



ORDER NUMBER
G-9-23

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

and

CB Powerline Ltd.
Request to Vary BCUC Order G-187-22

BEFORE:
C. M. Brewer, Panel Chair

on January 19, 2023

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 sections 45 and 46 of the *Utilities Commission Act* (UCA);
- B. On December 17, 2021, by Decision and Order G-383-21, the BCUC issued CBP 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;
- D. On July 11, 2022, by Order G-187-22, the BCUC varied Order G-383-21 Directive 1(a), directing CBP to file evidence on the adequacy of consultation, with the BCUC by December 17, 2022;
- E. By letter dated December 9, 2022, CBP requests that the BCUC extend the deadline to submit evidence on the adequacy of consultation with OKIB by approximately three months, to March 31, 2023 (Application);
- F. OKIB filed a letter dated December 14, 2022, with respect to CBP's request to extend the deadline to submit evidence on the adequacy of consultation. OKIB submits that the deadline set by Order G-187-22 should be extended to May 31, 2023;
- G. On December 20, 2022, CBP responded to OKIB's letter by stating that it opposes the May 31, 2023 deadline; and
- H. The BCUC has reviewed the Application and determines that a variation of Order G-187-22 is warranted.

NOW THEREFORE pursuant to section 99 of the UCA, the BCUC varies Directive 1 of Order G-187-22 as follows:

1. Subject to the following:
 - a. By May 31, 2023, 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 19th day of January 2023.

BY ORDER

Original signed by:

C. M. Brewer
Commissioner

Attachment

CB Powerline Ltd.
Request to Vary Directive 1 of BCUC Order G-187-22

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. By Order G-187-22 dated July 11, 2022, the BCUC extended the deadline to submit this evidence to December 17, 2022.

On December 9, 2022, CBP filed a request to further extend the deadline to submit evidence of the adequacy of Crown consultation to March 31, 2023.

2.0 Legal and Regulatory Framework

The applicable provision of the 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 December 14, 2022, the Okanagan Indian Band (OKIB) filed a letter with the BCUC responding to CBP's deadline extension request. On December 20, 2022, CBP provided a letter in reply to OKIB's December 14, 2022 submission.

4.0 CBP's Extension Request

CBP submits that, as it has not been delegated any aspects of Crown consultation, it continues to have very limited access to information about the consultation process and very limited ability to contribute to the consultation process.¹ CBP states that it has not been involved in any meetings, telephone calls or other correspondence between the Crown and OKIB.²

CBP states that it has recently been provided with details of the Ministry of Forests' (MoF) consultation with OKIB.³ CBP submits that important advances in consultation with OKIB have been made since the issuance of Order G-187-22. CBP notes that the MoF has continued to meet with and discuss the Project with OKIB, and that on September 27, 2022, the MoF issued a letter to OKIB in which the MoF undertakes an assessment of both the required level of consultation with OKIB in relation to the Project and the Project's potential impacts to OKIB's rights.⁴

Independent of the Crown consultation process, CBP provided to OKIB \$40,000 in funding which had been previously offered by CBP. OKIB acknowledged receipt of this funding on October 12, 2022.⁵ CBP notes that OKIB has indicated it will use the \$40,000 in funding to complete an Indigenous land use study in relation to the Project (ILUS). CBP further notes that OKIB believes the ILUS to be necessary to understand the potential impacts of the Project on OKIB Aboriginal rights and title and that the ILUS will take approximately 3-4 months to complete.⁶

CBP requests an extension to the Crown consultation evidence deadline in Order G-187-22 given that the MoF believes that it requires more time for Crown consultation.⁷ Based on the timing of OKIB's receipt of \$40,000 in funding, and the estimated length of time to complete the ILUS, CBP requests that the deadline to demonstrate the adequacy of Crown consultation with OKIB be extended to March 31, 2023.⁸ CBP submits that this extension is warranted because of the critical importance of the Project to the community of Cosens Bay and to British Columbians in general, and by the serious consequences CBP would suffer if an extension was not granted.⁹

5.0 OKIB's Submission

OKIB supports CBP's request for an extension of the deadline set by Order G-187-22 for demonstrating consultation adequacy, however, submits that an extension to May 31, 2022 [2023], is required to provide the

¹ Exhibit B-1, p. 2.

² Ibid.

³ Ibid.

⁴ Ibid, p. 3.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid., p. 4.

⁸ Ibid.

⁹ Ibid.

time necessary to engage in consultation with respect to the results of the ILUS.¹⁰ In its letter dated December 14, 2022, OKIB confirms that it is in the process of completing the ILUS and anticipates completing the ILUS by March 31, 2023.¹¹ OKIB notes that CBP may file consultation adequacy evidence in advance of any extended deadline.¹²

6.0 CBP's Response

CBP strongly opposes the additional two month extension proposed by OKIB, as it suggests an unnecessary extension to the Crown consultation process.¹³ CBP states that OKIB will have completed the ILUS by the end of February 2023, if OKIB had begun work within a few weeks of receiving the \$40,000 in funding.¹⁴

CBP submits that the costs of further delay are clear and that they continue to grow.¹⁵ Current delays threaten the ability to begin construction on the Project in the spring of 2023, and these delays may require extensions or renewals of the key Project agreements and permits.¹⁶ For example, CBP's Agricultural Land Commission permit expires February 20, 2023. Similarly, if Project construction does not begin in the spring of 2023, CBP may be required to extend its Ministry of Transportation and Infrastructure road use permit, which expires December 31, 2023.¹⁷

CBP agrees with OKIB that the deadline for demonstrating consultation adequacy is merely the outside date by which evidence must be provided. CBP reiterates that it is eager to work with all parties to advance consultation.¹⁸

Panel Determination

The Panel determines that an extension to the deadline for CBP to file evidence that OKIB has been consulted adequately is warranted. The Panel notes that both parties support an extension.

In considering the length of extension to grant CBP, the Panel accepts OKIB's update regarding progress on its ILUS as of December 14, 2022. OKIB maintains that the ILUS will be complete by March 31, 2023 and has not provided any update to the contrary to date. The Panel finds that some length of time following completion of the ILUS is necessary to review the study results and assess any Project mitigations or accommodations. The Panel considers the proposed additional two months to be acceptable. The Panel notes that the additional time will reduce the risk that CBP will need to request further extensions to the consultation adequacy evidence filing deadline.

The Panel agrees with both parties that CBP may file evidence to demonstrate that OKIB has been consulted adequately at any point prior to the amended filing deadline.

¹⁰ Exhibit C1-1, p. 1

¹¹ Exhibit C1-1, p. 1.

¹² Ibid, p. 2.

¹³ Exhibit B-2, p. 1.

¹⁴ Ibid.

¹⁵ Ibid, p. 2.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

For these reasons, the Panel varies Directive 1 of Order G-187-22 as follows:

1. Subject to the following:

- a. **By May 31, 2023, 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.**