

REASONS FOR DETERMINATION

The Application

BECOL on February 11, 2003 filed with the Public Utilities Commission (“the Commission”) an application for consent under Section 51 and 52 of the Electricity Act (Chapter 221 of the Laws of Belize, Revised Edition 2000) for the construction and operation of the Chalillo Project. The Chalillo Project includes a storage dam, a toe of the dam powerhouse (7 MW), and a transmission line connecting the Chalillo powerhouse to the Mollejon facilities.

This is the second application for consent pursuant to Section 51 and 52 of the Act for construction, or extension and operation of a generating station received by the Commission since its establishment as the regulatory agency for the electricity sector in 1999. BEL in 2002 applied for the addition to their generating facilities of a 22.5 MW Gas Turbine to be used for emergency backup, peaking, black start, and voltage stability purposes. Notice was duly given and invitation to submit written objections was offered by publication in local newspapers with countrywide circulation. Objection was received from BACONGO after the closing date for receipt of the same, but the objections were duly considered. Consent was granted to BEL for the gas turbine application.

In the instant case the Commission issued a public notice dated February 12, 2003 in local newspapers asking for representations and/or objections from interested and/or affected parties on the BECOL application to be submitted in writing by March 7, 2003. The application and supporting documentation were made available to interested and/or affected parties at the office of the Commission during the period from February 12th to March 7th, 2003.

BACONGO filed their objections with the Commission within the deadline. There were no other representations or objections received by the Commission. In their objections we were invited not to proceed with our consideration of BECOL's application because:

- (i) the notice published by the Commission did not specify that interested persons might request that a public hearing be held nor the date on which such hearing would be held if requested; and
- (ii) BECOL does not hold a license and is in breach of the licensing requirements of the Electricity Act; is therefore not qualified to make a "relevant proposal" upon which the Commission's consent might be based; and for the Commission to grant consent to an unlicensed entity would circumvent the statutory requirements of proper notice, review and participation by the public in the licensing process.

In dealing with BECOL's application the Commission has sought to comply with the procedure mandated by Sections 51 and 52 of the Electricity Act, namely that set out in the Third Schedule to the Act. As presently advised, we are not persuaded that the notice was in breach of the requirements of the Third Schedule.

BECOL's application is declared to be for the purpose of generating electricity for sale to BEL. These activities do not appear to us to constitute "giving a supply" or "enabling a supply to be so given", as those phrases are used in the provisions of the Electricity Act which require that a license be obtained. Furthermore, as presently advised, we consider that the Commission has jurisdiction to grant or refuse its consent under Sections 51 or 52 of the Act to any proper applicant, whether license holder or not; is entitled upon consideration of BECOL's application to have regard to all the matters mentioned in the Second Schedule to the Act, and has in fact done so; and is not required to give any other notice of the application or opportunity for its review and for objections to be submitted by the public, other than has in fact been given.

In essence, BACONGO's principal objection is that consent should not be granted without first providing the opportunity for a public hearing.

The Chalillo Project

For many years, the Chalillo project has been subject to very effective public airing both by its proponents and opponents. It has received substantial newspaper, radio, and television coverage. The project has been challenged and the issues tabled and exhaustively examined in numerous forums including litigation in the Supreme and Appellate Courts of Belize. The Commission has had the benefit of receiving and considering numerous and detailed studies of the project and in the context of the litigation has had to concern itself, even before the application was received, with many of the objections relevant to its determination whether it should give or withhold its consent.

Among the studies and other documents received from BECOL and or BACONGO and considered by the Commission were:

- (1) The 1992 Agra CI Power Pre-feasibility Study with Engineering Appendix
- (2) The 1998 Agra CI Power Feasibility Study on the Macal River Upstream Facility;
- (3) The 1999 GE Least Cost Generation and Transmission Planning Study;
- (4) The August 2001 Environmental Impact Assessment Study in four volumes;
- (5) The GOB/BEL/BECOL Hydro Electric Agreements (1991 to present);
- (6) The February 2000 Evaluation and Comments on the 99 Feasibility study of the Chalillo Dam Project by Kimo Jolly
- (7) The February 2000 Analysis of the final feasibility study and environmental impact assessment by Conservation Strategy Fund;
- (8) February 2000 Chalillo HydroPower Feasibility Assessment by Philip Williams and Associates;
- (9) The Environmental Compliance Plan executed by the Department of the Environment and BECOL; and
- (10) The April 2002 Tender Documents for the design and Construction of RCC Dam with plans and specifications.

In addition, on January 16, 2003 a Public Hearing on the Chalillo Project was held at the Novelo's Convention Center in Santa Elena Town, Cayo District by Magistrate Eric Fairweather in compliance with an Order of the Supreme Court, and we have gained great assistance from this exercise. The Public Hearing elicited representations in support of the Chalillo Project from many responsible entities, informed and involved in their respective capacities with the subjects on which they made representations, as well as some in opposition. Magistrate Fairweather concluded that the developer, BECOL, had adequately addressed the major concerns of the public. He said that in any undertaking, especially one of this magnitude, there will never be 100% guarantee that all will be well, and concluded that there should be no reason why the project should not commence.

The National Environmental Appraisal Committee (NEAC) conducted an environmental appraisal of the Chalillo Project in accordance with their due process under governing legislation, including an environmental impact assessment, and signed an environmental compliance plan with BECOL for the implementation of the project including a series of mitigation actions.

The Ministry of Natural Resources, the Environment, Trade, and Industry in a letter to BECOL stated that the Ministry was the responsible authority for the geographic area in which the Chalillo Project was situated and that they had no objection to the project subject to the fulfillment of the requirements under the Environmental Protection Act and the relevant Environmental Compliance Plan. We are advised that there is no local planning authority within the meaning of the Housing and Town Planning Act having jurisdiction within the area in which the project is to be carried out.

The Objections

1. The Commission has dealt with all of the objections by BACONGO, inclusive of the technical and economic merit of the project, in its continuing due diligence.

Against a background of widespread publicity and copious technical material, as well

as several occasions on which opportunity for airing objections has been provided, the Commission does not consider it appropriate to hold a further public inquiry.

2. The Commission is satisfied that BECOL has acquired sufficient of the available data (hydrological, geological, etc.) and has designed and costed a facility consistent with internationally accepted project development procedures and in conformance with the governing laws of Belize.
3. We anticipate that the Chalillo Project will enhance energy security and reliability. Presently, some 60% of Belize's electricity needs are purchased from Mexico, another 20% is generated from diesel generators, and the remainder is sourced from hydroelectric supply locally. The supply from Mexico depends on Mexican consumer demands being first satisfied, Belize occupying a lower priority status.
4. Diesel generation is subject to the fluctuations of the international oil prices. Mexican supply is also indexed to international oil prices. The Chalillo project is expected to add some 80 GWH of electrical energy into the mix, reduce our dependency on international oil prices and external purchases, and thus improve price stability.
5. To the extent that a greater share of the sourcing of generation supply will be in country and within the control of Belizeans, reduction of the dependence on Mexican supply is to be desired.
6. The Commission is satisfied that the regime for environmental compliance operates to protect the public interest and to give expression to the Commission's concerns for the preservation of the environment.
7. Mindful of its policy to encourage competition in the generation of electrical energy, the Commission is nonetheless persuaded of the economic wisdom of improving the generating capacity and energy throughput of an existing facility in preference to the establishment of an independent alternative in the instant case. The Commission, in furthering the promotion of competition, is currently providing oversight in a competitive process by BEL to source a further 18 megawatts of generation from independent power producers other than BECOL.

8. The Commission is satisfied that the present proposal offers the best prospect of least cost energy production in the long run. Under the Power Purchase Agreement, the first 100 GWH of power purchased from the combined Mollejon and Chalillo facilities is priced at USD 0.0875 per KWH and subject to an escalation rate of 1.5% per annum beginning 2001. Electrical energy over 100 GWH per annum is priced at USD 0.05 per KWH and is not subject to any escalation. All electrical energy is subject to an Operation and Management fee of 5%. It is anticipated that the Chalillo project will provide 10-15 MW at the USD 0.0875 rate and 60MW at the USD 0.05 rate. The projected expansion will attract the lower incremental rate.
9. The Commission is not persuaded that there is evidence of any exceptional risk to the safety of the public which would arise if the project, as presently designed, were to be implemented.

The Consent

It is for these reasons that the Commission determined to give its consent, as applied for, subject to the following conditions:

- (a) That the works which are the subject of the consent shall be carried out in accordance with the Plans, Engineering Drawings and Specifications submitted, and any addition, alteration or modification thereof shall require the written consent of the Commission; and
- (b) That the said works shall be carried out in all respects so as to conform with the Environmental Compliance Plan executed by BECOL and the Department of the Environment in respect of the same.

Dated the 1st of April 2003.

Dr. Gilbert H. Canton
Chairman