



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

and

British Columbia Hydro and Power Authority
Application for Approval of a Market-Based Rate
For Self-Generation Output Sold to Market
Under the Provisions of Commission Order No. G-38-01

BEFORE: P. Ostergaard, Chair)
P.G. Bradley, Commissioner) August 9, 2001
B.L. Clemenhagen, Commissioner)

O R D E R

WHEREAS:

- A. Pacifica Power Co. Ltd., a wholly-owned subsidiary of Pacifica Papers Inc. ("Pacifica"), owned hydroelectric generation and transmission facilities on Powell River and at Lois Lake British Columbia (the "Power Facilities") which were used to generate electricity for the use by Pacifica in its pulp and paper mill (the "Mill") at Powell River, B.C.; and
- B. Pacifica sold its interest in the Power Facilities to Powell River Energy Inc. ("PREI") early in 2001. Pacifica currently owns approximately 50% of PREI; and
- C. Maclaren Energy Management Services Inc. ("Maclaren") operates and manages the Power Facilities on behalf of PREI; and
- D. PREI, Maclaren and the Power Facilities were granted an exemption from Part 3 and Section 71 of the Utilities Commission Act with respect to the production and sale of Surplus Power to public utilities and wholesale customers by way of Minister's Order No. M-22-0101 on January 30, 2001; and
- E. On April 6, 2001, the Commission issued Order No. G-38-01 directing B.C. Hydro to allow Rate Schedule 1821 customers with idle self-generation capability to sell excess self-generated electricity provided the self-generating customers do not arbitrage between embedded cost utility service and market prices; and
- F. The Power Facilities experienced a drought in early 2001 resulting in low reservoir levels, curtailed hydro generation and increased electricity purchases from B.C. Hydro; and
- G. PREI continued to generate electricity during Pacifica's scheduled shutdown from June 4 to June 8, 2001, and sold the electricity not purchased by Pacifica to the market; and
- H. On June 8, 2001, the British Columbia Hydro and Power Authority ("B.C. Hydro") applied to the Commission for approval of a market-based rate for re-supply of self-generation output sold to market under the provisions of Commission Order No. G-38-01 ("the Application"); and
- I. The market-based rate proposed in the Application would be applicable to energy sold to market that is not excess self-generation in that it results in B.C. Hydro providing increased embedded cost service to the self-generating customer; and

- J. B.C. Hydro submitted that the sale of electricity by PREI during Pacifica's shutdown resulted in increased embedded cost service from B.C. Hydro, and that Pacifica should be required to pay the market-based rate for the first energy taken upon the re-start of its Mill up to the amount of electricity sold by PREI to the market; and
- K. The Commission requested Pacifica's comments on the Application in a letter dated June 14, 2001. Pacifica provided its comments by letters dated June 20, 2001, June 29, 2001 and July 18, 2001; and
- L. In letters dated June 21, 2001, the Commission confirmed that PREI and Maclaren were entitled to comment on the Application. Comments were received from PREI and Maclaren by letters dated June 29, 2001 and July 18, 2001; and
- M. By letter dated June 14, 2001, the Commission requested B.C. Hydro's comments on certain issues related to the Application. B.C. Hydro replied by letter dated June 29, 2001. B.C. Hydro's comments on the submissions from Pacifica, PREI and Maclaren were provided to the Commission by letter dated July 13, 2001; and
- N. Pacifica, PREI and Maclaren requested that the Commission direct B.C. Hydro to pay their costs with respect to the Application; and
- O. The Commission has reviewed the submissions from B.C. Hydro, Pacifica, PREI and Maclaren. The Commission concludes that the sale of electricity by PREI during the June 4-8, 2001 Mill shutdown for annual scheduled maintenance meets the definition of Surplus Power under the Minister's Order No. M-22-0101 and that B.C. Hydro should not be permitted to charge Pacifica a market-based rate. The Commission also concludes that B.C. Hydro should not be required to pay the costs of Pacifica, PREI and Maclaren with respect to the Application.

NOW THEREFORE the Commission orders as follows:

- 1. B.C. Hydro's Application is denied.
- 2. The request by Pacifica, PREI and Maclaren that the Commission direct B.C. Hydro to pay their costs with respect to the Application is denied.
- 3. Reasons for Decision are attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of August 2001.

BY ORDER

Original signed by:

Peter Ostergaard
Chair



BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Application for Approval of a Market-Based Rate for Self-Generation Output Sold to Market
Under the Provisions of Commission Order No. G-38-01

REASONS FOR DECISION

1.0 Background

On April 6, 2001 the Commission issued Order No. G-38-01 regarding B.C. Hydro's obligation to serve Rate Schedule 1821 customers with self-generation capability. In that Order, the Commission directed B.C. Hydro to allow RS 1821 customers with idle self-generation capability to sell excess self-generated electricity provided the self-generating customers do not arbitrage between embedded cost utility service and market prices.

Pacifica Papers Inc. ("Pacifica") owns and operates a pulp and paper mill at Powell River, British Columbia. Until recently, Pacifica owned a 100% interest in the hydroelectric generation facilities on Powell River and at Lois Lake (the "Power Facilities") through its wholly-owned subsidiary, Pacifica Power Co. Ltd. The Power Facilities had a combined installed nominal capacity of 82 MW and produced an average of 540,000 MW.h of electricity per year for use at Pacifica's mill (the "Mill"). Pacifica purchased additional electricity required for the Mill from B.C. Hydro under Rate Schedule 1821.

Earlier this year, Pacifica reorganized and the Power Facilities were transferred to Powell River Energy Inc. ("PREI"). Pacifica owns approximately 50% of PREI; the remaining 50% is owned by Powell River Energy Trust. Minister's Order No. M-22-0101 (the "Minister's Order") exempts PREI from Part 3 and Section 71 of the Utilities Commission Act (the "Act") with respect to electricity generated by PREI and sold to Pacifica for use at the Mill. The Minister's Order also exempts PREI with respect to the sale of Surplus Power to public utilities or Wholesale customers.

According to B.C. Hydro, the Power Facilities experienced a severe drought in early 2001, resulting in low reservoir levels and curtailed hydro generation. The Mill has continued to operate at normal production levels, so electricity purchases from B.C. Hydro were significantly higher than normal in the first four months of this year (CBL energy for January - April is 161,064 MW.h; actual consumption in January - April, 2001 was 290,946 MW.h).

The Mill had a scheduled shutdown from June 4 – June 8, 2001. PREI continued to generate electricity during this period and exported the electricity not needed by the Mill. B.C. Hydro initially estimated PREI's electricity sales during the shutdown at 4,597 MW.h, but PREI indicated that the total amount of electricity exported was 2,010 MW.h.

On June 8, 2001, B.C. Hydro applied to the Commission for approval to establish a market-based rate for re-supply of self-generation output sold to market in violation of the provisions of Commission Order No. G-38-01 ("the Application"). B.C. Hydro proposed to set the market-based rate by applying the Dow-Jones Mid-Columbia Firm Electricity Price Index for High Load Hours and Low Load Hours to the export schedule during the shutdown and dividing by total energy exported. This rate would apply to the energy taken from B.C. Hydro by the Mill, upon re-start, up to the total amount of energy exported.

By letter dated June 14, 2001, the Commission asked Pacifica to comment on the Application and provide responses to certain questions. In response to a letter dated June 20, 2001 on behalf of Pacifica, the Commission also invited comments from PREI and the operator of the Power Facilities, Maclaren Energy Management Services Inc. ("Maclaren"). The Commission received written responses on behalf of Pacifica and PREI/Maclaren on June 29, 2001.

The Commission requested B.C. Hydro's comments on the Commission's jurisdiction to approve the proposed rate increase by letter dated June 14, 2001. B.C. Hydro's response was received on June 29, 2001. B.C. Hydro filed an additional letter on July 13, 2001 responding to the issues raised by Pacifica and PREI/Maclaren.

Pacifica and PREI/Maclaren responded to B.C. Hydro's July 13, 2001 letter and provided additional comments in their own letters dated July 18, 2001.

2.0 B.C. Hydro's Position

B.C. Hydro contends that the water used to generate the electricity sold by PREI could have been stored and used to generate electricity after the Mill re-started and, hence, was not really surplus to the Mill's needs. As such, B.C. Hydro submits that the exported energy was not Surplus Power as defined by the Minister's Order. In such a case, the Minister's exemption would not apply to the energy sale. B.C. Hydro further notes that Pacifica owns at least 50% of PREI, and submits that this makes Pacifica equivalent to a self-generator. Under Commission Order No. G-38-01, self-generating customers may sell excess self-generated electricity as long as customers do not arbitrage between embedded cost utility service and market prices and B.C. Hydro is not required to supply increased embedded cost service. B.C. Hydro indicates that Pacifica will increase its electricity purchases from B.C. Hydro as a result of PREI's energy sales during Pacifica's

shutdown, and that the energy sale by PREI is therefore not permitted under Commission Order No. G-38-01.

In its June 29, 2001 letter, B.C. Hydro states that the proposed market-based rates would form the basis for a new rate schedule outside of Rate Schedule 1821. The new rate schedule would apply not just to Pacifica, but to any self-generating customer engaging in arbitrage.

Due to Pacifica's approximate 50% interest in PREI, B.C. Hydro submits that Pacifica can only escape being regarded as a self-generator if the most narrow, technical view of the matter is taken. B.C. Hydro also argues that the submissions of Pacifica, PREI and Maclaren take a very strict, narrow interpretation of the Minister's Order with respect to the "ordinary course of the Mill's business". B.C. Hydro submits that the assessment of need should be made prior to generation and that the decision to generate should not be entirely divorced from any advance assessment of the needs of the Mill.

B.C. Hydro also submits that failure to approve the Application would be unfair to other industrial customers with generation facilities who are not structurally separated in the same manner as Pacifica. B.C. Hydro further notes that failure to approve the Application would harm ratepayers through the effect on the Rate Stabilization Account.

Finally, on the issue of costs, B.C. Hydro submits that costs should not be awarded to Pacifica, PREI and Maclaren given the certain profitability of the exports in question and given that its actions were intended to ensure fairness amongst its industrial customers and ratepayers rather than to defend its own interests. B.C. Hydro further notes that establishing an award for costs to PREI and Maclaren may be inappropriate given that they sought to intervene in the process.

3.0 Pacifica's Position

Pacifica states that it no longer owns the Power Facilities and, hence, is not a self-generator. Pacifica therefore contends that Commission Order No. G-38-01 has no application to Pacifica with respect to the sale of electricity by PREI.

Pacifica further submits that the power sales during the Mill's shutdown met the definition of Surplus Power under the Minister's Order. The Minister's Order defines Surplus Power to be "electricity generated by PREI which from time to time may not be needed or used in the Mill operations", subject to various conditions including a condition that during the first 10 years "PREI will sell all of the available energy generated by the Power Facilities to Pacifica" unless that energy is not needed in the ordinary course of the Mill's business. Pacifica submits that the power could not be classified as surplus or not surplus until after it

had been generated by PREI, and argues that once the power was generated it was surplus since it was not needed by the Mill. It submits that the fact that Pacifica was taking no power from B.C. Hydro during the shutdown is evidence that the power was not needed during the ordinary course of the Mill's business.

Pacifica notes that Section 88(4) of the Act provides that the Commission has no power to make an order respecting a matter that is subject to Section 22 of the Act. As long as the power exported was Surplus Power as defined by the Minister's Order, then the Commission has no jurisdiction and Commission Order No. G-38-01 could not apply to PREI's power sales.

Further, Pacifica notes that there is no requirement in the Minister's Order for PREI to maintain certain water storage levels or to comply with other criteria before it is free to generate power. Pacifica suggests that B.C. Hydro's assertion that there must be a danger of a spill before electricity generated by PREI may constitute Surplus Power does not accord with the plain language of the Minister's Order. Pacifica further submits that the Minister's Order was drafted specifically to allow power sales such as those which occurred during the Mill's shutdown.

Pacifica submits that the Application should be dismissed and that the Commission should order B.C. Hydro to reimburse Pacifica's costs pursuant to Section 118(1) of the Act.

4.0 Position of PREI/Maclaren

PREI and Maclaren contend that the power sales meet the definition of Surplus Power under the Minister's Order. PREI and Maclaren also note that the Minister's Order does not require PREI to manage its reservoir levels and does not define Surplus Power in terms of how much electricity Pacifica might have purchased from B.C. Hydro in the past. PREI and Maclaren submit that Pacifica is not a self-generator and, as such, Commission Order No. G-38-01 is not applicable. PREI and Maclaren further submit that the Application is an attempt by B.C. Hydro to effectively rewrite the terms and conditions of the Minister's Order.

PREI and Maclaren request that the Commission order B.C. Hydro to reimburse the costs of PREI and Maclaren resulting from the Application.

5.0 Commission Determinations

The Application

Commission Order No. G-38-01 allows Rate Schedule 1821 customers with idle self-generation to sell excess self-generated electricity under certain conditions. Nothing in Order No. G-38-01 restricts the sale of self-

generated electricity by parties who are otherwise permitted to make such sales. The Minister's Order specifically permits PREI to sell Surplus Power to public utilities or Wholesale customers. Consequently, the Commission has no reason to approve a new rate for Pacifica if PREI's electricity sales during Pacifica's shutdown for annual scheduled Mill maintenance meet the definition of Surplus Power under the Minister's Order.

The Minister's Order defines Surplus Power to be "electricity generated by PREI which from time to time may not be needed or used in the Mill operations, subject to the circumstances set forth in sections 2(b) to (d), (e)iii (f) and 3". The sections relevant to this matter are as follows:

- 2(b): during the ten-year period commencing at the date of this Order,
- (i) PREI will sell all of the available energy generated by the Power Facilities to the Pacifica Parties, and
 - (ii) the Pacifica Parties will make all of that energy available for the use of the Mill, unless such energy is not needed in the ordinary course of the Mill's business;
- 2(c): during the ten-year period commencing as at the date of this Order, the Pacifica Parties will purchase, for the use of the Mill all of the available energy generated by the Power Facilities from PREI, and will purchase the energy in priority to purchasing energy from B.C. Hydro, unless such energy is not needed in the ordinary course of the Mill's business;
- 2(d): during the ten year period commencing at the date of this Order, the electricity generated by the Power Facilities will be made available to the Mill before any of the generated electricity from the Power Facilities is made available to others, unless such energy is not needed in the ordinary course of the Mill's business;

The Commission agrees with Pacifica that, based on this definition, the point in time at which power must be classified as surplus or not is when it is generated by PREI, and that nothing in the Minister's Order requires PREI to maintain certain water storage levels or comply with any other criteria before it is free to generate power. The Commission finds that the sale of electricity by PREI during Pacifica's shutdown for annual scheduled Mill maintenance met the definition of Surplus Power under the Minister's Order and therefore denies B.C. Hydro's Application. If B.C. Hydro continues to believe that the actions of Pacifica are contrary to the intent of the Minister's Order, B.C. Hydro can approach the Minister directly.

This Decision is specific to Pacifica's circumstances having regard to the exemption under the Minister's Order. Similar applications with respect to the sale of energy by other self-generating customers that result in increased embedded cost service to the customer will be considered by the Commission on their own merits.

Throughout its submissions, Pacifica takes the position that it could not be considered a self-generator with respect to the electricity generated by PREI since the facilities are owned by PREI and operated by Maclaren. In contrast, B.C. Hydro submits that Pacifica is in a position analogous to an industrial customer with self-generating capability and should be regarded as a self-generating customer. The Commission's interpretation of the definition of Surplus Power in the Minister's Order makes it unnecessary for it to determine whether or not Pacifica is a self-generating customer.

Costs

Pacifica, PREI and Maclaren requested that the Commission direct B.C. Hydro to pay all of the costs that they have incurred in responding to this matter pursuant to Section 118 of the Act. Section 118 (1) of the Act states that:

“The commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding.”

Attachment A to Commission Order No. G-23-01 provides the Commission's most recent Participant Assistance/Cost Award Guidelines (“the Guidelines”). According to the Guidelines, a proceeding begins when the Commission issues an order establishing a hearing, an inquiry or a Negotiated Settlement Process. Since the Commission did not issue an order establishing such a process, the Commission finds that no parties are eligible for cost awards with respect to the Application. Furthermore, the Commission finds that B.C. Hydro's Application raised legitimate questions about the interpretation of the Minister's Order and Commission Order No. G-38-01, and that B.C. Hydro was acting in the interest of its other industrial customers and ratepayers. The Commission notes that Pacifica, PREI and Maclaren had a strong financial incentive to participate in the process and were certainly capable of participating effectively without participant assistance. In these circumstances, the Commission would have been reluctant to approve a cost award even if a proceeding had been established.

The request by Pacifica, PREI and Maclaren to have B.C. Hydro pay for their costs related to the Application is denied.