

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-127-05



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

and

**A Review of Possible Violations of British Columbia Transmission Corporation's
Network Economy Service**

BEFORE: L.F. Kelsey, Chair
R.J. Milbourne, Commissioner November 29, 2005
N.F. Nicholls, Commissioner

O R D E R

WHEREAS:

- A. British Columbia Transmission Corporation ("BCTC") filed, on August 3, 2004, an application for an Open Access Transmission Tariff ("the OATT Application") pursuant to Sections 58, 59 and 60 of the Utilities Commission Act ("the Act"); and
- B. British Columbia Hydro and Power Authority ("BC Hydro") filed, on August 4, 2004, an application to establish rates, terms and conditions for Interconnected Operations Services ("the IOS Application") to be offered to BCTC once it becomes responsible for offering and providing transmission services through the OATT; and
- C. Order No. G-81-04 dated August 20, 2004, directed that the BC Hydro IOS Application would be heard at the same time as the BCTC OATT Application and that there would be one record for both Applications; and
- D. During the proceeding into the BCTC OATT Application and the BC Hydro IOS Application, the Chair appointed a separate Commission Panel ("NE Panel") to review BC Hydro's conduct regarding use of Network Economy Service, whether scheduling behaviour inconsistent with the 1999 Network Economy Purchasing with Alberta Exports Rule ("1999 Rule") had occurred, and whether there should be a further proceeding; and
- E. The NE Panel conducted its review through a series of information requests and submissions from BCTC, BC Hydro, third party users of the system and interested parties, as well as through analysis of reports filed in accordance with the OATT Decision; and
- F. The NE Panel has concluded that violations of the 1999 Rule occurred and continue to occur, and that a formal process leading to an enforceable tariff provision to replace the 1999 rule should be initiated. The NE Panel's Reasons for Decision are attached as Appendix A to this Order.

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NOW THEREFORE the Commission orders as follows:

1. BCTC is directed to consult with BC Hydro, third party users of the system and interested parties, and then apply to the Commission by March 1, 2006 for approval of a clear, enforceable Network Economy Tariff provision. The tariff provision is to include definition of the circumstances under which Network Economy Service is to be used, as well as procedures for monitoring and reporting to detect any unwarranted use of Network Economy Service, and enforcement penalties in the case of any breach of the provision.
2. In the interim, both BCTC and BC Hydro are directed to make every reasonable effort to comply with the spirit and intent of the 1999 Rule, and to continue to file the quarterly reports as directed by the OATT Panel at page 98 of the OATT Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of December 2005.

BY ORDER

Original signed by:

L.F. Kelsey
Panel Chair and Commissioner

Attachment



A Review of Possible Violations of
British Columbia Transmission Corporation's
Network Economy Service

REASONS FOR DECISION

1.0 INTRODUCTION

During the hearing established to review the British Columbia Transmission Corporation ("BCTC") Open Access Transmission Tariff ("OATT") Application and the BC Hydro and Power Authority ("BC Hydro") Interconnected Operations Services Application, BCTC provided the results of an analysis that suggested that there had been scheduling behaviour that may have been inconsistent with its 1999 Network Economy Purchasing with Alberta Exports Rule ("the 1999 Rule") (OATT T6: 582). As a result, the Chair of the OATT proceeding appointed a separate Commission Panel ("NE Panel") to review BC Hydro's conduct with regard to the use of Network Economy (OATT Decision of June 20, 2005 ["the OATT Decision"], pg. 96), and to determine whether there should be a further proceeding (OATT T12:1875).

The NE Panel has conducted a retrospective review of Network Economy usage and related issues, and presents its findings and decisions here. The NE Panel's review included:

- analysis of reports filed in accordance with the OATT Decision (OATT Decision, pg. 98);
- responses to Commission information requests by BCTC, BCH, third-party users of the transmission system, and an interested party; and
- an independent consultant's analysis of the information received.

2.0 BACKGROUND

Network Economy

Network Economy refers to secondary transmission service available to a Network Customer under the OATT. Section 28.4 of the OATT allows the Network Customer to use the transmission system, on an as-available basis and at no additional charge, to deliver energy to its Network Loads, from resources that have not been designated as Network Resources, in priority over Non-Firm Point-to-Point Transmission Service. Section 28.6 of the OATT prohibits the Network Customer from using Network Economy for sales of capacity and energy to non-designated loads or for direct or indirect provision of transmission service by the Network Customer to third parties. BC Hydro is BCTC's only Network Customer.

The 1999 Rule

In 1999, Alberta energy market participants who were using British Columbia's transmission system complained about the superior rights of Network Economy service and the ability of BC Hydro/Powerex to use those superior rights to displace third party non-firm point-to-point reservations. In response, BC Hydro (the transmission system operator at that time) developed the 1999 Rule, which was published as a Bulletin in October 1999.

The 1999 Rule states in part that "it is [BCTC's] policy that when BC Hydro Power Supply reserves Network Economy Transmission Service and they or Powerex are exporting energy to Alberta, Power Supply and Powerex must schedule as much or more [point-to-point] [T]ransmission Service and energy from US to BC as they do BC to AB."

Mixed-Class Wheelthrough

The Mixed Class Wheelthrough product was introduced in November 1998 to address market participants' concerns about the higher priority of Network Economy transmission over non-firm point-to-point transmission on the US to BC path. This product allows third parties to use firm transmission service to import energy into BC and non-firm transmission service to move the energy into Alberta.

During this review, all parties other than the Alberta Electric System Operator (“AESO”) (which does not trade energy) stated that they use or have used the Mixed Class Wheelthrough product. Most see it as having some value relative to non-firm transmission but limited value relative to Network Economy. Other than recognizing that the Mixed-Class Wheelthrough product was available to market participants and understanding its operation, the NE Panel did not consider this product to be a central issue in Network Economy rule violations and did not deal with it further.

Network Economy Data

Data provided during the OATT hearing indicated a marked increase in the hours of possible inconsistencies with the 1999 Rule from July 2001 through 2004. During the OATT hearing, the OATT Panel directed BCTC to file reports reviewing scheduling practices that may have been inconsistent with Section 28.6 of the BCTC tariff and the 1999 Rule (“Network Economy reports”) on a weekly basis, for four weeks. Those reports form part of the record of the Network Economy review (Exhibits B1-1, B1-2, B1-4, B1-5, B1-6).

The OATT Decision directed BCTC to continue to file Network Economy reports quarterly, and BC Hydro to file quarterly reports on its rationale for situations when it reserved transmission capacity using Section 28.4 of the OATT but ultimately chose not to use it (OATT Decision, pg. 98).

The NE Panel required further information to conduct its analysis and on May 16, 2005 the Commission issued Information Request No.1 to BCTC (Exhibit A-3) and to BC Hydro (Exhibit A-4). The Commission engaged EnVision Energy Consulting Ltd. (“EnVision”) to provide technical analysis and related expert opinion for this review.

On June 27, 2005 EnVision provided a Preliminary Report on Network Economy Rule Violations. The report was circulated to participants for comment. BCTC, BC Hydro, AESO and TransCanada Energy Ltd. (“TCE”) made various suggestions regarding further review of the matter. After further review EnVision provided a revised Preliminary Report, which was again circulated to participants for comment on July 15, 2005. The Commission requested additional data files from BCTC in a supplemental Information Request (Exhibit A-10).

EnVision submitted a Final Report on Network Economy Violations on August 12, 2005. This report was circulated on August 15, 2005 to participants for information, along with an Information Request to participants who may be affected by BC Hydro's use of Network Economy (Exhibit A-11). Responses were received from TransAlta Corporation ("TransAlta"), EPCOR Utilities Inc. ("EPCOR"), ENMAX Energy Marketing Inc. ("ENMAX"), and AESO. TCE requested additional information from BCTC prior to completing its response to the Information Request. In response to Information Request 2.1 TCE provided a calculation that, in its view, demonstrates foregone income of \$3 million due to violations of the Network Economy Rule over the period July 2001 to August 2004 (Exhibit C1-2, pp. 2, 3).

The NE Panel requested that EnVision analyze the responses and the data provided and, based on that analysis, comment specifically on TCE's estimate of the financial impact of Network Economy on its revenues. EnVision's analysis found that, although it is unrealistic to presume that any analysis of the impact of Network Economy violations can provide the "right" value of foregone income, a reasonable range for TCE's foregone income for the selected period is \$600,000 to \$800,000 (Exhibit A-14). On October 6, 2005 the NE Panel circulated the EnVision response to participants in the hearing and requested comments. Comments were received from BC Hydro, TCE, AESO, ENMAX, EPCOR and TransAlta. In contemplation of the termination of this proceeding, the NE Panel requested that EnVision submit a final Summary Report.

The EnVision Summary Report was received on November 7, 2005 and circulated to all participants for information. That communication also closed the record for this proceeding.

3.0 ISSUES, ANALYSIS AND CONCLUSIONS

Compliance with the 1999 Rule

The participants in this review were in agreement that BC Hydro's use of Network Economy has not always been consistent with the 1999 Rule. Even BC Hydro acknowledged in a May 6, 2005 letter to BCTC that Network Economy scheduling practices had been inconsistent with the 1999 Rule "for a significant number of hours in the period in question" (Ex. B2-4, pg. 2). The EnVision Report of Aug. 12, 2005 found that violations occurred in almost all eligible hours (Ex. A-11).

In its letter to BCTC, BC Hydro stated that it has generally followed the 1999 Rule since the issue was raised in the OATT hearing (Exhibit B2-4). However, it is apparent from BCTC's Quarterly Network Economy Report for the quarter ending June 30, 2005, that 1999 Rule violations are still occurring.

The NE Panel concludes that violation of the 1999 Rule has occurred, and continues to occur, in a significant number of hours.

Effectiveness of the 1999 Rule

The effectiveness of the 1999 Rule is clearly problematic. Participants to this review described a range of problems, including rule violations, issues of interpretation and transparency, and lack of enforcement. As TCE submitted, "[the] fact that BCTC, BC Hydro, and EnVision cannot agree on the extent of past Network Economy violations suggests that the 1999 Rule is ambiguous and unclear" (Exhibit C3-1, pg.1). BC Hydro provided detailed descriptions of some of the substantive and interpretive problems that it sees as arising from the 1999 Rule in its letters of May 6, 2005 to BCTC (Exhibit B2-4) and July 22, 2003 to BCUC (Exhibit B2-10).

In addition, there was some dissatisfaction on the part of market participants with the 1999 Rule's application to only transactions along the US/BC/AB path. As AESO noted, the 1999 Rule does not constrain the use of Network Economy to curtail transactions from Alberta to the US, or round-trip transactions originating in the US (Exhibit C2-4, pg. 2). Stakeholders expressed concern that their exports from Alberta had been cut due to BC Hydro's use of Network Economy (Exhibit C4-2, pg. 2; Exhibit C5-1, pg. 3; Exhibit C6-1, pg. 2). They suggest that if there is to be any kind of rule or tariff revision on Network Economy usage in the future, it should apply to flows in both directions.

The Commission Panel concludes that including the existing 1999 Rule in the OATT and enforcing it would not sufficiently address the issues and concerns identified by participants.

Consequences of Rule Violations

Financial Impacts

Responding to Commission Information Request No. 1 to Participants, TCE submitted an analysis of the financial impact of BC Hydro's alleged violations of the Network Economy Rule and estimated \$3.0 million in foregone income over the period July 1, 2001 through August 31, 2004. EnVision's analysis developed a range of \$600,000 to \$800,000 (Exhibit A-14). Several other participants claimed that their transmission reservations and/or schedules had been affected by BC Hydro's use of Network Economy, although they did not provide detailed estimates of foregone income (Exhibits C4-2, C5-1, C6-1). BC Hydro challenged all those submissions (Exhibit B2-13, pg. 5), and argued that even the lower EnVision estimate is unreliable.

The NE Panel finds that there is sufficient evidence to conclude that BC Hydro's alleged violations of the 1999 Rule had a tangible financial impact on other market participants. The Panel acknowledges that a range of \$600,000 to several million dollars is very broad, and notes that BC Hydro's submission suggests that the range may be even broader, but concludes that it would be a very complex and difficult task to develop a more precise estimate of foregone income, and that it is unnecessary for the purposes of this review.

Other Impacts

The consequences of 1999 Rule violations go beyond the financial impacts. Participants expressed concern that BC Hydro's alleged use of Network Economy for purposes other than provision of energy to network loads discourages competition (Exhibit C2-4, pg. 1) and reduces confidence and participation in the British Columbia energy marketplace (Exhibit C3-4, pg. 2).

The NE Panel is of the view that even full compliance with an improved rule will not address all of the participants' concerns about competition, but concludes that better clarity and transparency, complemented by suitable enforcement provisions, would facilitate a more competitive and open energy market.

Penalties

The NE Panel will not impose any penalty on BC Hydro for its past use of Network Economy service in a manner inconsistent with the 1999 Rule. None of the participants in this review requested penalties; instead, their primary focus centred on developing a clear, effective and enforceable tariff going forward (Exhibits C1-4, C2-6, C4-3, C5-2, C6-2). In addition, there is some uncertainty about the regulatory status of the 1999 Rule, and BC Hydro does not believe that it is binding or enforceable (Exhibit B2-4). Finally, as noted above, it is very difficult to quantify the impacts of BC Hydro's use of Network Economy on other parties.

Enforcement

Participants expressed concerns about the lack of enforcement of the 1999 Rule (Exhibits C2-4, C5-1, C6-1). BC Hydro concurred that an enforceable tariff provision would be desirable (Exhibit B2-13, pg.2).

The NE Panel agrees, and finds that it is unacceptable to continue the present situation in which BC Hydro can decide to follow the 1999 Rule "when it matter[s]" (Exhibit B2-4, pg. 2).

The NE Panel notes that there are costs associated with monitoring and enforcement, and acknowledges the OATT Panel's determination that "[e]xcessively strict monitoring and reporting procedures could easily paralyze the use of the transmission system" (OATT Decision, pg. 98).

The NE Panel concludes that enforcement is a necessary component of an effective Network Economy tariff, and expects that practical monitoring and reporting procedures will be developed.

4.0 CONCLUSIONS AND DIRECTIVES

Based on the evidence and submissions before it, the NE Panel concludes that the best interests of BCTC, and its customers, will be served by the creation and incorporation of an enforceable tariff provision governing the circumstances in which Network Economy Service will be provided. It is abundantly clear that the 1999 Rule per se is inadequate to provide the necessary degree of clarity and certainty.

In particular, the 1999 Rule is inappropriately narrow in its ambit, covering only “one-way” transactions along the US to BC to AB path, while in reality, the use of Network Economy Service affects transactions along the AB to BC to US path as well. Further, as pointed out by BC Hydro, and by the OATT Panel, there is some uncertainty as to the regulatory status of both the 1999 Rule and any business practice regime that might arise pursuant to it (Exhibit B2-4, pg.3; OATT Decision, pg.95).

Both BCTC and BC Hydro have argued, and continue to argue, that Network Economy should be a matter of developing business practices (Exhibit B1-13, pg. 1; Exhibit B2-13, pg. 2). Based on the evidence before it, the OATT Panel found that to be an avenue worthy of pursuit (OATT Decision, pg. 94).

In this proceeding, analysis of historical records and submissions from the other system users have provided ample evidence of the difficulty in executing otherwise permitted transactions in the absence of clear terms and conditions governing the access to Network Economy by the Network Customer. As well, users have emphasized the perceived lack of fairness and transparency that characterizes the present situation.

Given that apparent violations of the 1999 Rule continue (Exhibit A1-15, pg.9) and the overwhelming difficulties faced by all parties in sorting out the appropriate, from the perceived to be inappropriate, usages of Network Economy, and the impacts on those customers (Exhibit A1-15, p.2), **the NE Panel directs that a formal process leading to an enforceable tariff provision to replace the 1999 Rule be initiated.**

Accordingly, the NE Panel directs BCTC to consult with BC Hydro, third party users of the system and interested parties, and then apply to the Commission for approval of a clear enforceable Network Economy Tariff provision by March 1, 2006. The tariff provision is to include definition of the circumstances under which Network Economy Service is to be used, as well as procedures for monitoring and reporting to detect any unwarranted use of the Service, and enforcement penalties in the case of any breach of the provision.

In the interim, both BCTC and BC Hydro are directed to make every reasonable effort to comply with the spirit and intent of the 1999 Rule, and to continue to file the quarterly reports as directed by the OATT Panel (OATT Decision pg. 98).