



IN THE MATTER OF

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

**CONTRACTED GENERATOR BASELINE GUIDELINES
AND RECONSIDERATION AND VARIANCE OF ORDER G-19-14**

DECISION

October 30, 2015

Before:

**L. A. O'Hara, Panel Chair/Commissioner
B. A. Magnan, Commissioner
R. D. Revel, Commissioner**

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EXECUTIVE SUMMARY

This decision addresses an application by the British Columbia Hydro and Power Authority (BC Hydro) that relates to the approval of Contracted Generator Baseline (GBL) Guidelines (Guidelines) and reconsideration of British Columbia Utilities Commission (Commission) Order G-19-14 Directive 2 regarding Tariff Supplement No. 74 (TS 74). The stated purpose of the Guidelines is to outline the framework that BC Hydro uses in setting a Contracted GBL for customers with new or incremental self-generation facilities who are considering entering into a prospective Electricity Purchase Agreement (EPA) or Load Displacement Agreement (LDA) with BC Hydro. Under EPAs and LDAs, BC Hydro provides self-generating customers with financial payments in exchange for these customers generating more energy than they would otherwise. BC Hydro defines the phrase “incremental or new” electricity as additional electricity generated at existing idle (underutilized) generation facilities, upgrades to existing generation capacity, or a new generator.

In addition to BC Hydro, key stakeholders affected by this decision are BC Hydro’s self-generating customers and other ratepayers. The Guidelines are intended to be applicable on a prospective basis only. Key issues considered were:

- Will the Guidelines assist the Commission in the review of an EPA filed under section 71 of the *Utilities Commission Act* (UCA) or an LDA in the context of the demand-side measure (DSM) expenditure schedule filed under section 44.2 of the UCA;
- Will the GBL methodology mitigate the risk to other ratepayers due to price differential between the embedded-cost rate and the negotiated contract price for EPAs and LDAs;
- Will the Guidelines assist a self-generating customer when considering the prospect of an EPA or LDA with BC Hydro and in negotiating the EPA or LDA;
- Will the Guidelines provide self-generator customers with a recourse to the Commission, especially in regards to fairness concerns;
- Overall, are the Guidelines adequate, appropriate, effective and sufficiently transparent for their stated purposes;
- Applicability of the Guidelines; and
- Where should the Guidelines reside?

The Panel finds that in the case of customers with existing self-generation, the Guidelines do establish a satisfactory framework to mitigate the risk to other ratepayers. While acknowledging that in this decision it should not make a public interest determination on any particular Contracted GBL, EPA or LDA, the Panel also finds that after certain amendments the Guidelines will provide an adequate and transparent framework to assist the Commission in the review of future EPAs. Finally, the Panel finds that while the Guidelines effectively inform the self-generating customers, without official Commission approval, they would fail to provide any recourse to a prospective customer to raise concerns with the Commission related to the consistent application of the Guidelines during the negotiating process.

With regard to the applicability of the Guidelines, the Panel determines that the Guidelines will apply to both transmission service and general service customers on a prospective basis. Furthermore, they apply only to

customers with existing self-generation - not to current customers with no existing self-generation or new customers with self-generation. The Panel has concerns over the limited applicability of the Guidelines and the possibility that a Contracted GBL for a new self-generator could be set at zero and result in harm to other ratepayers. The Panel recommends that BC Hydro take time to address new self-generation and consider alternative approaches. The Panel also recommends that future EPAs to be filed with a zero Contracted GBL to include a comprehensive explanation.

Regarding the question where the Guidelines should reside, the Panel agrees with BC Hydro that there are concerns and risks related to attaching the Guidelines to TS 74. The Panel also notes that BC Hydro has agreed to and is directed to file the pro-forma Billing Formulae with the Commission for customers that have EPAs containing a Contracted GBL. Therefore, the Panel determines that the purpose of the Guidelines will be adequately met if they are approved by the Commission and appended to the order concluding this proceeding. In addition, the Panel finds that it would be beneficial to have the Guidelines reside in the additional six places identified by BC Hydro, such as BC Hydro's website, package materials provided to prospective customers and as an attachment to future section 71 and 44.2 UCA filings.

By way of a summary, the Panel will give the final approval to the Guidelines with the amendments directed in this decision after receipt of the updated Guidelines. BC Hydro is directed to file the amended Guidelines within 30 days of the date of the decision and order. Furthermore, BC Hydro is directed to use the Guidelines when negotiating with those existing self-generating customers who express interest in entering into a contract concerning incremental or new self-generation output.

To arrive at these findings, the Panel gained perspective by considering the genesis of the Application and the GBL concept as follows.

Genesis of the Application

The issue concerning BC Hydro's self-generating customers with idle generation was first addressed by the Commission in Order G-38-01 which introduced the GBL as a way to safeguard current BC Hydro ratepayers while allowing self-generating customers to realize benefits from their idle self-generation. The order was intended as a solution to short-term power sales due to prevailing lucrative export markets that time. In 2009, the concept of these short-term sales was starting to be applied to longer term energy supply contracts between BC Hydro and its self-generator customers.

As a result, on November 27, 2009, the Commission issued a letter to BC Hydro requesting it to develop guidelines for the establishment of GBLs to achieve greater transparency, efficiency and consistency in the determination and development of GBLs. Approximately two and half years later, BC Hydro filed the June 20, 2012 Information Report in response to the Commission's 2009 letter. Because BC Hydro did not seek approval from the Commission for the guidelines contained in the report, the Commission by Order G-19-14 directed BC Hydro to file an application for approval of updated Contracted GBL Guidelines to be incorporated into TS 74.

Generator Baseline Concept

The Panel in its review concentrated on the GBL approach, although this concept appears to be unique to British Columbia. The Panel did not consider other alternatives to GBLs for customers with existing self-generation. However, the Panel recommends alternatives for BC Hydro to consider for new generation.

1.0 INTRODUCTION

On December 12, 2014, the British Columbia Hydro and Power Authority (BC Hydro) submitted an application for approval of Contracted Generator Baseline Guidelines (Guidelines) in compliance with Directive 2 of the British Columbia Utilities Commission (Commission) Order G-19-14 as varied by Order G-106-14 (GBL Application) and the Phase 2 reconsideration and variance of Order G-19-14 established by Order G-106-14 (Reconsideration) addressing BC Hydro's proposal for where the Guidelines should reside (Application).

1.1 Regulatory process and intervention

Prior to filing the Application, BC Hydro consulted the Association of Major Power Customers (AMPC), FortisBC Inc. (FortisBC or FBC), and certain individual customers with self-generation. BC Hydro also held a workshop on November 20, 2014 and provided draft guidelines for comment.

After the Application was filed, the Commission on December 16, 2014 by Order G-199-14, established a Regulatory Timetable for the initial review of the Application, including one round of information requests (IRs) and intervener submissions on further process.

The following registered as interveners for the review of the Application:

- Commercial Energy Consumers Association of British Columbia (CEC)
- B.C. Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA)
- Zellstoff Celgar Partnership Limited (Celgar)
- FortisBC
- British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO)
- AMPC
- West Fraser Mills Ltd. (West Fraser)

On January 20, 2015, BC Hydro filed a letter which questioned the nature of Celgar and FortisBC's respective interests in the Application, as well as the extent of their anticipated involvement in the proceeding and the nature of the issues they intend to pursue. In response to a letter filed by BC Hydro questioning the status of certain interveners, the Commission, by letter dated January 29, 2015, asked interveners to not file their IRs for Friday, January 30, 2015, as directed by Order G-199-14.

On January 30, 2015, by Order G-12-15, the Commission established a Procedural Conference for February 5, 2015 and suspended the Regulatory Timetable established by Order G-199-14 to allow for consideration of various matters at the Procedural Conference.

Pursuant to the Procedural Conference, and by way of Order G-18-15 dated February 12, 2015, the Commission found that continued intervener status to Celgar and FortisBC was appropriate, and requested submissions on a draft General Issues List appended to Order G-18-15 as the next step.

The Panel considered all submissions regarding the draft General Issues List and set out a final General Issues List in Order G-42-15 dated March 27, 2015. The Commission also lifted the suspension of the Regulatory Timetable directed by Order G-199-14. The dates in the Regulatory Timetable were further extended by way of Order G-64-15 dated April 23, 2015.

By May 19, 2015, in accordance with the Regulatory Timetable, the registered interveners, with the exception of FortisBC and West Fraser, made submissions regarding further process for the remaining review of the Application. Celgar, in its submission on further process, also sought a direction from the Commission requiring BC Hydro to provide responsive answers to certain Celgar IRs that BC Hydro declined to address. On May 25, 2015, BC Hydro filed its reply submission on further process and responded to Celgar's request. On May 25, 2015, AMPC also responded to Celgar's request.

By Order G-96-15 dated June 4, 2015, the Commission determined that the review of the Application would proceed by way of a written hearing as set out in the Regulatory Timetable which allowed for a second round of IRs followed by written submissions. Order G-96-15 also denied Celgar's request that the Commission direct BC Hydro to respond to certain unanswered IRs.

2.0 THE CONTRACTED GBL GUIDELINES APPLICATION AND THE REVIEW PROCESS

2.1 Approvals sought by BC Hydro

In the Application, BC Hydro seeks the following determinations or directives:

- BC Hydro's Contracted GBL Guidelines Application complies with Directive 2 of Order G-19-14 as varied by Order G-106-14;
- the Contracted GBL Guidelines will not be incorporated into TS 74;
- the Contracted GBL Guidelines, as applied for by BC Hydro, provide an appropriate framework within which the Commission will be able to assess whether future Electricity Purchase Agreements (EPA) and Load Displacement Agreements (LDA) between BC Hydro and its self-generating customers are in the public interest; and
- BC Hydro is directed to file the Contracted GBL Guidelines with any future BC Hydro application with respect to the electricity purchase agreements with a self-generating customer under section 71 of the UCA or an expenditure schedule that includes expenditures on load displacement agreements under section 44.2 of the UCA.¹

BC Hydro believes that the central issue for the Commission's review of the GBL Application is whether the Guidelines are adequate in terms of providing sufficient information concerning BC Hydro's business practices for developing a Contracted GBL to be used in an EPA or LDA between BC Hydro and its self-generating customer and to express an opinion on the adequacy to serve their purposes.²

¹ Exhibit B-1, Attachment 1, draft order, p. 2.

² Exhibit B-1, p. 32 [emphasis added].

2.2 The Contracted GBL Guidelines Application

In the GBL Application, BC Hydro states that the purpose of the GBL Guidelines is to outline the criteria and procedures that BC Hydro uses in setting a Contracted GBL for customers with new or incremental self-generation facilities who are considering entering into a prospective EPA or LDA.³ BC Hydro has provided customers with financial payments, under EPAs and LDAs, in exchange for these customers generating more energy than they would otherwise. BC Hydro will provide funding to a customer only to generate energy that is incremental to the amount of energy the customer normally generates without the funding, as represented by the Contracted GBL. Thus, the Contracted GBL identifies the amount of self-generation output that BC Hydro will not incentivize pursuant to an LDA or procure pursuant to an EPA.⁴

BC Hydro states that the Guidelines neither propose a new use, nor new principles for determining Contracted GBLs.

2.3 Summary of the proposed Guidelines

The Guidelines are appended as Attachment 2 to the Application and summarized as follows: the Contracted GBL Guidelines describe the criteria and procedures that BC Hydro uses in setting a Contracted GBL for a transmission service or general service customer that has self-generation facilities and is considering entering into a prospective EPA or LDA with BC Hydro.

The Contracted GBL is used in an LDA or EPA between BC Hydro and a customer with self-generation facilities to identify the incremental or new electricity that BC Hydro will incentivize pursuant to the LDA or procure pursuant to the EPA.

A Contracted GBL demarks the amount of electricity that the customer generates for self-supply in current normal operating conditions, and electricity in excess of the Contracted GBL is recognized as incremental or new electricity.

The purpose of the Contracted GBL is to mitigate the risk of arbitrage when BC Hydro incentivizes or procures customer self-generation output pursuant to an LDA or EPA at the same time BC Hydro is selling electricity to the customer at regulated rates pursuant to an electricity supply or service agreement.

The annual Contracted GBL for a customer with existing self-generation facilities is set as follows:

- Will represent the customers self-generation output under current normal operating conditions over a 365 day period⁵ (in MWh or GWh) that the customer normally generates for self-supply adjusted as follows:
 - Force Majeure Events
 - Non-recurring Downtime
 - Self-generation Capacity Increase Projects

³ Exhibit B-7, BCOAPO IR 1.1.3.

⁴ Exhibit B-7, CEC IR 1.6.4.

⁵ The Contracted GBL will be set on the basis of the customer's most recent 365 days, or other period that BC Hydro and the customer agree better represents current normal operating conditions for the customer. BC Hydro and the customer will typically review the customer's self-generation output data for the most recent three years.

- Plant Changes
- Non-recurring Generation.
- The annual Contracted GBL may also refine into seasonal or hourly time period components.
- The Contracted GBL is an express or implied term of an EPA or LDA and has no on-going effect or meaning after the contract terminates or expires.
- An existing Contracted GBL would not be effective for the renewal of an existing EPA or LDA. A new Contracted GBL would be set at the time of the contract renewal and be based on normal operating conditions prevailing at that time.⁶

During the information request process, BC Hydro agreed to revise the definition of **Contracted Generating Unit**.⁷ The original definition referred to a self-generating facility that “might or will be used.”

2.4 Additional information – not included in the Application

BC Hydro provided further information regarding the Contracted GBL in the Application which was not explicitly reflected in the Contracted GBL Guidelines themselves:

- If negotiations fail to yield an agreement, any Contracted GBL determined will have no ongoing effect or meaning.
- BC Hydro defines the phrase “incremental or new” electricity as additional electricity generated at existing idle (underutilized) generation facilities, upgrades to existing generation capacity, or a new generator.⁸
- If entering into an EPA or LDA with a new customer proposing to construct and operate a new industrial facility in the BC Hydro service area (for example, a new LNG facility), BC Hydro states that this would be a challenge given that the facility does not yet exist and there is no historical self-generation output data upon which to base a Contracted GBL. The lack of historical data, however, does not mean that a Contracted GBL of zero would be determined for the project proponent: the same principles of the Contracted GBL Guidelines would be applied in that situation. If BC Hydro wished to incentivize the new customer to produce more self-generation output than it otherwise would, BC Hydro and the customer would need to first determine how much energy the customer will self-generate under normal operating conditions. The question would be whether the proponent would install and operate self-generation in the absence of funding from BC Hydro, and at what level would it generate? The Governments of British Columbia and/or Canada might require the project proponent to include self-generation facilities in the project design as part of an environmental assessment certificate or other major project permit. If the proponent is under no such obligation, BC Hydro might consider the design and operation of similar industrial facilities built elsewhere in the world.⁹

In addition to the Attachment 2 Guidelines, the Application included several other attachments. Among these, Attachment 3, entitled “Transmission Service and General Service Self-Generation in the BC Hydro Service Area”

⁶ Exhibit B-1, Attachment 2, Contracted GBL Guidelines, sections 3.0 and 4.0, pp. 2–3.

⁷ Contracted Generating Unit means a Self-Generation facility that will be used to make self-generation output under a prospective EPA or LDA if BC Hydro and the customer enter into such a contract; BC Hydro Final Submission, pp. 16–17.

⁸ BC Hydro Final Submission, p. 2, fn. 8.

⁹ Exhibit B-1, p. 40.

which sets out the factual context for self-generation in BC Hydro's service area, is of note. BC Hydro states that Attachment 3 is intended to provide background and context for BC Hydro's use of Contracted GBLs and therefore the principles reflected in the Contracted GBL Guidelines.¹⁰

2.5 Legislative framework

The review of the application will take place within a legislative framework that includes relevant sections of the *Utilities Commission Act* (UCA) as well as the Commission Rules for Energy Supply Contracts for Electricity. The specifics of this framework are as follows.

Rate Setting

Section 58 of the UCA provides that the Commission may, on its own motion or a complaint, after a hearing, determine the just, reasonable and sufficient rates to be observed and in force. It further provides that if the Commission makes such a determination, it must, by order, set the rates. Section 58 also provides that the public utility affected by an order under this section must amend its schedules in conformity with the order, and file amended schedules with the Commission.

Section 59(1) stipulates that a public utility must not make, demand or receive:

- (a) An unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or
- (b) A rate that otherwise contravenes the UCA, the regulations, orders of the commission or any other law.

Section 60 specifies the matters the Commission must consider in setting the rate.

Energy supply contracts

An EPA is an energy supply contract (ESC) as defined in section 68 of the UCA:

‘energy supply contract’ means a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of this Act.

Section 71 of the UCA sets out the Commission's legislative authority regarding the acceptance of EPAs (referred to as energy supply contracts in section 71). Unless otherwise exempted by the Government of British Columbia, all EPAs must be filed with the Commission for acceptance as being in the public interest.

For clarity, in section 68 of the UCA, “energy” means electricity or natural gas. Accordingly, in this decision, an ESC refers to an energy supply contract for electricity.

¹⁰ Exhibit B-1, p. 4.

Commission Rules for Energy Supply Contracts for Electricity

Appendix A to Commission Order G-61-12 dated May 17, 2012 sets out rules intended to facilitate the Commission's review of ESCs for electricity and proposed energy supply contracts for electricity under section 71 of the UCA. The Commission Rules for Energy Supply Contracts for Electricity (ESC Rules) are made pursuant to section 2(4) of the UCA and section 11 of the *Administrative Tribunals Act*.

The ESC Rules, which are appended to this decision as Appendix C, provide specific guidance regarding the need for an expeditious review, the information that must be included in an application, which parties should be provided notice of the filing, which party is responsible for filing the energy supply contract, what information the Commission shall rely on to determine whether an energy supply contract is in the public interest, the process for determining that disclosure of information is not in the public interest, and the reporting requirements in regard to any amendments and contractual developments.

Load Displacement Agreements

Subsection 44.2(1)(a) describes the nature of the expenditure schedule on demand-side measures to be filed by the public utility. The Commission can accept the schedule if it considers that making the expenditure referred to in the schedule would be in the public interest, or reject the schedule.

Section 44.2(5.1) sets out the factors to be considered when the Commission reviews an expenditure schedule filed by BC Hydro in addition to considering the interest of persons in British Columbia who receive or may receive service from BC Hydro.

3.0 THE GENESIS OF THE APPLICATION

3.1 Regulatory background from 2001 to 2012

3.1.1 Order G-38-01

The issue concerning BC Hydro's self-generating customers with idle generation was first addressed by the Commission in Order G-38-01 which introduced the concept of a Generator Base Line as a way to safeguard current BC Hydro ratepayers while allowing a self-generating customer to realize benefits from its idle self-generation. In other words, the genesis of the GBL concept was this order issued in 2001 in response to a BC Hydro request to the Commission for guidance. BC Hydro sought guidance regarding its duty to serve those of its industrial self-generating customers seeking to sell their self-generation into what at that time was a lucrative export market and to increase their purchase of lower cost power from BC Hydro to run their operations. At the conclusion of the review, BC Hydro accepted that the sale of truly "idle or incremental" generation into the market many not harm other ratepayers as long as any increased take of BC Hydro's electricity was not above the customer's normal historical level. By Order G-38-01, the Commission directed BC Hydro to allow its transmission service customers with idle self-generation capability to sell excess self-generated electricity, provided they did not engage in arbitrage between embedded cost utility service and market prices. BC Hydro was further directed to make every effort to agree on a GBL to establish the normal historical level.

By Order G-17-02, the Commission determined that the program established in 2001 should continue until future circumstances warranted a further review.

3.1.2 Long-term energy supply contracts - 2009

In 2009, the concept of short-term power sales established in Order G-38-01 started to be applied to longer term energy supply contracts between BC Hydro and a customer with self-generation. The notion of a GBL was brought into these contracts. On October 28, 2008, BC Hydro submitted a revised EPA with Tembec Industries Inc. (Tembec) and the Commission, by Order E-16-09, accepted the EPA filing pursuant to section 71 of the UCA. That EPA identified an Annual Generator Baseline for the Tembec plant in the terms of the contract. Further, three of the Bioenergy Call Phase 1 EPAs that BC Hydro filed on February 17, 2009 also have Annual GBLs. In addition, documentation related to the Clean Power Call indicated that a GBL may be required where the customer has a generator that is or has been generating electricity.¹¹

3.1.3 Letter L-106-09

On November 27, 2009, the Commission issued a letter to BC Hydro which stated:

The Commission believes that it may be helpful and timely to develop guidelines for the establishment of GBL's to assist efficiency and consistency in the determination and review of GBL's. Therefore, the Commission requests that as part of its next major EPA filing that involves GBL's or next Long Term Acquisition Plan filing, BC Hydro include draft Guidelines for the determination of GBL's, and the Commission requests that BC Hydro address the questions [20 questions attached to the letter] when it submits the draft GBL Guideline and related discussion.¹²

After letter L-106-09 was issued, the Government of BC enacted the *Clean Energy Act* (CEA) which makes the UCA provision related to filing and review of public utility long-term resource plans inapplicable to BC Hydro. The CEA also exempts BC Hydro from the UCA provisions related to the filing and review of energy supply contracts with respect to contracts arising from specified electricity acquisition processes.

3.1.4 BC Hydro letter dated July 27, 2011

On July 27, 2011, BC Hydro filed a letter stating that it continued to agree with the Commission that it would be helpful to file its guidelines for the determination of GBLs in order to achieve greater efficiency and consistency in the determination and review of such GBLs. In that letter, BC Hydro outlined the timing and scope to address the Commission requests set out in letter L-106-09. As the content of this letter is informative for the review of this Application, it is summarized and attached in Appendix D.

3.1.5 June 20, 2012 Information Report

On June 20, 2012, BC Hydro submitted to the Commission, an information report addressing the last three items set out in BC Hydro's July 27, 2011 letter including Contracted GBL Guidelines and responses to the 20 questions as requested by the Commission in L-106-09 (Information Report).

¹¹ Exhibit B-1, Attachment 6, June 20, 2012 Information Report, Appendix D, Commission letter L-106-09, p. 1.

¹² Ibid., p. 2.

The Information Report discussed the difference between Non-Contracted and Contracted GBLs. BC Hydro explains that Contracted GBLs are for self-generating customers that enter into either an EPA or LDA with BC Hydro, while Non-Contracted GBLs are for self-generating customers who do not have a contract to sell power to BC Hydro. The GBL Guidelines attached to the Information Report only addressed Contracted GBLs.

BC Hydro did not seek approval from the Commission for the Contracted GBL Guidelines or any of the other information contained in the Information Report.

3.2 Recent Commission determinations

3.2.1 Tariff Supplement 74

On November 2, 2012, BC Hydro filed an application with the Commission for approval to amend Tariff Supplement No. 74 as they had indicated they would in their letter dated July 27, 2011 (TS 74 Application)¹³. The amendments were proposed to be made by way of new Attachment B Guidelines to TS 74.

TS 74 contains the rules BC Hydro applies to determine, adjust, and reset a unique Energy Customer Baseline Load (CBL) for each Transmission Service Rate (TSR) customer taking service under RS 1823. Energy CBLs are used to determine a customer's "normal" annual electricity consumption, against which changes can be measured for the purpose of billing under RS 1823, a two-tiered stepped rate. The CBL of a self-generator is necessarily affected by its self-generation and the amendments being requested make specific reference to those customers.

In the TS 74 Application, BC Hydro proposed to use a GBL mechanism for both customers with and without a contract with BC Hydro. The Non-Contracted GBL represents the annual output of a customer which is used solely for the purpose of serving the customer's own load and is not subject to a contract. The guidelines for the initial and subsequent determination of a Non-Contracted GBL are contained in the Attachment B Guidelines. A Contracted GBL on the other hand represents the generation output of a customer's self-generating unit, which must be used for self-supply, where the unit and/or its output is subject of a contract between the customer and BC Hydro. This contract can be either an LDA or EPA. The principles for determining a Contracted GBL, however, were not included anywhere in TS 74, but rather BC Hydro relied on the Contracted GBL Guidelines filed in the June 20, 2012 Information Report. As stated above, BC Hydro took the position that it filed the 2012 Information Report for information purposes only, and that it was not seeking approval of those principles from the Commission.

In the decision issued on February 17, 2014, the Commission found, in the context of TS 74, that both Non-Contracted GBLs and Contracted GBLs are rates within the meaning of the UCA. The Panel was satisfied that TS 74 Attachment B Guidelines adequately addressed Non-Contracted GBLs but found that the provision of more detailed guidelines for the determination of Contracted GBLs would be of assistance, not only to the Commission, but to all parties which either have self-generation facilities or are considering installing such facilities. In the Panel's view, there would be considerable merit to the resultant consistency and transparency in

¹³ BC Hydro Application to Amend Tariff Supplement No. 74 Customer Baseline Load Determination Guidelines for RS 1823 Customers with Self-Generation (Tariff Supplement No. 74), Decision dated February 17, 2014.

the treatment of self-generating customers taking service under RS 1823 who have either an EPA or LDA with BC Hydro if the Contracted GBL Guidelines were approved by the Commission. Accordingly, by way of Order G-19-14, Directive 2, the Panel directed BC Hydro to:

...file an application with the Commission, no later than 6 months [August 17, 2014] after the date of the Order, for approval of updated Contracted Generator Baseline [GBL] Guidelines to be incorporated into Tariff Supplement No. 74.¹⁴

The Panel also determined that the filing should include considerations of the following:

- Definition of incremental generation and idle generation;
- The treatment of a GBL when an EPA or LDA expires; and
- GBL dispute resolution.

3.2.2 Tariff Supplement 74 Reconsideration

On May 21, 2014, BC Hydro applied for a reconsideration and variance of Order G-19-14. Specifically, BC Hydro requested that the Commission rescind Directive 2 on the basis that:

- The Panel made a fundamental error of fact as it appears that the Panel assumed that Contracted GBLs are, or could be, determined in the context of applying TS 74 (First Alleged Error); and
- The Panel made an error of law, or mixed fact and law, by failing to distinguish between the Contracted GBL itself within an EPA or LDA, versus the mechanisms that referentially incorporate and use that Contracted GBL in the context of a CBL treatment (Second Alleged Error).¹⁵

By Order G-106-14, dated July 25, 2014, the Commission denied BC Hydro's application to rescind Directive 2 as it related to BC Hydro's requirement to file an application for approval of updated Contracted GBL Guidelines. However, the Commission accepted that there may be alternatives to filing the Contracted GBL Guidelines other than incorporating them into TS 74. Therefore, the Commission established Phase Two to reconsider Order G-19-14 as it relates to where the Contracted GBL Guidelines should reside (Phase 2 Reconsideration). The Commission also established that the Phase 2 Reconsideration will accept new evidence and further, that new parties will be permitted to intervene. BC Hydro's filing deadline for the Contracted GBL Guidelines was also extended to November 1, 2014 to allow sufficient time for additional stakeholder consultation.¹⁶

This Application addresses both the filing of the Contracted Generator Baselines Guidelines (Guidelines) and the Phase 2 Reconsideration as to where those Guidelines should reside. It should be noted that the Application and the Guidelines do not address the determination of Non-Contracted GBLs as those have been previously approved by the Commission in the Tariff Supplement 74 Application by Order G-19-14.

¹⁴ The Panel did not identify any other concerns with the Attachment B Guidelines as they relate to the determination of Customer Baselines, and therefore approved the Attachment B Guidelines and the ancillary amendments to TS 74 as filed.

¹⁵ BC Hydro Reconsideration of Order G-19-14 Directive 2 Application, May 21, 2014, p. 7.

¹⁶ Order G-106-14, dated July 25, 2014, p. 2.

4.0 GENERATOR BASELINE CONCEPT

4.1 Economic and policy context

4.1.1 Customers with self-generation

BC Hydro provides electricity service to approximately 135 customer sites at transmission voltage. These customers are primarily engaged in natural resource industries such as forestry, mining and oil/gas processing. The default rate for transmission service is RS 1823. Fifteen of the one hundred and thirty-five TSR customer sites have electrical power self-generation facilities that are operational. In most cases, the customer's generating facilities were installed to meet the thermal requirements of the customer's production process. Thermal self-generation is presently located at twelve pulp mills, one sawmill, one gas processing plant and one waste processing plant.

Historically, most of these customers have used their self-generated electricity to serve their own industrial plants to displace electricity the customer would otherwise have purchased from BC Hydro. Each customer's decision to self-supply has largely been influenced by the technical requirements of the customer's industrial plant and the cost of self-generation relative to the avoided cost of purchasing electricity from BC Hydro. BC Hydro points out that the incremental cost of fuel for self-generation is a particularly important consideration. Part or all of a customer's electricity generation may be idled even though its industrial plant load is not fully displaced by self-generation. For example, using BC Hydro's F2012 data, the aggregate capacity factor for self-supply was approximately 49 percent but is increased to 61 percent when incremental generation for EPA sales is included.

BC Hydro notes that although the reasons for the idle capacity may vary, economics is a primary reason for the significant amount of idled generation. The incremental costs (fuel, operations, maintenance) of self-generating more electricity are simply greater than the cost of RS 1823 electricity that the customer would avoid having to purchase. Similarly, customers may choose to not invest in upgrades or new generation opportunities if the customer's avoided cost is insufficient to justify the investment.¹⁷

Short of it being an economically efficient alternative to self-supplying (economic benefit to displacing BC Hydro purchases), the only alternative for BC Hydro customers with self-generation to realize the benefits of their idle self-generation would be to have the ability to sell it for a price that is greater than their incremental costs.

4.1.2 Cost-effective domestic resources

BC Hydro states that over the past decade, projected energy and capacity load-resource gaps have caused it to pursue a variety of cost-effective domestic electrical sources including customer self-generation. This self-generation can be an attractive option for BC Hydro relative to other resource options for a number of reasons, including reducing demand on BC Hydro's system, and thereby deferring need for other resources.¹⁸

Specifically, BC Hydro explains the acquisition of incremental or new customer self-generation may be attractive relative to other resource options because:

¹⁷ Exhibit B-1, Attachment 6, June 20, 2012 Information Report, pp. 3–7.

¹⁸ Ibid., p. 7.

- (i) It is often cost-effective;
- (ii) It may have a relatively high capacity value;
- (iii) It is located close to the load which may allow BC Hydro to avoid infrastructure costs and transmission losses;
- (iv) It will generally track the customer's load profile or shape to the extent that the self-generation is linked to the customer's industrial processes;
- (v) It may be dispatchable; and
- (vi) It may be brought on-line quickly, particularly in the case of idle generation.¹⁹

BC Hydro submits that to the extent its relatively low tariff rates have been the economic barrier limiting customer self-generation, BC Hydro and its customers may not realize the full benefits of cost-effective energy and capacity supplied from customer self-generation. Therefore, funding provided through an EPA or LDA removes economic barriers to this incremental or new self-generation and provides BC Hydro with cost-effective domestic resources.²⁰

BC Hydro states that the acquisition of cost-effective customer resources has been consistent with numerous provincial laws and policies (see Appendix E, Laws and Policies), including the 2007 Energy Plan and the *Clean Energy Act* (CEA).²¹

4.1.3 Energy Purchase and Load Displacement Agreements

Within this economic, legal and policy context, BC Hydro has entered into contractual arrangements with a number of customers to mitigate or remove the economic barriers to the use of idle generation and encourage investments in upgrades and new generation.

The contracts with BC Hydro are either an LDA which is a demand-side measure (DSM) as defined in the CEA, or an EPA, which is treated as an energy supply contract as defined in section 68 of the UCA.

Table 3.1 lists all TSR self-generating customers with EPAs or LDAs with BC Hydro and the one General Service Rate customer. BC Hydro has also entered into an EPA with Celgar, which is a Fortis BC customer.²²

The table also indicates BC Hydro's energy procurement process that resulted in the contract, as well as the Commission order that accepted the contract for filing or the CEA provision that exempted the parties from the filing requirement.

¹⁹ BC Hydro Final Submission, p. 14.

²⁰ Exhibit B-1, Attachment 6, p. 12.

²¹ Exhibit B-1, Attachment 6, pp. 7–8.

²² Exhibit B-6, BCUC IR 1.8.1.

Table 3.1 TSR and General Service Rate Customer Table

Operating TSR Customer Sites with Self-Generation	Rate	Industry Sector	Contracted		Energy Acquisition Program	Approval/Exemption
			Electricity Purchase Agreement	Load Displacement Agreement		
Canfor Pulp – Prince George	1823B	Pulp and paper	✓	✓	DSM/Bio call 1	Order E-8-09
CPLP – Intercon Pulp Mill (1 TG)	1823B	Pulp and paper	✓	✓	DSM/IPO	CEA, s. 7
Catalyst Paper – Powell River (2 TGs)	1823B	Pulp and paper	✓	✓	DSM/IPO	CEA, s. 7
Domtar Kamloops	1823B	Pulp	✓	✓	DSM/IPO	CEA, s. 7
Howe Sound Pulp and Paper	1823B	Pulp and paper	✓		IPO	CEA, s. 7
Nanaimo Forest Products/Harmac	1823A	Pulp	✓		IPO	CEA, s. 7
Skookumchuck Pulp Inc.	1823B	Pulp	✓		Bilateral	Order E-16-09
West Fraser – Cariboo Pulp	1823B	Pulp	✓		IPO	CEA, s. 7
Nechako	1823B	Solid Wood		✓	DSM	n/a
Louisiana-Pacific	1611	Solid Wood	✓		SOP	CEA, s. 7
Conifex Timber Inc.	1823A	Solid Wood	✓	✓	Bilateral	Order G-40-12
Regional District of Nanaimo	1600	Municipal	✓		SOP	CEA, s. 7
Generation not yet operating:						
Metro Vancouver – Capilano Filtration Plant	1823A	Municipal		✓	DSM	n/a
Catalyst Paper – Powell River	1823B	Pulp and paper		✓	DSM	n/a

By way of elaboration, BC Hydro provided the following aggregate estimates and information:

- The EPAs generally became effective during 2009 or 2010, and have terms ranging from 10 to 20 years.
- Some of the LDAs became effective as early as 2002 and as late as 2015. LDA terms are generally 20 years.
- Total installed nameplate self-generation capacity in aggregate is approximately 800 MW, of which about 475 MW is used to serve customer load and about 175 MW is used for energy sales to BC Hydro. This leaves roughly 150 MW of idle self-generation, of which about 50 MW is located at facilities that are currently not operating.
- The total customers' plant load is about 900 MW.²³

BC Hydro also confirmed that no TSR customer was fully displacing their load prior to entering into an EPA with BC Hydro and that no BC Hydro customer has an EPA for energy sales greater than their load. Furthermore, BC Hydro confirmed that the General Service customer is fully displacing its load.²⁴ Additionally, BC Hydro stated there is one TSR customer that is currently in the process of building a new generator noting that the size of the generator is confidential customer information.²⁵

4.2 Acceptance of the Generator Baseline concept

BC Hydro has been using a GBL concept in negotiations with self-generating customers as far back as 2009 for EPAs and 2002 for LDAs to identify the amount of energy a customer must first self-supply before BC Hydro

²³ Exhibit B-6, BCUC IR 1.8.1.

²⁴ Ibid., BCUC IR 1.9.1, 1.9.2.

²⁵ Ibid., BCUC IR 1.10.2.

incentivises any incremental generation. This concept was directed by the Commission in Order G-38-01 to address a short term energy shortage and was subsequently extended by Order G-17-02.

BC Hydro explained that British Columbia appears to be the only jurisdiction in which a utility customer's self-generation is managed through Generator Base Lines. Specifically, BC Hydro states it is not aware of any other jurisdiction which uses a GBL to recognize and incentivize new or incremental self-generation at a customer's site.²⁶ Furthermore, BC Hydro states it is not aware of any other approach to incentivizing incremental self-generation at existing operating generation facilities that would not require a baseline dividing what will be incentivized from what will not be incentivised.²⁷

BC Hydro submits the Contracted GBL approach is an effective way to add cost-effective resources to BC Hydro's resource stack while managing the financial risk to other ratepayers resulting from funding incremental customer generation where it is also supplying electricity to the customer at embedded cost rates. BC Hydro also notes that it is not aware of, and has not considered, any other effective approach to mitigating this risk. Notwithstanding that, BC Hydro notes that by implementing a policy not to incentivize any below-load self-generation, the risk to other ratepayers would be avoided entirely.²⁸

The Contracted GBL has no bearing on the amount of energy BC Hydro will incentivize in excess of the Contracted GBL. The amount incentivised will depend on several factors including BC Hydro's projected need for new supply, the terms and price BC Hydro offers for incremental or new energy, and the customer's opportunities to use idle generation and/or invest in upgrades and new generation within the terms and price offered by BC Hydro.²⁹

AMPC is supportive of BC Hydro's approach to incremental generation and suggests that without the incentive agreements, the most economic electricity supply choice for the customer is typically to maintain BC Hydro purchases and forego more expensive potential on-site generation opportunities. In AMPC's view, the resulting electricity purchased by BC Hydro (EPA), or made available to BC Hydro through reduced customer demand (LDA), comes at a price lower than the marginal cost of BC Hydro's incremental generation and thus lowers costs to other customers of BC Hydro.³⁰

BCOAPO agrees with BC Hydro that there currently does not appear to be a reasonable alternative to the current Contracted GBL approach for determining the level of self-generation to be funded and mitigating the risk to other ratepayers. BCOAPO submits the only alternative is to abandon consideration of self-generation as a potential supply source. On balance, BCOAPO submits the use of Contracted GBLs to identify and acquire new or incremental self-generation while not perfect appears to be the better approach.³¹

Celgar challenges the BC Hydro approach and definition which discards any reference to historical generation. Celgar submits that in essence, the policy advocated by BC Hydro is a variation of Order G-38-01 because it is

²⁶ Exhibit B-7, CEC IR 1.8.1.

²⁷ Ibid., CEC IR 1.27.4.

²⁸ BC Hydro Final Submission, pp. 14–15.

²⁹ Exhibit B-6, BCUC IR 1.16.2.

³⁰ AMPC Final Submission, p. 2.

³¹ BCOAPO Final Submission, p. 10.

based on concepts of “incremental generation” over and above “current normal operating conditions” without any acknowledgement of the value of historical generation to-date. By way of contrast, Celgar refers to Order G-191-13 (the Tolko Decision³²).³³ Celgar submits the Commission established a much more appropriate approach to GBL determinations in the Tolko Decision than that advocated by BC Hydro in the current proceeding. Celgar further submits that unlike BC Hydro’s proposed approach, which discards any reference to historical generation, the Tolko Decision recognizes that a Contracted GBL also sets the utility’s obligation to serve.³⁴

Panel discussion

No party has raised concerns with the general concept of a GBL methodology in setting a baseline for EPAs and LDAs based on incremental or idle generation other than Celgar. Celgar suggests that the baseline should not require the self-generator to continue to self-generate by ignoring historical generation levels. Given that Celgar is a customer of FortisBC and not BC Hydro and further, the proposed Guidelines will not currently apply to a FortisBC customer, the Panel has not given Celgar’s position significant weight in its deliberations.

In the review of the Application, the Panel did not consider other alternatives to GBLs for customers with existing self-generation although it will raise some suggested alternatives for new generation in section 6.5.

5.0 APPLICABILITY OF THE GUIDELINES

5.1 Who the GBL Guidelines apply to

TSR and GSR customers

Regarding the applicability of the Guidelines, BC Hydro indicated that it has in the past, and may in the future, enter into EPAs and LDAs with both transmission service and general service (GSR) self-generating customers. BC Hydro specifically stated: “If BC Hydro enters into a future EPA or LDA with a general service self-generating customer, the Contracted GBL Guidelines could be applied when determining the Contracted GBL for the contract.”³⁵ BC Hydro also indicated that it has used Contracted GBLs when negotiating contracts for incremental and new self-generation with both TSR customers and GSR customers and may do so again in the future. In most cases, BC Hydro noted, the incremental self-generation output does not result in a physical transfer of electricity from the customer site to the BC Hydro system, and so the voltage of the service interconnection (distribution or transmission) is rarely a consideration.

With regard to the specific question of whether or not the Contracted GBL Guidelines should apply to both TSR and GSR self-generators, all parties agree that this should be the case.

³² FortisBC Inc. Application for a Certificate of Public Convenience and Necessity for the Purchase of the Utility Assets of the City of Kelowna Phase 2, Order G-191-13 with Reasons for Decision, Appendix A, pp. 18–19.

³³ Celgar Final Submission, pp. 8–9.

³⁴ Ibid., pp. 8–10.

³⁵ Exhibit B-6, BCUC IR 1.7.2.

Specifically, BCOAPO notes BC Hydro has the same objective of avoiding or mitigating the risk of arbitrage by self-generating customers in the context of EPAs and LDAs regardless of whether they are transmission service or general service customers. Therefore, the need to develop Contracted GBL guidelines to determine how a GBL will be established applies equally to both types of customers.³⁶

FortisBC customers

BC Hydro addresses the relationship of the Guidelines to FortisBC customers who may sell electricity to BC Hydro in the Application letter of transmittal and states:

These Guidelines will not work for the case where BC Hydro might choose to procure electricity from a FBC self-generating customer unless FBC offers a service that enables its customers to simultaneously purchase electricity from FBC and sell electricity to a third party (including BC Hydro).³⁷

In an IR response to FortisBC IR 1.1.1, BC Hydro qualified the above:

...BC Hydro has concluded that the Contracted GBL Guidelines will not currently work for the case where BC Hydro might choose to procure electricity from a FortisBC self-generating customer. This is due to the fact that a FortisBC customer is not directly connected to the BC Hydro system and is not a customer of BC Hydro with an Electricity Supply Agreement.

Commission determination

Section 1.0 of the Guidelines states that the Guidelines apply to both TSR and GSR customers. **In consideration of the fact that all interveners agree that the Guidelines should apply to both TSR and GSR self-generating customers, the Panel determines that this is appropriate.** In the Panel's view, there is no reason why cost-effective incremental or new self-generation at distribution-connected GSR customer sites should be excluded from the pool of resources available to BC Hydro using the Contracted GBL approach.

The Panel also accepts BC Hydro's position that the Guidelines currently do not apply to any FortisBC customers.

5.2 Where the Guidelines do not apply

For clarity, the Guidelines also list a number of areas where they would not be applicable such as determination of a contract demand for the purposes of an Electricity Supply Agreement or Electric Service Agreement (ESA) and design of a BC Hydro electricity procurement process or design of EPA or LDA terms and conditions. While the focus of this review is on the applicability of the Guidelines, the public interest determinations and export related terminology are of significance in this section and are therefore addressed as follows.

³⁶ BCOAPO Final Submission, p. 6, para. 23.

³⁷ Exhibit B-1, p. 2.

5.2.1 Public interest when entering into LDAs and EPAs

BC Hydro submits that it is not seeking a Commission determination that it is in the public interest for BC Hydro to enter into EPAs and/or LDAs with self-generating customers using the Contracted GBL approach.³⁸

BC Hydro further submits:

BC Hydro believes that it would be inappropriate for it to request and inappropriate for the Commission to make such determinations in this proceeding, because the Commission is not considering any actual EPAs or LDAs in this proceeding and such determinations would purport to limit a future Commission Panel's considerations and powers when reviewing actual EPAs or LDAs...The Commission Panel could make an error if it was to order that it is in the public interest for BC Hydro to enter into EPAs and/or LDAs with self-generating customers using Contracted GBLs determined in accordance with the Contracted GBL Guidelines, because the Commission Panel is not considering any actual EPAs or LDAs in this proceeding and such determination would purport to limit a future Panel's considerations and powers when reviewing actual EPAs or LDAs without a statutory basis to do so.³⁹

CEC submits it agrees that the scope of the current process does not include a ruling on the public interest in pursuing EPAs and /or LDA and such the scope should not be considered in this proceeding.⁴⁰

Commission determination

The Panel agrees with BC Hydro and finds that the purpose of this Application is not for the Commission to make a determination on the public interest of any particular Contracted GBL, EPA or LDA.

5.2.2 Export related issues

The Guidelines state that they are not for the determination of a baseline that might be used by BC Hydro and a customer in the context of the customer selling self-generation output to a party other than BC Hydro.⁴¹

BC Hydro further states that the Guidelines are also not relevant in the context of a point-to-point transmission service transaction under BC Hydro's Open Access Transmission Tariff (OATT).

BC Hydro indicates that its use of Contracted GBLs in EPAs and LDAs shares the underlying principle espoused by the Commission in Order G-38-01 that there should be no arbitrage between embedded cost service and market prices (in the case of EPAs, this would be the contract price); however, the specific use of Contracted GBLs in EPAs and LDAs is different from the use of baselines contemplated in Order G-38-01.⁴²

BC Hydro further noted that the determination of a Contracted GBL does not enable a customer to simultaneously purchase electricity from BC Hydro and sell electricity to a third party.⁴³

³⁸ BC Hydro Final Submission, p. 5.

³⁹ Ibid., pp. 5–6.

⁴⁰ CEC Final Submission, p. 3.

⁴¹ Exhibit B-1, Attachment 2, Contracted GBL Guidelines, p. 1.

⁴² Exhibit B-1, p. 22.

⁴³ Exhibit B-6, BCUC IR 1.32.2.

Finally, BC Hydro stated that it does not have tariffs, service agreements, rate schedules or business practices to enable customers to simultaneously purchase electricity from a customer and sell to a third party. The one exception is FortisBC, which is able to simultaneously purchase electricity from BC Hydro under the 2014 Power Purchase Agreement and export eligible energy to third party buyers in accordance with the 2014 Energy Export Agreement.⁴⁴

With regard to past Commission determinations, BC Hydro notes the Order G-106-14 Decision in which the Commission considered that while RS 1823 customers do not sell electricity into the market, “the fundamental principles are the same” because the customers are entering into agreements with their own utility to sell energy (through an EPA) or to displace their load (through an LDA).⁴⁵

Commission determination

While no specific question was asked of parties as to what constitutes “an export” in the context of Contracted GBLs, the Panel wishes to clarify its position.

BC Hydro’s submissions are very concerned with the “export of power to a third party” (other than the utility), as it indicates is the proposal of FortisBC for the purposes of its GBLs.⁴⁶ BC Hydro also indicates that no BC Hydro self-generating customer has requested that BC Hydro enable the customer to simultaneously purchase electricity from BC Hydro and sell electricity to a third party. In 2001, BC Hydro asserts that Howe Sound Pulp and Paper Ltd. (HSPP) expressed an interest in doing so but abandoned its original plan to sell electricity into the California market, and instead entered into discussions with BC Hydro and Powerex regarding its proposal to restart idle self-generation facilities.⁴⁷ BC Hydro describes the resulting arrangements between HSPP, Powerex and BC Hydro as the sharing of proceeds attributable to HSPP operating otherwise idle self-generation freeing up BC Hydro resources for export by Powerex.⁴⁸

As the Panel considers the various positions regarding what constitutes an export market in the context of GBLs, it is struck by the observation that there is a false dichotomy between selling to a third party export market and selling to the utility either as a contribution to that utilities’ resource stack or for that utility to export that power either directly or through a related party. In the Panel’s view, ratepayers can be harmed regardless of where self-generator power is deployed.

The Panel considers that in defining an “export” the issue is not whether it goes to a third party or to the self-generator’s service provider utility but rather that it physically leaves the plant site of the self-generator or is deemed to leave that site. The end-source of the disposition of that energy seems irrelevant. Further, Order G-38-01 did not differentiate between the selling of power to BC Hydro/Powerex and a third party. In this context, the Panel notes both the opportunity to move electricity physically as well as the opportunity to offset load are examples of “selling of power” or “exporting.”

⁴⁴ Exhibit B-7, FortisBC IR 1.2.1.

⁴⁵ Exhibit B-1, p. 9.

⁴⁶ BC Hydro Final Submission, p. 5.

⁴⁷ Ibid., p. 21.

⁴⁸ Exhibit B-1, pp. 23–24.

However, the Panel is aware that no customer has requested that it be able to “export” to a third party, likely because BC Hydro customers have this opportunity available to them indirectly through their access to Powerex. The Panel understands that exporting to a third party would require tariffs, service agreements and rate to be developed, including access through the OATT. Given that no customer is requesting such access, the Panel agrees that it is not necessary at this time to make this option available.

Therefore, the Panel accepts that the proposed Guidelines are not designed to apply to a situation where a customer is selling its self-generation output to a party other than BC Hydro and the proposed Contracted GBL will not enable a customer to simultaneously purchase electricity from BC Hydro and sell electricity to a third party.

5.2.3 Contract demand, level of service and Billing Formula

The Guidelines state that they are not used in the determination of a contract demand for the purposes of an electricity supply or service agreement (ESA) or to defining BC Hydro’s level of service to the customer.⁴⁹

For clarity, ESA stands for Electricity Supply Agreement for a transmission service (TSR) customer and Electric Service Agreement for a general service (GSR) customer.

BC Hydro explains that for a TSR customer, BC Hydro’s service obligations are specified by the Electricity Supply Agreement between BC Hydro and the customer set out in the standard form Tariff Supplement 5 (TS 5). BC Hydro’s service to the customer is limited by, among other things, the concepts of Contract Demand as set out in the customer’s ESA. On the other hand, BC Hydro’s service obligations in respect of GSR customers are specified by the Electric Tariff and an ESA between BC Hydro and the customer.⁵⁰ While this section focuses on TSR customers, the principles are applicable for GSR customers as well.⁵¹

BC Hydro further explains that Contract Demand limits the service in terms of capacity (kV.A power demand) but not in terms of energy (kW.h). There is no limit on the customer’s energy consumption within the specified Contract Demand. If the customer enters into an EPA or LDA with BC Hydro that incorporates a Contracted GBL, the Contracted GBL will have no impact on the Contract Demand in the ESA as the Contracted GBL identifies “incremental energy.”⁵²

5.2.3.1 Customers with an EPA

BC Hydro states that in the case of a self-generating customer entering into an EPA with BC Hydro, the incremental energy produced in accordance with the EPA is deemed to be delivered to BC Hydro because the energy is actually consumed by the customer’s load and does not physically transfer to the BC Hydro system. To accommodate this, an ESA Billing Formula is used to determine the accounting for the customer’s deemed demand and deemed energy. Therefore, because the EPA has no impact on the customer’s demand, as deemed by the Billing Formula, the Contract Demand should not be and is not reduced. Maintaining the Contract

⁴⁹ Exhibit B-1, Attachment 2, Contracted GBL Guidelines, p. 1.

⁵⁰ Ibid., pp. 11–13.

⁵¹ Exhibit B-6, BCUC IR 1.33.12, 1.33.12.1.

⁵² Exhibit B-6, BCUC IR 1.33.12 and 1.33.12.1.

Demand unchanged ensures the correct minimum demand charges continue to apply. The workings of this concept are further described below based on BC Hydro's evidence.⁵³

Deemed demand and deemed energy

The purpose of deemed energy and demand is to deem the EPA customer to purchase energy and demand at levels as if the EPA energy deemed to be delivered to BC Hydro is actually delivered. Incremental self-generation output under the EPA contract structure is deemed to be delivered to BC Hydro (in accordance with the EPA) and not to reduce energy and demand purchases (in accordance with the ESA Billing Formula).

Billing Formula

The Billing Formula is used to calculate the amount of energy and demand the EPA customer purchases from BC Hydro. Metering at the point of delivery will measure actual demand and energy flows (as actually impacted by the incremental EPA energy), and it will not measure deemed energy and demand. For these customers the appropriate amount of demand and energy flows must be calculated using meter readings at the customer's generator(s) and at the point of delivery, and hourly generator baselines, in accordance with the Billing Formula.

The Billing Formula⁵⁴ is attached to and forms part of the customer's service agreement with BC Hydro. In the case of TSR customers, the Billing Formula is attached to and forms part of the TS 5 ESA.⁵⁵

BC Hydro states that "the TS 5 ESA, the provisions of the Billing Formula that determine deemed energy purchases, RS 1823, and the provisions of TS 74 that determine the Energy CBL...are all part of the rate(s) applicable to the RS 1823 Stepped Rate customer with self-generation and an EPA or LDA with BC Hydro."⁵⁶

5.2.3.2 Customers with an LDA

In the case of a self-generating customer entering into an LDA with BC Hydro, the incremental LDA energy serves the customer's load and is not deemed to be delivered to BC Hydro. The LDA energy reduces the energy BC Hydro supplies to the customer. However, the LDA energy (kWh) may or may not impact the peak demand (kV.A) of the customer's load on the BC Hydro system. Demand in kV.A and energy in kWh are not directly comparable.

The extent to which incremental self-generation output under the LDA will impact the customer's demand, depends on the amount and profile of the incremental energy versus the amount and profile of the customer's peak demands on the BC Hydro system. If the Contract Demand is unnecessarily high due to the new incremental energy produced under the LDA, the customer will typically seek BC Hydro's agreement to reduce the Contract Demand because Contract Demand can impact the customer's demand charges.

⁵³ Ibid.

⁵⁴ BC Hydro provided a copy of a pro-forma Billing Formula in response to BCUC IR 1.33.1 (Attachment 2).

⁵⁵ Exhibit B-6, BCUC IR 1.33.1.

⁵⁶ Exhibit B-7, BCOAPO IR 1.8.5.

If BC Hydro and the LDA customer agree that the ESA Contract Demand should be reduced, the Contracted GBL (in kWh/year) would not be relevant to determining the amount of the Contract Demand reduction (in kV.A). The Contract Demand reduction would be based on the expected peak demand (in kV.A) of the customer site on the BC Hydro system when the customer is operating under the LDA.

In summary, for a customer with an LDA there is no deemed demand and therefore no need for a Billing Formula. Power demand is measured and demand charges are calculated just like they are for a customer that does not have an LDA.⁵⁷

5.2.3.3 Submissions by parties

BC Hydro in its final submission summarizes its position as put forward in response to BCUC IR 1.33.1 and detailed above.

CEC states that BC Hydro has outlined its view of the relationship between “Deemed Energy and Demand” for BC Hydro self-generating customers and their use for billing purposes and accepts BC Hydro’s view of the relationship as being accurate.⁵⁸ BCSEA⁵⁹ and AMPC⁶⁰ also confirm BC Hydro’s position.

BCOAPO submits the Commission should direct BC Hydro to file a pro-forma of the Billing Formulae that is used in conjunction with an EPA for approval by the Commission as it is considered to be part of the rate.⁶¹

In reply to BCOAPO’s request, BC Hydro submits that it would have no objection to developing a pro-forma Billing Formula (to determine the amount of energy [kWh/h] and demand [kV.A] the customer purchases from BC Hydro since these amounts are different from what is measured by the meter at the point of delivery) for filing if the Commission finds value in it. An alternative option, in BC Hydro’s submission, would be to include a copy of the sample Billing Formula that has already been filed in this proceeding (as Attachment 2 in response to BCUC IR 1.33.1) where the Contracted GBL Guidelines will reside.⁶²

Commission determination

As stated by BC Hydro and specified in the Guidelines, the primary purpose of the Contracted GBL is to identify the incremental or new electricity that BC Hydro will incentivize pursuant to the LDA or procure pursuant to the EPA by identifying the amount of electricity that the customer generates for self-supply in current normal operating conditions, and electricity in excess of the Contracted GBL is recognized as incremental or new electricity.

However, the Panel continues to find that the GBL context is analogous to two sides of the same coin: it both identifies how much idle generation (energy) a customer has available for BC Hydro to purchase under an EPA or incent pursuant to an LDA after self-supplying a portion of its plant load, and it identifies the amount of the

⁵⁷ Exhibit B-6, BCUC IR 1.33.1.

⁵⁸ CEC Final Submission, p. 20.

⁵⁹ BCSEA Final Submission, p. 5.

⁶⁰ AMPC Final Submission, p. 4.

⁶¹ BCOAPO Final Submission, pp. 59, 72.

⁶² BC Hydro Reply Submission, p. 3.

residual plant load that must be served by BC Hydro as set out in the ESA (i.e. residual plant load = plant load - Contracted GBL).

Nevertheless, the Panel finds that this “other side of the coin” concept is only relevant in the case where a customer is exporting to a third party and not when it is exporting to BC Hydro. As indicated by BC Hydro⁶³, in a hypothetical case where a customer is exporting to a third party (i.e. there is no EPA with BC Hydro) BC Hydro would likely have to mitigate the risk of arbitrage (risk to other ratepayers) through the terms of the customer’s energy supply agreement as contemplated in Order G-38-01 as it may be the only control available to ensure that the self-generating customer is not realizing economic benefits for energy that it was already using to supply its own load.

However, controlling the level of service that a self-generating customer is entitled to through the ESA is not necessary in the case where BC Hydro is providing the economic benefit to the customer through an EPA or LDA because BC Hydro will only purchase or incent energy above the Contracted GBL. Given that the Guidelines apply only to a situation where BC Hydro is procuring energy under an EPA or incenting under an LDA, and do not apply to a situation where a customer is simultaneously purchasing electricity from BC Hydro and selling to a third party the concern is mitigated. **Accordingly, the Panel agrees that the Guidelines are not used in the context of determining the contract demand for the purposes of an electricity supply or service agreements nor are they necessary for defining BC Hydro’s level of service to the customer.**

In regards to the Billing Formula, the Panel agrees with BCOAPO that because the Billing Formula is a rate, it should be filed with the Commission for approval. **Therefore, the Commission approves the terms set out for calculating deemed energy and deemed demand as set out in the sample Billing Formula included in Attachment 2 in BCUC IR 1.33.1.**

BC Hydro is directed to file, within 30 days of the date of this order, the appropriate Deemed Demand and Deemed Energy Billing Formula tariff sheets for both TSR and GSR customers. The tariff sheets must include a description of the method that BC Hydro uses to determine the energy (kWh) that is deemed to have received from the customer in accordance with the Energy Purchase Agreement and describe the billing process and calculation that BC Hydro will use to bill the customer for deemed energy (kWh) and demand (kW.A) it purchases from BC Hydro under the customer’s Electricity Supply Agreement.

The Panel suggests that the tariff sheets also incorporate some of the additional calculation details and explanations provided in Attachment 1 to BCUC IR 1.33.1.

6.0 MITIGATE THE RISK TO OTHER RATEPAYERS

6.1 Commission’s review of the Contracted GBL

The Guidelines appended as Attachment 2 to the Application state that the purpose of the Contracted GBL is to mitigate the risk of arbitrage when BC Hydro incentivizes or procures customer self-generation output pursuant

⁶³ Exhibit B-1, p. 26.

to an LDA or EPA at the same time BC Hydro is selling electricity to the customer at regulated rates pursuant to an electricity supply or service agreement.⁶⁴

BC Hydro submits it believes that the Commission should not determine in this proceeding whether the Contracted GBLs and/or Contracted GBL Guidelines are appropriate and effective at mitigating the risk to other ratepayers. Instead, BC Hydro submits the effectiveness of a particular Contracted GBL, criteria and guidelines relied on in its determination should be evaluated in the future, if and when BC Hydro submits an EPA to the Commission under section 71 of the UCA or a DSM expenditure schedule with expenditures on LDAs under section 44.2.⁶⁵

CEC agrees with BC Hydro that the Commission should evaluate the appropriateness of each GBL at the time of the section 71 review of the EPA or LDA. However, CEC submits this should not preclude the Commission from reviewing the Guidelines with respect to their effectiveness in their capacity as mitigating the risk to other ratepayers in this proceeding.⁶⁶ The CEC disagrees with BC Hydro's position that the Commission should not determine in this proceeding whether the Contracted GBLs and/or Contracted GBL Guidelines are effective at mitigating the risk to ratepayers.

BCOAPO submits there is a need to make a distinction between:

1. The Contracted Generator Base Line Guidelines;
2. The Contracted GBL, expressed in Annual MWh, that BC Hydro develops using the Guidelines for a customer who is considering entering into a prospective EPA or LDA; and
3. The formal Contracted GBL as incorporated in the final EPA/LDA when and if one is ultimately executed, which may include hourly or seasonal refinements not addressed in the Guidelines.⁶⁷

Similar to BCOAPO, CEC submits it is important to distinguish the broader purpose of the contracts in the LDAs and EPAs from that of the devices employed to bring them into effect. CEC further submits a GBL is effectively a device that is used to enable the larger purpose of the LDAs and EPAs (incenting incremental self-generation by removing economic barriers) while protecting other ratepayers.

Panel discussion

The Panel agrees with CEC that the GBL is effectively a device that is used to enable the larger purpose of the LDAs and EPAs (incenting incremental self-generation by removing economic barriers) while at the same time protecting other ratepayers. The Panel further agrees with BCOAPO that there needs to be a distinction between the GBL Guidelines, the Contracted GBL itself, and the review of the EPA/LDA.

The Panel has already acknowledged, in section 5.2.1, that the evaluation of the appropriateness of each GBL will take place at the time of the section 71 review of the EPA or a section 44.2 review of DSM expenditure.

⁶⁴ Exhibit B-1, Attachment 2, Contracted GBL Guidelines, p. 1 [emphasis added].

⁶⁵ BC Hydro Final Submission, p. 14 [emphasis added].

⁶⁶ CEC Final Submission, p. 13.

⁶⁷ BCOAPO Final Submission, p. 4.

Further, the Panel will address the purpose of the Guidelines and evaluates them in sections 7.0 and 8.0 respectively.

The Panel is not in agreement with BC Hydro's position that the Commission should not make a determination on whether the Guidelines themselves meet their purpose of mitigating the risk to other ratepayers. The Panel agrees with CEC that the Commission is not precluded from reviewing the Guidelines in this proceeding and will therefore make a determination with respect to their adequacy and effectiveness in setting the Contracted GBL to mitigate the risk to other ratepayers. Because most of the submissions in this regard were in the context of "arbitrage", the Panel will clarify its position below.

6.2 Clarification of the term Arbitrage

The Panel notes that the word "arbitrage" is currently being used to describe the "protection of other ratepayers between regulated rates and the contract price." The Panel find this phraseology not particularly helpful and provides this further clarification suggesting the term "mitigate the risk to other ratepayers" be more appropriate.

In discussing arbitrage, BCOAPO notes that while arbitrage is generally defined as the simultaneous buying and selling of product in different markets to profit from unequal prices, there is nothing fundamentally wrong with arbitrage in competitive markets that are subject to market forces. Indeed, BCOAPO indicates that arbitrage normally brings about the equalization of prices in different markets. However, this is not the case when one of the markets has fixed, regulated prices as in the case of BC Hydro's domestic electricity market.⁶⁸ BCOAPO then observes that in the case of electricity and BC Hydro, the term "arbitrage" can be used in different contexts. In situations where a customer of BC Hydro is seeking to purchase power (at embedded/regulated rates) from the utility while, at the same time, selling power to a third party (at market prices) is one context and situations where a customer is purchasing power from BC Hydro while at the same time seeking to either sell power to BC Hydro through an EPA or obtain a financial incentive from BC Hydro for self-generating through an LDA is a second context. In both types of circumstances, BCOAPO's concern is with arbitrage activities that are detrimental to other ratepayers and represent nothing more than a wealth transfer between customers.⁶⁹

AMPC believes that creating an "operational definition of arbitrage" appears to be a semantic issue that is not helpful in resolving the issues in this matter. AMPC believes that the focus of the inquiry in these circumstances must be on whether BC Hydro is achieving its stated goals: obtaining incremental generation at a reasonable price, without paying customers incentives to generate electricity that they would generate in any event.⁷⁰

BCSEA is of the view that it would not be productive for the Commission to try to develop a definition of arbitrage in the context of BC Hydro's Contracted GBL Guidelines. They state that the Guidelines quite adequately protect the interests of ratepayers in ensuring that BC Hydro buys only what it would not otherwise get for free without using the fraught term arbitrage.⁷¹

⁶⁸ BCOAPO Final Submission, para. 16.

⁶⁹ Ibid., para. 17.

⁷⁰ AMPC Final Submission, p. 3.

⁷¹ BCSEA Final Submission, p. 3.

BC Hydro, in addressing Celgar IR 1.6.2 also offered the suggestion that it is not helpful to focus on the definition of “arbitrage.” With respect to the electricity buying and selling activities of utilities and self-generators that occurs or may occur in the province, BC Hydro asserts that nothing turns on whether the activities fall within the definition of ‘arbitrage’ and that there is nothing inherently wrong with arbitrage. In any commercial context, the concept of arbitrage is not illegal nor does it carry any pejorative implication. The result of arbitrage is normally to bring about an equalization of prices in separate markets assuming that pricing in the separate markets is variable and responsive to market forces. But that is not the case when one of the markets has fixed, regulated rates.⁷²

Although BC Hydro’s response to this IR was related to the development of the FortisBC self-generator guidelines, BC Hydro continues: “...nothing turns on whether such activities fall within the definition of arbitrage. The issues are whether the activities will be (i) beneficial to ratepayers, (ii) detrimental to ratepayers, or (iii) neutral (no harm) to ratepayers; and if there is a risk of harm to ratepayers, what measures will FortisBC put in place to mitigate or eliminate those risks?”⁷³

Commission determination

The Panel is persuaded that the use of the word “arbitrage” to describe the buying and selling of electricity by self-generators is not particularly helpful as noted by several parties. On the contrary, it seems to be subject to logical errors of both commission and omission related to the equivocal nature of its use by parties to the BC Hydro Contracted GBL Guidelines Application. The Panel finds itself in concurrence with BC Hydro that the key issue with regard to the sale or purchase of electricity is whether such activities are beneficial, detrimental or neutral as far as their impact on other ratepayers.

Accordingly, when considering the merits of buying or selling electricity by self-generators in the context of Contracted GBLs, the Panel will not assess whether the Guidelines “mitigate the risk of arbitrage.” Instead, the Panel will consider whether setting the GBL mitigates the risk to other ratepayers due to difference between the regulated rates and the contract price. Therefore, the Panel’s terminology includes “harm prevention”, “mitigation of risk to other ratepayers” and “other ratepayers are not worse off.”

BC Hydro is directed to amend the wording in section 1.0 of the Guidelines to remove reference to “mitigate the risk of arbitrage” and replace it with “mitigate the risk to other ratepayers.”

6.3 Idle, incremental and new generation

BC Hydro uses the descriptions of idle, underutilized, incremental and new generation in the context of the Guidelines. Therefore it is important that these concepts are defined for the purposes of this Decision. By way of background, BC Hydro was directed by Order G-19-14 to consult its RS 1823 customers with self-generation facilities on definitions for incremental and idle generation.

BC Hydro stated that there is no need for the Contracted GBL Guidelines to include definitions of “new”, “incremental” and/or “idle generation.” In BC Hydro’s view, the Contracted GBL Guidelines are not intended to

⁷² Exhibit B-7, Celgar IR 1.6.2.

⁷³ Ibid.

and do not determine the amount of new, incremental or idle generation. Including definitions for these terms would be redundant and confusing.⁷⁴

BC Hydro notes that it uses Contracted GBLs when negotiating with those of its self-generating customers who express interest in entering into a contract with BC Hydro concerning incremental or new self-generation output. For further clarification, BC Hydro submits the phrase “incremental or new” electricity refers to additional electricity generated at existing idle or underutilized generation facilities, upgrades to existing generation capacity, or a new generator.⁷⁵ However, BC Hydro confirmed that Guidelines as currently written are not directly applicable to customers without existing self-generation, such as a new customer proposing to construct and operate a new industrial facility.⁷⁶

Intervenors did not disagree with BC Hydro’s definition of incremental or new generation or make any additional submissions. It should also be noted that the Panel’s General Issues List did not pose this question.

Commission determination

The Panel acknowledges that the definitions and explanations provided by BC Hydro are now very clear. **The Panel accepts that the “incremental or new” electricity refers to additional electricity generated at existing idle or underutilized generation facilities, upgrades to existing generation capacity or a new generator for customers with existing self-generation.** To further enhance transparency, the Panel strongly recommends that BC Hydro consider including the definitions in the amended Guidelines.

The Panel is concerned, however, that the Guidelines do not indicate with sufficient clarity that they only apply to customers with existing self-generation. **Accordingly, BC Hydro is directed to amend to Guidelines to clarify in its compliance filing that the Guidelines do not apply to current customers with no existing self-generation or new customers with self-generation.** The Panel will further address issues related to customers with new self-generation in section 6.5.

6.4 Customers with existing self-generation

6.4.1 BC Hydro submissions

BC Hydro states its use of Contracted GBLs in EPAs and LDAs shares the underlying principle espoused by Order G-38-01 that there should be no arbitrage⁷⁷ (mitigate the risk to other ratepayers) between embedded cost service and market prices.⁷⁸ In section 6.2 above, the Panel already provided certain clarifications and definitions and concluded for the purposes of this decision that the criteria BC Hydro is, in fact, applying is to ensure that other ratepayers are not worse off. To put it another way, in setting GBLs for the purpose of potential EPAs and LDAs, BC Hydro is taking a conservative approach in aspiring to prevent harm to other ratepayers.

⁷⁴ Exhibit B-6, BCUC IR 1.16.1.

⁷⁵ BC Hydro Final Submission, p. 2 [emphasis added].

⁷⁶ Exhibit B-6, BCUC IR 1.18.14.

⁷⁷ The Panel notes that it has rejected the term arbitrage in favour of using the concept of “no harm to BC Hydro’s other ratepayers.”

⁷⁸ Exhibit B-1, p. 22.

This section addresses the effectiveness of that harm prevention by asking whether the risk to other ratepayers is effectively mitigated through use of GBLs.

BC Hydro submits the “arbitrage risk” that it seeks to mitigate through the use of the Contracted GBLs is the risk arising when it agrees to pay a customer to produce incremental or new self-generation output pursuant to an EPA or LDA. The risk is that BC Hydro may pay the customer too much under the contract if it pays for energy that the customer would produce regardless without the incentive funding from BC Hydro. BC Hydro further submits that if no Contracted GBL is set or if the GBL is set too low, then BC Hydro would be paying the customer for existing self-generation that is not new or incremental. In other words, “BC Hydro would be paying the customer for nothing in return.”⁷⁹

BC Hydro acknowledged that the Contracted GBL will not completely eliminate the risk to other ratepayers unless it was theoretically perfect⁸⁰ and indicated that to the extent the Contracted GBL is set too low, the Contracted GBL will not have fully achieved its purpose. However if the Contracted GBL is set accurately in accordance with the principles and criteria of the Guidelines, this risk is effectively eliminated.⁸¹ BC Hydro further stated that this would likely arise from an error in applying the Guidelines, rather than a failure of the Guidelines themselves.⁸²

BC Hydro provides numerous reasons in support of the proposed Guidelines including:

- The GBL determination process begins with the customer’s actual self-generation output during the most recent 365 days, or other period that BC Hydro and the customer agree better represents current normal operating conditions for the customer. Typically, three years of historical data are reviewed to identify trends; and
- The Guidelines present a list of events at the customer site which will result in adjustments to the historical data to determine the Contracted GBL.

In response to an inquiry made by CEC, BC Hydro states that determining the Contracted GBL based on any approach other than what the customer self-generates under current normal operating conditions would not serve BC Hydro’s objectives and would mean either:

- The Contracted GBL is less than what customer is self-generating normally, and the EPA or LDA would provide a windfall to the customer by paying them for self-generation they would produce anyway; or
- The Contracted GBL is more than what the customer is self-generating normally and the EPA or LDA would require the customer to increase self-generation output without compensation up to the Contracted GBL. It is unlikely that a customer would agree to such terms.

In either case, BC Hydro states that it does not add cost-effective resources to its portfolio.⁸³ In conclusion, BC Hydro submits the Contracted GBL approach is the only approach which adds cost-effective resources to

⁷⁹ BC Hydro Final Submission, p. 12; Exhibit B-6, BCUC IR 1.3.1.

⁸⁰ Exhibit B-6, BCUC IR 1.3.3.

⁸¹ BC Hydro Final Submission, p. 16.

⁸² Exhibit B-7, CEC IR 1.6.3.

⁸³ Exhibit B-7, CEC IR 1.30.1.

BC Hydro's resource stack while also addressing the risk to other ratepayers caused by provision of an inefficient incentive.⁸⁴

6.4.2 Intervener submissions

In the context of adequacy of the proposed Guidelines, BCOAPO provides the following critique:

- There is other information, not specifically noted in the Guidelines, that BC Hydro has acknowledged could be used to “augment the historical information available to determine normal self-generation output under current conditions”;
- The Guidelines are not specific on how many years of data will be considered and/or how the trend assessment will be done or how adjustments for major events will be made using the best available data which may also include professional opinions;
- The Guidelines refer to “unusual self-generation downtime events” but do not provide any guidance as to how “unusual” is to be determined or defined;
- The Guidelines provide for adjustments due to “non-recurring generation” which BC Hydro has acknowledged are “potentially complex.”⁸⁵

BCOAPO concludes its critique by observing that given the flexibility and lack of precision in the Guidelines, two parties applying the Guidelines could well come to different conclusions regarding the appropriate value for the Contracted GBL. In BCOAPO's view, this suggests that from a transparency perspective the Guidelines are less than ideal. However, BCOAPO acknowledges BC Hydro's submissions regarding the need for a flexible, balanced approach, and that a more transparent but inflexible formulaic approach would be arbitrary. In this context, BCOAPO submits the Guidelines are appropriately transparent.⁸⁶

BCOAPO submits that given the alternatives of abandoning consideration of self-generation as a potential supply source, a Contracted GBL based on current normal operating conditions is a reasonable and practical way to mitigate the risk to other ratepayers while recognizing that it will not fully eliminate that risk.⁸⁷

CEC agrees with many observations of BCOAPO regarding vagueness and resultant subjectivity of the proposed Guidelines. In addition, CEC submits the Guidelines could be, but are not, especially useful in assessing economic opportunity for an LDA or EPA in that they provide fairly general information as to how the baseline will be set. CEC further submits that information detailing how the various metrics will be employed would provide prospective EPA and LDA customers with better insight into how any adjustments to the self-generation output might be resolved.⁸⁸

CEC notes that one evaluation of the Guidelines' success in managing the risk to other ratepayers could be considered as their ability to prevent customers from manipulating the process such that a GBL is set too low. After completing its assessment, CEC submits that, overall, the Guidelines are reasonably appropriate for their

⁸⁴ BC Hydro Final Submission, p. 16.

⁸⁵ BCOAPO Final Submission, para. 29–34.

⁸⁶ Ibid., para. 35–40.

⁸⁷ BCOAPO Final Submission, p. 10.

⁸⁸ CEC Final Submission, p. 11.

purpose in establishing the criteria and procedures for setting GBLs and, therefore, in mitigating the risk to other ratepayers.⁸⁹

To a large extent, AMPC and BCSEA support the views of BC Hydro.

6.4.3 Submissions regarding enhancements to the Guidelines

CEC recommends an additional paragraph from Attachment 6 of Exhibit B-1, the June 2012 Information Report, be added to the proposed Guidelines as it provides further details on factors being considered such as the relationship between the customer's industrial production process and its self-generation as well as the type, age and efficiency of the customer's generator. The proposed paragraph is as follows:

BC Hydro considers a number of economic, technical, and operational factors in establishing the contracted GBL. The foundational information is the customer's historical self-generation output, industrial plant load and purchases from BC Hydro. The data and information typically must be "normalized" by taking into account the specific circumstances of each customer including its operational requirements and constraints (e.g., thermal requirements), the specific industry, economic conditions, and any abnormalities during the time period of the data that may impact the customer's normal conditions.⁹⁰

BCOAPO also recommends that Attachment 3 of the Application, which provides background for BC Hydro's use of Contracted GBLs, should also be included as an Appendix.

BC Hydro submits it has no objection to the addition requested by CEC. However, BC Hydro notes that if the Commission agrees with these CEC requests, the Guidelines need to be revised and refiled by BC Hydro.⁹¹

With regard to the BCOAPO proposal to attach the backgrounder Attachment 3 of the Application to the Guidelines, BC Hydro replies that Attachment 3 was included to provide broader background and context for the principles reflected in the Guidelines. BC Hydro further submits it would not be appropriate to have the context document as an appendix to the Guidelines. However, BC Hydro has no objection to including a copy of the Transmission Service and General Service Self-Generation in the BC Hydro Service Area document where the Guidelines will reside.⁹²

Commission determination

The Panel finds that in the case of customers with existing-self generation, the Guidelines do establish a satisfactory framework to mitigate the risk to other ratepayers.

The Panel is satisfied that a Contracted GBL based on current normal operating conditions is a reasonable and practical way to protect other ratepayers but recognizes that it will not fully eliminate all risks. The Panel agrees with BC Hydro that the setting of a GBL too low would likely arise from an error in applying the Guidelines, rather than a failure of the Guidelines themselves. The Panel also agrees that the Guidelines require a flexible,

⁸⁹ Ibid., p. 15.

⁹⁰ Exhibit B-1, Attachment 6, June 20, 2012 Information Report, p. 16

⁹¹ BC Hydro Reply Submission, pp. 3–4.

⁹² BC Hydro Reply Submission, p. 2.

balanced approach, and that a more transparent but inflexible formulaic approach would be arbitrary and may cause undesirable results.

After considering the suggestions by CEC and BCOAPO as well as BC Hydro's reply, the Panel concludes that certain amendments to the Guidelines are required. **Therefore, to further enhance transparency BC Hydro is directed to include:**

1. **An additional paragraph from the June 20, 2012 Information Report, page 16, in the Contracted GBL Guidelines⁹³; and**
2. **A copy of the Transmission Service and General Service Self-Generation in the BC Hydro Service Area document (Exhibit B-1, Attachment 3) where the Guidelines will reside.**

6.5 Customers with new self-generation

BC Hydro has confirmed that the Guidelines as proposed do not apply to customers without existing self-generation. In regards to how BC Hydro would determine a Contracted GBL if it was considering entering into an EPA or LDA with a new customer proposing to construct and operate a new industrial facility in the BC Hydro service area (for example, a new LNG facility), BC Hydro states that this would be a challenge given that the facility does not yet exist and there is no historical self-generation output data upon which to base a Contracted GBL.

However, BC Hydro states that the lack of historical data does not mean that a Contracted GBL of zero would be determined for the project proponent. The same principles of the Contracted GBL Guidelines would be applied in that situation: if BC Hydro wished to incentivize the new customer to produce more self-generation output than it otherwise would, BC Hydro and the customer would need to first determine how much energy the customer will self-generate under normal operating conditions. The questions would be whether the proponent would install and operate self-generation in the absence of funding from BC Hydro, and at what level would it generate?

In an attempt to respond, BC Hydro states the Governments of British Columbia and/or Canada might require the project proponent to include self-generation facilities in the project design as part of an environmental assessment certificate or other major project permit. If the proponent is under no such obligation, BC Hydro might consider the design and operation of similar industrial facilities built elsewhere in the world.⁹⁴

BC Hydro further clarifies that it does not have detailed criteria for determining a Contracted GBL concept for a new plant. However, if the situation arose BC Hydro would use principles similar to those it uses for new plant design projects within Power Smart Industrial programs.⁹⁵

However, in the IR process, BC Hydro confirmed that a customer entering into an LDA for a new project, with no existing self-generation, would have a Contracted GBL of zero. Specifically, in reference to the sample LDA

⁹³ See previous page for the paragraph suggested by CEC.

⁹⁴ Exhibit B-1, pp. 39-40.

⁹⁵ Exhibit B-7, CEC IR 1.30.2; reference:

<https://www.bchydro.com/powersmart/business/programs/projectincentives/npd.html>.

Agreement provided in the IR response, BC Hydro stated: “The specimen LDA does not include any terms related to a Contracted GBL because in most instances LDAs are funding new projects with no existing self-generation. In such situation there is an implied Contracted GBL of zero and there is no need for the agreement to include language related to a Contracted GBL.”⁹⁶

Panel discussion

The Panel is concerned that a Contracted GBL for a new self-generator could be set at zero and result in harm to other ratepayers because the Guidelines do not require any evaluation as to whether the proponent would have installed and operated the new self-generation in the absence of funding from BC Hydro. The Panel concludes that there is insufficient information presented in the evidence to determine how a Contracted GBL would be set in the context of a new customer with self-generation, such as a new LNG facility. Besides, the Panel notes that in the case of an existing customer who enters an LDA, there is an implied GBL of zero, because “in most instances LDAs are funding new projects with no existing self-generation.” Again, the Panel cannot ascertain whether risk to other ratepayers is mitigated especially because the Commission will not even see the individual LDAs. As a first step, the Panel has already directed BC Hydro to amend the proposed Guidelines to state that they apply only to existing customers with self-generation.

The Panel acknowledges that the government may continue to exempt certain EPAs from the Commission’s review for policy reasons. The Panel is also pleased to note BC Hydro’s comment that the lack of historical data does not necessarily mean that Contracted GBL of zero would be set for the project proponent. Regardless, the potential of zero GBLs for customers with new self-generation concerns the Panel.

Therefore, as a second step, the Panel recommends that BC Hydro address and consider alternative Contracted GBL approaches when it files with the Commission any future EPAs for customers with new self-generation. The Panel would like BC Hydro to consider the optimal approach taking into consideration the interests of the utility, the self-generators and the other ratepayers over the long-term. Suggested alternative approaches to consider include:

- (i) Each self-generator must self-supply a percentage of its load. The remaining balance of energy which would represent the incremental or new generation would then be the amount of energy to be considered for an EPA and LDA; and
- (ii) Consider the amount of generation obtainable from free feedstock which is available as a by-product of the industrial processes, such as black liquor or hog fuel, to determine the amount of load the customer must self-supply. The remaining balance of energy which would represent the incremental or new generation would then be the amount of energy to be considered for an EPA and LDA.

The Panel also recommends that future EPAs with a Contracted GBL of zero are to include a comprehensive explanation of BC Hydro’s approach to the issue.

⁹⁶ Exhibit B-6, BCUC IR 1.3.2.

7.0 PURPOSE OF THE GUIDELINES

BC Hydro states that the purpose of the GBL Guidelines is to outline the criteria and procedures that BC Hydro uses in setting a Contracted GBL for customers with new or incremental self-generation facilities and are considering entering into a prospective EPA or LDA.⁹⁷ BC Hydro lists the following uses for the Guidelines:

- (i) Can be applied when determining a Contracted GBL for a prospective EPA or LDA with a self-generating customer;
- (ii) Can assist a customer when considering the prospect of an EPA or LDA with BC Hydro and in negotiating the EPA or LDA; and
- (iii) May assist the Commission in the review of an EPA filed under section 71 of the UCA or an LDA in the context of a DSM expenditure schedule filed under section 44.2 of the UCA.⁹⁸

BCOAPO agrees with BC Hydro that the purpose of the Guidelines is to outline the criteria and procedures (i.e. the framework) BC Hydro uses in setting contracted GBLs for a customer with new or incremental self-generation facilities that is considering entering an EPA or LDA.⁹⁹

CEC concludes that a substantial purpose of the Guidelines themselves is to provide a common understanding for the Commission, the customers and BC Hydro of the manner in which the GBL will be set. CEC generally agrees with BC Hydro's list however, it recommends that the Guidelines include an appropriate reference to ratepayer interests.¹⁰⁰ CEC further submits that the Guidelines do have importance to ratepayers because they establish the fundamentals as to how the baselines are set between the customer and BC Hydro. To the extent that the Guidelines adequately or inadequately describe a methodology for setting the GBL, they can influence the GBL and therefore its impact on rates. The Commission may either accept or reject an EPA filed under section 71 of the UCA, but not set or amend its terms and conditions. As the Commission is limited in their approach to approving or denying the Application, the methodology established in the Guidelines has a direct impact on the degree to which an LDA or EPA provides benefits to BC Hydro ratepayers.¹⁰¹

BC Hydro submits its reply that it has no objection to the additions requested by CEC; however, notes that if the Commission agrees with these CEC requests, the Guidelines need to be revised and refiled by BC Hydro.¹⁰²

Celgar submits that historically BC Hydro has made incentive payments to self-generation customers on a case-by-case basis without reference to a clear methodology, or to transparent and consistent standards. Moreover, Celgar submits that BC Hydro has selectively determined varying incentive levels and thereby created an uneven and unfair playing field not only amongst competitors within the BC Hydro service area, but also amongst all BC competitors. Accordingly, Celgar submits another substantial purpose of the Guidelines should be to preserve a level playing field for all self-generation customers across and within industry sectors in British Columbia.¹⁰³

⁹⁷ Exhibit B-7, BCOAPO IR 1.1.3.

⁹⁸ Exhibit B-1, pp. 29–30.

⁹⁹ BCOAPO Final Submission, p. 4.

¹⁰⁰ CEC Final Submission, pp. 9, 22.

¹⁰¹ Ibid., pp. 4–6.

¹⁰² BC Hydro Reply Submission, pp. 3–4.

¹⁰³ Celgar Final Submission, p. 9.

In regards to a dispute resolution mechanism, BC Hydro stated that the Guidelines should not include dispute resolution provisions. The Guidelines are not a contract, and it would not be appropriate to incorporate dispute resolution provisions into them.¹⁰⁴ BC Hydro further clarifies that if the parties are unable to agree on a Contracted GBL the parties simply do not form a contract.¹⁰⁵ If BC Hydro rejects a proponents proposal, for example because the proposal did not use the Contracted GBL determined by BC Hydro at the outset of the process, this is not a dispute and the proponent will have no right to a dispute resolution process. The proponent can request an information meeting to discuss the reasons for the rejection of their offer to supply.¹⁰⁶

BC Hydro's position is that the fairness of BC Hydro's procurement processes generally, or of any particular process, is not within the scope of this proceeding. If a proponent had an issue with the fairness of a BC Hydro procurement process, the proponent could elect not to participate in the process or take a complaint to the Courts but not to the Commission. Such a complaint would not fall under the UCA and the Commission would not have jurisdiction.¹⁰⁷ BC Hydro stated it conducts fair processes for the procurement of incremental generation resources by applying consistent rules and standards to proponents that choose to participate in the procurement offer or process.¹⁰⁸

BC Hydro further clarifies that if a dispute arises after a contract has been signed, the dispute resolution mechanism in the contract will govern the dispute. This is no different than how BC Hydro resolves disputes related to procurement from independent power producers.¹⁰⁹

Commission determination

The Panel agrees with BC Hydro in regards to the three purposes put forward but has concerns with BC Hydro's position in regards to dispute resolutions.

In order for a self-generator to make a rational economic decision about whether to invest in new generation or to restart idle self-generation it needs to understand the cost, risk and financial benefit associated with such decisions. The Guidelines should provide guidance in the determination of a Contracted GBL prior to BC Hydro commencing negotiations with a self-generating customer and should inform self-generators in ascertaining their economic opportunity and providing a basis for negotiations. However the Panel is concerned that while the customer is negotiating with BC Hydro (prior to entering into the contract) that no dispute resolution mechanism is available to the customer and, as stated by BC Hydro, the parties simply do not form a contract.

Order G-38-01, Directive 4, states that "In an effort to assist both the self-generator sellers and BC Hydro/Powerex, the Commission directs that either party may request the views of the Commission staff on any unresolved issues before negotiations are terminated."

¹⁰⁴ Exhibit B-6, BCUC IR 1.25.1.

¹⁰⁵ Exhibit B-1, p. 30.

¹⁰⁶ Exhibit B-6, BCUC IR 1.25.1.

¹⁰⁷ Exhibit B-6, BCUC IR 1.4.7.

¹⁰⁸ Exhibit B-6, BCUC IR 1.4.7.

¹⁰⁹ Exhibit B-1, p. 30.

The Panel believes that the Guidelines must be applied consistently to all customers. Consistent with Order G-38-01, the Panel also finds that before a contract has been signed, the self-generator customer negotiating an EPA or LDA under BC Hydro's customer DSM program should have the ability to come forward to the Commission and raise their concerns regarding the proper application of the Guidelines in those situations.

For this reason, the Panel finds that another purpose of the Guidelines is for the customer to have a basis to come forward to the Commission to raise any concerns that arose during the negotiating process. However the Panel notes that once the customer enters into the contract, BC Hydro is correct in that the dispute resolution mechanism in the contract will govern the dispute.

In regards to CEC's position that an additional purpose of the Guidelines should be to inform BC Hydro ratepayers as well, the Panel agrees and notes that BC Hydro has not taken exception.

In response to Celgar's position that the Guidelines should be designed to preserve a level playing field for all self-generation customers across and within industry sectors in British Columbia, the Panel reminds Celgar of the Commission position put forward in the decision on Tariff Supplement 74 where the Panel found that "it does not consider this Proceeding as appropriate to examine broader issues concerning the provision of utility service by different utilities to self-generating customers on a province wide basis."¹¹⁰ Consistent with this principle, the Panel finds that the BC Hydro Guidelines are not meant to preserve a level playing field for all self-generating customers in BC as they currently only apply to BC Hydro customers.

In regard to Celgar's position that BC Hydro has selectively determined varying incentive levels and thereby created an uneven and unfair playing field amongst competitors within the BC Hydro service area, the Commission notes that no BC Hydro customer has come forward with a complaint to the Commission claiming an uneven or unfair playing field. Celgar is a customer of FortisBC who operates under a net-of-load concept rather than a GBL concept.

In conclusion, the Panel determines the purpose of the Guidelines can be better summarized as follows:

- 1) Provide BC Hydro with a consistent and transparent framework that can be applied when determining a Contracted GBL for a prospective EPA or LDA with a self-generating customer.**
- 2) Assist the Commission in exercising its authority in respect to an EPA filed under section 71 of the UCA.**
- 3) Assist the Commission in exercising its authority in respect to an LDA filed under section 44.2 of the UCA.**
- 4) Provide the self-generating customers with a consistent and transparent framework for their negotiations of a prospective EPA and to provide a basis to come forward to the Commission to raise any concerns during the negotiating process regarding the consistent application of the Guidelines.**
- 5) Be informative to BC Hydro ratepayers.**

¹¹⁰ Tariff Supplement No. 74, Decision dated February 17, 2014, p. 25.

8.0 ASSESSMENT OF THE GUIDELINES

In this section, the Panel will assess the adequacy of the Guidelines to meet each of the following purposes: assist the Commission in exercising its authority in respect to an EPA or LDA; provide the self-generating customers with a basis to come forward to the Commission to raise any concerns during the negotiating process; and ratepayer considerations. The Panel notes that the Application is not clear regarding the level of Commission approval expected. In the cover letter and the Phase 2 Reconsideration, BC Hydro's focus is on the approval of the Guidelines. Yet, elsewhere, BC Hydro indicates that a formal approval is not necessary. This section outlines the reasons for a formal approval.

8.1 Assist the Commission in exercising its authority in respect to an EPA or LDA

The Panel has previously found that the Contracted GBL Guidelines should be of assistance to the Commission when exercising its authority in respect to an EPA filed under section 71 of the UCA and an LDA filed under section 44.2 of the UCA. The use of the Guidelines in this manner aligns to the use originally contemplated by the Commission in its letter L-106-09. To assess adequacy of the Guidelines in this context, the Panel will first address the EPA review process, then the confidentiality of the Contracted GBL related information, followed by the LDA review process. After this, the overall assessment is provided.

8.1.1 Electricity Purchase Agreements

Section 71 of the UCA sets out the Commission's legislative authority regarding the acceptance of EPAs which are referred to as energy supply contracts in the UCA as previously discussed in section 2.5. Under section 71(1) of the UCA, all EPAs must be filed with the Commission for acceptance as being in the public interest, unless otherwise exempted by the Government of British Columbia.

The Commission can accept an EPA with BC Hydro as being in the public interest based on the information filed, in consideration of the criteria listed in section 71(2.21), without proceeding to a hearing. The Commission can determine that the EPA is not in the public interest and declare the EPA unenforceable, either wholly or in part, but only after a hearing.¹¹¹ As confirmed by BC Hydro, the Commission may choose to provide interested parties the opportunity to comment on the need for a hearing.¹¹²

Once an EPA is executed and accepted by the Commission to be in the public interest, it is a binding and fixed contractual obligation for the term of the EPA.¹¹³

BC Hydro submits that if the EPA incorporates a Contracted GBL that is too low, and BC Hydro is therefore paying the self-generator to produce electricity that it would normally generate in the absence of the EPA, the

¹¹¹ In order for the Commission to find that the energy supply contract is not in the public interest, the Commission is required to conduct a hearing after which the Commission may:

(a) by order, declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or

(b) make any other order it considers advisable in the circumstances.

¹¹² Exhibit B-9, BCUC IR 2.5.3.

¹¹³ Ibid., BCUC IR 2.14.2.3 [emphasis added].

Commission could find, after considering all other factors, that the contract is not in the public interest and declare it unenforceable under section 71(3).¹¹⁴

BC Hydro also observes that the Commission's powers in respect of a utility's EPAs are not the same as its powers in respect of a utility's rates. Under section 71, the Commission may, after a hearing, determine that an EPA is not in the public interest and declare it unenforceable in whole or in part. BC Hydro submits that this is a very strong power but it is quite different than the powers that form the Commission's rate-setting jurisdiction. The Commission cannot require the parties to change a term of the contract or impose different terms on the parties to the EPA. The Commission has no ongoing oversight over energy supply contracts.¹¹⁵

Overall, the entire EPA review process entails weighing of all section 71 criteria to be considered. The question of whether to accept the EPA or declare the contract unenforceable will be the outcome of consideration of all the information provided. Therefore, the acceptance or rejection would not be based solely on one factor such as a GBL.

ESC Rules

To facilitate the review of an EPA under section 71, the Commission, by Order G-61-12 (Appendix A, dated May 17, 2012), established Rules for Energy Supply Contracts for Electricity¹¹⁶ which detail the information that must be filed and considerations leading to the information filing, notices to be provided, issues related to confidentiality of information, and matters of public interest. The complete set of ESC Rules is provided in Appendix C.

Evidence and argument in this proceeding brought forth the idea that the Commission amend its ESC Rules. While such amendments are not within the scope of this review, the Panel will briefly address the matter in this decision insofar as it leads to a Panel recommendation.

BC Hydro stated the Commission could amend its ESC Rules to add a rule "that where a public utility submits an energy supply contract that uses a Contracted GBL, the filing should include an explanation of the basis for the Contracted GBL and a copy of any guidelines the public utility used to determine the Contracted GBL."¹¹⁷

BC Hydro also noted that if the Commission decided to make such an amendment it could add a new rule as follows:

- 1.6.1 An ESC for incremental or new electricity produced at a public utility customer's site with existing generation facilities should be submitted with appropriate evidence of the basis for the generation baseline between existing and incremental or new electricity, and with a copy of any guidelines that were used to determine the generation baseline.¹¹⁸

¹¹⁴ BC Hydro Final Submission, p. 19.

¹¹⁵ Exhibit B-1, pp. 27–28.

¹¹⁶ The Commission Rules for Energy Supply Contracts for Electricity (Rules) are made pursuant to section 2(4) of the UCA and section 11 of the *Administrative Tribunals Act*.

¹¹⁷ Exhibit B-7, CEC IR 1.22.7.

¹¹⁸ Exhibit B-9, BCUC IR 2.4.1.

BC Hydro further noted that it would not be concerned if the Panel for this proceeding ordered an amendment to the current ESC Rules along the lines suggested in the response to BCUC IR 2.4.1. However, BC Hydro pointed out that ordering the ESC Rule amendment as part of this proceeding might not be consistent with past Commission practice. The Commission's practice has been to circulate draft rules for energy supply contracts for comment by stakeholders before establishing or amending the rules by Commission order. The existing ESC Rules were approved by Commission Order G-61-12.¹¹⁹

BCOAPO submits that EPAs are considered on an individual basis and therefore the current approval requirements and process allow for such a consideration. In order to facilitate specific consideration of the Contract GBL (as used in the proposed EPA) the Commission should adopt BC Hydro's suggestion that the ESC Rules be amended to add a rule that "where a public utility submits an energy supply contract that uses a Contracted GBL, the filing should include an explanation of the basis for the Contracted GBL and a copy of any guidelines the public utility used to determine the Contracted GBL."¹²⁰

CEC notes BC Hydro's suggested amendment to the ESC Rules and submits "an amendment to the ESC [Rules] would be appropriate in improving the transparency for the Commission" but notes that BC Hydro has indicated it may be inconsistent with past Commission practice.¹²¹

Commission determination

The Panel acknowledges BC Hydro's suggested additional wording for the Commission's Rules for Energy Supply Contracts for Electricity and believes the wording to be appropriate in the context of this proceeding. However, the Panel further notes the ESC Rules are attached as Appendix A to Commission Order G-61-12 dated May 17, 2012 and were developed as part of a public process to update the previous version of the ESC Rules dated July 20, 1993. The decision to review the ESC Rules arose from changes to the UCA in 2008 and from the introduction of the CEA in 2010.¹²²

The Panel recommends that the Commission consider modifying the Rules for Energy Supply Contracts for Electricity next time the ESC Rules are reviewed to include a new Rule 1.6.1. Such a new rule might read as follows:

An ESC for incremental or new electricity produced at a public utility customer's site with existing generation facilities should be submitted with appropriate evidence of the basis for the generation baseline between existing and incremental or new electricity, and with a copy of any guidelines that were used to determine the generation baseline.

8.1.2 Confidentiality of Contracted GBL related information in an EPA

Section 71(5) of the UCA provides that an EPA and information filed with the Commission under section 71 must be made public unless the Commission considers that disclosure is not in the public interest. Rule 1.10 of the ESC

¹¹⁹ Ibid., BCUC IR 2.4.3.

¹²⁰ BCOAPO Final Submission, p. 9.

¹²¹ CEC Final Submission, p. 12.

¹²² Commission Order G-61-12 dated May 17, 2012, Recital B.

Rules sets out the process by which the Commission could make a determination that disclosure is not in the public interest.

With regard to whether the Contracted GBL and related information including criteria upon which it was set should be fully transparent and available for Commission review in assessing EPAs and LDAs in the public interest, BC Hydro stated: “BC Hydro does not agree that a Contracted GBL in a EPA or LDA between BC Hydro and its customer and the related information including criteria upon which it was set should be fully transparent to the public. The Contracted GBL and the related information upon which it was determined is customer confidential data.”¹²³

AMPC submits that the Guidelines reflect both business practices developed with AMPC members over time and refinements that were the subject of extensive consultation with AMPC.¹²⁴ On the subject of disclosure of confidential information, in response to Celgar’s letter of May 19, 2015 requesting access to certain confidential data, AMPC submits:

Confidentiality has allowed customers to feel comfortable disclosing information and negotiating with BC Hydro, and has resulted in BC Hydro and its customers reaching deals that were mutually beneficial for each, and for the other ratepayers, where agreements might not otherwise have happened. Breaching that existing trust, and making commercially sensitive customer information public will have a serious detrimental impact on future programs.¹²⁵

CEC submits that the Commission’s confidentiality processes are well understood and effective in ensuring that ratepayers can have adequate representative transparency. CEC accepts that given the confidentiality of certain information ratepayers may have limited input into whether or not a GBL is precisely set in any given application but submits that ratepayers do have an interest in, and can have visibility of the facts, in ensuring that the GBL is appropriately established.¹²⁶

BCOAPO submits the Commission should ensure that consideration is given to the appropriateness of the proposed Contracted GBL as it relates to the interests of ratepayers and that participation in the review by parties representing ratepayers’ interests is accommodated.¹²⁷ BCOAPO further submits that the Commission should note that it is during the review of a filing of an EPA between BC Hydro and a self-generating customer that other parties potentially impacted by the EPA filing should be also afforded the opportunity to assess whether the EPA is in the public interest.¹²⁸

BC Hydro stated that when it files EPAs between itself and a self-generating customer, BC Hydro intends to provide a copy of the Contracted GBL Guidelines and a description of how the Contracted GBL was determined but will not publically disclose a customer’s specific self-generation data and any associated adjustments as such

¹²³ Exhibit B-9, BCUC IR 2.17.1.

¹²⁴ AMPC Final Submission, p. 1.

¹²⁵ Exhibit C6-4, AMPC Response to Celgar Requests, p. 4.

¹²⁶ CEC Final Submission, p. 12.

¹²⁷ BCOAPO Final Submission, p. 9.

¹²⁸ Ibid., p. 16.

information is provided by a customer on a confidential basis. BC Hydro recognizes that the customer-specific data would be necessary to the Commission's review.¹²⁹

In reply to BCOAPO's request that the Commission note that other parties potentially impacted by the EPA filing should be also afforded the opportunity to assess whether the EPA is in the public interest BC Hydro submits that this is already addressed in Rule 1.1.2 of the ESC Rules and in the Commission's existing practices for granting intervener status and dealing with confidential filings.¹³⁰

Commission determination

The Panel acknowledges the disclosure requirement of section 71(5) of the UCA. The Panel also notes the ESC Rule 1.10 provides further clarity regarding confidentiality stating that parties to the EPA must file with the Commission written submissions supporting any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential, and include in the filing a redacted version of the ESC and other information. The Commission will consider the justification provided and determine the issue of confidentiality. Where the Commission determines that disclosure of the ESC is not in the public interest, it will require a redacted version of the ESC to be made available to the public.

The Panel also acknowledges the filing and notice requirements identified in Rule 1.2.2 of the ESC Rules.

Accordingly, the Panel accepts BC Hydro's position that BCOAPO's concerns can be addressed within the current legislative and regulatory framework.

8.1.3 Load Displacement Agreements

The Commission's jurisdiction concerning a utility's demand-side measures (DSM) flows from the UCA under section 44.1 in respect to long-term resource and conservation planning and in section 44.2 in respect to DSM expenditure schedules.¹³¹

The LDAs have already been addressed to some extent earlier in this decision. For instance, section 4.1.3 lists the existing LDA contracts and describes the nature of LDAs. In section 6.5, the discussion relating to customers with new self-generation highlights the Commission's predicament related to the LDAs. First, the Panel finds that the proposed Guidelines are not readily applicable to LDAs as in most instances, LDAs are funding new projects with no existing self-generation.¹³² Second, the Commission does not review individual LDAs as they are part of a broader DSM program. Regardless, a brief assessment is provided below.

The primary financial benefit of DSM programs to ratepayers is the avoidance of acquiring more expensive supply-side resources.¹³³ For an LDA, the economic incentive is provided by capital incentive from BC Hydro.¹³⁴ The Contracted GBL, in most cases, is not explicitly incorporated into the LDA; it is an implied term of the LDA. A Contracted GBL will be determined and used in connection with calculating the amount of the incentive BC

¹²⁹ Exhibit B-9, BCUC IR 2.4.4.

¹³⁰ BC Hydro Reply Submission, p. 3.

¹³¹ Exhibit B-1, p. 28.

¹³² Exhibit B-6, BCUC IR 1.3.2.

¹³³ Ibid., BCUC IR 1.6.1.

¹³⁴ Exhibit B-7, CEC IR 1.29.2.

Hydro will provide under the LDA towards the customer's self-generation capital project.¹³⁵ In regards to LDAs, there is no offset for increased purchases (as is the case for EPAs) at the regulated rates because all self-generated energy is used to reduce purchases and none is deemed to be delivered to BC Hydro.¹³⁶

When considering a DSM expenditure schedule filed by BC Hydro under section 44.2 of the UCA, the Commission may consider whether expenditures on LDAs included in that schedule are in the public interest and either accept the expenditure schedule as being in the public interest or reject the schedule.¹³⁷ In making its public interest determination, the Commission will consider fundamentally whether the expenditures are cost-effective with regard to BC's energy objectives and the interests of persons who receive or may receive service from the utility (these are essentially the same considerations as are applied to the review of EPAs).

As noted by BC Hydro, the UCA provides the Commission with different powers in relation to EPAs versus LDAs. BC Hydro submits that "In the case of a LDA, there is no requirement to file a copy of the contract with the Commission, and the Commission has not been empowered to declare such contracts unenforceable."¹³⁸ In the Application, BC Hydro describes the Commission's recourse:

To the extent that the Commission has concerns about Contracted GBLs used in LDAs, its recourse would be to reject the DSM expenditure schedule filed by the utility and/or deny recovery of costs. But the Commission cannot declare a DSM incentive contract unenforceable, nor can it require the parties to change a term of the contract.¹³⁹

The Commission can either accept or reject such expenditure schedules.¹⁴⁰

However, BC Hydro confirms that it would be required to file with any such schedules that include expenditures on LDAs the Guidelines that were used to determine the Contracted GBLs in conjunction of such LDAs.¹⁴¹

BC Hydro submits the risk of setting a GBL too low does not materialize in the same way for LDAs as for EPAs and the only gaming which could potentially occur is if the Contracted GBL is incorrectly set too low and the customer receives an incentive for that amount of generation it would normally generate for self-supply.¹⁴² However, BC Hydro has a practice of determining the incentive amount for the LDA using the lesser of two calculations to determine the LDA incentive. Typically, BC Hydro stated the incentive will be based on 75 percent of the project cost and not the amount of incremental energy (in which case there is no GBL).¹⁴³

In BC Hydro's view, the Guidelines may be of assistance to the Commission in assessing BC Hydro's approach to determining LDA incentives and whether BC Hydro is getting good value pursuant to the expenditures on LDAs.

¹³⁵ Exhibit B-6, BCUC IR 1.29.1.

¹³⁶ BC Hydro Final Submission, p. 13.

¹³⁷ UCA, section 44.2(3).

¹³⁸ BC Hydro Reply Submission, p. 2.

¹³⁹ Exhibit B-1, pp. 28–29.

¹⁴⁰ Exhibit B-7, CEC IR 1.26.2.

¹⁴¹ Exhibit B-10, BCOAPO IR 2.18.2.

¹⁴² Exhibit B-6, BCUC IR 1.3.1.

¹⁴³ Ibid., BCUC 1.3.1, 1.29.1.

8.1.4 Overall assessment of the Guidelines in assisting the Commission

In regards to the Guidelines being satisfactory for informing the Commission in its assessment of an EPA or LDA in respect to setting the Contracted GBL, CEC accepts the criteria that must be considered in assessing the public interest as set out in sections 71(2.21) and 44.2(5.1) of the UCA. However, CEC submits that the part of those sections that relate to the “interests of persons who receive or may receive service from the authority” is of considerable importance and should be weighed heavily in the Commission's determinations.¹⁴⁴ CEC notes that although the Guidelines are reasonably appropriate for their purpose in mitigating the risk to other ratepayers, the Guidelines may be of less use for the Commission in exercising its authority under the UCA in respect to an EPA or an LDA due to their subjectivity. However, CEC later submits that the Commission will have the access to confidential information and the particulars of the GBL determination in its review of an EPA or LDA and will be able to satisfy itself with respect to the appropriateness of the review. The Commission can weigh the evidence with respect to any unnecessary costs that may arise from the setting of the GBL baseline in its determination of the public interest of an EPA.¹⁴⁵ In conclusion, CEC finds the Guidelines to be satisfactory for informing the Commission in its assessment of an EPA or LDA in respect to the setting of the Contracted GBL.¹⁴⁶

AMPC and BCSEA also are of the view that the Guidelines provide an appropriate framework within which the Commission will be able to assess whether future EPAs and LDAs between BC Hydro and its self-generating customers are in the public interest.¹⁴⁷¹⁴⁸

Celgar’s response to the question of whether the Contracted GBL Guidelines provide the appropriate framework for assessing whether a particular LDA or EPA is in the public interest was no as a consequence of their position on the scope of the proceeding.¹⁴⁹

BCOAPO notes there is a problem with the review of GBLs in the context of LDAs, since LDAs are not reviewed by the Commission on an individual basis. Without some authority, the Commission can only consider the general effectiveness of the Guidelines in permitting BC Hydro to identify new/incremental generation when reviewing the expenditure schedules.¹⁵⁰

In response to BCOAPO, BC Hydro submits that in the case of an LDA, there is no requirement in the UCA for a party to file a copy of the contract with the Commission. Further, the Commission has not been empowered to declare such contracts unenforceable. The Commission’s powers in relation to a utility’s expenditures on DSM, including expenditures on LDAs, are set out in sections 44.1 and 44.2 of the UCA. BC Hydro submits its approach is to align its filings of EPAs and DSM expenditures to the applicable requirements of the UCA.¹⁵¹

¹⁴⁴ CEC Final Submission, p. 24.

¹⁴⁵ Ibid., p. 25.

¹⁴⁶ Ibid., p. 26.

¹⁴⁷ AMPC Final Submission, p. 4.

¹⁴⁸ BCSEA Final Submission, p. 6.

¹⁴⁹ Celgar Final Submission, pp. 4, 12 [emphasis added].

¹⁵⁰ BCOAPO Final Submission, para. 42, p. 9.

¹⁵¹ BC Hydro Reply Submission, p. 2.

Panel discussion

Although it is expected that the Contracted GBL and any related information including criteria upon which it was set will likely be held confidential and only available to the Commission, the views of BC Hydro and interveners, with the exception of Celgar, is that the Guidelines with respect to EPAs provide the appropriate framework for the Commission to assess whether the GBL component of a particular EPA is in the public interest at the time the EPA is filed with the Commission for acceptance under section 71.

Earlier, the Panel determined that the Contracted GBL Guidelines did not apply to Celgar as Celgar is a customer of FortisBC. For that reason, the Panel places little emphasis on the Celgar submission in reaching its determination concerning the adequacy of the Guidelines with regard to EPAs.

In the Panel's view, the Guidelines provide the appropriate framework to assist the Commission in exercising its authority in respect to an EPA filed under section 71 of the UCA, especially regarding the GBL component, as section 71 provides for the Commission to request BC Hydro to file any information the Commission considers necessary to determine whether or not the EPA is in the public interest. However, the Panel notes that under BC Hydro's proposal, the Commission does not approve the Guidelines in this review. Each future panel reviewing an EPA will need to consider not only the ensuing Contracted GBL but the Guidelines themselves.¹⁵² The Panel is concerned that this will lead to regulatory inefficiency and potentially inconsistent outcomes.

In regard to LDAs, as noted by BCOAPO, they are not reviewed by the Commission on an individual basis and the Commission has limited oversight in assessing DSM programs under section 44.2 of the UCA. Further, BC Hydro is not seeking Commission approval for the Guidelines or Commission's direction to use the Guidelines. Rather, BC Hydro believes that future panels can and should consider the Contracted GBL Guidelines when considering whether expenditures on LDAs included in a DSM expenditure schedule filed under section 44.2 of the UCA are in the public interest.

Because the Contracted GBL and any related information will not be available to the Commission when assessing if the DSM expenditure schedule is in the public interest, the Panel is concerned that if the Guidelines are not approved in this proceeding they may not be of assistance to the Commission in exercising its authority in respect to LDAs. However this concern is somewhat mitigated by the fact that typically an LDA incentive with a self-generating customer will be based on 75 percent of the project cost and not the amount of incremental energy and accordingly there is no need for a Contracted GBL. Furthermore, often LDAs are established for customers without any existing self-generation, for which the Guidelines do not apply.

Nevertheless, the Commission's concerns would be further alleviated if the Guidelines were approved in this proceeding, thus providing certainty the Guidelines will always be applied in a consistent manner.

8.2 Provide self-generating customers a basis for recourse to the Commission

BC Hydro stated that its description of the process that applies to the review of EPAs also applies to the review of LDAs pursuant to section 44.2(5.1) of the UCA. Specifically, the Commission's review is focused on the interests of cost-effectiveness and the interests of persons in British Columbia who receive or may receive

¹⁵² BC Hydro Final Submission, pp. 4–5.

service from BC Hydro rather than the interests of the parties entering into an LDA from the perspective of whether the LDA is fair. BC Hydro maintains it conducts fair processes by applying consistent rules and standards to proponents that choose to participate.¹⁵³

BC Hydro elaborated that when the Commission considers whether an EPA filed under section 71 of the UCA is in the public interest, the focus will not be on the fairness of outcomes for proponents that choose to participate in the procurement process. BC Hydro pointed out that the list of factors that the Commission must consider does not include the interests of the supplier under an energy supply contract with a public utility. BC Hydro stated that the Commission has no mandate to protect the interests of non-utility electricity generators that produce electricity under an electricity supply contract with a utility. BC Hydro further clarified that it is the ratepayer's interest that is at the core of the Commission's review of EPAs under section 71, and not the interests of either the specific party supplying the energy or the interests of the party's competitors.¹⁵⁴

CEC agrees with BC Hydro with respect to the primary focus of the public interest test being in the interests of those that receive or may receive service, but disagrees as to the exclusion of the interests of the supplier under an energy supply agreement. However, CEC submits that "in the case of an EPA or LDA, the supplier is also a customer of BC Hydro's and is therefore appropriately considered in the public interest test...CEC agrees that cost-effectiveness of the EPA and LDA is a key criterion of the public interest test, but submits that it is not the only criterion for consideration."¹⁵⁵

CEC further submits that there is limited information on the evidentiary record with respect to whether or not there is adequate information for BC Hydro customers who negotiate EPAs and LDAs. CEC submits that the Guidelines are not especially useful in assessing economic opportunity for an LDA or EPA from a customer's viewpoint in that they provide fairly general information as to how a baseline will be set. However, since the baseline is to be negotiated and the incentives are defined outside of the Guidelines, CEC submits that the Guidelines are adequate from this perspective.¹⁵⁶

Panel discussion

The Panel found previously that one of the purposes for the Guidelines was to provide the self-generating customers with a consistent and transparent framework for their negotiations of a prospective EPA and to provide a basis to come forward to the Commission to raise any concerns during the negotiating process. No interveners other than CEC specifically addressed the use of the Guidelines to provide the self-generating customers with a consistent and transparent framework for their negotiations of a prospective EPA. The Panel agrees with CEC that since the baseline is to be negotiated and the incentives are defined outside of the Guidelines, the Guidelines are adequate from this perspective.

The Panel also agrees with BC Hydro that once a contract has been entered into, neither section 71 nor 44.2 of the UCA takes into consideration the interest of the supplier. However, as pointed out by CEC, because the customer is also the supplier, broadly speaking, its interest should be taken into consideration as part of the

¹⁵³ Exhibit B-6, BCUC IR 1.4.7.

¹⁵⁴ Ibid.

¹⁵⁵ CEC Final Submission, p. 25.

¹⁵⁶ Ibid., p. 27.

Commission's consideration of interests of persons in British Columbia receiving service from BC Hydro. Yet, given the nature of the section 71 and section 44.2 review, this protection would be minimal at best.

Therefore, the Panel has doubts in regards to the usefulness of the Guidelines in providing a basis for a self-generator to approach the Commission with a complaint regarding concerns related to inconsistent application of the Guidelines that arose during the negotiating process. To remedy this concern, the Panel is of the view that with the appropriate Commission approvals this recourse objective may be achieved. In other words, the approved Guidelines would provide the self-generators with recourse to the Commission.

Under BC Hydro's proposal where the Guidelines are not approved by the Commission, the self-generator's recourse to the Commission would be limited. BC Hydro has proposed that the Commission confines its determination to an opinion as to whether the Guidelines provide an adequate and transparent framework. This limits the self-generator recourse to the Commission since the rules (or basis of negotiation) are not firmly established prior to the commencement of negotiations. A self-generator customer who is dissatisfied with the results of the negotiations has limited ability to argue that the Guidelines have not been followed if these Guidelines are open to revision by either party and BC Hydro has not been directed to apply them.

If the Guidelines were approved by the Commission and BC Hydro was directed to apply them, the self-generator customer's recourse would be to file a complaint with the Commission that the Guidelines were not correctly applied. As a result, the Commission's ability to efficiently evaluate the complaint is improved if the Guidelines are firm and any deviation from the Guidelines can be identified.

8.3 Ratepayer considerations

BC Hydro stated that "the ratepayers' interest test would be a separate test for a separate issue (that is, a separate issue not within the scope of this Application). The consideration of the ratepayers' interest would be in the future when the Commission considers an actual EPA or an actual DSM expenditure schedule filed under section 71 or 44.2 of the UCA, respectively."¹⁵⁷

Panel discussion

In the review of an EPA, the Commission, in making its public interest determination under section 71 of the UCA, must consider the interests of persons in British Columbia who receive or may receive service from BC Hydro. This definition includes ratepayers.

Under BC Hydro's proposal, where the Commission is not approving the Guidelines, future panels would have an opportunity during the section 71 review to make a determination on whether or not the Guidelines were adequate in mitigating the risk to other ratepayers and whether or not the negotiated GBL was set in accordance with those Guidelines. Therefore, in regards to an EPA filed under section 71 of the UCA the ratepayers' interest would be protected by future panels.

¹⁵⁷ Exhibit B-10, BCOAPO IR 1.18.1.

In regards to LDAs, the Commission is also required to consider the interests of persons in British Columbia who receive or may receive service from BC Hydro in a section 44.2 review of LDAs included in a DSM expenditure filing. As noted by BCOAPO, the Contracted GBL and any related information will not be filed with the Commission in respect to an LDA filed under section 44.2 of the UCA. If the Commission is not approving the Guidelines and directing BC Hydro to apply them, the Panel suggests it may be difficult to ensure that the ratepayer interest has been protected during the review of an LDA. However, Commission concerns would be alleviated if the Guidelines were approved in this proceeding as there would be certainty that they would be applied as approved by the Commission.

8.4 Commission determination

The Panel determines that after the specified amendments directed in this decision, the Contracted GBL Guidelines will be sufficiently transparent and effective to fulfil their intended purposes. Accordingly, the Guidelines, updated as of July 23, 2015 and attached to BC Hydro's final submission, will be approved by further order, after BC Hydro files the updated Guidelines, with the amendments directed in the decision. BC Hydro is directed to file with the Commission within 30 days of the date of this decision the updated Guidelines.

After receipt of BC Hydro's updated Guidelines, the Commission will issue a final order and attach the Guidelines, including Attachment 3 of Exhibit B-1, to that order. BC Hydro will also be directed to include Attachment 3 in all locations where the Guidelines will reside as directed in section 9.2.3.

The amendments required to the Guidelines, as directed in the decision, are as follows:

Guidelines Section 1

- Change the wording to remove reference to "mitigate the risk of arbitrage" and replace it with "mitigate the risk to other ratepayers" (section 6.2);
- Add wording to clarify that the Guidelines do not apply to current customers with no existing self-generation or new customers with self-generation (section 6.3).

Guidelines Section 3

- Provide further details on factors being considered, add a paragraph from the June 20, 2012 Information Report (page 16), as suggested by CEC (section 6.4.3).

Once the Guidelines are approved, BC Hydro is directed to apply the Guidelines when negotiating all future Energy Purchase Agreements and Load Displacement Agreements with self-generating customers to whom the Guidelines apply. Should BC Hydro wish to make further changes to the Guidelines in the future, it must file those amendments with the Commission for approval before they can be applied.

In addition, BC Hydro has been directed to file with the Commission for approval as a rate, the pro-forma Billing Formulae used for billing purposes for TSR and GSR customers that have EPAs containing a Contracted GBL (section 5.2.3.3).

9.0 RECONSIDERATION – WHERE THE GUIDELINES SHOULD RESIDE

9.1 Phase 1 reconsideration

As described in section 3.2, the Application also includes the Phase 2 reconsideration and variance of Order G-19-14 established by Order G-106-14 addressing BC Hydro's proposal for where the Guidelines should reside. Directive 2 of Order G-19-14 originally directed BC Hydro to file an application for approval of Contracted GBL Guidelines for incorporation into TS 74 which applies exclusively to a RS 1823 customer.

BC Hydro's Application for Reconsideration set out its concerns in detail. In summary, BC Hydro disagreed with the Commission's conclusion in the Order G-19-14 Decision that Contracted GBLs are rates in the context of TS 74 and disagreed with the reasoning that resulted in that conclusion. BC Hydro also expressed concern that it is not workable to incorporate the Guidelines into TS 74 because a Contracted GBL has already been determined and is a term of a binding contract (EPA or LDA) before TS 74 comes into play.

BC Hydro expressed further concern about including the Guidelines in TS 74 because the implication would be that the terms of a binding EPA or LDA could be changed by the Commission, without the mutual agreement of the parties to the EPA or LDA. This could undermine certainty of contract, as well as being fundamentally inconsistent with the Commission's powers in relation to regulatory oversight of EPAs and LDAs.

By Order G-106-14, the Commission established this current proceeding as Phase 2 of the reconsideration process to consider where the Guidelines should reside (Phase 2 Reconsideration). In the Order G-106-14 Decision, the Commission indicated that it has been persuaded on a *prima facie* basis that the Contracted GBL Guidelines should not be incorporated into TS 74.

9.2 Phase 2 reconsideration

9.2.1 BC Hydro's position

As part of the Phase 2 Reconsideration, BC Hydro states it believes that it is appropriate to seek the Commission's approval of the Guidelines, so that when the Commission considers an LDA or an EPA between BC Hydro and a self-generating customer, it has a framework within which to assess whether the agreement is in the public interest and otherwise consistent with the UCA and the CEA. However, BC Hydro argues that it is not sensible to restrict the use of Contracted GBL Guidelines to the determination of Contracted GBLs in EPAs and LDAs with only those customers who are charged for energy under RS 1823. BC Hydro submits that the EPA/LDA and Contracted GBL terms therein exist independently of the rate applied to determine the customer's charges for electricity.¹⁵⁸

BC Hydro further states, that if a Contracted GBL were deemed to be a rate for a utility service, it could be changed by the Commission as needed over time. The Commission might be obligated to reconsider the Contracted GBL from time to time. This could have significant consequences for customers who have relied on financial incentives offered by BC Hydro in arriving at a decision to make investments to increase their self-generation, and have a negative impact on customer willingness to enter into these agreements in the future.¹⁵⁹

¹⁵⁸ Exhibit B-1, pp. 6–8.

¹⁵⁹ *Ibid.*, p. 27.

BC Hydro submits that the possibility that a key term of a commercial EPA or LDA being subject to ongoing oversight and reopening by the Commission could have a negative impact on customer willingness to enter into agreements that provide benefits to persons who receive or may receive service from BC Hydro. The regulatory status of a Contracted GBL as used by BC Hydro, therefore, matters very much to BC Hydro and to customers with an EPA/LDA or considering entering into such a contract.¹⁶⁰

The following summarizes BC Hydro's main point made as part of the Phase 2 Reconsideration in regards to why the Guidelines should not be attached to TS 74:

- Not all self-generating customers negotiating a prospective EPA or LDA take service under RS 1823 and therefore there is no reason to limit the Guidelines to just those customers;
- There is no logic to the Guidelines residing in TS 74 because:
 - BC Hydro applies TS 74 to determine a unique Energy CBL. Such customer's energy consumption relative to the Energy CBL determines whether the customer's energy purchases will be at the Tier 1 or Tier 2 rate of the RS 1823;
 - TS 74 has nothing to do with determining Contracted GBLs and they play no role in the determination of how to treat a customer's Energy CBL pursuant to TS 74;
- A Contracted GBL, in the context of an EPA or an LDA with a BC Hydro customer, does not define or limit in any way BC Hydro's obligation to serve that customer;
- A Contracted GBL is not a "rate", as defined in the UCA, in the context of TS 74 or otherwise;¹⁶¹
- Once an LDA or EPA has been executed, the Guidelines will have no further role in relation to that customer. The Guidelines will have no bearing on any subsequent Energy CBL treatment under TS 74 when the customer begins producing incremental self-generation output on a commercial operation basis.¹⁶²

BC Hydro submits that the question of where the Contracted GBL Guidelines should reside needs to be informed by two main issues:

- (i) the use to which the Contracted GBL Guidelines will be put, and
- (ii) the Commission's authority over that use.¹⁶³

In light of the uses to which the Guidelines should be put and the Commission's authority in respect of those uses, BC Hydro submits that it makes sense for them to be attached as an appendix to the Commission's order concluding this proceeding and also reside in the following six places:

1. in future BC Hydro filings under section 44.2 of the UCA in respect of a DSM expenditure schedule that includes expenditures on LDAs;
2. in future BC Hydro filings under section 71 of the UCA in respect of an EPA between BC Hydro and a self-generating customer;
3. on BC Hydro's PowerSmart website within the section associated with LDAs;

¹⁶⁰ Ibid., p. 29.

¹⁶¹ BC Hydro Final Submission, pp. 8–10.

¹⁶² Application, Exhibit B-1, p. 21.

¹⁶³ BC Hydro Final Submission, p. 18.

4. in the package of materials provided to customers for the purposes of negotiating an LDA;
5. on BC Hydro's website within the section associated with energy procurement; and
6. in the package of materials provided to customers for the purpose of negotiating an EPA.¹⁶⁴

9.2.2 Submissions by parties

In their respective final submissions, CEC, AMPC, BCSEA and BCOAPO did not raise objection to locating the Guidelines outside of TS 74 or to appending them to the Commission's order concluding this proceeding. They also are generally in agreement with BC Hydro's proposal as to where else they should reside.

Celgar on the other hand has taken the position the Commission previously determined that this proceeding has a very narrow, restricted scope, and to preserve procedural fairness the Commission must not consider any issues outside this narrow restricted scope. Celgar submits that the Contracted GBL Guidelines included with the Application are themselves out of scope (as the scope is defined by Celgar) and therefore, in Celgar's view, the Application must be rejected in its entirety.

In its reply, BC Hydro submits that "the Commission has not directed BC Hydro to revise...[TS 5] to, in some manner, make the contract demand therein based on a GBL, as Celgar suggests it did...It is because of the misunderstandings about the bases for BC Hydro's obligation to serve, in many cases propagated by Celgar, that the Application includes lengthy sections aimed at correcting the record."¹⁶⁵ BC Hydro further responds stating "Celgar incorrectly suggests that the decision to deny reconsideration of 'other aspects of Directive 2' means that the Commission will refuse to consider anything and everything, except for the extremely narrow question of where the Contracted GBL Guidelines should reside."¹⁶⁶ BC Hydro concludes this issue stating that given the record above, Celgar's argument is wrong and its claim of procedural unfairness is entirely without foundation.¹⁶⁷

9.2.3 Commission determination

First, the Panel agrees with BC Hydro that Celgar's claim of procedural unfairness is without foundation. The Commission did not determine that this proceeding was to have the very narrow restricted scope as suggested by Celgar. Second, the Panel agrees that not all self-generating customers negotiating a prospective EPA or LDA take service under RS 1823 and therefore there is no reason to limit the Guidelines to just those customers as would be the case if they were incorporated into TS 74.

The Panel also agrees that once an LDA or EPA has been executed, the Guidelines will have no further role in relation to that customer. The Guidelines will have no bearing on any subsequent Energy CBL treatment under TS 74 when the customer begins producing incremental self-generation output on a commercial operation basis even though it is a secondary component of TS 74. The Panel agrees that the EPA/LDA and Contracted GBL terms are incorporated into TS 74 but therein exist independently of the rate applied to determine the

¹⁶⁴ Ibid., pp. 10–11.

¹⁶⁵ Ibid., p. 5.

¹⁶⁶ Ibid., p. 6.

¹⁶⁷ Ibid., p. 10.

customer's charges for electricity. **Therefore, the Panel determines that it is the Billing Formula that determines the calculation of the rate a self-generating customer with a Contracted GBL under an EPA will be billed.**

The Panel also shares BC Hydro's concerns that if the Guidelines were attached to TS 74 there is the possibility that the Commission might be obligated to reconsider the Contracted GBL from time to time which is inconsistent with the Commission's powers in relation to EPAs and LDAs. This could have unintended consequences for customers who have relied on financial incentives offered by BC Hydro in arriving at a decision to make investments to increase their self-generation, and may have a negative impact on customer willingness to enter into these agreements in the future.

The Panel agrees with BC Hydro that one must consider the use to which the Guidelines will be put and the Commission's authority over that use.¹⁶⁸ In its determination on the GBL Guidelines, the Panel explored in detail the purpose and use of the Guidelines and their adequacy in achieving those purposes. In the end, the Panel approved the Guidelines as proposed by BC Hydro subject to amendments reflecting determinations made in the decision.

The Panel understands that the Guidelines apply to a self-generator who is both a customer and supplier and recognizes the risk of attaching the Guidelines to TS 74 as stated above. The Panel also takes into consideration that BC Hydro has agreed to and is directed to file the pro-forma Billing Formulae with the Commission for approval.

BC Hydro's request for reconsideration of Directive 2 of Order G-19-14 regarding where the Guidelines should reside is granted. The Panel determines that the purpose of the Guidelines will be adequately met if they are approved by the Commission and appended to the Commission's order concluding this proceeding and approving the Guidelines as determined in section 8.4. The Panel finds that it would also be beneficial to have them reside in the additional six places listed on page 11 of BC Hydro's final submission as recreated above and therefore directs BC Hydro to do so.

¹⁶⁸ Ibid., p. 18.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of October 2015.

Original Signed By

L. A. O'Hara
Panel Chair/Commissioner

Original Signed By

B. A. Magnan
Commissioner

Original Signed By

R. D. Revel
Commissioner

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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-174-15**

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IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Application for Approval of Contracted Generator Baseline Guidelines
and Reconsideration and Variance of Order G-19-14

BEFORE: L. A. O'Hara, Panel Chair/Commissioner
B. A. Magnan, Commissioner
R. D. Revel, Commissioner
October 30, 2015

O R D E R

WHEREAS:

- A. On December 12, 2014, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (Commission) for approval of Contracted Generator Baseline Guidelines (Guidelines) in compliance with Directive 2 of Order G-19-14 as varied by Order G-106-14 and the Phase 2 reconsideration and variance of Order G-19-14 addressing where the Guidelines should reside (Application);
- B. The British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA), Commercial Energy Consumers Association of British Columbia (CEC), FortisBC Inc., Zellstoff Celgar Limited Partnership (Celgar), the Association of Major Power Customers (AMPC) and West Fraser Mills registered as interveners;
- C. On December 16, 2014, by Order G-199-14, the Commission established a preliminary Regulatory Timetable for the review of the Application which included one round of Information Requests, and submissions from the parties on further regulatory process. The preliminary Regulatory Timetable was subsequently suspended by Order G-12-15, dated January 30, 2015;
- D. The suspension was lifted and the dates amended by Order G-42-15, dated March 27, 2015. The dates in the preliminary Regulatory Timetable were further extended by way of Order G-64-15 dated April 23, 2015;

- E. By Order G-96-15, dated June 4, 2015, the Commission determined that the review of the Application would proceed by way of a written hearing and set the final Regulatory Timetable which provided for a second round of information requests, followed by written submissions; and
- F. On July 23, 2015, BC Hydro made its final submission. On August 7, 2015, BCSEA, Celgar, CEC, AMPC and BCOAPO filed final submissions, followed by BC Hydro's reply on August 20, 2015.

NOW THEREFORE, pursuant to the *Utilities Commission Act*, the British Columbia Utilities Commission orders:

1. The Contracted GBL Guidelines (Guidelines), updated as of July 23, 2015 and attached to British Columbia Hydro and Power Authority's (BC Hydro) final submission, will be approved by further order, after BC Hydro files the updated Guidelines with the amendments directed in the decision.
2. BC Hydro is directed to file, within 30 days of the date of this order, the final updated Guidelines incorporating the findings in the decision.
3. Once approved, BC Hydro is directed to apply the Guidelines when negotiating all future Energy Purchase Agreements and Load Displacement Agreements with self-generating customers to whom the Guidelines apply.
4. BC Hydro's request for reconsideration of Directive 2 of Order G-19-14 regarding where the Guidelines should reside is granted. BC Hydro is directed to include the Guidelines and Attachment 3 of Exhibit B-1, that will be attached to the final order approving the Guidelines:
 - (i) in future BC Hydro filings under section 44.2 of the UCA in respect of a DSM expenditure schedule that includes expenditures on LDAs;
 - (ii) in future BC Hydro filings under section 71 of the UCA in respect of an EPA between BC Hydro and a self-generating customer;
 - (iii) on BC Hydro's PowerSmart website within the section associated with LDAs;
 - (iv) in the package of materials provided to customers for the purposes of negotiating an LDA;
 - (v) on BC Hydro's website within the section associated with energy procurement; and
 - (vi) in the package of materials provided to customers for the purpose of negotiating an EPA.
5. BC Hydro is directed to file, within 30 days of the date of this order, the appropriate Deemed Demand and Deemed Energy Billing Formula tariff sheets for both transmission service rate customers and general service customers. The tariff sheets must include a description of the method that BC Hydro uses to determine the energy (kWh) that is deemed to have received from the customer in accordance with the Energy Purchase Agreement and describe the billing process and calculation that BC Hydro will use to bill the

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-174-15

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customer for deemed energy (kWh) and demand (kV.A) it purchases from BC Hydro under the customers Electricity Supply Agreement.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of October 2015.

BY ORDER

Original Signed By:

L. A. O'Hara
Panel Chair/Commissioner

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Application for Approval of Contracted Generator Baseline Guidelines
and Reconsideration and Variance of Order G-19-14

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter dated December 16, 2014 – Order G-199-14 establishing Regulatory Timetable
A-2	Letter dated January 7, 2015 – Appointment of Commission Panel
A-3	Letter dated January 29, 2015 – Requesting information requests to not be filed as directed by Order G-199-14 due to BC Hydro’s filing regarding interveners (Exhibit B-2)
A-4	Letter dated January 30, 2015 – Order G-12-15 establishing a Procedural Conference and suspending the Regulatory Timetable, established by Order G-199-14, until further notice
A-5	Letter dated January 30, 2015 – Notice of member extension
A-6	Letter dated February 12, 2015 – Order G-18-15 Containing Reasons and establishing Regulatory Timetable
A-7	Letter dated March 27, 2015 – Commission Order G-42-15 Final Panel General Issues List, Regulatory Timetable and Reasons for Decision
A-8	Letter dated April 2, 2015 – Commission Information Request No. 1 to BC Hydro
A-9	Letter dated April 23, 2015 – Commission Order G-64-15 Amended Regulatory Timetable
A-10	Letter dated June 4, 2015 – Commission Order G-96-15 Regulatory Timetable and Reasons for Decision
A-11	Letter dated June 22, 2015 – Commission Information Request No. 2 to BC Hydro

Exhibit No.	Description
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APPLICANT DOCUMENTS

B-1	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO) Letter Dated December 12, 2014 - Reconsideration and Variance of Commission Order No. G-19-14 Directive 2 Contracted Generator Baseline (GBL) Guidelines Application
B-2	Letter Dated January 20, 2015 – BC Hydro Submitting Comments regarding FortisBC and Celgar Intervener Status
B-3	Letter dated February 23, 2015 – BC Hydro Submitting Comments
B-4	Letter dated March 9, 2015 – BC Hydro Submitting Reply Comments
B-5	Letter dated April 17, 2015 - BC Hydro Request for Filing Extension of IR No. 1 responses
B-6	Letter dated May 11, 2015 – BC Hydro Response to Commission Information Request No. 1
B-6-1	Letter dated July 9, 2015 - BC Hydro Revised Attachment 1 to BCUC IR No. 1.33.1
B-7	Letter dated May 11, 2015 – BC Hydro Response to Intervener Information Request No. 1
B-8	Letter dated May 25, 2015 – BC Hydro Reply to Intervener Submissions of Further Process
B-9	Letter dated July 9, 2015 - BC Hydro Responses to BCUC Information Request No. 2
B-10	Letter dated July 9, 2015 - BC Hydro Responses to Interveners Information Request No. 2

INTERVENER DOCUMENTS

C1-1	COMMERCIAL CLASS ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA (CEC) – Letter dated December 22, 2014 – Request for Intervener Status by C. Weafer
C1-2	Letter dated March 2, 2015 – CEC Submitting Comments
C1-3	Letter dated April 7, 2015 – CEC Submitting IR No. 1 to BC Hydro
C1-4	Letter dated May 19, 2015 - CEC Submitting Comments on Process

Exhibit No.	Description
C2-1	BC SUSTAINABLE ENERGY ASSOCIATION AND THE SIERRA CLUB OF BRITISH COLUMBIA (BCSEA) – Letter dated January 5, 2015 – Request for Intervener Status by William J. Andrews and Thomas Hackney
C2-2	Letter dated February 26, 2015 – BCSEA Submitting Comments
C2-3	Letter dated April 7, 2015 – BCSEA Submitting IR No. 1 to BC Hydro
C2-4	Letter dated May 19, 2015 - BCSEA Submitting Comments on Process
C2-5	Letter dated June 22, 2015 – BCSEA Submitting IR No. 2 to BC Hydro
C3-1	ZELLSTOFF CELGAR PARTNERSHIP LIMITED (CELGAR) Letter dated January 6, 2015 – Request for Intervener Status by Kim Moller, Elroy Switlischoff, Robert Hobbs and Brian Merwin
C3-2	Letter dated March 2, 2015 – Celgar Submitting Comments
C3-3	Letter dated April 7, 2015 – Celgar Submitting IR No. 1 to BC Hydro
C3-4	Letter dated May 19, 2015 - Celgar Submitting Comments on Process
C3-5	Letter dated June 22, 2015 – Celgar Submitting IR No. 2 to BC Hydro
C4-1	FORTISBC INC. (FBC) Letter dated January 6, 2015 – Request for Intervener Status by Diane Roy
C4-2	Letter dated April 7, 2015 – FBC Submitting IR No. 1 to BC Hydro
C5-1	BRITISH COLUMBIA OLD AGE PENSIONERS’ ORGANIZATION, ACTIVE SUPPORT AGAINST POVERTY, DISABILITY ALLIANCE BC, COUNSEL OF SENIOR CITIZENS’ ORGANIZATIONS OF BC, AND THE TENANT RESOURCE AND ADVISORY CENTRE (BCOAPO) Letter dated January 7, 2015 – Request for Intervener Status by Tannis Braithwaite, Erin Pritchard and Bill Harper
C5-2	Letter dated March 2, 2015 – BCOAPO Submitting Comments
C5-3	Letter dated April 7, 2015 – BCOAPO Submitting IR No. 1 to BC Hydro
C5-4	Letter dated May 15, 2015 - BCOAPO Submitting Comments on Process
C5-5	Letter dated June 22, 2015 – BCOAPO Submitting IR No. 2 to BC Hydro
C6-1	ASSOCIATION OF MAJOR POWER CUSTOMERS OF BC (AMPC) Letter dated January 12, 2015 – Request for Intervener Status by Brian Wallace, Matthew Keen and Richard Stout
C6-2	Letter dated March 2, 2015 – AMPC Submitting Comments
C6-3	Letter dated May 19, 2015 - AMPC Submitting Comments on Process

Exhibit No.	Description
C6-4	Letter dated May 25, 2015 – AMPC Response to Celgar Request
C6-5	Letter dated July 8, 2015 – AMPC Submitting Comments regarding BCUC IR No. 2
C7-1	WEST FRASER MILLS LTD. (WFM) Letter dated February 13, 2015 – Request for Late Intervener Status by Veikko Paivinen

INTERESTED PARTY DOCUMENTS

No Submissions

LETTERS OF COMMENT

No Submissions

LIST OF ACRONYMS

AMPC	Association of Major Power Customers
Application	Approval of Contracted Generator Baseline Guidelines in compliance with Directive 2 of the British Columbia Utilities Commission Order G-19-14 as varied by Order G-106-14 and the Phase 2 reconsideration and variance of Order G-19-14 established by Order G-106-14 addressing BC Hydro's proposal for where the Guidelines should reside
BC Hydro	British Columbia Hydro and Power Authority
BCOAPO	British Columbia Old Age Pensioners' Organization <i>et al.</i>
BCSEA	B.C. Sustainable Energy Association and the Sierra Club of British Columbia
CBL	Customer Baseline Load
CEA	<i>Clean Energy Act</i>
CEC	Commercial Energy Consumers Association of British Columbia
Commission	British Columbia Utilities Commission
DSM	demand-side measure
EPA	Electricity Purchase Agreement
ESA	Electric Service Agreement
ESC Rules	Rules for Energy Supply Contracts for Electricity
FortisBC or FBC	FortisBC Inc.
GBL	Generator Baseline
GSR	general service
Guidelines	Contracted Generator Baseline Guidelines
GWh	Gigawatt-hour
IRs	Information Requests
kV.A	Kilovolt-ampere
kWh	Kilowatt-hour
LDA	Load Displacement Agreement
LNG	Liquefied natural gas
MWh	Megawatt-hour
OATT	Open Access Transmission Tariff
TS 74	Tariff Supplement No. 74
TS 74 Application	Application for approval to amend Tariff Supplement No. 74
TSR	Transmission Service Rate
UCA	<i>Utilities Commission Act</i>
West Fraser	West Fraser Mills Ltd.

British Columbia Hydro and Power Authority
Application for Contracted Generator Baseline Guidelines
and Reconsideration and Variance of Order G-19-14 Phase 2

British Columbia Utilities Commission
Rules for Energy Supply Contracts for Electricity
Order G-61-12
Appendix A

APPENDIX A
to Order G-61-12
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BRITISH COLUMBIA UTILITIES COMMISSION
RULES FOR ENERGY SUPPLY CONTRACTS FOR ELECTRICITY

INTRODUCTION

The following Rules are intended to facilitate the British Columbia Utilities Commission's (Commission) review of energy supply contracts for electricity and proposed energy supply contracts for electricity under section 71 of the *Utilities Commission Act* (the Act). Separate Rules apply to energy supply contracts for natural gas.

The Rules are made pursuant to section 11 of the *Administrative Tribunals Act*.

The Rules replace the "Energy Supply Contracts – Rules" dated July 20, 1993, posted on the Commission's website under the link "Energy Supply Rules – Electric."

Energy Supply Contracts

The Commission intends to review energy supply contracts (ESCs) expeditiously and accept them for filing without a hearing where it has been provided with sufficient information to allow it to determine that the ESC is in the public interest. Further, the Commission intends to avoid retroactive Orders.

Proposed Energy Supply Contracts

The Commission also intends to review proposed energy supply contracts (Proposed ESCs) expeditiously and to approve them where it has been provided with sufficient information to allow it to determine that the Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions is in the public interest.

Relevant Legislation

Sections 44.1, 68 and 71 of the Act together with sections 2, 4, 6, 7 and 19 of the *Clean Energy Act* (CEA) are currently the principal statutory provisions relevant to the filing of an ESC or submitting of a Proposed ESC with the Commission.

Since legislation may change from time to time, users of these Rules should always consult the legislation to determine which Rules apply to them. In the event of any inconsistency with these Rules and the legislation, the legislation governs.

Section 68 of the Act defines an "energy supply contract" to mean:

a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of the Act,

and "energy" to mean:

electricity or natural gas.

Sections 71(1) and 71(1.1) of the Act require that with the exception of an ESC for the sale of natural gas to a person other than a public utility, a person who enters into an ESC must file a copy of the ESC with the Commission under rules and within the time the Commission specifies and provide the Commission with information the Commission considers necessary to determine whether the ESC is in the public interest.

Section 71(2.3) of the Act allows a public utility to submit a Proposed ESC setting out the terms and conditions of the contract and a process the public utility intends to use to acquire power from other persons in accordance with those terms and conditions.

ESC not in the Public Interest

If the Commission, following a hearing, determines an ESC is not in the public interest, it may pursuant to section 71(3) of the Act:

- (a) by order, declare the ESC unenforceable, either wholly or to the extent the Commission considers proper; or
- (b) make any other order it considers advisable in the circumstances.

Proposed ESC in the Public Interest

If the Commission is satisfied that it is in the public interest to approve a Proposed ESC and the process the public utility intends to use to acquire the power from other persons, it may by order approve the Proposed ESC and the process.

1.0 GENERAL RULES

- 1.1 Unless otherwise exempted from filing by the Act, the CEA or any orders or regulations made thereunder, an ESC and any amendments thereto shall be filed with the Commission pursuant to Section 71 of the Act and its acceptance obtained.
 - 1.1.1 A person entering into an ESC to sell or purchase electricity on a short-term or spot basis with a term of 62 days or less in duration, may request Commission approval for a procedure whereby the person retains the ESC for audit purposes and files a quarterly statement of short-term and spot electricity sales or purchases that provides information on a composite basis on the quantity and price of such sales or purchases confirming that they conformed to prevailing market conditions and were consistent with the buyer's supply needs. The quarterly reports must be filed within 30 days of the end of the period, and the Commission will respond as required to address any concerns with the short-term and spot electricity purchases on an exception basis. On or before April 30 of each year, the person must file the ESCs made during the previous year for short-term and spot electricity sales or purchases that are for a term of 62 days or less in duration.
 - 1.1.2 A person entering into an ESC other than an ESC described in section 1.1.1 shall file the ESC with the Commission within 60 days of the date upon which the person enters into the ESC. In addition to filing the ESC with the Commission, a public utility entering into an ESC must provide notice of the filing to parties that intervened in its most recent

revenue requirements application as appropriate. Upon reviewing the filing, the Commission will determine whether appropriate notice has been given in the circumstances.

- 1.1.3 The obligation to file an ESC and provide information rests upon each party to the ESC, but for the purposes of these Rules, the Commission considers that the primary obligation to file and provide information rests with the buyer.
- 1.2 The Commission will rely on all information it considers necessary to determine whether an ESC is in the public interest. In doing so it will consider the factors referred to in section 71(2.1) and (2.2) of the Act where the ESC is filed by a public utility other than BC Hydro and the Commission will consider and be guided by the factors in section 71(2.21) of the Act where the ESC is filed by BC Hydro.
- 1.3 Generally, the Commission will decide within 60 days of the filing of an ESC as to whether a public hearing is required, and if not, will issue an Order determining the ESC is in the public interest and accepting the ESC for filing. If the Commission determines a public hearing is required, it will take place where:
- (a) the Commission is unable to determine on the basis of the information filed under these General Rules that the ESC is in the public interest; or
 - (b) it appears to the Commission on the basis of the information filed under these General Rules that the ESC may not be in the public interest.
- The Commission may also hold a hearing where it receives a third party complaint about the ESC.
- 1.4 Where a public utility submits a Proposed ESC to the Commission pursuant to section 71(2.3) of the Act, the Commission will rely on all information it considers necessary to determine whether the Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions is in the public interest and should be approved. In doing so it will consider the factors in section 71(2.5) of the Act where the Proposed ESC is submitted by a public utility other than BC Hydro and it will consider and be guided by the factors in section 71(2.51) of the Act where the Proposed ESC is submitted by BC Hydro.
- 1.5 The Commission will by Order:
- (a) determine that an ESC is in the public interest and accepted for filing; or
 - (b) determine, after a hearing, that the ESC is not in the public interest and declare the ESC unenforceable, either wholly or to the extent that the Commission considers proper or make any other order it considers advisable in the circumstances;¹ or
 - (c) for a submission pursuant to section 71 (2.3) of the Act, approve or not approve the

¹ Act, s. 71(3)

Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions².

- 1.6 Where applicable, an ESC filing pursuant to section 71(1) of the Act or a Proposed ESC submitted pursuant to section 71(2.3) of the Act must at a minimum include the following information: duration, rights of renewal and other special provisions, reliability considerations, price and price escalation and alternate sources of supply of the ESC or Proposed ESC and, where a person seeks Commission acceptance of an amendment to an ESC, that notice has been provided to all parties that intervened in any Commission proceeding concerning the filing of the original ESC under section 71 of the Act.
- 1.7 On or before April 30 of each year, the buyer must file a report with the Commission providing details of any amendments to the terms and conditions of the ESC. For the purposes of this filing, an amendment means an alteration or revision, by modification, addition or deletion, to any term or condition of the ESC.
- 1.8 An ESC contingent on wheeling or load shaping arrangements with a public utility should be submitted with appropriate related contracts or other evidence of formal arrangements made in this regard.
- 1.9 These Rules do not apply to an ESC entered into prior to June 18, 1988 unless the ESC has been amended since that date.
- 1.10 An ESC and the information filed under section 71(1) of the Act shall be made available to the public except where the Commission considers that disclosure is not in the public interest.³ In order to allow the Commission to make a determination that disclosure is not in the public interest, parties to the ESC must provide written submissions in support of any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential and include in the filing a redacted version of the ESC and other information. The Commission will consider the justification provided and determine the issue of confidentiality. Where the Commission determines that disclosure of the ESC or other information is not in the public interest, it will require a redacted version of the ESC and other information to be made available to the public.
- 1.11 These General Rules, modified only insofar as is necessary, apply to a person who is not a public utility who enters into an ESC with a person other than a public utility.

2.0 CONTRACTUAL DEVELOPMENTS

- 2.1 For the purposes of this section a Contractual Development means any document or action that does not alter or revise, by modification, addition or deletion, any term or condition of the ESC and could include:
 - (a) a deemed assignment agreement,
 - (b) an assignment and assumption agreement,

² Act, s. 71(2.4)

³ Act, s. 71(5).

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- (c) a consent,
- (d) a termination agreement,
- (e) a waiver,
- (f) a change of name, or
- (g) a Memorandum of Understanding.

- 2.2 On or before April 30 of each year, the buyer shall file a report with the Commission providing details of any Contractual Developments that have occurred pursuant to the terms of the ESC, in order that the form of the ESC on file with the Commission remains current.
- 2.3 Contractual Developments are filed for information purposes only and will not be subject to further Commission Orders.

British Columbia Hydro and Power Authority
Application for Contracted Generator Baseline Guidelines
and Reconsideration and Variance of Order G-19-14 Phase 2

British Columbia Hydro and Power Authority
Summary of Letter dated July 27, 2011

On July 27, 2011, the British Columbia Hydro and Power Authority (BC Hydro) filed a letter stating that it continued to agree with the British Columbia Utilities Commission (Commission) that it would be helpful to file its guidelines for the determination of Generator Baselines (GBLs) in order to achieve greater efficiency and consistency in the determination and review of such GBLs. In that letter, BC Hydro outlined the timing and scope to address the Commission requests set out in letter L-106-09.

BC Hydro states that the introduction of a stepped rate in 2006 required the establishment of Energy Customer Baselines (CBL) for each customer which are calculated in accordance with Tariff Supplement No. 74 (TS 74).¹⁶⁹ However the guidelines currently do not address establishing an Energy CBL in a situation where a customer is using self-generation facilities to serve a portion of its load nor does it allow for adjustments to an Energy CBL in the event that a self-generating customer begins making deliveries to BC Hydro under an Electricity Purchase Agreement (EPA).

BC Hydro explains that for customers that are serving a portion of their load with self-generation, a Non-Contracted GBL needs to be determined (which represents the baseline output used by the customer in the CBL establishment year to serve an equivalent portion of the customer's historic plant load) to ensure that future changes in customer energy purchase can be correctly attributed to corresponding changes in self-generation.

For customers with an EPA or Load Displacement Agreement (LDA) with BC Hydro, a Contracted GBL is required to determine a baseline above which BC Hydro will agree to purchase electricity from the customer or for compensating a customer for displacing its load. The Contracted GBL represents the contractual amount of generation output that must first be used to supply an equivalent portion of the customer's plant load.

In both cases, the GBL is harmonized with the CBL such that the sum of the two baselines (CBL + GBL) continue to reflect the total normal historical load of the customer site. BC Hydro explained that the determination of normalized historic annual net energy purchases (CBL) requires the determination of the customers normalized historic annual self-generation output (Non-Contracted or Contracted GBL) for the purposes of billing under Rate Schedule 1823.

In the letter, BC Hydro stated that because TS 74 does not have specific provisions for determining historic self-generation output in aid of establishing an Energy CBL for a self-generating customer nor does it have specific provisions for adjustment of an Energy CBL in the event a self-generating customer begins making deliveries to

¹⁶⁹ TS 74 provides for the determination of Customer Baseline Loads (CBL) for industrial customers taking service at transmission voltage under RS 1823

BC Hydro under an EPA. The letter also states that BC Hydro plans to file new tariff documents that reflect established business practices as follows:

1. CBL Determination Guidelines specifically for transmission service customers with self-generation; and
2. CBL Determination Guidelines for customers that begin making deliveries to BC Hydro under an EPA [or LDA].

The letter noted that given the need for a better understanding of the determination and use of GBLs, BC Hydro also intends to submit with the planned filing, a detailed report for information purposes that includes:

1. Principles of GBL Establishment;
2. GBL Establishment Considerations for EPA customers; and
3. Response to BCUC Letter L-106-09 (20 questions).

British Columbia Hydro and Power Authority
Application for Contracted Generator Baseline Guidelines
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Laws and Policies

- A key government policy, enacted into law, is the mandate to achieve electricity self-sufficiency by 2016 by holding the rights to electricity generated in B.C. from clean or renewable sources sufficient to meet BC Hydro's domestic needs;
- Other policies in the 2007 BC Energy Plan also provide an important policy context including:
 - zero net GHG emissions from new electricity generation projects;
 - at least 90 percent of total generation from clean or renewable resources;
 - the implementation of bioenergy strategy; and
 - the implementation of a bioenergy call for power.
- The *BC Bioenergy Strategy* has also influenced BC Hydro's decision to purchase customer self-generation from forestry TSR customers; and
- British Columbia's energy objectives in the CEA have influenced BC Hydro's decisions to encourage customers to generate additional electricity. Relevant objectives include:
 - the implementation of demand-side measures such as load displacement objective;
 - generation of at least 93 percent of electricity in B.C. from clean or renewable resources, which by definition includes bio-mass;
 - reductions in B.C. GHG emissions;
 - reduction in waste by encouraging the use of biomass;
 - encouraging economic development and the creation and retention of jobs; and
 - fostering the development of first nation and rural communities through the use and development of clean or renewable resources.