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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-179-14**

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

**and**

**FortisBC Inc.**

**Application for Stepped and Stand-By Rates for Transmission Voltage Customers**

**BEFORE:** L. A. O'Hara, Panel Chair/Commissioner  
R. D. Revel, Commissioner November 17, 2014

**O R D E R**

**WHEREAS:**

- A. On March 28, 2013, FortisBC Inc. (FortisBC) filed an application with the British Columbia Utilities Commission (Commission) for approval of new rates for transmission voltage customers (Application) under sections 58-61 of the *Utilities Commission Act*;
- B. The Application requested, among other things, approval for a Stand-by Service Rate (RS 37) and a determination of the retroactive application of rates to Zellstoff Celgar Limited Partnership (Celgar);
- C. The British Columbia Hydro and Power Authority (BC Hydro), Celgar, International Forest Products Limited, the British Columbia Old Age Pensioners' and Seniors' Organization *et al* (BCOAPO), the BC Municipal Electric Utilities (BCMEU), and Minister of Energy and Mines (MEM) registered as interveners, while Tolko Industries Ltd. registered as an interested party;
- D. On May 26, 2014, by Order G-67-14, the Commission, among other things, declined to approve RS 37 as proposed in the Application and directed FortisBC to file a revised RS 37 incorporating the findings in the decision and to address certain Celgar specific matters;
- E. On June 26, 2014, in compliance with Order G-67-14, FortisBC filed for approval of a Revised Stand-by Service Rate (Revised RS 37 Filing) and by Orders G-81-14, G-118-14, and G-154-14 the Commission established the regulatory timetable for the review of the Revised RS 37 Filing;
- F. On October 14, 2014, BCOAPO filed a letter with the Commission requesting an extension to the September 8, 2014 deadline to file intervener evidence as established by Order G-118-14;

- G. BCOAPO identified the specific intervenor evidence which they intended to file as:
- i. Ministerial Order dated May 23, 1991, in respect of an Application by Celgar for an Energy Project Certificate for the Celgar Pulp Mill Expansion (Ministers' Order); and
  - ii. Associated witness statements relating to the Ministers' Order which were filed under the North American Free Trade Agreement Chapter 11 (Witness Statements);
- H. On October 15, 2014, Celgar filed a letter with the Commission advising that it did not object to the filing of the Ministers' Order but objected to the filing of the Witness Statements;
- I. On October 16, 2014, the Commission issued a letter requesting that BCOAPO justify the relevance of the intervenor evidence to the limited scope of the Revised RS 37 Filing proceeding. Other parties to the proceeding were also provided an opportunity to make a reply submission on BCOAPO's filing;
- J. On October 17, 2014, BCOAPO submitted a letter to the Commission explaining that its initial characterization of the Ministers' Order as intervenor evidence may not have been apt as the Order is available in the public archives. BCOAPO withdrew its request for an extension of time in which to file intervenor evidence and instead simply requested that the Ministers' Order be put on the record of this proceeding. BCOAPO also withdrew its request to introduce the Witness Statements;
- K. Celgar, BC Hydro, and FortisBC filed reply submissions on BCOAPO's October 17, 2014 filing;
- L. Order G-166-14, directive 2, issued on October 17, 2014, the Commission ordered as follows: The timeline for filing intervenor evidence is extended to October 30, 2014, to allow BCOAPO to file the Ministerial Order, dated May 23, 1991, in respect of an Application by Celgar for an Energy Project Certificate for the Celgar Pulp Mill Expansion;
- M. On October 27, 2014, BCOAPO filed the Ministers' Order and the application that gave rise to the Ministers' Order (Associated Application), to form part of the evidentiary record;
- N. On October 29, 2014, by way of letter, Celgar requested that the Associated Application be expunged from the record given that Order G-166-14 limited the filing of intervenor evidence to the Ministers' Order;
- O. On October 31, 2014, by Order G-168-14, the Commission sought submissions on Celgar's October 29, 2014 request; and
- P. On November 5, 2014, the Commission received submissions from FortisBC, BCOAPO, MEM and BC Hydro. Celgar filed a reply submission on November 12, 2014.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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3

**NOW THEREFORE** for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission grants the Zellstoff Celgar Limited Partnership's (Celgar) request for the Application by Celgar for an Energy Project Certificate for the Celgar Pulp Mill Expansion that gave rise to a Ministerial Order, dated May 23, 1991, included in Exhibit C4-17, be removed from the evidentiary record.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 17<sup>th</sup> day of November 2014.

BY ORDER

*Original signed by:*

L. A. O'Hara  
Panel Chair/Commissioner

Attachment

**FORTISBC INC.**  
Application for Stepped and Stand-By Rates  
for Transmission Voltage Customers

**REASONS FOR DECISION**

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**1.0 Background**

By Order G-166-14, directive 2, issued on October 17, 2014, the British Columbia Utilities Commission (Commission) extended the regulatory timetable to October 30, 2014, to allow the British Columbia Old Age Pensioners' and Seniors' Organization *et al* (BCOAPO) to file as evidence a Ministerial Order dated May 23, 1991, (Ministers' Order) in respect of an Application by Zellstoff Celgar Limited Partnership (Celgar) for an Energy Project Certificate for the Celgar Pulp Mill Expansion (Associated Application). On October 27, 2014, BCOAPO filed the Ministers' Order along with the Associated Application and Schedule A, marked as Exhibit C4-17.

On October 29, 2014, by way of letter, Celgar requested that the Associated Application be expunged from the record given that Order G-166-14 limited the filing of intervenor evidence to the Ministers' Order only. On October 31, 2014, by Order G-168-14, the Commission sought submissions on Celgar's request.

**2.0 Submissions**

On November 5, 2014, FortisBC Inc. (FortisBC), BCOAPO, Minister of Energy and Mines (MEM) and British Columbia Hydro and Power Authority (BC Hydro) submitted that Celgar's request should be rejected.

FortisBC submitted that the Associated Application provides important context to the Ministers' Order and will assist the Commission in determining the relevance and weight to be assigned to any submissions made based on the information contained in the Minister's Order. FortisBC further commented that Celgar should be agreeable to including the Associated Application to round out the record.

BCOAPO stated that the Ministers' Order is a regulation of the Government of British Columbia, and as with any law, does not need to be marked as an exhibit on the record of a proceeding to refer to it in argument or for a Panel to take notice of it. BCOAPO argued that the Associated Application forms part of the Ministers' Order because it is referred to in condition 1(a) of that Order and nothing in Order G-166-14 supported the interpretation that the directive therein limited the BCOAPO to filing just the text of the Ministers' Order.

MEM submitted that it would be impossible to ascertain the effect of the Ministers' Order in relevance to this proceeding without also reviewing the Associated Application. MEM argued that the Associated Application was incorporated into the Ministers' Order because it was referenced in the Ministers' Order. MEM stated that provincial Regulation and all relevant laws of the Province of British Columbia should be considered by the Commission in this proceeding.

The submission filed by BC Hydro was limited to agreeing with the arguments presented by FortisBC, BCOAPO and the MEM.

### **3.0 Reply**

Celgar replied that the Ministers' Order refers to many documents, licenses, permits, approvals and so forth, not solely the Associated Application. The Ministers' Order does not have the Associated Application appended to it, nor does it state in the Order that the Associated Application, to the exclusion of the other documents referenced in the Order, formed part of the Order. Celgar argued that a document referenced in an Order does not make it part of the Order.

Celgar went on to clarify that they were amicable to BCOAPO filing the Ministers' Order because it was understood to be a matter of law and therefore could be referenced in any event; however, Celgar argues that the same cannot be said for the Associated Application or any other evidence that may be filed for the purpose of assisting in the interpretation (or misinterpretation) of the Ministers' Order. Celgar took the position that, if any such evidence is to be filed, it would be entitled to test that evidence and file evidence in response.

However, Celgar clarified that Schedule A, which includes the 50 Recommendations and was filed by BCOAPO with the Order as well, properly forms part of the Order and as such Celgar is not requesting that Schedule A be expunged from the record.

Celgar disagreed with BCOAPO's position that the Associated Application does not need to be marked as an exhibit on the record of the proceeding to refer to it in argument or for the Panel to take notice of it. Celgar argued that the Associated Application would not be in evidence, and therefore would not be in scope in final submissions. Documents filed in other proceedings, even if of public record, do not by virtue of such status automatically become evidence in proceedings before the Commission.

Celgar further replied that it is not relevant if the Associated Application provides important context to the Ministers' Order as it does not form part of the Order itself and therefore falls outside of the limited exception granted by Order G-166-14. Celgar argued that looking solely at the Minister's Order and the Associated Application, to the exclusion of all other evidence including the 23 year history since the Order was issued, will be of no assistance to the Commission in making a fully informed decision, and would result in a denial of due process to Celgar.

Finally, Celgar argued that the issues are more complex than have been made out and were raised too late in this proceeding to enable a full exploration by the Commission of *all* relevant evidence. Celgar stated that the issue raised in the Ministers' Order is a completely new issue not previously raised in this proceeding, or any other proceeding in British Columbia, and thus it does not support the claim of "rounding out the record" on existing issues.

### **4.0 Commission Determination**

The Panel is aware that the Ministers' Order is a provincial Regulation and as such does not need to be marked as an exhibit on the record of the proceeding in order for it to be referred to or for the Panel to take notice of it. Therefore, and given that no party objected, the Commission allowed by Order G-166-14 for the Ministers' Order to be filed as evidence on the record. However, at no time did BCOAPA advise the Commission that it also sought leave to enter the Associated Application as evidence in the proceeding.

The Panel wishes to clarify that Order G-166-14 was very clear and explicit in determining that only the Ministers' Order would be allowed to be filed as late evidence. Therefore, the Panel's determination in regards to Celgar's request turns on the issue as to whether or not the Associated Application is part of the Ministers' Order or not.

BCOAPO and the MEM have argued that the Associated Application is an integral part of the Ministers' Order because it is referenced within and therefore forms part of the Order.

The Commission agrees with Celgar's arguments that just because a document is referenced in an Order does not in itself make it part of the Order. It is a fact that the Ministers' Order did not have the Associated Application appended to it and referred to many documents, licenses, permits, and approvals, in addition to the Associated Application.

**Therefore, the Panel determines that the Associated Application does not form part of the Ministers' Order and is not part of the provincial Regulation.**

MEM and FortisBC submitted that it would be impossible to ascertain the effect of the Ministers' Order in relevance to this proceeding without also reviewing the Application. While this may, or may not be true, BCOAPO should have requested to file the Associated Application if it wished to do so. However, given that BCOAPO did not make such a request, and the deadline for filing intervenor evidence had passed, no such provision in the regulatory timetable allowed for this evidence to be part of the record of this proceeding.

The Panel is also aware that any additional evidence filed at this time would result in Celgar being entitled to test that evidence, and to possibly file additional evidence. Such a provision would unnecessarily delay the review process further, but without it Celgar would be denied due process.

**The Commission grants Celgar's request to have the Associated Application removed from the evidentiary record, as Order G-166-14 only allowed for the filing of the Ministers' Order, and the Associated Application is not part of that Order. For clarity, Schedule A forms part of the Order and is to remain on the record.**