



ORDER NUMBER
C-4-23

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

and

CB Powerline Ltd.
Application for a Certificate of Public Convenience and Necessity
Regarding Order G-383-21 Directive 1 Consultation Evidence

BEFORE:

C. M. Brewer, Panel Chair
T. A Loski, Commissioner

on October 17, 2023

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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 Order G-383-21 established the deadline for CBP to submit evidence on the adequacy of consultation to be within six months of the date of Order G-383-21;
- C. By Orders G-187-22 and G-9-23, the BCUC varied Order G-383-21 Directive 1(a) in response to CBP requests to extend the deadline to submit evidence on the adequacy of consultation with OKIB. Order G-9-23 directed OKIB to file this evidence by May 31, 2023;
- D. On May 31, 2023, CBP filed evidence to demonstrate that OKIB has been adequately consulted on the Project (Application);
- E. By Order G-143-23, the BCUC established the regulatory timetable for the review of the Application, which included an opportunity for OKIB to submit its written response to CBP's Application and for CBP to submit a written reply to OKIB's submission;
- F. On July 17, 2023, OKIB submitted its written response to CBP's Application. On July 27, 2023, CBP submitted its written reply;

- G. In the Application, CBP requests that certain information in the Application and in several appendices be held confidential as it includes details of consultation with OKIB. In OKIB's written response to CBP's Application, OKIB requests that certain sensitive information and locations be held confidential (together, Confidential Information); and
- H. The BCUC has considered the Application and the submissions, and determines that certain approvals are warranted.

NOW THEREFORE for the reasons set out in Appendix A to this order and pursuant to sections 45 and 46 of the UCA, the BCUC orders as follows:

1. CBP is granted a CPCN for the Project.
2. CBP is directed to file Project reports as outlined in Appendix B to this Decision.
3. The Confidential Information will be held confidential until the BCUC determines otherwise.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of October 2023.

BY ORDER

Original signed by:

C. M. Brewer
Commissioner

Attachment

CB Powerline Ltd.

Application for a Certificate of Public Convenience and Necessity

Reasons for Decision

October 17, 2023

Before:

C. M. Brewer, Panel Chair

T. A. Loski, Commissioner

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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 (RDNO). The Okanagan Indian Band (OKIB) participated in the CPCN Application proceeding as an intervenor.

1.1 Background

On December 17, 2021, the BCUC issued Decision and Order G-383-21 (2021 CPCN Decision) regarding the Project. The 2021 CPCN Decision states that Crown consultation with OKIB on the Project was inadequate to the date of the decision because OKIB had not been provided with the necessary support to sufficiently assess the potential impacts of the Project on its ability to exercise its claimed Aboriginal title and rights to the Project area, nor had the Crown consulted the OKIB on those impacts.¹ As the Indigenous consultation had been inadequate, the Panel was not able to find that the Project was in the public interest, and therefore the CPCN was not issued. The Panel directed CBP to demonstrate to the BCUC that OKIB has been adequately consulted no later than six months from the issuance of the 2021 CPCN Decision. Accordingly, Order G-383-21 established the following conditions for CPCN approval:

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 2021 CPCN Decision. By Order G-187-22, 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 adequacy of Crown consultation to March 31, 2023. By Order G-9-23, the BCUC extended the deadline to submit this evidence to May 31, 2023.

On May 31, 2023, CBP filed evidence which it states demonstrates that OKIB has been adequately consulted on the Project (Directive 1 Compliance Filing or Application). CBP requests that the BCUC confirm that Directive 1 of Order G-383-21 has been fulfilled and that the BCUC issue a CPCN for the Project.

¹ Order G-383-21, p. 37.

1.2 Regulatory Process

By Order G-143-23, dated June 14, 2023, the BCUC established a regulatory timetable for the review of the Directive 1 Compliance Filing which consisted of an opportunity for OKIB to submit its written response to CBP's Directive 1 Compliance Filing, and for CBP to submit a written reply to OKIB's submission.

On July 17, 2023, OKIB submitted its written response to CBP's Directive 1 Compliance Filing. On July 27, 2023, CBP submitted its written reply to OKIB's submission.

2.0 Evidence on Further Consultation

CBP submits that OKIB has been adequately consulted on the Project, and provides correspondence from the Ministry of Forests (MOF) as evidence. Specifically, CBP files three documents:²

- The indication of consultation determination provided by MOF to CBP, dated May 30, 2023;
- The determination of consultation adequacy letter provided by MOF to OKIB, dated May 29, 2023; and
- MOF's initial assessment of potential impact on OKIB Aboriginal rights and title, dated September 27, 2022.

CBP files the latter two documents on a confidential basis.³

CBP submits that the deficiencies in the consultation process with OKIB, as identified in the 2021 CPCN Decision, have been addressed.⁴ The 2021 CPCN Decision found OKIB's ability to obtain information on potential impacts to its Aboriginal right and title, and the financial support provided to OKIB to do so, to be deficient.⁵ The 2021 CPCN Decision states that "OKIB [had] not been given the suitable support to complete the studies needed to properly assess the potential impacts" of the Project.⁶ The 2021 CPCN Decision further states that any evidence of effective consultation has "to show the impacts of the Project on OKIB's claimed Aboriginal rights and title including any mitigation or accommodation that may be necessary regarding any potential impacts."⁷

CBP submits that OKIB has now received funding support, and has completed the studies needed. CBP states that it provided \$40,000 to OKIB to support OKIB's efforts in gathering information regarding potential impacts of the Project. OKIB received this funding on October 12, 2022, and OKIB indicated that the funding would be used to complete an Indigenous land use study.⁸ CBP submits that MOF delayed the conclusion of consultations with OKIB until OKIB had conducted, completed and reviewed its Indigenous land use study.⁹

CBP submits that the MOF letter dated May 29, 2023, demonstrates clear consideration of the potential impacts of the Project on OKIB Aboriginal rights and title, and application of appropriate mitigation and accommodation.¹⁰

² Exhibit B-1.

³ Ibid., p. 1

⁴ Ibid., p. 3.

⁵ Ibid., p. 2.

⁶ Ibid., p. 2.

⁷ Ibid.

⁸ Ibid., p. 4.

⁹ Ibid., p. 4.

¹⁰ Exhibit B-1, p 3.

3.0 OKIB Submission

OKIB maintains that Crown consultation on the Project remains inadequate.

Between the issuance of the 2021 CPCN Decision and October 2022, when OKIB received funding, OKIB submits it continued to express its concerns regarding the Project, particularly with respect to how the Project would induce further development in an area already heavily impacted by cumulative effects.¹¹ OKIB states that during this time, the Crown only met with OKIB on one occasion, and the purpose of the meeting was to clarify concerns.¹²

As noted by CBP, OKIB received funding to proceed with an assessment of Project impacts to its rights. OKIB states it was able to complete a limited scope assessment of impact to its rights by February 2023 (Cultural Land Use Report).¹³ OKIB's Cultural Land Use Report concluded the following:¹⁴

- There were ongoing community concerns about the Project's impact on kokanee;
- The electrification of the Cosens Bay community would support increased number of houses, increased demand for infrastructure, and longer duration of time spent by property owners at their residences, all of which will have a direct adverse effect on OKIB's rights; and
- The Project will exacerbate cumulative effects that OKIB already considers to be at an unacceptable level.

Following completion of the Cultural Land Use Report, OKIB and MOF met in April 2023. In an attempt to address some of the impacts associated with the Project, OKIB proposed a number of potential accommodation measures. OKIB filed details of these accommodation measures on a confidential basis.¹⁵ MOF however advised OKIB that it could not agree to most of the proposed accommodation measures because the proposed measures fell outside of its statutory mandate.¹⁶

In May 2023, OKIB put forward a proposal to work with MOF and other relevant ministries (such as BC Parks, Ministry of Indigenous Relations and Reconciliation and the Ministry of Water, Land and Resource Stewardship) to further develop and come to agreement on the proposed accommodation measures noted above. OKIB states that MOF refused to engage in this process and on May 29, 2023, determined that it was of the opinion that consultation had been sufficient.¹⁷

¹¹ Exhibit C-1, para 24.

¹² Ibid., para 26.

¹³ Ibid., para 30.

¹⁴ Ibid., para 31.

¹⁵ Exhibit C-1-1, pp. 193-195.

¹⁶ Ibid., para 33.

¹⁷ Ibid., para 35.

OKIB submits that the Crown has failed to meet its consultation obligations for the following reasons:¹⁸

- MOF has failed to address the issues of induced development and cumulative effects;
- MOF has inappropriately limited accommodations to only those measures within MOF's statutory mandate;
- The accommodation measures that the MOF has agreed to are incomplete and lack certainty;
- MOF has failed to provide capacity funding to OKIB, and has failed to facilitate OKIB in getting capacity funding from the Crown; and
- The Crown has failed to consult with OKIB with respect of the CPCN.

In its submission, OKIB elaborates on each of these reasons.

Failure to address induced effects and cumulative effects

OKIB submits that its Cultural Land Use Report indicates that while currently residents are only permitted to spend half of the year on their property, several letters from Cosens Bay community members in support of the Project demonstrate desire to increase the amount of time spent on the properties.¹⁹ Further, OKIB refers to the Cultural Land Use Report which states that "in at least two instances the proposed electrification [Project] has also been used to advertise real estate in the Cosens Bay community" and that the Project has been used to "support rezoning applications."²⁰ OKIB submits that MOF has not addressed this issue. OKIB states that MOF has instead concluded that because increased development would require a change in zoning, and because zoning is the responsibility of the RDNO, MOF does not have the responsibility to address the issue.²¹

Undue limitation on accommodation measures

OKIB states that MOF's position that it cannot agree to accommodation measures because they fall outside of their statutory mandate is inconsistent with the law on the duty to consult.²²

Accommodation measures that have been proposed are incomplete and lack certainty

OKIB states that MOF acknowledged that the accommodation measures that it proposed lacked certainty, yet it refused to work with OKIB to take the steps necessary to ensure the measures would be fulfilled.²³

Lack of Adequate Capacity Funding

OKIB references case law which states that appropriate funding is essential to a fair and balanced consultation process, and to ensure a 'level playing field' in any consultation.²⁴ OKIB notes that the BCUC also recognized the

¹⁸ Exhibit C-1, para 5.

¹⁹ Ibid., para 39.

²⁰ Ibid., para 41.

²¹ Ibid., para 44.

²² Ibid., paras 62 & 67.

²³ Ibid., para 74.

²⁴ Ibid., para 75.

importance of providing OKIB with capacity funding to support its participation in this consultation process.²⁵ OKIB states that, despite this, MOF has provided no funding to OKIB.

OKIB acknowledges that CBP eventually provided \$40,000 in capacity support, although this occurred more than 8 months after the issuance of the 2021 CPCN Decision, and following the urging of OKIB for CBP to do so.²⁶

The \$40,000 estimate for capacity funding prepared by OKIB in April 2021 was developed early in the process, and OKIB states that at that time it had little information about the Project or knowledge about OKIB's land uses in the Project area.²⁷ OKIB has since determined that it needs to complete the following studies to assess the impacts on its Aboriginal rights and title:

- an environmental and archaeological impact study to understand the gaps in the Environmental Impact Assessment/Environmental Management Plan (EIA/EMP) and environmental impacts of the Project; and
- a cultural land use study

OKIB estimates the costs of these studies to be approximately \$135,500 and \$226,600, respectively.²⁸

No consultation on the CPCN

OKIB submits that the BCUC should refuse to grant the CPCN as the record shows that the duty to consult has not been satisfied, particularly with respect of the potential effects of the CPCN itself.²⁹ To date however, OKIB states there has been no consultation on the CPCN itself. OKIB notes that MOF has explicitly stated that its consultation process has only been in respect of the authorizations required under the *Land Act* and the *Water Sustainability Act* and that it is not consulting on the issuance of the CPCN under the UCA.³⁰ OKIB submits that in limiting Crown consultation to the MOF authorizations, the Crown took a much narrower view of its responsibilities.³¹

OKIB submits that for these reasons the BCUC must refuse to issue a CPCN for the Project.

4.0 CBP Response

In reply, CBP reiterates that consultation with OKIB has been extensive, has involved multiple rounds of exchanges of information and communication with OKIB, and has been adequate.³²

CBP submits that OKIB's concerns with the Project have shifted over time, from initial environmental concerns to a focus primarily on cumulative and induced impacts. CBP accepts that shifts in focus are expected throughout consultation; however, CBP submits that this reduced emphasis on environmental issues attests to MOF's engagement on these topics and is indicative of the depth of consultation generally.³³

²⁵ Exhibit C-1, para 76.

²⁶ Ibid., para 78.

²⁷ Ibid., para 81.

²⁸ Ibid.

²⁹ Ibid., para 90.

³⁰ Ibid., para 96.

³¹ Ibid., para 98.

³² Exhibit B-2, p. 2.

³³ Ibid., p. 2.

In its reply, CBP addresses OKIB's concerns with Crown consultation.

MOF failed to address the issues of induced development and cumulative effects

CBP respectfully submits that these induced or "knock-on" effects are speculative and beyond the scope of the Crown decision in relation to the Project to which consultation pertains.³⁴ CBP states it has consistently been of the view that the purpose of the Project is to serve a current need of the community of Cosens Bay, and that the BCUC agreed with that position in the 2021 CPCN Decision. CBP notes that the land authorizations sought by CBP would not be exclusive and would not prevent OKIB access across the Crown lands required for the Project, except potential temporary road closures during construction for safety reasons.³⁵ CBP submits that the focus of consultation should be on the effects of the Project in question, such as potential effects on wildlife or ecosystems.³⁶ CBP submits those effects have been appropriately considered, consulted on, and mitigated, both through CBP's proactive mitigations and the recommended mitigations from MOF.³⁷

MOF inappropriately limited accommodations to only those measures within MOF's statutory mandate

CBP submits that the evidentiary record demonstrates that MOF engaged extensively, in good faith, and is committed to recommending several mitigation measures to address OKIB concerns, including working with other departments as appropriate.³⁸ CBP further submits that OKIB input has had a meaningful influence on the MOF and BCUC CPCN processes and outcomes.³⁹ CBP states that the Crown has therefore engaged in a reasonable level of consultation and accommodation given the severity of the impacts, which MOF found to be low.⁴⁰

The accommodation measures that the MOF agreed to are incomplete and lack certainty

CBP states that consultation on the Project has been substantive and extensive, and that MOF has committed to implement several mitigation measures to address environmental impacts within the authorizations it grants.⁴¹ Specific details regarding these mitigation measures have been filed on a confidential basis. CBP's EIA and EMP were submitted to MOF and were viewed as acceptable by MOF Ecosystem Biologists.⁴² Further, "MOF is of the opinion that given the mitigations outlined in the EIA/EMP and the mitigations recommended by MOF Ecosystems, that the potential impact to fish and wildlife is likely to be low."⁴³

MOF has failed to provide capacity funding

³⁴ Exhibit B-2, p. 4.

³⁵ Ibid.

³⁶ Ibid., p. 5.d

³⁷ Ibid., p. 5.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid., p. 6.

⁴² Exhibit B-1, p. 2; Exhibit C-1, p. 176.

⁴³ Exhibit C-1, p. 177.

CBP notes that the decision of whether and how much funding to provide is a Crown decision which must be assessed on a standard of reasonableness, and that capacity funding is not required in all circumstances or always required to the level requested by a First Nation.⁴⁴ CBP states that the evidence demonstrates that “OKIB was able to fully participate and have its concerns addressed at the level of funding which it received, commensurate with the fact that the topic of consultation in this instance is a proposed community underground distribution power line.”⁴⁵

CBP further submits that environmental surveys were completed and were sufficient for the regulatory requirements of CBP’s permitting processes. CBP states these surveys were reviewed by MOF Ecosystems Branch, which subsequently offered clarification and several mitigation measures to address OKIB’s stated concerns. CBP submits that lack of the funding sought by OKIB did not therefore prevent its environmental concerns from being considered, as part of MOF’s comprehensive decision making process.⁴⁶

Crown has failed to consult in respect of the CPCN

CBP submits it is not clear that any independent duty to consult OKIB necessarily arose in relation to the CPCN, particularly on the facts of the Project. If such a duty did arise, CBP submits that it was effectively fulfilled by the MOF and BCUC processes.⁴⁷ CBP notes that the MOF processes engaged fully with potential impacts of the Project on OKIB rights and title, including impacts to the use of certain species such as kokanee, cumulative effects, and potential knock on effects, though it did not reach the conclusions requested by OKIB.⁴⁸ CBP therefore submits that there is no difference between consultation on the CPCN specifically or on the MOF authorizations specifically, as both involve a consideration of Project impacts on OKIB.⁴⁹

Panel Determination

The Panel determines that Crown consultation with OKIB has been adequate to the date of this decision. The Panel provides its reasons below.

The Panel acknowledges the timeline of events which have taken place since the 2021 CPCN Decision was issued. This includes the delivery of \$40,000 by CBP to OKIB in October 2022 and the completion of OKIB’s Cultural Land Use Report by the end of February 2023. The Panel notes that OKIB worked with its consultant to develop a scope of work for a revised approach to its Cultural Land Use Report that could be completed within a \$40,000 budget.

The Panel notes that following completion of the Cultural Land Use Report, OKIB and MOF met to discuss the findings, specifically potential accommodations. Through this meeting, and subsequent emails, MOF indicated that it had limited ability to act on some proposed accommodations.

The Panel also acknowledges that OKIB accepted the \$40,000 reluctantly, as it had identified this budget no longer represented the full scope of studies that it considers are required. OKIB accepted the funds so as not to

⁴⁴ Exhibit B-2, p. 6.

⁴⁵ Ibid.

⁴⁶ Ibid., p. 7.

⁴⁷ Ibid.

⁴⁸ Ibid., p. 9.

⁴⁹ Ibid.

frustrate the consultation process, and used the funds to complete what it considers to be a limited scope assessment of potential Project impacts to its Aboriginal rights and title. The Panel is satisfied that OKIB was able to complete a Cultural Land Use Report to support its understanding of the impacts of the Project on its rights and title.

OKIB states that its Cultural Land Use Report identified several outstanding concerns. The Panel considers these identified concerns in its assessment of the consultation process to date.

Project impacts on kokanee

The Panel notes that through discussion/emails with OKIB during the summer of 2022, the results of kokanee surveys completed by CBP were submitted to OKIB. The Panel understands OKIB's concerns relate to the impacts on kokanee which may occur during Project construction, and in particular directional drilling. Mitigations and accommodations required during construction to protect fish and wildlife are outlined in CBP's EIA and EMP. Submissions made in this proceeding indicate that MOF Ecosystems Biologists reviewed the EIA and EMP as part of the permitting process.

The Panel further notes that MOF considers the potential impact to fish and wildlife is likely to be low, given the mitigations included in the EIA/EMP and recommended by MOF Ecosystems Biologists. The MOF recommended mitigations consider construction timing, monitoring, silt containment, impact mitigation, restoration and wildlife exclusion measures.⁵⁰ These mitigations form part of the authorizations granted by MOF. Specific details of these MOF mitigations have been filed on a confidential basis.

In the 2021 CPCN Decision, the BCUC noted that it was satisfied that the EIA and EMP are to be assessed as part of CBP's permitting processes with MOF. The evidence before this Panel indicates that with respect to impacts to fish during construction, MOF Ecosystem Biologists have reviewed the EIA and EMP and have included the requirement for specific mitigation measures to be implemented during construction. These measures, as well as follow-up monitoring after construction, include for the participation of OKIB members. The Panel finds that OKIB's environmental concerns were accounted for within the authorizations issued by MOF.

Induced impacts and cumulative effects of the electrification of Cosens Bay

In considering OKIB's concerns regarding the induced impacts and cumulative effects which may result from the Project, the Panel revisits the electricity distribution capacity assumptions and the evidence submitted by CBP in its CPCN Application. CBP states that the Cosens Bay community is made up of 101 land parcels, of which 74 land parcels have structures currently placed upon them.⁵¹ CBP has sized the Project based on the assumption of serving 100 residential customers, each requiring 8 kW of power.⁵² The community of Cosens Bay is surrounded on three sides by Kalamalka Lake Provincial Park.⁵³ Further, the community of Cosens Bay is accessed by the Cosens Bay Road, which itself is "very narrow and rough" and has to date not been upgraded to any modern-day standard for a rural road.⁵⁴ Cosens Bay Road travels through Kalamalka Lake Provincial Park and any widening of

⁵⁰ Exhibit B-2, p. 6.

⁵¹ CBP CPCN Proceeding, Exhibit B-6, BCUC IR 2.1.2 & 2.1.3.

⁵² Ibid., BCUC IR 16.6.

⁵³ Ibid., Exhibit B-1, p. 15.

⁵⁴ Ibid., p. 17.

the road right-of-way would require a BC Park boundary adjustment.⁵⁵ CBP states that approval of a BC Park boundary adjustment to widen the road is very unlikely, given a past application to widen the road in 2016 by the Ministry of Transportation and Infrastructure (MOTI) was met with public resistance. That application by MOTI was eventually withdrawn.⁵⁶

Based on these limitations, the Panel considers that the Project on its own will not change the extent of occupation of private lands beyond that currently occupied in the region. If there is ever a need for increased electrical capacity to serve increased demand from additional CBP customers, CBP would need to seek approval of a CPCN from the BCUC and the Crown would need to consult with potentially impacted First Nations with respect to this potential future expansion. Having said that, there is no evidence before the Panel that CBP is seeking or considering any future expansion to the Project's capacity.

With respect to the Project leading to increased use of the dwellings within Cosens Bay by their owners, the Panel notes that limitations are in place on this matter as well. The Cosen's Bay area is currently zoned by the RDNO for "seasonal, single-family residential (R-6) and therefore occupancy is limited to 182 days per year."⁵⁷ Any new dwellings to be built on the existing lots will need to align with current zoning requirements. In the future, should the community wish to increase allowable usage to greater than seasonal, it would need to follow the RDNO's rezoning process. The Panel is therefore satisfied that, with respect to this Project, the risk of cumulative effects and induced impacts is sufficiently mitigated. The Panel is confident that any further development or any changes to property usage, which may impact OKIB's or other area First Nations' rights and title, would require further consultation.

In assessing the adequacy of consultation, the Panel also considered whether further studies by OKIB would elicit additional necessary accommodations not already identified. MOF has indicated that it considers the impact of the project to be low. Based on this determination by MOF, the Panel is satisfied that no further studies are required prior to making its decision regarding the adequacy of consultation with OKIB on the Project.

Regarding the issue of whether the Crown has failed to consult in respect of the CPCN. The BCUC's role is to assess the scope of the Crown's duty to consult First Nations and to make a determination as to the adequacy of consultation with potentially affected Indigenous groups up to the point of its decision.⁵⁸ As noted in Order G-62-23 and the related decision, the BCUC already acknowledged that its decision to issue a CPCN may trigger the duty to consult. However, the legislature has not delegated to the BCUC, the Crown's duty to consult; therefore, it cannot itself engage in consultation.⁵⁹ The Panel considers that consultation with OKIB has been adequate to date for the reasons provided here. Concerns with the Project raised by OKIB during the consultation process have either been adequately addressed in the authorizations granted by MOF or through appropriate mitigations which are in place as a result of CBP accommodations relating to the Project.

OKIB submits that the Crown has effectively limited its consultation to matters within the jurisdiction of MOF. In this instance, the Panel does not consider that the MOF's limited jurisdiction has led to inadequate consultation. The cumulative impact concerns raised by OKIB may be beyond MOF's jurisdiction; however, the Panel finds that

⁵⁵ Ibid.

⁵⁶ CBP CPCN Proceeding, Exhibit B-1, p. 17.

⁵⁷ Exhibit C-1, p. 168.

⁵⁸ Order G-383-21, p. 32.

⁵⁹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para. 74.

the cumulative impact concerns raised by OKIB in this proceeding would require future Crown decisions, which would, in turn, require further consultation. Based on the evidence provided, the potential adverse impacts of these future decisions do not relate to this CPCN Application. Therefore, any limitations on MOF's ability to address cumulative impact concerns outside of its jurisdiction are not an issue for this Panel nor do they impact our findings on the adequacy of consultation.

For the reasons set out in this decision, the Panel finds that Crown consultation with OKIB on the Project has been adequate to the date of this decision and that CBP has complied with Directive 1 of Order G-383-21. Accordingly, **the Panel issues a CPCN for the Project pursuant to sections 45 and 46 of the UCA.**

The Panel directs CBP to provide ongoing reporting on the Project as set out in Appendix B to this Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of October 2023.

Original signed by:

C. M. Brewer
Panel Chair / Commissioner

Original signed by:

T. A Loski
Commissioner

CB Powerline Ltd.
Application for a Certificate of Public Convenience and Necessity

PROJECT REPORTING

The scope of Project reporting for the duration of the Project will comprise the following:

1. Semi-Annual Progress Reports

Each report is required to detail:

- Actual costs incurred to date compared to the Project cost estimate breakdown provided in Table 8 of the CPCN Application, highlighting variances with an explanation of significant variances;
- Updated forecast of costs, highlighting the reasons for significant changes in Project costs anticipated to be incurred; and
- The status of identified risks noted in Exhibit 4.6 of the CPCN Application, highlighting the status of identified risks, changes in and additions to risks, the options available to address the risks, the actions that CBP is taking to deal with the risks and the likely impact on the Project's schedule and cost.

CBP must file semi-annual progress reports within 30 days of the end of each semi-annual reporting period, with the first report covering the period ending June 30, 2024. Each report must provide the information set out above.

2. Material Change Reports

A material change (Material Change) is a change in CBP's plan for the Project that would reasonably be expected to have a significant impact on the schedule, cost or scope, such that:

- There is a schedule delay of greater than six months compared to the schedule provided in Exhibit 4.3 of the CPCN Application;
- The total Project cost exceeds 10 percent of the estimated Project cost provided in Table 8 of the Application; or
- There is a change to the Project scope detailed in section 4 of the Application.

In the event of a Material Change, CBP must file a Material Change report with the BCUC explaining the reasons for the Material Change, CBP's consideration of the Project risk and the options available, and actions CBP is taking to address the Material Change. CBP must file the Material Change report as soon as practicable and in any event within 30 days of the date on which the Material Change occurs.

3. Final Report

A Final Report within three months of commissioning the Project. The report is to include:

- The final cost of the Project, including a breakdown of the final costs;
- A comparison of the final costs to the estimates provided in Table 8 of the Application; and
- An explanation and justification for any material cost variances that exceed 10 percent for any of the cost items provided in Table 8 of the Application.