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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-134-11**

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

and

**An Application by Tembec LAP
for Reconsideration of Commission Order G-95-10A with respect to the
MRS Registration of Tembec LAP as a Load Serving Entity**

BEFORE: D. Morton, Commissioner
N.E. MacMurchy, Commissioner July 28, 2011

O R D E R

WHEREAS:

- A. By Order G-123-09 dated October 15, 2009, the British Columbia Utilities Commission (Commission) approved the Registration Manual for entities subject to adopted Mandatory Reliability Standards (MRS) and extended the date provided in paragraph 6 of Order G-67-09 by which those entities were required to register as functional entities with the Commission;
- B. The Registration Manual requires that the Western Electricity Coordinating Council (WECC) in its role as the Commission's Mandatory Reliability Standards Administrator (Administrator) review and recommend registration for all applicable Entities;
- C. On April 28, 2010, WECC recommended the Commission register Tembec LAP for the MRS functions of Distribution Provider and Load Serving Entity;
- D. On June 7, 2010, the Commission approved Order G-95-10A which among the functional registrations for other entities, registered Tembec LAP for the MRS functions of Distribution Provider and Load Serving Entity;
- E. On October 28, 2010, Tembec LAP requested the Commission reconsider Order G-95-10A with respect to the registration of Tembec LAP as a Load Serving Entity (Reconsideration Application);
- F. The Commission received additional submissions from WECC on January 20, 2011 and from Tembec LAP on February 4, 2011 and May 26, 2011;
- G. The Commission has considered the submissions on the Reconsideration Application.

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NOW THEREFORE the Commission orders, for the reasons stated in the Reasons for Decision attached as Appendix A, that the Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of July 2011.

BY ORDER

Original signed by:

D. Morton
Commissioner

Attachment

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REASONS FOR DECISION

1.0 INTRODUCTION

This is an application by Tembec LAP (Tembec Chetwynd Operations) (Tembec LAP) for a reconsideration of the British Columbia Utilities Commission (Commission) Order G-95-10A dated June 3, 2010 which approved, among the functional registrations of other entities, the functional registration of Tembec LAP as a Load Serving Entity (LSE). The same Order also approved the functional registration of Tembec LAP as a Distribution Provider. Tembec LAP does not seek a reconsideration of that part, nor any other part, of the Order.

In addition, Tembec LAP requests that the Commission consider whether British Columbia Hydro and Power Authority (BC Hydro) should be registered as the LSE responsible for Tembec LAP.

The Commission approved Tembec LAP's functional registrations as LSE and Distribution Provider on the recommendation of its Mandatory Reliability Standards (MRS) Administrator, the Western Electricity Coordinating Council (WECC). Tembec LAP had applied for functional registration as a Distribution Provider.

For the reasons which follow, the Reconsideration Application is dismissed.

2.0 ISSUE

The sole issue in this Reconsideration Application is whether Tembec LAP, as an entity to whom MRS applies, is required to be registered as a LSE.

3.0 THE TEST FOR RECONSIDERATION APPLICATIONS

Reconsideration applications before the Commission generally proceed in two phases. The first phase is a threshold phase and the second involves a hearing of full arguments on the application.

The Commission has four main criteria for a reconsideration request to move to the second phase:

- The Commission has made an error in fact or law;
- There has been a fundamental change in circumstances or facts since the Decision;
- A basic principle had not been raised in the original proceedings; or
- A new principle has arisen as a result of the Decision.

The Commission will also exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, to advance to the second phase, the application must meet the following criteria:

- The claim of error is substantiated on a prima facie basis; and
- The error has significant material implications.

In the Reconsideration Application, Tembec LAP asserts that the Commission has made an error in fact or law and that Tembec LAP is not now, nor has it ever been, a LSE.

Since Tembec LAP filed the Reconsideration Application on October 28, 2010, the Commission has received a submission from WECC dated January 20, 2011, a reply from Tembec LAP dated February 4, 2011 to the WECC letter, and a letter from Tembec LAP dated May 26, 2011 in response to a letter from the Commission dated May 11, 2011 requesting further submissions from Tembec LAP on the statutory principles that apply to Tembec LAP's registration as a LSE and a copy of the Electricity Supply Agreement (ESA) relating to Tembec LAP's operations. As a result the Commission believes that it has received all the submissions and evidence it would likely receive on a phase two hearing.

Accordingly, for the purposes of this application only, the Commission is prepared to move directly to the second phase.

4.0 JURISDICTION

Mandatory Reliability Standards in British Columbia are governed by section 125.2 of the *Utilities Commission Act*, RSBC 1996, c. 473 (*Act*), and BC Regulation 32/2009 (MRS Regulation). Section 125.1(4)(o) and (p) authorize the minister responsible for the administration of the *Hydro and Power Authority Act*, RSBC 1996, c. 212 to make regulations for certain subsections of section 125.2. Section 125.2 provides for the adoption of reliability standards and the MRS Regulation prescribes the persons to whom the MRS apply. By Order G-123-09 dated October 15, 2009, the Commission approved Rules of Procedure, including a Registration Manual and a Compliance Monitoring Program setting out the administrative framework for the registration of functional entities in British Columbia and the monitoring and enforcement of adopted reliability standards.

5.0 THE PROCESS FOR DETERMINING REGISTRATION

The process for determining registration as an Applicable Entity for MRS follows two steps. The first step is to determine if Mandatory Standards are applicable to the entity. This is determined by applying the criteria provided in the MRS Regulation. The second step is to determine which functions apply to that entity. This is determined by applying the functional definitions found in the NERC Glossary of Terms, dated February 12, 2008 (Glossary) adopted by Order G-67-09.¹

6.0 POSITIONS OF TEMBEC LAP AND WECC

6.1 Tembec LAP's Position

Tembec LAP notes that WECC justifies its recommendation to register Tembec LAP as a LSE on the following grounds: "Tembec LAP is a 60 MW load connected at the end of a 230kV line. Tembec LAP meets the definition of a "direct user" and sections 2.b and 2.c. (i) [2(b) and 2(c)(i)] as defined by the BC Reg. 32/2009. In addition, Tembec LAP meets the NERC definition of LSE." Tembec LAP submitted that the Commission had made a mistake of fact or law in approving Tembec LAP for registration of the function of LSE.

¹ As of November 10, 2010, the NERC Glossary of Terms used in Reliability Standards dated 20 April 2009 replaced the February 12, 2008 Glossary: Order G-167-10. The same definition of a LSE appears in both Glossaries.

In support of the Reconsideration Application, Tembec LAP submits that whether or not it is a LSE depends on the requirements and definitions provided in the MRS Regulation and the functional definitions as defined in the Glossary. The Glossary includes the following definitions:

“Load-Serving Entity”:

Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.²

“Transmission Customer”:

1. Any eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service.
2. Any of the following responsible entities: Generator Owner, Load–Serving Entity, or Purchasing-Selling Entity.³

“Transmission Service”:

Services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.⁴

“Transmission Service Provider”:

The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.⁵

Neither the *Act* nor the MRS Regulation defines “load–serving entity”, “transmission customer”, “transmission service” or “transmission service provider”.

Tembec LAP submits that while it receives electricity at a voltage greater than 100 kV, it has not entered into an agreement for “Transmission Service” as defined by the Glossary nor does it take Transmission Service from a “Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.”

In addition to its argument that it is not a LSE since it does not secure Transmission Service as defined, Tembec LAP submits that it does not serve “end use customers”; it does not sell electricity to customers and it uses all the electricity it purchases itself. [Emphasis in the original.]

Tembec LAP distinguishes the transmission service it receives under RS 1823 from the Glossary definition of Transmission Service on the basis that it purchases energy from BC Hydro which is supplied at transmission voltages, whereas the Glossary definition of Transmission Service is: “Services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.” [Emphasis in the original.]

² Glossary, p. 10/21

³ Glossary, p. 20/21.

⁴ Glossary, p. 21/21.

⁵ Glossary, p. 21/21.

It submits that the Glossary definition is more universally used and should prevail. Tembec LAP submits that applying the Glossary definition makes it clear that it is not a “direct user” as defined by the MRS Regulation.⁶ Tembec LAP also refers to section 2.1 of the Rules of Procedure to support its submissions that it is not a “direct user”. That section provides that terms used, but not specifically defined in the *Rules of Procedure*, the *Registration Manual* and the *Compliance Monitoring Program* have the meanings provided in the Glossary.

The MRS Regulation defines “direct user” to mean:

- (a) an entity that enters into an agreement for transmission service, and
- (b) an end-user of electricity that receives electricity from transmission facilities at voltages of 100 kilovolts or greater.

In response to a request from the Commission, Tembec LAP provided its interpretation of “direct user” as set out in the MRS Regulation.

6.2 WECC’s Position

On January 20, 2011, WECC responded to Tembec LAP’s arguments that it (1) is not receiving Transmission Service as defined by the Glossary; and (2) is not a LSE as defined by the Glossary.

WECC first addresses the argument based on the definition of “Transmission Service” in the Glossary. It expresses the view that while it understands the distinction Tembec LAP is attempting to make, WECC’s belief is that transmission service under RS 1823 meets the intent of the definition in the Glossary and cannot be distinguished for practical purposes. It says it appears Tembec LAP is receiving a bundled product from BC Hydro, which necessarily involves both an energy and a transmission component. It defers to the Commission on the interpretation of the BC Hydro Tariff.

On the Tembec LAP argument that it is not an end-use customer as used in the Glossary definition of LSE, WECC’s conclusion is that Tembec LAP is its own end-use customer as it is the entity responsible for meeting its own load obligations. According to WECC, Tembec LAP is an end-use customer whether its obligations are met with Tembec generation or from other sources.

WECC notes that it had previously suggested to the Commission that entities such as Tembec LAP could be considered end-use customers of another customer if the other customer agreed to take on load serving responsibilities for the customer. According to WECC, the issue of Tembec LAP’s registration could be resolved by BC Hydro assuming the function for Tembec LAP.⁷

WECC observes that if BC Hydro does not assume the LSE function for Tembec LAP and Tembec LAP is registered as and recognized as the LSE entity, a “reliability gap” may result relative to the mandatory reliability standards applicable to the LSE function. WECC also notes that in the U.S. where it is the Compliance Enforcement Authority, it has concluded “where an entity generates its own electricity and/or secures electricity to serve itself, it can be a LSE, even though it serves no customers other than itself, if no other entity serves as the LSE. Absent another entity assuming the compliance responsibility for LSE-applicable reliability standards, this avoids any ‘reliability gap.’”

⁶ The Glossary does not define “direct user”.

⁷ Section 4.1 of the Registration Manual provides for the written assignments of compliance responsibilities: Attachment 1 to Order G-123-09.

Based on its experience and knowledge of the U.S. mandatory-electric-reliability standards regime, WECC has recommended that the Commission consider entities which serve their own load as LSEs, even if they are their only end-use customers.

WECC is of the view that Tembec LAP is properly registered as a LSE.

7.0 COMMISSION DETERMINATION

It is important to note that although Tembec LAP argues that the definition of "direct user" under the MRS Regulation does not apply to it, Tembec LAP does not dispute that it is an entity to whom MRS applies. In fact has registered for the function of Distribution Provider. The issue that the Reconsideration Application places before the Commission is whether Tembec LAP, as an entity to whom MRS applies, is required to be registered as a LSE. Therefore, the determination whether Tembec LAP as a "direct user" based on the statutory interpretation of the MRS Regulation is not relevant to this issue.

Tembec LAP's argument that it should not be registered as a LSE rests on its position that it does not take a Transmission Service and does not serve end-use customers and therefore it does meet NERC's definition of LSE.

Tembec LAP takes its electricity supply under BC Hydro rate schedules 1823 and 1880 which are defined as Transmission Service tariffs because energy is delivered at a transmission voltage and by necessity require the customer to provide its own distribution transformation. These rate schedules specify the point of delivery as the point of interconnection. They therefore do not require the customer to secure a transmission contract to move the energy from another point on the grid. Nevertheless transmission service is provided as part of the bundled supply. Furthermore Tembec LAP is its own end-user because it takes its power at transmission voltage and then transforms it to a distribution voltage through its own substation.

The purpose of assigning a functional designation to an entity is to define which standards are applicable to it. Therefore, regardless of how the definition of LSE is interpreted, the fundamental question is "Are there standards which are required to be performed by an entity to protect the reliability of the Grid?" As noted earlier, WECC observes that a "reliability gap" may result relative to the Mandatory Reliability Standards applicable to the LSE function, if Tembec LAP is not registered and recognized as the LSE entity and if BC Hydro does not assume the LSE function for Tembec LAP.

In MRS Report No 1, BCTC identified 26 potential standards which could apply to a LSE. Five of the standards that apply to the LSE function also apply to the DP function and a number of standards that apply to a LSE may not be applicable to Tembec LAP because of Tembec LAP's particular configuration and function within the Grid. However there are clearly a number of standards which would apply to Tembec LAP as a LSE and which if not complied with would create a reliability gap. Some examples are the Critical Infrastructure Protection (CIP) standards which require secure computer connections, and security arrangements for elements connected to the Grid. Other examples include the Modeling, Data and Analysis (MOD) standards which require load and forecasting information such that the transmission system is able stay within its capacity while serving customer demand.

The Commission therefore concludes that Tembec LAP performs the function of an LSE and is required to register as an LSE and denies the Reconsideration Application. Tembec LAP could assign its LSE responsibilities to BC Hydro by a written agreement, but Tembec LAP would need to make these arrangements with BC Hydro.