



IN THE MATTER OF

FortisBC Inc.

**GUIDELINES FOR ESTABLISHING ENTITLEMENT
TO NON-PPA EMBEDDED COST POWER
AND MATCHING METHODOLOGY
(COMPLIANCE FILING TO ORDER G-188-11)**

DECISION

December 27, 2012

Before:

**M.R. Harle, Panel Chair/Commissioner
N.E. MacMurchy, Commissioner
L.A. O'Hara, Commissioner**

TABLE OF CONTENTS

	PAGE NO.
1.0 INTRODUCTION	1
1.1 Background	1
1.2 Review Process and Participants in the Proceeding	2
1.3 Overview of the Decision	3
2.0 GUIDELINES FOR ESTABLISHING A SELF-GENERATOR'S ENTITLEMENT TO NON-BC HYDRO PPA EMBEDDED COST POWER	3
2.1 FortisBC's Proposal	3
2.2 Intervener Positions	4
2.2.1 Celgar	4
2.2.2 BC Ministry of Energy and Mines	5
2.2.3 BC Hydro	6
2.2.4 BC Pensioners' and Seniors' Organization	6
2.2.5 Other Interveners	6
2.3 FortisBC's Response	6
2.4 Celgar's Response	7
3.0 MATCHING METHODOLOGY	12
3.1 FortisBC Proposal	12
3.2 Intervener Positions	13
3.2.1 Celgar	13
3.2.2 BC Hydro	13
3.2.3 BC Pensioners' and Seniors' Organization, ATCO, Interfor, and the Municipal Utilities	13
3.3 FortisBC's Response	14
4.0 OTHER ISSUES	15
4.1 Applicability of Guidelines	15
4.2 Interim Billing	16

1.0 INTRODUCTION

1.1 Background

On April 13, 2012 FortisBC Inc. (FortisBC) made its Compliance Filing with the BC Utilities Commission (BCUC, Commission) in response to Order G-188-11 issued concurrently with the *Celgar Complaint Decision*.¹ That Order included the following directives to FortisBC:

8. "FortisBC is directed to consult with all classes of its customers to determine guidelines for the level of entitlement to non-BC Hydro PPA (RS 3808 Power Purchase Agreement) embedded cost power by eligible self-generating customers. Draft guidelines should be delivered to the Commission by March 31, 2012 and, once approved by the Commission, should be used as a basis for negotiating GSA's for customers such as Celgar."
6. "FortisBC is directed to establish a methodology for notionally matching sales to Celgar in service of its load when Celgar is selling power, to FortisBC's non-BC Hydro PPA components of its resource stack and submit it to the Commission for approval by March 31, 2012."

On March 29, 2012, the Commission granted an extension in the filing dates to April 13, 2012.

These directives form an element of an ongoing series of BCUC decisions related to power sales by self-generators within BC, particularly as they relate to the potential arbitrage of power. Relevant decisions and Orders include:

- Order G-27-99² which approved the Access Principles Application (APA) for FortisBC (then West Kootenay Power). The purpose of the APA is to set principles to ensure that the development of a competitive generation market occurs in a way that results in "Fair Treatment" of utility shareholders, customers and "Eligible Customers" (those customers who obtain supply from non-utility resources);
- Orders G-38-01³ and G-17-02⁴ related to self-generator customers of BC Hydro selling excess self-generated electricity. These Orders established that self-generators were not to arbitrage between embedded cost utility service and market prices. They also established that customer baselines (later Generator Baselines or GBLs) related to a customer's historical energy consumption or the historical output of the generator were the preferred mechanism for BC Hydro customers by which to prevent arbitrage;
- Order G-48-09⁵ which approved amendments to the bulk Power Purchase Agreement (Rate Schedule 3808) between BC Hydro and FortisBC. These amendments prohibit the sale of PPA power to any

¹ In the *Matter of the Zellstoff Celgar Limited Partnership: Complaint Regarding the Failure of FortisBC and Celgar to Complete a General Service Agreement and FortisBC's Application of Rate Schedule 31 Demand Charges*; Decision and Order G-188-11 dated March 14, 2011 (*Celgar Complaint Decision*).

² In the *Matter of An Application by West Kootenay Power Ltd. for Approval of Access Principles*: Decision and Order G-27-99 dated March 10, 1999 (*APA Decision*).

³ In the *Matter of British Columbia Hydro and Power Authority Obligation to Serve Rate Schedule 1821 Customers with Self-Generation Capacity*; Order dated April 5, 2001.

⁴ In the *Matter of British Columbia Hydro and Power Authority Obligation to Serve Rate Schedule 1821 Customers with Self-Generation Capacity*; Order dated March 14, 2002.

⁵ In the *Matter of British Columbia Hydro and Power Authority and Application to Amend Section 2.1 of Rate Schedule 3808 Power*

FortisBC customer when such customer is selling self-generated electricity which is not in excess of its load. The amendments were introduced to prevent FortisBC self-generating customers from purchasing power at regulated embedded cost rates and simultaneously selling an equivalent amount of power into available domestic and export markets;

- Order G-156-10⁶ related to the FortisBC 2009 Rate Design and Cost of Service decision. Among other matters, that decision established that Celgar may be an Eligible Customer under the APA and explored matters related to a Celgar GBL (Order G-156-10, p. 114); and
- Order G-188-11 referred to above.

1.2 Review Process and Participants in the Proceeding

On April 19, 2012, Celgar requested a public process to review the Compliance Filing. The process contemplated Intervener comments and a reply by FortisBC.

By Order G-54-12 dated May 8, 2012, the Commission established a Regulatory Timetable for the review. The Order provided, in part, for the submission of Intervener, Customer, and Interested Party comments by May 22 and FortisBC Reply by May 31, 2012 with further process, if necessary, to be determined. FortisBC was also directed to provide a copy of the Compliance Filing to all its Industrial Customers and all Interveners in its 2009 Rate Design and Cost of Service proceeding.

By Letter L-30-12 dated May 18, 2012, the Commission extended the dates for the submission of comments and reply to June 22 and July 4, 2012 respectively.

On July 19, 2012, FortisBC submitted a letter of clarification and additional comments to the reply which it filed on July 4.

By Order G-104-12 dated July 20, 2012, the Commission established a Regulatory Timetable for Intervener Comments on the submissions of FortisBC and other Interveners and a FortisBC reply to those Comments. The Order required Interveners to file their Comments by August 10 and FortisBC to file its reply by August 17, 2012.

The following entities took part in the proceeding:

- FortisBC;
- Zellstoff Celgar Limited Partnership (Celgar);
- BC Ministry of Energy and Mines (MEM);
- BC Hydro and Power Authority (BC Hydro);
- BC Pensioners' and Seniors' Organization, *et al.* (BCPSO);
- ATCO Wood Products (ATCO);

Purchase Agreement; Decision and Order G-48-09 dated May 6, 2009. (RS 3808 Amendment Decision).

⁶ *In the Matter of FortisBC Inc. 2009 Rate Design and Cost of Service Analysis; Decision and Order G-156-10 dated October 19, 2010 (FortisBC 2009 RDA Decision).*

- International Forest Products Ltd. (Interfor); and
- Nelson Hydro, Penticton Electric Ltd., and Grand Forks Electrical Utility Services (collectively, the Municipal Utilities).

1.3 Overview of the Decision

Section 2 of this Decision addresses Directive 8 of Order G-188-11 – the guidelines for the level of entitlement of an eligible self-generator to non-BC Hydro PPA embedded cost power (NECP).

Section 3 addresses Directive 6 of Order G-188-11 - the proposed methodology for notionally matching sales to Celgar, to FortisBC's non-BC Hydro PPA components of its resource stack, while Celgar is selling power.

Section 4 provides the conclusions and determinations of the Commission. In summary, the Commission Panel finds that FortisBC has complied with Directives 6 and 8 of Order G-188-11. This includes the conclusions that:

- FortisBC has adequately consulted with all its classes of customers to determine guidelines for the level of entitlement to non-BC Hydro PPA embedded cost power by eligible self-generating customers;
- The entitlement to non-BC Hydro PPA embedded cost power by a self-generating customer may be as high as 100 percent of load as nominated by that customer; and
- FortisBC's proposal that 100 percent of the customer nomination be matched from alternate sources or surplus FortisBC capacity is approved by the Commission as the methodology for notionally matching sales to self-generating customers in service of their load when they are selling power, to FortisBC's non-BC Hydro PPA components of its resource stack.

The Regulatory Timetable in this proceeding allowed for extensive “back and forth” among FortisBC and the Interveners. This Decision recounts many of the positions taken because, in the Commission Panel's view, this back and forth is integral to the understanding of the issues.

As well, this Decision relates to a compliance filing required by Order G-188-11. Accordingly, the Commission has not reiterated all background or principles set out in the *Celgar Complaint Decision*. Instead, it directs readers to that Decision for greater background on the issue.

2.0 GUIDELINES FOR ESTABLISHING A SELF-GENERATOR'S ENTITLEMENT TO NON-BC HYDRO PPA EMBEDDED COST POWER

2.1 FortisBC's Proposal

In compliance with Directive 8 of Order G-188-11 FortisBC proposes that an Eligible Customer, as defined in the APA, may have a right that up to 100 percent of its expected plant load be served by NECP, but the actual percentage of load served is to be nominated by the customer. The balance of a self-generating customer's plant load is to be served by either self-generation or other third party sources of supply. (Exhibit B-1, p. 9)

FortisBC bases this proposal on its interpretation of previous Commission decisions. The following interpretations form the basis of FortisBC's proposal:

- “The Access Principles encompassing Fair Treatment, the Obligation to Serve, and Re-entry Provisions lead FortisBC to the conclusion that treating a self-generator as an Eligible Customer means that “the treatment of that self-generating customer must be consistent with that of any Eligible Customer under the Access Principles.” (Exhibit B-1, p.6)
- Celgar is not the only customer meeting the definition of Eligible Customer under the Access Principles. Eligible Customers of FortisBC include the wholesale customers of Nelson Hydro, and the Cities of Grand Forks, Penticton, Summerland and Kelowna, as well as three customers taking service at transmission voltage. Any new customer in the large Commercial Transmission or Wholesale rate classes would also become an Eligible Customer.” (Exhibit B-1, p. 9)
- “The Company is of the opinion that the Commission has established the principle that arbitrage of FortisBC non-PPA power is not prohibited out of hand. In addition, no rationale has become obvious that serves as a basis for choosing one amount of power that may be arbitrated over another.” (Exhibit B-1, p. 4)
- In the *Celgar Complaint Decision* the Commission stated that “FortisBC should nevertheless preserve the benefits of its resource stack for all of its own customers in order to safeguard against unduly discriminatory rates.” (p. 37 [Emphasis in original]) In FortisBC’s opinion “while a primary consideration in designing guidelines for a self-generator’s access to NECP is that all other customers, and the rates charged them, are not negatively impacted, it is also evident that providing those safeguards for other customers is most correctly considered a rate design and pricing issue and therefore will be addressed when the Company files its proposal for a Transmission Stepped Rate. An Eligible Customer’s entitlement to NECP is a required precursor to the correct rate design necessary to protect other customers’ interests.” (Exhibit B-1, p. 13)
- “Protection of other FortisBC customers through the appropriate rate design does not hinge upon the selection of any given level of entitlement of non-PPA power. The imperative to hold other customers harmless is in itself a limiting factor on the range of potential self-generator rates that could be considered. In the absence of a clear method for determining the entitlement level, and the constraint of the Fairness Principles, the Company considers that it is appropriate that no hard limit is used, or in other words, the entitlement may be as high as 100 percent.” (Exhibit B-1, p. 6)

In Exhibit B-1, FortisBC summarizes the approach that it undertook in relation to consulting with its customers on the entitlement to NECP by self-generating-customers, including the vetting of a draft Guideline proposal. Appendix B to that Exhibit includes letters of support for its proposed approach from Celgar, Interfor, and the Municipal Utilities.

2.2 Intervener Positions

2.2.1 Celgar

Celgar supports FortisBC’s proposal and relies, in part, on the APA. Celgar states:

“...the correct application of the APA leads only to one conclusion and that is the conclusion reached by FortisBC that a self-generator has the right to meet its full load requirement from FortisBC...Celgar believes that the Guidelines should be consistent with the obligation to serve, which is the fundamental

principle of the APA, and that self-generators choose or 'nominate' the level of entitlement for non-PPA embedded cost power when a self-generator is selling power." (Exhibit B-1, Appendix B, p. B-11)

Celgar submits that FortisBC's planning criteria and costs to serve a self-generator who nominates entitlement of 100 percent of load are the same as the costs for any customer whose full load requirements are served by FortisBC. Celgar concludes that FortisBC's obligations are therefore the same for a self-generator who has nominated 100 percent of its load and any other customer. (Exhibit C1-3, p.9)

2.2.2 BC Ministry of Energy and Mines

MEM believes that FortisBC's proposal for entitlement does not adequately demonstrate how the interests of other FortisBC customers will be protected and that, because the protection of other ratepayers depends on a subsequent stepped transmission rate design, more information is needed on that rate design and pricing to ensure that FortisBC's proposal adequately protects the interests of customers. (Exhibit C2-2, pp. 2-3)

MEM also indicates that FortisBC's approach clearly allows for the possibility that self-generators will engage in arbitrage of NECP. MEM states it:

"does not support arbitrage of [NECP] by self-generators, just as it does not support arbitrage of BC Hydro embedded cost power...arbitrage by self-generators 'takes unfair advantage of the utility's obligation to serve at embedded cost rates to the detriment of other customers'...arbitrage by self-generators has the potential to harm the interests of FortisBC's other customers and precautions are necessary to avoid it. It is not clear why the Commission has restricted arbitrage related to BC Hydro's embedded cost power delivered to FortisBC under the PPA, while potentially allowing self-generators in FortisBC's service territory to arbitrage against FortisBC's NECP." (Exhibit C2-2, p. 3)

In MEM's view the Commission has taken different "approaches" in the BC Hydro and FortisBC service areas to address arbitrage including GBLs, and net of load, and that FortisBC's compliance filing introduces a third approach. (Exhibit C2-2, pp. 4-5)

MEM submits that to protect the interest of all utility customers, the key objective must be to ensure that "regulated utilities do not supply increased embedded cost generation to self-generating customers because they begin to sell their self-generation - previously used to serve the self-generators' own loads - to market." (Exhibit C2-2, pp. 3-4)

MEM indicates a desire to have consistent regulatory principles governing self-generation, including the requirement to mitigate arbitrage, throughout British Columbia. It submits that the Commission now has an opportunity to decide whether consistent principles should be used throughout the Province. (Exhibit C2-2, p. 5)

MEM suggests the Commission adopt the Generation Baseline (GBL) approach, founded in Order G-38-01, where a baseline is set based on the historic output of the generator or historic energy consumption because it is the approach that addresses the economic barriers that would otherwise deter self-generators from increasing their own self-generation while mitigating the risk of arbitrage. (Exhibit C2-2, p. 5)

Although the Commission requested information on GBLs from BC Hydro in 2009 (by Letter L-106-09), MEM notes that BC Hydro filed an Information Report on GBLs in June 2012 which provided the Commission with information on how it sets GBLs. (Exhibit C2-2, p. 5)

2.2.3 BC Hydro

BC Hydro takes the same position as MEM that there is little guidance on how pricing of the future transmission stepped-rate will address the risk of arbitrage and that additional information is necessary to properly assess FortisBC's proposal. BC Hydro takes the view that FortisBC's Compliance Filing is based on a critical misinterpretation of Order G-188-11, namely that FortisBC is treating self-generating customers as Eligible Customers for all purposes under the APA. For these reasons BC Hydro recommends that the Commission not confirm FortisBC's proposal at this time. (Exhibit C3-1, p.1; Exhibit C3-3, pp. 2-4)

BC Hydro indicates that it uses a GBL approach consistent with the principles of Order G-38-01 to mitigate the potential for self-generating customers to arbitrage between regulated embedded cost rates and market prices. However, it notes that FortisBC proposes a different approach for such mitigation, namely rate design and pricing based on its interpretation of the application of the APA to self-generating customers. BC Hydro does not agree with FortisBC's interpretation of the APA and is concerned that Commission acceptance of this interpretation will have implications to BC Hydro and its ratepayers. (Exhibit C3-2, p. 1; Exhibit C3-3, pp. 1-4)

2.2.4 BC Pensioners' and Seniors' Organization

BCPSO makes three observations on the APA and FortisBC's proposal, including:

1. "Fair Treatment" under the APA requires that customers who remain with the utility are made no worse off in terms of price and reliability of supply;
2. The Re-Entry provisions of the APA would be extremely difficult to manage if a self-generator chooses to leave and return to FortisBC supply yearly, monthly or daily. A workable definition of re-entry would need to be developed for the purpose of determining entitlement;
3. It may be useful for the Commission to adopt FortisBC's proposal on an interim basis and finalize it after approval of FortisBC's Stepped Transmission Rate. (Exhibit C4-3, pp. 2-4)

BCPSO identifies a "complicating factor" for self-generators being that "the customer is effectively 'leaving' the utility supply each time it chooses to meet a portion of its load requirements through its own generation and re-entering each time it chooses to reduce its generation such that all of its load requirements are met by FortisBC." (Exhibit C4-3, p. 3)

2.2.5 Other Interveners

ATCO, Interfor and the Municipal Utilities all agree with FortisBC's proposal. The Municipal Utilities further request that the Commission make it clear that for customers such as the Municipal Utilities there is no restriction on the purchase of BC Hydro PPA for resale by the Municipal Utilities to customers within their services areas. They submit that the restriction should only apply when power is exported, either domestically or internationally, outside their service areas. (Exhibit C7-1, para. 3)

2.3 FortisBC's Response

FortisBC's position, in contrast to that of MEM and BC Hydro, is that it is not necessary to have completed the transmission stepped rate design when setting the principles for the entitlement and the Matching Methodology. It argues that the Commission envisioned this by staggering the submission dates for the filings of Directives 8 and 6 from Directives 9 and 10 in Order G-188-11. (Exhibit B-4, p. 4)

FortisBC indicates that it:

“shares the concerns of both MEM and BC Hydro with respect to the potential for arbitrage of utility embedded cost resources. However, given the clear direction in the [*Celgar Compliant Decision* at pp. 36, 39, 49] what remained for the Company was to determine the entitlement to NECP in compliance with Order G-188-11.” (Exhibit B-4, p. 16)

In response to Intervener comments, FortisBC provided an example of a stepped rate which illustrated that there is protection from the impact of the self-generator activities but that protection is not absolute. (Exhibit B-4, pp. 5-13, Exhibit B-5, pp. 1-2) FortisBC explains:

“The only means to provide absolute protection to other customers under the Company’s proposed methodology would be to address the situation in which the purchase rate exceeds the self-generator flat rate by flowing through any additional power purchase costs, over and above the amount recovered by the rate, to the customer.” (Exhibit B-5, p. 2)

In its August 17, 2012 Reply (FortisBC Final Reply), FortisBC states that the “protection of other customers is an absolutely critical aspect of the Entitlement guidelines without which the conclusion that the entitlement can be 100 percent cannot be reached. If the imperative to hold other customers in no harm as a result of Celgar’s exporting activities is removed, then FortisBC does not support those activities.” (FortisBC Final Reply, p. 5)

FortisBC also provides an outline on how it could determine a GBL for Celgar. It indicates that use of a GBL would remove the need for a separate stepped transmission rate designed specifically for exporting self-generators. (Exhibit B-4, p. 25)

2.4 Celgar’s Response

Celgar agrees with the BCPSO that it would be a “complicating factor” if a self-generation customer were to leave and return to utility supply as described. Celgar states that it intends to nominate 100 percent of its load for supply from FortisBC and to remain with utility supply - it does not intend to intermittently enter and leave the utility supply. (Exhibit C1-3, p. 11)

Regarding the issue of arbitrage and protection of ratepayers, Celgar responds that these issues should be addressed in the future stepped transmission rate proceeding and that the Commission should concentrate on whether the Guidelines proposed are in compliance with Order G-188-11. (Exhibit C1-5, pp. 8-9)

However, Celgar also responds that providing protection to FortisBC’s other customers through a rate design has no applicability beyond the two year notice period defined in the APA and has no foundation in the Commission’s determinations in Order G-188-11. (Exhibit C1-5, p. 11)

The two year notice period referred to by Celgar is the Re-entry Provisions which state, in part:

“An Eligible Customer that has previously taken bundled service may, at any time, return to power service from West Kootenay Power at a rate calculated to ensure Fair Treatment, subject to the conditions set out below, West Kootenay Power will make reasonable efforts to accommodate returning Eligible Customers as quickly as possible.”

Returning Eligible Customers and new Eligible Customers who initially chose an alternative supplier should receive rates reflecting the embedded cost of service within the lesser of:

- the period in which West Kootenay Power can adjust its supply portfolio to serve these Eligible Customers, consistent with Fair Treatment; or
- two years from the date of their notice to return to West Kootenay Power's supply." (Appendix A to Order G-27-99, p. 4)

Regarding the recently articulated desire for regulatory consistency and Province-wide principles governing self-generation in BC, Celgar submits that MEM's submission should not delay the current proceedings.

(Exhibit C1-5, p. 4) Celgar submits that Order G-188-11 does not require Celgar and FortisBC to agree on a GBL and, therefore, BC Hydro's GBL approach does not apply to Celgar's right to NECP. Celgar continues:

"the tardy fashion in which the GBL Guidelines were filed [with the Commission] is relevant as it reflects an historical lack of commitment to the broader policy situation [relating to governing self-generators in British Columbia]. If the Province was concerned in 2009, 2010, and 2011, prior to Order G-188-11, with establishing a consistent, Province-wide policy, as a start it could have directed BC Hydro to address the Commission's questions [in Letter L-106-09] in a timely fashion. The timing of the filing belies any urgency to do so." (Exhibit C1-5, p. 6)

Commission Determination

Compliance

The Commission Panel determines that FortisBC has adequately complied with Directive 8 which requires it to consult with all classes of its customers to determine the guidelines for the level of entitlement to non-BC Hydro PPA embedded cost power by eligible self-generating customers. The Compliance Filing summarizes the consultation related to Directive 8. It includes in Appendices A and B the Consultation materials and Completed Questionnaires and Correspondence Received.

Level of Entitlement

The Commission Panel accepts FortisBC's proposal for the level of entitlement based on the reasons below, and provides additional guidance for the stepped transmission rate design application FortisBC will file in the future.

The Commission Panel concurs with FortisBC's conclusion that a self-generator that is an Eligible Customer under the APA may have the right that up to 100 percent of its expected load be served by FortisBC NECP and that the self-generator may nominate the portion of that load to be served by FortisBC NECP. All service to an Eligible Customer is subject to the APA, notably the Fair Treatment and Re-Entry provisions. The Commission Panel accepts that the issue of arbitrage is appropriately addressed in the stepped transmission rate design that FortisBC is directed to file by March 31, 2013. The Commission Panel directs that this rate design must accord with the Fair Treatment provision of the APA which, in the Commission Panel's view, prevents against self-generators arbitraging the NECP to the detriment of other FortisBC ratepayers.

In the Commission Panel's view the APA is clear: FortisBC would be obligated to serve any other new Eligible Customer in its service area, or any other existing customer who increases its load. A self-generator is equally

entitled to having its load requirements serviced by FortisBC at embedded cost rates, except for BC Hydro PPA power which is specifically excluded by the PPA. A primary concern raised by Interveners with FortisBC's proposal is how the entitlement would impact other FortisBC ratepayers. Specifically, both MEM and BC Hydro believe that more information on FortisBC's proposed stepped transmission rate is required before a determination is possible as to whether other customers are harmed by FortisBC's proposal on entitlement.

The Commission Panel disagrees with MEM and BC Hydro and accepts FortisBC's submission on the separability of the Entitlement Guidelines from other directives in Order G-188-11. The Commission also finds that, based on the examples provided by FortisBC, protection of other FortisBC customers can be achieved through rate design. This is because, in part, any rate design for self-generators that are Eligible Customers must accord with the Fair Treatment provision of the APA, which states:

“For customers who remain with Utility supply, the exit, partial exit or re-entry of Eligible Customers must, at a minimum, make them no worse off than if Eligible Customers had always remained with the Utility.”

In the Commission Panel's view, the Fair Treatment principle mitigates possible detrimental effects of arbitrage to the general FortisBC ratepayer.

The issue of the degree of protection from arbitrage and the timing was raised by Celgar in reference to the Re-Entry provisions of the APA.

The Re-Entry Provisions state, in part:

“An Eligible Customer that has previously taken bundled service may, at any time, return to power service from West Kootenay Power at a rate calculated to ensure Fair Treatment, subject to the conditions set out below, West Kootenay Power will make reasonable efforts to accommodate returning Eligible Customers as quickly as possible.” [Emphasis added]

Celgar's position is that providing protection to FortisBC's other customers through a rate design has no applicability beyond the two year notice period defined in the APA.

The Panel considers that the Re-Entry Provisions are likely subject to the Fair Treatment principle for Eligible Customers who are self generators. However this “no-harm construct” issue has not been adequately canvassed in this proceeding, thus the Panel declines to make a finding, but rather expects that it will be addressed in the upcoming stepped transmission rate design hearing.

In the Commission Panel's view, the Fair Treatment principle and the requirement that it be used in the future stepped transmission rate design, counter BC Hydro's concerns over FortisBC's “critical misinterpretation of Order G-118-11” by treating a self-generator as an Eligible Customer, rather than as a self generator. As stated above, a rate design based on the Fair Treatment principle will provide protection to the general FortisBC ratepayer. As well, the Panel finds later in this Decision that these Guidelines are applicable Eligible Customers who are self generators.

To provide further guidance for the future stepped transmission rate design and to address the concerns of MEM and BC Hydro, the Commission Panel recalls the comments on the definition of “arbitrage” made by the Commission in the *RS 3808 Amendment Decision*, specifically that:

“in any commercial context, the concept of arbitrage is not illegal nor does it carry any pejorative implication.” (Reasons for Decision attached to Order G-48-09, p. 9)

Arbitrage is not, by definition alone, a negative concept. In the utility context, it is arbitrage to the detriment of other ratepayers that the Commission has consistently protected against. The Commission has consistently upheld the principle that other utility ratepayers should not be harmed by self-generators’ arbitrage of embedded cost power.

In the *RS 3808 Amendment Decision*, the Commission imposed a change in the PPA contract to restrict access to PPA power by self-generation customers selling power not in excess of their loads in order to protect customers of BC Hydro. In the *FortisBC 2009 RDA Decision* and again in the *Celgar Complaint Decision*, the Commission determinations regarding arbitrage were necessarily tempered by the applicability of the APA to FortisBC and its customers:

“Nevertheless, the Commission Panel considers that the APA remains in effect and that some of the principles established in the APA and found by the Commission to be in the public interest in 1997 might be relevant to these proceedings.

The Commission Panel considers that hypothetically, an eligible customer that had chosen in 1997 to receive service from a third party and was now looking to 'come back into the fold' and take service from FortisBC in 2010, would be entitled to receive service at embedded cost, but this must address the Fair Treatment principles to minimize the harm to existing ratepayers.”
(*FortisBC 2009 RDA Decision*, p. 114)

In the *Celgar Complaint Decision*, the Commission stated:

“The Commission Panel considers that while FortisBC is not subject to Heritage Special Direction No. HC2 to the Commission which directs BC Hydro to preserve the benefits of its low cost generation for all British Columbians, FortisBC should nevertheless preserve the benefits of its resource stack for all of its own customers in order to safeguard against unduly discriminatory rates.
(p. 37 and repeated again on p. 39) [Emphasis in original]

It made the following comment on the potential for arbitrage:

“Given that Celgar has entitlement to some amount of FortisBC non-PPA embedded cost power, it follows that Celgar would be allowed to sell such power to third parties unless specifically precluded by doing so by contract with FortisBC. That is, such non-PPA power could be exposed to the potential for arbitrage, subject to the terms of an agreement between FortisBC and Celgar which would require Commission approval.” (p. 49)

For clarity, the potential for arbitrage discussed in the excerpt above (p. 49 of the *Celgar Complaint Decision*) was in the context of the self-generator finding an arrangement where it can arbitrage power while FortisBC still preserves the benefit of its resource stack for all of its customers, or in other words, while FortisBC still applies the Fair Treatment principle.

The Need for Common Principles Governing Self-Generation in BC

MEM submits that province-wide regulatory principles governing self-generation and mitigating arbitrage are required and suggests the Commission adopt the GBL approach across the province.

The Commission has upheld a consistent regulatory principle, that self-generators should not arbitrage power to the detriment of other ratepayers, but has applied different mechanisms to achieve this protection in different circumstances. The mechanisms have included the GBL and net-of-load approaches. In Orders G-38-01 and G-17-02 it applied the GBL approach; in Order G-48-09 it applied the net-of-load approach.

In the Commission Panel's view, MEM's position has not recognized the Heritage Contract and its requirements of BC Hydro. The Heritage Contract imposes obligations upon BC Hydro in relation to "heritage energy" as defined by the contract which do not apply to FortisBC. FortisBC's only obligations regarding such power are addressed in the PPA. Furthermore, FortisBC has unique obligations under the APA for Eligible Customers, including self-generating Eligible Customers.

In the Commission Panel's view, GBLs, net-of-load, and now entitlement with appropriate rate design are all mechanisms the Commission can use to satisfy its regulatory principle that self-generators should not arbitrage power to the detriment of other ratepayers. Different mechanisms are appropriate in this case because of the different relationships (utility-to-customer or utility-to-utility) and the different service characteristics of the utilities, namely the Heritage Contract for BC Hydro and the APA for FortisBC.

Regarding the degree of protection, preventing arbitrage by self-generators which will result in detriment to other ratepayers is a balancing act. MEM suggests that the main advantage of the GBL approach is that "it...addresses the economic barriers that would otherwise deter self-generators from increasing generation while mitigating the risk of arbitrage." (Exhibit C2-2, p. 5) MEM therefore acknowledges that there are incentive mechanisms in the use of generation baselines to promote incremental self-generation while protecting the general ratepayer from arbitrage. In the Commission Panel's view, FortisBC's proposal for entitlement and appropriate rate design achieves a similar balance. The exact degree of protection provided by the rate design will be reviewed at the time of FortisBC's stepped transmission rate application filing.

Furthermore, GBLs exist between BC Hydro and its self-generating customers because they have been able to reach agreement on their GBLs. FortisBC and Celgar have been unable to reach such an agreement, notwithstanding the repeated encouragement by the Commission to do so. There is currently no basis upon which the Commission is able to force such an agreement or dictate what a GBL should be. While BC Hydro has recently provided an Information Report on Transmission Service Rate GBLs that could act as a useful guideline for the determination of GBLs, the Report was for information only and has not been adopted by the Commission as a guideline.

In Exhibit B-4 FortisBC has provided a possible GBL for Celgar. It has also indicated that use of a GBL as opposed to the entitlement to NECP and the matching methodology it has proposed would remove the need for a separate stepped transmission rate designed specifically for exporting self-generating customers. **The Commission Panel rejects these submissions.** There is no approved basis for the establishment of the GBL proposed, nor has there been any consultation to vet the proposal. Furthermore the introduction of a stepped transmission rate has energy conservation objectives to be satisfied that would not be met if FortisBC was not to proceed with its pursuit of the stepped transmission rate for self-generating customers as has been directed by the Commission.

BCPSO Clarification Required on Fair Treatment and Reliability

BCPSO's interpretation of the Fair Treatment in the APA implies that customers should be made no worse off in terms of rates *and* reliability. (Exhibit C4-3, p. 2) We note that the definition of Fair Treatment in the APA does not include an assessment of reliability, rather, there is only reference to rates under the APA. The APA states [Fair Treatment means each] remaining customer class is made no worse off if their rates for bundled service are no higher after an Eligible Customer makes its election [to exit, partially exit or re-enter]." (Order G-27-99, Appendix A, p. 1) Therefore, the Commission Panel determines that only rates need be considered when assessing whether other customers are worse off when applying the Fair Treatment provision to a self-generating customer. Reliability need not be considered.

Municipal Utilities Clarification Required on Prohibition Against or Restriction of their Purchase from FortisBC of BC Hydro PPA Power for the Purpose of Resale to Their Customers Within Their Service Areas

The Municipal Utilities have supported the notion that FortisBC should be precluded from selling BC Hydro PPA Power to a self-generator whilst the self-generator is exporting power. They have requested clarification that for customers such as Municipal Utilities there should be no prohibition against the purchase from FortisBC of Hydro PPA Power for the purpose of resale by the Municipal Utilities to customers within their service areas. The restriction should apply only when power is exported either domestically or internationally outside the service area. The Commission Panel notes that situations may arise where Municipal Utilities may serve customers who are also self-generators. The Commission Panel finds that there is insufficient evidence in this Proceeding to provide to the Municipal Utilities their requested clarification. The Commission Panel is aware that FortisBC and BC Hydro's PPA is due for renewal in the near future and suggests that Municipal Utilities seek this clarification in that proceeding.

3.0 MATCHING METHODOLOGY

3.1 FortisBC Proposal

FortisBC was directed to establish a methodology for notionally matching sales to Celgar in service of its load when Celgar is selling power to FortisBC non-BC Hydro PPA components of its resource stack. FortisBC's proposal in this regard is that 100 percent of a customer's nomination could be matched from alternate sources or surplus Company-owned capacity. It "proposes that after the Eligible Customer makes a nomination for the load it intends to serve through FortisBC, a matching block resource will be purchased by the Company." (Exhibit B-1, p. 10) The matching block could be sourced from BC Hydro (non PPA), surplus power generated by FortisBC (demonstrated not to be BC Hydro PPA), or the market. FortisBC suggests that this is the only method that provides certainty that no PPA power is notionally included in sales to the Eligible Customer.

As a protection against under-nomination of its load requirements by an Eligible Customer and the requirement for power in excess of the amount contracted for, "the Company anticipates that it will provide notification to the Eligible Customer that it will have to meet its excess requirements through some combination of market and self-supply." (Exhibit B-1, p.10) Furthermore, FortisBC will require access to metering to track a customer's actual load in support of an industrial process, and compare that load to the nominated load for which FortisBC has found an alternate source.

3.2 Intervener Positions

3.2.1 Celgar

Celgar strongly disagrees with FortisBC's approach. It submits that it was the Commission's intention that the matching methodology would see "only that portion of the self-generator's load notionally served by PPA Power would be matched with market purchases." Celgar refers to Directive 6 and p. 32 of the *Celgar Complaint Decision* and submits that:

"By requiring FortisBC to match sales to Celgar (when Celgar is selling power) '**to FortisBC's non BC Hydro components of its resource stack**', the Commission clearly contemplated FortisBC notionally separating the BC Hydro (PPA) portion of the energy from that portion derived from its own portfolio. This would allow FortisBC to 'match purchase' the BC Hydro (PPA) portion from another source thereby ensuring all sales to Celgar are derived from non-BC Hydro PPA Power." (Exhibit C1-3, p. 3) [Emphasis in original]

Celgar has outlined a proposed matching methodology designed to isolate only that notional portion of the power sold by FortisBC to self-generators that could be considered as served by BC Hydro PPA power, and matching this portion only with power from other sources.

Celgar believes that FortisBC's proposed approach would result in purchase costs of FortisBC to meet load requirements of its customers that would be higher than under the Celgar proposal. It also submits that "under FortisBC's proposal, **additions of self-generation in the FortisBC service area will actually result in decreases of available PPA Power for the benefit of all customers.**" (Exhibit C1-3, p. 5) [Emphasis in original] It further submits that FortisBC's proposed approach would result in firm block purchases of resources that are unnecessary and imprudent. (Exhibit C1-3, p. 7)

3.2.2 BC Hydro

BC Hydro generally agrees with the Compliance Filing as it relates to Directive 6, "subject to there being a mechanism for accounting and verification, that matching an appropriate agreement to purchase a firm block resource corresponding to the Eligible Customer's nomination should transparently show the energy supplied to the Eligible Customer is not from the BC Hydro Power Purchase Agreement." (Exhibit C3-1, p. 1)

BC Hydro also agrees with FortisBC's assessment of Celgar's proposed matching methodology (outlined in section 3.3 below). It indicates that, as noted by FortisBC:

"Celgar's approach would result in an increase in the FortisBC take of BC Hydro PPA power solely as a result of the exporting activities of self-generating customers of FortisBC which is the very outcome the BCUC determined should be prevented. Accordingly, Celgar's proposed matching methodology must be rejected." (Exhibit C3-3, p. 4)

3.2.3 BC Pensioners' and Seniors' Organization, ATCO, Interfor, and the Municipal Utilities

BCPSO comments that:

"[i]n concept, the proposed 'Matching Methodology' meets the requirements of BC Hydro's PPA. However, it needs to be more fully developed in order for

parties to understand how it would work as a practical matter, and whether, in practice, it will comply with BC Hydro's PPA requirements." (Exhibit C4-3, p. 4)

ATCO and Interfor indicate that they believe the Commission should reject the proposed FortisBC matching methodology because the amount of non-PPA power purchases will exceed the amount necessary. They are more closely aligned with the alternative approach proposed by Celgar.

While the Municipal Utilities state that they generally support the proposed FortisBC matching methodology, it is with the caveat that it should apply only to the extent required to demonstrate that no BC Hydro PPA Power is being resold by the Self-Generator. (Exhibit 7-1, para. 6) In other words, they are also more closely aligned with the alternative approach proposed by Celgar.

3.3 FortisBC's Response

FortisBC disagrees with Celgar's approach and suggests that Celgar's approach would result in an increased uptake of BC Hydro PPA power. Rather, FortisBC submits that its proposal properly reflects previous Commission decisions, particularly G-38-01, G-48-09 and G-188-11. It points to the example provided by Celgar at page 12 of Appendix C to Exhibit C1-3, and states that it shows: "The exporting activities of Celgar have led to an increase in FortisBC PPA purchases...without any increase in customer load. Presumably, this is exactly the potential outcome that BC Hydro has concerns with, and that the Commission meant to prevent by Order G-48-09." (Exhibit B-4, p. 20)

Under the FortisBC proposal:

"a self-generating customer does receive the benefit of FortisBC's embedded costs. The self-generator rate is built upon the embedded cost flat rate and therefore the embedded costs are inherent in the rate and are adjusted only to the degree that the exclusion of PPA power raises average power purchase expense.

The 'full costs of the matching block,' are not passed on to the self-generating customers. Rather, the adjustment to the average embedded cost ensures the incremental longer term impact is borne by the customer who chooses to sell power not in excess of load. Anytime the replacement power is valued above the tariff rate, the cost to that customer is mitigated by the non-PPA embedded costs.

It is appropriate that as the driver of the increase in the average cost of power, that self-generator absorbs the impact. Other customers are kept whole."
(Exhibit B4, p. 21)

It further submits that its proposal is consistent with Directive 3 of Order G-188-11 which directs it to develop a rate for Celgar and other self-generators by May 31, 2012 based on Rate Schedule 31, but excluding BC Hydro PPA power from its resource stack.

Commission Determination

The Commission Panel approves the Matching Methodology proposed by FortisBC, namely that 100 percent of the customer nomination would be matched from alternate sources for ensuring that no BC Hydro PPA power is notionally included in sales to a self-generating customer.

The matching methodology determination is made solely on the basis of whether it adequately prohibits a self-generator from accessing PPA power when it is itself selling power. The issue of whether it results in increased costs for all customers must be examined at the time of FortisBC's stepped transmission rate design application in the context of the Fair Treatment principle of the APA.

The Commission Panel does not agree with Celgar's interpretation of FortisBC's matching methodology, namely that it will necessarily result in a larger decrease in PPA purchases by FortisBC, as compared to under the matching methodology proposed by Celgar. The Panel expects that FortisBC will dispatch its resources in the most cost efficient manner. Based on the Entitlement Guidelines and Matching Methodology proposed by FortisBC, when a self-generating customer is itself selling power, its access to BC Hydro PPA power is precluded and the nominated portion of its load is matched with other power sources. This frees up the BC Hydro PPA power that would otherwise have been used to serve the self-generating customer, for use by other FortisBC customers. This embedded cost power should then be dispatched to other customers before FortisBC is required to source power from other, presumably, more expensive sources.

The Commission Panel determines that FortisBC has adequately complied with Directives 6 and 8 of Order G-188-11. **FortisBC is now directed to proceed with Directives 9 and 10 of Order G-188-11 for a two-tier stepped transmission rate and a standby rate for customers in Celgar's circumstances. The Commission Panel directs FortisBC to file these applications by March 31, 2013.**

4.0 OTHER ISSUES

4.1 Applicability of Guidelines

FortisBC notes that:

"Celgar is not the only customer meeting the definition of Eligible Customer under the Access Principles. Eligible Customers of FortisBC include the wholesale customers of Nelson Hydro, and the cities of Grand Forks, Penticton, Summerland and Kelowna, as well as three customers taking service at transmission voltage. Any new customer in the Large Commercial-Transmission or Wholesale rate classes would also become an Eligible Customer."
(Exhibit B-1, p. 9)

It requests confirmation from the Commission that its Guidelines Entitlement and Matching Methodology apply not just to Celgar, but that they "have general applicability to all Eligible Customers that may choose at some point to generate and sell power while meeting some or its entire load requirement from FortisBC"
(Exhibit B-1, p.9)

Celgar agrees with this proposal. (Exhibit C1-3, p. 2) No other intervenor commented on this position.

The Commission Panel finds that the Entitlement Guidelines and Matching Methodology are applicable to self-generators (or customers who may choose at some point to generate and sell power) who are “Eligible Customers” as that term is defined in the APA.

4.2 Interim Billing

Directive 10 of Order G-188-11 directs FortisBC to design a standby rate to address Celgar’s request for access to non-firm power above the Contract Demand.

In Order G-188-11, the Commission also determined that FortisBC is appropriately invoicing Celgar under Rate Schedule 31 for services delivered since January 2, 2011. In addition, the Commission directed that billings since March 25, 2011 (the Interim Period) are to be on an interim and refundable basis, pending the Commission’s determinations on FortisBC’s stepped transmission rate and standby rate designs. (Directive 5, Order G-188-11)

In this proceeding, Celgar requests confirmation from the Commission Panel that the amounts invoiced by FortisBC beginning March 25, 2011 will be recalculated on the basis of the charges associated with a standby rate once it becomes available:

“With respect to the reimbursement mechanism, Celgar seeks confirmation that the retroactive refund provisions set out in Directive 5 of the Order will apply to the Interim Rate on the basis that invoiced amounts will be recalculated, taking into account the retroactive availability of the Standby Rate to March 25, 2011, as well as any other rates applicable to Celgar. This only makes sense as, during the interim period, all invoices to Celgar have been calculated on the Interim Rate (which is a “firm” rate) notwithstanding that Celgar only requires standby service. Such confirmation would alleviate, to at least a small extent, Celgar’s concerns regarding the timing of the process.” (C1-2, p. 3)

In Order G-104-12 the Commission directed FortisBC to address Celgar’s request, including whether Celgar has required only standby service since Order G-188-11 was issued.

FortisBC defines standby service for Celgar as “the provision of service to maintain plant operations during unplanned outages of Celgar’s generation.” In the case of Celgar, it states that “standby service is specifically the provision of service to maintain plant operations during unplanned outages of Celgar’s generation.” It further states that “[s]hould Celgar be able to nominate its full load as eligible for supply using Non-PPA embedded cost power, the standby service issue is moot.” (FortisBC Final Reply, pp. 11-12)

In other words, once Celgar is taking firm service under a two-tier transmission rate for the 100 percent of its load, there is no situation where Celgar requires a back-up, or standby source of power. This situation is different if Celgar’s entitlement were less than 100 percent of its load.

Celgar provides a table of load data for the period from March 25, 2011 to July 31, 2012 (Interim Period) along with other evidence that it submits is relevant to the standby service issue. It submits that:

“based on the circumstances of purchases from FortisBC during the Interim Period, that the Commission must conclude that all purchases above the contract demand of 8 MVA should be billed at the standby rate. Such determination would also be consistent with BC Hydro RS 1880 and

Order G-188-11 that references such rate as an appropriate model.”
(Exhibit C1-5, p. 17)

Under this circumstance, Celgar confirms that it would request standby service for that portion of its load not served under a firm rate. Celgar states:

“until Celgar begins to sell power [and exercise its entitlement], it will not require firm service above 8 MVA [the demand placed by the Mill’s environmental system] and will wish to continue to access the remainder of its needs on a standby basis. (Exhibit C1-5 p. 17)

The FortisBC Final Reply includes a table which represents instances in the period March 1, 2012 to July 31, 2012 where Celgar was a load on the FortisBC system and concludes that:

“Celgar then, has had a number of instances where supply form (sic) FortisBC has been required, often at levels equaling the full mill load.
(FortisBC Final Reply, p.14)

The most definitive response that the Company can provide to the Commissions (sic) inquiry as to whether Celgar 'only required standby service' is to say that without commenting on the specifics of the rate itself, given the assumptions on the use of standby service previously discussed, and that if Celgar ultimately serves some of its load from its own resources, standby service would be appropriate.” (FortisBC Reply, pp. 13-14)

Commission Determination

The Commission Panel notes that Celgar’s need for a standby rate may be short-lived, depending on Celgar’s future operation of its generation assets. Were Celgar to nominate 100 percent of its load to be served by FortisBC, then a standby rate would have no applicability.

In Order G-188-11, the Commission Panel directed FortisBC to design a standby rate following the review of FortisBC’s Entitlement Guidelines and Matching Methodology. As this Decision concludes the review of those Guidelines and Methodology, there are no approved terms and conditions associated with a standby rate in effect today against which the Commission Panel, or FortisBC for that matter, can make a determination of whether such a rate would have applicability to Celgar during the Interim Period. However, the Commission Panel accepts FortisBC’s assessment that, based on the load behaviour filed by Celgar, standby service during the period between March 25, 2011 and July 31, 2012 (the period for which load data was made available to FortisBC and to the Commission Panel) may be appropriate. Without information on Celgar’s load behaviour after this period, the Commission Panel cannot make any further determination.



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-202-12**

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**A Filing by FortisBC Inc.
Guidelines for Establishing Entitlement to Non-PPA Embedded Cost Power
and Matching Methodology (Compliance Filing to Order G-188-11)**

BEFORE: M.R. Harle, Panel Chair/Commissioner December 27, 2012
 L.A. O'Hara, Commissioner
 N.E. MacMurchy, Commissioner

ORDER

WHEREAS:

- A. On April 13, 2012 FortisBC Inc. (FortisBC) submitted its Compliance Filing to Order G-188-11;
- B. On May 3, 2012 the British Columbia Utilities Commission (Commission) issued Order G-54-12 establishing a Regulatory Timetable for review of the Compliance Filing which included an opportunity for comments;
- C. On May 18, 2012, by Letter L-30-12, the Commission altered the Regulatory Timetable to accommodate an extension request from the Ministry of Energy and Mines;
- D. By June 22, 2012 the Commission received comments on the Compliance Filing from Celgar, the Ministry of Energy and Mines (MEM), BC Hydro, BC Seniors' and Pensioners' Organization (BCPSO), ATCO Wood Products, International Forest Products Ltd. (Interfor), and the Municipal Utilities composed of Nelson Hydro, Penticton Electric Ltd, and Grand Forks Electrical Utility Services;
- E. On July 4, 2012 FortisBC submitted its Reply comments. On July 19, 2012 FortisBC submitted clarification and additional comments on its July 4, 2012 submission;
- F. On July 30, 2012 the Commission established a further Regulatory Timetable by Order G-104-02;
- G. The Commission received comments from Celgar, MEM, BC Hydro, and BCPSO by August 10, 2012 and on August 17, 2012, FortisBC submitted its Final Reply;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-202-12**

2

- H. The Commission has considered the comments as set out in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission for the reasons set out in the Decision issued concurrently with this Order, orders as follows:

1. FortisBC's has adequately complied with Directive 8 of Order G-188-11 to consult with customers to determine the Guidelines for the Level of Entitlement.
2. FortisBC's Guidelines for the Level of Entitlement are accepted.
3. FortisBC's Matching Methodology is approved.
4. FortisBC's Guidelines for the Level of Entitlement and Matching Methodology are applicable to all self-generators that are "Eligible Customers" as that term is defined in the Access Principles Application.
5. FortisBC is directed to file its application for a Stepped Transmission Rate and Standby Rate (Directives 9 and 10 of Order G-188-11) with the Commission by March 31, 2013.
6. In designing those rates, FortisBC is to comply with the directives in Section 2 of the Decision.
7. FortisBC's assessment that it is appropriate to charge Celgar for standby service from March 25, 2011 to July 31, 2012 is accepted.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of December 2012.

BY ORDER

Original signed by

M.R. Harle
Panel Chair/Commissioner