these statutory provisions.⁹³

⁸⁶ BC Hydro Reply Argument, p. 14.

⁸⁷ *Ibid.*, p. 15.

⁸⁸ *Ibid.*, p. 19.

⁸⁹ *Ibid.*, p. 34.

⁹⁰ *Ibid.*, p. 12.

⁹¹ *Ibid.*, p. 36.

⁹² *Ibid.*, p. 10.

⁹³ *Ibid.*, pp. 12-13.

BC Hydro addresses Surrey's argument regarding the need for clear language to abrogate common law rights and notes that the Richmond Appeal Decision found that this did not apply in the context of disputes under section 32.⁹⁴ The Court wrote:

Section 32 is fundamentally different in nature. It does not prescribe or suggest any specific change to the common law. Instead, its clear terms allow the Commission, in circumstances where a utility "cannot come to an agreement with [a] municipality... on the terms of the use" of a street or other place, to "specify the manner and terms of use". Under s. 32, the Commission acts, in a sense, as the arbiter of particular kinds of dispute between utilities and municipalities. When s. 32 is engaged, the Commission is granted a broad jurisdiction to "specify" the terms under which utilities will undertake work on municipal streets or in other places within a municipality. Any order the Commission makes necessarily interferes with and overrides the freedom to contract the parties would normally enjoy. Further, any order the Commission makes is limited in its application to the parties whose dispute is before the Commission. Such orders do not reflect a departure "from the general system of law".⁹⁵ [emphasis in original]

Panel Determination

The Panel finds that the BCUC has the jurisdiction to determine this dispute, which is about public utility use of municipal public lands, and is not, as Surrey characterizes it, about property rights. Section 32 of the UCA grants the BCUC broad express powers to oversee the use by public utilities of municipal lands for the provision of that utility's service. As the BC Court of Appeal noted in the Coquitlam Appeal Decision, section 32 of the UCA applies to disputes where a public utility has a CPCN conferring the right to enter and place utility infrastructure within a municipality, which is very much the current situation.

Surrey's arguments against the application of section 32 are based on BC Hydro not having lawful authority, in other words, that the BCUC's powers are triggered only once both conditions – an antecedent right to enter municipal property plus the lack of agreement on terms of use – are met. In fact, we note Surrey's acknowledgement that section 32 applies only where a utility already possesses a legal right to enter the municipality to place its infrastructure and where the dispute concerns the terms of use. Having found that BC Hydro had lawful authority to place the Electric Transmission Facilities on the Highway Dedication, we see no merit in Surrey's objections to the applicability of section 32 of the UCA.

We also find that section 121 of the UCA expressly subordinates Surrey's municipal rights where those rights conflict with the BCUC's jurisdiction or – in this case – BC Hydro's CPCN for the Electric Transmission Facilities. It reflects a clear intention to give priority to the BCUC's jurisdiction relative to municipal rights and powers.

Both parties acknowledge that the BCUC's jurisdiction is a matter of statutory interpretation, and both parties cite leading appellate decisions in support. We consider that the principles relied on by both BC Hydro and Surrey support our conclusion that the BCUC has jurisdiction. For example, the three-part approach that BC Hydro outlines – examining the express wording of section 32, the broader statutory framework and the BCUC's core mandate – is comparable to the guidance that Surrey lists, namely interpreting our jurisdiction considering the surrounding context and governing scheme of the legislation.

One principle that Surrey points to, that we must consider binding or relevant precedent, requires particular discussion, because Surrey refers to precedents that the Panel does not consider relevant. The decisions in *Princeton Light* and *Howes v. FortisBC* are specific to private law disputes, unlike this matter. Conversely, we do not accept Surrey's arguments that the Coquitlam and Richmond Appeal Decisions do not support BC Hydro's position; the Panel considers both decisions to be applicable as well as binding precedent. Surrey distinguishes both the Coquitlam and Richmond Appeal Decisions on the basis that in this case, BC Hydro lacks the authority

⁹⁴ Ibid., p. 31.

⁹⁵ BC Hydro Reply Argument, p. 31.

to place the Electric Transmission Facilities on Surrey’s public lands. Having found otherwise, however, we find no merit in Surrey’s arguments against the applicability of those decisions.

The Panel agrees with Surrey’s position that we must construe the UCA in a manner consistent with the common law unless the legislature has clearly expressed an intention to the contrary. Based on the principles of statutory interpretation that Surrey submits we must consider, for example, the requirement to justify our interpretation of our jurisdiction in light of the surrounding context and governing scheme, we find that the broad statutory framework of the UCA evidences the legislature’s intention to give priority to the BCUC’s jurisdiction relative to municipal rights and powers over the placement of utility infrastructure on municipal public lands.

The Panel rejects Surrey’s argument that having filed a response to its claim in the BC Supreme Court, BC Hydro has attorned to that court’s jurisdiction and therefore its Application to the BCUC amounts to an abuse of process. As BC Hydro points out, the BC Supreme Court claim relates to an allegation of trespass whereas the Application before us relates to the public interest determination about prospective use and terms of use of the Highway Dedication. As our analysis that follows demonstrates, the Application is properly brought before the BCUC and **therefore, the Panel finds no evidence of abuse of process and declines to stay the proceeding.**

The BCUC’s jurisdiction over BC Hydro’s continued use of the Electric Transmission Facilities was not displaced when Surrey filed a claim in the BC Supreme Court. To permit that would endorse a ‘race to file’ approach to litigation and forum shopping, instead of considering – properly – the nature of the dispute and asking where the dispute should be adjudicated.

The Panel recognizes it has no authority in regards to claims of trespass, and we make no findings whether BC Hydro’s infrastructure is trespassing on Surrey property. We have, however, found that BC Hydro has lawfully placed the Electric Transmission Facilities on the Highway Dedication, i.e. the deemed CPCN, and whether that is a defence to the trespass allegation is a matter for the BC Supreme Court to determine.

The Panel does not accept Surrey’s suggestion that the Application places the BCUC in the “unenviable position” of deciding whether to prefer its own jurisdiction over that of the BC Supreme Court. It is not a question of whose jurisdiction to prefer, but which jurisdiction is correct for which matter. As BC Hydro notes, Surrey’s trespass claim concerns a retrospective determination on a private law matter, whereas the Application pursuant to section 32 of the UCA concerns a prospective assessment on matters of public interest which invoke the BCUC’s jurisdiction.

The Panel rejects the nuanced distinction that Surrey draws in its interpretation of section 32, between ‘use of land’, which it concedes section 32 addresses, and ‘terms of use’, which it says the section does not address. The BC Court of Appeal in both the Coquitlam and Richmond Appeal Decisions upheld the BCUC’s jurisdiction to set terms of use of municipal land under section 32 in the absence of an agreement between the utility and the municipality. Both are binding precedents on the parties and the BCUC.

4.0 The Transmission Line Relocation Agreement

4.1 Scope and Cost of Proposed Transmission Line Relocation

Having found BC Hydro has a CPCN and a deemed CPCN for the Electric Transmission Facilities, that the parties are in dispute, and that the BCUC has jurisdiction to hear the matter, we now discuss the scope and cost of the proposed transmission line relocation work.

BC Hydro states that it expects that the modification of the Electric Transmission Facilities would involve relocation of one tangent structure and/or raising up to two tangent structures on either of 2L075 and 5L040 circuits (Relocation Project). BC Hydro states that this work is necessary, in part, to address a vertical clearance violation to circuit 5L040.⁹⁶

BC Hydro's initial cost estimate for the Relocation Project, based on recent similar projects, is in the range of \$6 million to \$13 million per circuit for a total of \$18 million to \$39 million. It clarifies that the estimate is only used for the purpose of determining the prepayment amount. BC Hydro notes that the cost estimate range is larger than usual due to Surrey's decision to file a civil claim in the BC Supreme Court before it completed the preliminary engineering work to prepare an estimate.⁹⁷ BC Hydro states that, should the Relocation Project proceed, it would use its Project and Portfolio Management system to minimize delivery risks and to manage the project scope, risk, schedule and cost throughout the project lifecycle.⁹⁸

BC Hydro explains that, in general, it constructs electric transmission infrastructure in accordance with its engineering standards, which are prepared based on CSA Group (formerly the Canadian Standards Association, and commonly referred to as CSA) standards issued under the Canadian Electrical Code Part III. BC Hydro explains that when work on its infrastructure is required to accommodate a change in the land use, as in this case, BC Hydro must perform the work in alignment with current standards.⁹⁹ BC Hydro submits that the three affected circuits were built to the standards in force at the time of their construction, and that, as electrical and engineering standards evolve, existing facilities are essentially grandfathered. Clause 1.2 of CSA C22.3 No.1 provides:¹⁰⁰

Existing installations that meet the requirements of prior editions of this Standard need not be modified to comply with this edition of the Standard, except as might be required for safety reasons by the authority having jurisdiction.

BC Hydro submits that, consistent with its practices, it will ensure that the Electric Transmission Facilities accord with current safety standards as Surrey's Road Project will require major modifications to the Electric Transmission Facilities to account for the change of land use under the lines.¹⁰¹

Surrey states that the cost estimate is too high and is based on incomplete information. Surrey also submits that it is clear that the transmission lines do not comply with current law, and that even if the 72nd Avenue development does not go ahead, they would have to be raised.¹⁰² Therefore, Surrey argues, BC Hydro seeks to impose on Surrey the costs of upgrading the Electric Transmission Facilities to bring them into compliance with current laws and sound engineering practices.¹⁰³

Surrey states that its investigations suggest that BC Hydro's transmission lines, both in Surrey and elsewhere in the Lower Mainland, do not meet the specifications for vertical clearance that BC Hydro is imposing for the modifications to the Electric Transmission Facilities to accommodate the Road Project.¹⁰⁴ Surrey also states that BC Hydro has advised that a 32-meter set back must be maintained around the towers on its 500 kV transmission lines, which includes the towers associated with the Electric Transmission Facilities, and that this

⁹⁶ Exhibit B-1, Appendix H, p. 1.

⁹⁷ Exhibit B-1, pp. 33-34.

⁹⁸ Exhibit B-4, BCUC IR 1.6.

⁹⁹ Exhibit B-3, pp. 6-7.

¹⁰⁰ *Ibid.*, p. 7.

¹⁰¹ BC Hydro Final Argument, pp. 45-46.

¹⁰² City of Surrey Final Argument, p. 40.

¹⁰³ *Ibid.*, p. 39.

¹⁰⁴ Exhibit C1-2, PDF pp. 10-11.

requirement further impedes the development of the Highway Dedication.¹⁰⁵ In addition, Surrey notes that the lack of a detailed list of the work to be done means that the BCUC and Surrey are unable to determine if the work is required or in the public interest.¹⁰⁶

In response to Surrey's submissions, BC Hydro clarifies that the requirement to raise the lines only arises if there is a change in use of the Highway Dedication to allow for large vehicles. BC Hydro observes that the Highway Dedication is inaccessible to vehicle traffic and the surrounding lands are being farmed, much like it has been for decades, and it has no plans to alter the infrastructure in the absence of the Road Project.¹⁰⁷

BC Hydro also notes that it would only be in a position to particularize how current standards specifically impact engineering design in this instance once BC Hydro completes its engineering work. It states that Surrey has not provided the information necessary for BC Hydro to perform that engineering work.¹⁰⁸

Panel Discussion

The Panel accepts that BC Hydro would not be performing the work on the Electric Transmission Facilities but for Surrey's Road Project. Further, there is no evidence that the infrastructure was not built to standards at the time and therefore we accept that it is grandfathered and does not need to be upgraded unless Surrey's project moves forward.

4.2 Terms of Draft Transmission Line Relocation Agreement

In this section, we discuss the TLRA including its purpose, previous TLRAs reached between BC Hydro and Surrey and the proposed terms of the draft TLRA provided as Appendix A to the Application (Draft TLRA).

BC Hydro's Evidence

BC Hydro states that its TLRA provides the framework for BC Hydro to undertake the necessary engineering work to accommodate Surrey's project and it addresses:¹⁰⁹

- BC Hydro's obligation to perform engineering work;
- Timing;
- Estimated cost;
- Surrey's payment obligations; and
- Liability.

BC Hydro states that the Draft TLRA contemplates that Surrey will pay the costs BC Hydro incurs to respond to Surrey's request to modify the Electric Transmission Facilities. It notes that the allocation of 100 percent of the costs to Surrey aligns with the cost causation principles previously articulated and applied by the BCUC in dealing with utility asset relocations requested by municipalities. It submits that Surrey should bear the costs of bringing the Electric Transmission Facilities up to current standard, because these facilities would be grandfathered but for Surrey's relocation request.¹¹⁰

¹⁰⁵ Ibid., PDF p. 11.

¹⁰⁶ City of Surrey Final Argument, p. 40.

¹⁰⁷ BC Hydro Reply Argument, p. 58.

¹⁰⁸ Ibid.

¹⁰⁹ Exhibit B-1, p. 31.

¹¹⁰ Ibid., p. 35-36.

BC Hydro explains that the Draft TLRA is based on BC Hydro's standard TLRA that it has used for many years, including in Surrey, three of which are outlined in Table 1 below.¹¹¹

Table 1: Previous TLRAs Between BC Hydro and Surrey

Date of TLRA	Amount	Description
July 26, 2022	\$7,036,000	Modify up to four transmission line structures for circuits 2L074, 5L040 and 5L081 to accommodate the opening of a proposed road (extension of 84 th Avenue)
March 10, 2023	\$262,500	Completion of detailed design and construction for the relocation of structure 12-04&05 on 60L074NKL.
June 17, 2024	\$126,000	Relocating 60L074 str. 3-11 and reviewing clearance between str. 12-13

BC Hydro states that under the standard TLRA, the requesting party is asked to pre-pay based on a project estimate. BC Hydro then invoices the requesting party based on actual costs once the project is complete, which could result in a refund if the final project cost is less than the estimate, or a bill for the difference if the project cost exceeds the estimate.¹¹² BC Hydro submits that its Draft TLRA is consistent with its standard TLRA and apportions costs to Surrey, as the costs BC Hydro will incur to accommodate the Road Project provide no value to ratepayers.¹¹³

BC Hydro states that the Draft TLRA contemplates Surrey pre-paying \$39 million plus applicable taxes for a total of \$40,950,000 based on the initial Relocation Project cost estimate, with a true-up occurring upon completion. BC Hydro explains that using the upper end of the estimated cost range was prompted by its inability to perform engineering design work given Surrey's litigious approach, and that typically the prepayment amount is based on a preliminary engineering design and not the upper end of an estimated cost range.¹¹⁴ In the absence of further engineering work, there remains a higher degree of uncertainty about matters such as the complexity of design and construction work necessary, design considerations, site-specific soil conditions, the need for additional right-of-way, and consultation.¹¹⁵ BC Hydro states that, in this instance, a prepayment in an amount equal to the upper end of the estimated cost range is appropriate to mitigate cost risk to BC Hydro ratepayers because it reduces the risk of non-recovery if costs exceed the prepayment amount.¹¹⁶

BC Hydro argues that the Draft TLRA upholds the provincial public interest by ensuring that the transmission circuits, as part of the Bulk Electric System, can continue to function and provide safe and reliable service to Lower Mainland homes and businesses and access to the Canada-U.S. electric grid intertie. BC Hydro argues that there is no practicable way for these critical circuits to operate at all without continuing to cross the Highway Dedication in this general alignment.¹¹⁷

¹¹¹ Exhibit B-1, p. 42.

¹¹² Ibid., p. 33.

¹¹³ BC Hydro Final Argument, pp. 38, 50.

¹¹⁴ Exhibit B-4, BCUC IR 1.1.

¹¹⁵ Ibid., BCUC IR 1.1.

¹¹⁶ Ibid., BCUC IR 1.1, BCUC IR 1.2.

¹¹⁷ BC Hydro Final Argument, pp. 32-34.

BC Hydro submits that the interests of its ratepayers are an important component of the public interest and should be given considerable weight in this case. The Draft TLRA upholds this interest in the following ways and is consistent with prior BCUC decisions.¹¹⁸

1. All relocation costs are allocated to Surrey;
2. Recoverable costs include the cost of bringing no-longer-grandfathered infrastructure up to current standards;
3. The Draft TLRA includes an appropriate allocation of liability; and
4. The Draft TLRA includes reasonable prepayment terms with a true-up.

BC Hydro notes that although an engineering-based estimate is not available, the prepayment amount does reflect some analysis, with the expected scope of work and cost range based on recent transmission line modification projects. Further, BC Hydro submits that the estimate is only used for the purpose of determining the prepayment amount and that, consistent with the standard TLRA, Surrey will pay the actual costs with a true-up after completion of the work.¹¹⁹

Surrey's Evidence

Surrey states 72nd Avenue is regionally significant because it forms a connection between Highway 91 and Highway 15, and connections to Langley, Maple Ridge and Golden Ears Way. The primary users of this segment of 72nd Avenue will be Surrey residents, with 40 percent of users non-Surrey residents. Surrey states the users should not cover the costs of the Relocation Project, as it is made necessary by BC Hydro's trespass.¹²⁰ Surrey states that it is willing to sign a TLRA provided BC Hydro agrees to fully fund the cost of the work.¹²¹

Surrey states there are no viable alternatives to the 72nd Avenue development as the lands surrounding the Highway Dedication are private lands inside the Agricultural Land Reserve, which prevents Surrey from securing rights to re-route the planned road. Surrey states that if it cannot develop the road on its designated road allowance, the planned work will be uneconomical and Surrey will be forced to abandon the Road Project.¹²²

Surrey states that it has signed TLRAs for projects where BC Hydro's infrastructure was not trespassing or impacting the development of a road allowance. Surrey acknowledges that although it signed a TLRA in 2022, to accommodate the extension of 84th Avenue, it did so under protest.¹²³

Surrey disagrees with the TLRA process in this instance. The requirement that Surrey entirely fund the required works is not appropriate because, historically, the party that does not hold the property right assumes responsibility to fund works to remedy the property infringement. Surrey argues that past TLRA arrangements between BC Hydro and Surrey offer no precedential value because BC Hydro's infrastructure was not trespassing or impinging on its rights. Surrey explains that it required the modification work in those other instances to accommodate Surrey's infrastructure projects and not to address a property infringement by BC Hydro.¹²⁴

¹¹⁸ BC Hydro Final Argument, p. 36.

¹¹⁹ Ibid., p. 50.

¹²⁰ Exhibit C1-4, BCUC IR 2.2.1.

¹²¹ Ibid., BCUC IR 1.5.

¹²² Ibid., BCUC IR 2.3.

¹²³ Ibid., BCUC IR 1.1.

¹²⁴ City of Surrey Final Argument, pp. 11-12.

Additionally, Surrey submits that BC Hydro's submission that Surrey be responsible for the cost and risk of the relocation should be denied for the following reasons:¹²⁵

- (a) BC Hydro's trespass and lack of diligence in placing the Electric Transmission Facilities on a highway without authority should result in BC Hydro bearing the costs of the Relocation Project. Surrey should not have to pay to remedy what was "plainly a mistake" by BC Hydro;
- (b) The estimate of the Relocation Project cost is based on incomplete, insufficient information and could be \$20 million less than the prepayment sought. The absence of a proper record to make a \$39 million award is, on its own, sufficient to deny any order for prepayment;
- (c) BC Hydro has failed to prove that the Electric Transmission Facilities, at any time, complied with the applicable safety regulations for power lines over and on roads. In light of this failure it has not met its case for an order that Surrey bear the costs of upgrading the transmission lines; and
- (d) Surrey does not consent to any terms in the TLRA and they should only be granted if BC Hydro has convinced the Panel that the terms are in the public interest in light of all the relevant considerations.

Surrey states it does not dispute the importance of the transmission lines, but that given the public benefits of the 72nd Avenue project, fairness does not require that Surrey taxpayers, who are also BC Hydro ratepayers, bear the costs of moving the Electric Transmission Facilities in addition to the costs of the 72nd Avenue project.¹²⁶

Surrey submits that whether the BCUC determines that the Electric Transmission Facilities are in trespass or that they were granted a deemed CPCN, BC Hydro should bear the costs of relocation. If the lines are trespassing, then BC Hydro bearing the costs would be a reasonable legal remedy. If the lines have a deemed CPCN, then the public interest would warrant BC Hydro bearing the costs of relocation.¹²⁷

Surrey submits that the BCUC's proceeding for the City of Coquitlam's Application for a Reconsideration of FortisBC Energy Inc's Use of Lands in Coquitlam (Coquitlam Reconsideration)¹²⁸ is instructive, in that the BCUC found that utility infrastructure that conflicted with municipal infrastructure should be relocated under a shared cost mechanism, with Coquitlam only bearing those costs they would have incurred regardless. The BCUC's reasoning of the public interest in that decision supports, at a minimum, a sharing of costs between BC Hydro and Surrey in this case. However, here, Surrey submits BC Hydro did not have the authority to place its transmission lines on the Highway Dedication.¹²⁹ Surrey submits that a cost allocation analogous to the Coquitlam Reconsideration is just and in the public interest: Surrey bears the cost of developing the Road Project but any additional costs caused by encroachment of the Electric Transmission Facilities should be borne by BC Hydro.¹³⁰

Surrey submits BC Hydro's argument that its opposition to bearing the Relocation Project costs is grounded in opposition to passing the costs onto ratepayers by way of a rate increase is flawed. Surrey submits this implies that the relocation would be so costly as to require a rate increase, which is speculative based on the record, and that BC Hydro would be entitled to recover the costs from ratepayers as opposed to absorbing the cost itself.¹³¹

¹²⁵ City of Surrey Final Argument, p. 32.

¹²⁶ Ibid., p. 33.

¹²⁷ Ibid., pp. 33-34.

¹²⁸ BCUC Decision and Order G-114-21 dated April 16, 2021.

¹²⁹ City of Surrey Final Argument, pp. 34-36.

¹³⁰ Ibid., p. 38.

¹³¹ Ibid., p. 37.

BC Hydro's Reply Argument

BC Hydro submits that there is no evidence that BC Hydro's rights in this case to use municipal lands are any different than those prior instances where TLRAs were signed by Surrey.¹³²

With respect to the \$39 million prepayment, BC Hydro submits that the requirement to prepay is a standard term in BC Hydro's TLRA that Surrey has previously signed. BC Hydro states that all parties requesting modifications to transmission lines are treated the same in this regard, with the only difference being Surrey's actions having precluded refining the cost estimate.¹³³ Further, BC Hydro ratepayers as a whole do not benefit from subsidizing the Road Project through allocating the Relocation Project costs to BC Hydro, so they should not fund the work. Instead, the principle of cost causation indicates the costs should be borne by Surrey.¹³⁴

BC Hydro also argues that if Surrey does not make the prepayment, then BC Hydro ratepayers are effectively having to finance the work and incur additional costs to do so. Further, BC Hydro submits that financing during construction is a real cost of the relocation work, and therefore the proposed prepayment keeps BC Hydro's ratepayers whole.¹³⁵

Finally, BC Hydro submits that it is reasonable and consistent with cost causation principles for Surrey to pay the costs for the relocated Electric Transmission Facilities to meet current standards.¹³⁶

Panel Determination

The Panel finds that the Draft TLRA represents reasonable terms for BC Hydro's modification of the Electric Transmission Facilities for Surrey's Road Project and the continued use of the Highway Dedication. In addition, the Panel finds that Surrey must pay the full cost of the Relocation Project as set out in the Draft TLRA, by pre-paying in full with a true-up to occur on project completion. The Draft TLRA is based on BC Hydro's standard TLRA that it has used for many years, including in Surrey, and therefore Surrey is familiar with the terms. The Panel notes that Surrey does not point to any terms in the Draft TLRA that it finds objectionable, except for the cost allocation and requirement that it prepay to relocate the Electric Transmission Facilities.

The Panel rejects Surrey's position that it is unfair to require Surrey's taxpayers to pay for both the municipal Road Project as well as the cost to move the Electric Transmission Facilities. The regulatory principle of cost causation remains applicable. Accepting Surrey's argument suggests that BC Hydro's ratepayers should absorb the cost to relocate the Electric Transmission Facilities because of the public benefits of the Road Project.

The Panel also rejects Surrey's argument that BC Hydro should bear the costs of upgrading the Electric Transmission Facilities, because of its failure to prove that the transmission lines complied with the applicable safety regulations for power lines over and on roads. We are satisfied that these facilities would be grandfathered but for Surrey's relocation request and note there is no evidence that the infrastructure is not in compliance with applicable standards.

The Panel also accepts that there is no evidence that the prepayment, which is a standard term in the TLRA, is not appropriate in this case. We are not persuaded that BC Hydro ratepayers should have to incur the additional cost to finance the relocation work so that Surrey can avoid the prepayment. We canvassed the reason for the larger cost estimate range in Section 2.3, and note that perhaps the parties could complete the preliminary

¹³² BC Hydro Reply Argument, p. 8.

¹³³ Ibid., p. 56.

¹³⁴ Ibid., p. 55.

¹³⁵ Ibid., p. 56.

¹³⁶ Ibid., pp. 56-58.

engineering work to permit a more precise cost estimate and therefore a potentially lower prepayment. By doing so, Surrey may have the opportunity to mitigate the amount of the prepayment.

We note BC Hydro's description of the difficulties it has encountered in performing preliminary engineering investigations at site because of the action before the BC Supreme Court, and that the Draft TLRA requires Surrey to prepay at the top end of the cost range for the Relocation Project. In consideration of these contentious matters, **the Panel directs BC Hydro to file the following compliance filings should the Relocation Project proceed:**

- (a) A copy of the executed Transmission Line Relocation Agreement for BCUC acceptance, within 30 days of signing;**
- (b) An Association for the Advancement of Cost Engineering (AACE) Class 3 cost estimate for the Relocation Project, including a cost breakdown for major scope items; and**
- (c) A Final Report within 12 months of substantial Relocation Project completion, including a final cost breakdown and final costs apportioned to Surrey**

DATED at Vancouver, in the Province of British Columbia, this 22nd day of August 2025.

Electronically signed by Blair Lockhart

E.B. Lockhart
Panel Chair

Electronically signed by Wendy Royle

W.E. Royle
Commissioner

British Columbia Hydro and Power Authority
Terms of Use of Municipal Land in the City of Surrey

LIST OF ACRONYMS

Acronym	Description
72 Avenue Road Allowance	The City of Surrey's proposed extension of 72 nd Avenue, currently unpaved gazetted road
Application	BC Hydro's Application to the BCUC for an order setting the terms on which BC Hydro will continue to use a highway dedication in the City of Surrey for high voltage transmission facilities
ATCO Gas	Supreme Court of Canada decision in <i>ATCO Gas and Pipelines v. Alberta</i>
BC Electric	British Columbia Electric Company (BC Hydro's predecessor)
BC Hydro	British Columbia Hydro and Power Authority
BCUC	British Columbia Utilities Commission
CSA	Canadian Standards Association
Coquitlam Appeal Decision	<i>City of Coquitlam v. British Columbia Utilities Commission</i> , 2021 BCCA 336
CPCN	Certificate of Public Convenience and Necessity
Highway Dedication	The City of Surrey's proposed extension of 72 nd Avenue, currently unpaved gazetted road
HPPA	<i>Hydro and Power Authority Act</i>
Relocation Project	The relocation of the tower on the Highway Dedication and the necessary work to maintain adequate clearances between the overhead transmission conductors and vehicles, street lighting fixtures and other installations on the proposed new road
Richmond Appeal Decision	<i>City of Richmond v. British Columbia Utilities Commission</i> , 2024 BCCA 16
Surrey	City of Surrey
TLRA	Transmission Line Relocation Agreement
UCA	<i>Utilities Commission Act</i>

British Columbia Hydro and Power Authority
Terms of Use of Municipal Land in the City of Surrey

EXHIBIT LIST

Exhibit No.	Description
-------------	-------------

COMMISSION DOCUMENTS

A-1	February 11, 2025 – Appointment of Panel
A-2	February 20, 2025 – BCUC Order G-34-25 establishing a regulatory timetable
A-3	March 18, 2025 – BCUC Information Request No. 1 to BC Hydro
A-4	March 18, 2025 – BCUC Information Request No. 1 to City of Surrey
A-5	March 27, 2025 – BCUC Order G-82-25 establishing an amended timetable
A-6	May 15, 2025 – BCUC Order G-124-25 establishing a further regulatory timetable

APPLICANT DOCUMENTS

B-1	February 7, 2025 – BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO) – Terms of Use of Municipal Land in the City of Surrey Application
B-2	February 18, 2025 – BC Hydro submitting response to the City of Surrey’s objection to the BCUC’s jurisdiction
B-3	March 12, 2025 – BC Hydro submitting Rebuttal Evidence
B-4	March 25, 2025 – BC Hydro submitting response to BCUC Information Request No.1
B-5	March 27, 2025 – BC Hydro submitting response to City of Surrey’s extension request to BCUC Information Request No. 1
B-6	May 12, 2025 – BC Hydro submitting response to City of Surrey’s request for sur-reply

INTERVENER DOCUMENTS

- C1-1 February 14, 2025 – **CITY OF SURREY (SURREY)** – Submitting objection to the BCUC's jurisdiction
- C1-2 March 5, 2025 – Surrey submitting summary of evidence
- C1-3 March 27, 2025 – Surrey submitting extension request for response to BCUC Information Request No.1
- C1-4 March 31, 2025 – Surrey submitting response to BCUC Information Request No.1
- C1-5 May 9, 2026 – Surrey submitting request for sur-reply