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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-130-11**

TELEPHONE: (604) 660-4700  
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IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

The Commission's Rules for  
Electricity Energy Supply Contracts

**BEFORE:** L.F. Kelsey, Commissioner July 12, 2011

## **O R D E R**

### **WHEREAS:**

- A. The Commission has decided to update the Rules for Electricity Energy Supply Contracts that were last issued on July 20, 1993;
- B. On May 1, 2008, the BC Provincial Government issued the Utilities Commission Amendment Act, 2008, which is also known as Bill M 211-2008. The *Utilities Commission Amendment Act* amended and supplemented the *Utilities Commission Act*, R.S.B.C. 1996 c. 473;
- C. On June 3, 2010, the BC Provincial Government issued the *Clean Energy Act* [SBC] Chapter 22 which is also known as Bill 17-2010;
- D. After considering the changes to the *Utilities Commission Act* and the impact of the *Clean Energy Act*, the Commission establishes a Regulatory Timetable for public comment on the Draft Rules for Electricity Energy Supply Contracts.

**NOW THEREFORE** the Commission orders as follows:

1. In accordance with this Order, any person wishing to comment on the Draft Rules on Electricity Energy Supply Contracts attached as Appendix A must deliver written comments to the Commission by no later than Friday, August 26, 2011 at the following address:

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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2

**British Columbia Utilities Commission**

Sixth Floor, 900 Howe Street

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Telephone: (604) 660-4700

BC Toll Free: 1-800-663-1385

Facsimile: (604) 660-1102

Email: [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com)

Web: [www.bcuc.com](http://www.bcuc.com)

2. The Commission will notify all utilities regulated by it, the Interveners in the BC Hydro 2012-2014 Revenue Requirements Application, the Interveners in the FortisBC Inc 2012-2013 Revenue Requirements and Review of the ISP Application and Clean Energy BC (formerly the Independent Power Producers association of BC or IPPBC).
3. All written comments on the Draft Rules will be placed on the public record and posted to the Commission's website.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 20<sup>th</sup> day of July, 2011.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner

Attachment

**BRITISH COLUMBIA UTILITIES COMMISSION  
DRAFT RULES FOR ELECTRICITY ENERGY SUPPLY CONTRACTS**

**INTRODUCTION**

The following Rules are intended to facilitate the Commission's review of energy supply contracts and proposed energy supply contracts.

The Commission intends to review electricity supply contracts expeditiously and accept them for filing without a hearing where it has been provided with sufficient information to allow it to determine that the electricity supply contract is in the public interest. The Commission also intends to review proposed electricity supply contracts expeditiously and to approve them where it has been provided with sufficient information to allow it to determine that the proposed electricity supply contract and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions is in the public interest. Further, the Commission intends to avoid retroactive Orders.

**SUMMARY OF RELEVANT LEGISLATION**

Sections 44.1, 68 and 71 of *Utilities Commission Act (Act)* together with sections 2, 4, 6, 7 and 19 of the *Clean Energy Act (CEA)* are the principal statutory provisions relevant to the filing of an energy supply contract or a proposed energy supply contract with the Commission.

The *Act* defines an electricity supply contract (ESC) to mean:

“a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of the *Act*”<sup>1</sup>

Section 71 of the *Act* requires that with the exception of an ESC for the sale of natural gas to a person other than a public utility, a person who enters into an ESC must file a copy of the ESC with the Commission under rules and within the time the Commission specifies and provide the Commission with information the Commission considers necessary to determine whether the ESC is in the public interest.<sup>2</sup>

If the Commission, following a hearing, determines an ESC is not in the public interest, it may:

- (a) by order, declare the ESC unenforceable, either wholly or to the extent the Commission considers proper; or
- (b) make any other order it considers advisable in the circumstances.<sup>3</sup>

Under section 71 of the *Act*, different tests apply when the Commission is considering the issue of whether an ESC filed, or a proposed ESC submitted, by a public utility is in the public interest based on whether the ESC or proposed ESC is filed or submitted by BC Hydro (referred to as the authority) or a public utility other than BC Hydro<sup>4</sup>. In both cases, however, the Commission must consider British Columbia's energy objectives as

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<sup>1</sup> Act, s. 68

<sup>2</sup> Act, ss. 71(1), (1.1)

<sup>3</sup> Act, ss. 71(2),(3)

<sup>4</sup> Act, ss. 71(2.21), (2.51), (2.1) and (2.5)

defined by section 2 of the *CEA*, either in their entirety in the case of BC Hydro or those applicable in the case of other public utilities. In both cases as well, the Commission must consider section 19 of the *CEA*.

Section 44.1 of the *Act* provides for the filing of a long-term resource plan by a public utility other than BC Hydro. One of the factors that the Commission must consider in considering whether an ESC or a proposed ESC filed or submitted by a public utility other than BC Hydro is in the public interest under section 71 of the *Act* is the public utility's most recently filed long-term resource plan filed under section 44.1 of the *Act*.<sup>5</sup>

Section 4 of the *CEA* relates to approvals by the Lieutenant Governor in Council of an integrated resource plan submitted by BC Hydro for the purposes of sections 44.2(5.1), 46 (3.3) and 71 (2.21) and (2.51) of the *Act*. One of the factors that the Commission must consider and be guided by in considering whether an ESC or a proposed ESC filed or submitted by BC Hydro is in the public interest under section 71 of the *Act* is an applicable integrated resource plan approved under section 4 of the *CEA*.<sup>6</sup>

Further, section 4(3) of the *CEA* exempts BC Hydro and those who enter into an ESC as a result of a process or processes to acquire the specified annual amount of energy and capacity from clean or renewable resources from section 71 of the *Act* with respect to that ESC.

Section 6 of the *CEA*, in part, mandates certain electricity self sufficiency requirements for BC Hydro.<sup>7</sup> It also requires that a public utility, in planning in accordance with section 44.1 of the *Act* for (a) the construction or extension of generation facilities, and (b) energy purchases, consider British Columbia's energy objective to achieve electricity self sufficiency. One of the factors that the Commission must consider in considering whether an ESC or a proposed ESC filed or submitted by a public utility other than BC Hydro is in the public interest under section 71 of the *Act* is the extent to which the ESC or proposed ESC is consistent with the applicable requirements of section 6 of the *CEA*.<sup>8</sup>

Section 7(1) of the *CEA* exempts the BC Hydro projects, programs, contracts and expenditures listed in that section from certain sections of the *Act* including section 71. Section 7(2) of the *CEA* exempts persons, their successors and assigns who enter into an ESC with BC Hydro for anything referred to in section 7(1) from section 71 of the *Act* with respect to the ESC. Further, pursuant to section 7(3) of the *CEA*, the Commission must not exercise a power under the *Act* that would directly or indirectly prevent BC Hydro from doing anything listed in section 7(1).

Section 19 of the *CEA* is intended to facilitate British Columbia's energy objective to generate a least 93 percent of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity.<sup>9</sup> One of the factors that the Commission must consider in considering whether an ESC or a proposed ESC filed or submitted by a public utility or by BC Hydro is in the public interest under section 71 of the *Act* is the extent to which the ESC or proposed ESC is consistent with the applicable requirements (in the case of a public utility other than BC Hydro) and the requirements (in the case of BC Hydro) of section 19 of the *CEA*.<sup>10</sup>

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<sup>5</sup> Act, ss. 71(2.1)(b) and (2.5)(b)

<sup>6</sup> Act, ss. 71(2.21)(b) and (2.51)(b)

<sup>7</sup> CEA, s. 6(2)

<sup>8</sup> Act, ss. 71 (2.1)(c) and (2.5)(c)

<sup>9</sup> CEA, s. 2(c)

<sup>10</sup> Act, ss.71(2.1)(c),and (2.5)(c); (2.21)(c) and (2.51)(c)

## **1.0 GENERAL RULES**

- 1.1** Unless otherwise exempted from filing by the *Act*, the *CEA* or any orders or regulations made thereunder, an ESC and any amendments thereto shall be filed with the Commission pursuant to section 71 of the *Act* and its acceptance obtained.
- 1.1.1** As an alternative to filing ESCs for short-term and spot electricity purchases that are less than one month in duration prior to the delivery of electricity, a public utility may request Commission approval for a procedure whereby the public utility retains the ESCs for audit purposes and files a quarterly statement of short-term and spot electricity purchases that provides information on a composite basis on the quantity and price of such purchases confirming that they conformed to prevailing market conditions and were consistent with the buyer's supply needs. The quarterly reports must be filed within 30 days of the end of the period, and the Commission will respond as required to address any concerns with the short-term and spot electricity purchases on an exception basis. On or before April 30 of each year, the public utility must file the ESCs made during the previous year for short-term and spot electricity purchases that are less than one month in duration.
- 1.1.2** An ESC other than those identified in section 1.1.1 requires Commission acceptance for filing prior to the delivery of electricity. An ESC falling within this category shall be filed with the Commission sufficiently in advance of the commencement of sales to provide the Commission with a reasonable time to consider whether to accept the ESC for filing inclusive of any hearing that may be required to determine whether the ESC is in the public interest.
- 1.1.3** The obligation to file an ESC and provide information rests upon each party to the ESC, but for the purposes of these Rules, the Commission considers that the primary obligation to file and provide information rests with the buyer.
- 1.2** The Commission will rely on all information it considers necessary to determine whether an ESC is in the public interest. In doing so it will consider the factors referred to in section 71(2.1) and (2.2) of the *Act* where the ESC is filed by a public utility other than BC Hydro and it will consider and be guided by the factors in section 71(2.21) of the *Act* where the ESC is filed by BC Hydro.
- 1.3** A hearing on an ESC will take place where:
- (a) the Commission is unable to determine on the basis of the information filed under these Rules that the ESC is in the public interest;
  - (b) it appears to the Commission on the basis of the information filed under these Rules that the ESC may not be in the public interest.

The Commission may also hold a hearing where it receives a third party complaint about the ESC.

- 1.4** Where a public utility submits a proposed ESC to the Commission pursuant to section 71(2.3) of the *Act*, the Commission will rely on all information it considers necessary to determine whether the proposed ESC and the process the public utility intends to use to acquire power from other

persons in accordance with its terms and conditions is in the public interest and should be approved. In doing so it will consider the factors in section 71(2.5) of the *Act* where the ESC is submitted by a public utility other than BC Hydro and it will consider and be guided by the factors in section 71(2.51) of the *Act* where the proposed ESC is submitted by BC Hydro.

- 1.5** The Commission will by Order:
- (a) accept an ESC for filing;
  - (b) determine that the ESC is not in the public interest and declare the ESC unenforceable, either wholly or to the extent that the Commission considers proper or make any other order it considers advisable in the circumstances;<sup>11</sup>
  - (c) for a submission pursuant to section 71 (2.3) of the *Act*, approve or not approve the proposed ESC and the process the public utility intends to use to acquire power from other persons in accordance with its terms and conditions.<sup>12</sup>
- 1.6** Where applicable, an ESC filing pursuant to section 71(1) of the *Act* must at a minimum include the following information: duration of the ESC, rights of renewal and other special provisions, reliability considerations, price and price escalation and alternate sources of supply.
- 1.7** On or before April 30 of each year, the buyer must file, a report with the Commission providing details of any amendments (express or implied) to the terms and conditions of the ESC. For the purposes of this filing, an amendment means an alteration or revision, by modification, addition or deletion, to any term or condition of the EPA.
- 1.8** An ESC contingent on wheeling or load shaping arrangements with a public utility should be submitted with appropriate related contracts or other evidence of formal arrangements made in this regard.
- 1.9** These Rules do not apply to an ESC entered into prior to June 18, 1988 unless the ESC has been amended since that date.
- 1.10** An ESC and the information filed under section 71(1) of the *Act*, shall be made available to the public except where the Commission considers that disclosure is not in the public interest.<sup>13</sup> In order to allow the Commission to make a determination that disclosure is not in the public interest, parties to the ESC must provide written submissions in support of any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential and include in the filing a redacted version of the ESC and other information. The Commission will consider the justification provided and determine the issue of confidentiality. Where the Commission determines that disclosure of the ESC or other information is not in the public interest, it will require a redacted version of the ESC and other information to be made available to the public.

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<sup>11</sup> Act, s. 71(3)

<sup>12</sup> Act, s. 71(2.4)

<sup>13</sup> Act, s. 71(5).

## 2.0 CONTRACTUAL DEVELOPMENTS

- 2.1** For the purposes of this section a Contractual Development means any document or action that does not alter or revise, by modification, addition or deletion, any term or condition of the EPA and includes:
- (a) a deemed assignment agreement;
  - (b) an assignment and assumption agreement;
  - (c) a consent and termination agreement;
  - (d) a waiver;
  - (e) a change of name; or
  - (f) a Memorandum of Understanding.
- 2.2** On or before April 30 of each year, the buyer shall file a report with the Commission providing details of any Contractual Developments that have occurred pursuant to the terms of the ESC, in order that the form of the ESC on file with the Commission remains current.
- 2.3** Contractual Developments are filed for information purposes only and will not be subject to further Commission Orders.