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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-41-06

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

and

A Joint Application by FortisBC Inc.
and the British Columbia Hydro and Power Authority
for Exemptions from the Act regarding the Canal Plan Agreement
and the FortisBC Entitlement Adjustment Agreement

and

An Application by FortisBC Inc.
for an Exemption from the Act regarding the CPA Subagreement

and

An Application by British Columbia Transmission Corporation
for Approval of the Canal Plant Support Agreement

BEFORE: L.F. Kelsey, Commissioner April 7, 2006

O R D E R

WHEREAS:

- A. British Columbia Hydro and Power Authority ("BC Hydro"), Teck Cominco Metals Ltd. ("Teck Cominco"), FortisBC Inc. ("FortisBC") and the Province of British Columbia (the "Province") entered into an agreement comprised of a letter dated August 13, 1971, from FortisBC to the Province, as clarified by letter dated August 30, 1971, from the Province to FortisBC, and enclosures therein (the "1971 Agreement"); and
- B. BC Hydro, Teck Cominco and FortisBC entered into an agreement made as of August 1, 1972 (the "Original CPA") pursuant to the 1971 Agreement whereby the parties agreed to co-operate in the operation of their available storage and generating facilities in British Columbia for the purpose of obtaining optimum generation; and
- C. The Province entered into an agreement with Teck Cominco made as of May 18, 1994 (the "Benefit Extension Agreement") whereby the Province agreed that Teck Cominco would continue to receive the benefits of the Original CPA until December 31, 2035; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-41-06

D. The Province:

- i) entered into the Power Asset Sale and Development Agreement made as of May 18, 1994 (the “PASDA”) with Teck Cominco whereby Teck Cominco agreed to sell expansion rights at its Brilliant and Waneta Dams;
- ii) assigned its rights under the PASDA to Columbia Power Corporation (“CPC”), which was incorporated by the Province to facilitate the purchase of the expansion right contemplated in the PASDA;
- iii) transferred to CPC, Columbia Basin Trust (“CBT”) and their affiliates the benefit of the water reserve on the Pend d’Oreille River near the Waneta Dam; and
- iv) allowed the issuance of water licences for the Brilliant Upgrades and Brilliant Expansion pursuant to the terms of the water reserve on the Kootenay River near the Brilliant Dam; and

- E. In May 1996, Teck Cominco sold the Brilliant Dam and related assets to a joint venture of CPC and CBT Power Corp. (collectively, “CPC/CBT”) and Teck Cominco assigned to CPC/CBT its rights and obligations under the Original CPA and the Benefit Extension Agreement to the extent those rights and obligations relate to the Brilliant Dam; and
- F. FortisBC, Teck Cominco and CPC/CBT entered into an agreement made as of April 4, 1996 to identify the ownership of certain facilities and to define the specific rights and obligations of each of FortisBC, Teck Cominco and CPC/CBT with respect to the Original CPA, which agreement has been amended and restated as the CPA Subagreement dated July 1, 2005 (the “CPA Subagreement”) among FortisBC, Teck Cominco, Brilliant Power Corporation (“BPC”), Brilliant Expansion Power Corporation (“BEPC”) and Waneta Expansion Power Corporation (“WEPC”) (collectively, the “Entitlement Parties”); and
- G. CPC and CBT Energy Inc., a wholly owned subsidiary of CBT, jointly own BPC, BEPC and WEPC; and
- H. Teck Cominco, BPC, BEPC and WEPC have been exempted from certain sections of the Utilities Commission Act (the “Act”) by ministerial order; and
- I. On April 1, 2004, CPC/CBT assigned the Brilliant Dam and all related assets and rights, including its rights under the Original CPA and the Benefit Extension Agreement to BPC; and
- J. BEPC is in the process of constructing, and intends to own and operate, the Brilliant Expansion; and
- K. WEPC intends to construct, own and operate, the Waneta Expansion; and
- L. Parts D and E of the Original CPA were to cease to be in effect after September 30, 2005 or such later date as the parties to the Original CPA extend those Parts; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-41-06

- M. BC Hydro, FortisBC, Teck Cominco, BPC, BEPC, and WEPC negotiated an amendment and re-statement of the Original CPA by the Canal Plant Agreement dated July 1, 2005 (the “2005 CPA”) by which the parties agree to continue to co-operate in the operation of their available storage and generating facilities in British Columbia for the purpose of obtaining optimum generation from BC Hydro’s generation resources and the respective plants of the other signatories; and
- N. BC Hydro and FortisBC entered into an agreement dated June 1, 2004 for the purpose of resolving a dispute between BC Hydro and FortisBC regarding the calculation of FortisBC’s benefits under the Original CPA, and any such future disputes under the 2005 CPA (the “Adjustment Agreement”); and
- O. By Application dated August 19, 2005, FortisBC and BC Hydro requested that the Commission exempt FortisBC and BC Hydro, and their successors and assigns, from all provisions of the Utilities Commission Act (“the Act”), to the extent that the Act may apply, in respect of the 2005 CPA, as amended from time to time, and the Adjustment Agreement, as amended from time to time; and
- P. By the same Application, FortisBC requested that the Commission exempt it, and its successors and assigns, from all provisions of the Act, to the extent the Act may apply, in respect of the CPA Subagreement, as amended from time to time; and
- Q. By Application dated August 31, 2005, British Columbia Transmission Corporation (“BCTC”) requested Commission approval of an agreement between BCTC and BC Hydro dated July 1, 2005 that defines the terms upon which BCTC will supply services to BC Hydro so that BC Hydro can fulfill its obligations under the 2005 CPA (the “Canal Plant Support Agreement”); and
- R. By letter dated August 24, 2005, the Commission invited comments on the appropriate regulatory process for the review of the BC Hydro and FortisBC Applications; and
- S. On September 15, 2005, FortisBC and BC Hydro held a Workshop regarding their Applications to the Commission regarding the 2005 CPA and related agreements; and
- T. Commission Order No. G-95-05 established a written process for the examination of the Applications from BC Hydro, FortisBC and BCTC, and identified the three issues that would be reviewed in the examination; and
- U. By submissions dated November 8 through 18, 2005, Mr. Alan Wait, CPC on behalf of BPC, BEPC and WEPC, British Columbia Old Age Pensioners’ Association et al., the Province, Nelson Hydro and Teck Cominco provided written comments on the Applications; and
- V. By submissions dated November 25, 2005, FortisBC, BC Hydro and BCTC responded to the written comments on their Applications; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-41-06

4

- W. By Order in Council No. 200, 2006 dated March 30, 2006, the Lieutenant Governor in Council granted advance approval to the Commission for the exemptions requested by FortisBC and BC Hydro and is attached as Appendix B; and
- X. The Commission has considered the Applications from FortisBC, BC Hydro and BCTC, and determines that the Applications should be approved for the Reasons for Decision that is attached as Appendix A to this Order.

NOW THEREFORE the Commission orders as follows:

1. The Commission, pursuant to Section 88(3) of the Act, orders that FortisBC and BC Hydro (including their successors and assigns) are exempt from all provisions of the Act in respect of the 2005 CPA, as amended from time to time, and the Adjustment Agreement, as amended from time to time.
2. The Commission, pursuant to Section 88(3) of the Act, orders that FortisBC (including its successors and assigns) is exempt from all provisions of the Act in respect of the CPA Subagreement, as amended from time to time.
3. The Commission, pursuant to Section 61(1) of the Act, accepts as filed and approves the Canal Plant Support Agreement.
4. BCTC will file the Canal Plant Support Agreement in standard tariff supplement format, in a timely fashion.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of April 2006.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachments

British Columbia Hydro and Power Authority and FortisBC Inc.
Application for Exemptions pursuant to Section 88(3) of the Utilities Commission Act
regarding the Canal Plant Agreement, the FortisBC Entitlement Adjustment Agreement,
and the Canal Plant Agreement Subagreement

REASONS FOR DECISION

1.0 INTRODUCTION

1.1 Application

On August 19, 2005, FortisBC Inc. (“FortisBC”) and British Columbia Hydro and Power Authority (“BC Hydro”) (collectively, the “Applicants”) filed a joint application to the British Columbia Utilities Commission (the “Commission”) regarding an amended and restated Canal Plant Agreement (“2005 CPA”) and related FortisBC Entitlement Adjustment Agreement (“Adjustment Agreement”). FortisBC and BC Hydro seek, pursuant to section 88(3) of the Utilities Commission Act (“the Act”), to be exempted from all provisions of the Act, to the extent that the Act may apply to the 2005 CPA and the Adjustment Agreement.

FortisBC also filed a CPA Subagreement seeking, pursuant to section 88(3) of the Act, to be exempted from all provisions of the Act, to the extent that the Act may apply to the CPA Subagreement.

On August 31, 2005, the British Columbia Transmission Corporation (“BCTC”) applied to the Commission for approval of a Canal Plant Support Agreement (“Support Agreement”) pursuant to section 61(1) of the Act.

The foregoing filings will be referred to collectively as the “Applications”.

1.2 The Agreements

1.2.1 The Canal Plant Agreement

The original form of the Canal Plant Agreement (“Original CPA”) made in 1972, is an agreement relating to the co-ordination of generation and integration of the systems of BC Hydro and the other parties to the agreement. The Original CPA was amended and restated as the 2005 CPA among BC Hydro, FortisBC, Tack Cominco Metals Ltd. (“Teck Cominco”), Brilliant Power Corporation (“BPC”), Brilliant Expansion Power Corporation (“BEPC”) and Waneta Expansion Power Corporation (“WEPC”). The parties other than BC Hydro are referred

to as the “Entitlement Parties”. Some parts of the Original CPA were stated to expire on September 30, 2005 but have been extended to the date when the 2005 CPA would come into effect by the CPA Extension and Transition Agreement (Tab J of the Application) (Exhibit C6-2, p. 4).

1.2.2 The Adjustment Agreement

The Adjustment Agreement is an agreement between FortisBC and BC Hydro. It has an effective date of June 1, 2004. Its purpose is to resolve a dispute between BC Hydro and FortisBC regarding the calculation of the energy and capacity FortisBC receives under the Original CPA and the 2005 CPA.

1.2.3 The CPA Subagreement

The CPA Subagreement is among FortisBC, Teck Cominco, BPC, BEPC and WEPC. The CPA Subagreement is made as of July 1, 2005. It allocates the aggregate rights and obligations of the Entitlement Parties under the 2005 CPA to each individual Entitlement Party.

1.2.4. The Support Agreement

The Support Agreement is an agreement between BC Hydro and BCTC. BCTC and BC Hydro have entered into the Support Agreement so that BC Hydro can fulfill its obligations to the Entitlement Parties under the 2005 CPA. Pursuant to this agreement, BCTC provides transmission services that have slightly different terms and conditions than in BCTC’s open access transmission tariff.

1.3 Statutory Basis for Applications

Section 88(3) of the Act provides as follows:

The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.

Section 61(1) states:

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

1.4 Issues to be examined by the Commission and the Regulatory Process

On September 30, 2005 the Commission, by Order No. G-95-05, directed that the Applications would be examined by a written process and that the examination of the Applications would be limited to the following issues:

- Does the Commission have the jurisdiction to approve, with the prior approval of the Lieutenant Governor In Council, the exemption requests in the Applications; and
- If so, should the requested exemptions under section 88(3) of the Act be granted; and
- Should approval, pursuant to section 61(1) of the Act, be granted for the Canal Plant Support Agreement?

In accordance with the Regulatory Timetable, the written process commenced with Public Notification on October 7, 2005 and Intervenor Registration on October 14, 2005. The process included one round of Information Requests and Responses, Submissions by Intervenors and concluded with Reply by Applicants on November 25, 2005.

2.0 ISSUES

2.1 Does the Commission have the jurisdiction to approve, with the prior approval of the Lieutenant Governor In Council, the exemption requests in the Applications?

2.1.1 Background

Periodically an application is made to the Commission for an exemption under section 88(3) of the Act. Typically the exemption request will be for a facility, the operator of which clearly falls within the definition of “public utility” under the Act, however the exemption is sought because the operational circumstances are unique, the user community is limited and user business safeguards are in place. From time to time, after due consideration, and on conditions it considers advisable, the Commission has, after having sought and received the approval of the Lieutenant Governor in Council (“LGIC”), provided an exemption with respect to the facility from some or all of the provisions of the Act. As examples, in the last few years the Commission has issued Orders No. G-22-05, G-60-03, G-113-01, G-91-01 and G-13-01 granting exemptions of some of the provisions of the Act.

These Applications differ from a typical application related to section 88(3) of the Act in that it is not clear whether the 2005 CPA, the Adjustment Agreement and the CPA Subagreement (“the Agreements”) in terms of their purpose and content fall under and are subject to the Act.

The Commission, in an Information Request (Exhibit A-3), sought to clarify the manner by which the Act does or could apply to the 2005 CPA or the CPA Subagreement. The Applicants’ response did not provide clarity. The Applicants stated that:

“The extent to which the Act may apply to the agreements is not clear because the agreements are unique in terms of their purpose, their legal and historical context ... and the nature of the parties.” (Exhibit B-8, BCUC IR 1.1)

Nevertheless, the Applicants acknowledged “it is possible that in future a person ... could complain and argue that the Act, such as sections 58 and 64 (relating to rates) and Section 71 (energy supply contracts), may apply to parts of the 2005 CPA, FortisBC Entitlement Agreement and CPA Subagreement” (Exhibit B-8, BCUC IR 1.1). The BC Old Age Pensioners Organization *et al.* (“BCOAPO”) submits that the Agreements include energy supply contracts and rates, all of which are subject to the Act and Commission approval and that “there can be little doubt that the Act applies to substantial portions of the Agreements” (Exhibit C2-5, p. 7).

The 2005 CPA is described by the Applicants as “an agreement relating to the co-ordination of generation and integration of the systems of BC Hydro and the other parties to the agreement. The Canal Plant Agreement in its original form was made as of August 1, 1972” (Exhibit B1, p. 2). The legal and historical background to the Original CPA is described in some detail in the Application (Exhibit B-1, pp. 2-13). The parties to the 2005 CPA are BC Hydro, FortisBC, Teck Cominco, BPC, BEPC and WEPC. Columbia Power Corporation (“CPC”) and CBT Energy Inc., a wholly owned subsidiary of Columbia Basin Trust (“CBT”) jointly own BPC, BEPC and WEPC. FortisBC and BC Hydro are public utilities, while the other parties are exempted from most of the Act pursuant to ministerial orders (Exhibit B-8, BCUC IR 1.1).

The extent of the Commission’s jurisdiction over the Agreements, if any, is not clear. The Applicants suggest that it is also unclear whether the Original CPA was ever subject to the BCUC’s jurisdiction, noting that the Original CPA predates the Act and that, when the Act came into force, the Applicants’ facilities and operations that existed in 1980 were deemed to have the authorizations and approvals required by the Act (*Utilities Commission Act*, S.B.C. 1980, c. 60) (Exhibit B-8, BCUC IR 3.1; Exhibit C2-5, p. 5).

The general argument of the Applicants and other parties to the Agreements to support the request for exemption from the Act is not based on an identification of specific content or aspects of the Agreements that fall within the Act. Rather, exemptions are sought to remove uncertainty relating to possible alterations to the Agreements through any current or future Commission process.

2.1.2 Position of Parties

The Applicants and all Intervenors who made submissions on this issue agree that the Commission has jurisdiction to grant the applied-for exemptions.

The Applicants submit that section 88(3) of the Act clearly gives the Commission jurisdiction to grant the requested exemptions. The only express condition precedent for the grant of an exemption is “the advance approval of the LGIC”. The Applicants submit that the Commission may make a section 88(3) order, with the advance approval of the LGIC, when it would be consistent with the objects and purposes of the Act (Exhibit B-13, p. 4).

BCOAPO submits that, in legal terms, the Original CPA was, in fact, approved by the Commission. According to BCOAPO, a Commission Order to exempt the renegotiated 2005 CPA is required because “when the Commission was established, its enabling statute had the effect of conferring upon the original Agreement the benefit of deemed retroactive Commission Approval” (Exhibit C2-5, p. 5).

BCOAPO takes the position that the Commission has the jurisdiction to grant the exemption, “if it determines that it is in the public interest to do so” (Exhibit C2-5, p. 3). BCOAPO suggests that “the public interest is the main issue in this proceeding”.

2.1.3 Commission Decision

The Commission agrees with parties that it has the jurisdiction and authority to consider the Applications under section 88(3) of the Act and determine whether the Agreements should, as requested by the Applicants, be exempted from the Act to the extent the Act applies to them and, under what conditions, if any.

2.2 If so, should the requested exemptions under section 88(3) of the Act be granted?

2.2.1 Test for granting an Exemption

As noted above, the Applicants submit that the Commission may make a section 88(3) order “when it would be consistent with the objects and purposes of the Act” (Exhibit B-13, p. 4).

BCOAPO notes that “exempting the contracts would have the effect of permitting the applicants to bring them into operation” and suggests, therefore, that “exempting them requires a determination that it is in the public interest that this occur” (Exhibit C2-5, p. 3). The Applicants observe that the words “public interest” do not appear in section 88(3) of the Act and submit that BCOAPO’s interpretation “requires the Commission to read into the section conditions that are not there” and that “Where the requirement has been excluded, therefore, it should not be read in” (Exhibit B-13, p. 3).

The Commission sees little distinction of substance between the positions advanced by BCOAPO and the Applicants with respect to the test to be applied in considering whether to grant an exemption. The Commission is of the view that a section 88(3) exemption order should be issued, with the advance approval of the LGIC, when such exemption serves the objects and purposes of the Act and it is in the public interest to do so.

2.2.2 Positions of Parties

The background to and the nature of the Agreements are described by the Applicants and Intervenors. The position of the Applicants is that:

“The Original CPA is a 33 year old agreement relating to the co-ordination of generation and integration of the systems of BC Hydro and the other parties to the agreement.

The Commission has never purported to exercise jurisdiction over the Original CPA, nor has anyone ever suggested that the Commission should do so. ...this history of Commission “non-involvement” is not accidental ...the Canal Plant Agreement is not the kind of contractual arrangement over which the Commission typically exercises jurisdiction pursuant to the Act. ...The Agreements reflect a balancing of interests, including the interests of BC Hydro and FortisBC and their respective rate payers, the other (unregulated) parties and the Province. They advance certain of those interests, curtail others and, thus, cement a carefully-negotiated compromise of competing objectives. ... the parties to the Agreements are best suited to make, and have made, the kinds of trade-offs and compromises that are necessary to extend, in a viable substance and form, the Canal Plant Agreements” (Exhibit B-13, pp. 4-5).

The practical effect of the requested exemptions is that as between the parties, the Agreements would be enforceable in accordance with their terms like any commercial agreements...and the Act would not apply to allow the Commission or any other person (including a party) to change the terms or restrict the rights and obligations under the Agreements (Exhibit B-8, BCUC IR 1.3).

FortisBC and BC Hydro note that the exemptions would in no way affect the jurisdiction of the courts or government over the Agreements or the parties, or the usual jurisdiction of the Commission over FortisBC and BC Hydro (Exhibit B-8, BCUC IR 1.3).

The Applicants believe the requested exemptions serve the objects and purposes of the Act and that the Agreements reflect a careful balance of obligations and rights between the utilities and the other parties (that are specifically exempted from the Act by ministerial orders), in furtherance of government policy (Exhibit B-8, BCUC IR 1.5). The anticipated benefits of the 2005 CPA that the Applicants submit would accrue to FortisBC, BC Hydro and the other parties, as well as the benefits to the Province, are outlined in the Application (Exhibit B-1, pp. 13-19).

The Applicants suggest that the policy reasons for governmental regulation do not arise in the context of the Agreements and that the assertion of jurisdiction by the Commission would not be a fruitful use of the Commission's resources and would result in an incomplete regulatory framework in any event (Exhibit B-13, pp. 8-9).

BCOAPO does not dispute that the Agreements are in the public interest. BCOAPO submits that "it appears to be in the public interest that the arrangements be permitted to be put into operation" and that "the amendments, which perpetuate arrangements that would otherwise expire under the original CPA, and which clarify, update and adjust the arrangements, are in the public interest" (Exhibit C2-5, p. 5). BCOAPO's concern is not whether the Agreements are in the public interest but whether the Agreements should be approved under the Act, rather than exempted from the Act. BCOAPO submits that the Applicants' arguments to support the position that the public interest issues are broader in scope than the Commission normally considers, would all appear to be valid reasons to approve, not to exempt, the Agreement (Exhibit C2-5, p. 4).

BCOAPO suggests that the Commission has been presented with a tangle of contracts and arrangements in the nature of a "Gordian knot". While BCOAPO agrees that "it cannot be disentangled: if the strands are tinkered with, the integrity of the whole will be endangered", BCOAPO states that is not in a position to answer definitively whether the "Agreements achieve the optimal solution" without first untangling the Gordian Knot

(Exhibit C2-5, p. 4). BCOAPO submits that the Commission should refuse to grant the applied-for exemption orders and invite the Applicants to apply for approval of the Agreements, which BCOAPO proposes could be dealt with on an expedited basis and without a public hearing (Exhibit C2-5, p. 8).

The Applicants' request for an exemption from the Act was supported by three Intervenor. Two of those Intervenor (Tech Cominco and CPC) are parties, either directly or through subsidiaries, to two of the Agreements.

CPC, representing BPC, BEPC and WEPC, suggests that given the comprehensive nature of the requested exemptions, it is unnecessary for the Commission to first determine which provisions, if any, of the Act might apply to the 2005 CPA and related Agreements before deciding whether to issue an exemption (Exhibit C4-2, p. 3).

Teck Cominco states that the 2005 CPA provides benefits to all parties and that it also benefits the Province. Teck Cominco notes that "the value of generation in the Canadian portion of the Columbia River Basin is greater than it would be without the Agreements" (Exhibit C6-2, p. 3) and that "the Agreements advance Provincial economic and environmental interests and allow for the full benefit of the Columbia River Treaty to be realized" (Exhibit C6-2, p. 6). Teck Cominco submits that there is no public detriment and that granting the exemptions is in the public interest.

The Government of British Columbia ("Province") "supports the BC Hydro and FortisBC exemption Applications" (Exhibit C7-2, p. 4). The Province, in its submission of November 18, 2005 cites the long history of the Original CPA and indicates that it has served the parties and the Province well and that it is consistent with and supports provincial objectives and interests. The Province submits that granting the exemptions sought by the Applicants will allow the Province and the parties to the Agreements to continue to enjoy the benefits of integrated and co-coordinated operation afforded by the Agreements without the potential of change through the regulatory process. The Province also asserts that the Agreements are unique in that they involve issues of provincial interest, and federal-provincial arrangements and obligations, which are beyond the scope of those matters typically considered by the Commission in its decision-making. The Province, referencing past ministerial exemptions from portions of the Act for certain parties to the Original CPA, takes the position that the "current application for exemptions is entirely consistent with that public policy decision" (Exhibit C7-2, p. 4).

Nelson Hydro, in its undated Submission, states that “the original Canal Plant Agreement has worked well ...and customers should not have serious concerns about the continuation of the Agreement, regardless of its regulatory status” (Exhibit E-4, p.3). It does suggest however, that “BC Hydro and FortisBC consider a side agreement to the CPA that would amend the dispute mechanism contained in Section 12 in the event of a dispute between BC Hydro and FortisBC that otherwise did not impact the other parties to the CPA. In this case, the parties would appoint the Commission as arbitrator in the dispute. Nelson Hydro suggests that this would provide certainty that the interests of the customers of FortisBC (and the customers of BC Hydro for that matter) would be considered in the resolution of such a dispute” (Exhibit E-4, p. 3).

While this suggestion may have some merit, the Applicants point out that such a role would require the Commission to act as an arbitrator, not a regulator and a true arbitrator of such disputes would act without regard to the interests of the Applicants’ respective customers (Exhibit B-13, p. 11). In addition, as noted by the Applicants, “both BC Hydro and FortisBC will continue to be regulated by the Commission under the Act if the exemptions are granted, and the allocation of costs and benefits between the utilities and their respective ratepayers arising from the Agreements will continue to be subject to Commission review in revenue requirement proceedings” (Exhibit B-13, p.11).

Alan Wait in his Submission of November 8, 2005, while not directly opposing the exemptions, requests that the Commission “reject the exemption at this time and request[s] a full public hearing to examine the details of the 2005 CPA.....Then, once the 2005 CPA has met the test of fairness to all parties, the BCUC can consider whether an exemption is possible or necessary” (Exhibit C1-5, p. 5). The Applicants argue that “such an enquiry would need to consider not just the water licenses and facilities, but the entire legal and historical context of the Canal Plant Agreement” (Exhibit B-13, p. 9). In the Applicants’ view, “the only provision of the Act that could give the Commission Jurisdiction to undertake such a broad inquiry is section 5(1); but this provision does not apply because the LGIC has not made such a request of the Commission” (Exhibit B-13, pp. 9-10). The Commission agrees with this view.

2.2.3 Commission Findings

The Commission notes the unique nature of the Agreements and the successful operation of the Original CPA over more than thirty years. It is also evident that while some aspects of the Agreements, although not defined, could fall under and be subject to the Act, other aspects may not and other parties do not. To consider the Agreements for approval by the Commission would require “an untangling of the Gordian knot”. Further, as BCOAPO states, “if the Commission were to either disapprove the contracts or to attach conditions that have the

effect of amending them in any material respect, the fruits of protracted multi-party negotiations could be in jeopardy” (Exhibit C2-5, p. 4). This uncertainty is precisely what the Applicants seek to avoid, both now and in the future.

The Commission acknowledges that the Original CPA supported government policy to maximize the value of British Columbia’s hydroelectric resources and the benefits arising from the Columbia River Treaty, while balancing the interests of all of the parties. The Agreements result in new procedures and practices, as agreed to by the parties, to react to new circumstances. Balancing the interests of each of the parties under these very complex agreements has successfully been achieved through commercial negotiations.

With the exception of concerns expressed by Alan Wait, parties who made submissions do not disagree that the public interest has been well served by the Original CPA. Mr. Wait’s concerns deal with water license and facilities issues and the historical and legal context of the Original CPA. The Agreements, which update, amend and extend the arrangements under the Original CPA, contain a carefully balanced set of obligations and rights that have been agreed upon through protracted negotiations. With regard to Nelson Hydro’s proposal regarding the Commission’s involvement in dispute resolution, the Commission notes that provision exists in the Agreements for dispute resolution should the need arise and that the Commission will continue to have and will continue to exercise regulatory oversight of BC Hydro and FortisBC.

As the Applicants have noted, parties to the 2005 CPA who are subject to the Commission’s jurisdiction, BC Hydro and FortisBC, will continue to be regulated by the Commission and the allocation of costs and benefits between these utilities and their ratepayers arising from the Agreements will continue to be subject to the Commission’s review.

The Commission concludes that the requested exemptions under section 88(3) of the Act should, upon the approval of the LGIC, be granted.

2.3 Should approval, pursuant to section 61(1) of the Act, be granted for the Canal Plant Support Agreement?

2.3.1 Issues

BCTC seeks approval under section 61(1) of the Act for the Support Agreement. The Support Agreement between BCTC and BC Hydro was made so that BC Hydro can fulfill its obligations to the Entitlement Parties under the 2005 CPA. In the Application BCTC states “BCTC and BC Hydro have agreed to seek Commission approval of the Support Agreement to provide greater regulatory certainty to the parties and, in addition, for consistency with the spirit of transparency which is the Foundation of all open access electricity transmission tariffs in North America” (Exhibit B-4, p. 2).

Teck Cominco points out that “prior to the creation of the BCTC there was no need for Commission approval of a contract since BC Hydro then provided the transmission-related services to itself. The Support Agreement does not create new obligations for BCTC; rather it establishes a contractual framework for the services that BCTC has provided to BC Hydro since BCTC was created” (Exhibit C6-2, p. 7).

All Intervenors who commented on this Application were in support, without qualification.

2.3.2 Commission Findings

The Commission accepts that the Support Agreement provides a contractual framework for the provision of the service that BC Hydro needs to meet its obligations under the 2005 CPA **The Commission approves for BCTC, pursuant to section 61(1) of the Act, the Canal Plant Support Agreement between BCTC and BC Hydro.**

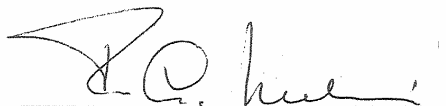
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

200

, Approved and Ordered

MAR 30 2006



Lieutenant Governor
Administrator

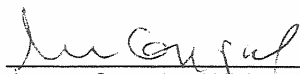
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Administrator, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to make the exemptions from the *Utilities Commission Act* set out in the attached draft order of the British Columbia Utilities Commission.


BCUC Log # 14249
RECEIVED

MAR 31 2006

Routing Cd to Comm & staff
45 RWR



Attorney General and Minister Responsible for
Multiculturalism



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Utilities Commission Act, s. 88 (3)

Other (specify):- _____

February 8, 2006

93/2006/13