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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-104-08

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

and

Applications by
British Columbia Transmission Corporation ("BCTC")
for an exception to BCTC's Standards of Conduct

and

British Columbia Hydro and Power Authority ("BC Hydro")
for an exception to BC Hydro's Standards of Conduct

BEFORE: L.F. Kelsey, Commissioner June 19, 2008

O R D E R

WHEREAS:

- A. On May 16, 2008, BCTC applied ("BCTC Application") for an exception to its Standards of Conduct ("BCTC Standards") to permit designated BC Hydro employees to have access to non-public transmission-related information for the purposes of engaging in integrated system planning and resource acquisition; and
- B. On May 16, 2008, BC Hydro applied ("BC Hydro Application") for an exception to the non-disclosure rules of its Standards of Conduct ("BC Hydro Standards") so that BC Hydro personnel might have access to BCTC's non-public transmission information for integrated system planning and resource acquisition purposes; and
- C. On May 29, 2008, the Commission issued a letter inviting comments from interested parties by June 10, 2008 and reply comments from BCTC and BC Hydro by June 16, 2008; and
- D. On June 10, 2008, the Independent Power Producers Association of British Columbia ("IPPBC") filed comments opposing the applications, submitting that it might be more convenient for BCTC and BC Hydro to have the information, but had not demonstrated a need for it, and that it is premature to allow BC Hydro access to the non-public information; and
- E. On June 16, 2008, BC Hydro filed reply comments submitting that the IPPBC misunderstands the purpose of the BCTC and BC Hydro Standards and that the applied-for exception would not change the "no conduit" rules of BC Hydro's Standards and that any of the personnel involved in the energy planning and power

**BRITISH COLUMBIA
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2

acquisitions programs would be subject to the BC Hydro Standards compliance program. BC Hydro also submits that proposed exception will allow for “sustained iterative dialogue” and result in improved efficiency related to the 2008 Long Term Acquisition Plan and BC Hydro’s forthcoming bioenergy call, clean power call and Standing Offer Program; and

- F. On June 16, 2008, BCTC filed reply comments and submits that the purpose of the Standards of Conduct is to protect against discrimination in the provision of wholesale transmission services by ensuring that the marketing employees of an affiliate of a transmission provider do not receive transmission information that is not available to other transmission customers. BCTC further submits that the purpose of the Standards of Conduct is not to create inefficiencies in, or to affect the relative positions of the parties of, a competitive resource acquisition process; and
- G. The Commission has reviewed the BCTC and BC Hydro Applications and is satisfied that the purpose of the Standards of Conduct, which is to protect against discrimination in the provision of wholesale transmission services, will be maintained if the requested exceptions to the BCTC and BC Hydro Standards are approved and has determined that approval of the Application is in the public interest. Reasons for Decision are appended to this Order.

NOW THEREFORE the Commission orders as follows:

1. The Commission approves the exception to its Standards of Conduct as requested by BCTC in its May 16, 2008 Application.
2. The Commission approves the exception to its Standards of Conduct as requested by BC Hydro in its May 16, 2008 Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of June 2008.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

Applications by
British Columbia Transmission Corporation (“BCTC”)
for an exception to BCTC’s Standards of Conduct

and

British Columbia Hydro and Power Authority (“BC Hydro”)
for an exception to BC Hydro’s Standards of Conduct

REASONS FOR DECISION

1.0 BCTC APPLICATION

On May 16, 2008, BCTC applied for approval of an exception to its Standards of Conduct (“BCTC Standards”) to permit designated BC Hydro employees to have access to non-public transmission-related information in order to engage in integrated system planning and resource acquisition. The BCTC Standards of Conduct were approved originally by Order No. G-12-05.

BCTC requests the exception to the BCTC Standards in order to remove obstacles to and foster more efficient and effective integrated system planning and resource acquisition processes, while at the same time continuing to withhold non-public transmission information from BC Hydro employees engaged in electricity marketing functions. BCTC further submits that the current BCTC Standards inhibit “a sustained iterative dialogue” on integrated system planning and that U.S. utilities have also expressed concerns with respect to integrated system planning and resource acquisition under the U.S. Federal Energy Regulatory Commission (“FERC”) standards.

BCTC in its Application notes that the FERC has issued two Notices of Proposed Rulemaking (“NOPR”) on its Standards of Conduct for Transmission Providers in the past 15 months. The second NOPR, issued in March 2008 to “...clarify and refocus FERC’s Standards on areas where there is the greatest potential for affiliate abuse”, proposed significant changes to its Standards. While the 2008 NOPR would continue to require transmission providers to function independently of marketing affiliates, it proposed to replace its current “corporate functional approach”, which includes all employees of an affiliate, whether engaged in sales or not, with an “employee functional approach”, which directly identifies which employees ought not to interact with one another. “Transmission function employees” who operate and plan the transmission system would be required to function independently of “marketing function employees” who actively and personally engage in marketing functions.

BCTC states that the proposed exception will permit designated BC Hydro employees to have access to, and use, non-public transmission-related information, to facilitate integrated system planning and resource acquisition, which are functions generally performed by BC Hydro's Energy Planning and Power Acquisitions groups. BCTC further submits that there are two important safeguards consistent with the FERC 'functional approach':

- 1) BCTC would not be permitted to share non-public information with "marketing function employees" such as BC Hydro or Powerex employees engaged in wholesale electricity marketing, and
- 2) BC Hydro would continue to employ a "no conduit" rule.

Under the framework proposed by BCTC, employees of BC Hydro's Energy Planning and Power Acquisitions groups would have access to transmission information, as would BC Hydro's legal services and regulatory employees, designated members of senior management who are not involved in electricity marketing, and BC Hydro's external counsel and consultants involved in integrated system planning and resource acquisition.

Because BCTC anticipates that it will be quite some time before FERC issues a final rule on standards of conduct BCTC is applying for an exception to its current standards rather than a revision to the BCTC Standards. BCTC states that it will file an application for approval of revised Standards of Conduct after FERC has issued a final rule.

2.0 BC HYDRO APPLICATION

Also on May 16, 2008, BC Hydro applied to the Commission for an Application for an exception to the non-disclosure rules of BC Hydro's Standards of Conduct. The BC Hydro Standards were originally approved by Order No. G-13-05 and a previous exception was granted by Order No. G-54-05. In its Application, BC Hydro requests approval of an exception to the non-disclosure rules of its Standards of Conduct ("BC Hydro Standards") so that certain BC Hydro personnel can have access to BCTC non-public transmission-related information for integrated system planning and resource acquisition.

BC Hydro submits that BC Hydro witnesses expressed concerns during the hearing to review BC Hydro's 2006 Integrated Electricity Plan ("IEP") and Long-Term Acquisition Plan ("LTAP") that the BC Hydro and BCTC Standards might be too restrictive for optimal coordination of generation and transmission planning. The Commission, in its May 2007 IEP/LTAP Decision, encouraged BC Hydro to work with BCTC to determine

what changes to the Standards of Conduct might be beneficial. BC Hydro also discusses the FERC NOPR activities raised in the BCTC Application.

BC Hydro states that it is currently finalizing its LTAP, proceeding with its bioenergy call, planning a clean power call, finalizing a resource plan for the Fort Nelson area, launching its Standing Offer program, and will be working with BCTC to prepare for the transmission system inquiry the BCUC must hold under section 5 of the amended *Utilities Commission Act*. BC Hydro submits that in order for the transmission planning assumptions to be consistent in those activities it must be able to engage in iterative discussions with BCTC without concerns about contravening the BC Hydro or BCTC Standards.

BC Hydro anticipates that FERC will not issue a final rule on Standards of Conduct until later in 2008, and is therefore applying for approval of an exception to its current Standards rather than for amended Standards. BC Hydro states that it expects to address fundamental changes to the BC Hydro Standards in an application after FERC has issued its final rule.

Therefore, BC Hydro is applying for approval to allow its Energy Planning, Power Acquisitions, Legal and Regulatory groups and its senior management to have access to transmission-related information and use it in conjunction with integrated system planning and resource acquisition functions. Senior management is identified as those employees in the top three rows of BC Hydro's organizational chart (attached as Appendix B to its Application), exclusive of any Powerex employee. BC Hydro also requests that outside legal counsel and consultants also be allowed access to non-public transmission-related information for use in the integrated system planning and resource acquisition activities.

3.0 SUBMISSIONS ON THE APPLICATION

The Commission issued a letter on May 29, 2008 requesting comments from interested parties, to be followed by reply comments from BCTC and BC Hydro. The Independent Power Producers Association of British Columbia ("IPPBC") commented by letter dated June 10, 2008. BCTC and BC Hydro responded on June 16, 2008.

The IPPBC does not support the BC Hydro or BCTC Applications and submits that the filing of BC Hydro's 2008 LTAP is imminent "...so it is difficult to understand why BC Hydro needs access to this information for this purpose at this very late date". The 2008 LTAP has been filed since the IPPBC filed its letter. The IPPBC also submits that terms of reference have not been set for the prospective inquiry under section 5(4) of the amended *Utilities Commission Act* so it is premature to request non-public information for this purpose.

The IPPBC also submits that “With respect to this information being used for various BC Hydro resource acquisition processes, including processes where there are negotiations between BC Hydro and independent power producers, it is imperative that these processes be transparent and not ones that rely in part on non-public transmission information. It is also important to note that BC Hydro will have this information for the purposes of developing its own generating projects and they compete with independent power projects.”

BCTC in its reply states that the purpose of the Standards of Conduct is to protect against discrimination in the provision of wholesale transmission services and not to create inefficiencies in, or to affect the relative positions of parties in a competitive resource acquisition process. BCTC further identifies sections of the FERC 2007 and 2008 NOPRs that are consistent with the exception requested and submits that the exceptions will assist with the reviews related to the 2008 LTAP, the prospective BCUC inquiry into transmission issues required under section 5 of the amended *Utilities Commission Act*, and to BC Hydro’s resource acquisition processes.

BCTC submits that the alternative proposed by the IPPBC, of ensuring that any party that uses the BCTC system be given the same access to information as BC Hydro, will create the same inefficiencies that the exception to the Standards of Conduct attempts to prevent.

BC Hydro in its reply comments submits that the IPPBC misunderstands the purpose of the Standards of Conduct and that the Standards are intended to ensure non-discriminatory, open access to transmission services in B.C. and were not established to control the manner in which BC Hydro conducts its energy planning or resource acquisition processes. BC Hydro states that the existing Standards prohibit its employees engaged in energy planning and power acquisitions functions from having access to transmission-related information, and that the existing restriction is more than an inconvenience.

BC Hydro reiterates that the applied for exception would not change the “no conduit” prohibition in the BC Hydro Standards, nor is it proposing any changes to its compliance program.

4.0 COMMISSION DETERMINATION

The Commission, at page 42 of the May 2007 IEP/LTAP Decision, encouraged BCTC and BC Hydro to work together to determine what changes to the Standards of Conduct would be beneficial. The issues addressed by BC Hydro and BCTC in their Applications and by the FERC in its NOPRs are all aimed at reducing the inefficiencies in the planning processes between transmission entities on one hand and distribution and generation entities on the other.

Moreover, the exceptions requested by BCTC and BC Hydro appear to be anticipated by the FERC and will be temporary exceptions until the FERC issues a final Order. Both BCTC and BC Hydro state in their respective Applications that they intend to address further changes to the BCTC and BC Hydro Standards in future applications, after a final FERC Order is issued.

The IPPBC argues that upcoming events do not require an exception to the Standards and submits that Terms of Reference have not yet been issued for an inquiry under section 5 of the amended *Utilities Commission Act* into long-term B.C. transmission infrastructure and capacity needs so it is premature to request non-public information for the purpose.

With respect to the argument that the requested exceptions are premature, the Commission notes that even though the LTAP has already been filed, it still must undergo a Commission review in a process that has yet to be determined by the Commission, but which almost certainly will involve information requests and further analysis by BC Hydro and BCTC. The Commission also notes that the amended legislation does not require that Terms of Reference be issued at all, but the inquiry must proceed by March 31, 2009.

The Commission accepts the submissions of both BCTC and BC Hydro that the purpose of the Standards of Conduct is to protect against discrimination in the provision of wholesale transmission services and not to create inefficiencies in, or to affect the relative positions of parties in a competitive resource acquisition process. The Commission also notes the evidence provided by BCTC and BC Hydro with respect to the concerns of the FERC and the directional need for change identified in the FERC 2007 and 2008 NOPRs and finds that this supports an exception to the current Standards rather than a fundamental change to the Standards at this time. The Commission is persuaded that approval of the exception to the BCTC and BC Hydro Standards will improve the efficiency of various resource planning and acquisition processes that are either underway or expected to be occurring in the foreseeable future. **Therefore, the Commission approves the BCTC Application for an exception to its Standards of Conduct, and the BC Hydro Application for an exception to its Standards of Conduct.**