



Kyuquot Power Ltd.

101-1444 Alberni Street
Vancouver, B.C. Canada V6G 2Z4
Tel (604) 688-8271 Fax (604) 688-1286

By Email

March 15, 2021

Mr. Patrick Wruck, Commission Secretary
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C. V6Z 2N3

**Kyuquot Power Ltd. ("KPL") – BC Utilities Commission
Order No. G-39-21 – KPL Final Argument**

Please find attached KPL's Reply Argument with respect to the above.

The undersigned should be contacted directly, in respect of any questions or clarifications.

Yours truly,

Roshni Reddy
For Tanya L DeAngelis
KYUQUOT POWER LTD.

REPLY ARGUMENT ON BEHALF OF

KYUQUOT POWER LTD.

**INVESTIGATION INTO THE SAFETY AND RELIABILITY OF THE
KYUQUOT POWER LTD. SYSTEM**

MARCH 15, 2021

INVESTIGATION INTO THE SAFETY AND RELIABILITY OF THE KPL SYSTEM

Reply Argument of KPL

I. INTRODUCTION

The Ka:yu:k't'h' / Che:k'tles7et'h' First Nations (“KCFN”) Final Argument (“KCFN Final Argument”) consists of two separate parts. One authored by TE Burns Engineering (“Burns Argument”) and the other by SBR Consulting Ltd. (“SBR Argument”). Throughout the British Columbia Utilities Commission’s “Investigation into the Safety and Reliability of the KPL System” (“Review Process”) Kyuquot Power Ltd. (“KPL”) has tried to accommodate KCFN’s unusual approach to the filing of evidence and commentary on various matters.

Typically BCUC review processes include a mix of fact and opinion without strict adherence to the rules of evidence.¹ The BCUC’s Rules of Practice and Procedure (“BCUC Rules”) and in particular section 4.02 allow the BCUC to take a broad approach to the conduct of its regulatory processes.² In order to stay within the bounds of natural justice and in fairness to all parties there should be some limits on the submission of evidence and commentary in final argument.

A. Use of Engineering Seals

Assuming that the Engineer & Geoscientist BC’s (EGBC’s) Quality Management Guidelines (emphasis added)³ are legally binding, even though they are expressed to be guidelines, section 3.2.1.1 says:

“Documents requiring authentication are those that are prepared by Professional Registrants in their professional capacity or under their Direct Supervision, involving the delivery of products or services requiring the application of professional engineering or professional geoscience.”

When KCFN filed its Reply Submission⁴ to KPL’s compliance filings (“KCFN Reply Submission”) all the material was stamped by an engineering seal including

¹ Under section 2.1 of the Utilities Commission Act (“UCA”) certain provisions of the Administrative Tribunals Act (B.C.) (“Act”) are made applicable to the BCUC. Section 11 of the Act which is applicable to the BCUC says in part: “...the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.”

² Section 4.02: “Notwithstanding the procedures provided for in the rules, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.”

³ file:///C:/Users/daustin/AppData/Local/Temp/7/EGBC-Authentication-of-Documents-V3-0.pdf

⁴ Exhibit C2-6

matters that clearly do not require the application of professional engineering.⁵ KPL took no notice of this over-use of the seal and responded in its Final Argument to the matters raised in KCFN's Reply Submission.

The entire KCFN Final Argument is also stamped with engineering seals. KPL is not aware of any final argument in any BCUC proceeding that has been stamped by engineering seals. The preparation of final argument does not require the application of professional engineering. Any evidence that requires sealing should already be on the record and referred to in the KCFN Final Argument. The KCFN Final Argument should be viewed by the BCUC without reference to engineering seals.

To further confound matters, the SBR Argument states:⁶

“This letter provides professional comment on non-technical matters related to submissions from all parties”.

Professional comment meaning “professional” argument on non-technical matters or any other matter including technical matters has no place in BCUC proceedings. Argument on all matters should be precisely that – argument. There is no such thing as “professional” argument.

Legal argument is the exception to not giving “professional argument” any special status. Final arguments in BCUC proceedings often contain legal argument which essentially are expert opinion. KCFN's legal arguments are made by SBR under seal.⁷ SBR's legal expertise has not been disclosed.

B. Introduction of New Evidence and Expert Evidence

KPL appreciates that the introduction of some new evidence can be accommodated in final argument. However, the argument phase of the Review Process is not the time to introduce new expert opinion evidence or new evidence under the guise of “professional comment on non-technical matters”⁸ or technical matters.

⁵ Exhibit C2-6, e.g. KCFN Electrical Energy Consumption vs KPL Energy Consumption, Vegetation Management & the Asplundh Report, and Load Management

⁶ SBR Argument, page 1

⁷E.g. SBR Argument, page 2, “As such, agreements for access to infrastructure previously on Federal Land (IR#6) would not necessarily remain legally in force. Any such agreements would require ratification by the new government.”

⁸ E.g. Burns Argument, page 5, first paragraph last sentence and the requests and material concerning fuses. SBR Argument Page 7, material about Walters Island and vegetation management. Page 8, first and second paragraphs, material about vegetation management. Page 13, first paragraph.

It appears to KPL that through the use of engineering seals, KCFN is trying to convert major portions of its Final Argument into expert opinion evidence. This is not appropriate.

C. Respectfully Participating

Portions of the SBR Argument are very personal.⁹ According to the BCUC Rules:¹⁰

“Intervenors are expected to participate actively, responsibly and respectfully for the duration of the proceeding.”

Personal references should be ignored.

D. Headings

KPL’s comments on the KCFN Final Argument are set out below. For convenience, the headings that precede these comments are the same headings used in the Burns and SMR Arguments. KPL has not commented on every part of these arguments and the absence of comment should not be construed as acceptance.

II. COMMENTARY.

A. Burns Argument

a) March 2020 Outages

The Burns Argument acknowledges that there is a dispute as to the causes of the March 2020 outages between March 6th and 16th, 2020. The cause(s) of the March outages remain unknown. In any event, KPL has applied to BC Hydro for the permanent installation of a 30T fuse.

b) Reliability – Peak Demand

The Burns Argument contends that energy consumption: “is an approximate proxy for demand”. This approximation is so imprecise that it is useless.

The solution to disagreements about peak demand at Houpsitas is the installation of a peak demand meter at the point of interconnection between the KPL and KCFN systems. KPL welcomes KCFN’s support for this installation.

⁹SBR Argument, page 2, references to Mr. McDonnell and Mr. Sunell. On page 3, references to HB Energy i.e. “It also became apparent that the HB personnel most frequently working in Houpsitas did not hold the required credentials, nor have the recommended knowledge, for working on high voltage power distribution systems”. On page 10, comments about Mr. Sunell

¹⁰ Section 10.1

c) GOLB S3 – Joint Operation

BCUC Order G-65-21 directs KPL and KCFN to pursue mediation with regard to the dispute regarding GOLB S3 including a joint operating order. Subject to KCFN’s application for reconsideration of this Order, KPL is optimistic this process will lead to a resolution of this matter.

B. SBR Argument

a) History of KPL’s Electrification of the Kyuquot Area

KPL received \$2.55 million from KCFN over a four year period commencing two years following the commercial operation date of the KPL system. By this date the reliability of this system was known to KCFN. There is no link between this investment and the reliability of the KPL system. These amounts did not fund the construction of this system but did result in a lower rate of electricity for the KCFN Houpsitas account. By far the largest KPL account.

b) Background of KCFN’s Complaint

During the entire period referenced under this heading the KPL system was annually inspected by Technical Safety BC and any identified deficiencies were corrected.

c) Requirement of Documents Approved by a Professional Engineer.

Reference is made to Engineers & Geoscientist BC’s (EGBC’s) Quality Management Guidelines and the following conclusions advanced:

“...Either way, it is my view that all such documents being considered as part of this investigation should be sealed.”

This should also apply to all technical arguments included in comments made in KPL’s Final Argument (BCUC File 64931). Such arguments should not be considered unless under seal.”

KPL’s comments on these guidelines are set out under the heading **“1. INTRODUCTION – Use of Engineering Seals”**.

d) Jurisdiction / Ownership of “Joint Use” Structures

KPL has clearly stated its desire to conclude a joint pole use agreement with KFCN.

However it does not agree with the legal opinions¹¹ provided by SBR under this heading because this entity has not provided its qualifications and experience to give these opinions.

It is claimed that:

“KCFN have several large capital projects in the planning/ design stages will increase the amount of power currently being consumed.”

Subject to the limitation of BC Hydro’s distribution line to deliver electricity to the point of interconnection with KPL and the KPL system to deliver this electricity to KCFN, KPL would be pleased to increase the amount of electricity it provides to KCFN. The increased revenue would help pay the fixed costs of the KPL system.

e) GOLB SWITCH (S3)

See KPL’s response to Burn’s Argument under the heading “**c) GOLB S3 – Joint Operation**”.

f) Comments on KPL Submissions for BCUC Order No. G-280-20 and G-309-20

Directive 1

SBR has provided no evidence of its qualifications and expertise with respect to vegetation management. KPL relies on the qualifications and expertise of Asplundh Canada ULC. It reiterates that it has complied with BCUC Directive 1.¹²

Directive 2

A Vegetation Management Report regarding Completion of Priority 1 work was not required as no such work was identified in the Vegetation Management Report.

Directive 3

The Maintenance Plan Completion Report was filed on February 22, 2021 in compliance with BCUC Order G-29-21. The assertion in the commentary that the KPL filing was late is incorrect.

¹¹ SBR Argument, page 5, items 2,5 and 6.

¹² Exhibit D-16, page 1

Directive 4

BCUC Order G-29-21 directs KPL to file the Assessment Report by April 1, 2021. The assertion in the commentary that KPL has not filed the Assessment Report as directed by the BCUC is incorrect.

Directive 5

As necessary, KPL relies on the advice of duly qualified professionals.

g) Record of Power Outages – Fall/Winter 2020/2021

KPL agrees that it did not record in its Progress Reports the outage for the period October 13 to October 16 of 77 hours. It was a mistake. This outage is included in the following amended table for the period July 1, 2020 to January 22, 2021 which first appeared in Progress Update #13:¹³

Sept 12, 2020	BC Hydro planned outage
Oct 13-16, 2020	BC Hydro forced outage due to high winds/trees (53 hrs) KPL forced outage due to high winds/trees (23 hrs)
Oct 29-31, 2020	BC Hydro forced outage due to high winds/trees
Nov 17-20, 2020	BC Hydro forced outage due to high winds/trees
Nov 27-28, 2020	BC Hydro forced outage due to high winds/trees
Dec 18-19, 2020	BC Hydro forced outage due to high winds/trees
Jan 02, 2021	BC Hydro forced outage due to high winds/trees
Jan 10-11, 2021	BC Hydro forced outage due to high winds/trees

For the period July 1, 2020 to January 22, 2021, there were 8 power outages affecting all of Kyuquot customers totalling 270 hours, of which 247 hours were attributable to BC Hydro and 23 hours were attributable to KPL.

III. CONCLUSION.

Given its location in a remote and rugged area on the west coast of Vancouver Island the KPL has demonstrated that its system is safe and reliable. KPL has acknowledged and accepted some of KCFN's suggestion to improve the reliability of this system.

KCFN has not provided any evidence that the KPL system is not safe.

All of which is respectfully submitted

March 15, 2021

¹³ Exhibit D-24