

CANADA / JUDGMENT

Richmond (City) v. British Columbia (Utilities Commission)

2024 BCCA 399

COURT

British Columbia Court of Appeal

DECIDED

20 November 2024

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2024 BCCA 399 Richmond (City) v. British Columbia (Utilities Commission) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Richmond (City) v. British Columbia (Utilities Commission), 2024 BCCA 399 Date: 20241120 Dockets: CA50129; CA50130 CA50135; CA50136 Docket: CA50129 Between: City of Richmond Appellant And British Columbia Utilities Commission Respondent

- and - Docket: CA50130 Between: Lulu Island Energy Company Ltd. Appellant And British Columbia Utilities Commission Respondent
- and - Docket: CA50135 Between: City of North Vancouver Appellant And British Columbia Utilities Commission Respondent
- and - Docket: CA50136 Between: Lonsdale Energy Corporation Appellant And British Columbia Utilities Commission Respondent Before: The Honourable Madam Justice Fenlon (In Chambers) On appeal from: A decision of the British Columbia Utilities Commission, dated August 12, 2024 (Order Number G-214-24). Oral Reasons for Judgment Counsel for the Appellants, City of Richmond and Lulu Island Energy Company Ltd.: C. Dennis, K.C. O.J. James Counsel for the Appellants, City of North Vancouver and Lonsdale Energy Corporation: J. Yardley Counsel for the Respondent: L. Bussoli Place and Date of Hearing: Vancouver, British Columbia November 20, 2024 Place and Date of Judgment: Vancouver, British Columbia November 20, 2024 Summary: Four applicants seek leave to appeal an order of the British Columbia Utilities Commission. The applicants argue the Commission erred in concluding that corporations, wholly owned and operated by a local government, that provide energy utility services exclusively within the boundaries of that local government are "public utilities" subject to the Commission's regulation. The applicants also argue that the Commission breached its duties of procedural fairness and natural justice by failing to provide notice to interveners before adding certain requirements to qualify for an exemption. Held: Applications for leave to appeal granted. The contrary statutory interpretation the applicants propose has merit and the appeal raises a question of general importance because the order could affect the operational and strategic decisions of numerous entities beyond the applicants. There is benefit to clarifying whether the

Commission must provide notice to, and seek input from, interveners before adding terms to an order that were not part of the inquiry.

- [1] FENLON J.A.: I have before me four applications for leave to appeal an order of the British Columbia Utilities Commission (the "Commission"). The applicants are: the City of Richmond; Lulu Island Energy Company Ltd., a local government corporation ("LGC") wholly owned and operated by the City of Richmond; the City of North Vancouver; and Lonsdale Energy Corporation, also an LGC wholly owned and operated by the City of North Vancouver.
- [2] The order of the Commission dealt with s. 1(1) of the Utilities Commission Act, R.S.B.C. 1996, c. 473, which provides that a municipality or regional district is not a public utility in respect of services it provides within its own boundaries, which I will refer to as the "Municipal Exclusion": "public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for
- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or
 - (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation, but does not include
 - (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,
 - (d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,
 - (e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,
 - (f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the Geothermal Resources Act, or
 - (g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12(9) of the Hydro and Power Authority Act, in respect of anything done, owned or operated under or in relation to that agreement;

- [3] The Commission's order states that an LGC does not fall within the Municipal Exclusion and is therefore a public utility subject to regulation by the Commission. The order also created a class of persons exemption that would effectively remove an LGC from the Commission's regulation if the LGC files annual reporting information required by the Commission in the form the Commission specifies.
- [4] Section 101(1)(b) of the Utilities Commission Act gives a right of appeal from an order of the Commission with leave of this Court, hence these applications.
- [5] The applicants seek leave on two grounds:
1. Did the Commission err in its interpretation of the Municipal Exclusion and in its conclusion that an LGC that is wholly owned and operated by a local government and providing energy utilities services within the boundaries of that local government does not fall within the exclusion?
 2. Did the Commission breach its duties of procedural fairness and natural justice by failing to provide the applicants, as interveners, notice of and input into the exemption criteria in the final order?
- [6] The respondent Commission takes no position on whether leave should be granted.
- [7] I conclude that the applicants have satisfied the test for leave to appeal from a statutory tribunal set out in *Queens Plate Development Ltd. v. Vancouver Assessor*, Area 09 (1987), 16 B.C.L.R. (2d) 104 (C.A.) at para. 14:
- (a) whether the proposed appeal raises a question of general importance as to the extent of jurisdiction of the tribunal appealed from ;
 - (b) whether the appeal is limited to questions of law involving:
 - (i) the application of statutory provisions ; (ii) a statutory interpretation that was particularly important to the litigant ; or, (iii) interpretation of standard wording which appears in many statutes, for example the in force provisions of retroactive legislation ;
 - (c) whether there was a marked difference of opinion in the decisions below and sufficient merit in the issue put forward ;
 - (d) whether there is some prospect of the appeal succeeding on its merits ;
 - (e) whether there is any clear benefit to be derived from the appeal ; and
 - (f) whether the issue on appeal has been considered by a number of appellate bodies

- [8] As to the first proposed ground of appeal, there is merit to the contrary statutory interpretation proposed by the applicants, as the Commission itself has indeed recognized. Further, the appeal raises a question of general importance because the Commission's order could affect operational and strategic decisions of numerous entities beyond those involved in the appeal.
- [9] As to the second proposed ground of appeal, there is a benefit in clarifying whether the Commission is obligated to provide notice and seek input from interveners to an inquiry before it adds terms to an order that were not part of the inquiry.
- [10] Finally, I note that this Court has not previously considered the proposed issues.
- [11] The applications for leave to appeal are accordingly granted. "The Honourable Madam Justice Fenlon"

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