



ORDER NUMBER
G-187-22

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

and

CB Powerline Ltd.
Request to Vary BCUC Order G-383-21 Directive 1(a)

BEFORE:
C. M. Brewer, Panel Chair

on July 11, 2022

ORDER

WHEREAS:

- A. On September 11, 2020, CB Powerline Ltd. (CBP) made an application to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to section 45 and 46 of the *Utilities Commission Act* (UCA) (CPCN Application);
- B. On December 17, 2021, by Decision and Order G-383-21 (Order), CBP was issued a CPCN for the Project subject to CBP filing evidence, to the satisfaction of the BCUC, that the Okanagan Indian Band (OKIB) has been adequately consulted on the Project. Directive 1(a) of the Order established the deadline for CBP to submit evidence on the adequacy of consultation within six months of the date of the Order;
- C. On May 30, 2022, CBP filed a letter with the BCUC requesting an extension to the deadline to submit evidence on the adequacy of consultation (Application);
- D. On June 13, 2022, the BCUC issued BCUC staff question No. 1 to CBP. On June 20, 2022, CBP filed its response to BCUC staff question No. 1;
- E. OKIB filed a letter of comment dated June 14, 2022, with respect to CBP's request to extend the deadline to submit evidence on the adequacy of consultation; and
- F. The BCUC has reviewed the Application and determines that a variation of Directive 1(a) of the Order is warranted.

NOW THEREFORE pursuant to section 99 of the UCA, the BCUC varies Order G-383-21 Directive 1(a) as follows:

1. Subject to the following:
 - a. By December 17, 2022, CBP shall file with the BCUC evidence demonstrating that OKIB has been adequately consulted on the Project as outlined in the Decision accompanying Order G-383-21.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of July 2022.

BY ORDER

Original signed by:

C. M. Brewer
Commissioner

Attachment

CB Powerline Ltd.
Request to Vary BCUC Order G-383-21 Directive 1(a)

REASONS FOR DECISION

1.0 Introduction

On September 11, 2020, CB Powerline Ltd. (CBP) applied to the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) for the Cosens Bay community electrification project (Project) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA)(CPCN Application). In its CPCN Application, CBP sought approval to build, own, operate and maintain an electrical distribution system which would serve the community of Cosens Bay, located on Kalamalka Lake in the Regional District of North Okanagan.

On December 17, 2021, the BCUC issued the Decision and Order G-383-21 (Order) setting out condition for approval as follows:

1. Subject to the following:
 - a. Within 6 months of the date of this order, CBP shall file with the BCUC evidence demonstrating that OKIB has been adequately consulted on the Project as outlined in the Decision.
 - b. OKIB will have 30 days from the date of the filing of the evidence to file a written response.
 - c. CBP will then have 10 days from the date of the filing of OKIB's response to file a written reply and
 - d. a BCUC determination that the Crown's duty to consult has been met,the CPCN will be issued.

On May 30, 2022, CBP filed a letter with the BCUC requesting a one-month extension of the deadline for CBP to submit evidence of the adequacy of Crown consultation set out in Directive 1(a) of the Order.

2.0 Legal and Regulatory Framework

The applicable provision of the *Utilities Commissions Act* (UCA) is section 99, which reads as follows:

99 The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

3.0 Regulatory Process

On June 13, 2022, BCUC staff issued question No. 1 (IR No. 1) to CBP requesting responses by June 20, 2022. On June 14, 2022, the BCUC received a letter of comment from the Okanagan Indian Band (OKIB), which was posted to the BCUC proceeding webpage. CBP responded to IR No. 1 on June 20, 2022.

4.0 Applicant's Submissions

4.1 Reasons for Extension Request

CBP submits that given that the Crown has not delegated procedural aspects of consultation to CBP, CBP has been limited in its ability to influence the course of consultation.¹

CBP further states that “since the release of the Decision and Order G-383-21, CBP has worked diligently to support Crown consultation with the OKIB as far as it is able within the Crown consultation structure established by the Government of British Columbia and the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (“FLNRORD”).”² CBP indicates that since March 2, 2022, CBP has been meeting weekly with FLNRORD and has agreed to commit \$40,000 in funding to the Crown which would then be provided to the OKIB to complete cultural land use studies.³

CBP states that despite its best efforts and due to circumstances beyond its control, it anticipates being unable to meet the deadline to submit evidence on the adequacy of consultation.⁴

The letter signed by Keith Weir, Ministry of Forests (Crown) that accompanies the Application states that

There has been diligent progress related to First Nations consultation related to [CBP's] applications, however, the Province is not fully satisfied that the interests of Okanagan Indian Band (OKIB) have been fully addressed... Additional information may be required to better understand the impact of the project on OKIB interests. Due to this, the Province is not able to conclude the consultation process, and it is unlikely that CB Powerline Ltd. (CBP) will meet the June 17, 2022, deadline prescribed by the British Columbia Utilities Commission (BCUC).⁵

4.2 Impact of Denial of Extension Request

CBP submits that denying this extension request would “leave Cosens Bay residents’ need for electrical service unfulfilled and requiring CBP to reapply for the CPCN for the Project would cause unnecessary delays and costs that could be fatal for the Project, resulting in the same outcome.”⁶ CBP further notes that “the time left for procurement of contracting services and long lead time equipment is already quickly disappearing for the fall / winter construction window.”⁷ Noting escalating costs related to unprecedented market conditions and scarcity of available equipment, CBP submits that each passing month of delay is putting the Project under further stress and a delay of yet another calendar year may put the entire Project in jeopardy as costs will escalate beyond what has been reasonably budgeted by residents for the Project.⁸

CBP noted that it is under significant pressure to move the Project forward, and a one-month extension was chosen to balance those competing factors and to ensure that all parties involved proceeded with urgency as

¹ Exhibit B-1, p. 1.

² Ibid., p. 2.

³ Exhibit B-2, BCUC Staff IR 1.1.

⁴ Exhibit B-1, p. 2.

⁵ Ibid., Appendix A.

⁶ Ibid., p. 3.

⁷ Ibid.

⁸ Ibid., p. 3.

appropriate given the importance of the Project to the community of Cosens Bay and the fact that FLNRORD referrals for the Project were issued to the OKIB nearly two years ago.⁹

5.0 OKIB Letter of Comment

In a letter dated June 14, 2022, the OKIB states that no meaningful, informed assessment of the project impacts on Syilx Aboriginal title and rights, nor any efforts at consultation have been undertaken. OKIB requests more than a one-month extension to allow it to complete a Cultural Land Use Study, which it asserts is required for the province to consider impacts on OKIB as part of a meaningful consultation and accommodation process, and for BCUC's decision to be properly informed. It states that this is expected to take several months.¹⁰

6.0 CBP's Response

In its responses to staff IR No. 1, CBP notes that OKIB requested a longer extension than one month in its letter of comment, but stresses the adverse impacts caused by delay, and the potential significant cost to the community of Cosens Bay, including the potential loss of the Project altogether.¹¹

CBP reiterates that it does not believe that more time is necessary to properly consider the issues at stake in consultation and that the OKIB's Aboriginal rights and title have been and will be fully considered and accommodated as much as possible in Project design, construction, and operation.

CBP submits that the delay which the Project has suffered to date as a result of FLNRORD's extended consultation process with the OKIB has been unnecessary in relation to the limited impacts of the Project and the Project's nature as a community led, community owned, initiative to fulfill an important and clearly identified community need.¹² It further submits that this delay has been unfairly prejudicial to the community of Cosens Bay, and a longer delay would only add to the prejudice.¹³ CBP asserts that a longer delay would have the effect of cancelling the project, which would give the OKIB the right to unilaterally veto the Project.¹⁴

Panel Determination

In determining whether an extension should be granted, the Panel considers and balances the interests of the parties, the BCUC, and the public. The Order and accompanying Decision set out the conditions for granting the CPCN. As one of those conditions, within six months of the date of that Order, CBP is required to file with the BCUC, evidence demonstrating that OKIB has been adequately consulted on the Project, as outlined in the Decision. The Order also allows OKIB a right of response. CBP has a right to file a written reply to OKIB's response, after which the BCUC would make a determination on whether or not the Crown's duty to consult had been met.

CBP indicates that the conditions set out in the Order have not been met. This is supported by the letters from the Crown and OKIB. Six months have passed since the date of the Decision and Order G-383-21, so CBP has exceeded the time within which it was to file the necessary evidence. Without an extension of time, CBP would

⁹ Exhibit B-2, p. 3.

¹⁰ Exhibit E-1.

¹¹ Exhibit B-2, p. 3.

¹² Ibid., p. 3.

¹³ Ibid., p. 4.

¹⁴ Ibid.

have to reapply for a CPCN if it wished to proceed with the Project. The Panel accepts that CBP would suffer serious consequences in the event that its application was declined. On a similar note, there is no indication that an extension of time would prejudice the OKIB. The Panel, therefore, finds that an extension of time to fulfill the conditions of the Order is warranted in the circumstances.

The Panel now considers the length of time to grant CPB to fulfill the condition set out in the Order. CBP seeks an additional month to enable it to fulfill the conditions of the Order on the basis that a one-month extension will balance the Crown's need to complete consultations with OKIB with the pressures of CBP to commence work on the Project.

The Panel accepts that CBP is meeting with the Crown regularly to monitor progress on consultation, but CBP is not privy to the actual consultations between the Crown and OKIB, and has provided no evidence of the anticipated timeframe within which consultations will be adequate for the purposes of the CPCN. As for evidence of timeframe, the parties to the consultation would be better positioned to understand the possible timeframe for completion of consultations. OKIB's letter of comment asks that the extension be for a period longer than a month, asserting that it has not yet been able to complete the work required to properly assess potential impacts as is needed to meaningfully participate in consultations. The letter of the Crown states that "[a]dditional information may be required to better understand the impact of the project on OKIB interests" but it gives no indication of how long it expects to conclude meaningful consultations and, if necessary, accommodation.

There is, therefore, no evidence to support a one-month extension, and the evidence of one of the parties indicates clearly that more than one month will be required. The Panel notes that if it were to grant a one-month extension, it is likely that consultations would not be completed and CBP would either need to come back to the BCUC for another variance of the Order or, failing that, the CPCN would expire, necessitating the need for CBP to reapply if it wished to pursue the Project. In that case, the BCUC would need to again assess the Project, including consultation and accommodation, before a CPCN could be granted.

Therefore, in the interests of regulatory efficiency, the Panel has determined that a six-month extension is appropriate. CBP may file evidence to demonstrate that OKIB has been consulted adequately at any point within this six-month extension.

For these reasons, the Panel varies Directive 1(a) of Order G-383-21 as follows:

1. Subject to the following:

- a. By December 17, 2022, CBP shall file with the BCUC evidence demonstrating that OKIB has been adequately consulted on the Project as outlined in the Decision accompanying Order G-383-21.**