

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-52-13**

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

**British Columbia Hydro and Power Authority
Northwest Transmission Line Application
Tariff Supplement No. 37 to BC Hydro Electric Tariff**

BEFORE: L.F. Kelsey, Commissioner April 10, 2013

ORDER

WHEREAS:

- A. The British Columbia Hydro and Power Authority (BC Hydro) is planning the construction of the Northwest Transmission Line (NTL). Under section 7(1) of the *Clean Energy Act* (CEA), the NTL is exempt from sections 45 to 47 and 71 of the *Utilities Commission Act* (UCA);
- B. On December 11, 2012, BC Hydro filed with the British Columbia Utilities Commission (Commission) a proposed Tariff Supplement No. 37 (TS 37) with respect to the NTL and requested that the Commission set TS 37 as a rate under section 8(2) of the CEA and section 61 of the UCA (the Application);
- C. TS 37 sets out the proposed supplemental terms and conditions applicable to certain BC Hydro customers receiving electricity service or generator interconnection service by means of the NTL;
- D. BC Hydro proposed that the Commission approve the Application without a hearing on the basis that the NTL is an exempt project under section 7(1)(a) of the CEA and falls under sections 8(1) and (2) of the CEA;
- E. Before BC Hydro filed the Application the Canadian Office and Professional Employees Union Local 378 (COPE) became aware of BC Hydro's position that the Application should be approved without a hearing and requested that the Commission provide an opportunity for Interveners to make submissions regarding the scope of the Commission's jurisdiction in relation to the Application. A similar request was also filed by the BC Sustainable Energy Association and the Sierra Club of BC (BCSEA);
- F. On December 12, 2012, the Commission issued a letter inviting submissions on the scope of the Commission's jurisdiction in relation to the Application from any interested party and allowing for a reply submission from BC Hydro. The letter was circulated to all Registered Interveners in the BC Hydro F2012-F2014 Revenue Requirements Application and the BC Hydro Large General Service Rate Application;

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- G. The Commission received submissions from COPE, BCSEA, the BC Pensioners' and Seniors' Organization *et al.* and the Ministry of Energy, Mines and Natural Gas;
- H. The Commission has reviewed the submissions and considered the applicable sections of the UCA and the CEA and determines that approval of the Application without further process is warranted.

NOW THEREFORE pursuant to sections 59-61 of the *Utilities Commission Act*, for the reasons stated in the attached Decision, the British Columbia Utilities Commission approves Tariff Supplement No. 37 as filed in the Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2013.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

British Columbia Hydro and Power Authority
Northwest Transmission Line Application
Tariff Supplement No. 37 to BC Hydro Electric Tariff

REASONS FOR DECISION

1.0 INTRODUCTION

On December 11, 2012, the British Columbia Hydro and Power Authority (BC Hydro or the Authority) filed an Application with the British Columbia Utilities Commission (Commission) under section 8(2) of the *Clean Energy Act* (CEA) and section 61 of the *Utilities Commission Act* (UCA) requesting the Commission accept new rate schedules as filed in Tariff Supplement No. 37 (the Application).

Tariff Supplement No. 37 (TS 37) is a tariff that sets out supplemental rates applicable to certain customers receiving service from BC Hydro from BC Hydro's Northwest Transmission Line (NTL) project. The NTL is a 287 kilovolt, 335 km transmission line that BC Hydro is constructing between Skeena substation and Bob Quinn Lake in northwest BC at an estimated cost of \$561 million. BC Hydro's actual costs are estimated to be \$250 million net of the Federal Government's and the anchor customer's contributions of \$130 million and \$180 million respectively.

TS 37 will allow BC Hydro to recover its actual costs of the NTL from the customers using the capacity of the line. If TS 37 did not exist, customers of the NTL would be subject to Tariff Supplement No. 6, which, if applied in this case, would not require customers to make a contribution for the project costs.

1.1 Issues

BC Hydro proposes that the Commission approve the TS 37 filing without a hearing because the NTL is an exempt project under section 7(1)(a)¹ of the CEA and therefore falls under sections 8(1) and (2) of the CEA. BC Hydro argues that the process should be modeled after the BC Hydro Feb 2, 2011 filing of Tariff Supplement No. 81 to the OATT Tariff, which the Commission approved as filed without a public hearing by Order G-20-11².

Before BC Hydro filed the Application, the Canadian the Office and Professional Employees Union Local 378 (COPE) became aware that BC Hydro intended to propose to the Commission that the Application be approved without a hearing and requested that the Commission provide an opportunity for Interveners to make

¹ Section 7.1 of the CEA reads, in part, as follows:

Exempt projects, programs, contracts and expenditures

- 7 (1) The authority is exempt from sections 45 to 47 and 71 of the *Utilities Commission Act* to the extent applicable, and from any other sections of that Act that the minister may specify by regulation, with respect to the following projects, programs, contracts and expenditures of the authority, as they may be further described by regulation:

(a) the Northwest Transmission Line, a 287 kilovolt transmission line between the Skeena substation and Bob Quinn Lake, and related facilities and contracts; ...

- (3) The commission must not exercise a power under the *Utilities Commission Act* in a way that would directly or indirectly prevent the authority from doing anything referred to in subsection (1).

² TS 81 is the Umbrella Agreement between BC Hydro and Coast Mountain Hydro Limited Partnership that includes the Forrest Kerr Project Standard Generator Interconnection Agreement, and which facilitates the interconnection to the NTL project of the Forrest Kerr Project and the anticipated output of two other generation projects.

submissions regarding the scope of the Commission's jurisdiction in relation to BC Hydro's filing of TS 37. A similar request was also filed by BC Sustainable Energy Association and the Sierra Club of BC (BCSEA).

The Commission allowed for this process and received submissions from COPE, BC Pensioners' and Seniors' Organization *et al.* (BCPSO), B.C. Sustainable Energy Association (BCSEA), and the Ministry of Energy, Mines and Natural Gas (MEMNG). COPE, BCPSO, and BCSEA disagree with BC Hydro's position and consider a hearing is warranted. MEMNG is in agreement with BC Hydro that a hearing is not necessary.

Thus, the issues at play in these comments are the interpretation of section 8 of the CEA and the applicability of sections 59-61 of the UCA in this interpretation. The Commission's determination on these matters will then determine whether BC Hydro's proposed TS 37 requires a hearing.

2.0 SECTION 8 OF THE CLEAN ENERGY ACT

Section 8 of the CEA reads as follows:

Rates

- 8 (1) In setting rates under the *Utilities Commission Act* for the authority, the commission must ensure that the rates allow the authority to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to
- (a) the achievement of electricity self-sufficiency, and
 - (b) a project, program, contract or expenditure referred to in section 7(1), except
 - (i) to the extent the expenditure is accounted for in paragraph (a), and
 - (ii) for costs, prescribed for the purposes of this section, respecting the feed-in tariff program.
- (2) Subject to subsection (1) of this section, the commission must set under the *Utilities Commission Act* a rate proposed by the authority with respect to the project referred to in section 7(1)(a) of this Act.
- (3) The commission must not, except on application by the authority, cancel, suspend or amend a rate set in accordance with subsection (2).
- (4) The authority must provide to the minister, in accordance with the regulations, an annual report comparing the electricity rates charged by the authority with electricity rates charged by public utilities in other jurisdictions in North America, including an assessment of the extent to which the authority's electricity rates continue to be competitive with those other rates.

2.1 BC Hydro and the Ministry of Energy, Mines and Natural Gas Submissions

All of the parties agree that the NTL is an exempt project under section 7(1)(a) of the CEA; however, BC Hydro's position is that section 8(2) of the CEA removes the Commission's discretion under the UCA with respect to the setting of a rate in relation to the NTL.

BC Hydro states that section 8(2) of the CEA directs the Commission to approve the rate proposed by BC Hydro subject only to the assurance that the costs of the NTL are not already recovered under the rates referred to in section 8(1). BC Hydro submits that section 8(2), as the dependent clause, acts to ensure that the Commission is not required to set a rate that would provide for the recovery of costs already recovered by the rates set under

section 8(1) (double recovery). BC Hydro states that its current rates, as set by Order G-77-12A, do not recover costs incurred with respect to the NTL as the project is not forecast to go into service until F2015 at the earliest.

MEMNG agrees with BC Hydro's interpretation and states that the intent of making section 8(2) of the CEA subject to section 8(1) was to avoid the potential for double-recovery of the costs incurred with respect to the NTL. In MEMNG's view, section 8(1) enables the Commission to refuse to set the rate proposed by BC Hydro under section 8(2) only if such a rate would allow for recovery of costs that are not already recovered in rates.

2.2 Intervener Submissions

The Interveners disagree with BC Hydro's interpretation and argue that the legislation confers upon the Commission substantive jurisdiction to approve or reject BC Hydro's tariff proposal, and a duty to exercise that jurisdiction.

COPE, BCSEA and BCPSO argue that sections 8(1) and (2) of the CEA must be considered together and that the statute clearly and plainly says that in setting rates for the NTL the Commission must ensure that the rate is sufficient to allow BC Hydro to collect sufficient revenue in each fiscal year to enable it to recover all its costs with respect to the NTL.

BCPSO states that the plain reading of section 8(2) of the CEA suggests that the rate ultimately approved by the Commission must be one the authority proposes. The Interveners interpret this to mean that the Commission cannot change the tariff proposed by the authority but it has the authority to approve the tariff as filed or deny the Application (and require BC Hydro to propose a new rate).

COPE states that to construe section 8(2) of the CEA correctly, one must treat it as subordinate to section 8(1); that is to say, section 8(1) must be satisfied in order for section 8(2) to operate.

COPE submits that section 8(1) of the CEA does not say that BC Hydro cannot over-collect for the NTL project: it says that BC Hydro cannot under-collect and that BC Hydro's rates must "allow the authority to collect sufficient revenue" to cover the costs of the project. In COPE's view section 8(1) ensures that the NTL customers are not cross-subsidized by other rate classes in order to protect BC Hydro's other ratepayers from an unjust rate burden.

COPE further argues that if BC Hydro's argument about the dependant and independent clauses is correct then absolutely nothing is added by the opening phrase of section 8(2), "Subject to subsection (1)", and there is no condition or provision attached to the obligation of the Commission to approve whatever BC Hydro serves up by way of a tariff application, no matter how large a cross-subsidy it generates.

COPE submits that section 8(1) of the CEA sets out a standard that the tariff must be sufficient to recover costs, that the proposed NTL tariff fails to meet the standard³, and that the Commission is therefore required by law to reject it. COPE seeks a process that enables the Commission and Interveners to establish if the proposed Tariff is sufficient to recover all the NTL costs.

³ There is a concern that TS 37, as currently designed does not fully recover all of the costs of the NTL project. On initial review it appears that the Tariff may only recover the costs to get the transmission line up to 298 MW's of capacity; however, BC Hydro is planning on adding a series capacitor to bring the line up to a 375 MW capacity. It is possible that the design of the Tariff as filed does not provide for the recovery of costs of the series capacitor. (Application, Attachment D, p. 10 and p. 12)

Regarding MEMNG's comments, COPE submits that the government's subsequent opinion about the meaning of legislation is irrelevant to the interpretation of the statute; otherwise we could dispense with courts and tribunals, and rely upon the government's declaration about the meaning of the Acts of the legislature.

3.0 APPLICABILITY OF SECTIONS 59 TO 61 OF THE *UTILITIES COMMISSION ACT*

BC Hydro has filed the Application under section 61 of the UCA, "Rate schedules to be filed with the commission," rather than under sections 59 and 60 which deal with the "Setting of rates" and "Discrimination in rates," respectively.

Section 61 states, in part:

"61 (1) A public utility must file with the commission, under rules the commission specifies and within the time and in the form required by the commission, schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced."

3.1 Intervener Submissions

COPE and BCPSO state that section 7(1) of the CEA does not exempt BC Hydro from sections 59 or 60 of the UCA.

COPE further argues that sections 8(2) of the CEA states the Commission must "set" a rate under the UCA and that "setting" rates is the entire process of ensuring that rates comply with the statute and authorizing those rates, not the mere mechanical act of issuing them in approval form.

BCPSO argues that while section 8(2) of the CEA requires the Commission to "set a rate proposed by the authority" the wording does not implicitly remove jurisdiction of the Commission to take into account sections 59 and 60 of the UCA.

BCPSO also relies on section 2(p) of the CEA, which reads "to ensure the commission, under the *Utilities Commission Act*, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act" and states that because TS 37 is a "domestic rate"⁴ it would be consistent with this subsection to read section 8(2) of the CEA as allowing the Commission to retain its regulatory authority with respect to the setting of rates.

COPE argues that the CEA has expressly imposed limits on the powers of the Commission, but has not prohibited the Commission from exercising a substantive decision-making authority over this tariff. COPE submits that "just" rates, as section 59 of the UCA requires, would not prohibit BC Hydro from recovering the costs of the NTL in rates – it would possibly just be in a different way.

⁴ No party has presented an argument that the NTL costs are expenditures for export.
BC Hydro TS 37

3.2 BC Hydro Submissions

BC Hydro submits that section 2(p) of the CEA does require the Commission to regulate the authority in respect to domestic rates but does not agree that this applies to section 7(1) exempt projects on the basis that section 2(p) also states “except as provided by this Act”. BC Hydro submits that considering the “Object of the Act” requires section 8(2) to be interpreted consistently with other provisions of the CEA, which intended to substantially reduce the Commission’s regulatory jurisdiction under the UCA with respect to specified utility undertakings and rates.

BC Hydro submits that the Interveners have erred by looking for context in the object of the UCA, and regulation of public utilities generally, rather than the CEA. Referring to the UCA is out of line with *Rizzo and Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27 [the leading authority on the interpretation of statute] when the “Object of the Act” to be considered is that of the CEA and not the UCA.

BC Hydro submits that the Interveners discussion of factors the Commission may take into account under section 59 and 60 of the UCA in rate setting would benefit an interpretative exercise of a provision within the UCA, but it is out of line with *Rizzo and Rizzo Shoes Ltd (Re)* when the “Object of the Act” to be considered is that of the CEA.

Commission Panel Determination

The Commission Panel acknowledges that *Rizzo and Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27, which states “...the words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act, and the intention of Parliament,” provides the framework with which to interpret statute.

Section 8(1) of the CEA applies to all projects referred to in section 7(1) of the CEA except for expenditures to achieve self-sufficiency and the feed-in tariff program, meaning it is applicable to the NTL. However, section 8(2) of the CEA applies only to section 7(1)(a) of the CEA making it relevant to the NTL exclusively.

The Commission Panel interprets section 8(1) of the CEA to mean that in setting rates for BC Hydro, the Commission must allow BC Hydro to collect sufficient revenue to enable it to recover its costs with respect to the NTL. The Panel interprets section 8(2) of the CEA to mean that the Commission must set a rate as proposed by BC Hydro for the NTL as long as there is no double recovery of costs. In the case of the TS 37 Application, the Commission Panel determines that it must set the rate as proposed by BC Hydro because the rate proposed does not result in the double recovery of costs.

As such, the Commission Panel does not agree with COPE that section 8(1) requires that NTL customers should not be cross-subsidized by other ratepayers and that BC Hydro must not under-recover its costs. In order for COPE’s “no cross-subsidization” interpretation to apply to the NTL it would also have to apply to all section 7(1) projects, programs, contracts and expenditures (except for expenditures to achieve self-sufficiency and the feed-in tariff program) including Mica Units 5 and 6, Revelstoke Unit 6, and Site C. In regards to these projects, absolute cost recovery from the customers benefiting from these projects would not be possible because, unlike in the case of the NTL, there is no discrete customer group directly benefiting from these projects. In the Commission Panel’s view, it would not be possible or practical to design tariffs for all section 7(1) projects, programs, contracts and expenditures to recover the costs exclusively from the customers benefiting from that project in a manner that would fit COPE’s interpretation of section 8(1) of the CEA.

As proposed, TS 37 allows BC Hydro to collect sufficient revenue to recover its actual costs to construct and energize the transmission line, estimated at \$250 million. Any additional costs to achieve the technical capacity of the line do not appear to be provided for in TS 37 but, if they were to occur, the additional costs would likely be borne by all ratepayers as an addition to rate base. As determined above, the Commission Panel interprets section 8(1) of the CEA to require the Commission, in setting rates generally for BC Hydro, to ensure that those rates allow BC Hydro to collect sufficient revenue to recover its costs for the NTL. This interpretation and the disagreement with COPE's cross-subsidization interpretation do not preclude BC Hydro from recovering any costs above those recovered from the direct customers from the general ratepayer.

Regarding the applicability of sections 59-60 of the UCA, BC Hydro did not apply for approval of TS 37 under sections 59 and 60 of the UCA, "Discrimination in rates" and "Setting of rates"; rather, it applied under s. 8(2) of the CEA and section 61 of the UCA, "Rate schedules to be filed with the commission". Given that section 8(2) of the CEA states "the commission must set under the *Utilities Commission Act* a rate proposed by the authority" for the NTL, the Commission Panel finds that approval of TS 37 must also occur under sections 59 and 60 of the UCA, which are the sections that relate to the setting of rates.

However, in the Commission Panel's view the specific provision of section 8(2) of the CEA (namely that the rate must be set as proposed by BC Hydro) overrides the more general provisions of sections 59 and 60 of the UCA. As a result, the Commission Panel does not agree that setting a rate under section 8(2) of the CEA requires the same review process, using the same criteria, as a rate filed solely under sections 59-60 of the UCA.

The Commission Panel determines that no further regulatory process is required and approves TS 37 as filed pursuant to sections 59-61 of the *Utilities Commission Act*.