



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-187-15**

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IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Reconsideration and Clarification of Order G-149-15 by
British Columbia Old Age Pensioners' and Seniors' Organization *et al*
regarding an Application by FortisBC Inc. for Stepped and Stand-By Rates

BEFORE: L. A. O'Hara, Panel Chair/Commissioner
R. D. Revel, Commissioner December 3, 2015

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 which included approval for a Stand-by Rate (RS 37) (Application by FortisBC for Stepped and Stand-by Rates or Original Application);
- B. Zellstoff Celgar Limited Partnership (Celgar), British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), British Columbia Hydro and Power Authority, BC Municipal Electric Utilities, International Forest Products Limited, and the Minister of Energy and Mines registered as interveners. Tolko Industries Ltd. registered as an interested party;
- C. Effective May, 29, 2015, the Commission approved RS 37 in stages by way of: Order G-67-14 (Stage I Decision), Order G-46-15 (Stage II Decision) and Order G-93-15 (Stage III Decision);
- D. In the Stage III Decision the Commission also sought further submissions exclusively from FortisBC and Celgar on an appropriate Stand-by Billing Demand (SBBB) for Celgar;
- E. By Order G-149-15, dated September 22, 2015, (Stage IV Decision) the Commission set the SBBB for Celgar at 40 percent of the Stand-by Demand Limit, which resulted in a SBBB of 16.8 MVA;
- F. On November 18, 2015, BCOAPO filed an application for reconsideration and clarification of Order G-149-15 on the basis that the Commission Panel made certain errors in the Stage IV Decision (Reconsideration Application);

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- G. By letter dated November 19, 2015, the Commission established Phase One of the Reconsideration process . The Commission sought written comments, by November 24, 2015, from FortisBC and registered interveners of the Original Application on whether the Reconsideration Application provided reasonable grounds to warrant the process proceeding to Phase Two and allowed for BCOAPO to respond to those comments by November 27, 2015;
- H. The Commission received comments from FortisBC and Celgar as well as a reply from BCOAPO in accordance with the dates established for Phase One; and
- I. 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 British Columbia Old Age Pensioners' and Seniors' Organization *et al.* Application for Reconsideration is denied.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of December 2015.

BY ORDER

Original signed by:

L. A. O'Hara
Commissioner

Attachment

Reconsideration and Clarification of Order G-149-15
as requested by British Columbia Old Age Pensioners' and Seniors' Organization *et al*
regarding an application by FortisBC Inc. for Stepped and Stand-by Rates for
Transmission Voltage Customers

REASONS FOR DECISION

1.0 INTRODUCTION

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 which included approval for a Stand-by Rate (RS 37)(Stepped and Stand-by Rates Proceeding or Original Application).

The following participants registered as interveners in the proceeding: British Columbia Hydro and Power Authority, Zellstoff Celgar Limited Partnership (Celgar), International Forest Products Limited, British Columbia Old Age Pensioners' and Seniors' Organization *et al.* (BCOAPO), BC Municipal Electric Utilities, and the Minister of Energy and Mines. Tolko Industries Ltd. registered as an interested party.

Effective May 29, 2015, the Commission approved RS 37 in stages by way of: Order G-67-14 (Stage I Decision), Order G-46-15 (Stage II Decision) and Order G-93-15 (Stage III Decision). By Order G-93-15, the Commission also sought further submissions exclusively from FortisBC and Celgar on an appropriate Stand-by Billing Demand (SBBB) for Celgar.

By Order G-149-15, dated September 22, 2015, (Stage IV Decision) the Commission set the SBBB for Celgar at 40 percent of the Stand-by Demand Limit (SBDL). On the basis of a SBDL of 42 MVA, Celgar's SBBB was set at 16.8 MVA. The Commission also directed FortisBC and Celgar to attempt to negotiate an agreement on the retroactive application of rates for the interim period.

On October 22 and 23, 2015, marked as Exhibits B-46 and B-46-1, FortisBC and Celgar filed with the Commission for approval, a joint submission attaching an executed Agreement (enclosed as Appendix A to the Exhibit) between the two parties as to the appropriate billing for the interim period. The Agreement provided for a refund to be issued to Celgar, the calculation of continued interest and certain rate treatment (Requested Rate Treatment). The Parties requested that the Commission resolve the matter on an expedited basis. On November 2, 2015, marked as Exhibit B-47, FortisBC provided supplementary information and background specific to the Requested Rate Treatment.

On November 9, 2015, the Commission issued a letter which provided an opportunity for any intervener to raise concerns with the Agreement, including the Requested Rate Treatment, and to provide comments on a preferred process if deemed necessary. BCOAPO was the sole intervener to raise a concern. In its submission BCOAPO requested that before the Commission considers approving the Agreement it require FortisBC to file further calculations and details of the negotiation, which should be followed by a written process including information requests and final submissions.

On November 18, 2015, BCOAPO also filed an application for reconsideration and a request for clarification of Order G-149-15 (Reconsideration Application). BCOAPO seeks a reconsideration and variance of the Commission's determinations alleging the Panel made the following three errors in the Stage IV Decision:

- a) It wrongly excluded intervenor groups, including ratepayer groups, from participation in the portion of the proceeding leading to the Stage IV Decision;
- b) It based its determination of Celgar's SBBD on something other than the cost of service; and
- c) It determined Celgar's SBBD in the absence of adequate evidence.

In addition, BCOAPO seeks clarification on an issue related to the implementation of the Stage IV Decision, specifically:

- a) Is Celgar's SBBD, as determined in the Stage IV Decision, intended to be permanent (i.e. for the life of Celgar's self-generation assets and, if so, which self-generation assets), or is it in scope and subject to change in FortisBC's general rate design application, which is to be filed prior to December 31, 2017.

2.0 PHASE ONE OF THE RECONSIDERATION

On November 19, 2015, the Commission established Phase One of the Reconsideration and issued a letter to FortisBC and the Registered Interveners of the Original Application requesting submissions, and allowing BCOAPO to reply, on the following questions:

1. Should there be a reconsideration of Order G-149-15 by the Commission?

Please base your comments 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 Decisions;
- iii. A basic principle was not raised in the original proceedings;
- iv. A new principle has arisen as a result of the Decisions; or
- v. There is other just cause to warrant reconsideration.

2. If there is to be a reconsideration of Order G-149-15:

- a. should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- b. 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 FortisBC – November 24, 2015 Submission

FortisBC submits that the BCOAPO reconsideration request should not proceed to Phase Two. By way of rationale, FortisBC submits the matters that BCOAPO has raised chiefly relate to the Stage III Decision rather than Stage IV and, more generally, to process that BCOAPO did not object to at the time. FortisBC also reiterates its support for the expeditious approval of the Agreement and the Requested Rate Treatment.

3.2 Celgar – November 24, 2015 Submission

Celgar submits that the Application does not meet the threshold for reconsideration and, for that reason, the Commission should decline the request to order Phase Two reconsideration of Order G-149-15. Furthermore, Celgar submits that the request for clarification of the Stage IV Decision should also be denied.

Celgar indicates that based on the three reasons advanced by BCOAPO only one of the reconsideration criteria is relevant to the Reconsideration Application; namely, whether the Commission made an error in fact or law. Celgar addresses each of BCOAPO's three alleged errors as follows.

3.2.1 Exclusion of intervenor groups from participation in the Stage IV proceeding

Celgar points out that the Stage IV process was established by Order G-93-15, and the accompanying Stage III Decision dated May 29, 2015. For that reason alone, Celgar submits, the BCOAPO's request for reconsideration related to participation in the Stage IV process must fail. Celgar further submits that BCOAPO should not be afforded the opportunity to await the outcome of a process, and only after it is known and found to be unsatisfactory, to revert to a complaint that should have been filed shortly after the Stage III Decision was issued. In Celgar's view, allowing the reconsideration almost six months after the process was established, would be patently, procedurally unfair to the other participants of the proceeding.

With regard to procedural fairness, Celgar notes that pursuant to Section 11(1) of the *Administrative Tribunals Act* the Panel:

.....has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of matters before it.

Celgar submits that decisions of the Commission related to procedural fairness are questions of law, and that the process established in Stage III was to ensure procedural fairness.

Regarding BCOAPO's concern that the Stage IV decision impacts other customers, Celgar submits that BCOAPO omits the foundational issue which is that BCOAPO had many opportunities through the lengthy review of FortisBC's Stand-by Rate to raise those concerns. Furthermore, Celgar submits, "The Commission was well aware that the rate design of stand-by service, including the SBB, would affect other customers and for that reason the Commission gave BCOAPO and all other stakeholders extensive opportunities to be heard." Celgar specifically refers to BCOAPO submissions regarding wires charges for stand-by service dated March 7, 2014 and December 3, 2014.

In summary, Celgar submits “The law with respect to procedural fairness is concerned with ensuring interested parties have had an opportunity to be heard. The procedural determinations in the Stage III Decision followed an extensive process in which all interested parties had repeated opportunities to be heard, including BCOAPO.”¹ Celgar explains that while the SBBB is significant (as it determines the wires charges for stand-by service) issues related to wires charges for stand-by service were reviewed by the Panel in each of processes leading to the Stage I, Stage II and Stage III Decisions. Celgar continues: “The Stage IV process did no more than give the Commission the benefit of further submissions from two of the affected stakeholders following many other submissions from other stakeholders.”² Celgar concludes that because all stakeholders already had received an opportunity to be heard, it cannot be said that a request for further submissions from two stakeholders was an error.

3.2.2 SBBB set on a basis other than Cost of Service

The second error alleged by BCOAPO is that the Commission set the SBBB on a basis other than cost causation principles, which in BCOAPO’s submission is an error of law. In response, Celgar refers to a number of sections of the *Utilities Commission Act* (UCA) which articulate the Commission’s authority and its discretion to set rates. Specifically, Celgar mentions sections 58(1), 60(1), 59(4), 75 and 79 of the UCA.

Celgar submits the legislative scheme gives the Commission discretion to consider any matters that it finds to be proper and relevant affecting rates. Accordingly, Celgar submits the Commission is not bound to follow cost causation principles, or any other rate setting principles. Pursuant to the UCA, the Commission must make determinations affecting a rate based on those principles that it considers appropriate and relevant. Celgar also points out that an error, if any, affecting rates is, by legislative decree an error of fact, and not an error of law.

Celgar also refers to a related claim of an error of fact by BCOAPO where the Commission concluded “different types of service should attract different rates regardless of the associated costs of service.” BCOAPO claimed that the net-of-load criterion does not require Celgar to self-supply its load requirements. In response, Celgar submits that this issue was the subject of extensive review during the Stage II and Stage III Decisions.

3.2.3 Determination of SBBB in the absence of adequate evidence

In response to the third error alleged by BCOAPO, Celgar submits the Commission clearly and repeatedly identified the scope of the Stepped and Stand-by Rates Proceeding to include all issues that are now the subject of the Application for Reconsideration. Celgar refers as an example, to materials related to a Minister’s Order filed by BCOAPO.

Celgar points out that the record of the proceeding opened with Order G-55-13 dated April 10, 2013, and now includes approximately 160 exhibits. Celgar also notes that the current proceeding followed several earlier proceedings that were all related to Celgar’s rates. In Celgar’s submission, this process has taken almost five years to conclude and “Given the extended and extensive nature of the proceedings, and because the scope of the proceeding had been previously established and rulings made with respect to many of the evidentiary issues specifically raised by BCOAPO, this BCOAPO ground for reconsideration does not approach the reconsideration threshold.”

¹ Exhibit C2-1, para. 26.

² *Ibid*, para. 30.

3.2.4 Request for clarification of scope for Stage IV Decision

Celgar describes BCOAPO's request for clarification as a "request for a Commission determination, disguised as a clarification request" and notes that the Commission, appropriately, has not made any determinations regarding the 2017 Rate Design proceeding. Celgar submits it would be highly unusual and inappropriate for the Stage IV Decision Panel to make determinations intended to influence the 2017 Rate Design proceeding and its scope. Therefore, Celgar submits the BCOAPO request should be denied.

3.3 BCOAPO – November 26, 2015 Reply Submission

In reply, BCOAPO characterizes the FortisBC and Celgar arguments as technical or procedural in nature. BCOAPO submits the substance of its reconsideration request and the nature of the error alleged is the same, regardless of whether it is characterized as relating to the Stage III or Stage IV Decision. BCOAPO reiterates that "the fundamental issue is whether the Panel erred in characterizing determination of Celgar's SBBB as a matter exclusively between Celgar and FortisBC and whether, therefore, it was procedurally fair for the Commission to make a decision affecting all ratepayers in the absence of other interveners."

BCOAPO acknowledges that the Commission has the legal authority to determine its own process. However, BCOAPO submits this ability "does not exempt the Commission from the requirement to adhere to standards of natural just (sic) by designing and implementing processes that allow affected parties to be heard."

With regard to rate setting on the basis other than cost causation, BCOAPO agrees Celgar is correct in saying the UCA specifies that it is a question of fact whether a rate is unjust or unreasonable. However, BCOAPO submits it is not possible for the Commission to determine what constitutes a just and reasonable rate in a vacuum because that determination can only be made in relation to rate setting principles.

Regarding the absence of adequate evidence claim, BCOAPO submits the Panel failed to appreciate the interrelationship between this proceeding and the setting of industrial rates. For instance, the Panel did not receive any evidence on what ratio of FortisBC's overall costs residential customers would be paying following the reduction in industrial stand-by revenues.

BCOAPO recognizes that its clarification request is unclear and wishes to reword its clarification. Specifically, BCOAPO submits the clarification it is seeking is whether the Panel of the current proceeding, in fact, already defined the scope of the 2017 Rate Design proceeding by finding that Celgar's SBBB is not within scope of that proceeding.

4.0 COMMISSION DETERMINATION

4.1 BCOAPO's Application for Reconsideration

The Panel finds that the threshold for the Application to proceed to Phase Two has not been met by BCOAPO. Accordingly, BCOAPO's Application for Reconsideration is denied. The Panel explains below why BCOAPO failed to put forward a reasonable basis to warrant the reconsideration process to proceed to Phase Two.

First and foremost, BCOAPO has been a party to the entire proceeding which was started by Order G-55-13 on April 10, 2013. BCOAPO and other interveners have received ample and fair notice throughout the proceeding. Parties have had an opportunity to make submissions in Stage I, Stage II and Stage III of the proceeding.

Furthermore, as pointed out by both FortisBC and Celgar, BCOAPO has raised matters that relate primarily to the Stage III Decision. The Stage IV process accomplished nothing more than giving the Commission the benefit of further submissions by the most affected parties, the utility and its customer who have the technical and operational knowledge on the subject matter. Other parties were already given many opportunities to be heard.

In its reply submissions, BCOAPO characterized the arguments by FortisBC and Celgar as procedural and technical in nature. In the Panel's view, the assessment whether an application meets the threshold to proceed to Phase Two of reconsideration to a large extent is technical and procedural by nature.

Second, in regards to rate setting on the basis other than cost causation, the Panel agrees with Celgar's submissions which highlight the broad scope and discretion the UCA gives the Commission to determine whether rates are just and reasonable. Through the Stage I, II, and III Decisions, which the BCOAPO fully participated in, the Commission approved a just and reasonable Stand-by Rate, which included Special Provision 1:

Stand-by Billing Demand (SBBB) – Billing under this rate schedule requires the establishment of a SBBB, expressed in kVA...The SBBB is to be agreed to between the Customer and the Company and is specified in the GSA between the Company and the Customer. If the Customer and the Company cannot come to an agreement, the SBBB will be set by the BCUC.

The Stage I Decision found that the SBBB (referred to as Stand-by Contract Demand in the Stage I Decision) is to be established on a principle based approach.³

It was the design of the of the Stand-by Rate which addressed the impact on other customers, including residential customers, of any change in rates for self-generating industrial customers. For clarity, the Stage IV Decision did not approve the just and reasonable Stand-by Rate as that was already done, rather it made a determination on the application of that rate. Specifically, the Commission made a determination on a component of the Stand-by Rate, that being the SBBB, for a particular customer given that the parties could not agree, as provided for in Special Provision 1. In arriving at the SBBB, the Panel applied the framework for the evaluation established in the Stage I Decision that relates to setting a SBBB. Namely, the principles of economic efficiency, fairness, the BC Energy Policy, as well as the last contract demand that the parties agreed to.

Third, regarding BCOAPO's claim regarding the absence of adequate evidence the Panel refers to Celgar's submissions and finds that through this lengthy four-stage proceeding a rich evidentiary record was developed.

4.2 BCOAPO's Request for Clarification

In its Application, BCOAPO also requested some clarification of the Stage IV Decision. In particular, BCOAPO's reworded request asks whether the Panel already defined the scope of the 2017 Rate Design proceeding.

In the Panel's view, no Commission Panel should make determinations that prejudice or predetermine the work to be done by future panels. The Panel believes its Stage IV Decision clearly speaks for itself. **Accordingly, the Panel denies BCOAPO's request for clarification.**

³ Stage I Decision, p. 55.