

D-5

**Walsh-Doucette, Michelle (Charlottetown)**

---

**From:** Hooley, David (Charlottetown)  
**Sent:** Monday, July 25, 2011 12:02 PM  
**To:** Allison MacEwen (amacewen@irac.pe.ca)  
**Cc:** Spencer Campbell; Ryan MacDonald; jgmackay@csmlaw.com; MacKay, Krista (Summerside)  
**Subject:** PEICA Deciison - Continuation of Summerside's New Transmission Application

Hi Allison:

In light of the recent PEICA Decision, I would like to request the hearing of Summerside's Application be now scheduled to be heard by the Commission on the merits. Presumably, we are looking at dates in the Fall. It may require a little coordination to ensure the Commission Panel, all legal counsel and their respective witnesses are available so setting advance dates down ASAP is in everyone's best interests so we can all schedule accordingly. I suggest each counsel check their own schedules and their witnesses for availability in September-October within say the next week and then that you convene a conference call early next week with yourself and counsel to schedule mutually convenient dates for all concerned.

As you know, the PEICA majority decision also alluded to the possible application of section 8 of the *Electric Power Act* leaving that potential question for determination by the Commission when the hearing proceeds on the merits. Should MECL or another party wish to pursue this potential issue, we can address it more fully when the hearing proceeds on the merits. As a "heads up", briefly it is Summerside's position that section 8 simply does not apply to its current Application for four (4) fundamental reasons:

1. Summerside's Application of November 7, 2008 was expressly brought (solely) under section 2.1(2) to furnish "service" to its customers via the addition of a new transmission line from its Ottawa Street Substation to MECL's Bedeque Substation and an interconnection within MECL's Bedeque Substation to the submarine cables. Summerside has not made any application under section 8(2); thus, the Commission has no such application before it.
2. The PEICA has unanimously ruled to disallow Summerside's Cross Appeal as to the need for a permit for its proposed new transmission line (see paras. [94], [170] - [171]), finding that Summerside's application under section 2.1(2) is to provide a transmission "service" - which includes both the proposed transmission line and the proposed interconnection. Accordingly, the entire application is subsumed under the one section of the Act.
3. Section 8 only applies where there is an application by one "public utility" (as defined by s. 1(1)(f) of the Act) to utilize the "conduits, poles, wires, or other equipment for furnishing electric energy" of another "public utility"; or, there is an application by any "person" (as defined by s. 1(1)(e) of the Act) "providing a cable or telephone service". Summerside is expressly excluded from the definition of a "public utility"; and, Summerside is not a "person" who is providing a "cable or telephone service".
4. Contextually speaking, Subsections 8(1) and 8(2) are plainly intended as a mechanism to resolve use or compensation disputes where an interested "public utility" or "person", as the case may be, wants to make joint use of the others' infrastructure; and the two parties are unable to agree on either the use, or, the compensation therefore. While Summerside acknowledges that MECL has in fact refused Summerside's request to interconnect to its proposed new transmission line to the submarine cables via facilities within MECL's Bedeque Substation (i.e. see John Gaudet's letter to Terry Murphy in the City's pre filed evidence), the threshold facts remain that:

- i. Summerside has not made its Application under section 8, but rather under section 2.1(2), which operates entirely independently of section 8 (and in which Application MECL has intervened as to both the proposed new transmission line and the proposed interconnection); and,
- ii. Summerside could not have made its application under section 8 in the first instance, because it is not a “public utility”, nor is it a “person” providing a “cable or telephone service”.

Accordingly, Summerside contends that section 8 simply does not apply to the proceedings currently before the Commission. The Commission is dealing with an application under section 2.1(2). The Commission has already determined in earlier rulings dated Feb. 26<sup>th</sup> and April 21<sup>st</sup>, 2009 (which were not appealed by MECL) that it has jurisdiction over the relevant components of MECL’s Bedeque Substation which are not part of the federal regulated undertaking comprising the submarine cables, but rather MECL infrastructure within the Commission’s jurisdiction.

In any event, if necessary, we can certainly address this (potential) issue more fully as part of the proceedings.

I look forward to hearing from you ASAP so we can get this proceeding scheduled.

David

**David Hooley** | Cox & Palmer | Senior Partner

**Direct** 902 629 3903 **Fax** 902 566 2639 **Web** [coxandpalmerlaw.com](http://coxandpalmerlaw.com)  
**Address** Landing Place 20 Great George Street Charlottetown PEI

This email contains information intended for the person(s) named and may be solicitor-client privileged. Any other distribution, copying or disclosure is strictly prohibited. If you have received this email in error, please notify us immediately at the telephone number above or reply by email to the sender, and delete all copies of this message.

*"Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent."  
Former US President Calvin Coolidge*