
TO: CITY MANAGER **DATE:** 2006 May 9

FROM: CITY SOLICITOR **FILE:**
DIRECTOR PLANNING & BUILDING

SUBJECT: SECTION 56, BILL 30 – PROPOSED AMENDMENT TO *UTILITIES COMMISSION ACT*

PURPOSE: To provide Council with information on Proposed Legislation (Bill 30)

RECOMMENDATIONS:

1. **THAT** Council endorse the resolution passed by the Squamish-Lillooet District (Attachment #2) pertaining to Bill 30 as it relates to independent power production.
2. **THAT** a letter be sent to both Premier Gordon Campbell and Richard Neufeld, Minister of Energy, Mines and Petroleum Resources requesting that Bill 30 not be proceeded with in regard to Section 56, and that the Memorandum of Understanding on Independent Power Projects between the Province of British Columbia and the Union of British Columbia Municipalities be honoured.
3. **THAT** a copy of this report be sent to the Squamish-Lillooet Regional District, the Sunshine Coast Regional District, Shane Simpson, MLA for Vancouver Hastings, Norm Macdonald, MLA for Columbia-River Revelstoke, and the Burnaby MLA's.

REPORT**1.0 BACKGROUND AND CONTEXT**

Appearing elsewhere on tonight's agenda are items of correspondence related to Bill 30, and specifically amendments to the Utilities Commission Act (UCA) proposed by the Bill. On April 27, 2006 the Provincial Legislature gave first reading to Bill 30, Miscellaneous Statutes Amendment Act (No. 2), 2006. As the title indicates, the proposed Act would make amendments to a number of different Provincial Statutes, including the UCA. In essence, the proposed amendments to the UCA would allow Independent Power Producers (IPPs) to contravene municipal bylaws governing such things as: zoning, nuisance, signage, business (hours of operation), noise/sound abatement and riparian areas. Furthermore, the proposed amendments are being

developed unilaterally, without municipal input, and in contravention of a specific Memorandum of Understanding on Independent Power Projects between the Province and the Union of British Columbia Municipalities (UBCM) signed on 2004 September 22 which clearly indicates an active role for municipalities in the approval of IPP projects (see Attachment #1).

2.0 NATURE OF PROPOSED LEGISLATION

Of particular interest to Local Governments is s.56 of the Bill. It would amend s.121 of the Utilities Commission Act so that it would read as follows (proposed new wording underlined):

“Relationship with *Local Government Act*

121(1) Nothing in or done under the *Community Charter* or the *Local Government Act*

- (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or
- (b) relieves a person of an obligation imposed by or under this *Act* or the *Gas Utility Act*.

(2) In this section, “authorization” means

- (a) a certificate of public convenience and necessity issued under section 46,
- (b) an exemption from the application of section 45 granted, with the advance approval of the Lieutenant Governor in Council, by the commission under section 88, and
- (c) an exemption from section 45 granted under section 22, only if the public utility meets the conditions prescribed by the Lieutenant Governor in Council.

(3) For the purposes of subsection (2) (c), the Lieutenant Governor in Council may prescribe different conditions for different public utilities or categories of public utilities.”

A “public utility” is broadly defined in the UCA to include (with some limited exceptions) any person who owns or operates equipment or facilities

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(a) for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, or other power service to the public for compensation; or

(b) for the transmission of communications or information by electromagnetic waves to the public for compensation.

It should be noted that most of the matters covered under subparagraph (b) are regulated under Federal Legislation and that the Utilities Commission's jurisdiction in this area is therefore somewhat limited.

Candidate projects require a certificate of public convenience and necessity issued by the Utilities Commission under the UCA for the commencement of construction or operation of a public utility plant or system or an extension thereof, subject to exemption under s.22 or s.88 of the UCA. Section 88 allows the Commission to exempt a person, equipment or facilities from the application of any of the provisions of the *Act* with the approval of the Lieutenant Governor in Council. Section 22 permits the Minister of Energy, Mines and Petroleum Resources by order to exempt from regulation under the *Act* a person who sells or produces a power service or the equipment, facility, plant project or system of such person on terms and conditions the Minister considers to be in the public interest.

Accordingly, all public utility construction, extension, or commencement projects, whether carried out pursuant to a certificate or a s.22 or s.88 exemption, would come within the scope of the revised s.121. This would mean that such projects could be undertaken in contravention of the local government bylaws, including bylaws dealing with land use, noise or nuisance, and riparian area protection.

It should be pointed out that under s.46 of the UCA, the Commission may, but is not required to, hold a public hearing on an application for a certificate. Likewise, exemptions under s.22 or s.88 could presumably be made as conditions that a public hearing be held, but the matter is not specifically dealt with in these sections. So, while there is potential for public input on projects that would be covered by s.121, there is no requirement.

2.0 POTENTIAL IMPLICATIONS

On the surface, it would appear that this proposed legislation would mostly relate to independent hydro-electric producers. Although this amendment will have less potential to affect Burnaby on hydro-electric projects than it may for other local governments in the Province, it would apply to other forms of power generation works that may become more common in the future.

As indicated above, as regards hydro-electric projects, this legislation is not likely to impact Burnaby as much as those communities which possess significant potential hydro-

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electric resources, such as those within the Squamish Lillooet Regional District, where there are 60 active applications by independent power producers (IPPs). However, it is noted that this legislation could have both short and longer-term implications for Burnaby in terms of other forms of power generation.

Currently, Burnaby has one power producer, a turbo-generator plant at 5150 Riverbend Drive in the Big Bend. The operator of this facility is contracted by the Greater Vancouver Regional District to provide power, extracted from excess thermal energy produced by the GVRD's incinerator facility, which is then sold to BC Hydro for distribution. This turbo-generator plant was approved as an accessory use to the GVRD's incinerator facility through the City's Preliminary Plan Approval process.

With respect to short-term implications, it is conceivable that the proposed legislation, if passed, would allow this existing Burnaby IPP to operate, redevelop or expand without necessarily having to observe Burnaby's development controls, regulations and bylaws. Over the longer-term, it would appear that the proposed legislation would permit new IPPs to locate and redevelop in Burnaby also without necessarily requiring municipal approvals. While recognizing that Burnaby does not have significant hydro-electric resources, future IPPs could, however, draw on other resources for power generation, such as coal, methane, natural gas, solar, thermal (as is the case with the turbo-generator plant in the Big Bend), tidal and wind without full regard for prevailing zoning, existing and adjacent land uses or environmental sensitivity.

One aspect to the proposed legislation which is troublesome is the manner in which it is being developed. Given the obvious and far-reaching impacts on local governments, it is disappointing that no input from municipalities has been sought as a part of the process which created the legislation. This is especially important as it would appear the proposed legislation contravenes a 2004 Memorandum of Understanding on Independent Power Projects between the Province and the Union of British Columbia Municipalities (UBCM). The general intent and purpose of the memorandum is to foster co-operative intergovernmental relations on IPP approvals, and to establish a "means through which local governments and the Province can co-operate and collaborate to realize the common goals". One of these common goals includes:

"Working to ensure that local, regional and provincial interests are appropriately considered in the review of projects and to work toward harmonization of provincial and local government project review mechanisms, including the Waterpower Project Guidebook, provincial operational policies, Land Resource Management Plans, Sustainable Resource Management Plans, Regional Growth Strategies, and local government planning and zoning processes"

It would appear from the tone of the proposed legislation that the co-operative relationship between the Province and local government envisioned in the aforementioned memorandum is no longer an important consideration in the approval of


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IPPs, and that a municipality’s zoning and land use controls are not considered absolute on matters concerning development of private land.

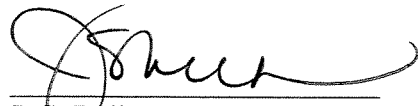
The previously referred to correspondence from the Squamish-Lillooet Regional District contains a resolution (see Attachment #2) on this matter which they are requesting endorsement by other municipalities and regional districts. Staff are of the opinion that it would be appropriate to adopt this resolution in light of our review of this issue.

4.0 CONCLUSIONS

This report discusses proposed amendments to the Utilities Commission Act which would allow IPPs to develop private land without necessarily obtaining municipal approvals. While it would appear these proposed amendments have little bearing on Burnaby given the lack of hydro power sources in Burnaby, the longer-term implications seem to suggest that the City’s ability to control land use and potential nuisances related to future power producers would be limited by the changes to the Act. These amendments also call into question the willingness on the part of the Province to continue working with local governments on these and other important matters. Finally, these amendments raise concerns that municipal zoning and other local government controls could become impotent as related to other future development projects which may have Provincial significance. In view of the above, it would be appropriate to adopt the resolution as submitted by the Squamish-Lillooet Regional District.



Bruce R. Rose
City Solicitor



J. S. Belhouse
Director Planning and Building

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Attach.

Copied to: City Clerk
Chief Building Inspector
Chief Licence Inspector
Director Engineering



**MEMORANDUM OF UNDERSTANDING
ON
INDEPENDENT POWER PROJECTS**

BETWEEN

**THE PROVINCE OF BRITISH COLUMBIA (the Province)
AND
THE UNION OF BRITISH COLUMBIA MUNICIPALITIES (UBCM)**

The Province and UBCM share the common goals of:

- Fostering co-operative inter-governmental relations;
- Recognizing the jurisdiction and accountabilities of both orders of government;
- Facilitating the responsible development of clean, renewable energy sources to meet the energy needs of British Columbians,
- Providing efficient and effective IPP review and approval processes for both orders of government.

The purpose of this agreement is to establish:

- Means through which local governments and the Province can co-operate and collaborate to realize the common goals.

The Province and UBCM agree to work toward achieving our common goals by:

- Creating an IPP coordinating group with a member from Land and Water British Columbia, Community Aboriginal and Women's Services, Energy and Mines and UBCM. This group will work cooperatively with related groups such as the "one window regulatory approach steering/working committee";
- Participating in a workshop facilitated by the Fraser Basin Council to bring proponents, Federal, provincial and local authorities together to discuss IPP development;

- Developing best practices to coordinate efficient project reviews through harmonization of provincial and local review processes;
- Working to ensure that local, regional and provincial interests are appropriately considered in the review of projects and to work toward harmonization of provincial and local government project review mechanisms, including the Waterpower Project Guidebook, provincial operational policies, Land and Resource Management Plans, Sustainable Resource Management Plans, Regional Growth Strategies, and local government planning and zoning processes; and
- Jointly communicating the outcomes of the work to all interested parties including IPP developers, local governments and provincial agencies.

SIGNED on behalf of the PROVINCE OF BRITISH COLUMBIA by:

George Abbott

The Honourable George Abbott, Minister of Sustainable Resource Management and Minister responsible for Land and Water B.C.

Date Sept. 22/04

Murray R. Coell

Date Sept 22/04.

Richard Neufeld
The Honourable Richard Neufeld Minister of Energy and Mines.

Date Sept 22/04

SIGNED on behalf of the UNION OF BRITISH COLUMBIA MUNICIPALITIES by:

Frank Leonard
His Worship Frank Leonard, Mayor and President of Union of British Columbia Municipalities

Date Sept 22/04

Resolution
Squamish-Lillooet Regional District
Bill 30, Pertaining to Independent Power Production

Whereas the Province of British Columbia and the Union of BC Municipalities, by Memorandum of Understanding signed September 22, 2004, are committed to:

- Fostering co-operative inter-governmental relations,
- Recognizing the jurisdiction and accountability of both orders of government,
- Facilitating the responsible development of clean, renewable energy sources to meet the energy needs of British Columbians,
- Providing efficient and effective IPP review and approval processes for both orders of Government,

And Whereas the amendments to the Utilities Commission Act proposed by Bill 30 will serve to:

- eliminate local government involvement and engagement in IPP review and approval processes,
- remove jurisdiction of local government over IPP's on Crown Land,
- remove local government from the responsible development of clean, renewable energy sources,
- impair co-operative inter-governmental relations, and

And Whereas these amendments will have significant impacts for local governments throughout the province when the full scope and potential of IPP's are considered (e.g. wind, geo-thermal, coal bed methane and run of river projects)

Therefore be it resolved that the Province of British Columbia be requested to immediately set Bill 30 aside and return to working with UBCM to complete the commitments of the MOU on Independent Power Projects as quickly as possible.