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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER C-5-13

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by British Columbia Hydro and Power Authority
for a Certificate of Public Convenience and Necessity for the
Dawson Creek/Chetwynd Area Transmission Project

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
C.A. Brown, Commissioner
D.M. Morton, Commissioner

April 25, 2013

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On July 11, 2011, British Columbia Hydro and Power Authority (BC Hydro) applied (the Application) pursuant to subsection 46(1) of the *Utilities Commission Act* (the Act), to the British Columbia Utilities Commission (Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Dawson Creek/Chetwynd Area Transmission Project (the Project) as described in the Application;

B. The Project is located in the Dawson Creek/Chetwynd area of north east British Columbia. Transmission capacity is needed in this area to enhance the quality of service to existing customers and to meet increasing customer load. The Project is BC Hydro's preferred alternative to meet the area's forecasted load growth;

C. The Project consists of three main components:

   i. The construction of the new Sundance Lake Substation (SLS) including the acquisition of 8.15 hectares to facilitate the space requirements of the new substation;

   ii. The construction of a double circuit 230 kV transmission line strung on steel monopoles from SLS to Bear Mountain Terminal (BMT) (60 km) and from BMT to Dawson Creek Substation (DAW) (12 km). A new 33 meter (m) right-of-way is required for the route; in portions where the route parallels existing transmission lines, the required additional width may be less;

   iii. The expansion of BMT including the acquisition of approximately 14 hectares of land to facilitate the additional equipment required for the Project.

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D. The Project's expected cost is $222 million and the authorized budget is $257 million with a planned in-service date of April 30, 2014;

E. At the request of BC Hydro, the Commission Panel temporarily suspended the review process on November 30, 2011. The suspension was lifted on April 11, 2012;

F. The Commission held a Procedural Conference on May 2, 2012 in Vancouver, BC to discuss, inter alia, the Scope of the Review of the CPCN Application; Order G-184-11 sets out the Commission's Determinations in that regard;

G. The review of the Application was conducted primarily by way of a written hearing. The adequacy of First Nations' consultation was conducted in an Oral Hearing Phase held from July 9 to July 10, 2012;

H. On October 10, 2012, the Commission issued Order G-144-12, wherein the Commission found the Crown's Duty to Consult West Moberly First Nations on the DCAT Project, had not been adequately met to the date of that Order. Order G-144-12 Directive 2 states:

"The Commission will grant a CPCN to BC Hydro for the DCAT Project, as set out in the Application as Alternative 1, subject to the following conditions:

(a) Within 180 days of the date of this Order, BC Hydro shall file with the Commission evidence of further consultation, as directed in the accompanying Decision.

(b) West Moberly First Nation[s] will have 10 days from the date of the filing of the evidence to file a written response.

(c) BC Hydro will then have 7 days from the date of the filing of West Moberly First Nation[s'] response to file a written reply.

The Commission will review the submissions and, if the further consultation is determined to be adequate to meet the Crown's duty to consult, as set out in this accompanying Decision, the CPCN will be granted."

I. Order G-144-12 also includes Directive 5 which states:

"The revision to section 8.3 of the Terms and Conditions of the Electric Tariff as proposed by BC Hydro is not approved at this time. The Panel may accept the proposed changes subject to receipt of the following clarifications:

(a) BC Hydro is to specify how a new customer's load is to be allocated between Tariff Supplement 6 and the Electric Tariff for the purpose of the deposit/contribution calculation.

(b) BC Hydro is to provide revised amended language for the Electric Tariff section 8.3 which specifically indentifies each section of Tariff Supplement 6 that is applicable to System Reinforcement."

J. On April 4, 2013, BC Hydro filed its Compliance Filing to Directives 5 (a) and (b) of Order G-144-12. In relation to Directive 2(a), BC Hydro states "[t]he potential for double counting can be eliminated by applying the customer's estimated revenues first to the calculations in respect of transmission System Reinforcement, and then any unused portion of the revenues would be eligible to cover BC Hydro's Contribution to the distribution Extension";

K. On April 8, 2013, BC Hydro filed its Compliance Filing to Directive 2 of Order G-144-12 to provide evidence of further consultation with West Moberly First Nations;

L. Also on April 8, 2013, West Moberly First Nations filed its written response to BC Hydro's April 4, 2013 Compliance Filing;

M. The Commission has considered BC Hydro's Compliance Filings and the submission of West Moberly First Nations and finds that BC Hydro has complied with Directives 2, 5(a) and 5(b) of Order G-144-12.

NOW THEREFORE the Commission orders as follows:

1. For the reasons set out in Appendix A to this Order, the Crown's Duty to Consult with the West Moberly First Nations on the DCAT Project has been adequately met, to the date of this Decision.

2. The Commission grants a Certificate of Public Convenience and Necessity for the DCAT Project, as set out in the Application as Alternative 1.

3. BC Hydro must file with the Commission semi-annual updates on the actual Project schedule and costs with a comparison to the plan as set out in the Application and any variances the Project may be encountering. The semi-annual progress reports will be filed within 45 days of the end of each reporting period.

4. BC Hydro must file a final report within six months of the end or substantial completion of the Project. The final report is to include a reconciliation of actual and anticipated Project costs as set out in the Application and provide an explanation of any material costs in excess of $257.4 million.

5. BC Hydro is directed to recalculate the deposit/contribution requirement under Tariff Supplement 6 and, if applicable, the Electric Tariff, for each DCAT customer and file the revised calculation with the Commission within 30 days of this Order.

6. BC Hydro's revised section 8.3 of the Electric Tariff as shown in BC Hydro's April 4, 2013 Compliance Filing, and as directed in Order G-144-12, Directives 5 (a) and (b) is approved.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of April 2013.

BY ORDER

Original signed by:

L.A. O'Hara
Panel Chair/Commissioner

An Application by British Columbia Hydro and Power Authority
for a Certificate of Public Convenience and Necessity for the
Dawson Creek/Chetwynd Area Transmission Project

REASONS FOR DECISION

1.0 DIRECTIVE 2 OF COMMISSION ORDER G-144-12 AND ACCOMPANYING REASONS

On October 10, 2012, the British Columbia Utilities Commission (Commission) issued Order G-144-12, wherein it found that the Crown's Duty to Consult West Moberly First Nations (WMFNs) on the Dawson Creek/Chetwynd Area Transmission (DCAT) Project had not been adequately to the date of that Order. Directive 2 of that Order states:

> "The Commission will grant a CPCN to BC Hydro for the DCAT Project, as set out in the Application as Alternative 1, subject to the following conditions:
>
> (a) Within 180 days of the date of this Order, BC Hydro shall file with the Commission evidence of further consultation, as directed in the accompanying Decision.
>
> (b) West Moberly First Nation[s] will have 10 days from the date of the filing of the evidence to file a written response.
>
> (c) BC Hydro will then have 7 days from the date of the filing of West Moberly First Nation[s'] response to file a written reply.
>
> The Commission will review the submissions and, if the further consultation is determined to be adequate to meet the Crown's duty to consult, as set out in this accompanying Decision, the CPCN will be granted."

In the Reasons accompanying Order G-144-12, the Commission found that British Columbia Hydro and Power Authority's (BC Hydro's) consultation with WMFNs on the DCAT was inadequate to that point because BC Hydro has not yet obtained adequate knowledge of the potential impacts of the Project on WMFN's treaty rights nor consulted the WMFN on those impacts. The Commission based this finding on the following:

> "BC Hydro acknowledges that it currently does not know enough about the seasonal round and how the DCAT Project may impact it;
>
> The issue of moose and moose habitat and the mitigation of potential impacts on these, has not been adequately assessed; and
>
> BC Hydro did not consider the new adverse impacts of the Project with an adequate cumulative impact perspective." (Reasons, p. 169)

The Commission further stated it "expects the further evidence will demonstrate consultation to a medium level on the *Haida* spectrum, addressing the deficiencies outlined in this Decision. The Commission also expects that this evidence will reveal any mitigation necessary respecting potential impacts." (Reasons, p. 172)

2.0 BC HYDRO'S COMPLIANCE FILING

On April 8, 2013, BC Hydro submitted its Compliance Filing to Directive 2 of Commission Order G-144-12. The Compliance Filing includes BC Hydro's evidence of further consultation that it has undertaken with WMFNs and BC Hydro's submissions on the adequacy of consultation.

2.1 Evidence on Further Consultation

BC Hydro submits that as part of its further consultation BC Hydro and WMFNs reached agreement on a joint consultation workplan, attached as Appendix A to the Compliance Filing. BC Hydro provided further capacity funding to WMFNs for the further consultation. (p. 3)

BC Hydro submits that between July 2012 and April 8, 2013 (the date of the Compliance Filing), BC Hydro and WMFN have met in-person and by telephone numerous times. (p. 3)

As part of this further consultation, and included in the joint consultation workplan, BC Hydro provided reports and memos on topics such as those listed below, and included an assessment of potential impacts arising from the DCAT Project and mitigation measures:

- A review of the DCAT Project effects on WMFNs' traditional seasonal round with a consideration of historical context;
- A revised Moose Report;
- An Archaeological Impact Assessment;
- A report on the geotechnical feasibility of horizontal/directional drilling on the pine river crossing. (p. 4)

BC Hydro submits that WMFNs provided written comments and questions on the reports and memos provided to them and BC Hydro responded in writing to each of the issues raised. (pp. 3-4)

BC Hydro submits that it and WMFNs have now developed a draft Implementation Phase Workplan which will guide ongoing consultation. (p. 5)

2.2 Submissions on Adequacy of Consultation

BC Hydro submits:

> "As is common in consultation, the parties do not agree on all the issues, nor are they required to do so. Nonetheless, both BC Hydro and WMFNs agree that consultation has been to a medium level and is adequate to date, including consultation on the Identified Deficiencies. As a result, WMFNs confirms with BC Hydro that it supports the issuance of a CPCN for the DCAT Project." (p. 6)

BC Hydro further states:

> "WMFNs and BC Hydro agree that during the last six months progress has been made on strengthening the ongoing relationship between the parties. As such, the parties would rather focus their efforts on continuing this momentum as opposed to engaging in an adversarial regulatory process on the DCAT Project." (p. 6)

BC Hydro concludes that "WMFNs' agreement that consultation on the DCAT Project has been to a medium level on the *Haida* spectrum and has been adequate to date, is conclusive evidence of this fact." (p. 7)

3.0 WMFNs RESPONSE

On April 8, 2013, West Moberly First Nations submitted its response wherein it states:

> "Please be advised that we were provided an opportunity to review a draft of the Compliance Report with our client and subsequently conveyed [our comments] on the draft to BC Hydro, which were incorporated therein. We are satisfied with the content of the Compliance Report now filed with the BCUC and adopt the statements therein."

COMMISSION DETERMINATION

BC Hydro's Compliance Filing indicates that it has addressed the deficiencies outlined in the Reasons for Decision attached to Order G-144-12. Namely, BC Hydro has addressed the following identified deficiencies:

- that it currently does not know enough about the seasonal round and how the DCAT Project may impact it;
- that the issue of moose and moose habitat and the mitigation of potential impacts on these, had not been adequately assessed;
- that BC Hydro did not consider the new adverse impacts of the Project with an adequate cumulative impact perspective.

BC Hydro addressed these deficiencies by:

- preparing the review of the DCAT Project effects on WMFNs' traditional seasonal round with a consideration of historical context;
- revising the Moose Report;
- providing both of these reports to WMFNs;
- answering written comments and questions from WMFNs on these reports, in writing and in-person.

As well, WMFNs agrees with BC Hydro that consultation has been to a medium level and has been adequate to this point, as indicated by WMFNs adopting the statements of the Compliance Filing.

Given that BC Hydro has addressed the identified deficiencies and that both parties agree that consultation has been adequate, the Commission finds that BC Hydro's consultation with WMFNs on the DCAT Project has been adequate to the date of this Decision and that BC Hydro has complied with Directive 2 of Order G-144-12.