



**LETTER NO. L-60-07**

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

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

Log No. 20453

**VIA E-MAIL**

[ludo.bertsch@esvi.ca](mailto:ludo.bertsch@esvi.ca)

July 12, 2007

Mr. Ludo Bertsch  
Energy Solutions for Vancouver Island  
2758 Asquith Street  
Victoria, BC V8R 3Y5

Dear Mr. Bertsch:

Re: British Columbia Hydro and Power Authority  
2006 Integrated Electricity Plan and Long-Term Acquisition Plan  
Application for Reconsideration of Participant Cost Award – Order No. F-10-07

On June 14, 2007, ESVI filed a request for Reconsideration of the reduced Participant Assistance Cost Award ("PACA") funding that was awarded under Order No. F-10-07 issued June 1, 2007. ESVI requests that the Commission reconsider the decision to disallow \$28,620.00 of the \$29,953.50 cost award application regarding its participation in the 2006 IEP/LTAP proceeding.

In Order No. F-10-07, the Commission said:

"The Commission Panel is of the view that on matters such as ESVI pursuing its goal of promoting energy conservation on Vancouver Island it could have joined with another Intervenor, such as the SCCBC *et al.* The Commission Panel has determined that ESVI does not represent a substantive interest in the proceeding and therefore it does not meet the threshold criterion for funding".

ESVI respectfully submits that a reasonable basis exists for reconsideration, and organizes its submissions under the following topic headings:

- Could have joined with another intervenor
- Substantial Interest
- BC Hydro's Comments
- Threshold Criterion
- BCUC RRA PACA letter points to IEP/LTAP
- Better Understanding
- Legal Representation

The Commission Panel has considered ESVI's application and addresses the significant issues as follows.

### **Joining with another Intervenor**

In support of the Reconsideration Application, ESVI submits that "when BCSEA was relatively new the two organisations exchanged information and worked together. As the BCSEA grew they began to focus their cooperative energies with larger, environmental, organisations." ESVI further submits that it "dealt extensively with EE3, EE4 and EE5", and that those matter were "redirected... into the IEP/LTAP PACA".

Both ESVI and SCCBC *et al.* addressed EE3, EE4, and EE5. ESVI submits that to construe that SCCBC *et al.* could or should have also represented ESVI is "simply wrong, and not something that would have been fair to either organisation. Nor does ESVI believe that it is a reasonable for the Commission to require organisations to join their interventions, as is implicit in the withholding of the PACA award".

The Commission Panel does not find that the Commission made an error when it concluded that ESVI could have joined with another Intervenor. The Commission Panel disagrees with ESVI submissions that it is unfair for the Commission to consider, in determining an award, whether or not ESVI joined with other groups. In some circumstances it might be unfair, as is submitted by ESVI, to require organisations to join together for the purposes of participating in a proceeding, but joining with SCCBC *et al.* was not a requirement for ESVI to participate in the IEP/LTAP proceeding. It was, as is set out in the Participant Assistance/Cost Award Guidelines ("Guidelines"), a consideration in determining an award (Order No. G-15-04, Appendix A, section 1(iv)).

### **Substantial Interest**

ESVI submits that there is no definition, interpretation or examples of this term throughout the Guidelines, nor in the review letters from Commission staff on September 8, 2006 and November 20, 2006. As ESVI submits, the letter from staff dated September 8, 2006 states that a "substantial interest" would be one of several criteria considered. Moreover, the Guidelines state that the Commission will consider whether or not the Participant represents a "substantial interest" in the proceeding.

The Commission Panel does conclude that the reference to a "substantive interest" rather than a "substantial interest" is an error, but not a material error, in the Decision. Although a "substantial interest" has not been defined, the Commission Panel disagrees that this reconsideration process is procedurally unfair for that reason. Further, the Commission Panel exercised its discretion regarding the award, and provided adequate reasons for doing so.

### **Threshold Criterion**

ESVI submits that the Guidelines do not establish the "substantial interest" criterion as a threshold criterion, and therefore the Commission erred when it stated that the "substantial interest" criterion is a threshold criterion. The Guidelines do establish a "substantial interest" as a consideration in determining an award.

ESVI submits that:

“In essence, the Guidelines and staff review letters constitute a promise, intended to be relied upon, and that was relied upon by ESVI to ESVI’s detriment. Consequently, the Commission is estopped from changing “substantial interest” from a criteria [sic] to a firm prerequisite.”

The Commission Panel disagrees that the Guidelines and staff review letters constitute a promise. The Guidelines state:

“The Commission staff advice is not binding on the Participant or the Commission panel and is provided only to forewarn Participants of potential issues that may not be funded by the Commission.”

The staff letter dated September 8, 2006 states:

“As identified earlier, Commission staff advice is not binding on the Participant or the Commission Panel, and the determination on any cost award will be made by the Commission Panel upon application after the proceeding.”

The Commission Panel has the discretion to make cost awards under section 118 of the Utilities Commission Act. The Guidelines are intended to guide participants and to assist the Commission Panel in making discretionary cost awards; the Guidelines do not constitute a promise of funding. And as clearly stated in the Guidelines, the staff letters are provided to only forewarn participants.

The Guidelines refer to a “substantial interest” as a consideration in making a PACA award. The Commission Panel concluded that ESVI did not represent a “substantial interest.” There is no requirement for consideration of other criteria. In most circumstances, it would be reasonable to conclude that a participant that does not represent a substantial interest in a proceeding should not be given a discretionary cost award. The Commission Panel concludes that it did not make an error when it did not refer to any other criteria in reaching its decision. Therefore, the Commission Panel concludes that it did not make a material error when it described a “substantial interest” as a “threshold criterion”. The decision would be the same whether or not the “substantial interest” criterion was a “threshold criterion” or the only criterion considered.

### **Legal Representation**

The Commission Panel disagrees with ESVI that when read together the Commission staff letter and the Decision suggest that legal representation is significant to PACA awards. ESVI further submits:

“It was our understanding that the PACA awards were designed to facilitate the inclusion of diverse interests which might otherwise not be represented, but instead ESVI has been shut out of the process”.

The Commission Panel finds that there are no grounds on which to conclude that ESVI was somehow disadvantaged because it was not represented by counsel.

Therefore, the Commission Panel concludes that the Reconsideration Application does not provide sufficient grounds to warrant a reconsideration, and denies the application of ESVI for a reconsideration of the PACA decision in Order No. F-10-07.

Yours truly,

*Original signed by:*

Robert J. Pellatt

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