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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-134-13A**

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

and

**the British Columbia Hydro and Power Authority
Application for Approval of Rates between
BC Hydro and FortisBC Inc. with regards to Rate Schedule 3808,
Tariff Supplement No. 3 – Power Purchase and Associated Agreements,
and Tariff Supplement No. 2 to Rate Schedule 3817**

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
B.A. Magnan, Commissioner August 29, 2013
R.D. Revel, Commissioner

O R D E R

WHEREAS:

- A. The British Columbia Hydro and Power Authority (BC Hydro) has supplied electricity to FortisBC Inc. (FortisBC) for 20 years to meet a portion of FortisBC's load service obligations, pursuant to a Power Purchase Agreement dated October 1, 1993 (1993 PPA), at rates established by the British Columbia Utilities Commission (Commission) and set out in BC Hydro Rate Schedule (RS) 3808;
- B. The 1993 PPA expires on September 30, 2013, pursuant to Commission Orders G-27-93 and G-85-93;
- C. On May 24, 2013, BC Hydro filed an application with the Commission requesting approval of four new agreements between BC Hydro and FortisBC to replace the expiring 1993 PPA, pursuant to sections 58 to 61 of the *Utilities Commission Act* (Application);
- D. The four new agreements, each dated May 21, 2013, include: a Power Purchase Agreement (new PPA), an Imbalance Agreement, an Energy Export Agreement and a Master Accounting Agreement;
- E. By Order G-87-13, dated May 28, 2013, the Commission established an Initial Regulatory Timetable, which included two Workshops, one round of Information Requests (IRs) and a Procedural Conference;
- F. On July 16, 2013, BC Hydro filed the Amended and Restated Wheeling Agreement and the Amended RS 3817, which was required to align with the new PPA and Associated Agreements. This was followed by the filing of the final executed version on July 26, 2013;

- G. The Procedural Conference held on July 29, 2013, was attended by BC Hydro and the following Interveners: FortisBC, British Columbia Pensioners and Seniors Organization *et al*, B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA), Commercial Energy Consumers' Association of British Columbia (CEC), British Columbia Municipal Electrical Utilities, Zellstoff Celgar Limited Partnership (Celgar), Industrial Customers Group ICG), Vanport Sterilizers Inc. (Vanport Sterilizers) and Mr. Alan Wait;
- H. By Order G-117-13, dated August 1, 2013, the Commission defined the scope of the proceeding, ordered that the Application be heard by way of a written proceeding as established in the Regulatory Timetable set out in Appendix A to the Order and outlined a process for resolution of certain outstanding unanswered IRs;
- I. By letters dated August 7, 8 and 9, 2013, BC Hydro, CEC and Celgar resolved their outstanding IRs;
- J. On August 9, 2013, Celgar requested that the Commission Panel direct FortisBC to file the record of the three proceedings (Related Proceedings) identified in outstanding IR Series 3.2;
- K. By letter dated August 12, 2013, the Commission requested comments on Celgar's request. Comments were provided by FortisBC, BCSEA, BC Hydro, Alan Wait and Vanport Sterilizers with most parties opposing the requested order;
- L. By letter dated August 12, 2013, Celgar requested a one-week extension to file its final submissions, from September 20, 2013 to September 27, 2013;
- M. By Order G-125-13, dated August 16, 2013, the Commission rejected Celgar's request regarding filing the records of the Related Proceedings but sought comments on the requested extension for the filing dates of Intervener Final Submissions;
- N. On August 21, 2013, BC Hydro stated it does not oppose Celgar's request but asked that if the request is granted, the due date for the responses to IR No.2 be also extended by one week;
- O. On August 21, 2013, FortisBC, BCSEA, ICG and Vanport Sterilizers also filed comments either supporting, not opposing, or taking no position regarding Celgar's request.
- P. On August 22, 2013, the Commission granted a one week extension and amended the Regulatory Timetable by Order G-129-13;
- Q. On August 23, 2013, Celgar sought an order that gives Celgar and other Interveners an opportunity to file evidence that is in scope by September 13, 2013;
- R. On August 26, 2013, the Commission requested comments on Celgar's submission, and responses were filed by BC Hydro, FortisBC, BCPSO and Vanport Sterilizers on August 27, 2013.

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NOW THEREFORE, as explained in the attached Reasons for Decision, the British Columbia Utilities Commission orders as follows:

1. Zellstoff Celgar Limited Partnership's (Celgar) request for an opportunity to file evidence is denied and the review of the Application will be concluded in accordance with the Amended Regulatory Timetable issued by Order G-129-13.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of August, 2013.

BY ORDER

Original signed by:

L.A. O'Hara
Commissioner

Attachment

the British Columbia Hydro and Power Authority
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REASONS FOR DECISION

Celgar Request

In its letter dated August 23, 2013, Zellstoff Celgar Limited Partnership (Celgar) submits that Celgar and other Interveners should be given an opportunity to file evidence that is in scope by September 13, 2013 because the regulatory process established by Order G-117-13 unfairly limits the evidence in the proceeding to only evidence from the utilities. In Celgar's view, the fact that the key content of its evidence identified in the Procedural Conference was found to be out of scope by the Panel "ought not to close all future opportunities to file evidence".

Celgar acknowledges that the requested amendment to the Regulatory Timetable may result in further procedural steps, especially if utilities require an opportunity to file Information requests (IRs). (Exhibit C5-8)

BC Hydro Submission

British Columbia Hydro and Power Authority (BC Hydro) opposes Celgar's request on grounds of procedural unfairness. BC Hydro submits that the July 29, 2013 Procedural Conference provided Celgar with the opportunity to raise any issues with respect to filing Intervener evidence and any procedural steps associated with the regulatory review. BC Hydro further submits that Celgar has not provided any description of the content of the intended evidence and that the new request does not meet any threshold to justify the Commission Panel reconsidering its earlier determinations. (Exhibit B-12)

FortisBC Submission

FortisBC Inc. (FortisBC) also opposes Celgar's request and provides many reasons similar to those provided by BC Hydro. FortisBC notes that there is no tangible basis on which to conclude that Celgar has pertinent in-scope evidence to bring forward that is not already on the record and that if Celgar wished to put additional material on the record, it could have done so through the second round of IRs that were due on August 19, 2013. (Exhibit C1-16)

BCSPO Submission

British Columbia Pensioners and Seniors Organization *et al* (BCSPO) supports Celgar's request but notes that Intervener evidence should be tested in the same manner as utility evidence by way of IRs. (Exhibit C2-6)

Vanport Sterilizers Inc. Submission

Vanport Sterilizers also supports Celgar's request and submits that it supports development of an evidence-based approach, employing actual findings and data as a basis. (Exhibit C10-6)

Celgar Reply

Celgar endorses the comments of BCPSO. With regard BC Hydro's comments, Celgar notes that in the past participants have not been required to provide an advance explanation of their evidence. Celgar further asks the Panel to consider whether a statement of intent made at a procedural conference regarding evidence to be filed should preclude the ability of an Intervener to file evidence. (Exhibit C5-9)

Commission Determination

The Commission Panel denies Celgar's request to be given an opportunity to file evidence that is in scope by September 13, 2013. The Panel acknowledges that Celgar's statement of an intent at the Procedural Conference does not automatically preclude its ability to file evidence. However, since July 29, 2013, Celgar had numerous opportunities to raise its issues as pointed out by FortisBC. For instance, Celgar could have requested that the Commission defer its scoping decision until all IRs were submitted, or Celgar could have placed further evidence on the record via the second round of IRs. Furthermore, Celgar did not specify the nature and import of the evidence it proposes to file nor how such evidence might be of such importance as to delay the Regulatory Timetable and as a result, the decision by several weeks when the record of the proceeding is about to close. The Panel agrees that it is procedurally unfair to the participants to delay the proceedings in this manner. Celgar had other methods available to it to deal with its request, including the use of IRs, and has delayed too long in bringing its request forward. There is too much prejudice to the participants to allow this late request.