



ORDER NUMBER
G-27-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations
Reconsideration of Order G-368-21 Directives 1 & 2

BEFORE:
D. M. Morton, Commissioner

on February 10, 2022

ORDER

WHEREAS:

- A. On January 14, 2022, pursuant to section 99 of the *Utilities Commission Act* (UCA) the Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nations (KCFN) submitted to the British Columbia Utilities Commission (BCUC) an application to reconsider Directives 1 and 2 of Order G-368-21 (Reconsideration Application);
- B. By Order G-368-21 and accompanying reasons for decision dated December 10, 2021, the BCUC determined, in part, that KCFN is a public utility as defined in Section 1(1) of the UCA and directed KCFN and KPL to negotiate an agreement concerning the joint use of facilities within three months of issuance of the order;
- C. In the Reconsideration Application, KCFN requests that the BCUC rescind Directives 1 and 2 of Order G-368-21 on the grounds that the BCUC erred in law in finding that the flat administrative fee collected by KCFN constitutes compensation for an electrical service provided by KCFN. In the alternative, KCFN requests the BCUC exempt KCFN from all of Part 3 and s. 71 of the UCA;
- D. The KPL power distribution system (KPL System) is interconnected to the British Columbia Hydro and Power Authority (BC Hydro) electric system and supplies customers, including KCFN, the Village of Hupsitas and others on the outer coast of Kyuquot Sound, with electricity;
- E. Crown Corridor is defined in Chapter 7 of the Maa-nulth First Nations Final Agreement;
- F. On April 28, 2021, by Order G-129-21, the BCUC established a regulatory timetable seeking submissions on whether, with respect to the portion of the line on the Crown Corridor, KCFN meets the definition of a public utility and submissions on the applicability of section 27 of the UCA on shared KCFN infrastructure, among other things;
- G. On May 28, 2021, pursuant to Order G-129-21, KCFN filed its submissions and stated that KCFN does not meet the definition of a public utility. KCFN further submitted that even if it did meet the definition of public utility under the UCA, the BCUC should recommend an exemption for KCFN from all portions of the UCA. On May 28, 2021, KPL filed its submissions pursuant to Order G-129-21;

- H. On June 2, 2021, KCFN submitted correspondence to KPL addressing a number of safety, reliability and legal matters, including concerns that KPL is transmitting power across KCFN's infrastructure on the Crown Corridor without appropriate legal agreements and KCFN's concerns over the safety of KPL's "fly-over" line through Houpsitas;
- I. On July 9, 2021, by Order G-212-21, the BCUC established a further regulatory timetable seeking submissions from parties on whether the BCUC has jurisdiction on treaty land, with respect to the fly-over line through Houpsitas on shared KCFN/KPL poles and KPL-owned poles and submissions on who is currently responsible for the maintenance of the fly-over line through Houpsitas on shared KCFN/KPL poles and KPL-owned poles;
- J. Section 88(3) of the UCA states: "the commission, may, on conditions it considers advisable, with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act";
- K. Part V of the BCUC's Rules of Practice and Procedure, which is attached to Order G-15-19, provide the Rules for the reconsideration process (Reconsideration Rules); and
- L. The Panel has reviewed the Reconsideration Application and considers that a public hearing process is warranted, in accordance with Rule 29 of the Reconsideration Rules.

NOW THEREFORE the BCUC orders as follows:

1. A public hearing process is established, in accordance with the regulatory timetable as set out in Appendix A to this order.
2. Parties who wish to actively participate in the proceeding are to register with the BCUC by completing a [Request Intervener Status](#) form, available on the BCUC's website under Get Involved, by the date established in the Regulatory Timetable and in accordance with the BCUC's Rules of Practice and Procedure attached to Order G-15-19. Alternatively, letters of comment can be submitted in accordance with the regulatory timetable attached as Appendix A to this order. The submissions should address the following:
 - Whether nominal fees, such as those charged by KCFN to its citizens, can be considered compensation, as defined in the UCA; and
 - The applicability of the UCA to KCFN, as a Treaty Nation.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of February 2022.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

KCFN
Reconsideration of Order G-368-21 Directives 1 & 2

REGULATORY TIMETABLE

Action	Date (2022)
Intervener registration	Wednesday, March 2
Intervener submissions and deadline for Letters of Comment	Wednesday, March 23
KCFN reply on intervener submissions and Letters of Comment	Wednesday, April 13
Further process	To be determined