

# LAWSON LUNDELL

BARRISTERS AND SOLICITORS

1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
Canada V6C 3L2  
Telephone 604.685.3456  
Facsimile 604.669.1620

[www.lawsonlundell.com](http://www.lawsonlundell.com)

Direct Line: (604) 631-9225  
Direct Fax: (604) 641-2816  
[bwallace@lawsonlundell.com](mailto:bwallace@lawsonlundell.com)

## COPY

October 23, 2003

### DELIVERED

British Columbia Utilities Commission  
Box 250  
900 Howe Street  
Vancouver, BC  
V6Z 2N3

**Attention:** Mr. Robert Pellatt, Commission Secretary

Dear Sirs and Mesdames:

### BCUC Approval of CFT Terms

In its decision of September 8, 2003, the Commission Panel encouraged BC Hydro to conduct a call for tenders ("CFT") to meet Vancouver Island's capacity needs. Because BC Hydro is seen as "unavoidably in the position of being a project proponent and the selector of the preferred project", it was also encouraged "to select an Independent Reviewer... and have the Independent Reviewer report to a Commissioner, who will not sit on the Commission Panel that may be required to hear an application for approval of the selected resource addition"(Panel Decision, p. 80).

The BCUC has offered to have Mr. R.L. Milbourne act as that designated commissioner. BC Hydro has met with Mr. Milbourne and Bill Grant to discuss the details of the role.

The Panel also observed that it was its "impression that bidders into the CFT can anticipate a fair and transparent process, especially given BC Hydro's willingness to engage an Independent Reviewer and the Commission's ultimate review of a CPCN application or EPA filing" (Panel Decision, p.79).

BC Hydro has actively tried to design and implement a fair and transparent CFT, and to that end has engaged Price Waterhouse Coopers (PwC) as the independent reviewer to review the fairness of the CFT process at specified points according to industry standard fairness criteria. PwC will report to the Commission and publicly. So far, PwC has reviewed the proposed CFT and advised BC Hydro on elements of the design required to issue the first fairness report. BC Hydro has

provided the Commission with PwC's terms of reference. Ultimately, the Commission will review the project selection resulting from the CFT.

We understand that, within that framework, Mr. Milbourne and Mr. Grant see the designated commissioner providing his views on the terms of the CFT early in the process.

BC Hydro's concern is that bidders will not make the investment necessary to participate in a tender if there is a risk that the Commission will not approve the resulting EPA because it finds that the process was inappropriate. A non-binding opinion by the designated commissioner on the terms of the CFT will not mitigate that risk. BC Hydro submits that the way to avoid the risk would be to have the Commission decide as a preliminary matter whether the terms of the CFT as proposed are appropriate, so that the Panel making the decision on the selected project does not revisit that issue.

BC Hydro agrees with the Commission that it should give early consideration to the terms of the CFT. But to BC Hydro, it is imperative that there be an early decision on their appropriateness, not just a non-binding opinion. The certainty gained from an early decision by the Commission will create the most attractive and therefore the most active and competitive climate for bidders. Active competition will be a key factor in the CFT producing the lowest cost new electricity supply for BC Hydro's ratepayers.

BC Hydro understands that such a preliminary decision would require project proponents to be heard and has designed the CFT to seek and accommodate their comments on the terms of both the CFT and the related EPA. BC Hydro proposes that it issue the CFT as planned on October 31, 2003 and ask project proponents to comment on the terms. BC Hydro proposes to post the comments on its CFT website. At the same time project proponents would begin preliminary work on their bids, including attendance at the bidders' workshop, tentatively set for November 21. BC Hydro would consider the comments, to be received by November 30, 2003, and amend the CFT to reflect those it believes have merit. BC Hydro would file the revised CFT documents, all of the comments of project proponents, and the report of the independent reviewer with the Commission by December 15, 2003, and would ask that the Commission decide by January 15, 2004 whether the CFT as designed is appropriate. BC Hydro does not believe that an oral hearing would be required.

BC Hydro believes that the steps outlined above would allow for an early collaborative exchange between BC Hydro and project proponents with a view to ensuring the fairness of the CFT process and would provide project proponents with the opportunity to be heard.

Thank you for your urgent consideration of this proposal. BC Hydro is cognizant of the short time available for project proponents to construct their bids and the importance of achieving a solution that does not compromise the schedule and the need to meet the schedule by issuing the CFT on October 31. As a result BC Hydro asks that the Commission advise BC Hydro by the end of this week whether it will proceed on the basis set out.

I would be pleased to discuss this proposal with you or other Commission staff at your or their convenience.

Yours truly,

A handwritten signature in black ink that reads "BJ Wallace". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Brian J. Wallace, Q.C.  
BJW/gsr

cc: BC Hydro



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. 4310

VIA FACSIMILE

October 24, 2003

Mr. Richard Stout  
 Chief Regulatory Officer  
 British Columbia Hydro and Power Authority  
 17<sup>th</sup> Floor, 333 Dunsmuir Street  
 Vancouver, B.C. V6B 5R3

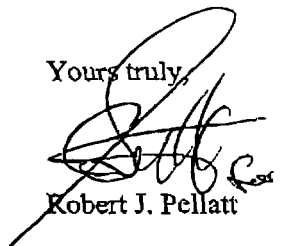
Dear Mr. Stout:

Re: British Columbia Hydro and Power Authority ("BC Hydro")  
 Commission Review of the Terms of the Call for Tenders

The October 23, 2003 letter from counsel for BC Hydro to the Commission proposes that, as a preliminary matter to the review of proposals to meet the electricity capacity needs of Vancouver Island in the winter of 2007/08 and beyond, the Commission make a decision on the appropriateness of the terms of the Call for Tenders ("CFT") as proposed by BC Hydro. The letter proposes that BC Hydro will issue the CFT documents on October 31, 2003 and ask project proponents to comment on the terms. BC Hydro will post the comments on the CFT website. A bidder's workshop is tentatively set for November 21<sup>st</sup>. Comments will be received until November 30, 2003 and BC Hydro will amend the CFT to reflect the comments that it believes have merit. BC Hydro will file the revised CFT documents, all of the comments of project proponents and the report of the Independent Reviewer with the Commission by December 15, 2003. BC Hydro asks that the Commission decide by January 15, 2004 whether the CFT as designed is appropriate.

The Commission considers the forgoing proposal for Commission review of the CFT terms to be appropriate. Provided that the revised CFT terms and other documents are filed by December 15, 2003, it would be the Commission's intention to provide its response on the appropriateness of the terms of the CFT by January 15, 2004.

Yours truly,



Robert J. Pellatt

JBW/rt  
 cc: Lawson Lundell  
 Attn: Brian J. Wallace, Q.C.

Post-it™ Fax Note	7671E	Date	10/24	# of pages	1
To	Mr. Richard Stout	From	Robert Pellatt		
Co./Dept.		Co.	BCUC		
Phone #		Phone #	604-660-4700		
Fax #	604-623-4407	Fax #	604-660-1102		

BCH/Cor/Call for Tenders Terms