



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-166-08**

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

and

Applications for Reconsideration of  
A Decision approving for FortisBC Inc.  
a Certificate of Public Convenience and Necessity  
for the Ellison Substation Project

**BEFORE:** L.F. Kelsey, Panel Chair November 18, 2008

**O R D E R**

**WHEREAS:**

- A. On October 27, 2006 FortisBC Inc. ("FortisBC") applied (the "Application") to the British Columbia Utilities Commission (the "Commission") for a Certificate of Public Convenience and Necessity ("CPCN") for the Ellison Substation Project (the "Ellison Substation"); and
- B. Following a review of the Application that included an oral public hearing on April 2, 2007, the Commission by Order C-4-07 granted FortisBC a CPCN to construct the Ellison Substation Project – Option 1, and directed FortisBC to file a report assessing the Airport site for the substation as an alternative to the proposed Lochrem Road site; and
- C. On June 6, 2007 FortisBC submitted its report assessing the Airport site; and
- D. By Order G-75-07 dated June 28, 2007, the Commission approved the Lochrem Road site for the Ellison Substation, as applied-for in the Application; and
- E. By letter dated September 18, 2008, the Concerned Citizens of Quail Ridge and Lochrem Road ("CCQRLR") applied for a reconsideration of the Commission's Decision as set out in Orders C-04-07 and G-75-07 (the "Decision"); and
- F. By letter dated September 23, 2008, the Quail Ridge Residents Association ("QRRR") also applied for a reconsideration of the Decision; and
- G. In response to the applications of CCQRLR and QRRR for a reconsideration of the Decision (the "Reconsideration Applications"), on October 21, 2008 FortisBC provided executed copies of an Operating Agreement and Statement of Work Agreement with NAV CANADA (the "Agreements"); and

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- H. By Letter L-50-08 dated October 22, 2008, the Commission established a written comment process on the Reconsideration Applications to address the reconsideration phase one issue of whether a reasonable basis exists to allow a reconsideration; and
- I. CCQRLR, QRRR, FortisBC, Colin Bechtel, Judy Clayton, Rhonie Horne, and Bernice and John Fortunat submitted comments; and
- J. The Commission has considered the submitted comments, and has determined that a reconsideration of the Decision should proceed on a limited basis with regard to the initial question of whether the Ellison Substation as approved at the Lochrem Road site, will cause problems for the systems at the Kelowna Airport under the terms specified in the Agreements with NAV CANADA. The Commission's Reasons for Decision are attached as Appendix B to this Order

**NOW THEREFORE** the Commission orders as follows:

1. The Commission establishes a written hearing to reconsider the Decision, so as to address the initial question of whether the Ellison Substation, as proposed and approved at the Lochrem Road site, will cause problems for the systems at the Kelowna Airport under the terms specified the Agreements and, if problems are caused, the changes that will be needed to remedy the situation, and the cost of the changes (the "Initial Issue").
2. By Monday, December 1, 2008, FortisBC will file an independent engineering Report (the "Report") by a properly qualified individual or group that reviews the siting and design of the Ellison Substation as proposed and approved, relative to the requirements of NAV CANADA as set out in the Agreements, and which confirms that the substation will comply with the requirements. If this confirmation cannot be provided, the Report will describe the changes to the substation that are needed to bring it into compliance, and the estimated cost of these changes.
3. FortisBC will provide a copy of the Report to Intervenors and Interested Parties in the Ellison Substation CPCN proceeding, parties who participated in the reconsideration phase one comment process and NAV CANADA (collectively the "Participants").
4. The Regulatory Timetable for the written process to address the Initial Issue is attached as Appendix A to this Order.

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5. Following the completion of the written process for the Initial Issue, the Commission may establish a reconsideration of other issues related to the Decision.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 18<sup>th</sup> day of November 2008.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Panel Chair

Attachments

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**REGULATORY TIMETABLE**

| <b>ITEM</b>  | <b>DATE (2008)</b>     |
|--|------------------------|
| Filing of Independent Engineering Report             | Monday, December 1     |
| Information Requests to FortisBC                     | Thursday, December 4   |
| FortisBC Responses to Information Request            | Wednesday, December 10 |
| Participants File Written Evidence                   | Monday, December 15    |
| Information Requests on Participant Written Evidence | Thursday, December 18  |
| Response to Information Requests                     | Wednesday, December 24 |
|  | <b>DATE (2009)</b>     |
| CCQRLR and QRRRA Final Submissions                   | Monday, January 5      |
| FortisBC and other Participants Final Submissions    | Friday, January 9      |
| CCQRLR and QRRRA Reply Submissions                   | Wednesday, January 14  |

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**REASONS FOR DECISION**

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**INTRODUCTION**

In letters dated September 18, 2008 and September 23, 2008 (the “Reconsideration Applications”), counsel for the Concerned Citizens of Quail Ridge and Lochrem Road (“CCQRLR”) and Quail Ridge Residents Association (“QRRRA”), respectively, requested that the British Columbia Utilities Commission (the “Commission”) reconsider its Decision as set out in Orders C-04-07 and G-75-07” (the “Decision”) (Exhibits B2-1, B1-1).

An application for reconsideration by the Commission typically proceeds in two phases. By Letter L-50-08 dated October 22, 2008, the Commission established a written comment process on the Reconsideration Applications, to address the first phase issue of whether a reasonable basis exists to allow a reconsideration (Exhibit A-1). Following the completion of the phase one comment process, the Commission typically decides whether or not a reconsideration should proceed. If the reconsideration proceeds to the second phase, the parties are allowed to address the substance of the issues that the Commission approves for reconsideration.

The Commission has reviewed the submission received on the Reconsideration Applications and, as discussed at greater length in the remainder of these Reasons for Decision, has established a reconsideration of the Decision on the limited initial issue of whether the proposed Ellison Substation at the Lochrem Road site will comply with the requirements of NAV CANADA.

**BACKGROUND**

In Order C-04-07, dated May 9, 2007, the Commission granted a Certificate of Public Convenience and Necessity (“CPCN”) to FortisBC to construct the Ellison Substation Project (the “Ellison Substation” or “Project”), and directed FortisBC to submit a written report regarding the site for the substation which was the subject of the CPCN. In Order G-75-07, dated June 28, 2007, the Commission, following review of FortisBC’s report, issued an order approving the Lochrem Road site for the construction of the Ellison Substation as applied for in the Application for the CPCN.

In response to the Reconsideration Applications, by letter dated October 21, 2008, FortisBC provided executed copies of an Operating Agreement and Statement of Work Agreement with NAV CANADA (the “Agreements”) (Exhibit C5-2). In the letter, FortisBC submitted that compliance with the NAV CANADA guidelines or adherence to the Agreements does not introduce new information of a nature that is material enough to impact the previous Decision, and requested that the Commission not accept the applications for reconsideration.

In the first phase reconsideration written comment process established by Letter L-50-08, the Commission received submissions from CCQRLR, QRRRA, FortisBC, Colin Bechtel, Judy Clayton, Rhonie Horne and Bernice and John Fortunat (Exhibits B2-2, B1-5, C5-1, C3-1, C1-1, C6-1 and C4-1, respectively). FortisBC opposed the requests for a reconsideration, while all the other submissions supported a reconsideration.

## **CCQLR RECONSIDERATION APPLICATION AND RELATED SUBMISSIONS**

The CCQLR application enclosed a letter from NAV CANADA that raised no objection to the Ellison Substation providing FortisBC agreed to certain conditions related to electromagnetic noise, and a copy of Transport Canada requirements for facilities near airports (Exhibit B2-1). The CCQLR submitted that this is a material new development that the Commission was not aware of during the CPCN proceeding. CCQLR argued that FortisBC needs to agree to shut down the substation if necessary, and that it cannot make such an agreement without Commission approval. Also, it appears that it is unknown whether the substation at the Lochrem Road site will interfere with NAV CANADA systems, and that this risk may have influenced the Commission's decision had it been aware of the risk. CCQLR also questioned whether FortisBC has Transport Canada approval for the proposed substation.

In its submission dated October 28, 2008, FortisBC argues that there is nothing in the Reconsideration Applications that suggests there is any basis whatsoever for a reconsideration in respect of Order C-04-07 issuing the CPCN for the Ellison Project (Exhibit C5-1). The Reconsideration Applications are in respect of the Lochrem Road site and, accordingly, the only matter arising in the Reconsideration Applications is Order G-75-07. That is, the question is whether there has been a fundamental change in circumstances or facts since the order approving the Lochrem Road site was issued. Furthermore, FortisBC submits that the change in circumstances or facts must have a significant material implication in order to warrant a reconsideration.

In response to CCQLR, FortisBC argues that it has the authority and capacity to enter into agreements with NAV CANADA without prior Commission approval. With respect to CCQLR's second point FortisBC argues that CCQLR have put forward no evidence that the Ellison Substation will put aviation safety at risk, and that speculation of a change in circumstances in the future if FortisBC is unable to comply with NAV CANADA requirements does not justify a reconsideration. With regard to Transport Canada, FortisBC states that the necessary Transport Canada approval has been obtained.

In its October 31, 2008 Reply Submission, CCQLR argues that the possibility that the substation may need to be relocated at considerable expense is a fundamental change in circumstances (Exhibit B2-2).

## **QRRR RECONSIDERATION APPLICATION AND RELATED SUBMISSIONS**

The QRRR application requests a reconsideration on the basis that NAV CANADA's letter identifies a risk that FortisBC may need to shut down the Ellison Substation after it becomes operational (Exhibit B1-1). Since this risk was not raised in the CPCN proceeding, the letter creates a fundamental change in circumstances or facts.

In response, the FortisBC Final Submission notes that it has provided its Operating Agreement with NAV CANADA, and that rather than contemplating that the substation will be shutdown, the agreement provides for a mutually agreed plan of action to resolve any concerns (Exhibit C5-1). FortisBC states that this undermines the QRRR issue about risk to the use of the site. FortisBC also submits that if the agreement with NAV CANADA had been before the Commission, it is not reasonable to suggest it would have made a difference to the Commission's Decision. FortisBC goes on to argue that the alleged risk of non-compliance with a regulation or law that may impact the suitability of the Lochrem Road site is a risk that could have arisen with other alternative sites, and that this risk is not a fundamental change in facts or circumstances.

The QRRR Reply Submission dated October 30, 2008 argues that the Operating Agreement with NAV CANADA requires FortisBC to correct a problem that is compromising the Air Traffic Control system (B1-6). QRRR submits that whether FortisBC will be able to prevent the Ellison Substation from interfering with the systems is an evidentiary issue for the reconsideration itself. QRRR also questions whether the Commission has the jurisdiction to resolve disputes, as provided in the Operating Agreement. QRRR also argues that the reconsideration should address the CPCN for the substation as well as the Lochrem Road site. The QRRR Reply Submission also requested that existing Intervenor should be allowed to present evidence relevant to the topics of the reconsideration.

### **COMMISSION DETERMINATION**

The Commission generally agrees with the submission of FortisBC that the Reconsideration Applications relate principally to the suitability of the Lochrem Road site. However, as it would appear that the potential to cause interference with navigation and other systems at the Airport may result from the design of the substation as well as the site, the Commission considers that the Reconsideration Applications address the proposed Ellison Substation at the Lochrem Road site.

The Commission recognizes that CPCN approval for a project is often granted prior to the utility obtaining many of the permits that it will need to construct the project. Obtaining these permits is part of the usual process of carrying out a project, and the utility may need to make certain commitments to regulatory and other government agencies to obtain them.

However, the Commission is concerned that this potentially serious issue has surfaced at this late date in the development of the Ellison Substation Project. It seems clear that the Lochrem Road site is close enough to the Kelowna Airport to fall within the zone of interest of NAV CANADA and Transport Canada. Furthermore, FortisBC has agreed to install monitoring equipment and to correct any issues caused by the substation that are identified under the terms of the Agreements.

A need to relocate or even significantly modify the substation appears likely to be a ratepayer cost. Any such additional costs, if material, would represent a material change to the facts and circumstances that were before the Commission when it granted a CPCN for the Ellison Substation at the Lochrem Road site.

At this time, the Commission is unclear as to the significance of the risk that the Agreements with NAV CANADA may require FortisBC to make significant changes to the substation, or perhaps relocate it. In the interest of regulatory efficiency, the Commission will deal with this initial question by a reconsideration on its merits of this matter, and will limit the reconsideration to this specific issue. Depending on the outcome of this initial stage of the reconsideration, the Commission may need to undertake a more broad reconsideration of other aspects of the Decision, including consideration at some length of alternatives if there is a material problem with the Lochrem Road site.

**Therefore, the Commission finds that it will consider the initial issue of whether the Ellison Substation, as proposed and approved at the Lochrem Road site, will cause problems for the systems at the Kelowna Airport as specified in the Agreements and, if problems are caused, the changes that will be needed to remedy the situation, and the cost of the changes (the "Initial Issue"). The Commission hereby establishes a written hearing and Regulatory Timetable to address the Initial Issue.**

The Agreements are already on the record (Exhibit C5-2). **To provide evidence to support the consideration of the Initial Issue, by Monday, December 1, 2008, FortisBC will file an independent engineering Report (the "Report") by a properly qualified individual or group that reviews the siting and design of the Ellison Substation as proposed and approved, relative to the requirements of NAV CANADA as set out in the Agreements, and which confirms that the substation will comply with the requirements. If this confirmation cannot be provided, the Report will describe the changes to the substation that are needed to bring it into compliance, and the estimated cost of these changes.** FortisBC will provide a copy of the Report to Intervenor and Interested Parties in the Ellison Substation CPCN proceeding, parties who participated in the Phase One comment process and NAV CANADA (collectively, "Participants").

**The Commission determines that Participants will have an opportunity to submit Written Evidence regarding the Initial Issue and the Report.**