



LETTER NO. L-34-02

ROBERT J. PELLATT
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September 6, 2002

Mr. Hans Karow
Coalition to Reduce Electropollution
S32, C6, RR1
8384 Road No. 15 (End of Road)
Oliver, B.C. V0H 1T0

Dear Mr. Karow:

Re: Aquila Networks Canada (British Columbia) Ltd. ("Aquila")
(Formerly UtiliCorp Networks Canada)
Application for Reconsideration of Commission Decision and Order No. G-46-02

The Commission has considered your letter of August 1, 2002 where you ask the Commission to reconsider its Order No. G-46-02 and attached Reasons for Decision of June 28, 2002 regarding Aquila's application for approval of the Final Project Routing, Schedule and Budget Estimates for the Kootenay 230-kV System Development Project ("Final Routing Decision").

The Commission has previously considered your arguments regarding electric and magnetic field ("EMF") impacts on a number of occasions. In particular:

- The Line 44 Decision and Order No. C-13-98;
- Your request for a reconsideration of Order No. C-13-98 (responded to by Order No. G-93-98);
- The Kootenay 230 kV System Development Project Order No. C-10-00 and Reasons for Decision;
- The Ootischenia Water and Land Stewardship Committee Action Group ("OWLSCAG") Complaint (responded to by Letter No. L-31-01 and Reasons for Decision); and
- Your request for reconsideration of Letter No. L-31-01 (responded to by Letter No. L-3-02).

The Commission has reviewed EMF issues on several occasions since its initial review in 1989 during a hearing into British Columbia Hydro and Power Authority's Application for a 230 kV transmission line from Dunsmuir to Gold River. The Commission has articulated a policy of prudent avoidance with respect to EMF and has stated that it does not wish to repeatedly review EMF policy issues unless authoritative new evidence becomes available.

In Letter No. L-3-02 the Commission noted that it is within the discretion of the Commission to accept and ultimately allow a request for reconsideration under Section 99 of the Utilities Commission Act. The Commission also noted that where reconsideration is requested on the basis of an allegation of an error the applicant must show that:

- The claim of error is substantiated on a prima facie basis; and
- The error has significant material implications.

The Commission's reply to you of January 17, 2002 (Letter No. L-3-02) regarding your December 10, 2001 request for a reconsideration of the Commission decision on the OWLSCAG complaint considered your submission to be largely a re-argument of your previous submissions. Letter No. L-3-02 advised you that the Commission would not accept your application unless you were able to demonstrate, in a clear manner, what constituted prima facie evidence in support of your application.

After reviewing your submission regarding the Final Routing Decision and Order No. G-46-02, the Commission considers that the issues you raise in your present application for reconsideration of a Decision of the Commission primarily deal with the previous hearing regarding the OWLSCAG Complaint and in essence are a reiteration of your arguments of December 10, 2001 in which you asked for a reconsideration of that decision.

One of your arguments refers to errors in EMF readings and appears to refer to evidence submitted in the original Kootenay 230kV System Development Project hearing and evidence submitted regarding the OWLSCAG Complaint. The Commission, in evaluating EMF levels to arrive at its decision regarding the final routing (Order No. G-46-02) has used more recent calculations submitted by Aquila in its Final Routing, Schedule and Budget Estimates submission of January 2002 and subsequent information responses. In raising this argument you fail to provide prima facie evidence of an error.

An argument you make in support of your contention that the Commission did not consider a basic principle in the Final Routing Decision states that the Commission did not address the "precautionary principle" in its decision making. In fact the Commission recognized that route Alternative A would result in improved aesthetics and reduced EMF levels relative to Alternative B, which was Aquila's preference. The Commission's approval of Alternative A is consistent with its position on prudent avoidance as stated in Letter No. L-31-01 Reasons for Decision and elsewhere. As noted in the Final Routing Decision, Alternative A has the lowest impact in terms of environment, capital cost, reliability, and impact on the resource base when compared with Alternative C or D.

Your August 1, 2002 application raises a number of other arguments in support of your contention that the Commission has erred in fact and in law. However, none of the arguments that you raise contain prima facie evidence to support your arguments. This is also true for your arguments in support of your contention that a basic principle had not been raised and that a new principle has arisen as a result of the decision.

Therefore, the Commission concludes that you have not provided evidence on a prima facie basis to demonstrate an error of material substance. The Commission determines that your application and arguments do not meet the threshold criteria for reconsideration and therefore denies your application for reconsideration of the Final Routing Decision.

The Commission would also like to reiterate that in recent proceedings in which you have intervened and sought reconsideration, you have advanced many of the same arguments with little new evidence of an authoritative nature to support the arguments. In future, therefore, the Commission expects your submissions to be supported by new evidence of an authoritative nature.

Yours truly,

Original signed by:

Robert J. Pellatt

RWR/rt

cc: Mr. George Isherwood
Regulatory Affairs Executive
Aquila Networks Canada (British Columbia) Ltd.
Ms. Carol A. McGowan, Secretary/Assistant Administrator
Regional District of Central Kootenay
Mr. John Cameron, Chair
Blueberry Creek Irrigation District
Mr. Elmer Pellerine, Director, Area J – Lower Arrow/Columbia
Mr. John Voykin, Director, Area I
c/o Regional District of Central Kootenay
Mr. Walter Kanigan
Ootischenia Water and Land Stewardship
Committee Action Group

Honourable Richard Neufeld, Minister
Ministry of Energy and Mines
Honourable Sandy Santori, Minister
Ministry of Management Services
MLA-West Kootenay-Boundary
Dr. Jon O'Riordan, Deputy Minister
Ministry of Sustainable Resource Management
Mr. Derek Thompson, Deputy Minister
Ministry of Water, Land and Air Protection
Mr. Blair Suffredine, MLA Nelson-Creston