



IN THE MATTER OF

FORTISBC INC.

APPLICATION FOR APPROVAL OF STEPPED AND STAND-BY RATES
FOR TRANSMISSION [VOLTAGE] CUSTOMERS

DECISION – STAGE V

AGREEMENT

(See Order G-67-14 for STAGE I,
Order G-46-15 for STAGE II, Order G-93-15 for Stage III
and Order G-149-15 for Stage IV)

December 24, 2015

Before:

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

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COMMISSION ORDER G-214-15

EXECUTIVE SUMMARY

The Stage I, II and III Decisions established and approved the final form of the FortisBC Inc. (FortisBC) Stand-by Service Rate in Rate Schedule 37 (RS 37) and established RS 31 and RS 37 as the Final Rates applicable Zelstoff Celgar Limited Partnership (Celgar). The Stage IV Decision set the Stand-by Billing Demand for Celgar and urged FortisBC and Celgar to negotiate an agreement on the appropriate billing charges for the Interim Period.

This Stage V Decision addresses the only remaining issue to be resolved; namely, Celgar's billing charges for the Interim Period which commenced on March 25, 2011, as a result of Order G-188-11. On October 22 and 23, 2015, FortisBC and Celgar (Parties) filed a joint submission, requesting approval for an executed agreement between the Parties which set out the negotiated refund amount Celgar would be entitled to, attached as Appendix A (Agreement). The Panel established an expedited review process for the submission with the British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), FortisBC and Celgar as participants.

The main goal of this review has been to determine if the refund amount Celgar will be entitled, as set out in the Agreement, is a just and reasonable rate in accordance the *Utilities Commission Act* (UCA). In this decision the Panel approves the executed Agreement between FortisBC and Celgar as filed. In arriving at this determination the Panel relied on the definition of a rate in section 1 of the UCA, as well as sections 59 to 61 of the UCA. Specifically, the Panel considered whether the Agreement is a fair and reasonable charge for service of the nature and quality provided by the utility, whether it is sufficient to yield a fair and reasonable compensation to the utility, and whether it is unjust or unreasonable for any other reason.

The Panel notes that applying the Final Rates, especially RS 37, on an after the fact basis requires certain assumptions to be made. The Panel has reviewed the model filed by Celgar on a confidential basis, considered submissions of parties and concludes that the necessary assumptions made appear to be just and reasonable, including the allocation of hours between Maintenance and Back-up service. Accordingly, the Panel finds that the estimated billing charges of \$8.66 million are calculated in accordance with Commission approved RS 31 and RS 37 and are based on reasonable assumptions, and therefore would result in a just and reasonable charge.

After establishing that the billing charges under Final Rates are just and reasonable, the Panel determines that the negotiated refund amount of \$7.65 million, excluding interest, is also reasonable, as it is less than the amount that would have been refunded under Final Rate already approved by the Commission to be just and reasonable.

The Panel also approves FortisBC's request to create the Celgar Interim Billing Adjustment Deferral Account to recover from ratepayers the Refund Amount and Continued Interest.

1.0 INTRODUCTION

On March 28, 2013, FortisBC Inc. (FortisBC) filed an application with the British Columbia Utilities Commission (Commission) for Stepped and Stand-by Rates for Transmission Voltage Customers (Application). Zellstoff Celgar Limited Partnership (Celgar), British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), British Columbia Hydro and Power Authority (BC Hydro), BC Municipal Electric Utilities, International Forest Products Limited, and the Minister of Energy and Mines registered as interveners (Registered Interveners). Tolko Industries Ltd. registered as an interested party.

As the scope of the Application was multifaceted and complex the Commission reviewed it, and made rulings in stages. To date, the Commission has issued four decisions on the Application: Order G-67-14 (Stage I Decision), Order G-46-15 (Stage II Decision), Order G-93-15 (Stage III Decision) and Order G-149-15 (Stage IV Decision). The only remaining outstanding issue in this proceeding relates exclusively to billing charges for one of FortisBC's customers, Celgar, during an interim period that started on March 25, 2011. This remaining issue is the focus of this decision, and will conclude this proceeding. The Stages I, II, III, IV and V Decisions are meant to work in conjunction with each other.

The history leading up to the determination on the billing charges for Celgar during the interim period is long and complex. For context, a brief background on Celgar and a summary on the relevant determinations that have already been made by the Panel in the four Stages of this proceeding are provided.¹

1.1 Celgar background

Celgar operates a pulp mill at Castlegar, BC (Mill). Under most circumstances Celgar's load is satisfied by its 52 MW turbo generator, which was installed in the early 1990s. The Mill generates steam to use for its operations, including electricity generation, by burning wood waste and black liquor, both by-products of the pulp-making process. From time to time, the turbo generator may be unavailable due to maintenance shutdowns or equipment failures. The Mill can operate without the turbo generator providing there is a back-up source of power, which FortisBC has historically provided. FortisBC and its predecessor companies have served the electricity needs of Celgar and its predecessors since 1959.

1.1.1 FortisBC Inc. 2009 Rate Design Application (Order G-156-10)

On October 30, 2009, FortisBC filed the FortisBC Inc. 2009 Rate Design and Cost of Service Analysis Application (2009 RDA). The 2009 RDA culminated with Order G-156-10, and accompanying decision (RDA Decision). In the RDA Decision the Commission determined that under current circumstances Celgar was no longer eligible to take service under Rate Schedule 33 (Time-of-Use), which it had been taking service under since 2006, and directed FortisBC to provide Celgar service under Rate Schedule 31 (RS 31 - Large Commercial Service Transmission).

¹ The full background and context regarding the service provided by FortisBC to Celgar is provided in Section 3.1 of the Stage I Decision.

Effective January 2, 2011, FortisBC began billing Celgar under RS 31 without any modifications as FortisBC and Celgar did not have an executed General Service Agreement, which would have among other things, established a Contract Demand for Celgar.

1.1.2 Celgar complaint (Order G-188-11)

On March 25, 2011, Celgar filed a complaint regarding the failure of FortisBC and Celgar to complete a general service agreement and FortisBC's application of RS 31 demand charges (Celgar Complaint). The Commission issued in its decision on the Celgar Complaint by Order G-188-11 and accompanying decision, which among other things, addressed new rates for Celgar as well as billing charges during the interim period while those rates were being developed.

In regards to new rates, Order G-188-11 directed FortisBC to submit an application for a two-tier stepped rate for transmission service customers (directive 9), to develop a version of this rate for Celgar and self-generators that excludes BC Hydro RS 3808 power from its resource stack (directive 4), and to develop a stand-by rate to address Celgar's circumstances (directive 10).

In satisfying directive 4 the Commission provided further guidance in directives 6 and 8 to Order G-188-11, which ordered FortisBC to:

- Draft guidelines for the entitlement of eligible customers to non-BC Hydro RS 3808 Embedded Cost Power (NECP); and
- Establish a matching methodology for avoiding arbitrage with power sales that may include BC Hydro's RS 3808 power.

In regards to billing charges to Celgar, directive 5 of Order G-188-11, directed FortisBC to:

...bill Celgar in accordance with RS 31 on an interim and refundable basis, beginning March 25, 2011 and ending when the Commission approved the new rate for Celgar that excludes PPA Power [BC Hydro RS 3808 Power] from its resource stack, and/or an agreement forwarded by the parties. Any differences between the interim rate and the rate ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year. (Interim Period)²

1.1.3 Non-Embedded Cost of Power Proceeding (Order G-202-12)

On April 13, 2012, in compliance with certain directives in Order G-188-11, FortisBC filed an Application for Guidelines for Establishing Entitlement to NECP and a Matching Methodology (NECP Proceeding).

On July 30, 2012, through the NECP Proceeding, the Commission provided further clarification regarding the Interim Period in Appendix A to Order G-104-12, which stated: "the Commission Panel recognizes that confusion may have been caused by the direction to FortisBC to create three rates [Order G-188-11] while referring to 'the rate ultimately approved' for the refund provision. The Commission Panel confirms that Directive 5 was intended to apply to the final approved rates for Celgar, including the stepped rate and the standby rate..."

² It is the resolution of this directive, directive 5, that constitutes the essence of this Stage V decision.

On December 27, 2012, by way of Order G-202-12 and accompanying decision, the Commission made a final determination on the NECP Proceeding and accepted the FortisBC Guidelines for the Level of Entitlement to NECP and its Matching Methodology.

The Commission also addressed the Interim Period in directive 7 of Order G-202-11, stating: “FortisBC’s assessment that it is appropriate to charge Celgar for standby service from March 25, 2011 to July 31, 2012, is appropriate.”

In the decision accompanying Order G-202-11, the Panel provided the following rationale regarding directive 7: “... the Commission Panel accepts FortisBC’s assessment that, based on the load behaviour filed by Celgar, standby service during the period between March 25, 2011 and July 31, 2012 (the period for which load data was made available to FortisBC and to the Commission Panel) may be appropriate. Without information on Celgar’s load behaviour after this period, the Commission Panel cannot make any further determination.”

1.2 Background on Stages I, II, III, and IV

On March 28, 2013, in compliance with certain directives in Order G-188-11, FortisBC filed the subject application. The Application requested approval for a stepped rate, a stand-by service rate, the NECP Rate Rider, and addressed billing charges for Celgar during the Interim Period. Throughout the Stages I through IV Decisions the Panel made the following determinations regarding the Stepped Rate, the NECP Rate Rider, the Stand-By Rate, all of which impact this decision.

1.2.1 Stepped Rate

In the Stage I Decision (Order G-67-14), the Panel rejected FortisBC’s application for a Stepped Rate. The Panel agreed with FortisBC and BCOAPO that the proposed Stepped Rate should not be mandated at this time and further concluded that there was no longer a need to consider the application of a stepped rate for customers with self-generation, such as Celgar.

1.2.2 Non-Embedded Cost of Power Rate Rider

On July 30, 2014, by Order G-107-14, after reviewing submissions from FortisBC and the Registered Interveners, the Panel determined that the NECP Rate Rider would not be considered in determining the appropriate billing charges for Celgar during the Interim Period. This was primarily because it was found that the resolution of the retroactive application of rates to Celgar was no longer related to, or dependent on, the NECP Rate Rider. The Panel also determined that the Interim Period, as established by directive 5 of Order G-188-11, would end on the day the Commission grants final approval of the Stand-by Rate.

On October 20, 2015, by Order G-168-15A, the Commission denied the NECP Rate Rider as filed in the Application, and put the matter on hold until the completion of certain other proceedings currently before the Commission.

1.2.3 Stand-by Rate

The Stand-by Rate filed in the Application as Rate Schedule 37 (RS 37), describes the terms and conditions under which a customer with self-generation will be able to call upon FortisBC's service to replace its self-generation output during times when its generation is unavailable or operating at less than normal capacity.

RS 37 was approved by the Commission in phases by way of the Stages I, II, and III Decisions. The Stage III Decision (Order G-93-15) issued May, 29, 2015, approved RS 31 and RS 37, which, as of that date, are the relevant and final rates applicable to Celgar (Final Rates).

The final approved RS 37 includes three components that are of particular relevance: (i) RS 31 Contract Demand; (ii) Stand-by Billing Demand (SBBB); and (iii) Stand-by Demand Limit (SBDL) collectively known as the Three RS 37 Components. The provisions of RS 37 require that each of the Three RS 37 Components is to be negotiated between the customer and the utility and if an agreement cannot be met on any of the Three RS 37 Components it is to be set by the Commission. Throughout the proceeding the Panel encouraged FortisBC and Celgar to agree on the Three RS 37 Components.³ Nevertheless, the parties were not able to reach an agreement on any of the components and as such the Commission was required to set them.

In the Stage III Decision the Panel set Celgar's RS 31 Contract Demand at 3 MVA⁴ and its SBDL at 42 MVA⁵ and, as suggested by FortisBC, the Panel gave FortisBC and Celgar an opportunity to make a further final submission on the SBBB. In the Stage IV Decision the Panel set the SBBB for Celgar at 40 percent of the SBDL, which resulted in a SBBB of 16.8 MVA.⁶ In determining the SBDL for Celgar the Panel concluded, among other things, that stand-by service under RS 37 is different than continuous or full service under RS 31, and rejected FortisBC's argument that Celgar, as a stand-by customer, should pay the same wires demand charges as a full service RS 31 customer.

2.0 **STAGE V DECISION – SETTLEMENT AGREEMENT**

As stated previously the only remaining issue to be resolved, the subject of this decision, is the billing charges for Celgar during the Interim Period. In the Stage IV Decision the Panel directed FortisBC and Celgar to attempt to negotiate an agreement on the appropriate billing charges during the Interim Period now that the Final Rates for Celgar and the Three RS 37 Components were set.⁷

On October 1, 2015, FortisBC filed a letter with the Commission⁸ requesting additional guidance on the nature of both the negotiations and any additional process that would follow. The Commission responded on October 6, 2015, and provided context for the parties to set aside debate on whether there should be a retroactive application of a particular rate and to focus on achieving a resolution.

³ Stage II Decision, p. 35; Stage III Decision, p. 28.

⁴ Stage III Decision, p. 29.

⁵ Ibid, p. 30.

⁶ Stage IV Decision, p. 36.

⁷ Ibid., p. 41.

⁸ Exhibit B-44.

Specifically, the Commission stated:

The parties should endeavour to find a true, principled outcome now that a final rate for Celgar has been approved. If the parties come to an agreement, the Commission will then initiate a subsequent process to address its approval and any impact of the agreement on other ratepayers. For further clarity, the Commission asks that the parties focus on determining the appropriate billing...instead of focusing on 'retroactive billing'.⁹

As suggested by the Panel, on October 22 and 23, 2015,¹⁰ FortisBC and Celgar (Parties) filed a joint submission, requesting approval for an executed agreement between FortisBC and Celgar, attached as Appendix A, as to the appropriate billing charges and interest during the Interim Period (Refund Amount), as well as a provision for continued interest after that period (Agreement). In addition the joint submission requested certain rate treatment for the Refund Amount and continued interest (Requested Rate Treatment). On November 2, 2015, FortisBC filed additional supplementary information on the Requested Rate Treatment (collectively the Settlement Agreement). The parties requested approval by the Commission on an expedited basis.

2.1 Process regarding the Settlement Agreement

On November 9, 2015, the Commission issued a letter, which provided an opportunity for Registered Interveners to raise concerns with the Settlement Agreement and to provide comments on a preferred process for its review if deemed necessary. BCOAPO was the only intervener to raise a concern, requesting that before the Commission considers approving the Agreement it ought to require FortisBC to file further calculations and details of the negotiation, which should be followed by a written process including information requests (IR) and final submissions (Process Submission).¹¹

The Commission received reply submissions from Celgar¹² and FortisBC¹³ on BCOAPO's Process Submission, which essentially concluded that nothing was to be gleaned from an examination of the detail behind the billing charges over the Interim Period, and asked that the Commission deny all of BCOAPO's requests and ensure that the Agreement be approved expeditiously.

The Panel, in order to ensure procedural fairness was upheld, determined that an expedited process around the Settlement Agreement, including one round of IRs to the Parties and written submissions, was warranted and established a regulatory timetable by Order G-192-15.

In accordance with the regulatory timetable, the Commission and BCOAPO filed IRs which the Parties responded to on December 14, 2015.¹⁴ BCOAPO was the only intervener to file a final submission on the Settlement Agreement (Stage V Final Submission), which both Celgar and FortisBC replied to on December 18, 2015 (Stage V Reply Submission).

⁹ Exhibit A-40.

¹⁰ Exhibit B-46 and B-46-1.

¹¹ Exhibit C4-22.

¹² Exhibit C2-38.

¹³ Exhibit B-48.

¹⁴ Exhibits B-49, B-49-1, B-50, B-50-1, C2-39, and C2-39-1.

2.2 Legislative and regulatory framework for evaluation of the Settlement Agreement

Particular attention has been given by the Panel to the following parts of sections 1, 59, 60 and 61 of the UCA in making a determination on the Settlement Agreement.

Specifically, subsection 59(1) provides that a public utility must not make, demand or receive:

- (a) an unjust, unreasonable, unduly discriminatory, or unduly preferential rate for 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.

Subsection 59(4) provides it is a question of fact, of which the Commission is the sole judge:

- (a) Whether a rate is unjust or unreasonable,
- (b) Whether, in any case, there is undue discrimination, preference, prejudice or disadvantage in respect of a rate or service, or
- (c) Whether a service is offered or provided under substantially similar circumstances and conditions.

In accordance with subsection 59(5) a rate is “unjust” or “unreasonable” if the rate is:

- (a) More than a fair and reasonable charge for service of the nature and quality provided by the utility,
- (b) Insufficient to yield a fair and reasonable compensation for the service provided by the utility, or a fair and reasonable return on the appraised value of its property, or
- (c) Unjust and unreasonable for any other reason.

Subsection 60(1) provides that in setting a rate under the UCA:

- (a) The Commission must consider all matters that it considers proper and relevant affecting the rate,
- (b)(i) The Commission must have due regard to the setting of a rate that is not unjust or unreasonable within the meaning of section 59,
- (b.1) The Commission may use any mechanism, formula or other method of setting the rate that it considers advisable.

Subsection 61 (1) requires that a public utility must file with the commission...schedules showing all rates established by it and collected, charged or enforced.

Subsection 61(3) requires that the rates in schedules as filed...are the only lawful, enforceable and collectable rates charged or enforced.

The definition of a rate in section 1 of the UCA includes a general, individual or joint rate in addition to a schedule or tariff respecting a rate. Furthermore, the definition of rate also includes a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate.

Celgar submits that the calculation of a refund should be between a utility and a customer, which are not normally reviewed by the Commission.¹⁵ However as the Agreement falls under the definition of a rate in the UCA, it requires Commission approval under sections 59 – 61 of the UCA. In accordance with those sections of the UCA, the Panel has a significant amount of latitude in determining if the Agreement can be approved. The UCA does not require a ‘perfect’ rate to be charged but rather a rate that is not unjust or unreasonable.

In its deliberations, the Panel considered the Agreement within this narrow context with a focus on establishing whether the Agreement is just and reasonable. Specifically, in accordance with subsection 59(5), the Panel considered if the Agreement is a fair and reasonable charge for service of the nature and quality provided by the utility and is sufficient to yield a fair and reasonable compensation to the utility. The Panel also considered if the Agreement is unjust or unreasonable for any other reason.

Furthermore, paragraph 8 of the Agreement states that the obligations of the Agreement are subject to Commission approval.¹⁶ Under this type of joint agreement the Commission can either grant or deny the parties request for approval. In these Stage V deliberations regarding the Agreement, the Panel has only considered either granting or denying approval as any modifications to the terms of the Agreement would require further process in order to ensure procedural fairness is upheld.

2.3 Matters and determinations

In considering if the Agreement is just and reasonable, the Panel focused on the following matters: the Interim Period, billing under the Final Rates, and the Refund Amount and interest charges.

2.3.1 Interim Period

Order G-188-11, clarified by Order G-104-12, established that the Interim Period would end when either:

- i. the Commission approved new rates for Celgar including the Stepped Rate, the Stand-by Rate, and a rate that excludes RS 3808 Power from its resource stack; and/or
- ii. an agreement forwarded by the parties.

Earlier in this proceeding the Panel denied FortisBC’s application for a stepped rate and concluded that there was no longer a need to consider the application of such a rate for Celgar. As well, the Panel determined that a rate that excluded RS 3808 Power (NECP Rate Rider) was no longer relevant, or would apply, to the Interim Period. As a result the only remaining considerations regarding the Interim Period are RS 37 and the existing RS 31 (together the Final Rates for Celgar), and the Agreement.

¹⁵ Exhibit C2-38.

¹⁶ Agreement, paras. 1, 2, 4 and 7.

Within these remaining considerations, there are two matters that are of relevance to the Interim Period that need to be addressed, specifically: when does the Interim Period end and what rate, if any, should apply during the Interim Period.

2.3.1.1 End of the Interim Period

The Agreement stipulated an Interim Period starting on March 25, 2011 and ending on July 31, 2015.

The effective date of RS 37 is May 29, 2015, and the Agreement was filed with the Commission on October 22, 2015.

Commission determination

The end of the Interim Period put forward in the Agreement is neither the effective date of RS 37 nor the date the Agreement was filed with the Commission. However, given that no party has objected to the Interim Period as stipulated in the Agreement, and given that it lies within the effective date of RS 37 and the date the Agreement was filed with the Commission, the Panel does not find it to be unjust and unreasonable.

2.3.1.2 Rate during the Interim Period

In regards to the appropriate rate to apply during the Interim Period there remains some diversity of opinion among the participants in the proceeding.¹⁷ Specifically, FortisBC submits that it continues to oppose retroactive application of a particular rate.

Although the term ‘retroactivity of rates’, as used by FortisBC in the Application¹⁸ and again here, has been used throughout the proceeding, the Commission does not set rates ‘retroactively’. Rather what is at issue here is the appropriate billing charges during the Interim Period.

Therefore, the Panel considers FortisBC’s submission through a lens which seems to imply that FortisBC opposed the billing charges during the Interim Period to be calculated based on the Final Rates (RS 31 and RS 37). Furthermore, as set out in paragraph 8 of the Agreement, FortisBC believes that no refund is contemplated by the Stage IV Decision.¹⁹ However, Celgar believes that RS 37 should form the basis of rates to be charged during the Interim Period.²⁰

The following is a summary of the amounts set out in the Settlement Agreement.

Billing under RS 31

Celgar paid to FortisBC a total of \$17,384,878.75 under RS 31 during the Interim Period.

¹⁷ Zellstoff Celgar 2011 Complaint against FortisBC Inc., Exhibit B1-2, Appendix A.

¹⁸ Exhibit B-1, p. 41.

¹⁹ Exhibit B-46, Attachment A, para. 8.

²⁰ Ibid.

Billing per the Agreement

The negotiations resulted in an amended billing of \$9,730,080.80.²¹

The Agreement requires FortisBC to pay to Celgar a refund and continued interest as follows:

- \$8,313,850.96 consisting of a principal payment of \$7,654,797.95 and interest up to the end of the Interim Period of \$659,053.02. On the basis of a 4 percent interest rate which is the average prime rate of interest of FortisBC's principal bank for the most recent year plus 1 percent (Refund Amount): and
- Additional interest after the Interim Period on the unpaid balance (Continued Interest).

Billing charges under the Final Rates

Billing charges during the Interim Period calculated on the basis of Final Rates for Celgar using a RS 31 contract demand of 3 MVA,²² and a SBBB of 16.8 MVA,²³ as well as other assumptions, is \$8,664,654.05.

On this basis the refund would be \$9,469,538.34 consisting of a principal payment of \$8,720,224.70 plus interest of \$749,313.64.

Revenues forecast in the Revenue Requirements Applications

FortisBC explained that during the Interim Period it collected \$8.76 million²⁴ more in revenue from Celgar than it had forecast as an input in the revenue requirement. This difference was captured in a deferral account and refunded to ratepayers. On this basis it appears that FortisBC forecast \$8.62 million²⁵ in revenue from Celgar during the Interim Period.

²¹ \$17,384,878.75 minus \$7,654,797.95.

²² Stage III Decision.

²³ Stage IV Decision.

²⁴ Exhibit B-47: (sum in millions); 2011, \$3.09; 2012, \$1.8; 2013, \$2.32; 2014, \$0.24; 2015, forecast \$1.32 and Exhibit B-49-1, BCUCIR 2.2: adjustment -0.15.

²⁵ Actual revenue of \$17.38 million less \$8.62 million excess.

Table 1 - Summary of amounts set out in the Agreement

Scenarios	Calculated Billing Charges/Forecast (in millions)	Difference in relation to Actual Billing under RS 31 (in millions and not including interest)
Actual Billing under RS 31	\$17.38	NA
Negotiated Amount	\$9.73	\$7.65
Final Rates: RS 31 and RS 37	\$8.66	\$8.72
Revenue Forecast in RRA	\$8.76	\$8.62

Commission determination

The Panel determined in the Stage IV decision that Celgar was not a full service customer and therefore billing at the full RS 31 rates would not be appropriate. This leads to the conclusion that some amount less than the full RS 31 charges during the interim period are appropriate. For this reason the Panel disagrees with FortisBC that the Stage IV decision did not contemplate a refund being appropriate for Celgar.

The directives in Order G-188-11, as clarified by Order G-104-12, did not explicitly state that the Final Rates would apply in determining billing charges during Interim Period. However, it is reasonable to conclude that such an interpretation is implicit, given that the Interim Period was established to allow for these rates to be designed by FortisBC and approved by the Commission, which is the usual Commission practice. **For this reason the Panel determines that calculating the billing charges during the Interim Period based on the Final Rates for Celgar, which the Commission has already determined to be just and reasonable, would therefore, not be unjust or unreasonable.**

The Panel also wishes to point out that the Interim period was the result of a complaint regarding the customer and FortisBC. Therefore it is also reasonable to conclude that any amount agreed to by the parties, and found by the Commission to be in accordance with UCA, could also be acceptable.

As such, in determining if the Agreement results in a just and reasonable rate, the Panel will consider the amount agreed to by the Parties in the Agreement in relation to the billing charges under the Final Rates.

2.3.1.3 Billing under the Final Rates

In its Stage V Reply Submission BCOAPO raises concerns regarding the billing charges under the Final Rates during the Interim Period, which Celgar calculated in an excel model it developed (Model). Specifically, BCOAPO is concerned with some of the “assumptions” that have been made by Celgar in the calculation. BCOAPO notes that the availability of RS 37 service and whether it is to be considered Maintenance or Back-up Service required certain notifications to be given. Given the after the fact application of the rate, assumptions regarding the type of service deemed to have been taken by Celgar are critical.

BCOAPO further points out that during the IR process Commission Staff requested that Celgar file the Model and BCOAPO sought information from FortisBC regarding the service type assumptions – both of which were filed with the Commission on a confidential basis.

FortisBC indicated that it reviewed the assumptions used in the Model and agrees that for the period in question the determinations are a reasonable basis on which to conduct the negotiations.²⁶ However, even with this, BCOAPO remains concerned with the reasonableness of the assumptions and requested that the Commission carefully review the details behind the calculations in the Model and the reasonableness of the assumptions and the associated results.

Celgar in its Stage V Reply Submission submits that it is reasonable that notice be deemed to be given in all hours for each back-up event during the Interim Period for the following three reasons:

1. It is reasonable to assume that Celgar would have provided notice as required;
2. It would be unfair to hold Celgar accountable for notice provisions that had not yet been approved by the Commission and which Celgar therefore knew nothing about; and
3. With the benefits of the telemetry available during the Interim Period, FortisBC would have been aware of all events when Celgar was meeting its full or partial load requirements from the FortisBC system. Further, given the net-of-load criterion FortisBC was always in a position to inquire regarding a back-up event.

Celgar further submits that the number of occurrences of Maintenance Service and the number of hours of Back-up Service are provided in the confidential response to BCOAPO’s IRs to FortisBC. FortisBC’s IR response confirms that during the Interim Period Celgar did not have more than six occurrences for more than sixty total days during any calendar year of Maintenance Service or more than 876 hours per calendar year of Back-up Service.

Commission determination

Celgar filed the Model with the Commission confidentially and FortisBC answered several IR regarding the Model both confidentially and non-confidentially.²⁷ The Model includes several assumptions regarding the Interim Period including the allocation of hours between Maintenance and Back-up Service.

²⁶ FortisBC Response to BCOAPO IR 4.3.1.

²⁷ Exhibits B-49, B-49-1, B-50, B-50-1.

The Panel notes that applying the Final Rates, especially RS 37, on an after the fact basis requires certain assumptions to be made. However, the Panel also notes that these are the only approved rates available to Celgar.

The Panel agrees with Celgar that it would be unreasonable to apply punitive provisions on an after the fact basis, given that Celgar would have had no way of knowing about the provision during the Interim Period. Further the Panel takes comfort in FortisBC's assertion that it reviewed the assumption in the Model and found them to be reasonable for their stated purpose. Further, the information filed by FortisBC in responses to the IRs filed both confidentially and non-confidentially agrees with the information filed in the Model.

The Panel reviewed the Model, including the details behind the calculations. **The Panel finds that the estimated billing charges of \$8,664,654.05 are calculated in accordance with RS 31 and RS 37 and that the necessary assumptions appear to be just and reasonable including the allocation of hours between Maintenance and Back-up Service. Accordingly, the Panel determines the estimated billing charges of \$8,664,654.05 result in a just and reasonable rate.**

2.3.1.4 Refund amount

The principal payment of the Refund Amount will be addressed first followed by the interest and Continued Interest calculation in section 2.3.1.5 of this Decision.

In the Settlement Agreement the Parties clarify that the Refund Amount is a negotiated amount based on the difference between the actual invoices issued to Celgar during the Interim Period, and the negotiated billing amount following the process suggested by October 6, 2015 letter.²⁸ They also clarify that the amount is not related to either the forecast revenues that are an input to the revenue requirements, nor is it based solely on the Final Rates for Celgar (RS 31 and RS 37).

The Parties indicate that they started with RS 37 and applied adjustments to it, based on certain assumptions, in determining the Refund Amount.²⁹

Celgar points out that the negotiated Refund Amount is less than the amount that would be payable if Celgar had been invoiced during the Interim Period on a combination of RS 31 and RS 37 in the form approved in the FortisBC tariffs [Final Rates].³⁰

²⁸ Exhibit B-40.

²⁹ Exhibit B-48.

³⁰ Exhibit C2-39-1.

2.3.1.5 Agreement - Interest and Continued Interest

The Agreement set out the following in regard to interest charges:

- Paragraph 2 of the Agreement sets out an interest rate of 4 percent per annum, compounded monthly, during the Interim Period and continuing up to December 22, 2015, followed by a rate of 8 percent per annum, compounded monthly, from December 23, 2015, for so long as unpaid.
- Paragraph 4 of the Agreement requires FortisBC to pay Celgar the Refund Amount and Continued Interest within 35 days after the Commission approval is given, and affirmation of Commission approval in any appeal or reconsideration proceeding which were commenced during that timeframe.

In its Process Submission, BCOAPO questions the rationale for the proposed doubling of interest charges beginning December 23, 2015. In its Stage V Final Submission BCOAPO state that it has concerns regarding the calculation of the Continued Interest. Specifically, BCOAPO submits that in its view the 8 percent interest rate is excessive; particularly since it will apply even if the Commission has not yet granted its approval. In BCOAPO's view the application of such an interest rate would only be appropriate if FortisBC fails to meet the 35 day period set out in paragraph 4 of the Agreement.³¹

FortisBC states that the doubling of interest charges from December 23, 2015, reflects recognition of the duration of time that the interim billing has been in place and the parties' commitment to proceeding expeditiously.³²

Celgar states that December 23, 2015 was thought to be a reasonable amount of time for the Commission to rule on the Settlement Agreement and, at the same time, limit the losses related to the differences in cost of capital of Celgar and the FortisBC prime rate. Celgar states that during the Interim Period, Celgar was required to finance the refund amount at FortisBC's prime rate of interest.³³ Celgar points out that a rate of 4 percent is well below its cost of capital, which is approximately 12 percent and FortisBC's at approximately 7.97 percent. Celgar further points out that BCOAPO has only raised concerns with the application of the 8 percent rate after the 35 day payment period set out in paragraph 4 of the Agreement.

Commission determination

The Panel can understand BCOAPO's concerns with the 8 percent interest rate given that Order G-188-11 directed that the rate be set at the average prime rate of FortisBC's principal bank for its most recent year. As a rule interim rates are short term in nature and therefore appropriately attract a short term interest rate. However, in this particular circumstance the interim period has spanned almost five years. Furthermore, in accordance with the terms of the Agreement, and taking into account the date of this decision, the 8 percent interest rate would be applicable, at the most, for 36 days.

³¹ BCOAPO's Stage V Final Submission, para. 20.

³² Exhibit B-48; FortisBC Stage V Reply Submission.

³³ Exhibit C2-38.

For these reasons the Panel finds that the proposed interest rate of 8 percent is not significant enough to conclude that the entire Agreement is unjust or unreasonable.

2.3.2 Final determination on the Agreement

In its Stage V Reply Submission, FortisBC concludes that all that remains at this point is for the Commission to complete its review of the Settlement Agreement and once satisfied, to approve the Agreement and Requested Rate Treatment.

In its Stage V Reply Submission, Celgar states that the Refund Amount is less than the refund during the Interim Period that would have been calculated under the Final Rates approved for Celgar. Celgar states that it has agreed to pay more for service from FortisBC during the Interim Period than would be calculated under rates the Commission has concluded are fair and reasonable and, in conclusion, respectively submits that the Agreement should be approved on an expedited basis.³⁴

The Panel agrees with Celgar that the Refund Amount proposed in the Agreement is less than would be calculated under rates the Commission has concluded are fair and reasonable. The Panel has found that the estimated billing charges of \$8,664,654.05 under the Final Rates as calculated by the Parties are just and reasonable. Therefore the Panel determines that the Agreement is not unjust or unreasonable within the meaning set out in sections 59 and 60 of the UCA because the Refund Amount is less than what would be calculated under rates the Commission has already approved. Specifically, the Panel determines that the Agreement is a fair and reasonable charge for service of the nature and quality provided by the utility, and is sufficient to yield a fair and reasonable compensation for the service provided.

Accordingly, the Panel approves the Agreement attached as Appendix A to Exhibit B-46.

2.3.3 Requested rate treatment

The Settlement Agreement requests that the Commission approve the creation of a deferral account (Celgar Interim Period Billing Adjustment Deferral Account) to capture the Refund Amount and Continued Interest for recovery from ratepayers through amortization in future revenue requirements over a time period that minimizes the annual rate impact and to be financed at FortisBC's weighted average cost of debt.

FortisBC explains that it believes that the use of a deferral account is the only mechanism that is consistent with past practice and effectively mitigates the impact of the other ratepayers by smoothing the resulting increase over a number of years. FortisBC further states that if the balance were to be amortized over one year the rate impact would be approximately 2.4 percent.

FortisBC requests that the amortization period be proposed in its 2017 Annual Review of Rates Application, and agrees to report on the balance in each year until it is fully amortized. FortisBC believes it is more appropriate to finalize the amortization period as part of the 2017 Annual Review of Rates Application when it has a more accurate forecast of the rate changes for 2017, 2018 and 2019.

³⁴ Celgar Stage V Final Submission, pp. 1-2.

FortisBC provided additional information on the way the revenues from Celgar were treated in previous revenue requirements applications, which set the rates during the Interim Period.

FortisBC explains that in each of the Interim Period years FortisBC forecast less revenue as part of its revenue requirements than it billed and collected from Celgar. FortisBC states that the additional revenue (in excess of the amount forecast to be recovered in rates) during the interim period was \$8.77 million and was captured in a deferral account. The balance in the deferral account was amortized in the year following its collection which resulted in a lower rate for customers than otherwise would have been charged.

In its Stage V Final Submission BCOAPO notes two concerns with FortisBC's Requested Rate Treatment. The first is that the deferral account treatment proposed results in no financial consequences for FortisBC; it is FortisBC's customers who are required to make the payments set out in the Agreement. The second is whether it is appropriate, in view of the limited process established for the review of the Settlement Agreement, that the matter of the disposition of the deferral account be determined at this time. In BCOAPO's view it would be appropriate for the Commission at this point, at most, to approve recovery from ratepayers, but it should not make any specific determination on the means by which the balance will be recovered.³⁵

In reply to BCOAPO's second concern, FortisBC submits that it does not see this as distinct from what has been proposed and concludes that BCOAPO is essentially in agreement with the Requested Rate Treatment.³⁶ Celgar declined to comment of the Requested Rate Treatment in its Stage V Reply Submission.

Commission determination

Of concern to the Panel was determining if FortisBC's shareholders received any benefits or financial consequences due to any variance between forecast revenues and actual revenues relating to Celgar during the Interim Period. Given that Celgar forecast revenues were less than the amount actually collected, any variance would go to the benefit of the shareholder if not captured in a deferral account or tracked in some other manner. FortisBC clearly explains that the \$8.76 million difference was captured in a deferral account and returned to ratepayers in the following year.³⁷ Therefore, the Panel is satisfied that due to the deferral account treatment there has been no benefit to FortisBC's shareholders.

The Panel also points out that, had the revenue variance not been amortized into rates each year during to Interim Period, there would be an \$8.76 million (excluding interest) balance which would be sufficient to pay Celgar the Refund Amount. In essence this is simply a timing difference.

In regards to BCOAPO's first concern, the Panel notes there is not normally any financial consequence to the shareholder on the account of interim rates. It would be unusual for any difference between an interim rate and a final rate to be absorbed by the shareholder and the Panel does not see how this circumstance is any different simply due to the lengthy interim period and the size of the balance.

³⁵ BCOAPO Stage V Reply Submission, paras. 21-23.

³⁶ FortisBC Stage V Reply Submission.

³⁷ Exhibit B-47.

For these reasons the Panel determines that FortisBC is entitled to recover the Refund Amount and Continued Interest from ratepayers and finds the most appropriate means of recovering the balance is through a deferral account.

Regarding BCOAPO's second issue, the Panel agrees with FortisBC that BCOAPO's concern does not change the substance of the Requested Rate Treatment as proposed in the Settlement Agreement. The Panel also notes that FortisBC addressed the interim billing charges to Celgar in the Application (Exhibit B-1) it filed when this proceeding first commenced in 2013 and at that time any party was free to request intervention in the review of the Application. Nevertheless, as requested by BCOAPO, the Panel will allow the interveners of the 2017 Annual Review of Rates Application proceeding to have some input into how the balance is to be recovered, as the Panel does not find anything of real substance turns on this determination as long as the balance is recovered in a reasonable time period. Therefore, the Panel will not make a determination on how the balance will be recovered. However, in order to preserve intergenerational equity the **Panel does find that the balance should be recovered over a reasonable period of time and finds that an amortization period of no more than five years, which is consistent with the period of time that ratepayers received the benefits of the amortization in rates of the revenue variance, is appropriate.**

Accordingly, the Panel approves FortisBC's request to create the Celgar Interim Period Billing Adjustment Deferral Account to recover from ratepayers the Refund Amount, Continued Interest (Deferral Account) as follows:

- a. The balance in the Deferral Account is to be financed at FortisBC's weighted average cost of debt (carrying costs);
- b. No amounts other than the Refund Amount, Continued Interest, and carrying costs are to be added to the Deferral Account;
- c. FortisBC must propose a means for recovery of the Deferral Account balance as part of the 2017 Annual Review of Rates Application;
- d. The Deferral Account must be fully amortized within five years of the date of Order G-214-15; and
- e. Once the Deferral Account is fully amortized it must be closed.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of December 2015.

Original signed by:

L. A. O'HARA
PANEL CHAIR/COMMISSIONER

Original signed by:

R. D. REVEL
COMMISSIONER

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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-214-15**

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

and

FortisBC Inc.
Application for Stepped and Stand-by Rates for Transmission Voltage Customers

BEFORE: L. A. O'Hara, Panel Chair/Commissioner
R. D. Revel, Commissioner December 24, 2015

O R D E R

WHEREAS:

- A. On March 28, 2013, FortisBC Inc. (FortisBC) filed with the British Columbia Utilities Commission (Commission) an Application for Stepped and Stand-By Rates for Transmission Voltage Customers addressing, among other things, approval for a Stand-by Rate (RS 37) and billing charges during the interim period for Zellstoff Celgar Limited Partnership (Application);
- B. Zellstoff Celgar Limited Partnership (Celgar), British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), British Columbia Hydro and Power Authority, BC Municipal Electric Utilities, International Forest Products Limited, and the Minister of Energy and Mines registered as interveners. Tolko Industries Ltd. registered as an interested party;
- C. Effective May, 29, 2015, the Commission approved RS 37 in stages by way of: Order G-67-14 (Stage I Decision), Order G-46-15 (Stage II Decision) and Order G-93-15 (Stage III Decision);
- D. By Order G-149-15, dated September 22, 2015 (Stage IV Decision), the Commission set the Stand-by Billing Demand (SBBD), a component of RS 37, for Celgar at 40 percent of the Stand-by Demand Limit of 42 MVA, which resulted in a SBBD of 16.8 MVA. The Commission also directed FortisBC and Celgar to attempt to negotiate an agreement as to the appropriate billing charges during the interim period;
- E. On October 22, 2015, FortisBC and Celgar filed for approval, a joint submission attaching an executed agreement enclosed as Appendix A (Agreement). On October 23 and November 2, 2015, FortisBC provided supplementary information on the Agreement (collectively the Settlement Agreement); and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-214-15

2

- F. By Order G-192-15, dated December 4, 2015, the Commission set out a regulatory timetable establishing an expedited written review the Settlement Agreement, which included one round of information requests followed by written submissions.

NOW THEREFORE the British Columbia Utilities Commission, for the Reasons stated in the Decision, orders the following:

1. The executed Agreement between FortisBC Inc. (FortisBC) and Zellstoff Celgar Limited Partnership (Celgar) made on October 22, 2015, enclosed as Appendix A to Exhibit B-46 (Agreement) is approved as filed.
2. The request to create the Celgar Interim Period Billing Adjustment deferral account to recover from ratepayers the Refund Amount, Continued Interest and carrying costs (Deferral Account) is approved as follows:
 - a. The balance in the Deferral Account is to be financed at FortisBC's weighted average cost of debt (carrying costs);
 - b. No amounts other than the Refund Amount, Continued Interest, and carrying costs are to be added to the Deferral Account;
 - c. FortisBC must propose a means for recovery of the Deferral Account balance as part of the 2017 Annual Review of Rates Application;
 - d. The Deferral Account must be fully amortized within five years of the date of this Order; and
 - e. Once the Deferral Account is fully amortized it must be closed.
3. As requested, the Commission will hold as confidential the responses to information requests including Celgar's model.
4. Applications for Participant Assistance Cost Award must be submitted to the Commission within 30 days of the date of this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of December 2015.

BY ORDER

Original signed by:

L. A. O'Hara
Panel Chair/Commissioner