



LETTER NO. L-78-07

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

ERICA M. HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

Log No. 21791

VIA E-MAIL

kacairns@thomasbutlerllp.com

October 2, 2007

Thomas Butler LLP
Barristers & Solicitors
Landmark 11 Tower
700 – 1708 Dolphin Avenue
Kelowna, B.C. V1Y 9S4

Attention: Kelly A. Cairns

Dear Mr. Cairns:

Re: FortisBC Inc. ("FortisBC")
Project No. 3698422 – Order No. G-140-06
Certificate of Public Convenience and Necessity Application
Ellison Substation Project

Application for Reconsideration of Participant Assistance/Cost Award Decision

This letter is in response to your August 27, 2007 application (the "Application") for a reconsideration of Commission Order No. G-72-07 as it relates to the Participant Assistance/Cost Award ("PACA") funding granted to the Concerned Citizens of Quail Ridge and Lochrem Road ("CCQRLR"). CCQRLR has confirmed to staff that the reference to Order No. G-72-07 should be to Commission Order No. F-15-07.

PACA Funding Decision

Order No. F-15-07 and Reasons for Decision dated August 16, 2007 responded to applications for PACA funding from CCQRLR and the Quail Ridge Residents Association. CCQRLR applied for funding of \$32,969.87, and the Commission Panel awarded \$14,137.80. The Commission Panel considered the number of Workshop, Pre-Hearing Conference and Oral Hearing days, and determined that the number of prorated proceeding days was 2.0 days. Although CCQRLR requested funding for legal counsel for 136.5 hours (17.1 days), the Commission Panel determined that the typical ratio set out in the PACA Guidelines of two preparation days for each proceeding day should apply for CCQRLR. Therefore, CCQRLR was awarded PACA funding for six days of legal counsel time. The Commission Panel also reduced the daily rates for the CCQRLR legal counsel and consultant to \$1,710.00 per day and \$1,200.00 per day, respectively, as set out in the Order No. G-15-04 PACA Guidelines, but these adjustments do not appear to be an issue with respect to the Application for reconsideration.

Criteria for a Reconsideration

A copy of the Reconsideration and Appeals section of the Commission's Participant Guide, which identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists to allow a reconsideration, is enclosed.

An application for reconsideration by the Commission proceeds in two phases. In the interest of both regulatory efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this first phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. The Commission usually invites submissions from the other participants in the proceeding that led to the Decision that is the subject of the reconsideration request, or may consider that comments from the parties are not necessary. The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If the Commission determines that a reconsideration is warranted, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application.

With respect to the CCQRLR Application for reconsideration, by letters dated August 31 and September 21, 2007, the Commission invited comments from FortisBC Inc. ("FortisBC") and reply comments from CCQRLR, respectively.

Application for Reconsideration

The Application identifies five Commission Findings that it considers affected the award it received:

1. The request exceeded the two preparation day guideline;
2. CCQRLR did not contribute in a unique or special way;
3. CCQRLR did not provide significant evidence on alternative siting opportunities as had been contemplated in its submission at the Pre-Hearing Conference;
4. CCQRLR contributed to the delayed timetable for the hearing; and
5. The oral hearing lasted only one day instead of the two days that were scheduled.

The Application then addresses these findings. The discussion of Findings 1 and 5 generally is a submission why six days of legal counsel funding was inadequate. CCQRLR believes that two days preparation per proceeding day as set out in the Guidelines is not sufficient for a shorter hearing, or where counsel is acting for a large community group. Furthermore, CCQRLR submits that counsel cooperated to streamline the hearing process so that the oral hearing was completed in one day, and that to penalize counsel for such efforts creates the wrong incentives.

CCQRLR's comment on Finding 2 is that the two citizen groups had different views and required separate representation.

With respect to Finding 3, CCQRLR provides reasons why it did not provide evidence on alternative sites, and states that the Commission does not appear to have given credit to the effort CCQRLR made in trying to engage FortisBC in a discussion of alternative sites.

CCQRLR submits that Finding 4 should not be a consideration in determining the PACA award as the only “delay” was the adjournment as a result of the Pre-Hearing Conference, and that this caused no harm as FortisBC believes the project can still achieve its objective.

Submissions on the Reconsideration Application

By letter dated September 10, 2007, FortisBC submits that CCQRLR provided no basis to entitle it to a reconsideration under the four criteria that the Commission typically applies to determine if a reconsideration is warranted, as it has not brought forward any additional evidence that was not before the Commission when it made the cost award decision, and has not established any error in fact or law. FortisBC states that the primary submission of CCQRLR is that the Commission should not have applied the PACA Guidelines in the manner it did, and that this is not an error in fact or law. FortisBC considers that the reconsideration application is a re-argument of matters before the Commission when it made the PACA funding decision, and submits that the Application should be dismissed.

By letter dated September 24, 2007, CCQRLR responds that the legalistic approach in the submission by FortisBC is not practical because the reconsideration rules are aimed at reconsideration of substantive hearing issues rather than cost awards. CCQRLR believes that the ratio of two preparation days for each hearing day is not realistic for short hearings. CCQRLR submits that, if the Commission is concerned that the PACA funding in Order No. F-15-07 falls short of the purpose of Section 118 of the Utilities Commission Act or the preparation days ratio for short hearings has the potential to undermine that purpose, then the cost award should be reconsidered.

Commission Determination

The Commission believes that the process and criteria that it generally applies to determine if circumstances warrant reconsideration of a Commission decision, should apply for a PACA funding decision. Moreover, the Commission believes that Participant Assistance properly describes the role of cost awards granted under Section 118 and the PACA Guidelines. Such PACA funding is to assist participation in a proceeding before the Commission, and may not provide full reimbursement of costs. The Commission understands the concern that CCQRLR raises about the PACA Guidelines with respect to shorter hearings involving large community groups. However, the Commission also notes that the Guidelines have recently been reviewed and updated by Order No. -72-07 dated July 5, 2007, and that the updated Guidelines are not materially different with respect to the number of preparation days that are eligible for funding.

In the reconsideration Application, CCQRLR does not explicitly address the four criteria that the Commission generally applies to determine whether a reconsideration should be allowed. The Application does not indicate that the Commission made an error in fact or law, as it does not question that the Commission correctly applied the PACA Guidelines in its determination of the number of legal counsel days that would be funded, or take issue in a factual sense with the other Findings.

Similarly, the Application does not identify a fundamental change since the Decision, a basic principle that had not been raised in the proceeding, or a new principle that has arisen as a result of the Decision. Instead, the Application largely makes arguments why the Commission should have given different weight to several considerations and Findings, and as a result reached a difference conclusion about the number of days to be funded.

Therefore, the Commission determines that the Application has not satisfied the criteria that it generally applies in the initial screening phase when considering if a reconsideration is warranted, nor has it provided other reasons that justify a reconsideration of Order No. F-15-07. The Commission concludes that CCQRLR has not established that a reasonable basis exists for allowing a reconsideration of Order No. F-15-07, and denies the Application for reconsideration.

Yours truly,

Original signed by

Erica M. Hamilton

JBW/cms

Enclosure

cc: FortisBC Inc.
Registered Intervenors (FBC-EllisonCPCN-RI)
Interested Parties (FBC-EllisonCPCN-IP)