



OFFICE OF THE
BRITISH COLUMBIA
FERRIES COMMISSIONER

ORDER NUMBER: 19-03

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IN THE MATTER OF

Section 55 and Section 67 of the *Coastal Ferry Act*,
and
Establishment of the Criteria for a Major Capital Expenditure

BEFORE: Sheldon Stoilen, British Columbia Ferries Commissioner (“the commissioner”)

ORDER

WHEREAS:

A. Section 55 of the *Coastal Ferry Act* (the “Act”) states:

55 (1) Subject to subsections (2) to (5), before deploying capital assets on, or incurring capital expenditures in connection with, a designated ferry route or terminal, the ferry operator may apply to the commissioner and the commissioner must, within one month after the application, declare whether the capital assets proposed to be deployed on, or the capital expenditures proposed to be incurred in connection with, the designated ferry route or terminal are reasonably required.

(2) A ferry operator must not incur a major capital expenditure without first obtaining the commissioner's approval of the expenditure.

(3) A ferry operator may apply to the commissioner for approval of a proposed major capital expenditure and the commissioner must respond to the application within 2 months after its receipt by the commissioner.

(4) The commissioner may approve a proposed major capital expenditure if the proposed major capital expenditure is

(a) reasonable,

(b) prudent, and

(c) consistent with

(i) the current Coastal Ferry Services Contract, and

(ii) any long term capital plan established by the ferry operator.

(5) For the purposes of this section, a capital expenditure of a ferry operator is a major capital expenditure if it meets the criteria

(a) established from time to time by the commissioner, and

(b) most recently provided by the commissioner to the ferry operator.

B. Section 67 of the Act states:

67 (1) In addition to the reports required under sections 65 and 66, each ferry operator must provide to the commissioner information reasonably required by the commissioner and, for the purposes of this Act, must answer all questions of the commissioner.

(2) A ferry operator that receives from the commissioner any form of return must fully and correctly answer each question in the return and deliver it to the commissioner.

C. The commissioner has previously established criteria for a major capital expenditure by Order 17-02 dated March 2, 2017; and

D. This Order replaces Order 17-02.

NOW THEREFORE the commissioner orders as follows:

For purposes of Section 55(5):

1. Any capital expenditure for any new vessel or mid-life upgrade to a vessel (“Vessel Expenditure”) is a major capital expenditure if the expenditure exceeds \$50 million inclusive of vessel related component programs and interest during construction;
2. Any capital expenditure for new terminals, terminal upgrades, information technology systems or other non-vessel capital expenditures (“Non-Vessel Expenditure”) is a major capital expenditure if the expenditure exceeds \$25 million, inclusive of non-vessel related component programs and interest during construction;
3. In the case where a single project (“Project”) planned by a ferry operator includes capital expenditures of a type referenced in both paragraphs (1) and (2) above, the entire capital expenditure for the Project will be a major capital expenditure if either the Vessel Expenditure or Non-Vessel Expenditure exceeds the applicable threshold;
4. When estimating the amount of a planned capital expenditure for purposes of this Order, a ferry operator may exclude the amount of any third party contributions;
5. The commissioner’s determinations of a Section 55(2) application for approval of a major capital expenditure, as defined in paragraphs (1) and (2) above, will be based on whether or not the proposed capital expenditure is:
 - a) reasonable, affordable and prudent;
 - b) consistent with the approved and current 12-year capital plan submitted to the commissioner for the current performance term;
 - c) consistent with the current Coastal Ferry Services Contract; and
 - d) consistent with any government long-term vision for the future evolution of coastal ferry services;
6. The definition of a major capital expenditure under paragraphs (1) and (2) above, excludes any Project for which a ferry operator has already obtained an approval under Section 55(1), where:
 - (a) the ferry operator has determined that the total estimated capital expenditure required to complete the Project now exceeds the estimated capital expenditure of the Project, as described in the ferry operator’s Section 55(1) application submitted and approved by the commissioner (“Original Project Cost”), and the revised estimate of the Vessel Expenditure or Non-Vessel Expenditure of that Project, as applicable, exceeds the applicable threshold established in either paragraph (1) or (2) above by less than 5%; and

(b) despite the subsequent increase in expenditures over the Original Project Cost, the scope and the justification for the Project have not materially changed;

7. Where the total estimated capital expenditure required to complete any Project for which a ferry operator has already obtained an approval under Section 55(1) exceeds the Original Project Cost and the requirements set out in sub-paragraphs (6) (a) and (b) above are not met, the ferry operator must submit a Section 55(2) application for approval of the amount of the capital expenditure that the ferry operator now estimates will exceed the Original Project Cost.

For the purposes of Sections 67(1) and (2)

8. The ferry operator shall deliver a report to the commissioner within 30 business days following board approval of any capital expenditure exceeding \$25 million, detailing the purpose of the expenditure and providing answers to the relevant questions set out in the commissioner's Guidelines for Section 55 applications. This requirement is waived for any major capital expenditure which will be the subject of an application under Section 55(1) or (2).

DATED at Victoria, in the Province of British Columbia, this 25th day of January 2019.

BY ORDER



Sheldon Stoilen
British Columbia Ferries Commissioner