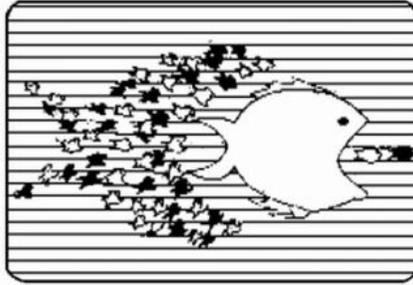


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Our file: 7445

December 16, 2009

## VIA EMAIL

Erica M. Hamilton  
Commission Secretary  
BC Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mesdames/Sirs:

**Re: Southern St'at'imc Communities Electrification Project ("SSCEP")**

These are the comments on process of BCOAPO *et al.* in the above noted matter. At a workshop held on December 14, 2009 (the "Workshop"), BC Hydro (and BCTC) presented the SSCEP along with a proposed regulatory timetable. Commission staff requested comments on process at the conclusion of the workshop.

Once again, we have yet another effort by BC Hydro to employ s. 44.2 for a purpose for which it was never intended - that is, as a back door route to evade the more rigorous oversight and accountability afforded by the CPCN procedure when it comes to standalone capital projects. That provision is intended to provide more comprehensive regulation on the level of strategic planning over periods of time that are integrated with long term resource planning processes. Section 44.2 explicitly regulates expenditure, not the construction of works which are the domain of section 45.

This application is for an order by the BCUC under section 44.2(1)(b), 58-61 of the *Utilities Commission Act* (the "Act"), and the *Remote Communities Regulation*. Upon initial review, our clients are supportive of this application, subject to the further evidence via information requests. As identified at the Workshop, however, we share the concerns of Staff with respect to the Commission's jurisdiction to approve this project under s. 44.2. In our view, a Certificate of Public Convenience and Necessity (CPCN) is the appropriate regulatory process for this project. Functionally, this may not change the regulatory process materially, but in our view, the Commission does not have jurisdiction to approve this project under s. 44.2.

This is the third application of late from BC Hydro that has made this jurisdictional error. In our final submissions on the Mica Switchgear Project<sup>1</sup> and Gordon M. Shrum Turbine Replacement Project<sup>2</sup> we stated:

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<sup>1</sup> Project No. 3698567

<sup>2</sup> Project No. 3698568

This situation places our clients in a dilemma. They want to see the project go ahead, they accept that a good case has been made out for it, but BC Hydro is asking the Commission to do something that is beyond its jurisdiction, and it is misapplying the regulatory machinery.

Similarly in the present application, we submit that section 44.2 is misapplied. BC Hydro's position as we understand it, is that this project is unique and is best characterized as a system extension, making a CPCN unnecessary per s. 45(2)(b).

This line of reasoning is problematic. It is not clear how BC Hydro defines what the relevant "system" is within the meaning of s. 45(2)(b). Presumably they do not suggest that their entire operation, or even their entire transmission grid, is a "system" for those purposes: otherwise, until the recent insertion of s. 44.2 of the *Utilities Commission Act*, BC Hydro did not require any form of regulatory approval to undertake any capital project of any sort for the enhancement of its physical plant or transmission grid, as the case may be. If the "system" is the entire grid, and therefore the addition of any distribution lines, or substations (or generation plant, for that matter) to the grid is deemed to enjoy CPCN approval under 45(2)(b), then this definition would exempt all of BC Hydro's capital expenditures from CPCN oversight. This position becomes even more absurd when one considers the fact that section 44.2 is a recent amendment (2008-13-8). This means that in BC Hydro's position, during the entire period prior to section 44.2 coming into effect, there was no need for regulatory oversight of any capital expenditure that could be characterized as a system or plant expenditure (which they define so broadly as to be all-encompassing).

On the other hand, if BC Hydro's position is that the existing transmission line to which the proposed distribution assets would be connected is the "system" for s. 45(2)(b) purposes, it cannot be said that attaching distribution infrastructure to a "system" which forms an element of the transmission grid constitutes an "extension" of that particular system, as Hydro does not seek to enhance or extend the transmission facility.

When probed at the Workshop, BC Hydro cited timing as the central reason for filing under s. 44.2. Specifically, BC Hydro intends to commence clearing in early February in order to accommodate the nesting season and the resulting complications. Section. 45(1) of the Act prohibits construction of a public utility plant or system subject to a CPCN *except as otherwise provided*. In other words, without specific authorization, construction would likely be delayed if this application was filed as a CPCN.

Our clients appreciate the timing and environmental sensitivities around this project, and as stated above, are supportive of the principles behind the remote and aboriginal community electrification. However, these factors do not, in our view, trump the appropriate regulatory overview.

A principled and appropriate solution, in our view is for BC Hydro to amend the application to seek the appropriate s.45 CPCN approval, and for the Commission to issue an interim order under section 90(2) of the Act, allowing for the seasonally-sensitive work to clear the rights-of-way to commence on the scheduled date.

We note that BC Hydro could have brought forward this application in a timely manner so that it could have been dealt with under section 45(1). BC Hydro adopted a similar strategy in the Toad River Application to force review under section 44(2). BC Hydro clearly prefers consideration

under section 44(2) and appears to be manipulating filing timing to force consideration under 44(2).

With respect to the proposed regulatory schedule, we have no objections. We have one further comment on the general process of RCE projects moving forward: applications and materials should be filed with the Commission in the usual manner, and materials should be accessible on the BCUC and BC Hydro website in the same manner as any other regulatory process.

All of which is respectfully submitted,

**BC PUBLIC INTEREST ADVOCACY CENTRE**

*Original in file signed by:*

Eugene Kung  
Barrister & Solicitor