

**VANCOUVER**  
**FEB 24 2005**  
**COURT OF APPEAL**  
**REGISTRY**

**NO**  
**VANCOUVER REGISTRY**

**COURT OF APPEAL**

**IN THE MATTER OF UTILITIES COMMISSION ACT**  
**R.S.B.C. 1996, c.473364 as amended; and**

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

**BETWEEN:**

**JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE**

**APPELLANT**

**AND:**

**THE BRITISH COLUMBIA UTILITIES COMMISSION,**  
**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY AND**  
**DUKE POINT POWER LIMITED PARTNERSHIP**

**RESPONDENTS**

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

TAKE NOTICE that Joint Industry Electricity Steering Committee hereby applies for leave to appeal to the Court of Appeal for British Columbia from the orders of the British Columbia Utilities Commission (the "Commission") pronounced January 27, 2005 (No. L-10-05) and February 17, 2005 (No. E-1-05), at Vancouver, British Columbia (the "Orders") pursuant to section 101 of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 (the "Act").

1. The appeal is from a:

☐ Trial Judgment ☐ Summary Trial Judgment

☒ Order of a Statutory Body ☐ Chambers Judgment

2. If the appeal is from an appeal under Rule 49 or 53 (6) of the Supreme Court Rules,

name the maker of the original decision, direction or order:

N/A

3. Please identify which of the following is involved in the appeal:

☒ Constitutional/Administrative

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the hearing of this application for an order that leave to appeal the Orders be granted so the Appellant may proceed with an appeal to have the Orders set aside, or in the alternative, varied.

The grounds of appeal are:

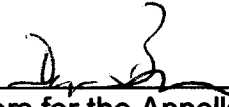
1. The Commission erred by not disqualifying the Panel on the grounds of a reasonable apprehension of bias.
2. The Commission erred by denying procedural fairness and natural justice to the Appellant, particulars of which include:
  - a. unduly restricting the scope of the hearing;
  - b. proceeding with undue haste;
  - c. unreasonably limiting the Appellant's 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 decision for Order E-1-05 is provided to counsel.
4. Such other grounds as counsel may advise.

The hearing of this proceeding occupied X days.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of February, 2005.

BULL, HOUSSEY & TUPPER

per:

  
Solicitors for the Appellant

To the Respondent: British Columbia Utilities Commission  
6th Floor, 900 Howe Street  
Vancouver, B.C.  
V6Z 2N3

And To its Solicitor: Mr. Gordon A. Fulton  
Boughton Peterson Yang Anderson  
1055 Dunsmuir Street  
Vancouver, B.C.  
V7X 1S8

And To the Respondent: British Columbia Hydro and Power Authority  
17<sup>th</sup> Floor - 333 Dunsmuir Street  
Vancouver, B.C.  
V6B 5R3

And To its Solicitor: Mr. Chris Sanderson  
Lawson Lundell  
1600 – 925 West Georgia Street  
Vancouver, B.C.  
V6C 3L2

And To the Respondent: Duke Point Power Limited Partnership  
3040 – 400 -4<sup>th</sup> Avenue SW  
Calgary, AB  
T2P 0J4

And To its Solicitor: Mr. Loyola Keough  
Bennett Jones  
4500 -855 -2<sup>nd</sup> Street SW  
Calgary, AB  
T2P 4K7

This Notice of Leave to Appeal is filed by Bull, Housser & Tupper, Solicitors for the Appellant, whose office address and address for delivery is 3000 - 1055 West Georgia Street, Vancouver, B.C., V6E 3R3 Attention: Brian Wallace, Telephone: 641-4852 Fax: 641-4949

To the respondent(s):

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 Appeal.

**IF YOU FAIL TO FILE A NOTICE OF APPEARANCE**

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

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

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**BULL, HOUSSEY & TUPPER**  
Barristers & Solicitors  
3000 - 1055 West Georgia Street  
Vancouver, B.C. V6E 3R3  
Phone: (604) 687-6575  
Attention: Brian Wallace