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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-35-10**

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

and

**An Application by FortisBC Inc.
for Approval of a 2009 Rate Design and Cost of Service Analysis**

BEFORE: A.J. Pullman, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
M.R. Harle, Commissioner
March 3, 2010

O R D E R

WHEREAS:

- A. On October 30, 2009, FortisBC Inc. (FortisBC) filed its 2009 Rate Design and Cost of Service Analysis model with the British Columbia Utilities Commission (the Commission), pursuant to sections 58 and 61 of the *Utilities Commission Act* (the Application). The Application includes a Rate Design and an accompanying Cost of Service Analysis (COSA), for which FortisBC seeks Commission approval; and
- B. By Order G-139-09 dated November 26, 2009, the Commission established a Preliminary Regulatory Timetable for the hearing of the Application. The Preliminary Regulatory Timetable was subsequently amended by Orders G-166-09 and G-22-10 dated December 21, 2009 and February 16, 2010 respectively; and
- C. By letter dated February 15, 2010 Zellstoff-Celgar Limited Partnership (Celgar), applied to the Commission seeking a determination from the Commission Panel that the issue of the appropriateness, and determination, of a Generation Baseline (GBL) for Celgar's Castlegar pulp mill be within the scope of proceeding relating to the Application, and providing procedural directions for establishing the GBL within the proceeding (the Celgar application); and
- D. By letter dated February 18, 2010, the Commission invited FortisBC and registered Interveners to comment on the Celgar application by way of written submissions to the Commission; and
- E. The Commission received submissions supporting the Celgar application from British Columbia Old Age Pensioners Organization (BCOAPO), Andy Shadrack, and Alan Wait; submissions opposing the Celgar application were received from British Columbia Municipal Electric Utilities and FortisBC. British Columbia Hydro and Power Authority (BC Hydro) took no position on the question of whether the appropriateness and determination of a GBL between FortisBC and Celgar is within the scope of the proceeding. However, BC Hydro submitted that neither the generation baseline established in the Energy Purchase Agreement (EPA) between BC Hydro and Celgar nor the Power Purchase Agreement between FortisBC and BC Hydro (PPA), as amended, should be within the scope of the proceeding. In Reply, Celgar agreed with BC Hydro's position on that those two matters are not within the scope of the proceeding; and

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F. The Commission Panel has considered the Celgar application, the submissions of FortisBC and Interveners and the Reply of Celgar.

NOW THEREFORE the Commission, for the reasons set out in the Reasons for Decision issued concurrently with this Order, determines as follows:

1. Subject to paragraph 2 of this Order, Celgar may file evidence concerning the establishment of a generation baseline with FortisBC (the GBL Evidence). All parties may deliver Information Requests on the GBL Evidence. Celgar is to respond to the Information Requests and Celgar is to make a witness panel available for cross-examination on the GBL Evidence at the oral hearing.
2. Neither the contractual generation baseline established in the EPA between BC Hydro and Celgar nor the PPA, as amended, are within the scope of this proceeding.
3. As part of its Decision on the Application, the Commission will determine whether the GBL Evidence is ultimately relevant to the proceeding and, if appropriate, may make determinations in respect of a GBL between Celgar and FortisBC.
4. The dates for the filing of the GBL Evidence and the delivery of Information Requests and Responses to those Information Requests will be as set out in the Revised Regulatory Timetable attached as Appendix B to Order G-166-09.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of March 2010.

BY ORDER

Original signed by:

Anthony J. Pullman
Panel Chair and Commissioner

Attachment

FortisBC Inc.
2009 Rate Design Application and Cost of Service Study

REASONS FOR DECISION

BACKGROUND

By letter dated February 15, 2010, Zellstoff Celgar Limited Partnership (Celgar) wrote to the British Columbia Utilities Commission (Commission), seeking the following relief:

- a determination that the appropriateness, and determination, of a generation baseline (the GBL) for Celgar's Castlegar pulp mill (the Mill) is within the scope of the FortisBC 2009 Rate Design Application (RDA); and
- procedural directions for establishing the GBL within the RDA hearing process.

To support its application, Celgar states that it wishes to establish a GBL in order that it may sell self-generated power that exceeds such baseline, while purchasing energy from FortisBC Inc. (FortisBC). Celgar further states that Commission Order G-48-09 had the effect of restricting FortisBC's ability to sell electricity to Celgar while Celgar sells self-generated electricity that is not in excess of its load, and that in order to establish the effect of Order G-48-09 on Celgar, Celgar's GBL or "load" must be determined. Finally, Celgar states that it wishes to lead evidence in these proceedings based upon historical data and competitive and policy considerations in support of its application for the establishment of an appropriate GBL.

Celgar submits that the determination of a GBL for Celgar will be relevant and material to the outcome of the RDA process and points out that the evidence filed by FortisBC in its Exhibit B-3-4 responses to Celgar Information Request 31.1-31.4 confirms that a GBL for Celgar along the lines that Celgar is seeking will materially change the revenue-to-cost ratios in the cost of service study (COSA) and that the ratios increase from 23.5 percent to a range of 105.5 percent to 122.6 percent depending on assumptions made regarding Celgar's GBL and consequent energy purchases. Therefore, Celgar submits that establishing a GBL for Celgar is relevant and material to the RDA.

Celgar further submits that FortisBC admits that meaningful stakeholder engagement did not take place between the two companies with respect to the matters that are most significant to Celgar in connection with the RDA. Celgar states that if it had been provided earlier notice that FortisBC would seek to isolate it as a rate class and apportion costs in the manner set out in the RDA, it would have attempted to accelerate the process to establish a GBL prior to the commencement of the current proceeding. As FortisBC and Celgar have been unable to come to agreement with respect to the establishment of a GBL, Celgar states that its only route to address the issue is to seek a determination of its GBL by the Commission. For the reasons stated in its February 15 letter, Celgar submits that the RDA hearing is the appropriate forum in which to do so.

Celgar also proposes a regulatory timetable in the event that its application is granted. (Exhibit C13-4)

British Columbia Old Age Pensioners Organization (BCOAPO), Alan Wait and Andy Shadrack all support Celgar's application. (Exhibits C5-5, C11-4 and C2-3)

British Columbia Municipal Electric Utilities states that while it understands Celgar's desire to have this matter reviewed, the appropriate remedy for Celgar is to bring an application to the Commission seeking a broad review of the pertinent issues in a separate proceeding with the appropriate parties, and expresses the concern that the Celgar request, if approved, will significantly expand the scope of this proceeding and the proceeding may not have the appropriate parties engaged to deal with the issues raised. (Exhibit C1-5)

BC Hydro takes no position on the question of whether the appropriateness and determination of a GBL as between FortisBC and Celgar is within the scope of the RDA.

BC Hydro also points out that a contractual generation baseline has been established in the Energy Purchase Agreement (EPA) between BC Hydro and Celgar. BC Hydro submits that neither this baseline nor the Power Purchase Agreement between FortisBC and BC Hydro (PPA), as amended, should be within the scope of the RDA. BC Hydro also submits that any Commission decision or order in respect of Celgar's request should be conditioned to that effect. (Exhibit C12-2)

FortisBC makes two submissions in respect to Celgar's request – the second being in the nature of surreply.

FortisBC submits that both issues raised by Celgar, namely the appropriateness and determination of a GBL for its Castlegar pulp mill, are outside the scope of, and in any event cannot be addressed either meaningfully or efficiently within, the RDA.

FortisBC discusses the GBL concept and submits that it is not generically associated with rate design, which relates to the setting of rates and terms and conditions of service. As a result, the GBL concept is not present in any of the FortisBC filings related to the RDA, in the Cost of Service Analysis (COSA) or in any of FortisBC's rates or tariffs. FortisBC submits that it relies on data from a test year for the COSA, which in this case was 2009, and states that, if Celgar ultimately achieves a low GBL and this does impact its revenue-to-cost ratio, this can be reflected in the next COSA and rate design, which FortisBC anticipates will occur within the next several years. FortisBC submits that the Celgar application should be dismissed. Alternatively, FortisBC requests that provision be made in Celgar's proposed timetable to allow for information requests by FortisBC and Celgar's responses to those requests. (Exhibit B-4)

In Reply, Celgar first addresses the BC Hydro position. It accepts the conclusions of BC Hydro that neither the Seasonal GBL established in the BC Hydro EPA nor the FortisBC and BC Hydro PPA are within the scope of the RDA.

Celgar then addresses FortisBC's statement that it does not have the experience in determining GBLs, that it is not privy to the methodology employed by BC Hydro and that any application of that methodology would presumably result in the same GBL as BC Hydro had established, and points out that the Commission's Order G-48-09 determined that the principles set out in the Commission's prior Order G-38-01 *"ought to be extended to customers of FortisBC"* [Celgar emphasis]. Celgar submits that the establishment of a GBL with FortisBC is critical to the application of such principles and that since FortisBC has not developed any protocols for addressing the GBL issue in its service area Celgar has turned to the Commission for relief in this regard.

Celgar states that in August 2008 it entered into an energy purchase agreement with FortisBC (the FortisBC EPA) pursuant to which Celgar would purchase all of its mill load and electricity requirements from FortisBC and sell all of its existing generated output to third parties. Celgar submits that one purpose of the FortisBC EPA was to facilitate sales of additional power from FortisBC to Celgar, and that the FortisBC EPA was withdrawn in response to BC Hydro's application to the Commission to amend the terms of the FortisBC Heritage Power Agreement and the resulting Commission Order G-48-09. Celgar attaches a copy of the FortisBC EPA to its Reply. (Exhibit C13-6)

FortisBC filed a surreply to Celgar's Reply to address what it described as two new propositions advanced by Celgar in its Reply. It describes those propositions as follows:

- (1) the GBL applicable to Celgar's GBL with BC Hydro (BC Hydro GBL) can diverge from a potential GBL applicable to future dealings with Celgar and FortisBC (FortisBC GBL); and
- (2) Celgar does not intend the proposed GBL inquiry it is seeking to include in the RDA the change to the BC Hydro GBL despite Celgar's connecting the inquiry to the implementation of Celgar's "Side Letter" with BC Hydro to which FortisBC is not a party.

FortisBC makes three points.

First, it says that Celgar's proposition that the BC Hydro GBL and the FortisBC GBL could diverge raises theoretical and practical questions that may be usefully addressed as part of a broader inquiry on GBL issues. The RDA is not the feasible forum for such issues.

Second, FortisBC submits that the additional variable of departing from the BC Hydro GBL that Celgar seeks to introduce into the COSA process creates a variable that “further distances the matter from both (1) the situation in place in the 2009 test year (on which the COSA was based); and (2) the reasonable assumptions which could have been made at the time the COSA was performed as to material future changes from the situation then in place.”

Third, it submits that neither the scope nor complexity of Celgar’s proposed GBL inquiry “is materially reduced by the fact that Celgar’s objective in that forum is not to change the BC Hydro GBL”. (Exhibit B-5, p. 2)

Accordingly FortisBC urges the Commission to deny Celgar the relief it seeks.

Commission Panel Determination

The Commission Panel notes that section 40(1) of the *Administrative Tribunals Act* states that the Commission “may receive and accept information that it considers relevant, necessary and appropriate whether or not the information would be admissible in a court of law.” In determining whether to grant Celgar the relief it seeks, it will consider the relevance of the evidence that Celgar wishes to file in the RDA.

At this stage in the proceedings, the Commission Panel is prepared to accept, without finally deciding the issue that the determination of a GBL between Celgar and FortisBC may have an impact on the latter’s COSA and the revenue-to-cost ratios that may flow from it and also may have an impact on the tariffs or the terms and conditions of Fortis BC, all of which fall clearly within the scope of the RDA. The Commission Panel does not consider FortisBC’s submission that it lacks the experience to determine Celgar’s GBL to be a valid reason to deny Celgar’s application, and finds FortisBC’s submission that such a determination would introduce speculative changes to its 2009 COSA to be premature, as any changes required to be made to the COSA would have been subject to a full regulatory process.

The Commission Panel will therefore allow Celgar to file evidence concerning the establishment of a GBL with FortisBC, for this evidence to be tested by a round of Information Requests from all parties to the proceeding and through cross-examination and for all parties to make submissions concerning it. As part of its Decision on the RDA, the Commission Panel will determine whether Celgar’s evidence is, in fact, ultimately relevant to the RDA, and, if appropriate, may make determinations in respect of a GBL between Celgar and FortisBC.

The Commission Panel agrees with BC Hydro that neither the contractual generation baseline established in the EPA between BC Hydro and Celgar nor the PPA, as amended, is within the scope of the RDA proceeding.