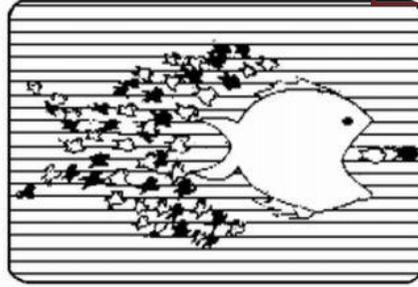


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November 21, 2011

Our File: 7490

Ms. Alanna Gillis
Acting Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Gillis:

**Re: British Columbia Hydro and Power Authority (“BC Hydro”)
Certificate of Public Convenience and Necessity
for the Dawson Creek/Chetwynd Area Transmission Project (“DCAT”)
Project No. 3698640**

Our clients in this matter, BCOAPO et al., are a group of community-based organizations whose members are low and fixed income residential BC Hydro electricity ratepayers. We make the following brief comments in response to the Commission’s November 14, 2011 letter requesting submissions from participants regarding the West Moberly First Nations’ application for an adjournment in the above noted process.

We note from Ms. Grier’s November 9, 2011 letter filed on behalf of the West Moberly First Nation (WMFN) that the adequacy of BC Hydro’s consultation and accommodation with the WMFN pertaining to the DCAT project is very much a live issue in this process. This represents a significant cost and regulatory risk to our clients should this process continue and a CPCN be granted while this issue remains unresolved. Our clients consistently support thorough consultation for two reasons: the increased cost certainty present once consultation and accommodation is properly undertaken and the importance of ongoing and appropriate reconciliation efforts with Aboriginal peoples.

In our respectful submission, the Commission must be cognizant of any measures taken by an applicant Crown utility to consult affected First Nations. It is only when examining those efforts that a regulatory can determine whether their efforts and actions have been sufficient to eliminate unreasonable risk to ratepayers that subsequent costs will render the project unrealistically expensive. Quite frankly, this is an impossible determination to make when there no document that might be used to inform an adequate consultative process.

It is our understanding that a Traditional Use Study (“TUS”) is a foundational document and they are rigorous studies, commonly requiring up to 6 months to complete. They are intended to be standalone reports that First Nations can rely upon to flag proposals potentially impacting traditional land use and are tools to initiate and set the tone for consultations. Impact Assessment Studies (“IAS”) for projects like the DCAT determine what specific impacts proposed projects will have on traditional lands and its use and therefore can be used to inform the actual consultation and accommodation processes.

Apparently, the lack of such evidence is a result of a dispute between the two parties regarding capacity funding and the format and terms of reference for a study intended to inform consultation. As a result, there is neither a TUS as preferred by BC Hydro or a study with the elements of a TUS and a project-specific IAS as preferred by the WMFN in existence at this time.

BCOAPO does not offer any comment on the correct study format or its terms of reference as those are issues that must be settled as between the WMFN, and BC Hydro in its capacity as a representative of the Crown. Instead, we simply take notice that there is apparently no study regarding either the traditional uses to which the land potentially affected by the DCAT are put or the impacts that this proposed project may have on those uses. It stands to reason that absent some study or comparable form of evidence, there is no way for regulators or intervenors to assess the potential cost and regulatory risks posed by proceeding and BC Hydro’s timeline is sufficiently tight that, absent an adjournment, the generation of such a study would come too late.

Without either a TUS or IAS as envisioned by the WMFN or some comparable document generated to inform the consultation process, how are parties to determine whether consultation has taken place to a sufficient degree under the law? How are we to assess the cost of consultation and accommodation? In short, we cannot.

It is BCOAPO’s position that evidence regarding the nature and scope of potential outstanding accommodation issues is not something parties external to the consultation process can produce. Any determination of these issues must be based on information that can only be provided by the WMFN and it would be improper to attempt to impose an external valuation, especially in the absence of any evidence upon which such a valuation might be made like a TUS or IAS.

Chief Roland Willson’s November 9th letter outlined an astonishing list of demands currently being made of the WMFN’s limited capacity to assert their traditional rights and land uses in processes for a proposed 11 mines, 6 windfarms, 4 pipelines, 2 powerlines, 2 facilities, 2 landfills and the Site C dam. In the face of such an onslaught of projects seeking to site themselves on traditional WMFN lands, our clients see a study in this case as a necessary means of ensuring the rights of this Nation are being protected.

We note that BC Hydro has expressed a sense of urgency, having in mind a firm in-service date in order to reinstate an N-1 planning. However, BCOAPO agrees with the submissions made at the procedural conference by counsel for COPE 378, Mr. Quail, regarding the danger of compressing processes and timelines to accommodate a utility’s desired implementation date when live issues, and particularly consultation and accommodation

issues, remain unresolved. The undersigned was counsel in the ILM process and it was indeed “a very costly decision to proceed rapidly rather than allow something to happen which could potentially have a significant bearing on the outcome” (BCH DCAT Transcript Vol 1, page 99, ll 5-8). If we should proceed absent sufficient resolution of the issue of consultation, we run a serious risk of repeating that past mistake.

There is, in our view, no possible answer to the WMFN’s application that avoids prejudicing one of the two parties. If BC Hydro’s timing concerns are accurate, a 6 month adjournment to facilitate a study would derail their planned in-service date. On the other hand, if the process continues as planned and construction begins before BC Hydro has satisfied its fiduciary duty then the damage to the Nation’s land and its traditional uses is done and difficult, if not impossible, to undo. If, for whatever reason, BC Hydro cannot unscramble the DCAT egg, the WMFN will only have recourse to monetary compensation for a failure to consult and accommodate and presumably BC Hydro expects its ratepayers will bear the ultimate cost.

If there are alternatives that can meet BC Hydro’s customers’ needs in the short term, and we believe that there are, allowing time to produce a fully informed option in the future, then it is clear that the WMFN interests will be more materially affected. There is no ‘alternative option’ to being consulted and accommodated properly. There is always the possibility that the WMFN will complete a study and find there are few issues with the project that can easily be dealt with through consultation and accommodation, but there is no way to assess the risk or estimate the costs until they have had an opportunity to complete that process. Thus far, BC Hydro and its shareholder certainly have not offered to accept that risk on behalf of our clients.

Given recent regulatory history, it is unrealistic to expect the WMFN to simply abandon its concerns, allowing BC Hydro to continue without some reckoning of its duty to consult. Absent a resolution to this matter indicating that it is sufficiently riskless, we cannot see any way of finding this project is in the public interest. As a result, BCOAPO supports the WMFN’s application for an adjournment with the hope that BC Hydro will indeed satisfy its fiduciary duty to consult and if necessary accommodate the WMFN, furthering the process of reconciliation between the Crown and Aboriginal peoples.

Sincerely,

BC PUBLIC INTEREST ADVOCACY CENTRE

Original on File Signed by

Leigha Worth
Acting Executive Director
Barrister & Solicitor

cc. Janet Fraser – BC Hydro
Registered Intervenors