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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-93-14**

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

and

**Zellstoff Celgar Limited Partnership
Application for Reconsideration of Order G-60-14
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 July 10, 2014
R.D. Revel, Commissioner

O R D E R

WHEREAS:

- A. On May 24, 2013, the British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (Commission) requesting approval, pursuant to sections 58 to 61 of the *Utilities Commission Act* (UCA), to replace, among other things, the existing 1993 Power Purchase Agreement (PPA) with FortisBC Inc. (FortisBC) with a New PPA and Associated Agreements (Application or Original Proceeding);
- B. FortisBC, the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO) (formerly the British Columbia Pensioners and Seniors Organization *et al.*), British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA), Commercial Energy Consumers' Association of British Columbia (CEC), British Columbia Municipal Electrical Utilities (BCMEU), Zellstoff Celgar Limited Partnership (Celgar), Industrial Customers Group, Vanport Sterilizers, Mr. Norman Gabana, Morgan Stanley Capital Group and Mr. Alan Wait registered as Interveners in the Original Proceeding;
- C. On May 6, 2014, the Commission issued Order G-60-14 which:
- Approved the Application as amended;
 - Directed BC Hydro to initiate a consultative process leading to an application for Section 2.5 Guidelines, which are ultimately to be added as an appendix to section 2.5 of the New PPA;

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- Directed that the net-of-load methodology apply until the Section 2.5 Guidelines have been added as an appendix to the New PPA; and
 - Directed FortisBC to initiate a concurrent consultation process leading to the filing of a comprehensive Self-Generation Policy Application for the FortisBC service territory;
- D. On June 6, 2014, Celgar submitted a letter to the Commission requesting a reconsideration and variance of Order G-60-14 pursuant to section 99 of the UCA on the basis that the Commission Panel made mixed errors of fact and law (Reconsideration Application);
- E. By letter dated June 11, 2014, the Commission established Phase One of the Reconsideration process seeking written comments by June 19, 2014 from BC Hydro and Registered Interveners of the Original Proceeding on whether the Celgar Reconsideration Application provided reasonable grounds to warrant the Reconsideration process to proceed to Phase Two;
- F. The Commission received comments from BC Hydro, BCOAPO, FortisBC, CEC, BCMEU and BCSEA as well as a reply from Celgar on June 26, 2014; and
- G. The Commission Panel has reviewed the submissions from all parties.

NOW THEREFORE, the British Columbia Utilities Commission, for the Reasons attached as Appendix A, orders that the Zellstoff Celgar Limited Partnership Reconsideration Application is denied.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of July 2014.

BY ORDER

Original signed by:

L.A. O'Hara
Panel Chair and Commissioner

Attachment

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REASONS FOR DECISION

1.0 INTRODUCTION

On May 24, 2013, the British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (Commission) requesting approval, pursuant to sections 58 to 61 of the *Utilities Commission Act* (UCA), to replace, among other things, the existing 1993 Power Purchase Agreement (PPA) with FortisBC Inc. (FortisBC) with a New PPA and Associated Agreements (Original Proceeding or Application).

On April 9, 2014, the Commission received a letter from BC Hydro, in which BC Hydro acknowledged a requirement for greater transparency in the determination of customer-specific baselines for the purposes of section 2.5 of the New PPA (Section 2.5 Guidelines) and Contracted Generator Baselines (Contracted GBL Guidelines). BC Hydro proposed a consultation process with FortisBC and stakeholders regarding the Section 2.5 Guidelines and the Contracted GBL Guidelines as well as proposed amendments to section 2.5 of the New PPA.

FortisBC, the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO), British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA), Commercial Energy Consumers' Association of British Columbia (CEC), British Columbia Municipal Electrical Utilities (BCMEU), Zellstoff Celgar Limited Partnership (Celgar), Industrial Customers Group, Vanport Sterilizers, Mr. Norman Gabana, Morgan Stanley Capital Group and Mr. Alan Wait registered as Interveners in the Original Proceeding.

On May 6, 2014, the Commission issued Order G-60-14 which:

- Approved the Application as amended.
- Directed BC Hydro to initiate a consultation process leading to an application for Section 2.5 Guidelines, which are ultimately to be added as an appendix to the New PPA.
- Directed that the net-of-load methodology apply until the Section 2.5 Guidelines have been added as an appendix to the New PPA.
- Directed FortisBC to initiate a concurrent consultation process leading to the filing of a comprehensive Self-Generation Policy Application for the FortisBC service territory.

On June 6, 2014, Celgar submitted a letter to the Commission requesting a reconsideration and variance of Order G-60-14 pursuant to section 99 of the UCA (Reconsideration Application) on the basis that the Commission made mixed errors of fact and law in:

- Ordering that certain subsections of section 2.5 of the New PPA be included in the New PPA;
- Maintaining the current net-of-load methodology in the FortisBC service area; and

- Approving BC Hydro's proposed amendments to section 2.5 of the New PPA after the evidentiary record of the proceeding had closed.

Specifically, the relief sought by Celgar is that the Order and Decision be reconsidered and varied so as to order:

1. the deletion of the subsections of section 2.5 of the New PPA that relate to the Customer Base line Restrictions;
2. that FortisBC negotiate generator baselines (GBLs) with the self-generators in its service area on a per case basis pending the establishment of a broader Commission-approved protocol; and
3. that the BC Hydro consultation process and the concurrent FortisBC consultation process be stayed in favour of a single process, independent from the New PPA proceeding, to be initiated as a separate proceeding to establish consistent Province-wide self-generator baseline standards and policies.

Alternatively, if the current format of the Commission-directed BC Hydro and FortisBC consultation processes remain, Celgar seeks certain clarifications and amendments to the Order and Decision with respect to a number of matters. In particular, Celgar seeks to:

1. establish consistent definitions of "prohibited arbitrage", "idle self-generation" and "new self-generation" for use in such process; and
2. ensure that necessary information is provided by BC Hydro in connection with its historical practices in the BC Hydro consultation process.

2.0 PHASE ONE OF THE RECONSIDERATION

On June 11, 2014, the Commission issued a letter to BC Hydro and the Registered Interveners of the Original Proceeding requesting submissions on the following questions:

1. Should the Commission order a Reconsideration of Order G-60-14? Please base your argument on one or more of the following rationales:
 - i. The Commission made an error in fact or law. If using this rationale, please provide support that the claim of error is substantiated on a prima facie basis and the error has significant material implications;
 - ii. There has been a fundamental change in circumstances or facts since the Decision;
 - iii. A basic principle was not raised in the original proceedings;
 - iv. A new principle has arisen as a result of the Decision: or
 - v. There is other just cause to warrant Reconsideration.
2. If there is to be a Reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
3. If there is to be a Reconsideration, should it focus on the items from the application for Reconsideration, a subset of these items, or additional items?

3.0 SUBMISSIONS BY PARTIES

3.1 BC Hydro – June 18, 2014 Submission

BC Hydro submits that the Commission should not order a reconsideration of Order G-60-14 because Celgar's claim of errors, even if substantiated on a prima facie basis, does not identify any significant material implications arising from the claim. BC Hydro states that the implications cited by Celgar are either incorrect or do not stem from Order G-60-14 or the Decision, or the alleged errors therein, but rather stem from a lack of documented and uniformly applied self-generation policies in the FortisBC service territory.

BC Hydro further submits that Celgar is arguing the alleged errors give rise to two implications: (1) imposition of a unique "net-of-load" standard on Celgar for an interim period, and (2) impositions on FortisBC's self-generation customers of undefined BC Hydro Guidelines and Customer Baseline Restrictions.

On the first point, BC Hydro submits that the net-of-load restrictions on Celgar are not because of Order G-60-14 or the Decision, let alone because of alleged errors in the Decision. BC Hydro argues that the net-of-load methodology will apply for the purposes of the New PPA only, and neither Order G-60-14 nor the Decision speaks to the methodology to be applied in the FortisBC service territory. BC Hydro states that the provisions do not place any restrictions on FortisBC from supplying its self-generating customers with electricity that does not include RS 3808 power.

On the second point, BC Hydro argues that section 2.5 of the New PPA does not impose self-generation policy in the FortisBC territory. Moreover, Celgar is in no way, directly or indirectly, subject to BC Hydro Guidelines because such guidelines do not yet exist. Further, Celgar may not even be subject to the BC Hydro Guidelines if certain parts of section 2.5 of the New PPA are eventually removed as contemplated in the Decision. BC Hydro submits that these outcomes depend on the results of the FortisBC consultation process and application to the Commission in relation to self-generation policies in the FortisBC service area.

Should the Commission decide that there be a reconsideration, BC Hydro submits that new evidence would not be required and new parties need not be given the opportunity to participate as Celgar is seeking a different result based on the same evidence and arguments that are on the record of the Original Proceeding.

Further, BC Hydro submits that should the Commission decide that there be a reconsideration that a full reconsideration should be limited to Celgar's request for the deletion of the Customer Baseline restrictions in the New PPA [contained in section 2.5] be removed in their entirety. BC Hydro submits that if any reconsideration includes relief sought by Celgar as defined in items (2) or (3) of the Celgar request for reconsideration, this would effectively make the reconsideration hearing about FortisBC's self-generation policy. If this was the case then BC Hydro submits that it would be appropriate for the Commission to hear new evidence and provide new parties the opportunity to present evidence.

3.2 FortisBC – June 19, 2014 Submission

FortisBC submits that the Commission should not order a reconsideration of Order G-60-14 as there has been no fundamental change in circumstances or fact, the basic principles were raised in the original proceeding, and no new principles have arisen as a result of the Decision. Further, the Commission made no error in fact or law, and if the Commission made any such error there are no significant material implications to Celgar. FortisBC submits that in the Decision "the Panel specifically expressed its hope that 'once these undertakings [BC Hydro and

FortisBC consultations process] have resulted in well documented Commission-approved principles, the Commission will seek submission from the parties to determine whether it would be reasonable to eventually remove the restrictions from section 2.5 of the New PPA' (.iv)" (p. 1).

FortisBC further submits that should the Commission decide that there be a reconsideration, no new evidence should be heard and new parties should not be given the opportunity to present evidence as the existing record already contains the necessary evidence. FortisBC reiterates BC Hydro's position that any part of the reconsideration would become, in effect, an inquiry into FortisBC's self-generation policy. FortisBC opposes that being the subject of the reconsideration but submits that if this does occur additional evidence may be required and new parties should be given the opportunity to present evidence.

3.3 BCOAPO – June 19, 2014 Submission

BCOAPO submits that the Commission should not order a reconsideration of Order G-60-14 as the Commission did not make an error of fact or law of any significance nor have there been any fundamental changes in circumstances or facts since the Decision was issued.

BCOAPO further submits that should the Commission decide that there be a reconsideration, new parties should not be provided with the opportunity to present new evidence as the record in this proceeding is extensive and the consultation processes already underway are best suited to reach a resolution of the issues raised by Celgar. Finally, BCOAPO submits that any matters under reconsideration should be limited to those raised by Celgar.

3.4 BCSEA – June 19, 2014 Submission

BCSEA submits that the Commission should not order a reconsideration of Order G-60-14 as "the Reconsideration Application does not disclose an error of fact or law, a fundamental change in circumstance since the Decision, a basic principle not raised in the original proceeding, a new principle that has arisen as a result of the Decision or other just cause to warrant reconsideration. In the alternative, any presumptive error of fact or law on a prima facie basis does not have significant material implications" (p. 1).

In regards to the filing of new evidence BCSEA submits that "If there is to be a reconsideration, then the Commission should invite Celgar to provide evidence as to exactly what it intends to do that it says it cannot do because of Order G-60-14 and Decision" (p. 1).

3.5 BCMEU and CEC – June 19, 2014 Submission

BCMEU and CEC generally agree with BC Hydro's submission regarding all three questions and note that they do not consider the Commission made an error in fact or law, nor do they find any other reason to warrant a reconsideration. BCMEU and the CEC submit that the Commission made a pragmatic and practical Decision in directing further process specifically to deal with concerns raised by Celgar and such further process is the best and most efficient manner in which to deal with these concerns.

3.6 Celgar Reply Submission

3.6.1 Response to Comments from BC Hydro

Celgar notes that BC Hydro does not contest Celgar's allegations of error but argues exclusively that the errors, if made, have no significant material implications. Celgar submits that the Commission should give this matter significant weight. (Response 1)

Celgar reiterates its contention that "...but for the errors, the Net-of-Load Restrictions could not have been imposed in the interim period, and the Commission could not have made Celgar subject to the Customer Baseline Restrictions (as and when finalized)" (p. 3). Celgar submits as the material implication the fact that the Net-of-Load Restrictions remain in place in the interim period. Furthermore, Celgar submits it cannot plan for the future beyond the interim period "...because of the confusion and uncertainty surrounding the interplay between BC Hydro self-generator policies to be incorporated in the New PPA and the separate and distinct FortisBC self-generator policies, both of which affect Celgar" (p. 3). (Response 2)

Regarding the original cause of Net-of-Load Restrictions, Celgar submits the Order G-60-14 imposed measures that replaced the prior temporary measure established by Order G-48-09. "Whether BC Hydro chooses to characterize these restrictions as a continuation of temporary restrictions or new restrictions simply is beside the point" (p. 4). (Response 3)

Celgar questions why BC Hydro suggests that the absence of Commission-approved, written self-generator policies justifies the application of net-of-load restrictions as a default mechanism in FortisBC territory when BC Hydro does not have approved policies or GBL guidelines in its own territory either. Yet, BC Hydro's self-generator customers are not subject to similar restrictions. (Response 4)

Celgar disagrees with BC Hydro's references to the Tolko Decision and its implications. Celgar submits "if the Order, Decision and Section 2.5 of the New PPA are reconsidered and amended to remove the net-of-load restrictions and Customer Baseline Restrictions" FortisBC would then be free to negotiate generation baselines with its customers including Celgar and Tolko as BC Hydro does with its customers (p. 6). (Response 5)

The submissions in responses 6 to 8 focus on the debate related to the cause and effect between "a lack of clearly documented, uniform policies regarding self-generation in the FortisBC service territory" and "Order G-60-14, the Decision or alleged errors therein" (p. 9). Celgar submits "the core issue in this proceeding is the Commission's imposition, at BC Hydro's request, of restrictions that apply exclusively in the FortisBC territory, and absent any factual justification doing so" (p. 9). (Responses 6 to 8)

In conclusion, Celgar submits regardless of whether the Customer Baseline Restrictions have current effect, they have current implications and their imposition has caused considerable uncertainty. (Response 9)

3.6.2 Response to Comments from Other Interveners

Celgar submits that in the submission of other Interveners there is little to rebut as none addresses in any substantive manner the merits of Celgar's arguments.

Celgar accurately points out that as in the past, also in the current proceeding, the focal issue is which party or parties should benefit from generation installed by a self-generating customer — the utility and indirectly its

other customers or the self-generation customer. In other words, the crux of the issue is how the benefits of self-generation should be shared.

3.6.3 Conclusion

Celgar submits it has made at least a *prima facie* case that one or more of the errors occurred because none of the Proponents or Interveners provided a viable response beyond a simple denial.

Regarding the second test of the error having *significant material implications*, Celgar submits: "If it is determined on a *prima facie* basis that errors occurred it is clear that they led to a different result being imposed than would otherwise have been the case." Celgar further submits BC Hydro's argument that the imposition of a different result has little significance because of the existence of a "default methodology" is unsupportable.

4.0 COMMISSION DETERMINATION

4.1 Relief Sought by Celgar

i. Preamble

The Commission has been dealing with a number of applications related to the self-generator issues in the FortisBC service territory since 2009. Most of them have been filed by FortisBC, Celgar or BC Hydro. The review processes have been time-consuming and costly for the parties involved and for all FortisBC customers as all costs are eventually subsumed in rates. Consequently, in connection with the review of the RS 3808 Application, the Panel set as its overarching goal to seek clarification to the Self-Generation Policy Issue. FortisBC was directed to initiate a consultation process in its service territory to address this matter, in fact, to develop and document its policies. Specifically, FortisBC was directed to file a resultant Self-Generation Policy application with the Commission by December 31, 2014, that establishes high-level principles for its service territory.

ii. If there is no problem, why was the Net-of-Load Methodology maintained for the interim period?

In the Decision the Panel clearly stated that in the interest of regulatory efficiency, the Panel's preferred solution would be to immediately remove the restriction from section 2.5 as it finds that due to the characteristics of the New PPA BC Hydro's ratepayers no longer require protection, especially in the short term. However, the Panel also recognized that the regulatory efficiency is not the sole decision criterion. Many related applications received since 2009 clearly demonstrated that there was a problem. That problem was the fact that FortisBC's self-generation policies have not been sufficiently developed or articulated nor have they been approved by the Commission. For instance, the 1999 Access Principles clearly were due for a review in today's context. Similarly, the entire self-generation matter needed to be reviewed in a broader framework, which includes both potential advantages and disadvantages of self-generation.

While the Panel concluded that BC Hydro's ratepayers did not need protection in the short term, it still based this finding on a forecast. Circumstances are known to change. Accordingly, the Panel considered it prudent to maintain the status quo with the net-of-load methodology as an intermediate solution. The Panel was also hopeful that once more clarity and certainty has been created, all parties are more willing to work together and

to accept the removal of restrictions from section 2.5 of the New PPA. Lack of acceptance could trigger another round of applications or complaints and resultant regulatory inefficiencies.

iii. Approval of BC Hydro's proposed amendments to section 2.5 of the New PPA after the evidentiary record of the Proceeding had closed

Celgar had already challenged the procedural fairness after BC Hydro filed its proposed amendment to section 2.5 of the New PPA. In response, BC Hydro submitted that the Commission has the power to control its own processes and has broad discretion to set procedural steps for reviewing an application or subsequent amendments. BC Hydro also pointed out that a provision for information requests (IR) is not a requirement in general but specifically, its proposed amendment was not a filing that warranted an IR process. The Panel accepted BC Hydro's submissions. The Panel also found that to a large extent the new amendments approximated Celgar's proposal and addressed its earlier objections. Finally, the Panel found that the amendments removed most of its earlier fundamental concerns with the exception of regulatory efficiency.

After directing the undertaking of two separate consultation processes, the Panel encouraged collaboration between BC Hydro and FortisBC, to the extent possible, as these two concurrent processes are carried out. The Panel concluded its Decision with its sincere wish that once the two consultation processes have resulted in clearly documented Commission-approved principles, the Commission will be in a position to seek submissions from parties to determine whether it would be reasonable to eventually remove restrictions from section 2.5 of the New PPA in pursuit of improved regulatory efficiency.

Commission Determination

The Panel finds that the arguments of BC Hydro and Celgar are circular and that the very nature of those arguments highlights the need for the two concurrent consultation processes to run their course before the status quo be changed.

The Panel further finds Celgar's observations regarding the debate over the sharing of benefits of self-generation by different ratepayer/customer groups most insightful. Sharing these benefits truly is the crux of the issue. Therefore, it is crucial that all parties with an interest in this matter can participate in the consultation processes to make their case in a collaborative fashion. The Panel considers that it is counterproductive to commence a reconsideration process which would unravel the progress made following the clearly laid out road map towards eventual removal of the restrictions from section 2.5 of the New PPA.

For clarity, the Panel reiterates its goal to have the self-generation policy issue in the FortisBC service territory resolved once and for all. The two consultation processes directed by the Panel are an interim step in the pursuit of the solution as the parties were asked to go away and work it out. With the respective filing deadlines of November 1, 2014 and December 31, 2014 given to BC Hydro and FortisBC, the consultations are expected to take place expeditiously. If there is no agreement by the parties, the Commission will continue with its own process to bring the matter to its ultimate conclusion.

The Commission Panel determines for reasons outlined above that Celgar has not met the test for proceeding to Phase Two of reconsideration. The Commission made no error in fact or law, and even if the Commission made any such error, it has no significant material implications. The Panel is unable to find in Celgar's submissions any persuasive demonstration of significant material implications. There has been no fundamental change in circumstances or facts since order G-60-14 was issued, the basic principles were all raised in the

Original Proceeding, and no new principle has arisen as a result of the Decision. **Accordingly, Celgar's Reconsideration Application is denied.**

4.2 Celgar's Request for Clarification

In its Application, Celgar also requested some clarifications in the event its request is denied. In particular, Celgar seeks clarification to the definitions of "prohibited arbitrage", "idle self-generation" and "new self-generation". In addition, Celgar wishes the Commission to ensure that BC Hydro will provide sufficient information in its own consultation process.

The Commission Panel declines to offer any further clarification as it expects the consultation process and the development of high-level principles for self-generation in the FortisBC service territory to produce answers to these questions. The Panel finds it would be counter-productive for it to define these concepts in isolation without due process and consultation with all customer groups.

Similarly, the Panel declines to make further amendments to its directives to BC Hydro for its consultation process. BC Hydro as a major utility knows what it needs to accomplish during its consultation process to produce comprehensive guidelines for Commission approval.