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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-101-11

TELEPHONE: (604) 660-4700  
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IN THE MATTER OF  
The Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Zellstoff Celgar Limited Partnership Complaint  
Regarding the Failure of FortisBC and Celgar to Complete a General Service Agreement and  
FortisBC's Application of Rate Schedule 31 Demand Charges

**BEFORE:** M.R. Harle, Commissioner/Panel Chair  
N.E. MacMurchy, Commissioner May 26, 2011  
L.A. O'Hara, Commissioner

**O R D E R**

**WHEREAS:**

- A. On October 19, 2010, the British Columbia Utilities Commission (Commission) issued Order G-156-10 and accompanying Decision in FortisBC Inc.'s (FortisBC) 2009 Rate Design and Cost of Service application;
- B. On December 3, 2010, Zellstoff Celgar Limited Partnership (Celgar) applied for a reconsideration of Order G-156-10;
- C. On January 12, 2011, the Commission issued Order G-3-11 denying Celgar's reconsideration application. In its Reasons for Decision, the Commission states, in part, that it:
  - (i) expects FortisBC and Celgar will move expeditiously to conclude a general service agreement;
  - (ii) does not consider a reconsideration application to be a suitable forum to broker a settlement between a utility and one of its customers; and
  - (iii) considers that Celgar's recourse should more appropriately be by way of a complaint to the Commission in the event that it cannot reach an agreement with FortisBC;
- D. On March 25, 2011, Celgar filed a complaint against FortisBC with the Commission relating to the failure of FortisBC and Celgar to complete a general service agreement, and to FortisBC's application of Rate Schedule 31 demand charges (Complaint);
- E. FortisBC responded to that part of the Complaint relating to FortisBC's application of Rate Schedule 31 demand charges by letter dated April 6, 2011, and to that part of the Complaint relating to the establishment of a general service agreement between the parties by letter dated April 15, 2011;
- F. Celgar replied to FortisBC's April 6, 2011 letter by letter dated April 13, 2011, and to FortisBC's April 15, 2011 letter by letters dated April 18 and April 26, 2011;
- G. The Commission has reviewed the submissions of Celgar and FortisBC.

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**NOW THEREFORE** the Commission orders, for the reasons set out in the Reasons for Decision attached as Appendix A to this Order, that:

1. The Complaint will be heard by way of a written hearing process in accordance with the Regulatory Timetable attached as Appendix B to this Order.
2. The evidence and submissions in the FortisBC 2009 Rate Design and Cost of Service (RDA) proceeding and the Celgar Application for Reconsideration of Commission Order G-156-10 proceeding will form part of the record in this proceeding.
3. Subject to further Order, the Commission will only accept, as further evidence in this proceeding, new evidence that participants wish to rely upon that relates to the issues of:
  - (i) a Generation Baseline (GBL) of 1.5 MW, 16 MW or 40 MW;
  - (ii) service at Rate Schedule 31 or a similar rate based upon FortisBC's embedded cost of service applicable regardless of whether Celgar is selling power in excess of its GBL or not;
  - (iii) contract demand equal to mill load less the established GBL but not less than 8 MVA; and
  - (iv) access to non-firm power above the contract demand pursuant to a brokerage arrangement.
4. Celgar will publish, by Tuesday, May 31, 2011, in display-ad format, the Notice of the Complaint attached as Appendix C to this Order, in such appropriate news publications as may provide adequate notice to the public in the FortisBC and British Columbia Hydro and Power Authority service areas.
5. Celgar is also directed to send a copy of this Order and the Complaint to all Registered Interveners in the 2009 FortisBC RDA Proceeding.
6. FortisBC is directed to have a copy of the Complaint and all proceeding documents available for inspection at its business address.

**DATED** at the City of Vancouver, in the Province of British Columbia, this    26<sup>th</sup>            day of May 2011.

BY ORDER

*Original signed by:*

M.R. Harle  
Commissioner/Panel Chair

Attachments

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**REASONS FOR DECISION**

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**BACKGROUND**

Zellstoff Celgar Limited Partnership (Celgar) became a FortisBC Inc. (FortisBC) customer in February 2005 by its acquisition of a pulp mill and energy generation assets in Castlegar, British Columbia. At the time of its acquisition Celgar assumed a general service agreement and accompanying brokerage agreement (GSA) dated December 2000 (2000 GSA). In 2006, Celgar and FortisBC began negotiations for a new GSA which resulted in a draft 2006 GSA (Draft 2006 GSA) which was never finalized or signed. During the negotiations Celgar switched from taking service under Rate Schedule 31 (RS 31) to service under Rate Schedule 33 (RS 33). This caused the parties to no longer be operating under the 2000 GSA because that agreement referenced RS 31. Between 2006 and 2008 Celgar and FortisBC continued to negotiate the Draft 2006 GSA but did not finalize it.

In 2008 and 2009, two British Columbia Utilities Commission (Commission) events took place which caused Celgar and FortisBC to suspend negotiations on a GSA. These two events included the Commission issuance of Order G-48-09 in the British Columbia Hydro and Power Authority (BC Hydro) Application to Amend Rate Schedule 3808 Power Purchase Agreement, and FortisBC's filing of its 2009 Rate Design and Cost of Service application to which Celgar became an Intervener.

On October 19, 2010, the Commission issued Order G-156-10 and accompanying Decision in the FortisBC 2009 Rate Design and Cost of Service proceeding. In that proceeding Celgar sought determination of a Generation Baseline (GBL) between it and FortisBC which the Commission declined to set for various reasons set out in the Decision. In the Order, the Commission found Celgar ineligible to take service under RS 33, under which it was being billed at the time, and directed FortisBC to provide Celgar service under RS 31.

On December 3, 2011, Celgar applied for a reconsideration of Order G-156-10. On January 12, 2011 by Order G-3-11 the Commission denied the reconsideration. In the accompanying Decision, the Commission states, in part, that it:

- (i) expects FortisBC and Celgar will move expeditiously to conclude a general service agreement;
- (ii) does not consider a reconsideration application to be a suitable forum to broker a settlement between a utility and one of its customers; and
- (iii) considers that Celgar's recourse should more appropriately be by way of a complaint to the Commission in the event that it cannot reach an agreement with FortisBC.

On March 25, 2011, Celgar filed a complaint with the Commission relating to the failure of FortisBC and Celgar to complete a GSA, and to FortisBC's application of RS 31 demand charges (Complaint). In the Complaint Celgar states that negotiations between it and FortisBC to complete a GSA have been unsuccessful to date.

## **SUMMARY OF CURRENT POSITIONS BY CELGAR AND FORTISBC**

Celgar, in its Complaint, seeks:

- (i) a Commission determination that FortisBC retroactively adjust Celgar's RS 31 invoices to a Billing Demand of 8,000 kVA (8 MVA); and
- (ii) the Commission's assistance in establishing a GSA with FortisBC and/or establishing a process whereby the terms of a GSA could be negotiated. Celgar seeks a GSA that includes:
  - (a) a GBL of 1.5 MW or another level as may be established in accordance with applicable regulatory parameters;
  - (b) service at a rate based upon rolled-in costs;
  - (c) a contract demand of at least 8 MVA that is equal to Celgar's mill load less the established GBL; and
  - (d) access to non-firm power above the contract demand.

FortisBC replied to that part of the Complaint relating to RS 31 billing on April 6, 2011 and to that part of the Complaint relating to the failure to negotiate a GSA on April 15, 2011.

Regarding the RS 31 billing issue, FortisBC states that Celgar's contract demand was determined as the maximum demand in kVA for the current billing months. This determination method accords with the RS 31 tariff when no contract demand is established, as currently exists in the absence of a GSA between FortisBC and Celgar. FortisBC submits that Celgar's actual load was greater than 43,000 kVA in January and February 2011 and it has billed Celgar correctly and according to the tariff for this load.

On April 13, 2011, Celgar replied that FortisBC's billing amounts under RS 31 are dramatically different than the calculations that resulted from prior GSAs between it and FortisBC. Celgar's position is that in the absence of a new service agreement prior GSAs and billing conduct should determine the rates and terms and conditions of service.

Regarding the GSA issue, in its April 15, 2011 letter, FortisBC attaches a draft GSA which includes some of Celgar's requests but does not include a GBL because it is FortisBC's opinion that billing net-of-load on a dynamic basis (billing Celgar for its actual load on FortisBC's system) rather than the implementation of a GBL, is appropriate. FortisBC states it is willing to accept its draft GSA.

On April 18, 2011, Celgar stated that the GSA proposed by FortisBC on April 15, 2011 includes previously rejected concepts and represents a significant departure from previous agreements. Celgar states the proposed GSA is a step backward and illustrates the breakdown in negotiation between the parties.

Celgar provided further reply on April 26, 2011 in which it requests the Commission to establish a negotiated settlement process to resolve the outstanding issues that bilateral negotiation between the parties could not resolve.

## **COMMISSION DETERMINATION**

The Commission Panel has considered the submissions of Celgar and FortisBC.

As set out in the Complaint, Celgar believes that the process of establishing a GSA between it and FortisBC should involve only these companies and the Commission, and no others. The Commission Panel disagrees.

Because other ratepayers may be affected by the outcome of the Complaint, the Commission Panel believes they should have the opportunity to comment on the potential implications for them. For example, if Celgar's requests were allowed, revenue-to-cost ratios of other rate classes could be impacted, shifting revenue requirements away from Celgar to these other rate classes.

Indeed, Celgar recognizes that the Commission's determination of the Complaint has the potential to affect other ratepayers of FortisBC or BC Hydro. As it states at page 3 of the Complaint:

"...Celgar acknowledges that its GSA with FortisBC must be settled on terms that will not inadvertently cause FortisBC to trigger a default under its RS 3808 power purchase agreement with BC Hydro (the "PPA"). Celgar believes that, through reasonable cooperation, FortisBC and BC Hydro could ensure that sales of power by FortisBC to Celgar under the GSA will not do so. All that should be required is a mechanism through which BC Hydro is assured that FortisBC is not drawing extra energy under the PPA to fulfill its obligations under the GSA, at BC Hydro ratepayers' expense. This could be achieved in many ways."

The Commission Panel believes that other ratepayers should be afforded the opportunity to comment on such possible eventualities.

**The Commission Panel orders a public, written hearing process to provide this opportunity. Celgar's proposal for limited involvement of other participants is denied.**

In the Complaint, Celgar asserts that it has been unable to negotiate a mutually satisfactory GSA with FortisBC. Therefore, "Celgar is seeking the Commission's assistance in establishing an acceptable [GSA] with FortisBC and/or the establishment of a process whereby the terms of such an agreement may be negotiated" (Complaint, p. 2). Because of the apparent impasse between the parties and because the Commission is aware that the parties have been negotiating an agreement without success for several years, the Commission Panel does not believe that a negotiated settlement process between Celgar and FortisBC sponsored by the Commission would adequately serve the needs of all ratepayers for the reasons set out above. We believe that other ratepayers need to be afforded the opportunity to comment on the potential implications of various situations that could emerge in resolving the Complaint. **Therefore, the request for a Commission sponsored negotiated settlement process between Celgar and FortisBC is denied.**

In the Commission Panel's view, many of the issues raised in the Complaint have been previously addressed in the aforementioned FortisBC Rate Design and Cost of Service proceeding and the Celgar Application for Reconsideration of Commission Order G-156-10 proceeding. For this reason, the Panel has concluded that the evidence and submissions in those proceedings relating to the issues raised in the Complaint will form part of the record in this proceeding.

As a result, and subject to further Order, the Commission will only accept, as further evidence in this proceeding, new evidence that participants wish to rely upon that relates to the issues of:

- (i) a generation baseline (GBL) of 1.5 MW, 16 MW, or 40 MW;
- (ii) service at RS 31 or a similar rate based upon FortisBC's embedded cost of service applicable regardless of whether Celgar is selling power in excess of its GBL or not;
- (iii) contract demand equal to mill load less the established GBL but not less than 8 MVA; and
- (iv) access to non-firm power above the contract demand pursuant to a brokerage arrangement.

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**REGULATORY TIMETABLE**

<b>ACTION</b>	<b>DATE (2011)</b>
Intervener Registrations	Tuesday, June 7
Filing of further Celgar Evidence	Tuesday, June 14
Filing of further FortisBC Evidence and Intervener Evidence	Tuesday, June 28
BCUC Information Request No. 1 on further Celgar Evidence, FortisBC Evidence and Intervener Evidence	Tuesday, July 12
Celgar Information Request No. 1 on further FortisBC Evidence and Intervener Evidence	Tuesday, July 12
Intervener and FortisBC Information Requests No. 1 on further Celgar Evidence	Tuesday, July 12
Celgar, FortisBC, and Intervener responses to Information Requests No. 1	Tuesday, July 26
Celgar Final Submission	Tuesday, August 2
FortisBC and Intervener Final Submissions	Tuesday, August 9
Celgar Reply Submission	Tuesday, August 16



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**NOTICE OF COMPLAINT AND PROCEEDING**

**THE COMPLAINT**

On March 25, 2011 Zellstoff Celgar Limited Partnership (Celgar) filed a complaint with the British Columbia Utilities Commission (Commission) relating to the failure of FortisBC and Celgar to complete a General Service Agreement (GSA), and to FortisBC's application of Rate Schedule 31 demand charges (Complaint). In the Complaint Celgar states negotiations between it and FortisBC to complete a GSA have been unsuccessful to date.

In its Complaint Celgar seeks:

- (i) a Commission determination that FortisBC retroactively adjust Celgar's RS 31 invoices to a Billing Demand of 8,000 kVA (8 MVA); and
- (ii) the Commission's assistance in establishing a GSA with FortisBC and/or establishing a process whereby the terms of a GSA could be negotiated. Celgar seeks a GSA that includes:
  - (a) a GBL of 1.5 MW or another level as may be established in accordance with applicable regulatory parameters;
  - (b) service at a rate based upon rolled-in costs;
  - (c) a contract demand of at least 8 MVA that is equal to Celgar's mill load less the established GBL; and
  - (d) access to non-firm power above the contract demand.

**THE REGULATORY PROCESS**

Commission Order G-101-11 established a written hearing process to address the Complaint in accordance with the Regulatory Timetable attached as Appendix B to that Order. This hearing process is intended to provide other ratepayers and affected parties with an opportunity to comment on the potential implications for them if Celgar's requests in the Complaint were allowed.

**REGISTERING TO PARTICIPATE**

Persons who wish to actively participate in this proceeding should register as Interveners with the Commission in writing or by email by June 7, 2011. Interveners will receive a copy of the Complaint as well as all correspondence and filed documents. An email address should be provided if available.

Persons not expecting to actively participate, but who have an interest in the proceeding, should register as Interested Parties with the Commission in writing or by email by June 7, 2011 and identify their interest in the Complaint. Interested Parties will receive a copy of the Complaint and a copy of the Commission's Decision when issued.

All submissions and/or correspondence received from active participants or the general public relating to the Complaint will be placed on the public record and posted to the Commission's website.

#### **PUBLIC INSPECTION OF DOCUMENTS**

The Complaint and all proceeding documents are available for inspection at the following locations:

**FortisBC Inc.**

Suite 100, 1975 Springfield Road  
Kelowna, BC, V1Y 7V7  
Telephone: 1-866-436-7847

**British Columbia Utilities Commission**

Sixth Floor, 900 Howe Street  
Vancouver, BC, V6Z 2N3  
Telephone: (604) 660-4700 or 1-800-663-1385

#### **FURTHER INFORMATION**

For further information, please contact Ms. Alanna Gillis, Acting Commission Secretary, by telephone (604) 660-4700 or BC Toll Free at 1-800-663-1385, by fax (604) 660-1102, or by email [Commission.Secretary@bcuc.com](mailto:Commission.Secretary@bcuc.com).