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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-188-11**

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

and

Zellstoff Celgar Limited Partnership Complaint
Regarding the Failure of FortisBC Inc. and Celgar to Complete a General Service Agreement
and FortisBC's Application of Rate Schedule 31 Demand Charges

BEFORE: M.R. Harle, Commissioner/Panel Chair
N.E. MacMurchy, Commissioner November 14, 2011
L.A. O'Hara, Commissioner

O R D E R

WHEREAS:

- A. On October 19, 2010, the British Columbia Utilities Commission (Commission) issued Order G-156-10 and accompanying Decision in FortisBC Inc.'s (FortisBC) 2009 Rate Design and Cost of Service application;
- B. On December 3, 2010, Zellstoff Celgar Limited Partnership (Celgar) applied for a reconsideration of Order G-156-10;
- C. On January 12, 2011, the Commission issued Order G-3-11 denying Celgar's reconsideration application. In its Reasons for Decision, the Commission states, in part, that it:
 - (i) expects FortisBC and Celgar will move expeditiously to conclude a general service agreement;
 - (ii) does not consider a reconsideration application to be a suitable forum to broker a settlement between a utility and one of its customers; and
 - (iii) considers that Celgar's recourse should more appropriately be by way of a complaint to the Commission in the event that it cannot reach an agreement with FortisBC;
- D. On March 25, 2011, Celgar filed a complaint against FortisBC with the Commission relating to the failure of FortisBC and Celgar to complete a general service agreement, and to FortisBC's application of Rate Schedule 31 (RS 31) demand charges (Complaint);

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- E. FortisBC responded to that part of the Complaint relating to FortisBC's application of Rate Schedule 31 demand charges by letter dated April 6, 2011, and to that part of the Complaint relating to the establishment of a general service agreement between the parties by letter dated April 15, 2011;
- F. Celgar replied to FortisBC's April 6, 2011 letter by letter dated April 13, 2011, and to FortisBC's April 15, 2011 letter by letters dated April 18 and April 26, 2011;
- G. By Order G-101-11 dated May 27, 2011, the Commission established an Initial Regulatory Timetable which provided for a written hearing process to hear the Complaint. By Order G-110-11 dated June 28, 2011, the Commission amended the Initial Regulatory Timetable. Both Celgar and FortisBC filed further evidence, which was clarified through one round of Information Requests;
- H. On May 31, 2011, FortisBC wrote to the Commission expressing concern over Celgar's refusal to pay its invoices that had been accumulating since January. The ultimate concern of FortisBC is the impact on other customers. As of June 1, 2011, Celgar was allegedly in arrears in excess of \$1.007 million. In its June 8, 2011 response, Celgar stated that in the absence of a General Service Agreement RS 31 is not an approved rate and that there is no provision in the *Utilities Commission Act* that grants authority to the Commission to require a customer to pay an amount pending approval of a rate. By letter dated July 11, 2011 the Commission Panel, while expressing concern over the alleged arrears, found that the Amended Regulatory Timetable for the proceeding would allow it to determine the Complaint in a timely way;
- I. On August 5, 2011, the Commission Panel requested the parties to address the following three issues in their Final Submissions:
- Does the criterion "subject to written agreement" in Rate Schedules 31 and 33 mean the tariff terms are subordinate to a written agreement or conditional on a written agreement? Are these tariffs invalid if a written agreement is not in place?
 - When establishing a fair and reasonable rate or a contract for Celgar, does the Commission's mandate imply that the Commission Panel must also consider rates/contracts afforded to other large scale self-generation customers in British Columbia? If the answer is yes, what sections of the *Act* would be applicable?
 - Given that the *CEA* exempted the type of Electricity Purchase Agreements BC Hydro has with its pulp mill customers from Commission oversight, is the establishment of a Generation Baseline for the customers of other regulated utilities under the jurisdiction of the provincial government or within the Commission's mandate? Please reference specific sections of the *Act* to justify your position.
- J. Celgar filed its Final Submission on August 15, 2011. FortisBC and BC Hydro filed their Final Submissions on August 22, 2011. Celgar filed its Reply Submission on August 29, 2011. BC Hydro, Celgar and FortisBC filed further submissions between August 31, 2011 and September 2, 2011;

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- K. The Commission has reviewed the Complaint, the evidence, and the submissions of Celgar, FortisBC, and BC Hydro, all as set out in the Decision issued concurrently with this Order.

NOW THEREFORE the Commission for the reasons stated in the Decision issued with this Order orders that:

1. The Complaint is denied.
2. Celgar is prohibited from accessing BC Hydro Power Purchase Agreement (PPA) Power while it is selling power.
3. Rate Schedule 31 applies to FortisBC service to Celgar.
4. FortisBC is directed to develop a rate for Celgar and other self-generators by May 31, 2012 based on RS 31 but excluding BC Hydro PPA Power from its resource stack.
5. FortisBC is directed to bill Celgar in accordance with RS 31 on an interim and refundable basis beginning March 25, 2011 and ending when the Commission approves the new rate for Celgar that excludes PPA Power from its resource stack, and/or an Agreement forwarded by the parties. Any differences between the interim rate and the rate ultimately approved by the Commission are subject to refund/recovery, with interest at the average prime rate of FortisBC's principal bank for its most recent year.
6. FortisBC is directed to establish a methodology for notionally matching sales to Celgar in service of its load when Celgar is selling power, to FortisBC's non-BC Hydro PPA components of its resource stack, and submit it to the Commission for approval by March 31, 2012.
7. Celgar is entitled to some amount of FortisBC non-BC Hydro PPA embedded cost power when selling power.
8. FortisBC is directed to consult with all classes of its customers to determine guidelines for the level of entitlement to non-BC Hydro PPA embedded cost power by eligible self-generating customers. Draft guidelines should be delivered to the Commission by March 31, 2012 and, once approved by the Commission, should be used as a basis for negotiating GSA's for customers such as Celgar.
9. FortisBC is directed to submit an application to the Commission by May 31, 2012 for a two-tier, stepped transmission rate to support conservation objectives that will reflect the long term marginal cost of power from sources other than BC Hydro PPA Power in the second tier. Any service above the amounts that customers are entitled to at embedded rates under the Re-entry provisions of the APA should be subject to the second tier rate.

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10. FortisBC is directed to design a standby rate to address Celgar's circumstances and describe how this rate takes account of its system planning criteria. It should be submitted to the Commission for approval by May 31, 2012.
11. FortisBC and Celgar are free to incorporate a Generation Baseline into a GSA and submit it to the Commission for approval.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of November 2011.

BY ORDER

Original signed by:

M.R. Harle
Commissioner/Panel Chair