



LETTER NO. L-3-06

ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 12100

VIA E-MAIL

wjandrews@shaw.ca

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Mr. W.J. Andrews
Barrister & Solicitor
1958 Parkside Lane
North Vancouver, BC V7G 1X5

Dear Mr. Andrews:

Re: British Columbia Hydro and Power Authority
Project No. 3698390/Order No. G-51-05
2005 Resource Options Report
Application for Participant Assistance Costs Award
Order No. F-15-05 and Letter No. L-85-05
Request for Reconsideration of Commission Decision Denying Funding

By letter dated October 13, 2005, the B.C. Sustainable Energy Association and the Sierra Club of Canada (BC Chapter) ["BCSEA, et al"] made a Request for Reconsideration to the British Columbia Utilities Commission (the "Commission") of the decision denying the request by BCSEA, et al for a participant assistance cost award in the proceeding. The denial was made by Order No. F-15-05 which was issued on September 23, 2005. By letter dated September 26, 2005, BCSEA, et al requested that the Commission provide written reasons for its decision in Order No. F-15-05. The Commission issued Reasons for Decision on October 11, 2005 (Letter No. L-85-05).

In response to BCSEA, et al's request for reconsideration, the Commission issued Letter No. L-92-05 on October 26, 2005 inviting comment as to whether a reasonable basis existed to allow the request for reconsideration. The letter notes that for a reconsideration to proceed, the reconsideration applicant is required to meet the following criteria:

1. The claim of error appears to be substantiated on a prima facie basis; and
2. The error has significant material implications.

No additional substantive comments were received in response to Letter No. L-92-05.

The Commission Panel has reviewed the Request for Reconsideration. The following provides the Commission Panel's determinations in respect of whether BCSEA, et al has met the required criteria in order for it to advance to second phase of the reconsideration process.

Request for Reconsideration

Pursuant to the provisions of subsection 1 of section 118 of the *Utilities Commission Act*, the Commission may order a participant in the proceeding to pay part of the costs of another participant in the proceeding. This provision is permissive. The Commission has issued guidelines relating to the exercise of its discretion to award costs which are attached as Appendix "A" to Order No. G-15-04 (the "PACA Guidelines"). The PACA

guidelines list five factors which the Commission Panel considers in determining whether a costs award should be made:

- (i) Does the Participant represent a substantial interest in the proceeding and will the Participant be affected by the outcome?
- (ii) Has the Participant contributed to a better understanding of the issues by the Commission?
- (iii) Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- (iv) Has the Participant joined with other groups with similar interests to reduce costs?
- (v) Any other matters appropriate in the circumstances.

In the Commission Panel's written reasons (Letter No. L-85-05), one criterion was relied upon to support the denial of the cost award. That criterion was whether the participant contributed to a better understanding of the issues by the Commission.

At page 2 of Letter No. L-85-05, the Commission Panel stated:

With regard to the participation of BCSEA/SCBC in the Resource Options Report proceeding, the Commission Panel concluded that BCSEA/SCBC did not contribute "to a better understanding of the issues by the Commission" because the Commission did not give directions or comment on any matters of substance, in fact, expressly declined to do so. As stated earlier, a request for withdrawal of the 2005 ROR was made and approved, without any Commission direction or comment on the substance of it. And in regard to the future planning issues, the Commission concluded that determination should continue to be deferred until further regulatory filings.

BCSEA, et al states at page 7 of its Request for Reconsideration that the Commission made an error in fact or law in finding that a participant assistance cost award is not available where the Commission conducts a proceeding under s. 45(6.1) and after receiving evidence and argument decides to terminate the proceeding without giving directions or comments on any matters of substance; and that a new principle has arisen as a result of the Decision, the result being the undesirable concept that intervenors lose eligibility for a Participant Assistance Cost Award where they successfully support the early termination of a proceeding under the *Utilities Commission Act*.

Commission Panel Determinations

The Commission Panel finds that BCSEA, et al has not met the criteria for its request to advance to the second phase of reconsideration. The Commission Panel finds that the claim of error in fact or law has not been substantiated on a prima facie basis. The Commission Panel also finds that the alleged error does not have significant material implications.

BCSEA, et al was denied a Participant Assistance Cost Award because in the Commission Panel's view it did not contribute to a better understanding of the issues by the Commission.

The participation by BCSEA, et al in this proceeding consisted of attendance at two procedural conferences, discussions with British Columbia Hydro and Power Authority ("BC Hydro") and the provision of a letter dated June 27, 2005 (Exhibit C-3-2) regarding the Resource Option Report and its regulatory context. The Commission was aware of BCSEA, et al's participation in the proceeding when it decided that BCSEA, et al did not contribute to a better understanding of the issues by the Commission Panel.

The mere fact of participation in a proceeding is not the threshold for an award of participant assistance costs. The intervenor must do more than participate. The intervenor must contribute to a better understanding of the issues by the Commission. An intervenor will not be entitled to a cost award if it did not contribute to a better understanding of the issues by the Commission. The mere fact that the Commission Panel fully understood the issues, as asserted by BCSEA, et al, does not mean that the intervenor contributed to that understanding.

The Commission Panel's determination was underscored by the fact that there had been no substantive determinations made on any aspect of the application by BC Hydro. Rather, the Commission ordered that the planning issues, one of the principal subjects of the proceeding, should be deferred until further regulatory filings.

As the proceedings before the Commission were terminated early on without any substantial determination on the application, the Commission Panel did not make a Participant Assistance Cost Award to BCSEA, et al because, in the Commission Panel's view, BCSEA, et al did not contribute to a better understanding of the issues. Nothing that has been said by BCSEA, et al in its request for reconsideration has changed the Commission Panel's view on this matter. It would be improper to burden the ratepayers of BC Hydro with the participant cost award in favour of the BCSEA, et al without benefit being brought to the ratepayers as a result of BCSEA, et al's participation in the aborted proceeding.

The Commission Panel is also of the view that the alleged error in the denial of the cost award does not have significant material implications. An intervenor's participation in a proceeding should not be premised on the assumption that it has entitlement to a discretionary cost award.

Based on the above, the Commission Panel finds that BCSEA, et al's request for reconsideration does not meet the threshold for further review.

Yours truly,

Original signed by:

Robert J. Pellatt

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cc: Ms. Joanna Sofield, Chief Regulatory Officer
British Columbia Hydro and Power Authority