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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-45-10

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

and

**British Columbia Hydro and Power Authority
Application for Reconsideration Regarding Order G-103-09, as Confirmed by Letter L-95-09,
Concerning British Columbia Transmission Corporation Firm Transmission Sales to Alberta**

BEFORE: A.A. Rhodes, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
P.E. Vivian, Commissioner

March 12, 2010

O R D E R

WHEREAS:

- A. On September 10, 2009, the British Columbia Utilities Commission (the Commission) issued Order G-103-09 and Reasons for Decision, ruling on a complaint by TransCanada Energy Ltd. (the TCE Complaint) concerning transmission sales by the British Columbia Transmission Corporation (BCTC) on the British Columbia to Alberta path (the BC>AB Path); and
- B. By letter dated September 17, 2009, BCTC submitted a request for Commission clarification of the directions in Order G-103-09. The clarifications were with respect to how the required reductions in Long-Term Firm Point-to-Point transmission service on the BC>AB Path should be accomplished. BCTC offered two interpretations of how the reductions might be implemented. BCTC also requested confirmation concerning the identity of the "affected customers," referred to in the Decision; and
- C. In response to BCTC, the Commission issued Letter L-95-09, dated October 15, 2009, confirming that BCTC should, in consultation with affected customers, arrive at a means of executing the required reductions. The Commission also confirmed that "affected customers" referred to NorthPoint and the British Columbia Hydro and Power Authority (BC Hydro); and
- D. By letter dated November 26, 2009, BC Hydro submitted an Application for Reconsideration (Reconsideration Application) to the Commission in respect of Order G-103-09 and Letter L-95-09; and
- E. On November 27, 2009, the Commission issued Letter L-107-09, requesting registered Interveners in the TCE Complaint proceeding to comment on the Reconsideration Application; and
- F. Comments on the Reconsideration Application were received from BCTC, Cargill Limited (Cargill), TransCanada Energy Ltd., the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO), the Commercial Energy Consumers Association of British Columbia (CEC), and the Joint Industry Electricity Steering Committee (JIESC); and

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- G. On January 8, 2010, the Commission issued Order G-6-10 with the determination that the reconsideration should proceed to a second phase, and specifying the Regulatory Timetable for review of the Reconsideration Application. The Regulatory Timetable provided for submissions from BC Hydro and registered Interveners, and requested that BCTC file additional evidence by affidavit; and
- H. BCTC filed additional evidence on February 1, 2010. By February 8, 2010, the Commission had received BC Hydro's submission, and submissions from BCOAPO, CEC and JIESC, which supported BC Hydro. Cargill's submission, dated March 1, 2010, opposed BC Hydro's requested relief, as described in the Reconsideration Application. BC Hydro filed a reply submission on March 8, 2010; and
- I. The Commission Panel has reviewed the Reconsideration Application, the additional BCTC evidence, the submissions from the registered Interveners, and BC Hydro's reply submission.

NOW THEREFORE for the reasons stated in the Decision issued concurrently with this Order, the Commission orders as follows:

- 1. BC Hydro's Application for Reconsideration is granted.
- 2. Order G-103-09 is varied by adding the following after paragraph 3:

The foregoing is subject to all customers with LTF PTP service on the BC>AB path retaining the same total amount of service capacity (MW) that they had prior to the sale of the 305 MW of additional capacity commencing in December, 2007. To the extent that customers do not have the same amount of service capacity (MW) after implementation of the foregoing, Service Agreements of those customers whose service capacity (MW) has increased shall be cancelled or amended, as required, effective April 1, 2010. Those customers whose service capacity (MW) has decreased shall have the opportunity to take the released capacity as of April 1, 2010, as long as they match the duration of the highest service request in the queue, as required by BCTC's OATT and Business Practices.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of March, 2010.

BY ORDER

Original signed by:

Alison A. Rhodes
Panel Chair/Commissioner

Attachment



IN THE MATTER OF

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
APPLICATION FOR RECONSIDERATION OF THE
TRANS CANADA ENERGY COMPLAINT**

REASONS FOR DECISION

March 12, 2010

BEFORE:

A.A. Rhodes, Panel Chair / Commissioner
L.A. O'Hara, Commissioner
P.E. Vivian, Commissioner

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1.0 BACKGROUND

This is an application by British Columbia Hydro and Power Authority (BC Hydro) for reconsideration of British Columbia Utilities Commission (Commission) Order G-103-09, as confirmed in part by Letter L-95-09 (Reconsideration Application). BC Hydro seeks reinstatement, effective April 1, 2010, of the 25 MW of Long Term Firm Point to Point (LTF PTP) capacity on the BC>AB path which it lost to Cargill Limited (Cargill) as a result of Order G-103-09. In essence, Order G-103-09 required British Columbia Transmission Corporation (BCTC) to cancel those contracts for LTF PTP capacity on the BC>AB path bearing a subject condition confirming those contracts were subject to a further order of the Commission. The purpose of cancelling the contracts was to reduce the amount of LTF PTP capacity offered for sale on the BC>AB path to 480 MW, which was the capacity offered prior to BCTC's decision to increase it to 785 MW starting on December 1, 2007. It subsequently came to light that the effect of cancelling those specific contracts as opposed to reinstating the status quo immediately prior to December 1, 2007 was a reallocation of 25 MW of capacity from BC Hydro to Cargill. This result was not intended by the Commission Panel.

The Reconsideration Application was filed on November 26, 2009. It was supported by the three intervener organizations representing the three major customer groups in the province, the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), the Commercial Energy Consumers Association of British Columbia (CEC) and the Joint Industry Electricity Steering Committee (JIESC). The only party to oppose the Reconsideration Application was Cargill, the beneficiary of the Order.

By Order G-6-10 dated January 8, 2010, the Commission Panel accepted the Reconsideration Application as appropriate to proceed to Phase II of the reconsideration process. Phase II involves a reconsideration on the merits. The Commission Panel agreed with BC Hydro that the implementation mechanism (by which BC Hydro lost 25 MW of capacity which it held prior to December 1, 2007 to Cargill) was not adequately canvassed in the original proceeding and that the result of that implementation mechanism was never addressed prior to the Reconsideration Application. The Commission Panel therefore requested that BCTC file additional evidence to explain, among other things, the life cycle of each of the Service Agreements which were in place prior to December 1, 2007 and the contract rollover process.

Following the submission of the additional evidence on February 1, 2010, submissions were received from BC Hydro as well as the BCOAPO, CEC and JIESC, all of which supported BC Hydro. Cargill, by its submission dated March 1, 2010, represents the sole opposition to BC Hydro's request for relief.

The Commission Panel grants the Reconsideration Application. As set out below, the Panel finds that the effect of Order G-103-09 was to unfairly deprive BC Hydro of 25 MW of capacity while at the same time granting a windfall to Cargill. The Panel finds that although Cargill's Service Agreement did not bear the formal condition confirming that its contract was subject to a further order of the Commission, it did have actual notice of this fact, both by way of a cover letter from BCTC accompanying its Service Agreement and from the express provisions of the Open Access Transmission Tariff (OATT). The Commission Panel further finds that the notice provided by the condition was redundant in any event given its general rate-setting powers provided by the *Utilities Commission Act*. In the Panel's view, the inequity to BC Hydro from the loss of its capacity is greater than the marginal benefit of the additional transparency provided by the inclusion of the subject clause on certain contracts.

2.0 NOTICE

The Commission Panel does not accept Cargill's submission that it would be fundamentally unfair to deprive it of the capacity when at all times it acted in a bona fide manner without the specific notice provided by the subject condition that its agreement with BCTC was subject to possible termination. No party disputes that the Commission has the general power to amend or cancel a Service Agreement pursuant to its general rate-setting powers as provided, in part, by s. 58 of the *Utilities Commission Act*. This power is independent of any specific notice of this potential result. In any event, the Commission Panel notes that Cargill in fact, had specific notice of the potential for this result, albeit not from a formal condition on the face of its Service Agreement.

The subject clause in issue provided explicit notice to those customers who received it that their service agreement was subject to a further order of the Utilities Commission. An interim order requiring the inclusion of the subject clause on certain contracts for transmission capacity on the BC>AB path was specifically requested by BCTC as part of its Application to Amend the Open Access Transmission Tariff (OATT Amendment Application) dated November 21, 2008. BCTC acknowledged in the OATT Amendment Application that "the Commission has the power under the [Utilities Commission] Act to change Service Agreements even without granting the interim relief" but submitted that "the order requested will assist in making the potential for that outcome as transparent as possible." (pp. 150-151) The interim order (G-175-08) was granted on November 27, 2008.

Cargill registered as an Interested Party in the OATT Amendment Application and the related TransCanada Energy Complaint on December 30, 2008, requesting copies of all relevant materials. Cargill was, or ought to have been, fully aware of the issues surrounding the limited capacity available on the BC>AB path, including the conditional nature of all Service Agreements.

Further, although Cargill did not receive the formal notice contained in the condition on the face of its Service Agreement, it did receive a substantially similar notice in the May 6, 2009 cover letter accompanying its Service Agreement as follows:

"As you are aware, the ATC [Available Transfer Capacity] on the BCTC-AESO [Alberta Electric System Operator] path is being considered by the British Columbia Utilities Commission. Your Service Agreement may be subject to Orders of the Commission arising out of that proceeding."
(Affidavit of Stephen Tran dated February 1, 2010, para. 27)

Cargill submits that this notice is substantially different than the express notice of the "Subject Condition" [required by Order G-175-08] found in the form of Service Agreement entered into by other parties. It submits that the unilateral notice in the letter "has no effect on the separate unconditional service agreement entered into between BCTC and Cargill" and that the notice was "gratuitous whereas the "Subject Condition" was specifically imposed on certain service agreements by order of the [Commission]." (Cargill Phase II Submissions, para. 14)

The Commission Panel disagrees that the difference is one of substance. It finds the notice in the cover letter to be substantially similar to that provided in Order G-175-08. Further, the Commission Panel accepts that it has the jurisdiction to amend or cancel Service Agreements in the absence of specific notice on the face of a Service Agreement from its general powers under the *Utilities Commission Act* as set out above. The Commission Panel further notes that s. 5.2 of the OATT which states:

“The rates, terms and conditions of this Tariff are subject to decisions, orders, rules and regulation of the Commission and may be amended from time to time.”

also provides notice to BCTC customers, including Cargill, that the tariff underlying their contracts is subject to amendment by the Commission from time to time.

3.0 TARIFF AND CONTRACT RELIANCE

The Commission Panel does not accept Cargill’s submission that BCTC was necessarily required to determine capacity on its system without regard to the dynamics of neighbouring systems and that the OATT required BCTC to offer Cargill an unconditional service agreement with unfettered rights, including rollover.

The evidence relied on by the Commission Panel in making its determinations included: the fact that the rollover right for Cargill’s service agreement was described in the OATT Amendment Application as “partial service under study” with a service end date of July 31, 2009 (OATT Amendment Application Exhibit B-1, p. 130, Table 6); the response of BCTC to BCUC IR 1.42.1 that “[a]ll contracts other than Cargill (Row 10 in Table 6-1) have rollover rights and would be able to rollover their contracts regardless of the Effective Date”; and the further response of BCTC to BCUC IR 1.74.1 that: “[t]he ‘under Study’ portion of the term ‘Partial Service under Study’ indicates that BCTC has not determined the rollover right for Cargill’s service request. Cargill’s service request was for a reservation of 25 MW from 1 January 2007 to 1 January 2011. A partial term service from 1 December 2007 to 31 July 2009 was awarded to Cargill with the remainder of the term requested under study, and which was suspended under Commission Order G-110-08.” (Order G-110-08 dated July 3, 2008 suspended the sale of further capacity on the BC>AB path and the related facilities study.) As a result, the Commission Panel concluded (erroneously in the result) that the Cargill contract would come to an end at July 31, 2009 such that it would not be an issue in the implementation of its Decision.

In fact, on May 21, 2009, as a result of additional capacity becoming available on the US>BC path, Cargill was awarded the balance of its originally requested term (to January 1, 2011) by way of a further Service Agreement commencing on August 1, 2009 to January 1, 2011, with rollover rights. (Affidavit of Stephen Tran dated February 1, 2010 paras. 25, 26, 27)

4.0 EQUITY

The Commission Panel is of the view that cancelling Cargill’s Service Agreement in favour of BC Hydro is not an inequitable result. Cargill has obtained 25 MW of capacity at the expense of BC Hydro as a result of the Commission Panel’s misunderstanding that Cargill’s Service Agreement would not be an issue, having an expiry date of July 31, 2009 without firm rollover rights. The Commission Panel finds that the effect of Order G-103-09 is to unfairly deprive BC Hydro of 25 MW of capacity while at the same time granting a windfall to Cargill. In the Panel’s view, as noted above, this inequity is greater than the marginal benefit of the additional transparency provided by the inclusion of the subject clause on certain contracts.

5.0 DETERMINATION

For all of the above reasons, the Commission Panel agrees with BC Hydro that the 25 MW of Long Term Firm Point to Point capacity on the BC>AB path which it lost to Cargill as a result of Order G-103-09 should be reinstated, effective April 1, 2010. Accordingly, Order G-103-09 will be varied, to include the following paragraph (which is similar to that proffered by BC Hydro) after paragraph 3:

The foregoing is subject to all customers with LTF PTP service on the BC>AB path retaining the same total amount of service capacity (MW) that they had prior to the sale of the 305 MW of additional capacity commencing in December, 2007. To the extent that customers do not have the same amount of service capacity (MW) after implementation of the foregoing, Service Agreements of those customers whose service capacity (MW) has increased shall be cancelled or amended, as required, effective April 1, 2010. Those customers whose service capacity (MW) has decreased shall have the opportunity to take the released capacity as of April 1, 2010, as long as they match the duration of the highest service request in the queue, as required by BCTC's OATT and Business Practices.

The Commission Panel considers that the inclusion of the above paragraph will serve to effect the reinstatement of BC Hydro's capacity while addressing Cargill's concern that transmission requests be reprocessed in accordance with the OATT and the queue be re-established to preserve its rights as they existed prior to December 01, 2007, when the additional capacity was added.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of March 2010.

Original signed by:

ALISON A. RHODES
PANEL CHAIR/COMMISSIONER

Original signed by:

LISA A. O'HARA
COMMISSIONER

Original signed by:

PETER E. VIVIAN
COMMISSIONER