SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-198-11

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

An Application by Tolko Industries Ltd. - Kelowna Division
for Reaffirmation of its Ability to Sell Power Generation
in Excess of the First 2 MW of Generation in each hour as per Order G-113-01

BEFORE: M.R. Harle, Commissioner/Panel Chair
L.A. O'Hara, Commissioner
N.E. MacMurchy, Commissioner

December 1, 2011

O R D E R

WHEREAS:

A. In a letter dated March 2, 2011, Tolko Industries Ltd. – Kelowna Division (Tolko) requested that the British Columbia Utilities Commission (Commission) reaffirm its ability to sell power generation in excess of the first 2 MW of generation in each hour as outlined in Order G-113-01;

B. In its letter, Tolko states that it believes that the revised section 2.1 of the Rate Schedule 3808 Power Purchase Agreement (PPA) between British Columbia Hydro and Power Authority (BC Hydro) and FortisBC Inc. (FortisBC) does not prevent it selling its generated power above 2 MW to BC Hydro or any other entity because Tolko is not a customer of FortisBC and that the baseline established in Order G-113-01 exists specifically to prevent arbitrage;

C. On March 24, 2011 by Order G-58-11, the Commission established a Written Public Hearing process for the review of the Application;

D. The Interveners were BC Hydro, City of Kelowna, FortisBC, Zellstoff Celgar Limited Partnership (Celgar), the Ministry of Energy, Mines and Petroleum Resources and the British Columbia Public Interest Advocacy Centre;

E. Only BC Hydro, FortisBC and Celgar submitted information requests and Final Arguments. The Ministry of Energy, Mines and Petroleum Resources and the British Columbia Public Interest Advocacy Centre did not submit information requests or Final Arguments;

F. BC Hydro took no position on Tolko's request for affirmation of Order G-113-01;

G. FortisBC stated that it had no issue with Tolko or any other customer selling some portion of its self generated power either to the City of Kelowna, BC Hydro or any other entity. It takes no position on whether the activities of Tolko should continue unchanged until it receives certain assurances from the Commission;

H. Celgar did not oppose Tolko's request for affirmation of Order G-113-01;

I. The Commission has reviewed the evidence and for the reasons stated in the attached Reasons for Decision, chooses to vary Order G-113-01 to clarify the treatment of incremental generation added by a self-generator.

NOW THEREFORE the Commission reaffirms Tolko's ability to sell power generation in excess of the first 2 MW of generation in each hour as outlined in Order G-113-01, but pursuant to section 99 of the *Utilities Commission Act*, it varies Order G-113-01 as follows:

1. The Commission varies the exemption of Tolko from the provisions of the Act, other than Part 2 and section 99, in respect of the production and sale of Tolko's incremental power by requiring that Tolko offer such incremental power on a Right of First Refusal basis consistent with the following priorities:

   - First, the City of Kelowna for use within the City's electrical service area,
   - Second, FortisBC for use when exported outside of the City's electrical service area but not outside the FortisBC service area,
   - Third, Powerex Corporation, B.C. Hydro, brokers or others for export outside of the City's electrical service area and the FortisBC service area but not outside the province, and
   - Fourth, Powerex Corporation, brokers or others for export outside of the province.

DATED at the City of Vancouver, in the Province of British Columbia, this *Second* day of December 2011.

BY ORDER

Original signed by:

M.R. Harle
Commissioner/Panel Chair

Tolko Industries Ltd. - Kelowna Division
Reaffirmation of its Ability to Sell Power Generation
in Excess of the First 2 MW of Generation in each hour as per Order G-113-01

REASONS FOR DECISION

1.0 INTRODUCTION

Tolko Industries Ltd. (Tolko) (formerly Riverside Forest Products) owns and operates a saw mill in the City of Kelowna (City). The saw mill operates a biomass power plant as part of its operations. The power plant produces steam which is used for lumber drying, building heat, and power generation for both operating the saw mill facilities and for sale to third parties. Tolko also purchases electricity from the City which, in turn, is a wholesale customer purchasing electricity from FortisBC Inc. (FortisBC). Tolko currently has a power purchase and sales arrangement with the City.

2.0 APPLICATION

Tolko – Kelowna Division is requesting that the British Columbia Utilities Commission (Commission) reaffirm its ability to sell power generation in excess of the first 2 MW of generation in each hour (incremental power), as outlined in Order G-113-01 dated October 25, 2001 and attached as Appendix 2. This request has come about as a result of Commission Order G-48-09 and its related impact on the Power Purchase Agreement (PPA) between BC Hydro and FortisBC Inc. (FortisBC).

3.0 JURISDICTION

The Commission's jurisdiction for Order G-113-01 was established under section 88(3) of the *Utilities Commission Act* (the *Act*) when Riverside Forest Products (now Tolko) applied for exemption from regulation from the provisions of the Act in respect of the production, purchase and sale of the incremental power to brokers or others for export outside of the province, or to Powerex Corporation or British Columbia Hydro and Power Authority (BC Hydro) for use outside of the City's electrical service area.

In 1999 Riverside Forest Products was considering entering into supply arrangements with West Kootenay Power Ltd. (WKP, now FortisBC) and the City. On August 21, 2001, Riverside Forest Products entered into a Letter Agreement with the City for the sale of incremental power. The Commission had jurisdiction to review the historical generator baseline data and the sale of incremental power, and to determine the public interest. (Exhibit B-4, Appendix A, pp. 61–65) The Commission's jurisdiction over energy supply contracts is derived from section 71 of the *Act* when determining the public interest.

4.0 GOVERNMENT ENERGY POLICY

The Government of British Columbia's energy policy, when Order G-113-01 was issued in 2001, was one of encouraging energy exports, while today's energy policy is one of promoting electricity self-sufficiency which includes the purchase of incremental power included under energy supply contracts regulated by section 71 of the *Act*. The Government has also included energy self-sufficiency requirements for BC Hydro in section 6 of the *Clean Energy Act* (*CEA*).

5.0 CONCERNS RESULTING FROM ORDER G-48-09

Tolko – Kelowna Division is currently engaged in discussions with multiple parties to sell power in excess of the first 2 MW of generation. Some of these parties have expressed concern about such a transaction in light of Commission Order G-48-09, and the resulting changes to section 2.1 of the 1993 PPA between BC Hydro and FortisBC and Rate Schedule 3808. Tolko believes that the revised section 2.1 does not prevent it selling its generated power above the historical 2 MW generator baseline (GBL) to BC Hydro or any other entity. First, Tolko submits that it is not a customer of FortisBC. Second, it submits that the baseline established in G-113-01 exists specifically to prevent arbitrage (Order G-113-01 specifically indicates that the 2 MW baseline was required to prevent harm to WKP and its customers).

The Commission Panel concurs with Tolko that it is not a direct customer of FortisBC. Therefore, the Commission Panel finds that the amended section 2.1 of the PPA between BC Hydro and FortisBC as well as its Rate Schedule 3808 does not apply to Tolko. As no Intervener opposed the historical GBL of 2 MW, the Commission Panel also accepts the historical GBL of 2 MW is sufficient to continue to prevent harm to FortisBC and its customers from arbitrage.

6.0 DECISION SUMMARY

In Order G-113-01 the Commission found Tolko is able to export energy that is in excess of its initial 2 MW of generation each hour that is not required by the facilities. Tolko will continue to be able to do this while remaining in compliance with Order G-48-09. In Order G-113-01 the Commission stated that it may, pursuant to section 99 of the *Act*, reconsider, vary or rescind an Order made by it. As no Intervener opposed the historical GBL, the Commission Panel upholds the continuation of the exemption of Tolko from the provisions of the Act, except for Part 2 and section 99, in respect of the production and sale to the City and others of that portion of the Tolko power plant's initial 2 MW of generation each hour that is not required by the saw mill facilities.

The Commission Panel has also considered the requirements in section 6 of the *CEA* for electricity self-sufficiency by BC Hydro. Accordingly, the Commission Panel considers that sales of electricity within the province of British Columbia take first priority to sales of electricity outside of the province of British Columbia.

After reviewing the Application, the evidence, and the submissions and the provisions of the *CEA*, the Commission Panel reaffirms Tolko's ability to sell power generation in excess of the first 2 MW of generation in each hour as outlined in Order G-113-01. Pursuant to section 99 of the *Act*, the Panel varies Order G-113-01 as follows:

1. The Commission varies the exemption of Tolko from the provisions of the Act, except for Part 2 and section 99, in respect of the production and sale of Tolko's incremental power by requiring that Tolko offer such incremental power on a Right of First Refusal basis consistent with the following order of priorities:

    - First, the City of Kelowna for use within the City's electrical service area.
    - Second, FortisBC for use when exported outside of the City's electrical service area but retained within the FortisBC service area.
    - Third, Powerex Corporation, B.C. Hydro, brokers or others for export outside of the City's electrical service area and the FortisBC service area but not outside the province.
    - Fourth, Powerex Corporation, brokers or others for export outside of the province.

REGULATORY PROCESS

In a letter dated March 2, 2011 Tolko– Kelowna Division requested that the British Columbia Utilities Commission (Commission) reaffirm its ability to sell power generation in excess of the first 2 MW of generation in each hour as outlined in Order G-113-01. In the letter, Tolko states that it believes that the revised section 2.1 of the Rate Schedule 3808 Power Purchase Agreement (PPA) between British Columbia Hydro and Power Authority (BC Hydro) and FortisBC Inc. (FortisBC) does not prevent it selling its generated power above 2 MW to BC Hydro or any other entity because Tolko is not a customer of FortisBC and the baseline established in Order G-113-01 exists specifically to prevent arbitrage.

On March 24, 2011 by Order G-58-11, the Commission established a Written Public Hearing process for the review of the Application.

The Interveners were BC Hydro, City of Kelowna, FortisBC, Zellstoff Celgar Limited Partnership, the Ministry of Energy, Mines and Petroleum Resources, and BC Public Interest Advocacy Centre.

Only BC Hydro, FortisBC and Zellstoff Celgar Limited Partnership submitted information requests and Final Arguments. The Ministry of Energy, Mines and Petroleum Resources and the British Columbia Public Interest Advocacy Centre did not submit information requests or Final Arguments.

BC Hydro took no position on Tolko's request for affirmation of Order G-113-01.

FortisBC stated that it had no issue with Tolko or any other customer selling some portion of its self-generated power either to the City of Kelowna, BC Hydro or any other entity. It takes no position on whether the activities of Tolko should continue unchanged until it receives certain assurances from the Commission.

Zellstoff Celgar Limited Partnership did not oppose Tolko's request for affirmation of G-113-01.

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-113-01

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

An Application by Riverside Forest Products Limited for an
Exemption from Certain Provisions of the Utilities Commission Act

BEFORE:	P. Ostergaard, Chair	)	
	R.D. Deane, Commissioner	)	
	K.L. Hall, Commissioner	)	October 25, 2001
	N.F. Nicholls, Commissioner	)	

O R D E R

WHEREAS:

A. Riverside Forest Products Limited ("Riverside") owns and operates a lumber stud mill, plywood facility and log processing facility in Kelowna, British Columbia (collectively, the "Facilities") whose electricity load requirements are met by power service purchases from the City of Kelowna (the "City") and power generated from Riverside's hog fuel fired generator located at the Facilities (the "Power Plant"); and

B. Commencing in 1998, Riverside entered into discussions with West Kootenay Power Ltd. ("WKP") and the City regarding how Riverside could increase the Power Plant's generation capacity above its historical capacity of about 2 MW and sell all electric energy generation above 2 MW each hour (the "Incremental Power") to brokers or others for export; and

C. The 2 MW baseline is required to prevent harm to WKP and its customers; and

D. In 2000, Riverside undertook various modifications to the Power Plant including adding a second turbine generator which, when brought into service in May 2000 increased the Power Plant's average generation capacity; and

E. On May 29, 2001, Riverside applied to the British Columbia Utilities Commission (the "Commission") pursuant to Section 88(3) of the Utilities Commission Act (the "Act") for an Order exempting Riverside from certain provisions of the Act in respect of the production and sale of:

(a) the Incremental Power to brokers or others for export outside of the province, to the City or to Powerex Corporation, B.C. Hydro or WKP for use outside of the City's electrical service area; and

(b) that portion of the Power Plant's initial 2 average MW of generation that is not required by the Facilities to the City; and

. . ./2

BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER NUMBER	G-113-01

F. The Commission has considered Riverside's application pursuant to Section 88(3) of the Act. The Commission finds that the exclusion of the first 2 MW of generation each hour from the definition of Incremental Power and the relatively constant production level associated with the generators will protect WKP and its customers from arbitrage with respect to the initial 2 MW or other impacts. The Commission is satisfied that an Order exempting Riverside from certain sections of the Act subject to certain conditions properly conserves the public convenience and interest; and

G. On October 18, 2001, the approval of the Lieutenant Governor in Council was given to the said exemption by Order in Council No. 919, attached as Appendix A.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to Section 88(3) of the Act, the Commission exempts Riverside from the provisions of the Act, other than Part 2 and Section 99, in respect of the production and sale of the Incremental Power to:
   - brokers or others for export outside of the Province,
   - the City or to Powerex Corporation, B.C. Hydro or WKP for use outside of the City's electrical service area.

2. Pursuant to Section 88(3) of the Act, the Commission exempts the purchaser of the Incremental Power (the "Purchaser") from Section 71 of the Act in respect of the purchase of the Incremental Power if the Purchaser is not a Public Utility under the Act.

3. Pursuant to Section 88(3) of the Act, the Commission exempts Riverside from the provisions of the Act, other than Part 2 and Section 99, in respect of the production and sale to the City of that portion of the Power Plant's initial 2 MW of generation each hour that is not required by the Facilities.

4. This Order is subject to the following conditions:

   (i) This Order shall be effective on the date of this Order; and

   (ii) The Commission may, pursuant to Section 99 of the Act, reconsider, vary or rescind an Order made by it; and

   (iii) Riverside will install and maintain electrical metering to the satisfaction of WKP and the City.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of November 2001.

BY ORDER

Original signed by:

Kenneth L. Hall
Commissioner and
Acting Chair

Attachment

Order/Riverside Exemption

APPENDIX A
to Order No. G-113-01
Page 1 of 3

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 919 *, Approved and Ordered* OCT 18 2001

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

approval is given to the British Columbia Utilities Commission to exempt Riverside Forest Products Limited from provisions of the Utilities Commission Act for the purposes and subject to the terms substantially set out in the attached draft order of the British Columbia Utilities Commission.

Minister of Energy and Mines

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Utilities Commission Act, section 88 (3)

Other (specify): ______

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-__-01

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

An Application by Riverside Forest Products Limited for an
Exemption from Certain Provisions of the Utilities Commission Act

BEFORE:) , 2001

O R D E R

WHEREAS:

A. Riverside Forest Products Limited ("Riverside") owns and operates a lumber stud mill, plywood facility and log processing facility in Kelowna, British Columbia (collectively, the "Facilities") whose electricity load requirements are met by power service purchases from the City of Kelowna (the "City") and power generated from Riverside's hog fuel fired generator located at the Facilities (the "Power Plant"); and

B. Commencing in 1998, Riverside entered into discussions with West Kootenay Power Ltd. ("WKP") and the City regarding how Riverside could increase the Power Plant's generation capacity above its historical capacity of about 2 MW and sell all electric energy generation above 2 MW each hour (the "Incremental Power") to brokers or others for export; and

C. The 2 MW baseline is required to prevent harm to WKP and its customers; and

D. In 2000, Riverside undertook various modifications to the Power Plant including adding a second turbine generator which, when brought into service in May 2000 increased the Power Plant's average generation capacity; and

E. On May 29, 2001, Riverside applied to the British Columbia Utilities Commission (the "Commission") pursuant to Section 88(3) of the Utilities Commission Act (the "Act") for an Order exempting Riverside from certain provisions of the Act in respect of the production and sale of:

(a) the Incremental Power to brokers or others for export outside of the province, to the City or to Powerex Corporation, B.C. Hydro or WKP for use outside of the City's electrical service area; and

(b) that portion of the Power Plant's initial 2 average MW of generation that is not required by the Facilities to the City; and

. . ./2

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-__-01

F. The Commission has considered Riverside's application pursuant to Section 88(3) of the Act. The Commission finds that the exclusion of the first 2 MW of generation each hour from the definition of Incremental Power and the relatively constant production level associated with the generators will protect WKP and its customers from arbitrage with respect to the initial 2 MW or other impacts. The Commission is satisfied that an Order exempting Riverside from certain sections of the Act subject to certain conditions properly conserves the public convenience and interest; and

G. On _______________, 2001, the approval of the Lieutenant Governor in Council was given to the said exemption by Order in Council No. ___, attached as Appendix A.

NOW THEREFORE the Commission orders as follows:

1. Pursuant to Section 88(3) of the Act, the Commission exempts Riverside from the provisions of the Act, other than Part 2 and Section 99, in respect of the production and sale of the Incremental Power to brokers or others for export outside of the Province, to the City or to Powerex Corporation, B.C. Hydro or WKP for use outside of the City's electrical service area.

2. Pursuant to Section 88(3) of the Act, the Commission exempts the purchaser of the Incremental Power (the "Purchaser") from Section 71 of the Act in respect of the purchase of the Incremental Power if the Purchaser is not a Public Utility under the Act.

3. Pursuant to Section 88(3) of the Act, the Commission exempts Riverside from the provisions of the Act, other than Part 2 and Section 99, in respect of the production and sale of that portion of the Power Plant's initial 2 MW of generation each hour that is not required by the Facilities to the City.

4. This Order is subject to the following conditions:

   (i). This Order shall be effective on the date of this Order; and

   (ii). The Commission may, pursuant to Section 99 of the Act, reconsider, vary or rescind an Order made by it; and

   (iii). Riverside will install and maintain electrical metering to the satisfaction of WKP and the City.

DATED at the City of Vancouver, in the Province of British Columbia, this day of August 2001.

BY ORDER

Peter Ostergaard
Chair