

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Surrey (City) v. British Columbia Hydro
and Power Authority,*
2026 BCCA 22

Date: 20260123
Docket: CA51001

Between:

City of Surrey

Appellant

And

**British Columbia Hydro and Power Authority and
British Columbia Utilities Commission**

Respondent

Before: The Honourable Justice Riley
(In Chambers)

On appeal from: A decision of the British Columbia Utilities Commission,
dated August 22, 2025 (Order Number G-206-25).

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Place and Date of Hearing:

Vancouver, British Columbia
December 9, 2025

Place and Date of Judgment:

Vancouver, British Columbia
January 23, 2026

Summary:

The City of Surrey (“Surrey”) applies for leave to appeal a decision of the British Columbia Utilities Commission (“Commission”) ordering Surrey to pay for the reconfiguration of British Columbia Hydro and Power Authority’s transmission lines to facilitate Surrey’s planned highway extension. Surrey asserts primarily that the Commission erred in law in making its decision as it did not have jurisdiction to rule on the use of the municipal property at issue, and erred in ordering Surrey to pay the costs of the reconfiguration.

*Held: Application for leave to appeal dismissed. Surrey has failed to establish that the factors under *Queens Plate Dev. Ltd. v. Vancouver Assessor, Area 09 (1987)*, 16 B.C.L.R. (2d) 104, 1987 CanLII 2626 (C.A.) have been met such that leave to appeal should be granted. Critically, given similar recent decisions of this Court, Surrey has not raised questions of law that have merit or would have a prospect of success before a division of this Court.*

Reasons for Judgment of the Honourable Justice Riley:

Introduction

[1] In order to facilitate a highway extension, the City of Surrey (“Surrey” or the “City”) required the reconfiguration of certain power lines owned by the British Columbia Hydro and Power Authority (“B.C. Hydro”) running across a property on 72nd Avenue. When the parties were unable to reach an agreement on the reconfiguration work, B.C. Hydro applied to the British Columbia Utilities Commission (the “Commission”) for a ruling to determine the manner and terms of B.C. Hydro’s continued use of its electrical infrastructure on the subject property. The Commission rendered a decision ordering Surrey to enter into a transmission line relocation agreement with B.C. Hydro for reconfiguration of the power lines, with the City to bear the full cost of the work totaling \$41 million. Surrey now applies under s. 101 of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 [*UCA* or the *Act*] for leave to appeal the Commission’s order.

[2] Surrey argues, among other things, that the Commission panel erred in law in interpreting the scope of its jurisdiction under s. 32 of the *UCA*, which is only engaged where a public utility has a pre-existing right to enter a municipality’s property. Surrey asserts that B.C. Hydro had no right to enter the 72nd Avenue

property, with the result that the Commission had no authority to rule on the matter. Surrey also argues that even if the Commission had jurisdiction, the panel erred in deciding to exercise that jurisdiction given the City's pending trespass claim against B.C. Hydro in the Supreme Court of British Columbia. Finally, Surrey argues that the panel made reviewable errors in its decision to allocate the entire cost of the work to the City.

[3] B.C. Hydro opposes the application, arguing that none of the grounds put forward by Surrey merit the attention of a division of this Court. B.C. Hydro relies upon two relatively recent decisions of this Court addressing the scope of the Commission's authority to grant orders setting the terms of use of public utility infrastructure located on or under municipal property. The decisions in question are *Coquitlam (City) v. British Columbia (Utilities Commission)*, 2021 BCCA 336 [*Coquitlam*], and *City of Richmond v. British Columbia Utilities Commission*, 2024 BCCA 16 [*Richmond*]. B.C. Hydro says that in the wake of these decisions, Surrey's grounds of appeal pertaining to statutory interpretation of the *UCA* have no merit. B.C. Hydro also submits that many of the other relevant factors weigh against granting leave to appeal.

Background

[4] Surrey is in the process of planning a highway extension, which is expected to run along the 72nd Avenue property. B.C. Hydro has high voltage transmission lines suspended by towers running across the property. To accommodate the proposed highway extension, the height of these transmission lines must be raised, and the towers must be relocated to allow adequate overhead clearance for traffic.

[5] In preliminary discussions, B.C. Hydro informed Surrey that the necessary modifications to the transmission line infrastructure would cost between \$18 million and \$39 million.

[6] At a certain point the preliminary discussions broke down, and on 10 January 2025, Surrey filed a claim against B.C. Hydro in the Supreme Court of British Columbia, alleging trespass on the basis that B.C. Hydro never had proper authority

to run its transmission lines across the 72nd Avenue property. B.C. Hydro filed a response to the civil claim on 31 January 2025.

[7] On 7 February 2025, B.C. Hydro filed an application with the Commission, under ss. 32 and 36 of the *UCA*, seeking an order setting the manner and terms on which B.C. Hydro’s high voltage transmission facilities would continue to run across the subject property. Surrey objected and submitted a letter asserting that the Commission did not have jurisdiction over the matter, because it was the subject of a pending Supreme Court action.

[8] Thereafter, the Commission established a timetable for the receipt of submissions on B.C. Hydro’s application.

[9] On 22 August 2025, a Commission panel gave a written decision holding that the Commission had jurisdiction to decide B.C. Hydro’s application (the “Commission Decision”). The panel issued an order requiring Surrey to enter into a transmission line relocation agreement as proposed by B.C. Hydro, under which the City would be responsible for 100% of the cost for transmission line reconfiguration.

The Commission Decision

[10] The panel’s ruling addressed three substantive issues. The first issue was whether B.C. Hydro had the right to “place” the subject transmission infrastructure on Surrey’s property, so as to meet the requirements of s. 32 of the *UCA*, thereby engaging the Commission’s authority to make a decision on the matter under dispute. The second issue addressed the existence and scope of the Commission’s jurisdiction to resolve disputes between B.C. Hydro and a municipality regarding municipal property. The third issue had to do with the terms of the transmission line relocation agreement proposed by B.C. Hydro.

[11] On the first issue, the panel determined that B.C. Hydro had both a historically valid certificate of public convenience and necessity (“CPCN”) for at least some of the existing electrical infrastructure through its predecessor BC Electric Company, and a deemed CPCN under s. 45(2) of the *UCA* for all of its existing

electrical infrastructure as of 11 September 1980. The panel held that the deemed CPCN met the criteria in s. 32(1)(a) of the *UCA*, authorizing B.C. Hydro to “place” its electrical transmission facilities on, along, across, over or under the subject property. The panel determined that this gave the Commission a basis on which to decide B.C. Hydro’s application under s. 32 of the *Act*.

[12] On the second issue, the panel considered and rejected Surrey’s argument that the Commission did not have jurisdiction to hear the application because of the pending Supreme Court action. The panel concluded that it had jurisdiction to determine the matter before it under s. 32 of the *UCA*, which in the panel’s view was not “about property rights” as asserted by Surrey, but rather about a “public utility[’s] use of municipal public lands”: Commission Decision at 16. The panel expressed the view that under this Court’s decision in *Coquitlam*, s. 32 of the *UCA* “applies to disputes where a public utility has a CPCN conferring the right to enter and place utility infrastructure within a municipality, which is very much the current situation”: Commission Decision at 16. The panel further reasoned that s. 121 of the *UCA* expressly subordinates Surrey’s municipal rights where they conflict with the Commission’s jurisdiction. As the panel put it, s. 121 “reflects a clear intention to give priority to the [Commission]’s jurisdiction relative to municipal rights and powers”: Commission Decision at 16. The panel determined that the Commission’s jurisdiction over the continued use of electrical transmission facilities running across the subject property was “not displaced” by Surrey’s trespass claim in the Supreme Court. In the panel’s view, the deemed CPCN had the effect of making B.C. Hydro’s placement of transmission facilities on the subject property lawful, however “whether that is a defence to the trespass allegation” remained a matter for the Supreme Court: Commission Decision at 17.

[13] With respect to the third issue, in addressing the terms of the transmission line relocation agreement, the panel considered “the scope and cost of the proposed transmission line relocation work”: Commission Decision at 17. The panel concluded that the draft agreement proposed by B.C. Hydro represented reasonable terms for the modification of the electrical transmission facilities on 72nd Avenue that were

required for Surrey's planned highway extension. The panel considered and rejected Surrey's argument that it was unfair to require the City to pay the entire cost, relying at least in part on the regulatory principle of cost causation. Applying that principle, the panel determined that it was reasonable for Surrey taxpayers, as the beneficiaries of the highway expansion, to absorb the cost of the required transmission line relocation. The panel rejected Surrey's argument that B.C. Hydro should bear the costs attributable to any system upgrades that might arise from the project, citing the absence of any evidence that the existing infrastructure was not in compliance with applicable standards.

The Leave Application

[14] In its notice of appeal, filed 19 September 2025, Surrey seeks leave to appeal and asserts that the panel: (1) erred in law, by applying the wrong legal test and refusing to stay B.C. Hydro's application as an abuse of process; (2) erred in law, by finding that the Commission had jurisdiction to adjudicate and grant relief in B.C. Hydro's application; (3) erred in law and fact, by finding that B.C. Hydro was authorized to place and leave transmission facilities on municipal property; and (4) erred in law and fact, by requiring Surrey to enter into the transmission line relocation agreement proposed by B.C. Hydro as a precondition to the relocation of B.C. Hydro's infrastructure.

[15] In its written submissions, Surrey reframed its argument, seeking leave on two issues, namely:

- (1) Whether the panel erred in law by holding that the Commission had jurisdiction to adjudicate B.C. Hydro's application and that it should exercise that jurisdiction. (At the hearing of the leave application, counsel for Surrey fleshed out this ground of appeal in terms that I will discuss in more detail below.); and
- (2) Whether the panel erred "in law or in law and fact" by requiring Surrey to enter into a transmission line relocation agreement, and in doing so, to bear the entire cost of the agreement.

Principles Governing Leave to Appeal a Commission’s Decision

[16] Under s. 101(1)(b) of the *UCA*, an appeal lies, with leave of a justice of this Court, from any decision or order of the Commission, other than certain classes of decisions which are not in issue in this case.

[17] The factors commonly considered in determining whether to grant leave to appeal the decision of a specialized tribunal, such as the Commission, are set out in *Queens Plate Dev. Ltd. v. Vancouver Assessor, Area 09* (1987), 16 B.C.L.R. (2d) 104 (C.A.), at paras. 14(a)–14(f), 1987 CanLII 2626 (Chambers). I will address the relevance of these factors in the analysis set out below.

[18] Surrey stresses, and I accept, that in assessing the merits of the proposed appeal, I am not to apply a particularly exacting standard. As Justice Taggart stated in *Queens Plate* at para. 14(d), the question is whether there is some prospect of success, and the applicant need only show that there are substantial questions to be argued.

[19] Surrey also relies on *British Columbia (Minister of Transportation & Highways) v. Reon Management Services Inc.*, 2000 BCCA 522 at para. 14 (Chambers), for the proposition that a “generous” approach to the question of leave to appeal is warranted where the proposed appeal is the “first and likely last review of the original decision”.

Analysis

The *Coquitlam* and *Richmond* Decisions

[20] Before addressing the *Queens Plate* factors, I will review the *Coquitlam* and *Richmond* decisions, on which B.C. Hydro relies in support of its position that the proposed appeal does not merit the attention of a division of this Court.

[21] In *Coquitlam*, a dispute arose between FortisBC Energy Inc. (“Fortis”) and the City of Coquitlam (“Coquitlam”) concerning upgrades to Fortis’s gas pipeline infrastructure. Fortis obtained a CPCN authorizing a pressure system upgrade. Coquitlam refused to approve construction of a new pipeline within its city

boundaries unless Fortis agreed to two conditions, one of which was the removal of a quarter mile segment of decommissioned pipeline. This prompted Fortis to apply to the Commission for orders setting the terms of use of municipal lands within Coquitlam in connection with the upgrade project.

[22] The Commission ultimately ruled that Fortis would be permitted to abandon the decommissioned pipeline but would have to remove any portion of old pipeline that interfered with municipal infrastructure, with the cost to be shared between Coquitlam and Fortis. Coquitlam then applied for the Commission to reconsider, and the panel upheld the original decision.

[23] After obtaining leave to appeal under s. 101 of the *UCA*, Coquitlam argued at the appeal that the panel erred in finding the Commission had jurisdiction over public infrastructure (in this case, a gas pipeline) even after that infrastructure was decommissioned. Coquitlam took the position that the Commission’s order granted Fortis “property rights beyond those it is authorized by statute to hold”, that the Commission had “no express jurisdiction” to make such a grant, and that there was “no need to imply such a power for the purposes of permitting the [C]ommission to discharge its core mandate”: *Coquitlam* at para. 37.

[24] In reviewing the statutory scheme, this Court noted that the “[c]onstruction and operation of public utilities are regulated by” CPCNs, which have been described in the case law as “the ‘central instrument[s]’ of the [C]ommission’s regulatory function”: *Coquitlam* at para. 39, citing *FortisBC Inc. v. Shaw Cablesystems Limited*, 2010 BCCA 552 at para. 51. The Court also described the CPCN certification process “as ‘the heart of the regulatory function delegated to the Commission by the legislature’”: *Coquitlam* at para. 39, citing *British Columbia Hydro & Power Authority v. British Columbia (Utilities Commission)* (1996), 20 B.C.L.R. (3d) 106 at para. 48, 1996 CanLII 3048 (C.A.).

[25] The Court cited s. 121 of the *UCA*, which provides that the provisions of the *Act* “expressly supersede the *Local Government Act*”: *Coquitlam* at para. 43.

[26] The Court accepted that Coquitlam’s argument raised questions of statutory interpretation reviewable on a standard of correctness: *Coquitlam* at paras. 45–47.

[27] In its analysis, the Court considered Coquitlam’s argument that the impugned order granted Fortis “property rights beyond those it is authorized by statute to hold”, in that it applied to decommissioned gas pipes, when Fortis only had ancillary authority to place, construct, renew, or alter equipment that was in active use for the production, transmission, or use of gas. Thus, Coquitlam argued, Fortis had no statutory authority to “place” pipelines not in use on municipal land and therefore the Commission could not make an order permitting Fortis to leave or abandon disused pipelines. In Coquitlam’s submission, the Commission’s order was “confiscatory”: *Coquitlam* at para. 48. The Court rejected that submission, reasoning that the Commission’s order granted Fortis “the right to use the property”, as neither the *UCA* nor the *Gas Utility Act*, R.S.B.C. 1996, c. 170 speak of a “proprietary interest in the affected lands”: *Coquitlam* at para. 50.

[28] The Court also considered and rejected Coquitlam’s argument that Fortis’s authority to place gas infrastructure could only be found in the *Gas Utility Act*. As the Court explained, that statute permits a gas utility to place distribution on or beneath municipal property with the consent of the municipality. By contrast, s. 32 of the *UCA* gives the Commission jurisdiction to authorize a gas utility to place equipment on municipal property without the municipality’s consent: *Coquitlam* at para. 55. To limit a gas utility’s ability to place infrastructure to what is expressly authorized in the *Gas Utility Act* would render s. 32 of the *UCA* (and s. 33, which applies to placement of equipment under municipal streets) “ineffectual”: *Coquitlam* at para. 55.

[29] The Court went on to consider and reject a number of Coquitlam’s other arguments in support of the theory that the Commission had no jurisdiction to make orders with respect to abandoned gas utility equipment on municipal property. Among these was Coquitlam’s argument, supported by the intervener Union of British Columbia Municipalities, that s. 32 of the *UCA* “is premised on the utility having a free-standing right to use the municipal property”: *Coquitlam* at para. 65.

The Court rejected this narrow reading of the Commission’s jurisdiction. The Court rejected the contention that the Commission had no jurisdiction under the *UCA* to make orders with respect to decommissioned utility equipment on or under municipal property, reasoning that the Commission was “the only authority” to decide what ought to be done with public utility infrastructure on or under municipal land. The Commission’s decision about whether to allow abandonment or require removal of decommissioned underground pipelines was “multifactorial” and went to “the core of” the Commission’s jurisdiction: *Coquitlam* at para. 78.

[30] This brings me to this Court’s decision in *Richmond*.

[31] Surrey highlights that even after the ruling in *Coquitlam*, the appellant in *Richmond* was able to obtain leave to appeal on issues related to the relationship between the Commission’s jurisdiction under the *UCA* and the City of Richmond (“Richmond”)’s private law rights or interests as a municipality. At the chambers hearing, Fortis argued against leave on the basis that while the proposed appeal involved a question of jurisdiction and turned on the interpretation of relevant *UCA* provisions, Richmond could not meet the leave threshold in the wake of the Court’s recent ruling in *Coquitlam*. In response, Richmond argued that the ruling in *Coquitlam* was focused specifically on jurisdiction over a decommissioned pipeline, which was not determinative of the Commission’s jurisdiction to impose limitations of tort liability conditions as a term of an order directing Fortis to do infrastructure work on municipal property. In granting leave, Justice Saunders stated, “[i]t seems to me that the application of *Coquitlam* to the circumstances here is sufficiently questionable that the City should have the opportunity to advance its position on that question fully before a division of this court”: *Richmond (City) v. British Columbia (Utilities Commission)*, 2022 BCCA 348 at para. 9 (Chambers).

[32] I move on to discuss the division’s decision on the merits in *Richmond*. The key issue was the Commission’s jurisdiction to impose limitations on Fortis’s potential tort liability for infrastructure work on municipal property. The facts bear some similarity to the present matter in the sense that Richmond was planning

upgrades to its sewer system and asked Fortis to realign its gas infrastructure for the upgrades. The Commission made an order for Fortis to make the necessary changes and imposed a limitation of tort liability condition as part of the arrangement. Richmond argued in the Commission proceedings, and again on appeal, that this condition was beyond the Commission’s jurisdiction under s. 32 of the *UCA*.

[33] As in *Coquitlam*, this Court proceeded on the basis that the appeal raised questions of law reviewable on a standard of correctness: *Richmond* at para. 22.

[34] The Court began its analysis with a discussion of the legal framework governing the Commission’s jurisdiction, explaining that a proper understanding of this framework as interpreted in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, and *Coquitlam* was “dispositive of the primary issue Richmond raises on appeal”: *Richmond* at para. 23.

[35] That primary issue, as stated in the heading above para. 33 of the *Richmond* decision, was whether the Commission erred by failing to apply the doctrine of “necessary implication” in interpreting s. 32 of the *UCA*. Richmond’s argument was that because the *UCA* did not contain an express grant of jurisdiction for the Commission to specify limitation of liability terms as a condition of an order relating to public utility infrastructure, the Commission could only find such jurisdiction through the doctrine of necessary implication, which has strict legal restrictions on its application.

[36] The Court rejected the premise that s. 32 of the *UCA* did not confer express power to impose limitation of liability conditions in connection with an order specifying the manner and terms of use of utility infrastructure on streets or other places in a municipality. The Commission’s express power to specify the manner and terms of use of municipal property included the power to require limitation of liability conditions: *Richmond* at paras. 35–39.

[37] The Court went on to hold that the Commission made no error of law in interpreting its jurisdiction in light of the express language in s. 32 of the *UCA*, the object of the *UCA*, and the Commission’s core mandate as discussed in *ATCO: Richmond* at paras. 45–46.

[38] Richmond also argued that under the doctrine of necessary implication, the Commission could not interpret its jurisdiction in s. 32 of the *UCA* in a manner that interfered with common law rights: *Richmond* at paras. 49–50. The Court rejected this argument, finding that s. 32 of the *UCA* does not prescribe or make any changes to the common law. As the Court stated at para. 55, “[u]nder s. 32, the Commission acts, in a sense, as the arbiter of particular kinds of dispute between utilities and municipalities” and that “[w]hen s. 32 is engaged, the Commission is granted a broad jurisdiction to ‘specify’ the terms under which utilities will undertake work on municipal streets or in other places within a municipality”: *Richmond* at para. 55. The Court went on to explain that s. 32 charges the Commission with the responsibility to undertake a “‘multifactorial’ assessment to determine the appropriate terms under which a utility may use a municipal street or other place”, providing the Commission with “the jurisdiction to undertake a substantive determination of public utility and municipal rights and obligations for public or regulatory purposes”: *Richmond* at para. 56.

[39] The Court also addressed the relationship between the Commission’s jurisdiction under the *UCA* and the status of municipalities as reflected in the *Community Charter*, S.B.C. 2003, c. 26 and the *Local Government Act*, R.S.B.C. 2015, c. 1, holding that s. 121 of the *UCA* “reflects a clear intention, where necessary, to give priority to the Commission’s jurisdiction relative to municipal rights and powers”: *Richmond* at para. 57.

[40] The Court’s conclusion, at para. 63, was as follows:

Accordingly, s. 32 confers express jurisdiction on the Commission to impose or specify terms impacting common law rights so long as those terms are consistent with the language of s. 32, with the scheme and purpose of the *UCA* and with the Commission’s core mandate. As noted earlier, this is the very analysis the Commission undertook in this case.

Merits of the Appeal

[41] As noted above, the merits threshold on a leave application under s. 101 of the *UCA* is not a particularly onerous one. Surrey need only show that the proposed grounds of appeal raise “substantial questions”, with “some prospect of the appeal succeeding”: *Queens Plate* at para. 14(d).

(1) Whether the Panel Erred in Invoking the Commission’s Jurisdiction under s. 32 of the UCA

[42] The first ground of appeal, as framed by Surrey, is whether the panel erred in holding that the Commission had jurisdiction to decide B.C. Hydro’s application for an order under s. 32 of the *UCA*, or by holding that the Commission should exercise that jurisdiction. There are two limbs to this argument. The first is focused on the scope of the Commission’s jurisdiction under s. 32 of the *UCA*, as an exercise in statutory interpretation. The second is concerned with the panel’s determination that it was appropriate to exercise the Commission’s jurisdiction in this particular case, in the face of the pending trespass action in the Supreme Court.

(1)(a) Whether the Panel Erred in Finding that the Commission had Jurisdiction

[43] I agree with Surrey that the first limb of its argument raises a jurisdictional issue that turns on the panel’s interpretation of s. 32 of the *UCA*, which is subject to review on a correctness standard. In other words, the panel had to be correct in its conclusion that the Commission had jurisdiction in these circumstances. However, the starting point for the statutory interpretation exercise is the panel’s finding that B.C. Hydro had two CPCNs (one inherited from its predecessor and the other deemed under s. 45(2) of the *UCA*) allowing for the use and maintenance of all of B.C. Hydro’s electrical infrastructure on the 72nd Avenue property in place since 11 September 1980: Committee Decision at 7–8. In finding B.C. Hydro had these CPCNs, the panel concluded that B.C. Hydro had authority to “place” infrastructure on the 72nd Avenue property and was therefore under the Commission’s jurisdiction. In my view, this is an underlying finding of mixed fact and law, which Surrey does not

expressly challenge, and in any event could not be revisited absent a showing of palpable and overriding error.

[44] In oral submissions, counsel for Surrey submitted that the City’s argument on this issue turns on the text of s. 32(1)(a), which gives the Commission the authority to rule on a public utility application only where that public utility “has the right to enter a municipality to place its distribution equipment on, along, across, over or under” the municipal property. Surrey says the Commission failed to properly consider whether B.C. Hydro had “the right to enter” the City’s property, as a basis for the Commission to exercise its jurisdiction.

[45] Surrey says that as a matter of statutory interpretation, a deemed CPCN under s. 45(2) of the *UCA* does not confer a right on a public utility to enter onto property. Without such a pre-existing right to enter, the public utility cannot obtain an order from the Commission specifying the manner in which its public utility infrastructure can be altered.

[46] In oral submissions, Surrey further contended that the panel set out the right question in its decision framework (Committee Decision at 4) by asking whether B.C. Hydro has the right to enter the municipality, but the panel failed to answer that question in its subsequent analysis. Instead, the panel shifted to a consideration of whether B.C. Hydro had the right to “place” its transmission facilities on municipal property.

[47] In my view, this argument is semantic and rests on an unjustified parsing of the panel’s reasons. Although there are portions of the reasons where the panel uses the phrase “right to place” rather than “right to enter”, there are other passages where the panel uses the phrase “right to enter”, not just in describing Surrey’s argument, but also in considering B.C. Hydro’s responding submissions, and in addressing the merits of the arguments. The reasons as a whole reflect that the panel often used the phrase “right to place” synonymously with, and more-or-less interchangeably with the phrase “right to enter”. In essence, the panel concluded that B.C. Hydro had a CPCN with respect to all of its electrical infrastructure on the

72nd Avenue property, which afforded B.C. Hydro the right to “place” infrastructure on municipal property, and to “enter” municipal property to do so.

[48] Surrey’s written submissions advance a comparable argument, contending that the Commission erred by focusing on B.C. Hydro’s “use” of the 72nd Avenue property for its high voltage powerlines, when what was really in issue was the “removal” of those powerlines to facilitate Surrey’s planned highway extension. This argument also turns on semantics, specifically the distinction between “use” and “removal”. Once the panel determined that B.C. Hydro had CPCNs affording the right to “enter” or “place” its system electrical infrastructure on the 72nd Avenue property, the Commission had authority under s. 32 of the *UCA* to rule on the conditions of “use” of that infrastructure. To the extent that Surrey’s proposed highway extension required modification of B.C. Hydro’s electrical infrastructure, the Commission had the authority to rule on the terms for doing so. Surrey’s argument that the *UCA* only authorizes rulings on “use” and not “removal” is directly contrary to the outcome in *Coquitlam*, in which the Court held that the Commission’s authority to set the terms of infrastructure “use” was broad enough to apply to the terms on which abandoned or decommissioned infrastructure would or would not be “removed” from municipal property: *Coquitlam* at paras. 31, 36, 50, 56, 66.

[49] Surrey’s overarching argument is that the panel erred in law in holding that B.C. Hydro had a right to enter municipal property so as to engage s. 32 of the *UCA*. In my view, the argument that the panel erred in reaching this conclusion has no merit.

[50] The panel determined (at p. 7–8 of its decision) that B.C. Hydro had both a prior CPCN (inherited from BC Electric Company) and a deemed CPCN under s. 45(2) (with respect to all of the electrical infrastructure that was part of its plant and “system” as of 11 September 1980) that authorized B.C. Hydro to “place” that electrical infrastructure on the portion of 72nd Avenue in issue in these proceedings. Thus, in the panel’s view, s. 32 of the *UCA* was applicable and the Commission had

jurisdiction over the dispute. This conclusion flows inexorably from the nature of a CPCN as contemplated in the *UCA*, and the case law interpreting it.

[51] I agree with B.C. Hydro that the clear import of the rulings in *Coquitlam* and *Richmond* is that where a public utility has a CPCN covering existing utility infrastructure on municipal property, the Commission has jurisdiction to make an order under s. 32 of the *UCA* authorizing the utility’s continued use of that infrastructure, and setting terms for its use.

[52] Surrey’s argument in the instant case is, in my view, indistinguishable from the argument advanced by *Coquitlam*, and supported by an intervener municipal association, that s. 32 of the *UCA* is only engaged where the utility has “a free-standing right to use the municipal property”: *Coquitlam* at para. 65. As discussed above, the Court rejected this “narrow reading” of the statutory authority of a public utility, concluding that the Commission had authority to make an order setting terms governing the decommissioning of public utility infrastructure located on or under municipal property, where that infrastructure was the subject of a CPCN: *Coquitlam* at para. 67. Also, the Court reasoned that where a CPCN confers authority on a public utility to “use” municipal land for its infrastructure, the Commission has the jurisdiction to rule on a dispute between the public utility and the municipality regarding the terms of use: *Coquitlam* at paras. 55–56.

[53] Surrey’s argument is also inconsistent with the Court’s conclusion in *Richmond* which, as previously discussed, held that s. 32 of the *UCA* gives the Commission the authority to act as “arbiter of particular kinds of dispute between utilities and municipalities” and that “[w]hen s. 32 is engaged, the Commission is granted a broad jurisdiction to ‘specify’ the terms under which utilities will undertake work on municipal streets or in other places within a municipality”: *Richmond* at para. 55. In exercising its jurisdiction under s. 32 of the *UCA*, the Commission is not concerned with property rights, but rather with the terms on which a public utility may use its infrastructure. To the extent that the Commission’s exercise of jurisdiction might be seen to come into conflict with the “rights and powers” of a municipality,

s. 121 of the *UCA* “reflects a clear intention, where necessary, to give priority to the Commission’s jurisdiction”: *Richmond* at para. 57.

[54] There is, in my respectful view, no realistic prospect that a division of this Court would decline to apply the reasoning in *Coquitlam* and *Richmond* in this case simply because it involves an electric utility rather than a gas utility. I agree with B.C. Hydro that the reasoning in both *Coquitlam* and *Richmond* rests on an interpretation of the scope of the Commission’s authority under the *UCA*, and not on the specific statutory powers granted to gas utilities under the *Gas Utility Act*. The Court in *Coquitlam* rejected the submission that the authority to place gas infrastructure on or under municipal property had to come from the *Gas Utility Act*, because that statute only authorizes a gas utility to use municipal property with the permission of the municipality: *Coquitlam* at paras. 54–55. Thus, the *Gas Utility Act* “does not exhaustively describe the circumstances in which a utility may place equipment on municipal property or limit the [Commission]’s jurisdiction to permit use of municipal property as contemplated by the [*UCA*]”: *Coquitlam* at para. 56.

[55] Finally, even if the *Coquitlam* and *Richmond* decisions were not dispositive on the issue of the Commission’s jurisdiction to decide the matter under dispute under s. 32 of the *UCA*, I do not see any merit in Surrey’s argument that a right to enter municipal property cannot flow from a deemed CPCN. Under s. 45(2) of the *UCA*, a deemed CPCN carries with it the right to operate the “plant or system” to which it relates, and to make extensions to the existing plant or system. Also under s. 46(8), a public utility that holds a CPCN is authorized, within the limits of the *UCA*, to “construct, maintain, and operate” the plant or system to which the CPCN relates. It would make no sense to interpret the *UCA* to authorize the maintenance and operation of infrastructure covered by a CPCN, without including the statutory authority to enter the municipal property to do so.

(1)(b) *Whether the Panel Erred in Holding that it Should Exercise Jurisdiction*

[56] The second limb of Surrey’s jurisdictional argument is that the panel erred in deciding to exercise jurisdiction, in the context of a dispute between Surrey and B.C.

Hydro that is the subject of a pending Supreme Court action. This argument appears to rest on Surrey’s contention that the panel ought to have declined to determine B.C. Hydro’s application for a ruling by the Commission under the *UCA*, given Surrey’s trespass action and B.C. Hydro’s consent or attornment to the Court’s jurisdiction through the filing of a response to civil claim.

[57] Surrey’s argument proceeds on the footing that even if the Commission had jurisdiction, the panel ought not to have exercised that jurisdiction in this case, given the pending Supreme Court action. I would characterize this as a challenge to the panel’s discretionary decision declining to apply the doctrine of abuse of process or otherwise refusing jurisdiction. The applicable standard of review is deferential. A division of this Court would only interfere with the panel’s decision where it is “shown to have proceeded on a wrong principle or failed to give weight, or sufficient weight, to relevant considerations”: *Lower v. Investment Industry Regulatory Organization of Canada*, 2022 BCCA 285 at paras. 60–61.

[58] The panel reasoned that there was no evidence of an abuse of process, and went on to explain that when considering the relationship between the Commission proceedings and the Supreme Court action, “[i]t is not a question of whose jurisdiction to prefer, but which jurisdiction is correct for which matter”. In the panel’s view, Surrey’s trespass claim concerns a “retrospective determination” of property rights, whereas B.C. Hydro’s application under s. 32 of the *UCA* “concerns a prospective assessment on matters of public interest which invoke the [Commission]’s jurisdiction”: Committee Decision at 17.

[59] Surrey submits that the panel “failed to consider that B.C. Hydro was forum shopping”. Yet the panel reached the opposite conclusion. The panel held that declining to exercise the Commission’s statutory jurisdiction over a dispute between a public utility and a municipality regarding the terms of use of public utility infrastructure on municipal property would endorse a “race to file’ approach” that encourages “forum shopping”, when the proper approach is to consider the nature of the dispute, and to ask where that dispute should be adjudicated: Committee

Decision at 17. Although Surrey may disagree with this conclusion, this alone is not a basis on which a division of this Court could find that the panel committed any reviewable error in exercising its jurisdiction. Indeed, the panel’s decision to exercise jurisdiction is entirely consistent with the conclusion in *Richmond* that the relevant provisions of the *UCA* authorize and require the Commission to be the “arbiter of particular kinds of dispute between utilities and municipalities”: *Richmond* at para. 55.

[60] Surrey relies on *Garland v. Consumers’ Gas Co.*, 2004 SCC 25 at para. 70 for the proposition that “utilities boards lack jurisdiction over property law disputes”. This submission overstates the finding in *Garland*, in which the Court held that the utility board did not have jurisdiction to rule over a “private law matter” relating to a dispute between a gas company and a customer over the interest rate on an unpaid bill.

[61] Surrey’s written submissions also cite *Pereira v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2024 BCCA 158 in support of an argument that “even where there is concurrent jurisdiction, parties cannot seek relief for the same matter in two tribunals and jump between tribunals at whim”. However, on the panel’s findings, that is not a fair characterization of what occurred in this case. The panel expressly rejected the argument B.C. Hydro “attorned” to the jurisdiction of the Supreme Court by filing a response to the civil claim, such that B.C. Hydro’s subsequent application to the Commission for a ruling under s. 32 of the *UCA* was an abuse of process. (It should also be noted that B.C. Hydro’s response to civil claim expressly pleaded that s. 32 of the *UCA* gave the Commission jurisdiction to rule on the dispute). The panel agreed with B.C. Hydro that the Supreme Court action “relates to an allegation of trespass”, whereas the application before the Commission “relates to the public interest determination about prospective use and terms of use” of electrical infrastructure on the 72nd Avenue property: Committee Decision at 17.

[62] Surrey has therefore not identified any basis on which a division of this Court could revisit the panel's conclusion that this was an appropriate case for the exercise of the Commission's statutory jurisdiction to resolve a dispute between a utility and a municipality regarding public utility infrastructure on municipal property.

(2) *Whether the Panel Erred in Ordering Surrey to Enter a Transmission Line Relocation Agreement, with the City Bearing the Full Cost of the Work*

[63] Surrey asserts that the panel erred by relying upon the "cost causation principle" to require the City to bear the entire cost of the reconfiguration project, as explained in the following passage from the Committee Decision at 19:

The Panel accepts that BC Hydro would not be performing the work on the Electric Transmission Facilities but for Surrey's Road Project. Further, there is no evidence that the infrastructure was not built to standards at the time and therefore we accept that it is grandfathered and does not need to be upgraded unless Surrey's project moves forward.

[64] I agree with B.C. Hydro's submission that the panel's conclusion on this issue was the product of a "multifactorial assessment" within the "core" of the Commission's jurisdiction as described in *Coquitlam* at para. 78. The panel's evaluation of the project and determination as to cost allocation is a case-specific conclusion of mixed fact and law, that could only be set aside based on a showing of palpable and overriding error.

[65] Surrey argues that the panel failed to deal with its argument that the cost causation principle ought not to be applied to require the City to cover the entire cost of the transmission line reconfiguration work, when B.C. Hydro's initial installation of transmission lines on the 72nd Avenue property was "unlawful", and "not saved by any CPCN". In Surrey's submission, B.C. Hydro's unlawful act or omissions were the "proximate cause" of the relocation costs, such that those costs cannot be attributed "solely" to Surrey's highway extension and thus should be borne by B.C. Hydro.

[66] Contrary to Surrey's submissions, the panel acknowledged Surrey's submissions that the costs of the transmission line reconfiguration were attributable to what Surrey alleged to be a trespass: Committee Decision at 22. However, the

argument clearly failed because the panel rejected the underlying premise, as reflected in the panel’s determination that B.C. Hydro had authority to maintain the existing transmission lines running across 72nd Avenue pursuant to applicable CPCNs. The need for modification only became necessary to facilitate Surrey’s proposed highway extension, and this was the basis on which the panel applied the cost causation principle to conclude that Surrey should be responsible for the costs of the work.

[67] Surrey also argues that the panel erred by placing a reverse onus on the City to establish that the existing transmission lines were not up to current standards and were not grandfathered. However, the panel did not place any onus on Surrey to establish these points. Rather, the panel rejected Surrey’s assertion that the City should not bear the entire cost of the reconfiguration project because it would have the effect of bringing the transmission lines up to current standards, after the panel accepted B.C. Hydro’s evidence that the existing infrastructure was “grandfathered” and “does not need to be upgraded unless Surrey’s project moves forward”: Commission Decision at 19.

[68] The panel’s reasons involved a careful assessment of the reconfiguration work required to accommodate Surrey’s highway extension project. The panel concluded that the draft agreement put forward by B.C. Hydro represented “reasonable terms” for the work, including the cost allocation: Committee Decision at 23. While Surrey may disagree with the panel’s conclusion, it has not identified any grounds on which it could successfully challenge the panel’s multifactorial assessment of the terms for modifying the existing B.C. Hydro infrastructure to accommodate Surrey’s planned highway extension.

Conclusion on the Merits of the Proposed Appeal

[69] I conclude that none of Surrey’s grounds of appeal are arguable. Thus, even under the generous merits assessment that applies on an application for leave to appeal under s. 101 of the *UCA*, Surrey’s proposed appeal does not pass muster.

General Importance of the Proposed Appeal

[70] On its face, the proposed appeal raises what is primarily a question of general importance concerning the Commission's jurisdiction: *Queens Plate* at para. 14(a). However, the weight attributable to this factor is substantially overborne by the two recent decisions of this Court — *Coquitlam* and *Richmond* — addressing the nature and scope of the Commission's jurisdiction over disputes concerning the terms of use of public utility infrastructure on municipal property for which this appeal is also concerned: *Queens Plate* at para. 14(c).

Grounds of Proposed Appeal Not Limited to Questions of Law

[71] I accept that Surrey's principal ground of appeal — related to the scope of the Commission's jurisdiction under s. 32 of the *UCA* — raises a question of law on a matter of statutory interpretation that is important to the litigants, and likely others interested in utilities regulation: *Queens Plate* at para. 14(b). However, even on the issue of the scope of s. 32 of the *UCA*, the panel's analysis turned largely on a case-specific finding of mixed fact and law that the existing B.C. Hydro infrastructure on the 72nd Avenue property is lawfully in place pursuant to two separate CPCNs, one inherited from BC Electric Company, and the other a deemed CPCN. The balance of the grounds advanced by Surrey raise questions of mixed fact and law, the resolution of which is unlikely to be of benefit to anyone other than the parties to this particular case. This factor weighs against granting leave.

Benefit to be Derived from the Proposed Appeal

[72] The appeal, if successful, would produce a clear benefit to the appellant. The transmission line relocation project will clearly involve significant cost, and is necessary to facilitate Surrey's proposed highway extension. Thus, I accept that the outcome of the appeal is a matter of significance to Surrey, and also to B.C. Hydro: *Queens Plate* at para. 14(e). If Surrey's appeal resulted in a finding that the Commission lacked jurisdiction or ought not to have exercised jurisdiction in the circumstances, this could alter the terms on which the project proceeded, or the cost allocation. Viewed in isolation, this factor would weigh in favour of granting leave to

appeal. However, in my view, this factor has little or no weight and certainly cannot carry the day given my determination that the appeal stands no chance of success on the merits: *Queens Plate* at para. 14(d).

Conclusion

[73] The application for leave to appeal is dismissed.

“The Honourable Justice Riley”