

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-180-08**

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

and

**An Application by Central Coast Power Corporation
and Boralex Ocean Falls Limited Partnership
for Approval of the Sale and Disposition of Utility Assets of
Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership**

BEFORE: P.E. Vivian, Commissioner December 5, 2008

O R D E R

WHEREAS:

- A. On August 1, 2008, Central Coast Power Corporation ("CCPC") and Boralex Ocean Falls Limited Partnership ("Boralex LP") applied, pursuant to Section 52(1) of the Utilities Commission Act ("the Act") or alternatively pursuant to section 2.(e) of British Columbia Utilities Commission ("the Commission") Order G-40-86 dated July 4, 1986, for an Order approving the sale and disposition of Utility Assets of CCPC to Boralex LP as set out in an agreement dated June 3, 2008 (the "Purchase Agreement") (the "Application"); and
- B. Central Coast Hydro Ltd. ("CCH"), a non-regulated business, owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Bella Valley in BC ("CCH Rights") that CCH will sell to Boralex LP as part of the Purchase Agreement; and
- C. On February 19, 1986, a 20 year agreement was signed by CCPC and British Columbia Hydro and Power Authority ("BC Hydro"). CCPC would supply electricity to BC Hydro at the point of delivery, which was the point where CCPC's transmission connection met BC Hydro's substation in Bella Bella (the "Power Purchase Agreement"); and
- D. On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from the Ocean Falls Corporation ("OFC"). On June 4, 1986 CCPC applied to the Commission for an exemption from the Act pertaining to the sale of electric power to residential, commercial and industrial consumers located at Ocean Falls and to Bella Bella, BC; and

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- E. Commission Order G-40-86 approved the Transfer of Lands and Chattels from OFC to CCPC and exempted CCPC from the Act (S.B.C 1980 Chapter 60) except for Part 2 and Sections 30, 44, 47 and 133. Part 2 has since been repealed and the sections have been renumbered as Sections 25, 38, 41 and 117, respectively; and
- F. Order G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the Agreement between CCPC and OFC that was attached to the Order. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and
- G. The 20 year Power Purchase Agreement between CCPC and BC Hydro was extended for another 10 years to December 31, 2016 (BC Hydro 2007 Rate Design Phase II Hearing, Exhibit B-79); and
- H. Commission Order G-30-02 amended Order G-40-86 with respect to Schedule F, by striking out Section 2 (c) of Schedule F and replacing it with the following wording: "For present firm installed capacity in CCPC's Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro's Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity of the plant is required, the parties may negotiate rates with consideration of the cost of installing additional generation"; and
- I. Order G-30-02 was also amended by striking out paragraph 2(a) of the Order and replacing it with the following wording: "CCPC shall fully comply with the terms of its agreements with B.C. Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively"; and
- J. Boralex LP is a limited partnership under British Columbia's Partnership Act. The Partners of Boralex LP are Boralex Inc. (limited partner) and Boralex B.C. Development Inc. (general partner). Boralex Inc. is one of Canada's largest and most experienced private corporations in the development and production of renewable energy and is based in Quebec; and
- K. Boralex LP is also applying for the continuation of the exemption for rates currently charged to residents and other customers as set out in Order G-40-86 and for industrial customers as amended in Order G-30-02; and
- L. CCPC has informed its customers by personally meeting with every permanent customer in Ocean Falls. A copy of the letter was posted in the Ocean Falls Post Office. A letter was sent to all non-resident account holders informing them of the sale. The industrial customer agreed to the transfer of its contract with CCPC to Boralex LP; and

- M. By Order G-121-08 the Commission established Regulatory Timetable for a written public hearing process to review the Application; and
- N. CCPC and Boralex LP, as part of the stakeholder consultation process, were directed to inform the public of the Application and respond to questions from the public concerning the Application and process to consider the Application; and
- O. On September 19, 2008, Heiltsuk Tribal Council (the “Heiltsuk”) filed for Registered Intervenor status; and
- P. On October 3, 2008 by Letter L-48-08, the Commission amended the Regulatory Timetable to provide additional time for issuance of Information Request No.2 and for the Heiltsuk to direct their questions to CCPC and Boralex LP; and
- Q. On October 20, 2008, the Heiltsuk filed its comments on the Application; and
- R. On October 27, 2008, CCPC and Boralex LP submitted their Final Argument; and
- S. By letter dated November 10, 2008 (the “Heiltsuk Filing”), the Heiltsuk filed its closing comments in response to the Final Argument of CCPC and Boralex LP dated October 27, 2008; and
- T. On November 14, 2008 by Letter L-54-08, the Commission informed CCPC and Boralex LP and all other participants that the amended Regulatory Timetable did not provide for a right of reply by Intervenor after October 20, 2008, consistent with the Commission’s practice and that the Commission Panel had established a process to address the Heiltsuk Filing; and
- U. By letter dated November 17, 2008, CCPC and Boralex LP advised that that they did not oppose the Commission accepting for filing the Heiltsuk Filing; and
- V. Section 52 of the Act states:
 - (1) “Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission’s approval,
 - a) dispose of or encumber the whole or a part of its property, franchises, licenses, permits, concessions, privileges or rights, or
 - b) by any means, direct or indirect, ,merge, amalgamate or consolidate in whole or in part its property, franchises, licenses, permits, concessions, privileges or rights with those of another person.

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(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest”; and

W. The Commission has reviewed the Application, the evidence and the submissions and considers the sale and disposition of the Utility Assets, subject to one condition, desirable in the public interest.

NOW THEREFORE the Commission orders as follows:

1. Subject to compliance within 60 calendar days of the date of this Order with the condition set out in Section 5.7.2 of the Decision issued concurrently with this Order by Boralex LP, the Commission approves, pursuant to Section 52 of the Act, the **sale and disposition** of the Utility Assets of CCPC to Boralex LP as set forth in the Purchase Agreement.
2. In the event of the failure of Boralex LP to comply with the said condition within 60 calendar days of the date of this Order, the Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of December 2008.

BY ORDER

Original signed by:

P.E. Vivian
Panel Chair and Commissioner