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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-3-09**

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

and

**An Application by the British Columbia Transmission Corporation
to Amend the BCTC Open Access Transmission Tariff**

and

**A Complaint by TransCanada Energy Ltd.
Re BCTC Firm Transmission Sales to Alberta**

BEFORE: A.A. Rhodes, Panel Chair
L.A. O'Hara, Commissioner
P.E. Vivian, Commissioner
January 15, 2009

O R D E R

WHEREAS:

- A. On June 3, 2008, the British Columbia Transmission Corporation ("BCTC") applied to the British Columbia Utilities Commission ("BCUC", "the Commission") to suspend the release for sale of additional Firm Available Transfer Capacity ("Firm ATC") on the British Columbia to Alberta path (the "BC>AB Path") and to suspend the Facilities Study relating to requests for additional service on the BC>AB Path; and
- B. On July 3, 2008, the Commission issued Order G-110-08 (the "Suspension Order"), granting BCTC's June 3, 2008 application. In granting the Suspension Order, the Commission directed BCTC to address certain issues raised in that application in the context of BCTC's next Open Access Transmission Tariff ("OATT") Application or Rate Design review, and to provide a Tariff provision to address the issues; and
- C. The OATT includes the rates, terms, and conditions (including tariff supplements) of the non-discriminatory, open access transmission service offered by BCTC. OATT is modeled on a pro forma tariff established by Federal Energy Regulatory Commission ("FERC") Order No. 888 (the pro forma tariff), as recently amended by FERC Order No. 890; and
- D. On July 14, 2008, BCTC held a consultation session concerning the implementation of FERC Order No. 890. The consultation discussed the following issues: the potential impact of incremental sales of firm transmission on existing firm transmission service on the BC>AB Path, the simultaneous submission window, and performance metrics and operational penalties; and

- E. On October 9, 2008, TransCanada Energy Ltd. ("TCE") filed a complaint (the "Complaint") with the Commission with respect to BCTC's release for sale of Firm ATC on the BC>AB Path; and
- F. By letter dated October 17, 2008, the Commission requested comment from BCTC on its views on a process to review the Complaint; and
- G. By letter of October 31, 2008, BCTC responded to the Commission, stating that BCTC anticipated filing its OATT application by November 21, 2008, and that the application would address the issues raised by TCE; and
- H. By letter dated October 24, 2008, NorthPoint Energy Solutions ("NorthPoint") submitted that it had also been negatively impacted in a manner similar to that provided for in the Complaint. NorthPoint stated that it anticipated filing a complaint; and
- I. By letter dated November 4, 2008, Cargill Power Markets LLC ("Cargill") requested that, as a power marketer with a reservation on the BC>AB Path that could be affected by the Complaint, it be informed of further developments with respect to the Complaint, and be provided with the opportunity to intervene if and when appropriate; and
- J. On November 13, 2008, the Commission issued Letter L-53-08, advising TCE that the Commission would, after receipt of the OATT application, issue a procedural letter or order to solicit submissions on the appropriate process or processes for reviewing the Complaint and the application, including the appropriate degree of separation between the reviews of the Complaint and application; and
- K. On November 21, 2008, BCTC filed an application to amend the OATT (the "Application"), pursuant to subsections 58, 59, and 60 of the Utilities Commission Act ("UCA", the "Act"); and
- L. BCTC indicated that the Application constitutes its response to the Complaint; and
- M. As part of the Application, BCTC sought an interim order, pursuant to section 89 of the Act, and section 15 of the Administrative Tribunals Act, requiring that specified new Service Agreements indicate that they are subject to a further Commission order on the Application. The requirement would apply to transmission service rollover requests by British Columbia Hydro and Power Authority ("BC Hydro") on the BC>AB Path and any queued requests for Firm ATC coming available on the BC>AB Path on January 1, 2009; and
- N. Commission Order G-175-08, dated November 27, 2008, required BCTC to indicate on two specified BC Hydro rollovers, and any contracts for Firm Available transfer capacity coming available on the BC>AB Path on January 1, 2009, that:

"This Service Agreement is subject to a further order of British Columbia Utilities Commission in the matter of the British Columbia transmission Corporation Application to Amend the Open Access Transmission Tariff"; and

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- O. By letter dated November 28, 2008, TCE reiterated its view that the Complaint should not be heard together with the BCTC OATT Application. Further, TCE objected to BCTC's request for an interim order for release of 180MW of Firm ATC upon the expiration of a BC Hydro contract having no roll-over rights. TCE also re-stated the essential elements of its Complaint; and; and
- P. By Order G-195-08, the Commission established a Procedural Conference for January 8, 2009 to address procedural matters; and
- Q. At the Procedural Conference, the Commission Panel heard submissions on the scope of the regulatory review, the review format for the principal issues, and whether the Application and the Complaint could be properly dealt with in a combined proceeding or separate proceedings; and
- R. The Commission has considered the submissions made at the Procedural Conference.

NOW THEREFORE the Commission, with Reasons to follow, orders that:

- 1. The BCTC OATT Amendment Application, except for the parts of Part 6 of the Application that are a response to the Complaint, will be reviewed through a Written Hearing Process. This proceeding will be termed the "OATT Amendment Hearing." For this hearing, BCTC is the Applicant.
- 2. The Complaint, and the parts of Part 6 of the Application that are a response to the Complaint, will be reviewed through an Oral Hearing process. This proceeding will be termed the "TCE Complaint Hearing." For this hearing, BCTC is the Respondent.
- 3. There will be a common evidentiary record for both the OATT Amendment and TCE Complaint Hearings.
- 4. The Regulatory Timetable attached as Appendix A to this order describes the schedules for both hearings.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of January 2009.

BY ORDER

Original signed by:

L.A. O'Hara
Commissioner

Attachment

British Columbia Transmission Corporation
Application to Amend the BCTC Open Access Transmission Tariff ("OATT")

and

A Complaint by TransCanada Energy Ltd.
Re BCTC Firm Transmission Sales to Alberta

REGULATORY TIMETABLE

Description	OATT Hearing	TCE Hearing
PACA Submissions	Monday, January 26, 2009	Monday, January 26, 2009
BCUC IR#1-OATT	Friday, February 06, 2009	
BCUC IR#1-Complaint		Thursday, February 12, 2009
Intervenor IR#1-OATT	Friday, February 13, 2009	
Respondent & Intervenors IR#1-Complaint		Thursday, February 19, 2009
BCTC Response OATT IR#1	Friday, February 27, 2009	
TCE Response Complaint IR#1		Thursday, March 05, 2009
Intervenors Evidence-OATT	Friday, March 13, 2009	
Respondent & Intervenors Evidence-Complaint		Friday, March 13, 2009
IR on Intervenors Evidence-OATT	Friday, March 27, 2009	
IR on Respondent & Intervenors Evidence-Complaint		Monday, April 06, 2009
Intervenors Response to IR on OATT Evidence	Wednesday, April 15, 2009	
Respondent & Intervenors Response to IR on Complaint Evidence		Wednesday, April 15, 2009
Procedural Conference (if needed)	Friday, April 17, 2009	Friday, April 17, 2009
Rebuttal Evidence - Complaint		Wednesday, April 22, 2009
Rebuttal Evidence - OATT	Wednesday, April 22, 2009	
Oral Hearing		Tuesday, April 28, 2009

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REASONS FOR DECISION

By letter dated October 9, 2008 TransCanada Energy Ltd. ("TCE") filed a Complaint with the British Columbia Utilities Commission ("BCUC" or "Commission") against the British Columbia Transmission Corporation ("BCTC") concerning its service agreement with BCTC for Long Term Firm Capacity Point-to-Point Transmission Service and the availability of Firm Capacity on the B.C. to Alberta Intertie ("the TCE Complaint" or "Complaint").

By letter dated October 17, 2008 the Commission requested BCTC, *inter alia*, to comment on an appropriate process to address the TCE Complaint.

By letter dated October 31, 2008 BCTC advised that it expected to file its next Open Access Transmission Tariff ("OATT") Application by November 21, 2008, and that the OATT Application would address the issue of Firm Sales to Alberta, and thus the issues raised in the TCE Complaint. BCTC submitted that "(i) the [OATT] Application should be considered BCTC's response to the Complaint and (ii) the Complaint should be heard at the same time as the [OATT] Application. The detailed procedural steps for addressing both the Complaint and the [OATT] Application, including the issue of whether an oral hearing is appropriate, should be addressed during a joint procedural conference convened for that purpose following the filing of the [OATT] Application."

By letter dated November 6, 2008 TCE submitted that the TCE Complaint should not be combined with BCTC's OATT Application as the process for the OATT Application could not adequately address all the issues raised in the TCE Complaint.

By letter dated November 13, 2008 the Commission stated that it would consider the appropriate process for reviewing the TCE Complaint once it had received BCTC's OATT Application.

BCTC filed its OATT Application on November 21, 2008 (Exhibit B1-1) and stated that the OATT Application also constituted its response to the TCE Complaint.

On December 17, 2008 the Commission issued Order G-195-08 that established, *inter alia*, a joint Procedural Conference to review the regulatory processes for the OATT Application and the TCE Complaint to be held on January 8, 2009 (Exhibit A-2).

The January 8, 2009 Procedural Conference was attended by representatives of: BCTC; TCE; British Columbia Hydro and Power Authority ("BC Hydro") and Powerex Corp. ("Powerex"); NorthPoint Energy Solutions Inc. ("NorthPoint Energy"); TransAlta Energy Marketing Corp. ("TransAlta"); British Columbia Old Age Pensioners Organization et al. ("BCOAPO"); and the Joint Industry Electricity Steering Committee ("JIESC").

BCTC submitted that the TCE Complaint should be heard at the same time as the OATT Application, (Part 6 of which deals with Firm Sales to Alberta), with a common evidentiary record. BCTC proposed one round of Information Requests ("IR"s), with Commission IRs first, and a written hearing process, except for the possibility of an oral hearing for the TCE Complaint and Part 6 of the OATT Application. BCTC also suggested that to streamline the proceedings, BCTC could be treated as the applicant throughout, with the TCE Complaint being treated as intervenor evidence. BCTC also agreed that a second Procedural Conference would be useful prior to any oral hearing process.

BC Hydro/Powerex supported BCTC's submission that the OATT Application and the TCE Complaint should share the same evidentiary record and timetable, and also submitted that two rounds of IRs would be appropriate and further proposed a second Procedural Conference.

The remaining Intervenor, other than TCE, were either supportive of the process proposed by BCTC or relatively indifferent as to the process. Some were specific in their comments about supporting the most efficient and cost-effective process with minimal duplication of effort.

TCE submitted, *inter alia*, that its Complaint ought to be heard on a stand-alone and expedited basis prior to the OATT Application. TCE argued that the issues to be resolved in its Complaint are urgent, and that it is suffering and will continue to suffer financial harm as well as continuing damage to its reputation and relationships with its counter-parties. TCE also submitted that its Complaint includes a retroactive component, which would involve different considerations beyond those that fail to be addressed in the OATT Application. TCE suggested that its Complaint is self-contained and discrete and that a number of other parties have only intervened to be involved in its Complaint. TCE also suggested that resolution of its Complaint prior to any determination in the OATT Application might inform certain aspects of the OATT Application. TCE also submitted that if its Complaint and the OATT Application were to be heard together, there should be a discrete module for the Complaint with its own process and schedule and a separate decision should be rendered.

BCTC noted that there are common facts and issues in the TCE Complaint and the OATT Application which are inextricably woven together. BCTC submitted that the same parties are interested, the issues are technical, and that any consideration of a retroactive adjustment would necessarily involve a tariff amendment. BCTC highlighted that there could be a risk of inconsistent findings on identical issues if the two proceedings were heard at different times, possibly by different panels. BCTC further noted that both proceedings were at the same stage of advancement and that the timetable put forward by TCE for the hearing of its Complaint could be readily accommodated by the timetable being discussed for the OATT Application.

The Commission Panel notes the concerns of TCE in terms of urgency but agrees with BCTC that resolution of the Complaint can be adequately accommodated within the timeframe proposed for the OATT Application. The Commission Panel is of the view that there are common facts and issues in the OATT Application and TCE Complaint which are inextricably linked and is further of the view that the most efficient and expedient process would be to hear the OATT Application and the TCE Complaint at the same time, with one evidentiary record. Therefore, the TCE Complaint will be heard at the same time as the OATT Application, with one evidentiary record.

The Commission Panel has also determined, however, that the OATT Application, except for those parts of Part 6 related to the Complaint, can be addressed by a written process, but that the Complaint, and those parts of Part 6 responsive to the Complaint, should be the subject of an oral hearing. The Commission Panel notes that the OATT amendments in the BCTC Application are voluminous and oft-times technical in nature and are drawn from the lengthy FERC Orders 890, 890A and 890B. The Panel is persuaded that these amendments can most

effectively be dealt with in a written process. The Commission Panel understands that there will be some overlap and cross-over from the examination and resolution of the Complaint and the relevant parts of Part 6 of the OATT Application and the Commission Panel agrees that the resolution of the Complaint may inform and impact upon the relevant OATT amendments in Part 6. However, given the common record for the two proceedings, any such overlap should be manageable. Some of the amendments proposed in Part 6 will not be relevant to the issues at play in the Complaint and can be best dealt with in the written process.

For the purposes of the common evidentiary record BCTC will continue in its role as Applicant for the OATT Application, with a right of Reply, and TCE will remain Complainant in its Complaint, with the corresponding right of Reply on matters relating to the Complaint. BCTC will be the Respondent for the purposes of the Complaint.

The Commission Panel has considered the representations made at the Procedural Conference with respect to the Regulatory Timetable. BCTC suggested April 13th for the Oral Hearing. TCE proposed an interval of 13 weeks from the date of submission of Commission IRs to the Oral Hearing. The TCE proposal provided for the timing of BCUC IRs to TCE to take place "As soon as practicable." Assuming three weeks from the Procedural Conference for the first Commission IR, the TCE schedule would result in the Oral Hearing commencing the week of April 27th. Based on those representations, and after considering other scheduling matters such as Easter, the Commission Panel determines that the Regulatory Timetable for the hearings to the date of the commencement of the hearing of the Complaint will be in accordance with the Regulatory Timetable attached as Appendix A to Commission Order G-3-09.