Date Issued: November 8, 2005

Indexed as: BCSSAB 1 (1) 2005

IN THE MATTER OF THE *SAFETY STANDARDS ACT*
SBS 2003, Chapter 39

AND IN THE MATTER OF an appeal to the
British Columbia Safety Standard Appeal Board

BETWEEN:

An Electrical Contractor

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR PRELIMINARY DECISION

Appeal of Compliance Order
Application for Intervener Status

Board Member: Deborah K. Lovett, Q.C., Vice-Chair

Introduction

[1] The Appellant filed a notice of appeal (the Appeal) with the British Columbia Safety Standards Appeal Board (the Board) on April 22, 2005. On July 5, 2005, An electrical contractor (the Applicant) filed an application to intervene in the Appeal. The Chair of the Board has delegated authority to me to determine whether the intervener application should be granted and, if so, whether any conditions should be attached to the intervention.

The positions taken in respect of the intervener application

[2] The following Agreed Statement of Facts was filed with the Board on behalf of the parties on June 17, 2005. This Agreed Statement of Facts provides a helpful context in which to consider the Applicant's intervener application:

1. The British Columbia Safety Authority ("BCSA") is a non profit organization established under the *Safety Authority Act* of British Columbia to administer technical safety in the province, including electrical safety.
2. The Appellant is a contractor registered under the *Safety Standards Act*.
3. On the 3rd day of June, 2004 the Appellant applied for and was issued an Electrical Contractor Installation Permit ("the Permit") to perform work described in the Permit as: convert Hydro takeover primary to private three pole primary, install three 167 KVA transformers and 600V 600A service." in Pitt Meadows.
4. The work described in the Permit is "regulated work" as defined in the *Safety Standards Act* and regulations and must comply with the requirements of the Act and regulations.
5. By virtue of section 20 of the Electrical Safety Regulation under the *Safety Standards Act*, the regulated work is subject to the Canadian Electrical Code, Part 1 as amended for use in British Columbia ("the B.C. Electrical Code").
6. Section 36-204 of the B.C. Electrical Code applies to the regulated work and provides:

   Overcurrent Protection

   1) Each consumer's service, operating unit of apparatus, feeder, and branch circuit shall be provided with overcurrent protection having adequate rating and interrupting capacity in all ungrounded conductors by one of the following:
      a) A circuit breaker; or
      b) Fuses preceded by group-operated visible break load-interrupting device capable of making and interrupting its full load rating and which may be closed with safety to the operator with a fault on the system; or
      c) Fuses preceded by a visible break air-break switch capable of interrupting the magnetizing current of the transformer installation and which may be closed with safety to the operator with a fault on the system and so interlocked with the transformer's secondary load interrupting device to prevent its operation under load.
   2) Fuses shall be accessible to authorized persons only.
8. Following the issuance of the Permit, the regulated work was approved from time to time under the established inspection regulated work complied with the Act and regulations.

9. During the period from approximately July, 2004 to November, 2004 both an Electrical Safety Officer, and the Electrical Safety Manager were contacted on more than one occasion by the Applicant who advised them that he had concerns about the regulated work and the high voltage switch installation.
10. On or about October 26, 2004 as a result of the complaint the regulated work was physically inspected and non compliances with the Act and regulations were noted not including a lack of overcurrent protection for the consumer's service. Subsequently, the deficiencies noted were remedied and the regulated work was accepted.
11. Following a further complaint about the regulated work, another physical inspection of the regulated work was conducted and the regulated work was found not to be in compliance with the Act and regulations due to the lack of overcurrent protection for the consumer's service.
12. The Appellant has identified a number of installations of regulated work at other sites which lack overcurrent protection for the consumer's service. These installations are being investigated by the British Columbia Safety Authority.
13. On the 3rd day of February, 2005 the Appellant wrote to the BCSA asking for a review of the Safety Officer's decision to reject the regulated work based on non compliance with the Act and regulations.
14. By letter dated the 22nd day of March, 2005 the Safety Manager for the BCSA advised that he had reviewed the decision of the Safety Officer and that he decided to confirm the decision.
15. On the 27th day of April, 2005 the Appellant filed a Notice of Appeal with the Safety Standards Board.

[3] The Applicant's intervener application provides the following brief explanation for seeking status as an intervener in this Appeal:

> The Applicant is a pole line contractor that would be directly affected by the application of rule 36-204 on a daily basis. The Applicant is witness to the inconsistency of the application of this rule on private primary pole lines.

[4] In support of its application, the Applicant provided a copy of an August 10, 2005 letter to the Provincial Safety Manager with respect to the application of Rule 36-204 of the British Columbia Electrical Code to one of its permits. That letter provides in part:

- October of 2004 we observed an installation at 18450 Dewdney Trunk Road that we believed was in non-compliance with rule 36-204 and registered notification to the Authority through your Coquitlam office. To date, nothing has been done to correct the situation.
- March of 2005 we received an issue of non-compliance with rule 36-24 based on the consistency of application of the code rule.
- June 2005 we received a "Notification of Appeal" with regard to rule 36-204 based on the consistency of application of the code rule. We were asked to apply to be considered for an "intervener" in this process.

- July 2005 we received notice that our application had been received and we were being considered by the chair. We are currently waiting for the next step in that process.

[5] The "Notification of Appeal" to which the Applicant refers is a notification of the Appellant's appeal, provided by the Chair under s. 51(5) of the *Safety Standards Act*.

[6] The Authority responded to the Applicant's intervener application on September 26, 2005. In that response, the Authority objected to the application for the following four reasons:

1. Non-compliance with Rule 16.2 of the Safety Standards Appeal Board Rules of Practice and Procedure;
2. The proposed Intervener lacks sufficient interest in the subject matter of the Appeal;
3. The Intervener's interests are adequately represented by the Appellant;
4. In the alternative, should the Appeal Board find that the Intervener does have sufficient interest in the subject matter of the Appeal, it is in that position as a result of its own actions – accordingly it should be estopped from appearing as an Intervener.

[7] The Authority provided fulsome and helpful submissions with respect to each of the four reasons given for opposing the application. To the extent necessary, those submissions will be discussed in the context of my analysis.

Analysis

[8] As this is the first preliminary decision of the Board in respect of an intervener application since its creation, I will review the relevant legislative context in more detail than would otherwise be necessary.

[9] The Board is established under section 43 of the *Safety Standards Act*. Section 51 of that Act provides for a right of appeal with respect to certain decisions made by "safety officers". That section requires in part that "(5) The appeal board must serve notice of the date, time and place of the hearing to the parties to the appeal, any interveners and any other person it considers sufficiently interested in the appeal". This provision needs to be read in connection with section 44 of the *Safety Standards Act*, which sets out those sections of the *Administrative Tribunals Act* (the ATA) that are to apply to the Board. Among the applicable ATA provisions is section 33 which provides as follows:

> 33 (1) The tribunal may allow a person to intervene in an application if the tribunal is satisfied that
>
> (a) the person can make a valuable contribution or bring a valuable perspective to the application, and
>
> (b) the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.
>
> (2) The tribunal may limit the participation of an intervener in one or more of the following ways:
>
> (a) in relation to cross examination of witnesses;
>
> (b) in relation to the right to lead evidence;
>
> (c) to one or more issues raised in the application;
>
> (d) to written submissions;
>
> (e) to time limited oral submissions.
>
> (3) If 2 or more applicants for intervener status have the same or substantially similar views or expertise, the tribunal may require them to file joint submissions.

[10] Thus the ATA contemplates those persons wishing to participate as interveners in appeal proceedings must apply to the Board for such status, as the Applicant has done in this case.

[11] The Board has authority to make rules of practice and procedure and issue practice directives under sections 11, 12, and 13 of the ATA. The Board's Rules of Practice and Procedure (the Rules) and Practice Directives and Guidelines (the Guidelines) were first published in December, 2004. Rule 16 deals with Interveners and it provides in part as follows:

> 1. A person who wishes to intervene in an appeal must apply to the board, in writing, to be added as an intervener within 15 days of the date the appeal was filed with the board.
>
> 2. An application under rule 16.1 must be served on the other parties to the appeal and must explain how:
>
> (a) the person can make a valuable contribution or bring a valuable perspective to the appeal, and
>
> (b) the potential benefits of the person's intervention outweigh any prejudice to the parties caused by the intervention.
>
> 3. The other parties to the appeal may make written submissions to the board responding to a person's application under rule 16.1.
>
> 4. Any written response under rule 16.3 must be filed with the board and served on the applicant and the other parties within 10 days of the date the appeal was filed with the board.
>
> 5. When considering whether or not to allow a person to participate as an intervener in an appeal, the board will consider the criteria set out in rule 16.2(a) and (b) and, if it decides to allow the person to intervene, limit the intervener's participation in one or more of the following ways:

(a) in relation to cross examination of witnesses;
(b) in relation to the right to lead evidence;
(c) to one or more issues raised in the application;
(d) to written submissions;
(e) to time-limited oral submissions.

6. If two or more applicants for intervener status have the same or substantially similar views or expertise, the board may require them to file joint submissions.

[12] These Rules reflect, to a large extent, the requirements of section 33 of the ATA, as well as provide the procedural mechanism for applying to be added as an intervener.

[13] As noted, the Authority objects to the Applicant's participation as an intervener in part for reasons of non-compliance with Rule 16.2 of the Rules. The point made here is that the Applicant's application does not explain how it will make either a valuable contribution or bring a valuable perspective to the Appeal. Nor does it explain how the potential benefit of the Applicant's intervention outweighs any prejudice to the parties caused by its intervention. The Authority maintains that, in light of this failure to provide information on either of these points:

> . . . there is cause therefore to strike the application of the Intervener. From a common-sense perspective one can see why it is essential that this provision be strictly interpreted – as is the case in this application, it is difficult for the Respondent and the Appeal Board to consider whether the Intervener's role is justified. In order to administer its own proceedings efficiently and effectively, the Board needs to have clear evidence regarding the legitimacy of the Intervener's standing and what prejudice may be caused to other parties. The alternative would be that any applicant could demand standing and the hearings may be unnecessarily lengthened and complicated by the addition of these other parties.
>
> The Respondent believes it will be prejudiced by the introduction of the Intervener and submits there is no valuable contribution or perspective that it could add.

[14] Rule 16.2 requires an applicant to address both factors described in that Rule. However, I am mindful that not only does the Board have the ability to relieve against the strict application of its Rules, but also the Applicant is not represented by legal counsel and the Board's process is intended to be readily accessible to lay participants. For this reason, if the deficiency at issue was merely technical, I would likely be inclined to relieve against it. However, Rule 16.2 reflects the substantive statutory requirements of section 33(1) of the ATA. In order to grant intervener status, section 33(1) requires me to be satisfied of two things. First, under section 33(1)(a), I must be satisfied that the

Applicant can either make a valuable contribution or bring a valuable perspective to the appeal. If I am satisfied that it can, section 33(1)(b) requires me to then consider whether the potential benefits of intervention by the Applicant outweigh any prejudice caused to the parties by it.

[15] In my view, section 33(1)(a) is properly interpreted to require the applicant to either: (1) demonstrate that its contribution is more than that of simply supporting a position already being advanced by a party; or (2) demonstrate that its perspective is somehow unique or different from the perspectives of the parties. While the Applicant's explanation for seeking intervener status is brief, it seems clear that its purpose in participating would be to support the Appellant's interpretation of Rule 36-204 and to give evidence respecting the Authority's application of that Rule, this latter function normally one associated with a witness.

[16] Although the Applicant's interest in participating in the Appeal is understandable, I agree with the Authority that, for all intents and purposes, the Applicant's interests are essentially identical to those of the Appellant, and it has not established that it can either bring a unique perspective or make a significant contribution to the issues such that its participation in the Appeal would be warranted. I therefore find that the requirements of section 33(1)(a) of the ATA have not been established in this case.

Conclusion

[17] For the reasons given, I dismiss the Applicant's application to participate as an intervener in the Appeal.