

COURT OF APPEAL

IN THE MATTER OF THE *UTILITIES COMMISSION ACT*, RSBC 1996, c.473

AND IN THE MATTER OF JANUARY 27, 2005, AND FEBRUARY 17, 2005,
ORDERS OF THE BRITISH COLUMBIA UTILITIES COMMISSION

BETWEEN:

GSX CONCERNED CITIZENS COALITION,
BRITISH COLUMBIA SUSTAINABLE ENERGY ASSOCIATION,
SOCIETY PROMOTING ENVIRONMENTAL CONSERVATION
Appellants

AND:

BRITISH COLUMBIA UTILITIES COMMISSION
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
DUKE POINT POWER LIMITED PARTNERSHIP
Respondents

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that pursuant to s.101 of the *Utilities Commission Act*, RSBC 1996, c.473, GSX Concerned Citizens Coalition, British Columbia Sustainable Energy Association, and Society Promoting Environmental Conservation hereby apply for leave to appeal to the Court of Appeal for British Columbia from the order of R.H. Hobbs, Chair, and L.A. Boychuk, Commissioner, of the British Columbia Utilities Commission ("Commission") pronounced the 27th day of January 27, 2005, ("L-10-05"), and the 17th day of February, 2005, ("E-1-05") at Vancouver, British Columbia.

1. The appeal is from an order of a statutory body.
2. The appeal is not from an appeal under Rule 49 or 53 (6) of the Supreme Court Rules.
3. The Appeal involves Constitutional/Administrative law.

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the hearing of this application for an order granting the Appellants leave to appeal Orders E-1-05 and L-10-05 so that the Appellants may proceed with an appeal to have the Orders set aside, or, in the alternative, varied.

The grounds of appeal are:

1. The Commission erred by not disqualifying the Commission Panel on the grounds of a reasonable apprehension of bias.
2. The Commission erred by denying procedural fairness and natural justice to the Appellants, particulars of which include:
 - a. unduly restricting the scope of the hearing,
 - b. proceeding with undue haste,
 - c. unreasonably limiting the Appellants' access to confidential documents and other information; and
 - d. improperly conducting itself during an *in camera* session.
3. The Commission erred in law on grounds to be further particularized once the Commission's reasons for decision regarding Order E-1-05 have been provided to counsel.
4. Such other grounds as counsel may advise.

The hearing of this proceeding occupied 11 days.

Dated at North Vancouver, British Columbia, this 27 day of February, 2005.

William J. Andrews
Solicitor for the Appellants
GSX Concerned Citizens Coalition,
British Columbia Sustainable Energy Association, and
Society Promoting Environmental Conservation

To the respondent: British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

And to its solicitor: Gordon Fulton,
Boughton Peterson Yang Anderson
1055 Dunsmuir Street
Vancouver, BC
V7X 1S8

To the respondent: British Columbia Hydro And Power Authority
17th Floor - 333 Dunsmuir Street
Vancouver, BC
V6B 5R3

And to its solicitor: Christopher Sanderson, Q.C.
Lawson Lundell
1600 – 925 West Georgia Street
Vancouver, BC
V6C 3L2

To the respondent: Duke Point Power Limited Partnership
3040 – 400 -4th Avenue SW
Calgary, AB
T2P 0J4

And to its solicitor: Loyola Keough
Bennett Jones
4500 -855 -2nd Street SW
Calgary, AB
T2P 4K7

This Notice of Application for Leave to Appeal is given by: William J. Andrews,
Barrister & Solicitor, whose address for service is: 1958 Parkside Lane, North
Vancouver, British Columbia, V7G 1X5, Telephone: (604) 924-0921, Fax: (604) 924-
0918.

To the respondents:

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE
of your intention by filing a form entitled “Notice of Appearance” (Form 2 of the Court
of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the
appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to
Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

(a) you are deemed to take no position on the application, and
(b) the parties are not obliged to serve you with any further documents related to the
application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
The Law Courts
800 Smithe Street
Vancouver BC V6Z 2E1

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT
850 Burdett Ave
Victoria BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468
Fax filings: (604) 660-1951

Court of Appeal File No. _____

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