



SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

ROBERT J. PELLATT  
COMMISSION SECRETARY  
Commission.Secretary@bcuc.com  
web site: <http://www.bcuc.com>

Log No. 15698

**VIA E-MAIL**

August 11, 2006

Mr. Marcel Reghelini  
Director, Regulatory Affairs  
British Columbia Transmission Corporation  
10<sup>th</sup> Floor, Four Bentall Centre  
1055 Bentall Street  
PO Box 49260  
Vancouver, B.C. V7X 1V5

BCTC-VITR Registered Intervenors  
and Interested Parties

Dear Sirs:

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

By the enclosed letter dated August 7, 2006, Ms. Pam Sutherland, Dr. Kyong Nam and Mr. Mark Warwarick ("Sutherland et al.") requested a reconsideration of the VITR Decision dated July 7, 2006, on the grounds that the Commission made errors both in fact and in law and the errors have significant material implications to the Tsawwassen homeowners thereby affected (the "Reconsideration Application").

A copy of the Reconsideration and Appeals section of the Commission's Participant Guide, which identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists to allow a reconsideration, is enclosed.

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 this first phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The Commission usually invites submissions from the other participants in the proceeding that led to the Decision that is the subject of the reconsideration request, or may consider that comments from the parties are not necessary. 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.

The Commission hereby establishes a written comment process on the Sutherland et al. Reconsideration Application to address the first phase issue of whether a reasonable basis exists to allow a reconsideration. The first phase will be a preliminary examination to assess the application in light 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 Reconsideration Application, a subset of these items or additional items?
- If there is to be a reconsideration, what process should be established for the reconsideration?

The first phase assessment process for the Reconsideration Application will be as follows:

- BCTC, Intervenors and Interested Parties submit written comments, if any, to the Commission by Friday, September 8, 2006, with a copy to Sutherland et al.
- Sutherland et al. submits a written reply, if any, to the Commission by Friday, September 29, 2006.

Written comments in the first phase should address whether the threshold for reconsideration has been met, rather than the substance of the issues. Following the completion of this written comment process, the Commission will decide whether or not a reconsideration should proceed. If the reconsideration proceeds to the second phase, the parties will be allowed subsequently to address the substance of the issues that the Commission approves for reconsideration.

Yours truly,

*Original signed by*

Robert J. Pellatt

JBW/rt

Attachments

cc: Sutherland et al.  
Ms. Pam Sutherland  
1320 53A Street  
Tsawwassen, B.C. V4M 3E6  
*pamsutherland@dccnet.com*

**From:** Pam Sutherland [pamsutherland@dccnet.com]  
**Sent:** Mon, August 7, 2006 11:02 PM  
**To:** Commission Secretary BCUC:EX  
**Subject:** Application for Reconsideration of VITR Decision.  
To: Robert Pellatt, Commission Secretary, BCUC.  
Sent: Monday 7<sup>th</sup> August, 2006.

Dear Mr. Pellatt,

Re: British Columbia Transmission Corporation.  
CPCN Application – VITR.  
Application for Reconsideration of VITR Decision.

This communication represents a request for Reconsideration of the Utilities Commission VITR Decision dated 7<sup>th</sup> July, 2006.

We refer to pages 7935 – 7985 of the PROCEEDINGS AT HEARING Transcript, Volume 42A, the last day and literally the last 2 hours of the Utilities Commission Hearing into the VITR. The discussion concerned the Right of Way Document, P.I.D.# 015-913-821, Registered owner of Charge, B.C.Hydro, T105021, Applied to the Land Title on 9<sup>th</sup> August 1981; also to Right of Way Document P.I.D # 009-189-459, Registered owner of Charge, B.C.Hydro, J22376, Applied to the Land Title on the 1<sup>st</sup> March, 1973. These documents refer to the B.C. Hydro Right of Way which runs parallel to Highway 17 along the North side of this Provincially owned Highway, from 52<sup>nd</sup>. Street to the east, and along to the Ferry Causeway to the West. It currently houses the existing HVDC lines, which will be de-rated to zero in 2007.

The Documents referred to above, were requested by Intervenor Karsten Holmsen in the BCUC Transcript (TR 42A), and it is in the BCUC Decision that the Documents were not provided as requested. Quite obviously, these important ROW Agreements are still very much in effect, the line continues to be operational, and the subject of the Documents production/non-production, formed the basis of argument between Lawyers Carpenter (BCTC), Sanderson (BCHydro) and Yardley (Corp. of Delta) discussion of which took up the final 2 hours of this 42 day Hearing. There was suggestion that the Hearing should adjourn “in camera” for consideration between the Commissioners and Legal Representatives present, so “sensitive” were the ROW Agreements

deemed to be, that avoidance of public inclusion was sought. This was curious in view of the stated “transparency” of the Public Hearing. In consequence, we (Tsawwassen Intervenors in this process) acquired ( with some difficulty), the ROW documentation to satisfy our collective curiosity. The prevailing opinion in Tsawwassen is that when BC Hydro has ownership and subsequent use of its own ROW, within an existing industrial corridor, and where it will cause no harm nor detriment to any living persons, then it has a confounded nerve in attempting to put a new application of massive power along privately owned property, where the contents of the prevailing Easement document state clearly the limitations and conditions of use.

With reference to the apparent inability of Mr. Fralic (BC Hydro negotiator with First Nations) to reach a satisfactory understanding with Tsawwassen First Nations during their Land Treaty Negotiations, we wish to point out that this is an agreement in principle only, and it behooves BC Hydro/BCTC to pursue more meaningful dialogue in order to reach an equitable agreement with First Nations before indulging in discriminatory practices against their neighbours in the Town of Tsawwassen. At this juncture, we draw your attention to the remarks of The Hon. Tom Christensen, Minister of Aboriginal Relations and Reconciliation, who made the following comment when interviewed by The South Delta Leader, Friday 4th August, 2006:-

**“ONE OF OUR PRINCIPLES IN MOVING TOWARDS TREATIES IS THAT WE NEED TO PROTECT RIGHT OF WAYS SUCH AS THIS ONE (HWY 17), SO IT WOULD BE EXCLUDED FROM WHAT THEY (TFN) WOULD RECEIVE. BC HYDRO WOULD RETAIN THE RIGHT OF WAY AND IT WOULD BE OFF – LIMITS FOR DEVELOPMENT BY TFN.” - Tom Christensen.**

Dancing around the issue in the manner that we have witnessed by the powers that be at the BCTC, serves no purpose other than to inflame an already unjust situation. The fact is that the ROW Agreements already in place give BC Hydro, and by definition BCTC, the right to do anything that they darn well please. They may go underground, overhead, maximize the Voltage, minimize the Voltage, dig large tunnels, large holes, pour concrete trenches, tunnels, in fact, whatever they choose, which is of course precisely why Bruce Barrett (BCTC) chose not to reveal the ROW Documents to the public. It was simpler to stick to the hidden agenda, ignore the information requests, keep the documents under wraps, and tell everyone that “new agreements “ would have to be negotiated -BLATANTLY UNTRUE! .

It is truly amazing that after 42 days of deliberation at the Utilities Hearing, not one Lawyer present sought to opine the existing easement agreement relating to the Tsawwassen homes. Instead, the Hillside Farms decision was presented by BCTC as a comparable legal precedent, which is totally different to the Tsawwassen situation. Before the Utilities Commission made its unfortunate decision, it would have been a terrific idea if the Commissioners had actually availed themselves of the easement documents and read them. At least having a rudimentary knowledge

of the existing legalities, would in large measure have assisted them in coming to a more reasonable conclusion than that offered. BCTC's plan for the Tsawwassen overhead easement involves a new concept and a brand new application of enormous power capacity and not simply an 'upgrade' to an archaic structure about to be decommissioned. They have no legal right, which put simply, means they are breaking the law. Better alternatives exist, and outside of residential neighbourhoods. If public expense is the issue, the many millions of dollars wasted on this Hearing could have been put to better use. Tsawwassen does not need to be considered the butt of BC Hydro's fiscal irresponsibility in past endeavours.

In conclusion, it is our unanimous opinion that **THE COMMISSION HAS MADE ERRORS BOTH IN FACT AND IN LAW, AND THE ERRORS HAVE SIGNIFICANT MATERIAL IMPLICATIONS TO THE TSAWWASSEN HOMEOWNERS THEREBY AFFECTED.**

For all of the reasons given, we unanimously request a reconsideration of the VITR Decision.

Yours truly,

The following Intervenors and Interested Parties;

Pam Sutherland.

Kyong Nam.

Mark Warwarick.

(Originals signed)

N.B. If copies of the ROW and Easement documents alluded to have not been made available by BCTC, please contact any of the signatories above, who will be pleased to provide.

## **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**

