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ROBERT J. PELLATT
COMMISSION SECRETARY
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Log No. 15498

VIA E-MAIL

nfnasn_hrly@yahoo.ca

July 26, 2006

Mr. Harley Anfinson

Dear Mr. Anfinson:

Re: British Columbia Transmission Corporation ("BCTC")
Certificate of Public Convenience and Necessity Application
Vancouver Island Transmission Reinforcement Project ("VITR")
Project No. 3698395/Order No. G-70-05
Application for Reconsideration of VITR Decision

This is in response to your July 17, 2006 letter (attached) in which you state that

"EVERYONE (myself) was not given the opportunity for presentation at the hearing"

and request an appeal to the finding in the VITR Decision dated July 7, 2006.

The Regulatory Timetable for the VITR proceeding was established by Order No. G-72-05, and amended and extended by several subsequent Orders. The Commission has no record that indicates that you asked to be registered as an Intervenor or Interested Party in the VITR proceeding, or that you asked to make a presentation at the Town Hall Meetings on Salt Spring Island or in Tsawwassen which took place in advance of the public hearing in Vancouver. Nor is there any record of your appearing at the public hearing in Vancouver.

With respect to your request for an appeal of the VITR Decision, a copy of the Reconsideration and Appeals section of the Commission's Participants' Guide, which includes information on appeals, is enclosed. Applications for leave to appeal must be made to the Court of Appeal under its rules.

The Reconsideration and Appeals section of the Guide also refers to applications for reconsideration. Applications for reconsideration are made to the Commission. The Guide identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists to allow a reconsideration. An application for reconsideration by the Commission proceeds in two phases. In the interest of both regulatory efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In the initial screening phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If the Commission determines that a reconsideration is warranted, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application.

While your letter refers to an appeal rather than a request for reconsideration, the Commission will treat it as a request for reconsideration for the purposes of applying the criteria it ordinarily applies in the first phase of a reconsideration application. In this instance, the Commission considers it unnecessary to invite comments from BCTC, registered intervenors or interested parties. The record of the proceeding fails to disclose any evidence that you sought an opportunity to be heard prior to the Commission's Decision. Since you did not request an opportunity to be heard during the proceedings, the Commission concludes that you were not denied an opportunity to be heard. In the absence of any evidence that you sought to be heard during the proceedings, the ground set forth in your letter does not meet the criteria for a reconsideration application to proceed to the second phase.

Therefore, the Commission denies your application for a reconsideration of the VITR Decision.

Yours truly,

Original signed by:

Robert J. Pellatt

JBW/dg

Enclosures

cc: Mr. Marcel Reghelini, Director, Regulatory Affairs
British Columbia Transmission Corporation
BCTC-VITR Registered Intervenors and Interested Parties (*BCTC-VITR*)

From: Harley Anfinson [nfnsn_hrly@yahoo.ca]
Sent: Mon, July 17, 2006 1:36 PM
To: Commission Secretary BCUC:EX
Subject: VITR

Dear Sirs/Maam,

Due to my MEDICAL CONDITION and health in general, I was not given my right to present facts that were of utmost importance in the above ruling by the Commission. Under Section 7. of the Canadian Charter of Rights, "Everyone has the right to life, liberty and security of the person and has the right not to be DEPRIVED thereof except in accordance with the principles of fundamental justice". This was a clear VIOLATION of my RIGHTS as EVERYONE (myself) was not given the opportunity for presentation at the hearings.

Section 15. (1) States " Every individual is equal before and the law and has the right to equal protection and equal benefit of the LAW without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or **PHYSICAL HEALTH**".

(2) adds that this does not preclude any law or Group, program or activity.

Alternative Dispute Resolution/Negotiated Settlement Process

Since the inception of the Alternative Dispute Resolution process in 1994, many utility applications have been resolved using this alternative method of reviewing utility filings. This process has led to a significant decrease in the number of oral public hearing days (see page 78 - 2001 Annual Report) and related costs. Guidelines outlining the Negotiated Settlement Process were issued by the Commission in January 1996 and last updated in January 2001. The Commission continues to explore different methods of regulation that offer alternatives, or are complementary to its oral public hearings. While not all applications made to the Commission are suited to the Alternative Dispute Resolution/Negotiated Settlement Process, a pre-hearing negotiation may be used to reach agreement on issues that traditionally would be examined at a public hearing. As a result, the settlement of certain issues can significantly reduce hearing time and costs.

The Commission can also decide if a written public hearing process will lead to a more efficient decision on a utility application.

As a individual of legal age I submit my appeal to this finding since the BCUC has allowed sufficient time for my submissions as a precondition to the Commissions ability to grant factual findings.

Yours Truly,

Harley Anfinson

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Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the

applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

Figure 4-2
OPPORTUNITIES AND MECHANISMS
FOR PARTICIPATING IN COMMISSION ACTIVITIES

