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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-26-10**

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

and

**An Application by Boralex Ocean Falls Limited Partnership
for Approval of Continuation of the Exemption for Rates Charged to Residents
as set out in Order G-40-86 and for Industrial Customers as amended in Order G-30-02**

BEFORE: L.F. Kelsey, Commissioner
D.A. Cote, Commissioner February 18, 2010

ORDER

WHEREAS:

- A. On August 1, 2008, Central Coast Power (CCPC) and Boralex Ocean Falls Limited Partnership (Boralex LP) applied, pursuant to section 52(1) of the *Utilities Commission Act* (the Act) or alternatively pursuant to section 2.(e) of British Columbia Utilities Commission (the Commission) Order G-40-86 dated July 4, 1986, for an Order approving the sale and disposition of Utility Assets of CCPC to Boralex LP as set out in the agreement dated June 3, 2008 (the Purchase Agreement) (the Application); and
- B. Central Coast Hydro Ltd. (CCH), a non-regulated business, owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Bella Valley in BC (CCH Rights) that CCH will sell to Boralex LP as part of the Purchase Agreement; and
- C. On February 19, 1986, a 20-year agreement was signed by CCPC and British Columbia Hydro and Power Authority (BC Hydro). CCPC would supply electricity to BC Hydro at the point of delivery, which was the point where CCPC's transmission connection met BC Hydro's substation in Bella Bella (the Power Purchase Agreement); and
- D. On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from Ocean Falls Corporation (OFC). On June 4, 1986, CCPC applied to the Commission for an exemption from the Act pertaining to the sale of electric power to residential, commercial and industrial consumers located at Ocean Falls and to Bella Bella, BC; and
- E. Commission Order G-40-86 approved the Transfer of Lands and Chattels from OFC to CCPC and exempted CCPC from the Act (S.B.C. 1980 Chapter 60) except for Part 2 and sections 30, 44, 47, and 133. Part 2 was repealed in 2003 and the sections have been renumbered as sections 25, 38, 41 and 117, respectively; and
- F. Order G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the Agreement between CCPC and OFC that was attached to the Order. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and

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- G. The exemption was to be in effect until total demand exceeded 6,000 KW, at which time continuation of the exemption would be subject to review by the Commission; and
- H. The 20-year Power Purchase Agreement between CCPC and BC Hydro was extended for another 10 years to December 2016 (BC Hydro 2007 Rate Design Phase II Hearing, Exhibit B-79); and
- I. Commission Order G-30-02 amended Order G-40-86 with respect to Schedule F, by striking out Section 2(c) of Schedule F and replacing it with the following wording: "For present firm installed capacity in CCPC's Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro's Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity is required, the parties may negotiate rates with consideration of the cost of installing additional generation"; and
- J. Order G-30-02 was also amended by striking out paragraph 2(a) of the Order and replacing it with the following wording: "CCPC shall fully comply with the terms of its agreements with BC Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively"; and
- K. Boralex LP is a limited partnership under British Columbia's Partnership Act. The Partners of Boralex LP are Boralex Inc. (limited partner) and Boralex B.C. Development Inc. (general partner). Boralex Inc. is one of Canada's largest and most experienced private corporations in the development and production of renewable energy and is based in Quebec; and
- L. By Order G-121-08 the Commission established the Regulatory Timetable for a written public hearing process to review the Application; and
- M. CCPC informed its customers by personally meeting with every permanent customer in Ocean Falls. A letter was sent to all non-resident account holders informing them of the sale and a copy of the letter was posted in the Ocean Falls Post Office. The industrial customer agreed to the transfer of its contract with CCPC to Boralex LP; and
- N. Only two parties registered as Intervenor: Heiltsuk Tribal Council (the Heiltsuk) and Shearwater Marine Ltd. (Shearwater). Neither filed evidence. The Heiltsuk was the only active Intervenor in this proceeding. The Heiltsuk did not support the proposed sale and disposition of CCPC's Utility Assets to Boralex LP and sought delay of the Commission's decision on the Application pending adequate consultation. The request for delay was denied by the Commission with reasons in the CCPC Decision dated December 5, 2008; and
- O. In the Application Boralex LP also applied to the Commission for an order for the continuation of the exemption from regulation for rates currently charged to residents and other customers as set out in Order G-40-86 and for industrial customers as amended in Order G-30-02; and
- P. The Applicant's Final Submission stated that the continuation of the exemption from regulation was in the interest of the CCPC system and utility customers and observed that no utility customers had expressed any concern or objection to the continuation; and
- Q. By Order G-180-08 dated December 5, 2008, the Commission determined that subject to the one condition set out in Section 5.7.2 of the Decision issued concurrently with the Order, the sale and disposition of the Utility Assets was desirable in the public interest. The condition required CCPC and Boralex LP to confirm within 60 calendar days of the Decision that Boralex LP would record the CCPC Utility Assets at their historical, depreciated value; and

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- R. In Section 5.9 of the Decision, the Commission determined that it was unable to continue the CCPC exemption for Boralex LP and denied the request to continue the exemption. However, it also stated that if Boralex LP advised the Commission within 60 days of the date of the Order accompanying the Decision that Boralex LP accepted the condition set out in Section 5.7.2 and that the transfer was proceeding, the Commission would send a request to the Lieutenant Governor in Council (LGIC) for approval to grant Boralex LP an exemption from regulation from the Act except for sections 25, 38, 41, 99 and 117 and with the inclusion of the Commission's ability to revisit the exemption for reasons that may include the determination of any complaint it receives from a person whose interests are affected; and
- S. In a confidential letter dated January 10, 2009, CCPC filed material in respect to Directive No. 1 in Order G-180-08 with regard to a detailed listing of the CCPC Utility Assets with its historic depreciated value. The Asset Valuation did not provide a total of the net book value of the assets as at December 31, 2008; and
- T. By letter dated January 20, 2009, the Commission prepared a tabulation of the CCPC Utility Assets with a total Net Book Value as at December 31, 2008 based on CCPC's January 10, 2009 submission. By letter dated January 21, 2009 CCPC confirmed the Commission's tabulation; and
- U. By letter dated January 30, 2009, Boralex LP confirmed that it accepted the conditions as set out in Sections 5.7.2 and 5.9 of the Decision dated December 5, 2008. In accordance with those conditions, Boralex LP accepted the accounting condition which required a record of utility assets, and the detailed listing of CCPC utility assets, at historical depreciated value and Boralex LP confirmed that the utility asset transfer for CCPC to Boralex LP was proceeding. Boralex LP also asked the Commission to request a grant of approval from the LGIC pursuant to section 88(3) for exemption from application of the Act, except for sections 25, 38, 41, 99 and 117; and
- V. By letter dated February 4, 2009, the Commission informed CCPC and Boralex LP that they had complied with the conditions established in the Decision. In accordance with Section 5.9 of the Decision and following review and approval by the Commission, a request was made to the LGIC for approval to grant Boralex LP an exemption from application of the Act except for sections 25, 38, 41, 99 and 117 pursuant to section 88(3) of the Act and including the provision on page 31 of the Decision related to the Commission's ability to revisit the exemption; and
- W. 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."; and
- X. By Order in Council No. 062-10 and attached as Appendix A to this Order, the LGIC granted advance approval to the Commission to exempt Boralex LP from certain provisions of the Act for the purpose and subject to the terms set out in the draft Commission Order attached to the Order in Council; and
- Y. The Commission has considered the Application and submissions it has received and has determined that an exemption for Boralex LP from certain provisions of the Act is in public interest.

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NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 88(3) of the Act, the Commission exempts Boralex LP from application of the Act except for sections 25, 38, 41, 99, and 117.
2. The exemption, granted pursuant to this Order, will be effective from the date of this Order and shall remain in effect until the Commission orders otherwise, for reasons that may include the determination of any complaint the Commission receives from a person whose interests are affected in accordance with page 31 of the Decision.
3. For customers in Ocean Falls, Boralex LP is to follow the BC Hydro binders [for rates and terms and conditions of service] in accordance with Section 5.9 of the Decision and the commitments made by Boralex LP in response to Commission Information Request 1.9.1 attached as Appendix B to this Order.
4. Boralex LP is to continue to charge retail customers at the same rates as BC Hydro Zone II rates and new industrial customers are to be charged negotiated rates in accordance with Sections 5.8 and 5.9 of the Decision, Commission Orders G-40-86 and G-30-02 and the commitments made by Boralex LP in response to Commission Information Request 1.9.2 also attached as Appendix B to this Order.
5. Despite Directive 2 of this Order, once total demand exceeds 6,000 KW, the exemption is subject to review by the Commission.
6. Boralex LP is responsible for the safe and proper operation of its facilities consistent with the requirements of the Electrical Safety Branch.

DATED at the City of Vancouver, In the Province of British Columbia, this 18th day of February 2010.

BY ORDER


Original signed by:

Dennis A. Cote
Commissioner

Attachments

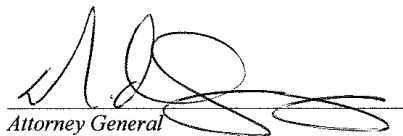
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 062, Approved and Ordered JAN 29 2010


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to exempt Boralex Ocean Falls Limited Partnership from the *Utilities Commission Act*, except for sections 25, 38, 41, 99 and 117 of the Act, for the purpose and subject to the terms set out in the attached draft order of the British Columbia Utilities Commission.


Attorney General
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*, R.S.B.C. 1996, c. 473, s. 88 (3)
Other (specify):-

August 24, 2009

O/Log 675/2009/27

9.0 Reference: Application G. Continuation of the 1986 Exemption 43 (a) p. 12 of 20

“...the current tolls that are linked to BC Hydro’s tolls for resident retail. Rates currently charged to residents and other customers located in Ocean Falls are determined by the 1986 order. The amending Order G-30-02 relates to the rates charged the industrial customers on the industrial site in Ocean Falls.”

- 9.1 CCPC has been following the BC Hydro tariff binder for rates and terms and conditions of service for customers in Ocean Falls. Will Boralex LP be following the BC Hydro binder for rates and terms and conditions of service? If not, please file Boralex’s proposed tariff setting out rates and term and conditions of service.

Response:

Boralex LP will be following the BC Hydro binders.

- 9.2 Will the new customers be offered identical BC Hydro rates or will they be negotiated rates (subject to BCUC approval).

Response:

Retail customers will continue to be charged the same rates. New industrial customers will be charged negotiated rates.