IN THE MATTER OF

ZELLSTOFF CELGAR LIMITED PARTNERSHIP

A COMPLAINT REGARDING THE FAILURE OF FORTISBC INC.
AND CELGAR TO COMPLETE A GENERAL SERVICE AGREEMENT
AND FORTISBC'S APPLICATION OF RATE SCHEDULE 31 DEMAND CHARGES

DECISION

November 14, 2011

BEFORE:

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

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EXECUTIVE SUMMARY

This Decision deals with a Complaint by the Zellstoff Celgar Limited Partnership (Celgar) pursuant to section 25 of the *Utilities Commission Act (Act)* regarding the failure of FortisBC Inc. (FortisBC) and Celgar to complete a general service agreement and FortisBC's application of Rate Schedule 31 demand charges in calculating Celgar's invoices subsequent to January 2, 2011. The key parties to the Complaint are Celgar and FortisBC. British Columbia Hydro and Power Authority (BC Hydro) is the sole Intervener.

Key issues considered in this Decision include:

- whether there is a pre-existing agreement under which FortisBC is obligated to provide service to Celgar;
- whether a signed, written agreement is necessary for FortisBC to provide service to Celgar under Rate Schedule 31 (RS 31);
- the appropriateness of FortisBC invoicing Celgar under RS 31 subsequent to January 2, 2011;
- the conditions under which FortisBC can continue to access BC Hydro Power Purchase Agreement Power taken under Rate Schedule 3808 (BC Hydro PPA Power) with respect to sales to Celgar;
- whether non-BC Hydro PPA components of the FortisBC resource stack could be exposed to arbitrage;
- who should pay for the costs of incremental power that result when FortisBC supplies power to Celgar when Celgar is selling power not in excess of its load;
- the method of recovering costs associated with the infrastructure used to serve Celgar;
- the necessity of incorporating a generation baseline (GBL) in a General Service Agreement (GSA) between FortisBC and Celgar;
- firm and non-firm service; and
- considerations in establishing a GBL.

Major determinations in the Decision include:

- there is no pre-existing agreement in effect which modifies the billings to Celgar under RS 31 after January 2, 2011;
- FortisBC's invoicing under RS 31 is valid for Celgar, even in the absence of a signed, written agreement between Celgar and FortisBC. Therefore, FortisBC's invoicing for services delivered since January 2, 2011 under RS 31 is appropriate;

- FortisBC is directed to develop a rate for Celgar and other self-generators by May 31, 2012 based on RS 31 but excluding BC Hydro PPA Power from its resource stack;
- FortisBC is directed to bill Celgar in accordance with RS 31 on an interim and refundable basis beginning March 25, 2011 and ending when the Commission approves the new rate for Celgar that excludes PPA Power from its resource stack, and/or an Agreement forwarded by the parties. Any differences between the interim rate and the rate ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year;
- a GBL may be incorporated into a GSA between FortisBC and Celgar, but it leaves the issue of doing so up to the parties;
- FortisBC will be unable to buy BC Hydro PPA Power *for sale to Celgar*, when Celgar is exporting power. While FortisBC may have access to BC Hydro PPA Power at all times, it is precluded from selling that power to Celgar when Celgar is selling power;
- 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 energy supplied from its resource stack of non-BC Hydro PPA Power, and submit it by March 31, 2012 to the Commission for approval;
- Celgar is entitled to *some* amount of FortisBC's non-PPA embedded cost power when selling power;
- FortisBC is to consult with all classes of its customers to determine guidelines for the level of non-PPA embedded cost power to which eligible self-generation customers should be entitled. The draft guidelines should be submitted to the Commission for approval by March 31, 2012;
- FortisBC is directed to submit an application to the Commission by May 31, 2012 for a two-tier stepped transmission rate to reflect conservation objectives;
- FortisBC is directed to design a standby rate to address Celgar's circumstances and describe how this rate takes account of its system planning criteria. This standby rate should be submitted to the Commission for approval by May 31, 2012.

In view of the foregoing, the Commission denies Celgar's Complaint and does not establish a GSA and accompanying brokerage agreement between Celgar and FortisBC. It leaves it to the parties to negotiate such an agreement which must comply with the determinations set out in this Decision. The Commission Panel finds that the FortisBC service to Celgar has not been "unreasonable, unsafe, inadequate, or unreasonably discriminatory," nor is RS 31 as it applies to Celgar "unjust, unreasonable, insufficient, unduly discriminatory or in contravention of [the] *Act*, in regulations or any other law."

1.0 INTRODUCTION

This Decision deals with a complaint by Zellstoff Celgar Limited Partnership (Celgar) pursuant to section 25 of the *Utilities Commission Act* (*Act*) regarding the failure of FortisBC Inc. (FortisBC) and Celgar to complete a general service agreement and FortisBC's application of Rate Schedule 31 demand charges in calculating Celgar's bills subsequent to January 2, 2011 (the Complaint).

The key parties to the Complaint in this proceeding are Celgar and FortisBC. British Columbia Hydro and Power Authority (BC Hydro) is the sole Intervener.

1.1 Background

As part of the FortisBC 2009 Rate Design and Cost of Service Analysis proceeding (RDA Proceeding) Celgar requested the British Columbia Utilities Commission (Commission) to determine a Generation Baseline (GBL) with respect to the sale and purchase of power from FortisBC. In its Reasons for Decision for Order G-156-10, dated October 19, 2010 (RDA Decision), the Commission declined to set a GBL between Celgar and FortisBC. In doing so, the Commission Panel noted that "the parties are at liberty to establish their own GBL and, should they desire, to incorporate it into a general service agreement and submit it to the Commission for approval" (RDA Decision, p.115).

On December 3, 2010 Celgar applied for a reconsideration of Order G-156-10 and the accompanying RDA Decision (Celgar Reconsideration Application). By Order G-3-11, dated January 12, 2011, the Commission denied the Reconsideration Application as it did not meet the threshold to proceed to Phase 2 of the reconsideration process. The Commission Panel concluded Celgar's request

> "to be premature as the outcome of the negotiations that it encouraged the parties to embark upon may well result in some of the things Celgar is seeking in the Reconsideration Application, such as a two-level COSA [Cost of Service Analysis]. The Commission Panel does consider that Celgar's recourse should more appropriately be by way of a complaint to the Commission in the event that it and FortisBC cannot reach an agreement" (Celgar Reconsideration Decision, p.11).

1.2 Celgar's Request for Relief

On March 25, 2011 Celgar filed the Complaint against FortisBC. In the Complaint, Celgar is seeking the Commission's assistance in establishing an acceptable general service agreement (GSA) and accompanying brokerage agreement with FortisBC and/or the establishment of a process whereby the terms of such an agreement may be negotiated. Celgar's requested GSA includes:

1. "a generation baseline (a "GBL") of 1.5 aMW or such other level as may be established in accordance with applicable regulatory parameters delineating self-supply obligation;
2. service at RS 31 or a similar rate based upon rolled-in costs (applicable at all times, including when Celgar sells power above its GBL) that apply to all FortisBC ratepayers;
3. a contract demand equal to Celgar's Mill load, less the GBL established under the agreement, provided that the minimum contract demand must be at least 8 MVa in order to support the Mill's critical environmental functions (the "Contract Demand"); and
4. access to non-firm power above the Contract Demand pursuant to a brokerage agreement that recognizes the non-firm nature of such a commitment and that reflects FortisBC's earlier revenue projections filed with the Commission"

(Exhibit B-1, p. 2).

In addition, Celgar is seeking the Commission's determination "that FortisBC's billing practices that have been implemented since Celgar was placed on RS31 are inconsistent with FortisBC's revenue projections and underlying assumptions that were presented to the Commission, and that all invoicing for demand charges be retroactively adjusted to January 2, 2011 based on a Billing Demand of 8,000 kVA" (Exhibit B1-1, p. 3).

1.3 Applicable Sections of the Act

Celgar filed its Complaint pursuant to section 25 of the *Act* which provides that:

> **25** If the commission, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the commission must

(a) determine what is reasonable, safe, adequate and fair service, and

(b) order the utility to provide it.

As the Complaint relates to rates, it also appears to engage sections 58 and 61 of the *Act.* The relevant parts of section 58 provide that:

58 (1) The commission may,

(a) on its own motion, or

(b) on complaint by a public utility or other interested person that the existing rates in effect and collected or any rates charged or attempted to be charged for service by a public utility are unjust, unreasonable, insufficient, unduly discriminatory or in contravention of this Act, the regulations or any other law,

after a hearing, determine the just, reasonable and sufficient rates to be observed and in force.

(2) If the commission makes a determination under subsection (1), it must, by order, set the rates.

…

(3) The public utility affected by an order under this section must

(a) amend its schedules in conformity with the order, and

(b) file amended schedules with the commission.

Section 61 of the Act provides that:

61(1) A public utility must file with the commission, under the rules the commission specifies and within the timeframe and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforces.

(2) A schedule filed under subsection (1) must not be rescinded or amended without the commission's consent.

(3) The rates in schedules and as amended in accordance with this Act and the regulations are the only lawful, enforceable and collectible rates of the public utility filing them, and no other rates may be collected, charged, or enforced.

(4) A public utility may file with the commission anew schedule of rates that the utility considers to be made necessary by a rise in the price, over which the utility has no effective control, required to be paid by the public utility for its gas supplies,

> or other energy supplied to it, or expenses and taxes, and the new schedule may be put into effect by the public utility on receiving approval of the commission.
>
> (5) Within 60 days after the date it approves a new schedule under subsection (4), the commission may,
>
> (a) on complaint of a person whose interests are affected, or
>
> (b) on its own motion,
>
> direct an inquiry into the new schedule of rates having regard to the fixing of a rate that is not unjust or unreasonable.
>
> (6) After and inquiry under subsection (5), the commission may
>
> (a) rescind or vary the increase and order a refund or customer credit by the utility of all or part of the money received by way of increase, or
>
> (b) confirm the increase or part of it.

Celgar argues that the "service" provided by FortisBC is unreasonable, inadequate and unreasonably discriminatory and therefore believes that its Complaint falls within the scope of section 25 of the *Act*. Celgar also states that it believes the GBL issue is best addressed under section 25 as it governs the service to be provided by FortisBC, not just the rate at which such service is to be charged (Exhibit B1-11, BCUC 1.1).

FortisBC states that Celgar's application appears to relate more to the issue of rates, rather than service and therefore Celgar filing its Complaint pursuant to sections 58 and 61(5) may be more appropriate.

COMMISSION DETERMINATION

The Commission determines that the Complaint is not about the nature or level of service being provided to Celgar by FortisBC. There has been no evidence provided to suggest that the service provided by FortisBC to Celgar has been unreasonable, unsafe, inadequate, or unreasonably discriminatory. Indeed, as stated by FortisBC: "it should be noted that FortisBC has not at any time…denied service to Celgar. Celgar has been supplied with electricity at every point it has called on FortisBC to do so." (FortisBC Final Submission, para.34) In essence, the Complaint is about the

rate Celgar is being charged for the service it receives. Therefore, the Commission Panel concludes that it should apply sections 58 and 61 of the *Act* in making its decision on the Complaint.

1.4 Regulatory Process

After receiving submissions from both parties, the Commission established a written hearing process which is described in Appendix A - Regulatory Process.

1.5 The Issues before the Panel

The Commission Panel notes that the Complaint is founded on the issue of FortisBC's current billing practices and rates in the context of FortisBC and Celgar not having concluded a GSA. The Commission Panel will first examine the current billing practice of FortisBC in regards to Celgar, and then consider whether there are any pre-existing agreements and whether these modify the billing as set out in Rate Schedule 31 - Large Commercial Transmission Service (RS 31). Then the Commission Panel will consider whether an agreement is a necessary pre-condition in order for Celgar to take service under the terms and conditions of RS 31. Finally, the Commission will address the issue of whether, absent any agreement modifying the terms and conditions of service under RS 31, Celgar has been appropriately billed.

Having dealt with the immediate issue of Celgar's Complaint, the Commission Panel will then consider the underlying issue, namely that the parties are unable to conclude an agreement containing, from Celgar's perspective, a GBL, a contract demand, service at embedded cost for the portion of the load to be served by FortisBC, and access to non-firm power. The Commission Panel also considers FortisBC's concerns about jeopardizing its access BC Hydro Power Purchase Agreement Power taken under Rate Schedule RS 3808 (BC Hydro PPA Power) by establishing a GSA with Celgar that satisfies Celgar's concerns.

2.0 BILLING UNDER RS 31

2.1 Is there a Pre-existing Agreement necessitating modification to the billings to Celgar as set out in RS 31?

2.1.1 Background

FortisBC and its predecessor companies have served the electricity needs of Celgar and its predecessors for many years. On February 15, 2005, Celgar acquired the mill and energy generation assets. On that date, Celgar assumed and became party to a general service power contract with FortisBC dated December 20, 2000 (2000 GSA) that had an Electricity Supply Brokerage Agreement attached to it. The 2000 GSA included provisions that charges for service would be calculated in accordance with RS 31 and that there would be a contract demand of 16 MVA. The brokerage agreement provisions included access to power above 16 MVA, subject to an energy charge only.

On October 1, 2006, Celgar started taking service under Rate Schedule 33 - Large Commercial Service – Transmission - Time of Use (RS 33) pursuant to the terms of a draft GSA agreement with FortisBC. The draft agreement was never signed. The draft agreement stipulated that "FortisBC shall make available the firm capacity reservation of 10 MVA between 8:00 am and 10:00 pm and 25 MVA between 10:00 pm and 8:00 am" and that the Customer shall not exceed the Demand Limit of 40,000 kVA unless otherwise agreed in writing. The Electricity Supply Brokerage Agreement attached to the draft GSA also addressed the issue of backup power required by Celgar due to unavailability of its own turbo generator. Celgar indicates "on that date, the parties were no longer operating under the original terms of the 2000 GSA" because the GSA referenced RS 31. (Exhibit B1-1, p. 7)

Celgar and FortisBC continued to try and negotiate a GSA. In 2008 a draft agreement was prepared, but it was withdrawn by FortisBC before it was executed when Order G-48-09 was issued. Order G-48-09 prohibits the sale of BC Hydro PPA Power by FortisBC to any customer selling self generated power not in excess of that customer's load.

In the RDA Decision, the Commission determined that Celgar was ineligible to take service under RS 33 due to: (i) the absence of a current signed agreement as stipulated by RS 33, and (ii) Celgar's unsatisfactory load factor. The Commission directed FortisBC to provide Celgar service under RS 31 effective January 2, 2011 (RDA Decision, p. 67)

As was inferred might be appropriate on page 115 of the RDA Decision, further negotiations towards a GSA transpired between Celgar and FortisBC, but there has been no agreement reached between the parties to date.

2.1.2 Positions of Parties

To highlight its key position Celgar "asserts there was an [pre-existing] agreement in place, as evidenced by the ongoing conduct of the parties, including the issue of the February 8, 2011 FortisBC invoice [which was billed under the terms Celgar had been billed under previously] and the continued exercise of the non-firm protocols post January 2, 2011. Even absent an agreement, FortisBC was not entitled to unilaterally discontinue non-firm service to Celgar." (Celgar Final Submission, p. 10) To further elaborate on its views, Celgar states that "in the absence of a new service agreement, prior general service arrangements, ongoing brokerage arrangements and conduct during the billing period, all of which reflect the reasonable intentions of the parties leading up to and during the billing period, should determine the rates and terms and conditions of service effective during the billing period." (Exhibit B1-2, p. 3)

FortisBC takes an opposing view and submits that it has not breached or disregarded any contracts. It notes the Commission's observation in Order G-101-11 that "the parties have been negotiating an agreement without success for several years." It also notes that in its submissions Celgar refers to "arrangements" in contrast to "agreements." FortisBC submits that the GSA drafted in 2006 specifically referenced RS 33, as did the appended brokerage terms. Finally, FortisBC submits "the fact that the parties entered into negotiations after the RDA/COSA Decision further suggests that there was not an agreement which would have applied under those post-decision conditions to spare them from making this effort." (FortisBC Final Submission, paras. 19, 21, 23)

COMMISSION DETERMINATION

The Commission Panel has considered Celgar's submissions in this proceeding regarding the applicability of predecessor agreements, signed or otherwise, to the billings under RS 31. The Commission Panel also notes Celgar's evidence in the RDA Proceeding:

> "Q.12.4 Does Celgar say that, since a new General Service Agreement was not executed prior to October 31, 2006, the 2000 General Service Agreement is now in effect? lf not, why not?
>
> A.12.4 No. … On October 1, 2006, the Mill switched over to Rate Schedule 33. On that date, the parties were no longer operating under the original terms of the 2000 Agreement, as the 2000 Agreement referenced Rate Schedule 31"
>
> (RDA Proceedings Exhibit C13-11, Celgar Response to FortisBC 1.12.4).
>
> and:
>
> Q.12.7 Celgar states that "a GSA is not in place between FortisBC and Zellstoff Celgar". Does Celgar state that any agreement is presently in effect between FortisBC and Celgar and, if so, what is that agreement? Please identify the document, if any, and the terms.
>
> A.12.7 In October 2006, FortisBC accepted Zellstoff Celgar's election to switch to Rate Schedule 33 from Rate Schedule 31. FortisBC has billed Zellstoff Celgar under Rate Schedule 33 since such date. Such arrangement remains in place. However, there is no agreement in place between Zellstoff Celgar and FortisBC" (RDA – Exhibit C13-11, Celgar Response to FortisBC 1.12.7).

The Panel first observes that Celgar does not dispute that the 2000 GSA no longer applies and that there is no agreement in place between itself and FortisBC.

Regarding whether Celgar and FortisBC can be said to be operating under the terms of an unsigned agreement or "prior arrangements" the Commission Panel notes that the unsigned 2006 agreement was specific to RS 33. In the RDA Decision the Commission determined that Celgar was ineligible to take service under RS 33 due, in part, to the absence of a signed agreement and directed FortisBC to provide service to Celgar under RS 31 effective January 2, 2011. (RDA Decision, p. 67) The terms of the unsigned 2006 Agreement, therefore, cannot apply.

Regarding whether Celgar and FortisBC have been operating under the terms of a draft agreement, the Commission Panel considers that Celgar's actual conduct appears to differ from the conduct it proposes in any draft agreement. For example, in its submissions, Celgar consistently has confirmed that it needs a firm contract demand of 8,000 kVA and that it can manage its requirements to that level. (Exhibit B1-1, p. 8) However, in actuality, Celgar consistently has exceeded this:

> "With the exception of June 2010, Celgar's actual demand on the FortisBC system has exceeded 8,000 kVA every month since the beginning of 2007."
> (Exhibit B2-9, BCUC 1.6.2)

In view of the foregoing, the Commission Panel determines that there is no pre-existing agreement in effect which modifies the billings to Celgar under RS 31 after January 2, 2011.

2.2 Is a signed, written agreement necessary in order for FortisBC to provide service to Celgar under RS 31?

2.2.1 Background

In the Celgar Reconsideration Decision the Commission Panel made the following statement:

> "The Commission Panel considers that FortisBC should have a current service agreement in place with its largest industrial customer, and expects that the two parties will move expeditiously to conclude such an agreement"
> (Celgar Reconsideration Decision, p. 11).

In this proceeding, the Commission Panel requested that the parties address in their Final Submissions, whether a written agreement is necessary in order for FortisBC to provide service to Celgar under RS 31:

> "Rate Schedules 31 and 33 include an applicability criterion "subject to written agreement." Does this criterion mean the tariff terms are subordinate to a written agreement or conditional on a written agreement? Are these tariffs invalid if a written agreement is not in place?" (Exhibit A-9, p. 1).

2.2.2 Positions of Parties

Celgar states that it "has taken the position that 'subject to written agreement' means that a written agreement between the parties is required." Celgar then develops its argument by drawing assistance from principles of statutory and contractual interpretation, concluding that up until at least January 1, 2011, the words 'subject to written agreement' could not have been intended to mean that a written agreement was voluntary for RS 31 and RS 33 customers. Celgar submits that had FortisBC wished to alter the terms of RS 31, it should have sought Commission approval to do so and engaged directly in an appropriate process. As to whether the rate schedule would be valid if a written agreement is not in place, Celgar acknowledges that it is obliged to pay for its electricity use, notwithstanding the absence of a signed, written agreement. However, Celgar submits it is also entitled to continued access to non-firm service, where it pays actual costs plus an administration fee incurred by FortisBC to supply power in excess of contract demand. (Celgar Final Submission, pp. 36-39)

FortisBC submits that the "subject to written agreement" wording means the tariff terms are subordinate to a written agreement, not conditional on a written agreement. The Company also explains that the term "subject to written agreement" was inserted in those rate schedules involving customers for whom entry into non-standard terms might make sense; i.e. where size and nature of the customer warranted departure from standard terms. Therefore, RS 31 is "not invalid if a written agreement is not in place." FortisBC further submits that interpreting the absence of a written agreement as invalidating RS 31 or 33 would be contrary to the overall statutory regime. In this regard, at any given point in time, all customers of FortisBC must be taken to fall under a given rate schedule. FortisBC concludes that the "drafters of the Tariff could not be taken to have intended that Rate Schedule 31 only apply to customers with a written agreement if they did not provide for an alternative rate schedule to those customers without a written agreement. However, there is no such alternative." FortisBC goes on to submit that RS 31 functions perfectly well irrespective of the existence of any written agreement. (FortisBC Final Submission, paras. 85-93)

BC Hydro argues that "it is the applicability of Fortis BC rate schedules (RS) 30, 31, 32 and 33 to a particular customer that is conditional upon there being a written agreement in place." BC Hydro goes on to submit that "there appears to be a problem with the FortisBC's rate schedules because no rate schedule clearly applies to a customer like Zellstoff Celgar in the absence of a written agreement." BC Hydro further submits that "The condition 'subject to a written agreement' does not render RS 30, 31, 32, 33 invalid if a written agreement is not in place; lack of a written agreement renders the particular rate schedules inapplicable to the customer." BC Hydro concludes that "In the absence of a written agreement, it appears none of RS 30, 31, 32, 33 and 33 apply to a customer such as Zellstoff Celgar, at least in the absence of direction from BCUC." However, "In BC Hydro's view, the condition "subject to written agreement" in RS 31 and the lack of a written agreement with Zellstoff Celgar does not override the clear direction from the BCUC that FortisBC is to provide Zellstoff Celgar service under RS 31 effective January 2, 2011." (BC Hydro Final Submission, pp. 1-4)

COMMISSION DETERMINATION

In the RDA Decision, the Commission Panel did not imply that it was of absolute necessity for an agreement to exist in order to allow FortisBC to provide service to Celgar under RS 31. As stated in the Celgar Reconsideration Decision, the "Commission Panel considers that FortisBC should (emphasis added) have a current service agreement in place with its largest industrial customer, and expects that the two parties will move expeditiously to conclude such an agreement." Moreover, in the RDA Decision, the Commission Panel directed FortisBC to provide service to Celgar under RS 31, effective January 2, 2011.

The Commission Panel accepts FortisBC submissions that interpreting the absence of a written agreement as invalidating RS 31 would be contrary to the overall statutory regime.
Also, RS 31 functions perfectly well irrespective of the existence of a written agreement. Considering the circumstances RS 31 is, in fact, the default tariff. The Panel also agrees with BC Hydro that the lack of a written agreement under RS 31 cannot override the clear direction from the Commission that FortisBC is to provide Celgar service under RS 31 because it would be contrary

to the overall statutory regime.

Accordingly, the Commission Panel determines RS 31 is valid for Celgar, even in the absence of a signed, written agreement between Celgar and FortisBC. In the absence of such an agreement Order G-156-10 directs FortisBC to provide service to Celgar under RS 31 effective January 2, 2011.

As will be described below in Section 3.2.2 FortisBC is precluded from selling BC Hydro PPA Power to Celgar or other self-generators when they are selling power, but it is able to sell power from the components of its resource stack that do not include such power. Therefore**, FortisBC is directed to develop a rate for Celgar and other self-generators by May 31, 2012 based on RS 31 but excluding BC Hydro PPA Power from its resource stack.**

2.3 FortisBC's billing under RS 31 to Celgar subsequent to January 2, 2011

2.3.1 Background

Celgar is seeking a determination from the Commission that all 2011 invoices issued to it by FortisBC since January 2, 2011 be retroactively adjusted, on the basis of a Billing Demand of 8 MVA and that FortisBC provide ongoing access to non-firm power above a Contract Demand of 8 MVA. Celgar submits that, in Order G-156-10, the Commission did not discontinue Celgar's access to non-firm service as was provided up until January 2, 2011 in accordance with the terms of the unsigned 2006 electricity supply brokerage agreement.

Celgar has paid a portion of the invoices issued to it by FortisBC, on the basis of its own calculations of billing demand and an assumption of access to non-firm service. FortisBC submitted a letter to the Commission stating that, as of June 1, 2011, Celgar was in arrears in excess of $1.007 million. (Exhibit B2-3, p. 2)

RS 31 is available to industrial customers with loads of 5,000 kVA (5 MVA) or more, taking service at

60,000 volts or higher, subject to written agreement. The Billing Demand for the rate is calculated as the greatest of:

i. eighty percent (80%) of the Contract Demand, or
ii. The maximum demand in kVA for the current billing month; or
iii. eighty percent (80%) of the maximum demand in kVA recorded during the previous eleven month period.

The rate schedule may be modified by agreement. FortisBC states that, for the months of January and February 2011, Celgar's Billing Demand was determined as in item (ii) above (Exhibit B2-1, p. 5).

2.3.2 Positions of Parties

Celgar states that FortisBC has provided invoices subsequent to January 2, 2011 based on a "Billing Demand" many times greater than its expected 8,000 kVA Billing Demand:

> "For the period January 2, 2011 to January 31, 2011, FortisBC has invoiced Celgar based on a "Billing Demand" of 46,254.6 kVA. Similarly, for the period January 31, 2011 to February 28, 2011, FortisBC bases its demand charges on a Billing Demand of 43,486.8 kVA. […] Celgar was surprised to receive such invoices as the revenue projections that FortisBC submitted to the Commission were based upon an 8,000 kVA Billing Demand." (Exhibit B1-1, p. 8)

Celgar states that, as a result, its bills are far in excess of what would have been the case had a Billing Demand of 8,000 kVA been used. Further, Celgar believes that revenue projections submitted to the Commission in the FortisBC 2011 revenue requirements proceeding were based on a Billing Demand of 8,000 kVA with the result that, when combined with the switch from RS 33 to RS 31, results in significant additional revenue for FortisBC:

> "For the months of January and February, as billed, Celgar's additional demand charges total $573,447.45, approximately $123,000 more than the amount that FortisBC projected would be collected for the entire year, in its filings before the Commission." (Exhibit B1-1, p. 9)

In its initial response to the Complaint FortisBC indicates that it is inappropriate for Celgar to rely on the 2009 COSA results to determine expected future bills and disregard the actual demand placed on the system (Exhibit B2-1, p. 5). FortisBC goes on to submit that the 8 MVA of demand used in the final COSA model was directed by the Commission and references a statement at p. 3 in the Reasons for Decision to Order G-196-10:

> "It is clear from p.27 of the [RDA] Decision that Celgar's firm requirement for power is 8,000 kVA and that it has the ability to manage its requirements to this level." (Exhibit B2-1, p. 5).

FortisBC states that the 8 MVA was based on Celgar's assertion that it could manage its load to that level and cites Celgar's evidence from the RDA Proceeding:

> "One of the important characteristics of the Mill, for the purposes of rate design, is its firm load requirements. The Mill needs firm power of 8 MVA to meet the needs of its environmental systems. This is the Mill's only firm requirement." (RDA Proceedings Exhibit C13-7, p. 30).

> "... the timing and duration of outages of the self-generation can in some circumstances be managed by Zellstoff Celgar and will, once the new generator is installed, be more easily manageable. Also, as stated earlier in this evidence, the timing of self-supply can be managed by Zellstoff Celgar by intraday storage of fuel, black liquor." (RDA Proceedings Exhibit C13-7, p. 30).

FortisBC further states that Celgar has not managed its load to a level of 8 MVA and that it has drawn a load in excess of 46 MVA in recent months. FortisBC submits that Celgar should expect to incur costs in accordance with the tariff, just as any other customer would. (Exhibit B2-1, pp. 5-6)

FortisBC also notes that looking at the COSA data (from the RDA Proceeding) in this proceeding is a backward looking process. Projections of revenues from any customer class used in the COSA are

based on assumptions on load and consumption. (FortisBC Final Submission, para 32) Celgar asserts that by virtue of increasing the revenues it provides, the revenue/cost (R/C) ratio for its customer class will rise. However, FortisBC states these changes would have to be incorporated into the COSA prior to the final results being produced which would impact rebalancing. It is therefore difficult to see how an increase in the R/C ratio for Celgar's customer class provides a benefit for other FortisBC customers. (FortisBC Final Submission, paras. 61-69)

FortisBC further notes that "the negotiated settlement agreement made in the 2011 revenue requirements process provides that variances in the revenue received from Celgar flow through 100% to FortisBC customers….FortisBC as a company has no independent financial stake in the outcome." (FortisBC Final Submission, para. 33)

FortisBC also submits that "the 8 MVA that Celgar has adopted as a relevant threshold was never included in a contract between the parties … There has never been an agreement in place where Celgar has a contract demand of 8 MVA. " (FortisBC Final Submission, para. 29)

Regarding the calculation of billing demand in the Celgar invoices, FortisBC states that, where no agreement between it and Celgar has been reached, it has "no discretion in 2011 to charge Celgar other than in accordance with the rate schedule that the Commission had prescribed" (FortisBC Final Submission, para. 31). FortisBC cites section 61(3) of the Act to support its statement.

Celgar responds to the issue of whether FortisBC's billings in accordance with RS 31, unmodified by any agreement, are appropriate. Celgar states that:

> "In the absence of a General Service Agreement, the 'rate' to be paid by Celgar has not yet been approved by the Commission. Approval of one part of the 'rate', that is, RS 31, is insufficient to establish the 'rate' for calculating an appropriate invoice to Celgar. That is why, in the Complaint, Celgar requests that the Commission establish the 'rate' for calculating amounts payable by Celgar. Further, there is no provision in the Act that requires a customer to pay an amount pending the approval of a 'rate'." (Exhibit B1-7, pp. 1-2)

Celgar further states that is has, and will continue, to pay amounts that are "in accordance with arrangements consistent with those in place for the Celgar mill going back to at least 1993." (Exhibit B1-7, p. 1)

COMMISSION DETERMINATION

The Commission Panel considers that the wording of section 61(3) of the *Act* is clear. Having previously determined that no agreement modifying the terms of RS 31 exists, the Commission Panel regards RS 31 as set out in FortisBC's Electric Tariff, as the only rate filed with the Commission. Billing in accordance with RS 31 is based on the higher of actual and contract demand. There is no agreement with a contract demand of 8,000 kVA, and actual demand has been well in excess of 8,000 kVA in all months to date in 2011. (FortisBC Final Submission, para. 50)

The Commission Panel therefore determines that FortisBC's invoicing of Celgar for services delivered since January 2, 2011 under RS 31 is appropriate.

The Commission Panel also recognizes that the parties have been in discussions regarding the form of a GSA that would be acceptable to both and that the terms of such a GSA are intended to alter the application of RS 31 to Celgar's metered demand. In their submissions, Celgar and FortisBC have identified several issues which require resolution before they can conclude an agreement that establishes a GSA. Celgar has requested the Commission's assistance in resolving these issues and the Commission Panel addresses these in the following Section. Given that the issues preventing the parties from reaching an agreement have been considered in this proceeding and that the Commission will give guidance on the issues in later Sections of this Decision, **the Commission Panel directs FortisBC to bill Celgar in accordance with RS 31 on an interim and refundable basis beginning March 25, 2011, the date when the Complaint was filed, and ending when the Commission approves the new rate for Celgar that excludes PPA Power from its resource stack, and/or an Agreement forwarded by the parties. Any differences between the interim rate and that ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year.** Therefore, the invoices

issued for January and February, 2011 will stand as presented by FortisBC. The invoices for March and subsequent months will be subject to the interim rate basis provided above.

3.0 ESTABLISHMENT OF A GENERAL SERVICE AGREEMENT

3.1 Background – BC Hydro PPA Power

As part of its power supply portfolio, FortisBC has access to BC Hydro PPA Power taken under Rate Schedule 3808. In Order G-48-09 the Commission approved the following amendment to section 2.1 of the PPA:

> "Section 2.1
> (a) The electricity purchased under this agreement is solely for the purpose of supplementing FortisBC's resources to enable it to meet its service area load requirements and, shall not be exported or stored, provided that nothing contained herein shall prohibit FortisBC from storing its entitlement resources in its entitlement account pursuant to the Canal Plant Agreement; and
>
> (b) shall not be sold to any FortisBC customer when such customer is selling self generated electricity which is not in excess of its load.
>
> For greater certainty, paragraph (b) above is 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."

The PPA thus attaches conditions to FortisBC's use of BC Hydro PPA Power by placing constraints on the arbitrage of this power, thereby preserving the benefits of low cost power for customers of BC Hydro and to the customers of FortisBC. Uncertainty about the conditions placed on FortisBC's access to BC Hydro PPA Power and the conditions under which it may sell power to Celgar while still accessing this power are fundamental issues in this proceeding and are addressed below.

3.2 Issues to be Addressed

The Commission Panel now considers the issues preventing the parties from concluding a GSA.

In its evidence, FortisBC sets out a number of matters summarized as the following four issues that it believes are preventing it and Celgar from concluding and executing a general service agreement:

(i) The conditions under which FortisBC can continue to access BC Hydro PPA power with respect to sales of power to Celgar.

(ii) Whether FortisBC should consider its own generation, along with BC Hydro PPA power and other components of its resource stack to be resources that should not be exposed to arbitrage.

(iii) Whether the customers of FortisBC should pay for the incremental power purchase costs that result from FortisBC supplying power to Celgar when Celgar is selling power not in excess of its load.

(iv) Agreement on a suitable method for recovering the costs associated with the infrastructure used to serve Celgar.
(Exhibit B2-9, BCUC 1.14.1)

From Celgar's perspective, the terms of a GSA provide a degree of certainty regarding access to some amount of utility power at embedded cost when Celgar is selling power not in excess of its load. From this perspective, Celgar believes the elements of a GSA therefore must include a GBL, a contract demand, service at embedded cost for the portion of the load to be served by FortisBC, and access to non-firm power. In its evidence Celgar states that two items – the establishment of a GBL and Celgar's access to non-firm service above its contract demand – are preventing it and FortisBC from concluding a general service agreement (Exhibit B1-11, BCUC 1.3.1).

The issues identified by FortisBC and Celgar are addressed in the Sections below.

3.2.1 Setting a GBL

Celgar states that the "determination of a FortisBC GBL can be thought of as the pivotal issue. If a FortisBC GBL is approved, doing so will determine the contract demand that will provide the demarcation point for firm and non-firm service" (Celgar Final Submission, p. 2).

3.2.1.1 Background

In its letter dated August 5, 2011, the Commission Panel requested that the parties address (i) whether the *Clean Energy Act* (*CEA*) exempts the establishment of a GBL for Celgar from Commission oversight, and (ii) whether the Commission must consider rates/contracts afforded to other large scale self-generation customers in British Columbia when determining a contract for Celgar (Exhibit A-9).

Once these questions of mandate have been determined, the Commission Panel will then consider only whether there has been any new evidence brought forward in this proceeding that would alter the Commission's determination in the RDA Decision wherein it declined to set a GBL between Celgar and FortisBC (RDA Decision, p. 115).

3.2.1.2 The *Clean Energy Act* and the Commission's Mandate

Section 7.1(f) of the *CEA* sets out a specific exemption of the *CEA* that deals with agreements between BC Hydro and its pulp and paper customers who are eligible for funding under Canada's Green Transformation Program.

The Commission Panel requested that the parties address in their Final Submissions the following question:

> Given that the *Clean Energy Act* exempted the type of Electricity Purchase Agreements BC Hydro has with its pulp mill customers from Commission oversight, is the establishment of a Generation Baseline for the customers of other regulated utilities under the jurisdiction of the provincial government or within the Commission's mandate?

3.2.1.3 Positions of Parties

Celgar submits that the exemption has no effect on the Commission's jurisdiction over agreements relating to the provision of service between Celgar and FortisBC, whether related to a GBL or otherwise. (Celgar Final Submission, pp. 42-43)

BC Hydro submits that:

> "The exemption of BC Hydro from the requirement to file certain Electricity Purchase Agreements with the BCUC under section 71 of the UCA has no bearing on the BCUC's powers to determine just and reasonable rates/contracts for FortisBC. The Clean Energy Act (CEA) does not change the BCUC's jurisdiction to determine a just and reasonable rate/contract for the service FortisBC provides to Zellstoff Celgar." (BC Hydro Final Submission, p. 7)

FortisBC states that "The exemption in the *Clean Energy Act* relates specifically to the commercial relationship between BC Hydro and Celgar … It does not extend to the relationship between BC Hydro and FortisBC, between FortisBC and Celgar, or Celgar and BC Hydro." FortisBC further submits that "…there seems no reason to conclude that the provisions of the *Clean Energy Act* affected any jurisdiction the Commission would otherwise have over the GBL at issue here." (FortisBC Final Submission, pp. 42-43)

COMMISSION DETERMINATION

All the parties agree that the *Clean Energy Act* exemption does not apply to agreements relating to the provision of service between FortisBC and Celgar. **The Commission therefore concludes that it has the authority to determine the contract terms between FortisBC and its pulp mill customers, including terms related to GBLs.**

3.2.1.4 The Issue of Fairness and the Commission's Mandate

Celgar refers extensively to BC Hydro and its approach to establishing GBLs. It "supports the approach taken by BC Hydro – that GBLs are not determined on a set formula." (Exhibit B1-1, p. 5). Celgar argues that its circumstances are similar to those of BC Hydro when dealing with its self-generator customers. (Exhibit B1-1, p. 18) Celgar believes that the Commission will find value in considering BC Hydro's rates "in the establishment of a fair and reasonable rate, in conjunction with a GBL, for Celgar." (Exhibit B1-1, p. 18)

Celgar acknowledges "that ensuring 'competitive fairness' may fall outside the Commission's direct jurisdiction. Celgar submits that the Commission should not, through the exercise of its ratemaking jurisdiction, create inequities between self-generation customers in British Columbia." (Exhibit B1-1, p. 18)

BC Hydro submits that "when establishing a fair and reasonable rate/contract for Zellstoff Celgar, the BCUC is not required to consider rates/contracts to the customers of other utilities in British Columbia. However, in considering whether a proposed rate/contract is fair and reasonable for a particular utility, the BCUC can consider the rate structures and terms and conditions of service that it has approved, or that other public utility regulators have approved, for other utilities." (BC Hydro Final Submission, p. 4).

However, BC Hydro concludes that "Because different utilities are not identical with respect to cost structure, services, load/resource balance, rate structure and other characteristics, BC Hydro submits that the primary BCUC focus must be on the specific circumstances of the particular utility before it. It is neither possible nor desirable to set a rate/contract for the service of one utility based solely on the rates/contracts afforded to customers of other utilities." (BC Hydro Final Submission, p. 5).

FortisBC submits "the Commission is likely not barred from giving consideration to rates/contracts afforded to other large scale self-generation customers in BC Hydro's service territory…. However,

the weight specifically given to those rates/contracts would necessarily be limited. BC Hydro itself has made clear its contractual arrangements are specific to the customer at issue and that they also would be specific to the particular utility involved… Further … the purpose and effect of a BC Hydro GBL and that sought by Celgar do not appear to be the same. Certainly a BC Hydro GBL does not affect another utility's access to power from BC Hydro, whereas a Celgar FortisBC GBL may." (FortisBC Final Submission, paras. 97-99)

COMMISSION DETERMINATION

In determining whether or not the Commission must consider the issue of fairness to Celgar in respect to other customers in B.C. having self-generation, the Commission Panel considers whether any of the parties in this proceeding have brought forward new evidence or arguments that would refute the Commission's determination in the RDA Decision:

> "In the Commission Panel's view, which was shared by all parties (including Celgar) to the proceeding, the issue of equity between pulp mills in BC falls outside the Commission's jurisdiction. The Commission Panel will not address the issue further." (RDA decision, pp. 115 – 116)

Nothing in the parties' evidence or submissions refutes this. BC Hydro and FortisBC are two different and distinct utilities, especially in regards to the mix of resources available. Policy Action No. 1 of the 2002 BC Energy Plan ("Energy for our Future: A Plan for B.C.") provided for a legislated heritage contract between BC Hydro's generation line of business and its distribution line of business (the Heritage Contract), under which BC Hydro has an obligation to preserve the value of existing low-cost generation assets for the benefit of all British Columbians. The Heritage Contract forms Appendix A to Heritage Special Direction No. HC2 to the Commission. That Special Direction became effective April 1, 2004 and the Commission is obliged to comply with it.

By Order G-48-09, the Commission confirmed that BC Hydro's heritage assets benefit not only BC Hydro customers, but all British Columbians including the customers of FortisBC:

> "Nelson residents, as British Columbians, do share in the overall benefits of the Heritage Power framework but should not be permitted to benefit unduly at the expense of other customers of BC Hydro." (Reasons for Decision for Order G-48-09, p. 25)

In doing so, however, the Commission tempered its statement by noting that Nelson residents in that case, as British Columbians in general, should not benefit from their access to Heritage Power at the expense of other customers of BC Hydro. FortisBC is a customer of BC Hydro taking power under RS 3808 which is comprised, in part, of Heritage Power and its use is subject to the determination in Order G-48-09 prohibiting the sale of such power to a customer selling power from its own generation not in excess of its load. Therefore, the Commission accepts the FortisBC submission that the establishment of a GBL by BC Hydro for one of its customers does not affect FortisBC's access to power, whereas the establishment of a FortisBC GBL may (at least with respect to BC Hydro PPA Power).

Furthermore, while Celgar believes that the establishment of a GBL between FortisBC and Celgar could be based on the experience that BC Hydro has had in establishing GBLs with some of its self-generation customers, the Commission does not believe there has been sufficient evidence filed for it to assess the relevance of BC Hydro's experience with its customers to the FortisBC-Celgar relationship.

The Commission concurs with BC Hydro's views that "it is neither possible nor desirable to set a rate/contract for the service of one utility based solely on rates/contracts afforded to customers of other utilities." (BC Hydro Final Submission, p. 5)

Therefore, the Commission Panel concludes that the different conditions regarding BC Hydro's accessing Heritage Power and FortisBC's accessing Heritage Power precludes relying on the precedents of HC Hydro's experience with GBLs relative to establishing a GBL in this proceeding.

3.2.1.5 Setting a GBL for Celgar

As previously stated Celgar believes that the "determination of a FortisBC GBL can be thought of as the pivotal issue. If a FortisBC GBL is approved, doing so will determine the contract demand that will provide the demarcation point for firm and non-firm service" (Celgar Final Submission, p. 2). In its evidence and submissions in both this proceeding, as well as in the proceedings leading to the RDA Decision and the Celgar Reconsideration Decision, Celgar has relied on a mathematical relationship between the GBL that it is requesting and the contract demand that it requires. Celgar has set out this relationship as:

> "a contract demand equal to Celgar's Mill load, less the GBL established under the agreement, provided that the minimum contract demand must be at least 8 MVa in order to support the Mill's critical environmental functions (the "**Contract Demand**')." (Exhibit B1-1, p. 2)

Celgar seeks to establish a GBL in order that it may sell power generated at its mill that exceeds such a baseline, while purchasing energy from FortisBC to serve any portion of its mill load below such a baseline. Depending on its level, such a GBL may allow Celgar to sell power in excess of its GBL that it is not otherwise obligated to sell to BC Hydro. Under the terms of the BC Hydro EPA entered into between Celgar and BC Hydro, Celgar is obligated to sell all of its generation in excess of 40 MVA to BC Hydro.

FortisBC states that it is not opposed to a GBL for Celgar as long as its other customers are not harmed as a result:

> "While FortisBC is not averse to a GBL per se, this is only if application of the GBL concept does not jeopardize the interests of other FortisBC customers. Applying the "GBL" label to any given number – 1.5, 40, or otherwise – accomplishes nothing unless it is clearly done as an exemption to FortisBC's contractual obligations under its PPA with BC Hydro." (FortisBC Final Submission, para. 53)

FortisBC submits that "a GBL need not be included in any agreement with Celgar" and that "a GBL is

not a mandatory feature of any contract between the Company and a customer" (FortisBC Final Submission, para. 77).

COMMISSION DETERMINATION

The Commission Panel agrees with FortisBC that a GBL is not a necessary component of a GSA. In the RDA Decision, the Commission declined to establish a GBL between FortisBC and Celgar and stated: "The parties are at liberty to establish their own GBL and, *should they desire*, to incorporate it into a general service agreement and submit it to the Commission for approval." (RDA Decision, p. 115; emphasis added)

The Commission Panel reaffirms the Commission's previous determination that, while a GBL may be incorporated into a GSA between FortisBC and Celgar, it leaves the issue of whether to incorporate such a GBL into a GSA up to the parties.

If FortisBC chooses to establish a GBL for Celgar it must do so taking into account the conditions regarding FortisBC's access to BC Hydro PPA Power included in section 2.1 of the BC Hydro PPA. It should be emphasized that section 2.1 of the PPA only provides restrictions on FortisBC's access to BC Hydro PPA Power. This does not preclude FortisBC from establishing its own principles regarding the supply of non-BC Hydro PPA Power in its resource stack when establishing GBLs with its customers.

In regards to Celgar's statement that, under current market conditions, no FortisBC customers would be adversely affected by Celgar's transition to increased service, the Commission Panel agrees with FortisBC that the establishment of a GBL should not shift the market risk of sourcing power from alternative sources from a self-generator to the other customers of a utility. While current market conditions may be depressed, this may not always be the case. In markets were to swing the other way, other customers could be affected unfavourably.

3.2.2 When can FortisBC access BC Hydro PPA Power?

3.2.2.1 Positions of Parties

As noted in Section 3.2.1.5, FortisBC is not opposed to a GBL for Celgar as long as its other customers are not harmed as a result.

FortisBC further submits that maintaining its access to BC Hydro PPA Power is a large concern and that the loss of access to BC Hydro PPA Power, comprising approximately 20 percent of its resource stack, could have a serious impact on its customers' rates. (FortisBC Final Submission, para. 55)

In its Submissions FortisBC poses a number of questions regarding the circumstances under which it would be in compliance with the terms of the BC Hydro PPA while selling power to Celgar as well as regarding how a GBL should be determined with respect to Celgar's "Historical Point-in-Time" load. (FortisBC Final Submission, para. 74)

Celgar provides several reasons it believes that FortisBC should establish a GBL for Celgar. It states that FortisBC can remain in compliance with the terms of its BC Hydro PPA and address its concerns about jeopardizing access to BC Hydro PPA Power by ensuring that "additional Celgar load served by FortisBC following the establishment of a FortisBC GBL is notionally matched to and served from additional third party energy purchases." (Celgar Final Submission, pp. 20 - 21) It submits these purchases would result in no negative impact, and might even have a positive impact on FortisBC's other customers. (Celgar Final Submission, pp. 29 - 31)

FortisBC appears to agree with Celgar's position, stating that, while "there is no method of determining which kilowatts generated by or supplied to FortisBC flow through to which customers":

> "An alternative to avoiding delivery of 3808 Power to Celgar when it is selling self-generated electricity that is not in excess of its load would be for FortisBC to deliver power to Celgar from any source but also at that time purchase Non-3808

> Power in the amount notionally required to cover the controversial portion of Celgar's desired purchase." (FortisBC Final Submission, para. 56-57)

FortisBC expresses concern about whether such a method would satisfy BC Hydro as being compliant with s. 2.1 of the PPA. (FortisBC Final Submission, para. 57)

In regards to FortisBC's questions Celgar states that the only relevant question is whether the notional matching methodology suggested by Celgar is an acceptable basis upon which to ensure that FortisBC would not be in breach of the its BC Hydro PPA by providing Celgar with firm power, while Celgar sells self-generation. Celgar goes on to submit that the policy-based questions posed by FortisBC need not be addressed in order to establish a FortisBC GBL for Celgar on a similar basis to those GBLs being provided in BC Hydro's service area. (Celgar Reply Submission, para. 89)

FortisBC states : "[t]he Commission has the authority…to determine that FortisBC's access to RS 3808 Power would not affected by Celgar's export activities" and "the Company respectfully submits that the Commission can make a determination that would remove, limit, or alter the risk to regulated customers in the Province by way of an Order." (FortisBC Final Submission, para. 75)

By letter to the Commission dated August 31, 2011, BC Hydro expressed concern that FortisBC poses a number of questions in its Final Submission related to FortisBC's access to BC Hydro PPA Power that go to the interpretation of section 2.1 of the BC Hydro PPA and that the interpretation is not within the scope of this proceeding. BC Hydro goes on to state that in Order G-156-10 the Commission has "confirmed its intentions regarding section 2.1 of the PPA" and that no further clarification is necessary.

COMMISSION DETERMINATION

The Commission Panel is prepared to provide some elaboration of its views regarding determinations in Orders G-48-09 and G-156-10 to assist FortisBC and Celgar in their negotiation of a GSA.

As part of its power supply portfolio, FortisBC has access to BC Hydro PPA Power. The amendment to section 2.1 of the PPA made by Order G-48-09 prohibits FortisBC from selling PPA Power to a customer where the customer is selling self-generated electricity which is not in excess of its load. Section 2.1 thereby preserves the benefits of low cost power for customers of BC Hydro and, through access to BC Hydro PPA Power, for the customers of FortisBC. These conditions were clarified in the RDA Decision:

> "as long as the Order [G-48-09] is in full force and effect, and as long as the PPA between FortisBC and BC Hydro is in effect, FortisBC will be unable to buy any power from BC Hydro under RS 3808 for sale to Celgar when Celgar is exporting power from the mill." (RDA Decision, p. 103)

The conditions regarding FortisBC's access to BC Hydro PPA Power are clear: FortisBC will be unable to buy BC Hydro PPA Power *for sale to Celgar*, when Celgar is exporting power. While FortisBC may have access to BC Hydro PPA Power at all times, it is precluded from selling that power to Celgar when Celgar is selling power. In other words, Celgar is prohibited from accessing BC Hydro PPA Power when Celgar is also selling power to any customer, either domestic or for export.

The Commission Panel notes that FortisBC has posed a number of questions in its Submissions regarding what constitutes "load" and "net of load on a dynamic basis" but these questions become irrelevant in light of the conditions under which FortisBC can access BC Hydro PPA Power.

In the Reasons for Decision for Order G-48-09 the Commission recognized that some method of monitoring the quantity of embedded cost power purchased from FortisBC by a self-generation customer, as well as of the quantity of excess self-generated power exported by the self-generator

is required to ensure that power purchased from the utility by the self -generator is not being sold into the open market (Reasons for Decision for Order G-48-09, p. 30). In this proceeding, Celgar has proposed a methodology for ensuring that any additional Celgar load served by FortisBC following the establishment of a FortisBC GBL is notionally matched to and served from additional third party energy purchases. FortisBC has conceded that such a methodology could be implemented but requires assurance that it would remain in compliance with the terms of s. 2.1 of the BC Hydro PPA were it to implement such a method.

The Commission Panel is satisfied that some method of accounting for sales to, and exports of, Celgar will be able to ensure that the determination on Page 103 of the RDA Decision prohibiting Celgar's access to PPA Power from FortisBC while Celgar is exporting power can be upheld. **The Commission Panel directs FortisBC to establish a methodology for notionally matching sales to Celgar in service of its load when Celgar is selling power, to FortisBC's supply of energy from its resource stack of non- BC Hydro PPA Power, and submit it by March 31, 2012 to the Commission for approval.**

3.2.3 Should Any Other Component of FortisBC's Resource Stack be Exposed to Arbitrage given the Access and Fair Treatment Principles and the Obligation to Serve, and Who Should Pay for the Incremental Power Purchase Costs that Result from FortisBC Supplying Power to Celgar when Celgar is Selling Power?

3.2.3.1 Background

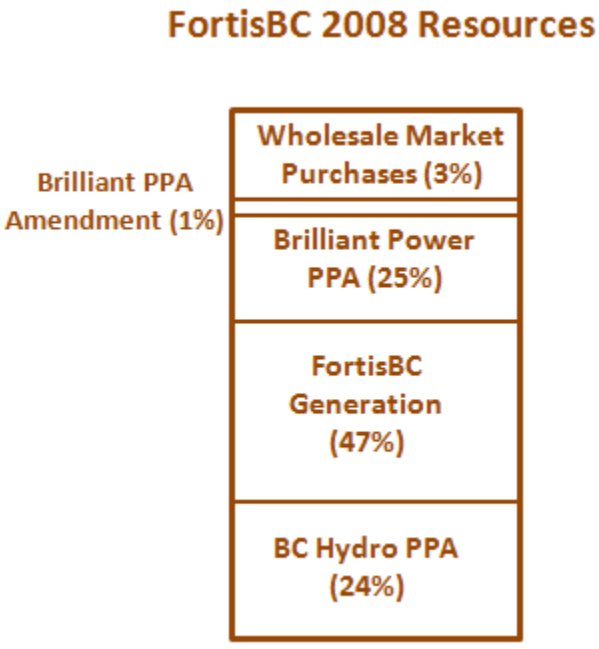
In its Complaint Celgar requested that the Commission assist it in establishing a GSA with FortisBC that includes service at RS31 or a similar rate based upon rolled-in costs, applicable regardless of whether Celgar sells power above its GBL or not (Exhibit B-1, p. 2).

FortisBC states that the question of whether it should consider "its own generation and other components of its resource stack, in addition to 3808 power, to be resources that should not be arbitraged" needs to be answered in order that it may conclude an agreement with Celgar. (FortisBC Final Submission, p. 36, para. 82)

3.2.3.2 FortisBC's Resource Stack

FortisBC owns four hydroelectric generating plants on the Kootenay River (the FortisBC Plants) which represented approximately 47 percent of its energy requirements in 2008. FortisBC is party to a power purchase agreement with Brilliant Power Corporation made as of April 4, 1996 (Brilliant PPA) and expiring in 2056. The Brilliant PPA provided approximately 25 percent of FortisBC's energy requirements in 2008. An amendment to the Brilliant PPA made in May 1996 provided for an additional one percent of its energy requirements in 2008. The BC Hydro PPA provided approximately 24 percent of FortisBC's energy needs. FortisBC addressed any short-term energy shortfalls by making purchases in the Wholesale electricity markets. (RDA Proceeding, Exhibit B-3-1, BCUC IR 1.7.1) These energy sources are represented below in Figure 1.

Figure 1: FortisBC 2008 Resource Stack



(Source: RDA Proceeding, Exhibit B-3-1, BCUC IR 1.7.1).

3.2.3.3 The Access Principles Application

In the RDA Decision the Commission considered that some of the principles of the 1999 Access Principles Application (APA), which was approved by Order G-27-99, might be relevant to the Celgar request for service at embedded cost rates. The goal of the APA was to open the West Kootenay Power (WKP) [now FortisBC] transmission system to all Eligible Customers to encourage the development of a competitive generation market. Some of the key principles of the APA are summarized as follows:

- The purpose of the APA is to ensure that the open access results in the Fair Treatment of Utility shareholder, of customers who remain with Utility supply and of Eligible Customers who choose to obtain some or all supply from non-utility resources.
- *Eligible Customer* means those [FortisBC] bundled service customers eligible for transmission access as determined by the Commission from time to time.
- *Embedded Cost of Power* means [FortisBC's] cost of generation related transmission assets, generation assets, power purchase contracts, market purchases and other costs of power as determined by the Commission from time to time.
- *Fair Treatment* means
  - (i) For *Shareholders,* the opportunity to earn a rate of return on equity does not change as a result of the exit, partial exit of re-entry of Eligible Customers;
  - (ii) 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. (emphasis added)
  - (iii) For *Eligible Customers*
    - *(a)* the maintenance of [FortisBC's] obligation to serve continues for an Eligible Customer as long as the Eligible Customer elects to receive embedded cost service from FortisBC for all or part of its load;
    - *(b)* the right to elect to leave the embedded cost of service of FortisBC in whole or in part;
    - *(c)* the right to return to [FortisBC's] embedded cost of service as set out under the Re-entry Provisions; and
    - *(d)* notwithstanding the general principle that remaining customers are to be made no worse off by the exit of Eligible Customers, the right to take with them any benefits accruing from their load characteristics without additional payment or compensation to customers who remain on Utility supply.

Obligation to Serve means

- [FortisBC] retains the obligation to serve every customer until that customer elects to leave the embedded cost power service of FortisBC.
- [FortisBC] also retains the obligation to serve at embedded cost rates any new load entering its service territory, any additional load attributable to its existing customers, and returning Eligible Customers, under the Re-entry Provisions. (emphasis added)
- [FortisBC] will enter into good faith negotiations with any Eligible Customers desiring to enter into a new contract at embedded cost rates.

Re-entry Provisions

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 [FortisBC] 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 [FortisBC 's] supply.

For the interim period [FortisBC] may charge rates reflective of its additional cost of serving these Eligible Customers over the interim period, while maintaining Fair treatment.

(Order G-27-99, Appendix A)

3.2.3.4 Positions of Parties

FortisBC states that it "does not believe it is appropriate that incremental power purchase costs incurred solely to support Celgar's export activities should be blended with power purchase costs used to support FortisBC's native load customers, potentially adding unnecessary upward pressure on other customers' rates." (FortisBC Final Submission, para. 57) FortisBC submits that "Celgar should no more be permitted to arbitrage power purchased under its Rate Schedule 31 when doing so may increase power purchase costs. The means to prevent this outcome would be to continue [to] abide by the 'net of load on a dynamic basis' methodology" (FortisBC Final Submission, paras. 82 - 84).

Celgar states that it is an Eligible Customer "as such term is used in the APA". Celgar then notes that its desire to return to full service was made known to FortisBC in 2008, prior to execution of the 2008 Power Supply Agreement. Finally, Celgar states that even if such notice period were to commence on today's date, given current energy market prices, Celgar believes that no other customer of FortisBC would be negatively impacted within the two-year period referenced in the APA Re-entry Provisions, and in fact could benefit within such a period through Celgar's transition to increased service. Celgar submits that FortisBC merely needs to enter into power purchase contracts at prices that are now available in the market to capture those benefits to other customers. (Exhibit B1-1, pp. 16-17 and Celgar Final Submission, pp. 31-33)

FortisBC submits that, while under current market conditions it may be possible to purchase power at a cost lower than its current cost of power on the margin, this cost may not be below the total embedded cost of power. It could, therefore, result in an increase to customer rates. Further, while power markets are currently depressed, power markets may well become buoyant and there is always risk of this occurring. Finally, FortisBC submits that "a period of favourable market conditions should not drive the appropriate process." (FortisBC Final Submission, para. 58)

Regarding other options available, FortisBC suggests that risk to FortisBC's overall customer base could be avoided by Celgar itself sourcing power in external markets and wheeling that power across FortisBC's system under the Company's Open Access Transmission Tariff (OATT) to serve its load while selling its generation to BC Hydro or other purchasers. FortisBC submits this would still provide Celgar with the benefit of purchasing market power and selling bio-energy without the risk of increasing costs to the regulated customers of either BC Hydro or FortisBC. (FortisBC Final Submission, para. 59)

COMMISSION DETERMINATION

The determination of whether Celgar has the right to service based upon embedded costs is also a determination about whether the incremental power costs caused by Celgar's market activities should be borne by FortisBC's other customers.

Should FortisBC's non-BC Hydro PPA Power resources be exposed to arbitrage?

In this Decision, the Commission Panel has already determined that FortisBC is prohibited from supplying Celgar with BC Hydro PPA Power while Celgar is selling power. Therefore the question now remaining - as FortisBC has posed the question - is whether FortisBC's own generation and other components of its resource stack outside of BC Hydro PPA Power should be identified as resources that should not be arbitraged.

In making such a determination, the Commission Panel first looks to existing legislation and Orders. Section 2.1 of the BC Hydro PPA as approved by Order G-48-09 protects the benefits of BC Hydro PPA Power for all customers of FortisBC. Order G-48-09 does not consider power from FortisBC's own generation or other non-BC Hydro PPA Power components of its resource stack.

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.

In the RDA Decision, the Commission reviewed the submissions of FortisBC, BC Hydro, and Celgar in respect to the Fair Treatment principles as defined in the APA. In the RDA Proceeding, BC Hydro stated that the APA set out principles to be applied in situations where FortisBC customers wished to purchase electricity from the market, and was not designed to address the principles to be applied when a self-generating customer wished to sell electricity to the market. FortisBC supported this position and further stated that Order G-27-99, under which the APA was approved, does not address such issues as:

(i) whether an obligation to serve might be affected by self-generation by a customer;
(ii) the sources of power that FortisBC would have to access in serving that customer;
(iii) the cost of that supply; or
(iv) the arbitrage concerns that have been raised by BC Hydro, since Order G-27-99 predated Orders G-38-01 and G-48-09. (RDA Proceedings, T7: 1302-04)

In the APA, the Fair Treatment principle requires that for customers who remain with Utility supply, the exit or re-entry of Eligible Customers must make them no worse off than if Eligible Customers had always remained with the Utility. At the same time, the Utility retains the obligation to serve at embedded cost rates any new load entering its service territory, any additional load attributable to its existing customers, and returning Eligible Customers, under the Re-entry Provisions**. The Commission Panel finds that the Fair Treatment Principles are still in effect. However, clarification is needed as to whether an obligation to serve might be affected by the self-**

generation by a customer. The Commission Panel also notes that Celgar can access external power markets directly through the FortisBC system, which implies that, in this way, FortisBC is also fulfilling its obligation to serve, although not through the provision of power but through the provision of access to its infrastructure.

In today's evolving energy world FortisBC may find new potential customers who are self-generators other than pulp and paper mills. For instance, businesses that have used natural gas to generate electricity for their own needs may decide to switch to using electricity from FortisBC, there may be new waste incinerators that generate electricity, and there may be other industrial generators operating as independent power producers. Would FortisBC supply electricity to these businesses, and if so, under what conditions and at what price? The eligibility of Celgar to access some of the embedded cost of the FortisBC resource stack, excluding BC Hydro PPA Power, must be considered in this context as well.

The mere status of being a customer who self-generates should not preclude FortisBC from its obligation to serve that customer. Nor does it automatically exempt such customers from accessing some amount of non-PPA embedded cost power. It would be fair that Celgar receive fair treatment within the FortisBC service area vis-à-vis other industrial customers. Yet, self-generators that sell into power markets do have the potential to negatively impact other FortisBC customers by necessitating acquisitions by the utility of power from other sources in order to supply the power the self-generator elects to purchase from the utility while simultaneously selling into the markets. Therefore**, the Commission Panel finds Celgar is entitled to *some* amount of FortisBC's non-PPA embedded cost power when selling power.** But it is unclear what that level should be.

Therefore, the Commission Panel directs FortisBC to consult with all classes of its customers to determine guidelines for the level of non-PPA embedded cost power to which eligible self-generation customers should be entitled. Draft guidelines should be delivered to the Commission for approval by March 31, 2012. Upon approval by the Commission, such guidelines would be used by FortisBC in negotiating GSAs with its eligible self-generating customers. Customers to be included in the consultations should include existing, returning, or new customers,

including Celgar and other identified Eligible Customers.

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.

Who pays for the incremental power purchases?

Having now determined that FortisBC should preserve the benefits of its resource stack for all of its customers and that Celgar may have a right to a portion of those benefits, the Commission Panel will consider a mechanism for apportioning the recovery of incremental power purchase costs that result from FortisBC supplying power to Celgar when Celgar is selling power not in excess of its load. For clarity, the issue is the recovery of the costs of serving Celgar above its entitlement to embedded cost service. The diagrams below serve to clarify this.

Figure 2: Resources serving Celgar's Mill Load when Celgar is selling power.

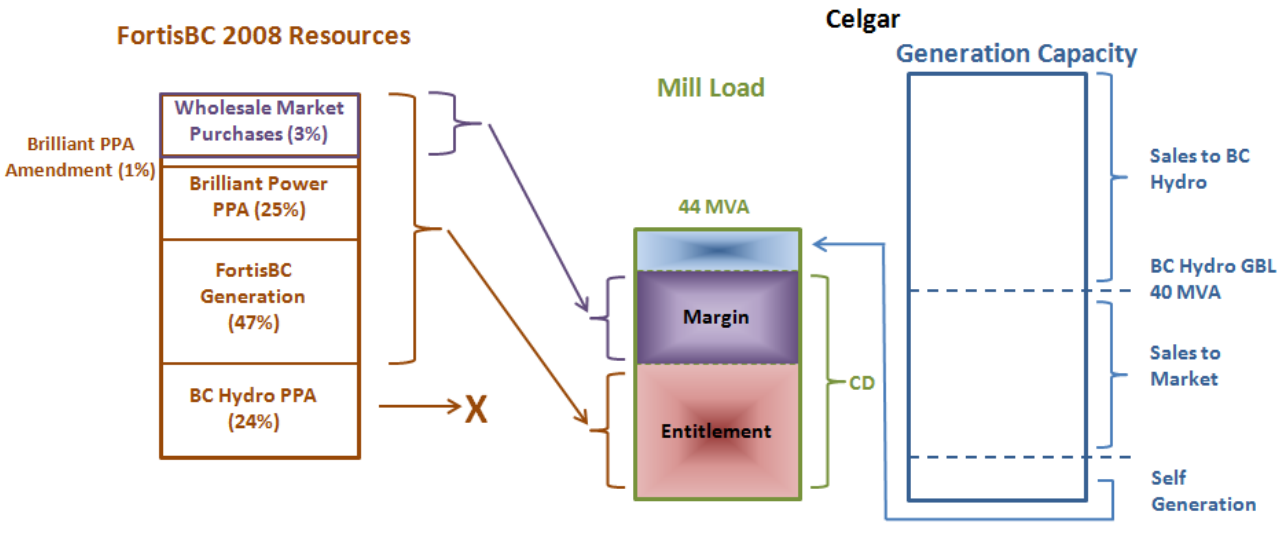
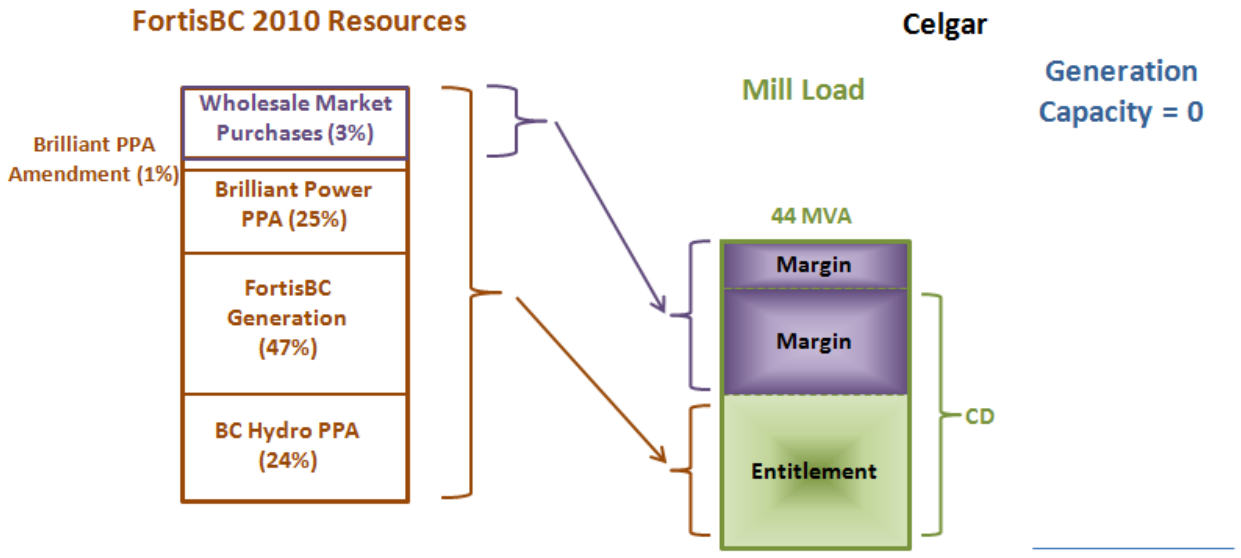


Figure 3: Resources serving Celgar's Mill Load when Celgar is not generating power



Celgar's mill load is served by a combination of:

(i) Celgar's own generation;

(ii) FortisBC supply at embedded cost rates to the extent determined by the application of the APA principles (the Entitlement); and

(iii) additional supply from FortisBC (the Margin).

The Commission Panel earlier determined that BC Hydro PPA Power may not be sold to Celgar under the circumstances illustrated by Figure 2.

In the RDA decision, FortisBC was directed "to initiate consultations with its industrial customers with a goal to introduce a stepped rate for transmission service similar to RS 1823 of BC Hydro" (RDA Decision, p. 65). The Commission Panel considers that a stepped rate could be an appropriate mechanism for recovering the costs of supply power to serve the Margin. Accordingly, **FortisBC is directed to submit an application to the Commission by May 31, 2012 for a two-tier stepped transmission rate to reflect conservation objectives.** The rate for the second tier should reflect the long term marginal cost of power from sources other than PPA Power. Any service above the amounts that Eligible Customers are entitled to at embedded cost rates under the Re-entry

provisions of the APA should be subject to the second tier rate. The two-tier rate would be included in Celgar's rate when its entitlement to FortisBC embedded cost power has been determined.

When these new rate structures are in effect, the Commission Panel expects that Celgar will be paying its full and fair share of the cost to serve its load. In these circumstances it is reasonable to assume that Celgar will be making a positive contribution as long as the incremental impact on the cost of the FortisBC's resource stack is less than the Celgar contribution towards the system costs.

In summary, all FortisBC customers share in the costs of power up to the amounts of entitlement of embedded cost power for eligible self-generators. Above these amounts costs are covered by the Eligible Customers such as Celgar who will either pay the second tier conservation rate or will have purchased the power directly from a third party and wheeled it though the FortisBC system under the Open Access Transmission Tariff. The second tier conservation rate will be sufficient to cover incremental power purchase costs that result when customers such as Celgar are selling power.

3.2.4 Contract Demand and Access to Non-Firm Power

3.2.4.1 Background

Celgar has requested "access to non-firm power above the Contract Demand pursuant to a brokerage arrangement that recognizes the non-firm nature of such commitment and that reflects FortisBC's earlier revenue projections filed with the Commission." (Exhibit B1-1, p. 2)

Until January 2, 2011 Celgar was being billed for service above its contract demand by means of an electricity supply brokerage agreement attached to an unsigned GSA. In the RDA Decision, the Commission determined that Celgar was ineligible to take power under RS 33, in part because it did not have a signed agreement with FortisBC, and recommended that:

> "FortisBC and Celgar reconsider the options available for designing a practical and workable rate schedule for Celgar. For instance, a stand-by rate similar to that offered by BC Hydro might still be an option." (RDA Decision, p. 67).

In considering Celgar's request, the Commission Panel will examine whether any offering of non-firm service can be distinguished from firm service on the basis of the characteristics of the FortisBC transmission system and resource stack, namely the availability of supply and the transmission system's reliability in delivering it. Then the Commission Panel will determine whether Celgar's proposed non-firm rate appropriately reflects the cost of obtaining and delivering this supply.

3.2.4.2 Positions of Parties

Celgar requests that "the Commission find that purchases in excess of 8,000 kVA (pending and subject to establishment of a FortisBC GBL) should be non-firm purchases, and also find that the rates and terms and conditions of service for such non-firm purchases are as provided for in either the 2000 brokerage agreement or the draft 2010 brokerage agreement." (Celgar Final Submission, p. 18)

Celgar goes on to submit that:

> "If the Commission concludes in these proceedings that non-firm service should continue, on the same rates and terms and conditions of service upon which that service was being provided prior to January 2, 2011, the Commission would need only to consider the contract demand to apply for billing purposes." (Celgar Reply Submission, para. 20)

Celgar states that a demand related charge for a non-firm service by FortisBC should be rejected because FortisBC has not provided any evidence to support that such a demand related charge follows cost causation principles. Celgar also refers to past experience, stating that a demand

related charge has never been part of a rate for non-firm service before and that BC Hydro's standby rate RS 1880 does not include a demand related charge (Celgar Final Submission, pp. 18-19).

Celgar states that the 2000 brokerage agreement and the 2010 draft brokerage agreement required that Celgar pay all actual costs incurred by FortisBC to supply power to Celgar in excess of Celgar contract demand, plus an administration fee (Celgar Final Submission, p. 19).

FortisBC states that it believes that the rates for all utility services should be set to recover costs related to the service provided. Further, it does not agree that non-firm service should attract no demand related charges. FortisBC goes on to submit that neither the 2000 brokerage agreement, nor the draft 2006 version attached to RS 33 adequately recovered all of the costs to serve Celgar, including the infrastructure costs. With regards to BC Hydro's standby rate RS 1880, FortisBC states that this rate is layered over an underlying rate, either RS 1823, 1825, 1827 or 1852 and that demand charges still apply:

> "The lack of a Demand Charge on the Standby Rate only means that Demand that exceeds the highest Demand set during the previous billing period, when reached during the period when the customer elects to take service on the Standby Rate, will not impact the current or future billing." (Exhibit B2-11, FBC Response to Celgar 1.9.2).

FortisBC argues that "there is no such right [to non-firm service] in the absence of either (a) a contract permitted by an otherwise applicable rate schedule and (by definition) specifically agreed between the utility and customer, or (b) meeting the terms of a standby rate schedule which, in FortisBC's case does not exist." (FortisBC Final Submission, para. 36)

In its Final Submission FortisBC provides several quotes from the testimony given in the RDA Proceedings that indicate that FortisBC does not draw a distinction between firm and non-firm demand from a transmission planning perspective and that all demands are considered to be firm for the purposes of system planning (FortisBC Final Submission, pp. 17 - 18).

FortisBC submits that "In advancing its arguments about 'non-firm' service, Celgar proceeds on assumptions at odds with the reality of the service that FortisBC provides" (FortisBC Final Submission, para. 40). FortisBC indicates that "In 2011, FortisBC covered Celgar's needs every time that that Celgar's demand spiked, even though those needs repeatedly shot well beyond the level that Celgar characterizes as "firm" (FortisBC Final Submission, para. 40 (d)). FortisBC then goes on to describe the transmission facilities serving Celgar:

> "Celgar has the particular assurance that in normal operations, one of two transmission lines is dedicated for the use of Celgar facility. The likelihood of not receiving service from FortisBC is very small [and] that small probability of not receiving service is no higher than for customers who have what Celgar might characterize as "firm" service: "firm" customers enjoy no guarantee that distinguishes them from "non-firm" customers in this regard." (FortisBC Final Submission, paras. 40(e), (f))

FortisBC summarizes that there is no distinction in the reliability of service to any of its customers:

> "In reality, the level of service FortisBC offers to all its customers (whether they describe their needs as "firm" or "non-firm") is comparable, and in the case of Celgar in particular (being fed from two separate and otherwise lightly loaded lines) highly reliable. Simple calling service "non-firm," does not make it so" (FortisBC Final Submission, para. 38).

Celgar points to the testimony of FortisBC expert witness, Mr. Saleba, during the RDA Proceeding as evidence that firm demand, and not non-firm demand, drives system planning:

> "… typically non-firm sales do not attract firm commitment for wires. You don't build around non-firm commitments. It's typically the firm commitments that drive the transmission and distribution planning. (2009 RDA proceeding, Transcript Volume 2, page 303, line 25 to 29 page 304, line 3)"
>
> (Celgar Reply Submission, para. 39)

Celgar goes on to state that the N-1 planning criteria, as established by WECC (WECC Standard TPL-001-0.1 System Performance under Normal Conditions and WECC Standard BAL-STD-2-01

Operating Reserves), do not include all customer loads and that, therefore, some loads are of a lower quality and do not need to be met in the event of an N-1 contingency (Celgar Reply Submission, p. 17, para. 39). The Commission Panel notes that Section R1 of WECC Standard TPL-001-09.1 states that:

> "The Planning Authority and Transmission Planner shall each demonstrate through a valid assessment that its portion of the interconnected transmission system is planned such that, with all transmission facilities in service and with normal (pre-contingency) operating procedures in effect, the Network can be operated to supply projected customer demands and projected Firm (non-recallable reserved) Transmission Services at all Demand levels over the range of forecast system demands ..." (emphasis added)

Celgar submits that the terms and conditions, rather than the physical characteristics, define the service provided and cites BC Hydro's standby service RS 1880 as being a lower quality service than that provided under RS 1823 (Transmission Service – Stepped Rate) (Celgar Reply Submission, para. 34).

Celgar submits that:

> "From a transmission planning perspective, in considering the matters before the Commission in this proceeding, the Commission needs only to recognize that terms and conditions of service can be relevant to transmission planning and that some customer loads need not be included in mandatory reliability criteria. It is then reasonable to assume that costs of service may be different for "firm" and "non-firm" service. (Celgar Reply Submission, para. 39)

The Commission Panel notes that in 2010 FortisBC changed its system planning criteria to be based on recorded demand at the Celgar facility:

> "With the exception of June 2010, Celgar's actual demand on the FortisBC system has exceeded 8 MVA every month since the beginning of 2007 … Correspondingly, in 2010, FortisBC System Planning commenced using 40 MW for the Celgar load, in recognition of the fact that many times in previous years the actual recorded peak demand at the facility was much greater than the 16 MW value which had been used previously." (FortisBC Final Submission, para. 50)

COMMISSION DETERMINATION

The Commission Panel notes that FortisBC changed its system planning criteria in 2010 to be based on Celgar's actual historical demands, rather than on 16 MVA that was the contract demand in the 2000 GSA. The record on whether this change was done after consultations with Celgar on its firm requirements is incomplete and therefore the Commission Panel is unable to ascertain whether FortisBC proceeded unilaterally. The Commission Panel considers that, if the two transmission lines serving Celgar are lightly loaded, the outcome of its system planning will likely be unaffected by whether 16 MVA or actual historical demand were used as the load remains below capacity. Nevertheless, the Commission Panel considers that, just as FortisBC submits that "calling service non-firm does not make it so", FortisBC should not significantly alter the amount of firm service used in system planning without consulting the customer affected.

In regards to the recovery of the costs of providing non-firm service, the Commission Panel agrees with FortisBC that these costs should include not only the costs of obtaining additional supply on the margin, but also the costs of the infrastructure providing the capacity to deliver the energy, notwithstanding that such services may be curtailed (FortisBC Final Submission, paras. 78-81) .

FortisBC is hereby directed to design a standby rate and describe how this rate takes account of its system planning criteria. It should be submitted to the Commission for approval by May 31, 2012. The Commission Panel contemplates that this rate will be offered in conjunction with RS 31 and that the demand charge of RS 31 will continue to apply to the billing demand as determined by the standby rate. In this regard, the Commission Panel considers that BC Hydro's RS 1880 is one example of a standby rate whose application appropriately recovers the costs of providing the service in BC Hydro's service area. This could serve as a model for FortisBC to consider in designing its proposed rate. The standby rate would be the means through which FortisBC would recover its costs associated with the infrastructure used to provide service to Celgar.

In regards to the level of firm versus non-firm service, the Commission Panel makes no determination and leaves it to the parties to negotiate. In the absence of such an agreement, the

various directives and rates provided for in this Decision will govern the relationship between Celgar and FortisBC.

4.0 CONCLUSIONS

4.1 Conclusions Regarding FortisBC's Concerns with Establishing a GSA with Celgar

The Commission Panel considers that it has addressed in enough detail the four issues identified by FortisBC and previously summarized in Section 3.2 that are preventing it and Celgar from concluding a GSA.

Regarding the first issue:

> "The conditions under which FortisBC can continue to access BC Hydro PPA power with respect to sales of power to Celgar,"

the Commission Panel has determined, in Section 3.2.2 , that Celgar will not be permitted to access PPA Power while it is selling power.

FortisBC's second issue has been dealt with in Section 3.2.3:

> "Whether FortisBC should consider its own generation, along with BC Hydro PPA power and other components of its resource stack to be resources that should not be exposed to arbitrage",

where the Commission Panel has determined that FortisBC should preserve the benefits of its resource stack for all of its own customers including Eligible Customers as defined under the terms of the APA agreement.

The Commission Panel found that Celgar is entitled to *some* amount of FortisBC's non-BC Hydro PPA embedded cost power when selling power, but it is unclear what that level should be. Therefore, the Commission directed FortisBC to consult with all classes of its to determine guidelines for the level of non-BC Hydro PPA embedded cost power to which eligible self-generator customers should be entitled. Such guidelines, once approved, will then be used by FortisBC to negotiate GSAs with its eligible self-generator customers.

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.

Section 3.2.3 also addresses the third issue of the recovery of the incremental power purchase costs from customers by directing the creation by FortisBC of a two-tier stepped transmission rate to reflect conservation objectives.

In Section 3.2.4, the Commission Panel addresses FortisBC's fourth issue:

> "Agreement on a suitable method for recovering the costs associated with the infrastructure used to serve Celgar."

the Commission Panel directs FortisBC to design a standby rate to be offered in conjunction with RS 31 and describe how this rate takes account of its system planning criteria.

The Commission Panel finds that its direction regarding the establishment some level of service at non-BC Hydro PPA Power embedded cost for Celgar, along with a two-tier rate structure and standby rate, provides enough certainty to Celgar regarding its power costs to allow it to make decisions regarding the extent to which it will self-supply its mill load. Referring to Figure 2, it is evident that Celgar is free to sell all or a portion of its generation below the BC Hydro GBL into the market and supply its mill from FortisBC resources, not including BC Hydro PPA Power.

Under the rates that the Commission Panel has directed FortisBC to implement, a FortisBC GBL should not be required.

As previously indicated, FortisBC and Celgar are encouraged to negotiate a mutually acceptable GSA with terms that could reflect concepts of contract demand, demand

charges, standby fees, contract amounts, brokerage, infrastructure charges, generation baseline, or other similar items and to submit it to the Commission for approval. Such an agreement could reasonably reflect automatic adjustment mechanisms, as considered appropriate by the parties to accommodate changing circumstances over time.

However, in the absence of a GSA FortisBC must continue to serve Celgar under RS 31 which makes no distinction between "firm" and non-firm" service.

4.2 Conclusions Regarding Celgar's Request for Assistance in Establishing a GSA

Celgar seeks the Commission's assistance in establishing a GSA between itself and FortisBC. Celgar seeks a GSA that includes:

1. "a generation baseline (a "GBL") of 1.5 aMW or such other level as may be established in accordance with applicable regulatory parameters delineating self-supply obligation;
2. service at RS 31 or a similar rate based upon rolled-in costs (applicable at all times, including when Celgar sells power above its GBL) that apply to all FortisBC ratepayers;
3. a contract demand equal to Celgar's Mill load, less the GBL established under the agreement, provided that the minimum contract demand must be at least 8 MVa in order to support the Mill's critical environmental functions (the "Contract Demand"); and
4. access to non-firm power above the Contract Demand pursuant to a brokerage agreement that recognizes the non-firm nature of such a commitment and that reflects FortisBC's earlier revenue projections filed with the Commission."

In summary regarding the four matters sought, the Commission has made the following determinations in light of Celgar's requests:

i. The Commission has declined to establish a GBL at any level. It has reaffirmed that FortisBC and Celgar are free to incorporate a GBL into a GSA and to present it to the Commission for approval.

ii. FortisBC is to supply service to Celgar under RS 31.

- Celgar is prohibited from accessing BC Hydro PPA Power while it is selling power.
- FortisBC is directed to develop a rate for Celgar and other self-generators by May

31, 2012 based on RS 31 but excluding BC Hydro PPA Power from its resource stack

- FortisBC is directed to bill Celgar in accordance with RS 31 on an interim and refundable basis beginning March 25, 2011 and ending when the Commission approves the new rate for Celgar that excludes PPA Power from its resource stack, and/or an Agreement forwarded by the parties. Any differences between the interim rate and that ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year
- 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 by March 31, 2012 to the Commission for approval.
- Celgar is entitled to access *some* amount of FortisBC non-BC Hydro PPA embedded cost power when selling power.
- FortisBC is directed to consult with all classes of customer to establish guidelines for determining the level of entitlement to non-BC Hydro PPA embedded cost power by 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 with customers such as Celgar.
- FortisBC is directed to submit an application to the Commission by May 31, 2012 for a two-tier, stepped transmission rate to support conservation objectives that will reflect the long term marginal cost of power from sources other than BC Hydro PPA Power in the second tier. Any service above the amounts that customers are entitled to at embedded cost rates under the Re-entry provisions of the APA should be subject to the second tier rate.

iii. The Commission has not set a contract demand for Celgar. However, FortisBC is directed to design a standby rate to address Celgar's circumstances and describe how this rate takes account of its system planning criteria. It should be submitted to the Commission for approval by May 31, 2012.

iv. As previously indicated FortisBC is to supply service to Celgar under RS 31 which makes no distinction between firm and non-firm service. Therefore, the Commission makes no determination for Celgar's request to access non-firm power.

In view of the foregoing, the Commission denies Celgar's Complaint and does not establish a GSA and accompanying brokerage agreement between Celgar and FortisBC. It leaves it to the parties to negotiate such an agreement having complied with the determinations set out in this Decision. The Commission Panel finds that the FortisBC service to Celgar has not been "unreasonable, unsafe, inadequate, or unreasonably discriminatory", nor is RS 31 as it applies to Celgar "unjust, unreasonable, insufficient, unduly discriminatory or in contravention of [the] *Act*, in regulations or any other law."

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of November 2011.

MICHAEL R. HARLE
PANEL CHAIR/COMMISSIONER

LIISA A. O'HARA
COMMISSIONER

NORMAN E. MACMURCHY
COMMISSIONER

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-188-11

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

and

Zellstoff Celgar Limited Partnership Complaint
Regarding the Failure of FortisBC Inc. and Celgar to Complete a General Service Agreement
and FortisBC's Application of Rate Schedule 31 Demand Charges

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

November 14, 2011

O R D E R

WHEREAS:

A. On October 19, 2010, the British Columbia Utilities Commission (Commission) issued OrderG -156-10 and accompanying Decision in FortisBC Inc.'s (FortisBC) 2009 Rate Design and Cost of Service application;

B. On December 3, 2010, Zellstoff Celgar Limited Partnership (Celgar) applied for a reconsideration of Order G-156-10;

C. On January 12, 2011, the Commission issued Order G-3-11 denying Celgar's reconsideration application. In its Reasons for Decision, the Commission states, in part, that it:

   (i) expects FortisBC and Celgar will move expeditiously to conclude a general service agreement;

   (ii) does not consider a reconsideration application to be a suitable forum to broker a settlement between a utility and one of its customers; and

   (iii) considers that Celgar's recourse should more appropriately be by way of a complaint to the Commission in the event that it cannot reach an agreement with FortisBC;

D. On March 25, 2011, Celgar filed a complaint against FortisBC with the Commission relating to the failure of FortisBC and Celgar to complete a general service agreement, and to FortisBC's application of Rate Schedule 31 (RS 31) demand charges (Complaint);

E. FortisBC responded to that part of the Complaint relating to FortisBC's application of Rate Schedule 31 demand charges by letter dated April 6, 2011, and to that part of the Complaint relating to the establishment of a general service agreement between the parties by letter dated April 15, 2011;

F. Celgar replied to FortisBC's April 6, 2011 letter by letter dated April 13, 2011, and to FortisBC's April 15, 2011 letter by letters dated April 18 and April 26, 2011;

G. By Order G-101-11 dated May 27, 2011, the Commission established an Initial Regulatory Timetable which provided for a written hearing process to hear the Complaint. By Order G-110-11 dated June 28, 2011, the Commission amended the Initial Regulatory Timetable. Both Celgar and FortisBC filed further evidence, which was clarified through one round of Information Requests;

H. On May 31, 2011, FortisBC wrote to the Commission expressing concern over Celgar's refusal to pay its invoices that had been accumulating since January. The ultimate concern of FortisBC is the impact on other customers. As of June 1, 2011, Celgar was allegedly in arrears in excess of $1.007 million. In its June 8, 2011 response, Celgar stated that in the absence of a General Service Agreement RS 31 is not an approved rate and that there is no provision in the *Utilities Commission Act* that grants authority to the Commission to require a customer to pay an amount pending approval of a rate. By letter dated July 11, 2011 the Commission Panel, while expressing concern over the alleged arrears, found that the Amended Regulatory Timetable for the proceeding would allow it to determine the Complaint in a timely way;

I. On August 5, 2011, the Commission Panel requested the parties to address the following three issues in their Final Submissions:

- Does the criterion "subject to written agreement" in Rate Schedules 31 and 33 mean the tariff terms are subordinate to a written agreement or conditional on a written agreement? Are these tariffs invalid if a written agreement is not in place?
- When establishing a fair and reasonable rate or a contract for Celgar, does the Commission's mandate imply that the Commission Panel must also consider rates/contracts afforded to other large scale self-generation customers in British Columbia? If the answer is yes, what sections of the *Act* would be applicable?
- Given that the *CEA* exempted the type of Electricity Purchase Agreements BC Hydro has with its pulp mill customers from Commission oversight, is the establishment of a Generation Baseline for the customers of other regulated utilities under the jurisdiction of the provincial government or within the Commission's mandate? Please reference specific sections of the *Act* to justify your position.

J. Celgar filed its Final Submission on August 15, 2011. FortisBC and BC Hydro filed their Final Submissions on August 22, 2011. Celgar filed its Reply Submission on August 29, 2011. BC Hydro, Celgar and FortisBC filed further submissions between August 31, 2011 and September 2, 2011;

K. The Commission has reviewed the Complaint, the evidence, and the submissions of Celgar, FortisBC, and BC Hydro, all as set out in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission for the reasons stated in the Decision issued with this Order orders that:

1. The Complaint is denied.

2. Celgar is prohibited from accessing BC Hydro Power Purchase Agreement (PPA) Power while it is selling power.

3. Rate Schedule 31 applies to FortisBC service to Celgar.

4. FortisBC is directed to develop a rate for Celgar and other self-generators by May 31, 2012 based on RS 31 but excluding BC Hydro PPA Power from its resource stack.

5. FortisBC is directed to bill Celgar in accordance with RS 31 on an interim and refundable basis beginning March 25, 2011 and ending when the Commission approves the new rate for Celgar that excludes PPA Power from its resource stack, and/or an Agreement forwarded by the parties. Any differences between the interim rate and the rate ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year.

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.

7. Celgar is entitled to some amount of FortisBC non-BC Hydro PPA embedded cost power when selling power.

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 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.

9. FortisBC is directed to submit an application to the Commission by May 31, 2012 for a two-tier, stepped transmission rate to support conservation objectives that will reflect the long term marginal cost of power from sources other than BC Hydro PPA Power in the second tier. Any service above the amounts that customers are entitled to at embedded rates under the Re-entry provisions of the APA should be subject to the second tier rate.

10. FortisBC is directed to design a standby rate to address Celgar's circumstances and describe how this rate takes account of its system planning criteria. It should be submitted to the Commission for approval by May 31, 2012.

11. FortisBC and Celgar are free to incorporate a Generation Baseline into a GSA and submit it to the Commission for approval.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of November 2011.

BY ORDER

M.R. Harle
Commissioner/Panel Chair

REGULATORY PROCESS

On March 25, 2011, Celgar filed a complaint against FortisBC with the Commission relating to the failure of FortisBC and Celgar to complete a general service agreement, and on FortisBC's application of Rate Schedule 31 demand charges (the Complaint).

The Commission received submissions from FortisBC regarding the Complaint on April 6, 2011 and April 15, 2011. Celgar replied to the two FortisBC submissions on April 13, 2011 and April 26, 2011 respectively.

By Order G-101-11 dated May 27, 2011 the Commission established a written hearing process to hear the Complaint. Both Celgar and FortisBC filed further evidence, which was clarified through one round of Information Requests.

British Columbia Hydro and Power Authority (BC Hydro) was the only Intervener in the proceeding. On May 27, 2011, Commission Staff filed the exhibits from the RDA Proceeding for the record in this proceeding. (Exhibit A2-1)

On May 27, 2011, Commission Staff also filed the exhibits from the Celgar Application for Reconsideration of Order G-156-10 for the record in this proceeding. (A2-2)

On May 31, 2011, FortisBC wrote to the Commission expressing concern over Celgar's refusal to pay its invoices that had been accumulating since January. The ultimate concern of FortisBC is the impact on other customers. As of June 1, 2011, Celgar was in arrears in excess of $1.007 million (B2-3). In its June 8, 2011 response, Celgar stated that in the absence of a General Service Agreement RS 31 is not an approved rate and that there is no provision in the *UCA* that grants authority to the Commission to require a customer to pay an amount pending approval of a rate (B1-7). After considering the submissions the Commission Panel, while expressing concern over the alleged arrears, found that the Amended Regulatory Timetable for the proceeding would allow it to determine Celgar's complaint in a timely way.(Exhibit A-6)

On August 5, 2011, the Commission Panel requested the parties to address the following three issues in their Final Submissions:

- Does the criterion "subject to written agreement" in Rate Schedules 31 and 33 mean the tariff terms are subordinate to a written agreement or conditional on a written agreement? Are these tariffs invalid if a written agreement is not in place?

- When establishing a fair and reasonable rate or a contract for Celgar, does the Commission's mandate imply that the Commission Panel must also consider rates/contracts afforded to other large scale self-generation customers in British Columbia? If the answer is yes, what sections of the *Act* would be applicable?

- Given that the *CEA* exempted the type of Electricity Purchase Agreements BC Hydro has with its pulp mill customers from Commission oversight, is the establishment of a Generation Baseline for the customers of other regulated utilities under the jurisdiction of the provincial government or within the Commission's mandate? Please reference specific sections of the *Act* to justify your position. (Exhibit A-9)

Celgar, FortisBC and BC Hydro filed Final Submissions on August 15 and August 22, 2011 respectively. Celgar filed its Reply Submission on August 29, 2011. BC Hydro, Celgar and FortisBC filed further submissions between August 31, 2011 and September 2, 2011. The Commission accepted the submissions for consideration even though they were received outside the time provided for in the Regulatory Timetable. (Exhibit A-10)

LIST OF ACRONYMS

2000 GSA	General Service Power Contract with FortisBC dated December 20, 2000
Act, UCA	*Utilities Commission Act*
APA	1999 Access Principles Application
BC Hydro	British Columbia Hydro and Power Authority
BC Hydro PPA Power	BC Hydro Power Purchase Agreement power taken under Rate Schedule 3808
Brilliant PPA	Power Purchase Agreement between FortisBC and Brilliant Power Corporation dated April 4, 1996 and expiring in 2056
CEA	*Clean Energy Act*
Celgar	Zellstoff Celgar Limited Partnership
Commission	British Columbia Utilities Commission
FortisBC	FortisBC Inc.
GBL	generation baseline
GSA	General Service Agreement
OATT	Open Access Transmission Tariff
PPA	Power Purchase Agreement
RDA Decision	Reasons for Decision for Order G-156-10, dated October 19, 2010
RDA Proceeding	FortisBC 2009 Rate Design and Cost of Service Analysis proceeding
RS 31	Rate Schedule 31 - Large Commercial Transmission Service
WKP	West Kootenay Power [now FortisBC]

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

and

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

EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION
COMMISSION DOCUMENTS	
A-1	Letter dated May 27, 2011 – Commission Order G-101-11 with Reasons for Decision, Regulatory Timetable, Notice of Complaint and Proceeding
A-2	Letter dated May 27, 2011 – Notice of Panel Appointment
A-3	Letter dated June 3, 2011 – Commission request Zellstoff-Celgar respond to FBC request Exhibit B2-3
A-4	Letter dated June 23, 2011 – Commission response to Zellstoff-Celgar request
A-5	Letter dated June 28, 2011 – Order G-110-11 amending the Regulatory Timetable to extend the filing date of FortisBC Evidence
A-6	Letter dated July 11, 2011 – Commission response regarding Zellstoff-Celgar Alleged Arrears
A-7	Letter dated July 19, 2011 – Commission Information Request No 1 to Zellstoff-Celgar
A-8	Letter dated July 19, 2011 – Commission Information Request No 1 to FortisBC
A-9	Letter dated August 5, 2011 – Issues for Final Submissions
A-10	Letter dated September 2, 2011 – Comments Regarding Submissions and Closing record of the Proceeding
A2-1	Letter dated May 27, 2011 – Commission Staff filing FortisBC Inc. 2009 Rate Design and Cost of Service Exhibits entered into evidentiary record

EXHIBIT NO.	DESCRIPTION
A2-2	Letter dated May 27, 2011 – Commission Staff filing Zellstoff-Celgar Limited Partnership Application for Reconsideration of FortisBC Inc. 2009 Rate Design Decision and Order G-156-10 proceeding Exhibits

ZELLSTOFF-CELGAR DOCUMENTS

B1-1	**ZELLSTOFF CELGAR LIMITED PARTNERSHIP (CELGAR)** Letter Dated March 25, 2011 – Complaint Regarding the Failure of FortisBC and Celgar to Complete a General Service Agreement and FortisBC's Application of Rate Schedule 31 Demand Charges
B1-2	Letter Dated April 13, 2011 - Celgar Submitting comments regarding FBC letter of April 6, 2011
B1-3	Letter Dated April 18, 2011 - Celgar Submitting comments regarding FBC letter of April 15, 2011
B1-4	Letter Dated April 26, 2011 - Celgar Submitting comments regarding FBC letter of April 15, 2011 (the Second FortisBC Letter)
B1-5	Letter Dated May 31, 2011 – Celgar Submitting confirmation of notice to participants
B1-6	Letter Dated June 1, 2011 – Celgar Submitting response to GBL Information Request
B1-7	Letter Dated June 8, 2011 – Celgar Submitting responses to Exhibit A-3
B1-8	Letter Dated June 8, 2011 – Celgar Submitting request for amendment to the regulatory timetable
B1-9	Letter Dated June 14, 2011 – Celgar Evidence Submission
B1-10	Letter Dated July 19, 2011 - Celgar Submitting Information Request No. 1 to FBC
B1-11	Letter Dated August 2, 2011 - Celgar Response Submitting Information Request No.1
B1-12	Letter Dated August 3, 2011 - Celgar Submitting request for extension

EXHIBIT NO.	DESCRIPTION

FORTISBC INC. DOCUMENTS

B2-1	**FORTISBC INC. (FBC)** Letter Dated April 6, 2011 - Submitting comments regarding Celgar letter of March 25, 2011
B2-2	Letter Dated April 15, 2011 - FBC Submitting comments regarding Celgar complaint
B2-3	Letter Dated May 31, 2011 – FBC Submitting comments regarding Customer's account arrears
B2-4	Letter Dated June 17, 2011 – FBC Submitting Reply to Exhibit B1-7
B2-5	Letter Dated June 24, 2011 – FBC Request for change in Regulatory Timetable
B2-6	Letter Dated July 5, 2011 – FBC Evidence
B2-6-1	FBC Appendices to its Evidence filed July 6, 2011
B2-7	Letter Dated July 14, 2011 - FBC Submitting Response regarding Celgar Arrears
B2-8	Letter Dated July 19, 2011 - FBC Submitting Information Request No. 1 to Celgar
B2-9	Letter Dated August 2, 2011 - FBC Responses to Commission IR No 1
B2-10	Letter Dated August 2, 2011 - FBC Responses to Celgar IR No 1
B2-11	Letter Dated August 9, 2011 - FBC Responses to Celgar IRs 9.1-9.6

INTERVENER DOCUMENTS

C1-1	**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BCH)** Via Email – Request for Intervener Status by Janet Fraser