



LETTER NO. L-14-08

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VIA E-MAIL

steve.davis@ippbc.com

April 18, 2008

Mr. Steve Davis
President
Independent Power Producers Association of BC
2633 Mathers Avenue
West Vancouver, BC V7V 2J3

Dear Mr. Davis:

Re: British Columbia Hydro and Power Authority ("BC Hydro")
Filing of 2007 Electricity Purchase Agreement with Alcan Inc.
as an Energy Supply Contract Pursuant to Section 71
Application for Reconsideration of PACA Decision

This is in response to your letter dated April 3, 2008 requesting that the Commission reconsider its decision to deny the Independent Power Producers Association of BC ("IPPBC") Participant Assistance/Cost Award ("PACA") application for its participation in the above-referenced proceeding.

In denying funding to IPPBC, the Commission stated that "IPPBC focused on features of the 2007 EPA that might be applicable to future contracts between independent power producers ("IPPs") and BC Hydro, matters which were not substantial issues in this proceeding. IPPBC did not contribute to the Commission's understanding of the key issues in this proceeding and, in fact, took no position on the cost-effectiveness analysis or on whether the 2007 EPA is in the public interest" (Letter of March 19, 2008, with Order No. F-13-08).

In support of your reconsideration application you submit that, based on Commission staff's letter of October 25, 2007, IPPBC believed that it had a substantial interest in a substantial issue in the proceeding and participated in the proceeding with an understanding that it would receive PACA funding. You submit that the Commission erred in concluding that IPPBC focused on features that might apply to future IPP contracts and did not contribute to the Commission's understanding or take a position on the cost-effectiveness analysis.

Reconsideration applications proceed in two phases. The application first undergoes an initial screening phase in which the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission.

The Initial Screening

The reconsideration criterion upon which you rely, i.e., that the Commission has made an error in fact or law, must meet the following criteria:

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

IPPBC has not substantiated on a prima facie basis its submission that “the Commission erred in concluding that the IPPBC focused on features that might apply to future IPP contracts”. IPPBC’s final argument summarized six areas of interest to IPPBC and linked the majority of them to future IPP contract terms, confirming the Commission’s conclusion regarding IPPBC’s focus in the proceeding. Your reconsideration letter describes several issues that IPPBC explored or offered comment on and, in some cases, acknowledges the comparison with future IPP contracts. However, in your discussion of other issues, selective quotations from IPPBC’s argument omit the linkages to IPP contracts. For example, IPPBC’s agreement that “BC Hydro’s and Alcan’s generating systems should be evaluated on a combined basis...” (p. 3, IPPBC Argument and p. 4 of your letter), is followed in IPPBC’s argument by the statement that “IPPBC expects BC Hydro to carry out the same analysis of the electricity supplied by independent power producers...” (p. 4, IPPBC Argument). Similarly, your references to IPPBC’s views on Green Attributes omit the statement in IPPBC’s Argument that it “...expects that a similar provision will become a feature of future contracts between IPPs and BC Hydro...” (p. 11, IPPBC Argument). The Commission did not conclude in its PACA decision, and has not now concluded, that IPPBC dealt exclusively with features that might apply to future IPP contracts, but only that it focussed on such features. Moreover, the Commission does not consider IPPBC’s focus inappropriate and offers the foregoing comments only in the context of IPPBC’s PACA funding request.

IPPBC has also failed to substantiate on a prima facie basis its submission that “the Commission erred in concluding that did not contribute to the Commission’s understanding or take a position on the cost-effectiveness analysis”. The Commission Panel’s understanding of the key issues was based on its review of the evidentiary record, and its conclusion that IPPBC did not contribute to that understanding is unaffected by IPPBC’s submissions that the Commission ought to have found more value in IPPBC’s participation.

However, the Commission accepts your submission that it made an error in fact to the extent that it found that IPPBC did not have a substantial interest in a substantial issue in the proceeding. Although IPPBC did not contribute to the examination of most aspects of BC Hydro’s cost-effectiveness analysis, the Commission considers that IPPBC represented a substantial interest in other issues that might be considered substantial although, as discussed in the reconsideration section below, those issues were not all within the scope of the oral hearing. In particular, the Commission has concluded that IPPBC has a substantial interest in the Equichange and Coordination services of the 2007 EPA, and that these services were substantial issues in the proceeding.

The Commission also notes IPPBC’s view that the decision to deny its PACA funding request has significant financial implications for IPPBC. If so, IPPBC should have anticipated that its PACA funding request was at some risk. The Commission staff letter of October 25, 2007 included the following statements:

“[T]he interests of IPPBC appear to have somewhat limited relevance within the limited scope of the oral hearing.”

“Commission staff believe that IPPBC is at serious risk of not receiving funding at the full amount set out in your budget.”

“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.”

In this instance, the Commission finds that it has sufficient information to proceed directly to Phase II of the reconsideration in which it considers the merits of the application, and finds it unnecessary to invite comments from BC Hydro, registered intervenors or interested parties. The Commission agrees with IPPBC that “no further

filing of evidence or argument is required.” In considering the merits of the application, the Commission has taken into account the record of the proceeding, IPPBC’s PACA budget letter of October 15, 2007, Commission staff’s letter to IPPBC of October 25, 2007, IPPBC PACA application letter of February 5, 2008, the Commission’s PACA decision of March 19, 2008 and IPPBC’s PACA reconsideration letter of April 3, 2008.

The Reconsideration

Having decided that IPPBC has met the first criterion for PACA eligibility, the Commission will consider the issues that IPPBC addressed in the proceeding and IPPBC’s contribution to the Commission’s understanding of key issues.

IPPBC presented a preliminary list of issues at the first procedural conference on September 26, 2007. IPPBC identified the terms and conditions of the 2007 EPA, the terms and conditions of the value of the Coordination services and the Equichange services, and the factors that influence the terms and conditions as its main interests. IPPBC later expanded and refined its list of issues in a letter dated October 4, 2007 (Exhibit C11-2), explaining its interest as follows:

“Generally, the IPPBC is trying to understand how the Contract works under various sets of assumptions e.g. a new smelter with a load of less than 700 average megawatts is built, no new smelter is built or the old smelter continues in operation for an indefinite period or the electrical transmission transfer capability from Terrace to Kitimat is increased. It is also trying to understand how the terms of the Contract compare to agreements entered into between BC Hydro and Independent Power Producers (“IPPs”) and with agreements that BC Hydro has indicated it may enter into with IPPs such as the proposed standing offer contract.”

In your reconsideration application, you note that:

“IPPBC is often alone among the intervenors in offering its observations on significant features of the energy supply contract terms, and the 2007 EPA is no exception [... and] IPPBC’s observations and analyses of contract terms and conditions are an honest attempt to inform the Commission about value differences between alternatives.”

However, the Commission determined that comparisons between the terms and conditions of the 2007 EPA and IPP contracts were not within the scope of the oral hearing. In its Scoping Letter, the Commission made the following comments about the issues identified by IPPBC:

“The Commission notes the categorization of the IPPBC issues as provided by counsel for BC Hydro (T2:162-164). **The Commission accepts the submissions of BC Hydro that the IPPBC issues that require a comparison of the terms and conditions of IPP contracts and the 2007 EPA are not within the scope of the oral hearing.** The Commission has heard extensive cross-examination of the differences between the terms and conditions of LTEPA+ and the terms and conditions of the 2006 Call agreements and **does not believe that further cross-examination on terms and conditions will benefit the decision.** Further, BC Hydro’s justification of the prices in the 2007 EPA does not rely on the 2006 Call in the same manner as did the LTEPA+ pricing.” (p. 4, emphasis added)

Therefore, although IPPBC was able to address issues related to terms and conditions in the broader proceeding and in its argument, the Commission clearly indicated that it did not expect additional investigation of terms and conditions at the oral hearing. The Commission agrees with your submission that terms and conditions are relevant in determining a contract's cost-effectiveness but, given their extensive examination in the LTEPA+ proceeding and the fact that they were not within scope for the oral hearing, terms and conditions cannot form the basis for a significant amount of PACA funding in the 2007 EPA proceeding. The Commission does not agree that it was required to make a careful comparison of the terms and conditions of the 2007 EPA and IPP contracts in its cost-effectiveness analysis.

IPPBC submits that it should not be necessary to take a definitive position on the overall cost-effectiveness of the 2007 EPA in order to make a contribution to the Commission's overall understanding of issues. The Commission agrees that an intervenor can make a contribution to the Commission's overall understanding of issues without taking a definitive position on the key issue in the proceeding, but that was generally not the case for IPPBC in this proceeding. The Commission Panel concluded, while writing its decision, that IPPBC did not contribute to its understanding of the key issues and that its input was not particularly helpful to the decision. The Commission understands that IPPBC has a different view of its contribution.

In summary, the Commission concludes that IPPBC had a substantial interest in substantial issues in the overall proceeding, but finds that IPPBC did not make a significant contribution to the Commission's understanding of the key issues that were within the scope of the oral hearing. In consideration of IPPBC's active participation in the proceeding and its efforts to investigate certain aspects of the 2007 EPA, the Commission considers that IPPBC should receive a partial PACA award for its participation. IPPBC shall receive funding for 6 days of counsel fees and 6 days of case manager fees (6 X \$1,800 X 1.12 plus 6 X \$500 X 1.05), for a total of \$15,246.

Yours truly,

Original signed by

Erica M. Hamilton

cms

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