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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-153-14**

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

and

Zellstoff Celgar Limited Partnership Application for Reconsideration of Order G-141-14
Regarding the FortisBC Inc. Application for
Stepped and Stand-By Rates for Transmission Voltage Customers

BEFORE: L.A. O'Hara, Panel Chair/Commissioner October 7, 2014

O R D E R

WHEREAS:

- A. On March 28, 2013, FortisBC Inc. (FortisBC) filed an application with the British Columbia Utilities Commission (Commission) for approval of new rates for transmission voltage customers (Rates Application) under sections 58-61 of the *Utilities Commission Act*;
- B. The Rates Application requested, among other things, approval for a conservation Stepped Rate and a Stand-by Service Rate (RS 37) for transmission voltage customers, and a determination of the retroactive application of rates to Zellstoff Celgar Limited Partnership (Celgar);
- C. The British Columbia Hydro and Power Authority, Celgar, International Forest Products Limited, the British Columbia Old Age Pensioners' and Seniors' Organization *et al* and the BC Municipal Electric Utilities registered as Interveners and Tolko Industries Ltd. registered as an Interested Party;
- D. On May 26, 2014, by Order G-67-14, the Commission denied FortisBC's request for approval of a Stepped Rate for transmission voltage customers, and declined to approve RS37 as proposed in the Application;
- E. Order G-67-14, also directed FortisBC to file a revised RS 37 incorporating the findings in the Decision to Order G-67-14, and to address certain Celgar specific matters. On June 26, 2014, in compliance with Order G-67-14, FortisBC filed for approval of a Revised Stand-by Service Rate (Revised RS 37 Filing);
- F. On June 30, 2014, by Order G-81-14, and on August 20, 2014, by Order G-118-14, the Commission established Regulatory Timetables for the review of the Revised RS 37 Filing;
- G. On September 8, 2014, in accordance with the Regulatory Timetable established by Order G-118-14, Celgar filed Intervener evidence and confidential Intervener evidence (Confidential Evidence). The Confidential Evidence relates to bypass options available to Celgar;

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- H. On September 17, 2014, FortisBC filed a letter with the Commission regarding the Confidential Evidence stating that Celgar's bypass options should be given little or no weight, or consideration in the review of the Revised RS 37 Filing because bypass options are not a proper consideration in establishing initial rates;
- I. On September 18, 2014, by Order G-141-14, Interveners were invited to file submissions, and FortisBC was provided an opportunity to reply, on the weight that should be afforded to Celgar's bypass options in the Commission's determination on the Revised RS 37 Filing. Order G-141-14 also temporarily suspended the Regulatory Timetable as established by Order G-118-14;
- J. On September 18, 2014, Celgar filed a request for reconsideration of Order G-141-14 (Reconsideration Application). The Reconsideration Application requested that the Regulatory Timetable established by Order G-118-14 be reinstated without the need for any additional process to "weight" the bypass options prior to the completion of final arguments and the closing of the record;
- K. The Commission reviewed the Reconsideration Application and by way of Order G-148-14 determined that it should proceed directly to Phase 2. The Commission established a Regulatory Timetable for its review and restricted participation to FortisBC and Interveners in the Rates Application;
- L. On September 26, 2014, in accordance with Order G-148-14, Celgar made its Phase 2 filing and adopted the September 18, 2014, Reconsideration Application to address the criteria for reconsideration;
- M. Celgar's requests, that Order G-141-14 be vacated and for the process established by Order G-118-14 be reinstated with an amended regulatory timetable;
- N. On October 1, 2014, FortisBC filed a submission which Celgar replied to on October 6, 2014; and
- O. After considering the submissions the Commission finds that the Celgar Reconsideration as requested should be allowed.

NOW THEREFORE for the Reasons attached as Appendix A to this Order, the British Columbia Utilities Commission orders as follows:

1. Order G-141-14 is rescinded.
2. The process established by Order G-118-14 for the review of the Revised RS 37 Filing will be determined by the FortisBC Inc. Stepped and Stand-By Rates for Transmission Voltage Customers proceeding Panel.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of October, 2014.

BY ORDER

Original signed by:

L.A. O'Hara
Panel Chair/Commissioner

Zellstoff Celgar Limited Partnership Application for Reconsideration of Order G-141-14
Regarding the FortisBC Inc. Application for
Stepped and Stand-By Rates for Transmission Voltage Customers

REASONS FOR DECISION

1.0 Background

On September 8, 2014, in accordance with the Regulatory Timetable established by Order G-118-14 in the FortisBC Inc. (FortisBC) Stepped and Stand-By Rates for Transmission Voltage Customers proceeding, Zellstoff Celgar Limited Partnership (Celgar) filed Intervener evidence, and additional evidence that Celgar requested confidential treatment of (Confidential Evidence). The Confidential Evidence relates to bypass options available to Celgar.

On September 17, 2014, FortisBC Inc. filed a letter with the British Columbia Utilities Commission (Commission) regarding the Confidential Evidence stating that at this point in time it does not object to such evidence being held in confidence. However, FortisBC further stated that if such evidence is to be given weight in the determination of the rates to be approved during the current regulatory process (review of the Revised RS 37 Filing), then FortisBC reserves the right to make a future submission on the appropriateness of keeping such information confidential and unavailable to FortisBC. Finally, FortisBC stated that the Celgar bypass options should be given little or no weight or consideration in the review of the Revised RS 37 Filing because bypass options are not a proper consideration in establishing initial rates. FortisBC points out that bypass options may potentially be a consideration at a time in the future, in relation to an approved stand-by rate. FortisBC explains that typically in situations where the potential for bypass exists, a customer has assessed opportunities for bypass in light of the charges resulting from the rate under which the customer currently takes service and refers to the Commission's Bypass Application Guidelines.

The Commission decided that a determination needed to be made as to the weight that should be afforded to Celgar's bypass options in the Commission's ruling on the Revised RS 37 Filing in order for FortisBC to be able to make a meaningful submission on the appropriateness of keeping the Confidential Filing unavailable. In view of that, on September 18, 2014, by Order G-141-14, the Commission invited Interveners to file submissions, and FortisBC was provided an opportunity to reply, on the weight that should be afforded to the Celgar bypass options in the Commission's determination on the Revised RS 37 Filing. Order G-141-14 also temporarily suspended the Regulatory Timetable as established by Order G-118-14.

On September 18, 2014, Celgar filed an application for reconsideration of Order G-141-14 (Reconsideration Application). Celgar requests that the Regulatory Timetable established by Order G-118-14 be reinstated without the need for any additional process to "weigh" evidence prior to the completion of final arguments and the closing of the record.

The Commission reviewed the Reconsideration Application and by way of Order G-148-14 determined that it should proceed directly to Phase 2 of the reconsideration process. Accordingly, the Commission established a Regulatory Timetable for its review and restricted participation to FortisBC and Interveners in the FortisBC Application for Stepped and Stand-By Rates for Transmission Voltage Customers.

2.0 Celgar's Reconsideration Application – Submissions Dated September 18 and 26, 2014

On September 26, 2014, in accordance with Order G-148-14, Celgar made the Phase 2 filing and adopted its submissions in the Reconsideration Application to address the criteria for reconsideration. In the original application dated September 18, 2014, Celgar states:

“The FortisBC request of the Commission, in this instance, is procedurally unfair because it seeks a ruling from the Commission regarding ‘the potential use of the information by the Commission and the weight afforded to it’ in the context of a confidentiality application. While the weight to be given to any piece of evidence is entirely within the purview of the Commission Panel, such assessment should be done at the proper time and has nothing to do with confidentiality.

The Commission's consideration of evidence and the weight to be attributed to such evidence is usually a matter for deliberation by the Commission after the record has closed, and following final arguments. However, Celgar acknowledges that there may be exceptions.”

Celgar's requests that Order G-141-14 be vacated and the process established by Order G-118-14 reinstated, albeit with an amended regulatory timetable.

Celgar submits that in only extremely unusual circumstance should the Commission make a determination with respect to “the potential use of the information by the Commission and the weight afforded to it”, before the record is closed and before final arguments. Specifically, Celgar states that the current circumstances in the review process do not justify such an extraordinary remedy. Nevertheless, Celgar submits Order G-141-14 granted such an exception to the usual regulatory practice.

By way of summary, Celgar states that the reconsideration process is defined by the question whether Order G-141-14 was procedurally unfair. Celgar submits that the Commission erred in establishing a procedure for weighing Celgar's evidence, or determining its potential use as part of an interim confidentiality process prior to final submission and without hearing Celgar's, or other Interveners' views on whether such a process should be undertaken at all.

Celgar further submits the process established in Order G-141-14 is both unfair and unnecessary. It is unfair because Celgar should have the right to lead in-scope evidence without pre-conditions as to its use or weight, and unnecessary as FortisBC will be free to argue “weight” during final submissions.

3.0 FortisBC Submission Dated October 1, 2014

On October 1, 2014, FortisBC filed its submission in the Phase 2 process; no other participants filed submissions. FortisBC submits that the Reconsideration Application should be denied as it fails to meet any of the criteria normally used in the Commission reconsideration process. For the record, FortisBC lists the criteria as follows:

1. The Commission has made an error in fact or law;
2. There has been a fundamental change in circumstances or facts since the Decision;
3. A basic principle has arisen as a result of the Decision; or
4. A new principle has arisen as a result of the Decision.

FortisBC notes that Celgar bases the Reconsideration Application on the grounds that a new principle was considered in issuing the Order that had not been raised earlier. FortisBC states it does not believe any such principle has been identified nor defined in the Reconsideration Application and submits there is no basis for the Commission to vary or reverse Order G-141-14.

To explain its rationale for filing its letter dated September 17, 2014, FortisBC first acknowledges that the scope of the review includes “Uneconomic Bypass and Alternatives Available for Celgar” based on Order G-118-14. However, FortisBC further highlights the Panel’s reasoning for that determination which was that “the Panel requires information that will enable it to compare the cost of other alternatives that are or may be available for Celgar for stand-by-service.” FortisBC then points out that the evidence Celgar filed is not relevant to determining a stand-by rate itself, but it might be relevant subsequently for a customer to seek a rate reduction based on a bypass opportunity. FortisBC states that only at that time, once a rate has been established, would there be something to which other alternatives could be compared. Accordingly, FortisBC states issues related to confidentiality could be deferred until that stage in the process when Celgar is actually seeking for a bypass rate.

FortisBC also states that its approach in the September 17, 2014 letter advanced “the most efficient and expeditious regulatory course”, which recognized the importance of concluding the review process as swiftly as possible while maintaining procedural fairness. In other words, FortisBC stated it “sought a means of balancing the expressed concerns of those involved while protecting its right to respond to the case to be met.”

FortisBC submits that discussions on weight are “certainly not unheard of at evidentiary or other stages of proceedings” and observes that even some portions of Celgar’s evidence go beyond evidence and have characteristics of a final submission.

In conclusion, FortisBC submits it sought to accommodate all interests and to adopt an approach that would allow for an expeditious and fair resolution of the proceeding whereas Celgar’s proposed approach does not address the interests of FortisBC or its other customers. Therefore, FortisBC submits Order G-141-14 should be left intact, except for adjustments for new dates required to reflect the time spent during the reconsideration process.

4.0 Celgar Reply Submission

On October 6, 2014, Celgar replied to the issues raised by FortisBC.

First, in regards to the reconsideration criteria Celgar argues that FortisBC fails to recognize that there is a distinction between criteria that applies to Phase 1 and the consideration of the merits of the application that occurs in Phase 2. Celgar submits the criteria quoted by FortisBC must be applied only to Phase 1 and given that the Commission has decided to move directly Phase 2, and hear full arguments on the merits of the application, it need not concern itself further with the reconsideration criteria.

Secondly, Celgar submits that FortisBC does not understand the real substance of Celgar’s concern. Celgar clarifies that the substance of its concern is that FortisBC endeavored in the September 17, 2014 letter, and in its submission on this application, to establish a process with respect to the Confidential Evidence that does not follow the alternatives¹ with respect to the considerations of confidential evidence set out by the Commission.

Thirdly, Celgar submits that FortisBC has not sought a reconsideration of Order G-118-14, but now appears to be requesting further clarification of Order G-118-14. In Celgar’s view a request for reconsideration of Order G-118-14 by FortisBC at this time would be unreasonable and unfair. Celgar further submits that if FortisBC requires further clarification on Order G-118-14 it must be sought in accordance with the *Administrative Tribunals Act* which Celgar goes on to argue has not been done and cannot be done at this time.

¹ Whether the filed evidence was within the scope of the proceeding and whether access to such confidential information should be provided or restricted.

Fourthly, Celgar states that there should be no doubt that the Confidential Evidence is relevant to this proceeding, and submits that until FortisBC makes a proper request for access, such access should not be considered by the Commission.

In conclusion, Celgar submits that the Commission should reinstate Order G-118-14, albeit, by necessity, with an amended regulatory timetable.

5.0 Commission Determination

The Commission Panel determines that Celgar's Reconsideration as requested should be allowed and therefore Order G-141-14 is rescinded.

The Panel accepts that Order G-141-14 was procedurally unfair by prematurely, and in the context of an application for confidentiality, requesting a determination as to the weight that should be afforded to Celgar's bypass options prior to the evidentiary record being closed and final arguments being made. While there may be exceptions as to when premature weighing of evidence can be properly done, the Panel is not persuaded that any of those exceptions apply here. The Panel agrees that it was procedurally unfair to establish a process to weigh evidence in an effort to address confidentiality concerns and access. Accordingly, the Order must be rescinded.

However, after reviewing Order G-118-14 and the attached Reasons for Decision, this Panel agrees with FortisBC that it is important to highlight the reasons for "Uneconomic Bypass and Alternatives Available for Celgar" being in the scope of review of the Revised RS 37 Filing. In the reasons for Order G-118-14, the Panel clearly indicated a desire to be informed for the purpose of setting a stand-by rate (RS 37) while not giving any indication of setting bypass rates.

This Panel also appreciates from a practical utility perspective the rationale put forward by FortisBC in its submissions dated September 17, 2014 and October 1, 2014. It makes sense that RS 37 must be set prior to any negotiations on or setting of bypass rates. To put it in another way, the task of the Panel reviewing the Revised RS 37 Filing is to look at the issue through a broader, high level lens. In setting RS 37, the Panel can certainly be informed by the publicly available bypass evidence filed by Celgar. However, this Panel is of the view that the issue of whether the Confidential Evidence would be of any value for that determination is questionable. Should Celgar proceed with bypass rate negotiations with FortisBC subsequent to a final RS 37 Decision being issued, there would be another Panel dealing with that application through a more specific and detailed bypass lens that might benefit from the Confidential Evidence. Based on this rationale, this Panel agrees that the Confidential Evidence may not be informative for the purposes of setting RS 37. Accordingly, at the present time this Panel does not hold the view that much weight could be put on the Confidential Evidence; however, that determination is to be left for the other Panel that will review all the evidence and submissions from the parties.

Finally, the Commission Panel appreciates the efforts of FortisBC to advance the most efficient and expeditious regulatory course to bring the review of the Revised RS 37 Filing to a conclusion. The Panel also notes that Celgar emphasized adherence to the Regulatory Timetable. It is most unfortunate that this reconsideration process has created a further delay in the review process. As can be seen in this case, sometimes the balance between regulatory efficiency and procedural fairness is very delicate.

The process established by Order G-118-14 for the review of the Revised RS 37 Filing will be determined by the Panel presiding over the FortisBC Stepped and Stand-By Rates for Transmission Voltage Customers proceeding.