

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-123-13**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

**Overwaitea Food Group
Applications for Exemptions from Regulation as a Public Utility**

BEFORE: C.A. Brown, Commissioner
N.E. MacMurchy, Commissioner August 15, 2013
B.A. Magnan, Commissioner
D.M. Morton, Commissioner

O R D E R

WHEREAS:

- A. On December 21, 2010, Overwaitea Food Group applied to the British Columbia Utilities Commission (Commission) for an Order exempting it from regulation as a public utility under subsection 88(3) of the *Utilities Commission Act* (UCA) (Application) for two of its companies (the Overwaitea Companies) as follows:
- Overwaitea's property company Great Pacific Industries Inc. (Great Pacific) owns a building located at 6100 McKay Avenue, Burnaby, British Columbia. Great Pacific as a landlord and lessor has three tenants – McDonald's, Tim Hortons and Vancouver City Savings Credit Union – that receive power downstream of the Save On Foods, BC Hydro account #1177130091. The fast food restaurants utilize electricity for food production and lighting and the banking institution utilizes electricity for lighting and office equipment;
 - Overwaitea Food Group Limited Partnership leases a building located at 300 - 32700 S. Fraser Way, Abbotsford, British Columbia. Overwaitea, as a sub-landlord and the lessor, resells electricity to its sub-tenant – Woodoak Management Inc. – downstream of Price Smart Foods #2208, BC Hydro account #22201601462. This sub-tenant is a medical clinic and utilizes electricity for lighting, office equipment and medical equipment;
- B. The tenants/sub-tenants have lease agreements with the Overwaitea for a period of more than five years;
- C. The Overwaitea Companies are responsible for invoicing the tenants for the electricity usage based on the measured consumption from sub-meters;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-123-13

2

- D. The UCA defines a “public utility,” in part, as “a person, or the person’s lessee...who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity...to or for the public or a corporation for compensation.” The definition excludes “a person not otherwise a public utility who provides the service or commodity only to the person or the person’s employees or tenants, if the service or commodity is not resold to or used by others”;
- E. A “tenant” for the purposes of the UCA “does not include a lessee for a term of more than 5 years”;
- F. Since the tenants have leases greater than five years, the Overwaitea Companies are public utilities as defined by the UCA;
- G. BC Hydro requires the Overwaitea Companies to enter into an Agreement For Resale Of Metered Electricity;
- H. Subsection 88(1) of the UCA allows the Commission to make an order, rule or regulation to apply to all cases, or to a particular case or class of cases, or to a particular person;
- I. Subsection 88(3) of the UCA provides that the Commission may, with the advance approval of the Lieutenant Governor in Council (LGIC) and on conditions it considers advisable, exempt a person, equipment or facilities from the application of all or any of the provisions of the UCA or may limit or vary the application of the UCA;
- J. In Order in Council No. 369 dated May 31, 2012, attached as Appendix 1 to this Order, the LGIC grants advance approval to the Commission to exempt, from Part 3 of the UCA, the Overwaitea Companies at the locations specified;
- K. The Commission has considered the Application and has determined that the Overwaitea Companies’ requests for exemption from certain provisions of the UCA are in the public interest.

NOW THEREFORE, the Commission pursuant to subsections 88(1) and 88(3) of the *Utilities Commission Act*, orders as follows:

1. The British Columbia Utilities Commission grants exemptions from Part 3 of the *Utilities Commission Act* to the Overwaitea Companies for the purpose of Resale of Electricity to their tenants/sub-tenants at the following locations: Save On Foods #912, 6100 McKay Avenue, Burnaby, British Columbia and Price Smart Foods #2208, 300 - 32700 S. Fraser Way, Abbotsford, British Columbia.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-123-13

3

2. The exemption of a person referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person for which sufficient notice has been given to the persons the Commission believes may be affected, orders that the exemption no longer applies.
3. The Overwaitea Companies are to comply with the BC Hydro and Power Authority Tariff and Terms and Conditions for the Resale of Electricity.
4. A person to whom the exemption referred to in Directive 1 of this Order applies must advise the Commission, in writing, of:
 - I. The termination of the lease with the tenant/sub-tenant; or
 - II. The termination of the agreement for resale of metered electricity with BC Hydro and Power Authority, whichever occurs first.
 - III. This submission is to be submitted to the Commission within 45 days of termination or the date of this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of August 2013.

BY ORDER

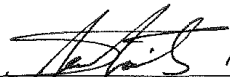
Original Signed By:

D.M. Morton
Commissioner

Attachment

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

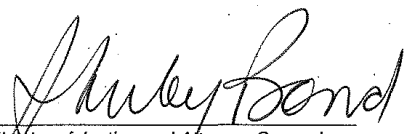
Order in Council No. 369, Approved and Ordered MAY 31 2012

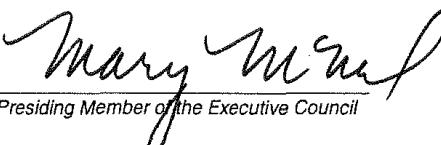

Lieutenant Governor

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 the following from Part 3 of the *Utilities Commission Act* for the purposes of and subject to the terms substantially set out in the attached draft order of the British Columbia Utilities Commission:

- (a) Great Pacific Industries Inc.;
- (b) Overwaitea Food Group Limited Partnership.


Minister of Justice and 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:

March 22, 2012