



Kyuquot Power Ltd.

101-1444 Alberni Street
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By Email

March 22, 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-79-21 – KPL Submission on KCFN Reconsideration Application

In its application for re-consideration (“Application”)¹ Ka:yu:k’t’h’ / Che:k’tles7et’h’ First Nations (“KCFN”) says:

“The ROW agreement, dated April 1, 2011, between KCFN and KPL does not apply to the section of powerline where S3 is located.

...The ROW agreement only applies to certain sections of Treaty Settlement Land over which KPL's line runs. The section of line S3 is connected to is not on Treaty Settlement Land, but is rather located within a Crown Corridor that KCFN holds a ROW agreement with the Province of British Columbia.”

As noted in BC Utilities Commission (“BCUC”) Order G-65-21, the right of way agreement that KCFN claims does not apply to the area where the pole that GLOB S3 is located on was filed by KFCN with the BCUC on September 23, 2020. KPL filed the same agreement on September 25, 2020 (“Right of Way Agreement”). Below is a table (“Table”) that sets out the various filings and comments KCFN has made about the validity of this right of way agreement and the opportunities that KCFN has to comment on it but did not.

Date	Exhibit Number or Other Reference	Comment or Extract
A. September 23, 2020	Exhibit C2-3 KCFN response to BCUC IR1	Right of Way Agreement filed by KCFN and no comment on validity was made
B. November 25, 2020	Exhibit C2-4, KCFN letter submitting update regarding investigation and extension request	Filed by KCFN and it did not avail itself of any opportunity to comment on validity the Right of Way Agreement
C. November 30, 2020	Exhibit C2-4-1 KCFN submitting additional safety concern photographs	Filed by KCFN and it did not avail itself of any opportunity to comment on the validity of the Right of Way Agreement
D. February 8, 2021	Exhibit C2-5 KCFN submitting response to Order G-29-21 Directive 2	Filed by KCFN. Attached as part of Exhibit C2-5 is a document entitled: “#4. January 9, 2020 letter from KCFN to Synex providing reasoning for installation of isolation switch” which says: “ <i>The switch will be located on KCFN Treaty Settlement Land.</i> ” Also attached is a document entitled: “#6 January 10, 2020 email from KCFN CAO to Synex re: switching” which says: “ <i>KPL has no agreement with KCFN to</i>

¹ Exhibit C2-7



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		<i>have their high-voltage line run through our land in order to feed Walters Island and Surrounding Area... KPL has no jurisdiction on Treaty Land, so we will be doing what is in our best interest."</i>
E. February 16, 2021	Exhibit C2-6 KCFN letter submitting reply submission that was made under seal	Filed by KCFN and it did not avail itself of any opportunity to comment on validity of the Right of Way Agreement
F. March 8, 2021	KCFN Final Argument made under seal	Filed by KCFN. In the portion of the Final Argument that was made by SBR Consulting Ltd. ("SBR Argument") it states: ² " <i>KCFN consider all parts of the April 1, 2011 (registered June 21, 2011) Statutory Right-of-Way Agreement between KCFN and KPL that encompass locations not within KCFN Treaty Settlement Lands null and void. This includes the 1.6km section of line identified in Item 3. KCFN did not hold legal title to the land on which this section of line exists at the time this agreement was created, nor does KCFN currently hold legal title to this land. KCFN have a Statutory Right-of-Way Agreement with the Province of British Columbia granting rights to operate and maintain this section of powerline. This is similar to the right-of-way agreement(s) KPL has with the Province of British Columbia for the sections of their powerline that run along forest service roads. Any right of way agreement authorizing KPL to operate/maintain this section of powerline would have to be granted by the Province of British Columbia and would require the consideration of KCFN.</i> " It also says: ³ " <i>KCFN have jurisdiction over KCFN Treaty Settlement Land (TSL). This means KCFN have the authority to make and implement laws and decide what outside entities are permitted to operate on TSL. If KPL wishes to continue to run their power through private KCFN land using KCFN owned infrastructure, a formal agreement with KCFN will be required.</i> "
G. March 12, 2021	Exhibit C2-7 KCFN submitting request for reconsideration of Order G-65-21	Filed by KCFN. It states: " <i>The ROW agreement, dated April 1, 2011, between KCFN and KPL does not apply to the section of powerline where S3 is located.</i> <i>...The ROW agreement only applies to certain sections of Treaty Settlement Land over which KPL's line runs. The section of line S3 is connected to is not on Treaty Settlement Land, but is rather located within a Crown Corridor that KCFN holds a ROW agreement with the Province of British Columbia.</i> "

² Page 5 of SBR Argument

³ Ibid



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KPL opposes KCFN's Application because KCFN has not proven that the area where the GOLB S3 is located ("GOLB Area") falls outside the Right of Way Agreement and in particular Schedules A and B. In this Agreement, "Right of Way Area" is defined as:⁴

"means the area in heavy outline on the survey plan, hereto attached as Schedule "B".

"Lands" is defined as:⁵

"means that part or those parts of the following described land shown outlined by bold line on the schedule attached hereto as "Schedule A".

The Right of Way Agreement states:⁶

"The Grantor grants to the Grantee, and its employees, representatives, contractors, agents, licencees, successors and permitted assigns for so long as required, the uninterrupted right, liberty and right of way to enter in, upon, under, over and through:

(a) the Right of Way Area....

(b) the Lands...."

As well, KCFN's position on whether the GOLB Area is within Treaty Settlement Land ("TSLand") or the Statutory Right-of-Way Agreement with the Province of British Columbia ("Crown Corridor") is inconsistent. In Exhibit C2-5, this area is expressed to be within TSLand.⁷

In the SBR Argument the GOLB Area is expressed to be within the Crown Corridor.⁸ This argument goes on to say that KCFN has jurisdiction over TSLand. It also says KCFN has the authority to make and implement laws and decide what outside entities are permitted to operate on TSLand. The implication is that the Right of Way Agreement is null and void in relation to TSLand. SBR did not provide any evidence of its legal qualifications.

The Application on Crabtree Legal letterhead says the GOLB Area is within the Crown Corridor.

In no instance has KCFN provided a copy of the right of way agreement between it and the Province of British Columbia. It has also not provided a survey by a BC Land Surveyor that shows where the boundaries of the Crown Corridor and the TSLands are or the location of the GOLB Area in relation to these areas, the Right of Way Area and the Lands.⁹ It has also not provided a full legal analysis to support the position that despite entering into the Right of Way Agreement in 2011, it is now null and void in relation to the Crown Corridor, TSL Land, the Right of Way Area and the Lands or any of them.

⁴ Section 1.1

⁵ Ibid

⁶ Section 2.1

⁷ See Entry D in the Table

⁸ See Entry F in the Table

⁹ As defined in the Right of Way Agreement



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For these reasons the KCFN Application for Reconsideration should be rejected because it does not meet the requirements for reconsideration in the BCUC Rules of Practice and Procedure¹⁰.

All of which is respectfully submitted.

Yours truly,

Roshni Reddy

For Tanya L DeAngelis
KYUQUOT POWER LTD.

¹⁰ BCUC Order G-15-19, Part V, section 26.05