

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-117-13**

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

**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 1, 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. On May 27, 2013, FBC filed a letter in support of the Application and confirmed its intention to respond to Information Requests (IRs) regarding this submission (Exhibit C1-2).
- F. By Order G-87-13, dated May 28, 2013, the Commission established an Initial Regulatory Timetable, which included two Workshops, one round of IRs and a Procedural Conference;

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- G. 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;
- H. On July 23, 2013, the Commission issued Letter listing the issues that participants at the Procedural Conference should address;
- I. 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, Commercial Energy Consumers' Association of British Columbia, British Columbia Municipal Electrical Utilities, Zellstoff Celgar Limited Partnership, Industrial Customers Group, VanPort Sterilizers and Mr. Alan Wait.

NOW THEREFORE, for the attached Reasons for Decision, the Commission orders as follows:

- 1. The Review of the Application will be heard by way of a written proceeding as established in the Regulatory Timetable set out in Appendix A to this Order.
- 2. The following issues are determined to be out of the scope of this proceeding:
 - a. Merchant energy storage and/or pump storage hydro operations and development policies;
 - b. Utility to utility rate comparisons;
 - c. How Generator Baselines (GBL) in the BC Hydro's service territory were established prior to the submission of the Transmission Service Rate and Customer Generator Baseline Information Report on June 20, 2012 (2012 Information Report);
 - d. How BC Hydro implements and operates its agreements with self-generators based on GBL's set prior to the issuance of the 2012 Information Report; and
 - e. Establishment of a GBL for any particular customer.
- 3. Information Requested, as provided for in the Regulatory Timetable, can address any issues not determined to be out of the scope of this proceeding.
- 4. On the basis of the scope limitations established for this proceeding, no provision for Intervener evidence has been made in the Regulatory Timetable.
- 5. FortisBC Inc.'s request to file its Final Submission at the same time as BC Hydro and to have a right of reply has been provided for in the Regulatory Timetable.
- 6. BC Hydro's request that the participants be left to interpret and apply the scope limitation to the unanswered Information Requests (IRs) before seeking Commission ruling is granted. Any participant who has unanswered IR No. 1 questions that they wish to have replied to, provided they remain within the scope of this proceeding as defined in the accompanying Reasons for Decision, must notify the Utility of their request on or before August 7, 2013. The Utility will have an additional five business days to file its IR

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responses. In the event that common ground cannot be found, the parties can seek the Commission's ruling in accordance with the Regulatory Timetable.

7. Upon written acceptance from BC Hydro and FortisBC by September 16, 2013, the current Commission approved RS 3808 and Tariff Supplement No. 3 – Power Purchase and Associated Agreements are to remain in effect until such time as the Commission determines otherwise.
8. The currently approved RS 3817 and Tariff Supplement No. 2 will remain in effect until the Commission determines otherwise.
9. The deadline for submitting budgets for Interveners intending to apply for participant assistance is Thursday, August 22, 2013.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of August, 2013

BY ORDER

Original signed by:

L.A. O'Hara
Commissioner

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

REGULATORY TIMETABLE

ACTION	DATES (2013)
Commission and Intervener Information Requests No. 2 to BC Hydro and FortisBC	Monday, August 19
Deadline for filing PACA Budgets	Thursday, August 22
BC Hydro and FortisBC respond to Commission and Intervener IR No.2	Tuesday, September 3
Final Submission by BC Hydro	Wednesday, September 11
Final Submission by FortisBC	Friday, September 13
Final Submissions by Interveners	Friday, September 20
FortisBC Reply Submission	Friday, September 27
BC Hydro Reply Submission	Monday, September 30

Schedule for Outstanding Unanswered Information Requests

ACTION	DATES (2013)
Notify Utility of Unanswered IRs	Wednesday , August 7
Deadline to seek Commission ruling if necessary	Friday, August 8
Utility to provide responses to unanswered IRs	Wednesday, August 14

An Application by British Columbia Utilities Commission

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

REASONS FOR DECISION

1.0 Background

On May 24, 2013, the British Columbia Hydro and Power Authority (BC Hydro) filed an Application with the British Columbia Utilities Commission (Commission) for approval of four new agreements negotiated by BC Hydro and FortisBC Inc. (FBC or FortisBC). More specifically, this Application is with regards to the approval of (a) Rate Schedule 3808, (b) Tariff Supplement No. 3 – which covers the new Power Purchase Agreement (new PPA) and the three Associated Agreements (the Imbalance Agreement; the Energy Export Agreement and the Master Accounting Agreement); and (c) Tariff Supplement No. 2 - the Amended and Restated Wheeling Agreement and its associated Amended Rate Schedule 3817 (the Application).

By Order G-87-13, the Commission established an Initial Regulatory Timetable which included two Workshops, one round of Information Requests (IRs) and a Procedural Conference that took place on July 29, 2013.

The need for amendments to the existing General Wheeling Agreement to align with the new PPA and associated Agreements was determined late in the negotiations between the parties. As a result, the Initial Regulatory Timetable provided for the filing of the General Wheeling Agreement on July 16, 2013, which fell after the date of the IR filing deadline. On July 16, 2013, BC Hydro then filed the amended Rate Schedule 3817 and a final version of the Amended and Restated Wheeling Agreement (ARWA). Subsequently, on July 26, 2013, the final executed version was filed with the Commission.

Therefore, neither the ARWA nor amended Rate Schedule 3817 have been exposed to any regulatory review to date.

The new PPA, which is a result of lengthy negotiations, is a significant one as it is building on a long history of co-operative arrangements between BC Hydro and FortisBC dating back to the 1950's. The new PPA and Associated Agreements are intended to replace the existing 1993 twenty-year agreement which expires on September 30, 2013.

On July 23, 2013, the Commission issued a Letter requesting that participants at the Procedural Conference address the following items:

1. Identification of significant issues;
2. Scope of the Commission review of various sections of the Application;
3. Identification of Interveners planning to file evidence;
4. In the event that a Commission determination on the Application is not made by September 30, 2013, should an interim rate be set based on the currently approved rates or the applied for rates;
5. What process, if any, is required on the signed Amended and Restated Wheeling Agreement and the amended Rate Schedule 3817;
6. Whether the review should proceed by oral or written public hearings, or some other process;

7. Steps, timetable and location (should an oral hearing be required) associated with the regulatory review process; and
8. Other matters that will assist the Commission to efficiently review this Application.

In addition to the Applicant, BC Hydro, the following registered Interveners attended the Procedural Conference:

- FortisBC, which also described itself as a signatory to the new agreements and a “co-applicant”;
- British Columbia Pensioners and Seniors Organization (BCPSO);
- B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA);
- Commercial Energy Consumers’ Association of British Columbia (CEC) and British Columbia Municipal Electrical Utilities (BCMEU);
- Zellstoff Celgar Limited Partnership (Celgar);
- Industrial Customers Group (ICG);
- VanPort Sterilizers; and
- Alan Wait.

2.0 MATTERS ARISING AT THE PROCEDURAL CONFERENCE ON JULY 29, 2013

2.1 Identification of Significant Issues

BC Hydro identified some themes that have emerged from the IR process, including the following:

- Can the relationship between BC Hydro and FortisBC continue to be appropriately characterized as “unique”;
- Costs and benefits attributable to the new agreements;
- Comparison of Rate Schedule 3808’s (RS 3808) two-step rate structure to BC Hydro’s other rate structures;
- Purpose and operation of the new Imbalance Agreement; and
- The practical application of section 2.5 of the new PPA.

BC Hydro also characterized as misunderstandings some IR themes and provided the following further clarification:

- The new PPA does not establish end-use rates for FBC customers; it simply defines the terms of BC Hydro’s service to one of its customers being FortisBC and the energy purchased becomes a component of FortisBC’s cost of energy.
- The new PPA does not define the terms of FortisBC’s service to its self-generating customers; rather it provides FortisBC with greater flexibility than section 2.1 of the current PPA. It is for FortisBC to determine whether and how to use this additional flexibility in designing rates in terms of service for its customers (T1:8-10).

FortisBC, as the other signatory to the agreements, to add further context, noted:

- The new PPA is a continuation of an existing supply agreement, which ensures that FortisBC will continue to have access to supply at BC Hydro’s embedded cost at the customer demand limit of 200 megawatts (MW).

- The new PPA is a testament to hard work over many years with balancing of interest having taken place. Therefore, it is not possible to alter individual components without affecting the overall balancing of interest (T1:17-19).

BCPSO submits that its primary interest is “ensuring that arbitrage is mitigated through the PPA” and identifies energy exports, with rules set out in sections 2.5 and 2.6 of the new PPA as a significant issue. In addition, BCPSO also introduced the pricing of Tranche 1 and Tranche 2 as an issue while noting that there seems to be some disagreement between BC Hydro and FortisBC regarding whether FortisBC will cross into Tranche 2. (T1:22)

BCSEA identified the following categories of issues:

- What is the content of the Agreement, what does the wording mean, how does it work?
- What will be the impact on BC Hydro, FortisBC and on the customers of the two utilities?
- What is the impact of the Agreement in the broader context? Why is an Agreement required at all? What is the future in which this Agreement, “fundamentally a modernized continuation of the status quo”, will be situated? (T1:24-26)

BCMUE and CEC adopt the general submissions of BCSEA, note the importance of the Agreement and submit that while the new PPA is an agreement between the two utilities, “at the end of the day it’s ratepayers who will pay those costs”. They further identified the following issues:

- The new PPA is complex.
- Some IRs remain unanswered.
- Lack of consideration of alternatives as opposed to the “take-it-or-leave-it” proposal.
- A number of changes in the circumstances since 1993; including the electricity surplus, pricing of electricity against natural gas.
- Is it appropriate that FortisBC continues to be a hybrid entity as a customer and a utility?
- Is the proposed rate a transmission rate or is it truly a unique customer rate which should be separated? (T1:27-30)

Celgar stated that the most significant issue is the treatment of self-generating customers of FortisBC with respect to access to electricity and the sales of self-generation as affected by the new section 2.5(a)(ii). Celgar questions “whether that section of the agreement as currently drafted, or at all, should remain in the document”. Celgar also provided a list of 13 corollary issues for the Commission’s considerations, which relate to the operation of the section 2.5 (Exhibit C5-4).

To highlight its dilemma, Celgar submits “if the Commission does not grasp its jurisdiction and take control of how baselines are set, then essentially BC Hydro becomes *de facto* arbiter of generation baselines in the province through its policy, which is indirectly imposed upon Celgar again without any consultation with us, because we’re not a customer, but imposed upon Celgar through this agreement and through its negotiations with FortisBC” (T1:50-51).

In reference to the Commission Order G-48-09, which amended the existing PPA to introduce new limitations to Celgar’s export of self-generated electricity, Celgar noted that the Commission’s description of the ruling under the heading “The Short-Term Nature of the Issue” (T1:32-33).

ICG listed three key areas, mainly in relation to certain unanswered IRs, and indicated their direct link to the scope definition:

- The RS 3808 and the new PPA, being rates, should stand up to the Bonbright Principles for the amount of capacity and energy purchased by FortisBC.
- Importance of a transparent review of the significant issues.
- Transparency and consistency of service for industrial customers.
- Comparison of FortisBC rates with BC Hydro's rates. (T1: 53-65)

VanPort believes that the new PPA could serve as a template and have an impact on developing a merchant energy solution. VanPort further sees this Application as an opportunity for the Commission to explore and develop policies and rule making to accelerate the development of a merchant energy storage business and clusters of such in BC. (T1: 65-67)

Mr. Wait had no further issues beyond those identified above (T1:68).

2.2 Scope of the Commission's Review

As the identified significant issues and the scope of the review are intrinsically related, this Section will address the scope matter in a more concise manner with only a few highlights, especially, as they relate to the unanswered IR's to date.

BC Hydro submits that the uniqueness of its relationship with FortisBC requires a unique rate schedule preventing direct comparisons with other customers, whether a utility or not. "Accordingly the rate schedule does not lend itself to an examination informed by the Bonbright principles, nor were these principles the subject of discussions during the negotiations." As the rates apply to only one customer, which is a sophisticated public utility and supports the rates as filed BC Hydro further submits "the Commission should refrain from exercising jurisdiction to amend the agreements if it has found that they are not unjust and unreasonable" (T1:11-14).

FortisBC emphasizes that the scope of review should be limited given the long history between the utilities and that a high threshold of significance should be placed in defining the scope (T1:19).

BCPSO submits the scope of the review should ensure that the PPA reflects a principled, consistent and effective treatment of the power purchases and that the interests of residential customers are protected (T1:23).

Mr. Wait submits that the scope should be kept fairly narrow to the Agreement itself (T1:68). However, most of the other Interveners, except for the co-applicant – FortisBC, supported a broader scope that enables the Commission to address the significant issues outlined in Section 2.1.

Commission Determination

The Commission Panel has considered all submissions received and concludes that the scope must remain broad enough to allow a comprehensive review of a number of significant issues identified. This is the case, even if the new PPA and Associated Agreements and the ARWA (Agreements) were negotiated and agreed to by two sophisticated utilities for numerous reasons. First, the circumstances of the 1993 energy markets, and BC Hydro and FBC's respective roles in the utility business, may not be sufficiently similar to those of 2013. Similarly, in the dynamic energy markets of today, it is difficult to predict what the next twenty years will look like. For instance, for what reasons does 200 MW continue to be the appropriate capacity purchase quantity? Second,

although the Agreements have been negotiated by BC Hydro and FortisBC, ultimately it is FortisBC customers, and to some extent BC Hydro's customers, that will be affected by the resultant benefits and costs of the Agreements. Third, the Panel requires a comprehensive evidentiary record to ensure that the Agreements reflect fairness and efficiency, the rates are not unfair or unreasonable and no potential for undue preferential treatment exists. Accordingly, the following broader scope issues will be considered.

Significant Issues in Scope

- Is the 1993 relationship between FortisBC and BC Hydro, that was described as unique, a hybrid in which FortisBC is partly a customer of BC Hydro and partly an independent utility, still relevant in 2013 and in the future?
- Are the Bonbright Principles relevant when assessing the new PPA as a rate?
- Should FortisBC self-generation customers receive the benefit of embedded cost power, inclusive of a British Columbia heritage power component? Would introduction of restrictions to FBC's or its customers' access to RS 3803 power be consistent with BC Hydro's obligation to serve? If access is to be restricted, on what basis will those restrictions be implemented?
- The concepts of a Customer Baseline (CBL), Generator Baseline (GBL) and Net-of-Load constructs as a component of setting the purpose of limitation for use of the scheduled energy in the new PPA.
- The June 20, 2012 Transmission Service Rate and Customer Generator Baselines Information Report (2012 Information Report) filed by BC Hydro on a prospective basis as its application may pertain to RS 3808.
- Risk & reward as well as cost & benefit relationships between BC Hydro, FBC and their respective customers.

Issues Out of Scope

While the Commission Panel aspires to a comprehensive review of the Application, it is cognizant of the need for an efficient regulatory process and declines to consider the following matters that are not relevant for the approval of the Agreements and rates.

- Merchant energy storage and/or pump storage hydro operations and development of related policies;
- Utility to utility rate comparisons;
- How GBL's in the BC Hydro's service territory were established prior to the submission of the 2012 Information Report;
- How BC Hydro implements and operates its agreements with self-generators based on GBL's set prior to the issuance of the 2012 Information Report; and
- Establishment of a GBL for any particular customer.

Information requested, as provided for in the Regulatory Timetable, can address any issues not determined to be out of scope. Thus the second round of IRs need not be limited to clarifications on the first round of IRs or to the recently filed ARWA.

Outstanding Unanswered Information Requests

As suggested by BC Hydro, the Commission wishes to leave it up to the participants to resolve which unanswered IRs need to be answered in view of the scoping limitations before seeking a Commission ruling.

Any participant who has unanswered IRs that they wish to have replied to, as they remain within the scope of this proceeding, must notify the Utility of their request after two business days of the date of this Order. The

Utility will have additional five business days to file its responses. In the event that common ground cannot be found in the case of certain IRs, the parties can seek the Commission's ruling within five business of the date of this Order. For further clarity, this schedule is also included in the Regulatory Timetable.

2.3 Identification of Interveners Planning to File Evidence

Celgar and VanPort indicated their intent to file evidence and outlined its content. **Due to the scope limitations set above, the Commission Panel finds that the planned evidence filings would be out of scope and therefore not relevant.**

2.4 Interim Rates

In view of the fast approaching expiry date of the current PPA, the Commission Panel also sought views on the need for a rate in the interim period.

BC Hydro stated that it and FortisBC have a strong preference that the new Agreements become effective October 1, 2013 and outlined various administrative and contractual issues as a justification. BC Hydro further indicated that to achieve an October 1st effective date, the parties would need the Commission Order early in the week of September 16, 2013. Should the Commission consider it would not be in the public interest to accommodate this request, BC Hydro stated it has a contingency plan which would allow for the new agreements to be deferred to a November 1, 2013 effective date. Again, to provide two weeks of certainty to complete the implementation, BC Hydro requested an Order by October 19, 2013 (T1: 14-16). FortisBC endorsed BC Hydro's submissions for the current agreements and rates to remain in effect until such time as the Commission determines otherwise (T1: 20-21).

Most of the other Interveners took the position that the proposed tight timeline was not caused by ratepayers or other stakeholders. Therefore, it should not be utilized to put undue pressure on the Commission or other parties. Parties emphasized that sufficient time should be taken to allow for effective and efficient participation by parties.

Commission Determination

The Commission Panel finds that due to the significant, long-term implications of the Application, sufficient time must be allowed for the review process. **Accordingly, upon written acceptance from BC Hydro and FortisBC by September 16, 2013, the current Commission approved RS 3808 and Tariff Supplement No. 3 – Power Purchase and Associated Agreements are to remain in effect until such time as the Commission determines otherwise.** Similarly, Tariff Supplement No. 2 and its associated RS 3817 remain in effect until further notice.

2.5 Process for the Amended and Restated Wheeling Agreement and the Amended RS 3817

The further Regulatory Timetable issued with the Order provides an opportunity for IRs on this late filing.

2.6 Regulatory Timetable and Other Process Matters

Many timing related issues were already addressed in conjunction with the interim rate issue above. A brief summary of other comments is provided here.

BC Hydro reconfirmed that the review of the Application can appropriately be completed by a written process (T1:94). BC Hydro also submitted two alternative schedules leading to an Order by September 16, 2013.

FortisBC supported this plan. However, FortisBC highlighted its status as a “co-applicant” and requested a right of reply from a procedural fairness perspective (T1: 101-106).

Most Interveners also supported the written hearing process but objected to the compressed Regulatory Timetable suggested by BC Hydro. Interveners also agreed that FortisBC’s request of a reply submission should be granted and that other Interveners should see the FortisBC Final Submission before making their own.

Commission Determination

The Commission Panel concurs with the parties that a written proceeding is the most practical approach in the case of this Application. As rates in the interim period have been adequately addressed, the Commission Panel finds it prudent to issue a Regulatory Timetable that concludes the evidentiary phase by the end of September 30, 2013.