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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-61-12**

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

and

British Columbia Utilities Commission
Rules for Energy Supply Contracts for Electricity

BEFORE: L.F. Kelsey, Commissioner
D.M. Morton, Commissioner May 17, 2012
N.E. MacMurchy, Commissioner

O R D E R

WHEREAS:

- A. On July 20, 1993, the British Columbia Utilities Commission (Commission) issued rules for energy supply contracts for electricity which are posted on the Commission's website under the link "Energy Supply Rules - Electric" (1993 Rules);
- B. On July 12, 2011, due to amendments to the *Utilities Commission Act* resulting from the *Utilities Commission Amendment Act*, 2008 and the enactment of the *Clean Energy Act* in 2010, the Commission issued Order G-130-11 to all Regulated Utilities and to all Interveners in both the FortisBC Inc. 2012-2013 Revenue Requirements and Integrated System Plan Application proceeding and the British Columbia Hydro and Power Authority (BC Hydro) 2012-2014 Revenue Requirements Application proceeding;
- C. Order G-130-11 included as Appendix A, Draft Rules on Electricity Energy Supply Contracts (Draft Rules) and invited written comments on the Draft Rules by August 26, 2011;
- D. The Commission received comments on the Draft Rules from BC Hydro, FortisBC Inc., the Association of Major Power Customers for British Columbia (AMPC) and Buryl Slack (Goodman);
- E. On December 22, 2011, the Commission issued a letter circulating the revised Draft Rules for comment by January 31, 2012;
- F. The Commission received comments on the revised Draft Rules from BC Hydro, FortisBC Inc., the BC Sustainable Energy Association (BCSEA) and the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);

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- G. On March 29, 2012, the Commission issued a letter circulating the revised Draft Rules (Rev 03) for comments on sections 1.1.2, 1.4 and 1.6 by April 20, 2012;
- H. The Commission received comments on the revised Draft Rules (Rev 03) from BC Hydro and Ilse Leis;
- I. The Commission has considered the comments received and has determined that it is in the public interest to replace the 1993 Rules with new Rules for Energy Supply Contracts for Electricity.

NOW THEREFORE the Commission orders that the 1993 Rules are repealed and the Rules for Energy Supply Contracts for Electricity attached as Appendix A to this Order are approved and substituted for them effective immediately.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of May 2012.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

**BRITISH COLUMBIA UTILITIES COMMISSION
RULES FOR ENERGY SUPPLY CONTRACTS FOR ELECTRICITY**

INTRODUCTION

The following Rules are intended to facilitate the British Columbia Utilities Commission's (Commission) review of energy supply contracts for electricity and proposed energy supply contracts for electricity under section 71 of the *Utilities Commission Act* (the Act). Separate Rules apply to energy supply contracts for natural gas.

The Rules are made pursuant to section 11 of the *Administrative Tribunals Act*.

The Rules replace the "Energy Supply Contracts – Rules" dated July 20, 1993, posted on the Commission's website under the link "Energy Supply Rules – Electric."

Energy Supply Contracts

The Commission intends to review energy supply contracts (ESCs) expeditiously and accept them for filing without a hearing where it has been provided with sufficient information to allow it to determine that the ESC is in the public interest. Further, the Commission intends to avoid retroactive Orders.

Proposed Energy Supply Contracts

The Commission also intends to review proposed energy supply contracts (Proposed ESCs) expeditiously and to approve them where it has been provided with sufficient information to allow it to determine that the Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions is in the public interest.

Relevant Legislation

Sections 44.1, 68 and 71 of the Act together with sections 2, 4, 6, 7 and 19 of the *Clean Energy Act* (CEA) are currently the principal statutory provisions relevant to the filing of an ESC or submitting of a Proposed ESC with the Commission.

Since legislation may change from time to time, users of these Rules should always consult the legislation to determine which Rules apply to them. In the event of any inconsistency with these Rules and the legislation, the legislation governs.

Section 68 of the Act defines an "energy supply contract" to mean:

a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of the Act,

and "energy" to mean:

electricity or natural gas.

Sections 71(1) and 71(1.1) of the Act require that with the exception of an ESC for the sale of natural gas to a person other than a public utility, a person who enters into an ESC must file a copy of the ESC with the Commission under rules and within the time the Commission specifies and provide the Commission with information the Commission considers necessary to determine whether the ESC is in the public interest.

Section 71(2.3) of the Act allows a public utility to submit a Proposed ESC setting out the terms and conditions of the contract and a process the public utility intends to use to acquire power from other persons in accordance with those terms and conditions.

ESC not in the Public Interest

If the Commission, following a hearing, determines an ESC is not in the public interest, it may pursuant to section 71(3) of the Act:

- (a) by order, declare the ESC unenforceable, either wholly or to the extent the Commission considers proper; or
- (b) make any other order it considers advisable in the circumstances.

Proposed ESC in the Public Interest

If the Commission is satisfied that it is in the public interest to approve a Proposed ESC and the process the public utility intends to use to acquire the power from other persons, it may by order approve the Proposed ESC and the process.

1.0 GENERAL RULES

- 1.1 Unless otherwise exempted from filing by the Act, the CEA or any orders or regulations made thereunder, an ESC and any amendments thereto shall be filed with the Commission pursuant to Section 71 of the Act and its acceptance obtained.
 - 1.1.1 A person entering into an ESC to sell or purchase electricity on a short-term or spot basis with a term of 62 days or less in duration, may request Commission approval for a procedure whereby the person retains the ESC for audit purposes and files a quarterly statement of short-term and spot electricity sales or purchases that provides information on a composite basis on the quantity and price of such sales or purchases confirming that they conformed to prevailing market conditions and were consistent with the buyer's supply needs. The quarterly reports must be filed within 30 days of the end of the period, and the Commission will respond as required to address any concerns with the short-term and spot electricity purchases on an exception basis. On or before April 30 of each year, the person must file the ESCs made during the previous year for short-term and spot electricity sales or purchases that are for a term of 62 days or less in duration.
 - 1.1.2 A person entering into an ESC other than an ESC described in section 1.1.1 shall file the ESC with the Commission within 60 days of the date upon which the person enters into the ESC. In addition to filing the ESC with the Commission, a public utility entering into an ESC must provide notice of the filing to parties that intervened in its most recent

revenue requirements application as appropriate. Upon reviewing the filing, the Commission will determine whether appropriate notice has been given in the circumstances.

- 1.1.3 The obligation to file an ESC and provide information rests upon each party to the ESC, but for the purposes of these Rules, the Commission considers that the primary obligation to file and provide information rests with the buyer.
- 1.2 The Commission will rely on all information it considers necessary to determine whether an ESC is in the public interest. In doing so it will consider the factors referred to in section 71(2.1) and (2.2) of the Act where the ESC is filed by a public utility other than BC Hydro and the Commission will consider and be guided by the factors in section 71(2.21) of the Act where the ESC is filed by BC Hydro.
- 1.3 Generally, the Commission will decide within 60 days of the filing of an ESC as to whether a public hearing is required, and if not, will issue an Order determining the ESC is in the public interest and accepting the ESC for filing. If the Commission determines a public hearing is required, it will take place where:
 - (a) the Commission is unable to determine on the basis of the information filed under these General Rules that the ESC is in the public interest; or
 - (b) it appears to the Commission on the basis of the information filed under these General Rules that the ESC may not be in the public interest.

The Commission may also hold a hearing where it receives a third party complaint about the ESC.

- 1.4 Where a public utility submits a Proposed ESC to the Commission pursuant to section 71(2.3) of the Act, the Commission will rely on all information it considers necessary to determine whether the Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions is in the public interest and should be approved. In doing so it will consider the factors in section 71(2.5) of the Act where the Proposed ESC is submitted by a public utility other than BC Hydro and it will consider and be guided by the factors in section 71(2.51) of the Act where the Proposed ESC is submitted by BC Hydro.
- 1.5 The Commission will by Order:
 - (a) determine that an ESC is in the public interest and accepted for filing; or
 - (b) determine, after a hearing, that the ESC is not in the public interest and declare the ESC unenforceable, either wholly or to the extent that the Commission considers proper or make any other order it considers advisable in the circumstances;¹ or
 - (c) for a submission pursuant to section 71 (2.3) of the Act, approve or not approve the

¹ Act, s. 71(3)

Proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions².

- 1.6 Where applicable, an ESC filing pursuant to section 71(1) of the Act or a Proposed ESC submitted pursuant to section 71(2.3) of the Act must at a minimum include the following information: duration, rights of renewal and other special provisions, reliability considerations, price and price escalation and alternate sources of supply of the ESC or Proposed ESC and, where a person seeks Commission acceptance of an amendment to an ESC, that notice has been provided to all parties that intervened in any Commission proceeding concerning the filing of the original ESC under section 71 of the Act.
- 1.7 On or before April 30 of each year, the buyer must file a report with the Commission providing details of any amendments to the terms and conditions of the ESC. For the purposes of this filing, an amendment means an alteration or revision, by modification, addition or deletion, to any term or condition of the ESC.
- 1.8 An ESC contingent on wheeling or load shaping arrangements with a public utility should be submitted with appropriate related contracts or other evidence of formal arrangements made in this regard.
- 1.9 These Rules do not apply to an ESC entered into prior to June 18, 1988 unless the ESC has been amended since that date.
- 1.10 An ESC and the information filed under section 71(1) of the Act shall be made available to the public except where the Commission considers that disclosure is not in the public interest.³ In order to allow the Commission to make a determination that disclosure is not in the public interest, parties to the ESC must provide written submissions in support of any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential and include in the filing a redacted version of the ESC and other information. The Commission will consider the justification provided and determine the issue of confidentiality. Where the Commission determines that disclosure of the ESC or other information is not in the public interest, it will require a redacted version of the ESC and other information to be made available to the public.
- 1.11 These General Rules, modified only insofar as is necessary, apply to a person who is not a public utility who enters into an ESC with a person other than a public utility.

2.0 CONTRACTUAL DEVELOPMENTS

- 2.1 For the purposes of this section a Contractual Development means any document or action that does not alter or revise, by modification, addition or deletion, any term or condition of the ESC and could include:
 - (a) a deemed assignment agreement,
 - (b) an assignment and assumption agreement,

² Act, s. 71(2.4)

³ Act, s. 71(5).

- (c) a consent,
 - (d) a termination agreement,
 - (e) a waiver,
 - (f) a change of name, or
 - (g) a Memorandum of Understanding.
- 2.2 On or before April 30 of each year, the buyer shall file a report with the Commission providing details of any Contractual Developments that have occurred pursuant to the terms of the ESC, in order that the form of the ESC on file with the Commission remains current.
- 2.3 Contractual Developments are filed for information purposes only and will not be subject to further Commission Orders.