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BCTC
OPEN ACCESS TRANSMISSION TARIFF EXHIBIT B2-1

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BY E-MAIL

October 9, 2008
File No.: 122699-1003

The Commission Secretary
British Columbia Utilities
Commission
Box 250, 900 Howe Street
Vancouver, BC B6Z 2N3

Dear Sir/Madam:

**Re: TransCanada Energy Ltd. Complaint Pursuant to the Provisions of the
Utilities Commission Act (B.C.)**

We are counsel to TransCanada Energy Ltd. Attached is a complaint for filing on its behalf. Would you kindly acknowledge receipt. If you require hard copies of the complaint and attachments, please let me know and we will forward copies to you.

Please address any future correspondence to me at the address herein and to Mr. Frank Karabetsos at TransCanada Energy Ltd., 450 - 1st Street S.W., Calgary, AB, T2P 5H1 or frank_karabetsos@transcanada.com. If you have any questions please call. Thank you for your attention to this matter.

Yours truly,



Lou A. Cusano

Régie de l'énergie
DOSSIER: R-3669-2008 Phase 2
DÉPOSÉE EN AUDIENCE
Date: 21/04/2011
Pièces n°: 13-218

LAC/pl

Encl.

IN THE MATTER of a Service Agreement for Long-Term Firm Capacity Point-to-Point Transmission Service dated December 18, 2006 between TransCanada Energy Ltd. and British Columbia Transmission Corp.

AND IN THE MATTER of a complaint by TransCanada Energy Ltd. to the British Columbia Utilities Commission pursuant to the provisions of the *Utilities Commission Act*, RSBC 1996, c. 473.

I. INTRODUCTION

A. Parties and Background

1. TransCanada Energy Ltd. ("TCE"), as the Transmission Customer, and British Columbia Transmission Corp. ("BCTC"), as the Transmission Provider, are parties to a Service Agreement for Long-Term Firm Capacity Point-to-Point Transmission Service dated December 18, 2006 (the "Service Agreement").
2. The pertinent terms of the Service Agreement are as follows:
 - (a) Transaction term of five years and two months, commencing on January 1, 2007 and terminating on March 1, 2012; and
 - (b) Maximum of 100 MW of capacity and 2400 MWh of energy to be transmitted per day.
3. The Service Agreement is Attachment B to the BCTC's Open Access Transmission Tariff ("OATT"), containing additional terms that govern the relationship between the parties.
4. The OATT also includes Attachment C entitled "Methodology to Assess Available Transmission Capability".
5. The Terms and Conditions of the OATT, the Service Agreement and Attachment C, are attached at Tab A. The OATT and all attachments can be accessed electronically at the following link: http://www.bctc.com/regulatory_filings/tariff/tariff_documents/open_access_transmission_tariff_%28oatt%29/open_access_tariff.htm.

6. BCTC held an Open Season from July 3 to July 31, 2007, inviting bids for additional transmission service over the British Columbia-Alberta Interconnection (the "Intertie") onto the Alberta Interconnected Electric System ("AIES").
7. In December 2007, BCTC increased the amount of firm capacity sold over the Intertie onto the AIES from 480 MW to 605 MW. On January 1, 2008, BCTC again increased the firm capacity sold over the Intertie to 785 MW.
8. The purpose of these increases, resulting in a 63 percent increase of capacity sold over the Intertie, was to allow BCTC to provide additional service agreements to various parties, including Powerex Corp. ("Powerex"), an affiliate of BCTC. Prior to November 30, 2007, BCTC firm transmission holders at the BC-Alberta point of receipt were Powerex (330 MW), TCE (100 MW), NorthPoint Energy Solutions Inc. ("NorthPoint") (50 MW). After November 30, 2007, Powerex increased its firm capacity to 430 MW, and Cargill Power Markets, LLC ("Cargill") acquired 25 MW. After January 1, 2008, Powerex increased its firm capacity to 610 MW. It is important to note that the capacity for MWs to flow to the Alberta border from BC has not changed (before or after these firm sale increases) and is not forecasted to change in the next five years. The result of these firm sale increases was that existing firm customers lost market share and new firm customers gained market share over the Intertie.
9. The AIES is not capable of accepting this increased amount of firm capacity during peak transfer periods and as a result, the firm capacity for which prior transmission customers, including TCE, have contracted has been reduced in favour of subsequent customers, predominantly Powerex. In 2007, the Alberta Electric System Operator ("AESO") was able to accept a maximum available transmission capacity ("ATC") greater than 580 MW over the Intertie from BCTC only 5% of the time over the whole year. Additionally, over the entire 2007 time horizon, the AESO was able to accept a maximum ATC greater than 518 MW only 50% of the time. In 2008, these numbers decrease further, with the AESO able to accept a maximum ATC greater than approximately 571 MW only 5% of the time and a maximum ATC greater than approximately 501 MW only 50% of the time. See the attached graph at Tab C.
10. The firm transmission capacity for which TCE had originally contracted pursuant to the express terms of the Service Agreement has been reduced by 24% when the Alberta Intertie is rated at 600 MW. This percentage is increased as the Alberta tie line ATC rating decreases. During the period of curtailment in 2008, 600 MW was the highest ATC rating for only 129

hours out of more than 6500 hours available for import. These curtailments have significantly eroded the value of TCE's existing service.

11. In addition to the terms of the OATT, the Utilities Commission Act, RSBC 1996, c. 473 ("UCA"), governs the conduct of BCTC in the circumstances. Additionally, TCE submits that Federal Energy Regulatory Commission ("FERC") precedent is instructive and serves as a guide for BCTC and the British Columbia Utilities Commission ("BCUC").¹ The BCUC maintains jurisdiction over the conduct of BCTC and, pursuant to the UCA, may order that firm capacity be prioritized.

B. Requested Relief

12. TCE requests that the BCUC exercise its jurisdiction to order BCTC to prioritize its firm capacity retroactive to December 1, 2007; i.e., to give priority to the firm capacity of TCE over those users that subsequently acquired incremental firm capacity, until such time as the appropriate system structural changes are made which would accommodate all firm capacity holders. In the alternative, TCE requests that the BCUC convene an oral hearing with a view to making an Order granting the relief TCE is hereby seeking.

II. JURISDICTION

A. Jurisdiction of the BCUC to Deal with TCE's Complaint

13. TCE submits that the jurisdiction of the BCUC, to hear and adjudicate its complaint, is grounded in the following provisions of the UCA:
 - (a) Section 72 - the BCUC can inquire into, hear and determine an application that a party constructing, maintaining, operating or controlling a public utility service has failed to do so in accordance with the UCA or any regulation, order or direction made under the UCA;
 - (b) Section 83 - upon receipt of a complaint, the BCUC can determine whether a hearing or inquiry ought to be held or whether any other action needs to be taken;

¹ See also Master Agreement between BC Hydro and BCTC at Section 4.5(b) (Nov. 12, 2003) (stating that "BCTC will at all times seek to ensure that the terms and conditions of the OATT, BCTC's business practices and governance ... subject to the approval of the Commission, meet the requirements of FERC, other regulators and other transmission operators to the extent necessary to permit continued access at market-based rates by electricity market participants in British Columbia to the United States and other Canadian electricity markets outside of British Columbia, including by BC Hydro and Powerex").

- (c) Section 25 - the BCUC can hear complaints where the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory;
 - (d) Sections 23 and 24 - the BCUC has a general supervisory power over all public utilities and can make examinations and conduct inquiries regarding certain matters;
 - (e) Sections 26 and 70 - the BCUC is specifically empowered to order that firm capacity be prioritized under the circumstances hereunder consideration; and
 - (f) the BCUC can order the requested relief or, if necessary, hold an oral hearing with a view to making an order respecting the prioritization of firm capacity, such that firm capacity of prior transmission customers, including TCE under the Service Agreement, stands in priority to all subsequent transmission customers.
14. TCE submits that BCTC's decision to increase firm capacity over the Intertie and onto the AIES triggers the jurisdiction of the BCUC as described above and allows it to make an order prioritizing firm capacity.

III. DETAILED DISCUSSION OF ISSUES AND AUTHORITIES

A. The Intertie

15. Interties are a critical and beneficial transmission element to both the AIES and BCTC systems as they allow for immediate assistance during emergency situations and foster a competitive market since power can flow in and out of connecting jurisdictions depending on need and price.
16. The BCTC System Operating Order 7T-17, effective November 30, 2007 and expiring November 29, 2011, governs the operating limits and operating procedure for the Intertie. Order 7T-17 is attached at Tab B.
17. According to Order 7T-17, the Intertie was designed to operate at an operating transfer capability of 1160 MW from British Columbia to Alberta.² This limit is based on normal system conditions with all transmission elements in service. Actual ratings on the Intertie are far

² BCTC's November 2007 System Impact Study at p.17 states that "[u]nder some conditions, the AESO System Controller may choose to accept this risk [contingencies in BC] and operate the BC-Alberta interconnection up to 1160 MW from BC to Alberta." This statement is somewhat confusing since the AESO has never accepted over 1160 MW from BC to Alberta.

below this limit. BCTC limits the BC to Alberta transfer to 850 MW, although this limit is again lowered to 785 MW in order to set aside 65 MW for Transmission Reliability Margin ("TRM"). As noted above, in 2007 the AESO was able to accept a maximum ATC greater than 580 MW over the Intertie from BCTC only 5% of the time during the entire year. (See the attached graph at Tab C.) BCTC is well aware of maximum import levels into Alberta and that its increased sale of firm transmission capacity would result in reductions to existing firm capacity holders.³

18. There are several reasons for import limits over the Intertie and onto the AIES, including the following:
 - (a) the single-contingency reliability criteria limits the operating capacity of the Intertie to the largest single capacity contributor from time to time, plus incremental capacity of up to 400 MW due to Import Load Remedial Action Schemes ("ILRAS"), when available;
 - (b) the import limit at the Intertie ensures that the AIES would not be under-voltage or under-frequency should the interconnection trip. The interconnection limit can be increased if adequate ILRAS loads are armed in combination with the Load Shed Service ("LSS"). The ATC into Alberta relies on the required amount of ILRAS loads being armed and the LSS load being on-line. When and if this is not the case, import transfer levels must be adjusted downward. Currently, the ILRAS and LSS availability in Alberta is not capable of allowing the levels of imports that may have been available five years ago, particularly in light of recent load growth in Alberta;
 - (c) the AIES has not been significantly upgraded in over 20 years; and
 - (d) the different market structures between British Columbia and Alberta also play a role in Intertie constraints. In British Columbia, transmission customers have explicit transmission rights, purchased on an hourly basis. In Alberta, transmission rights follow dispatch of generation through Power Pool bidding. Additionally, importers into Alberta are price-takers and may only submit bids of \$0.00, and are paid the after-the-fact price for the

³ See "British Columbia Transmission Corporation (BCTC) Report to British Columbia Utilities Commission (Commission) Regarding Firm Sales to Alberta and Conditional Firm Service", at p. 3, August 8, 2008: "The AESO dispatches all import energy schedules up to and above its own maximum import levels, relying on BCTC to curtail transmission in BC when Alberta's import limit is exceeded. It is only if BCTC does not curtail transmission reservations to the Alberta import levels in a particular hour that Alberta curtails energy schedules, doing so on a last-in/first-out basis."

hour. In other words, in Alberta power is accepted from importers freely but BCTC administers importers' ability to obtain power from the United States/British Columbia border into Alberta.

19. TCE acknowledges that the AESO published a request for expressions of interest ("EOI") for a replacement service that would result in an increase of import capability on the AIES to 800 MW. On July 21 2008, the AESO announced that the response to the EOI was insufficient to justify moving forward to an RFP and that it would consider what options, if any, remained for increasing import capacity using the ILRAS service. However, it should be noted that if there is any ILRAS service available to support imports into Alberta, it is under an ILRAS agreement between FortisAlberta and the AESO as amended January 11, 2007, that limits its use to system emergencies. TCE is not aware of whether this service is available today, as the agreement under which it was provided expired, nor whether or not the term of the agreement was extended.
20. TCE respectfully submits that the BCUC is required to act based on current circumstances not future possibilities. Therefore this expression of interest should not play a role in the BCUC's assessment of this Complaint.

B. Firm Capacity

21. BCTC plans and operates its transmission system in accordance with its obligations as a member of the North American Electric Reliability Council ("NERC") and its regional reliability organization ("RRO"), the Western Electricity Coordinating Council ("WECC").
22. The Intertie is designed and approved by WECC to operate at an operating transfer capability of 1160 MW under normal system conditions with all equipment in service. Despite the foregoing, as shown above, the transfer capability from British Columbia to Alberta is always lower than the WECC path rating.
23. Attachment C to the OATT provides that in determining the level of transmission capacity available to meet new transmission service requests, BCTC will exclude from the total transfer capability ("TTC") that capacity needed to reliably meet: (1) the current and reasonably forecasted load of network customers; (2) existing firm point-to-point transmission services; (3) previously received pending applications for firm point-to-point transmission service; and (4) existing contractual obligations under other tariffs, rate schedules and contracts.

24. Based on transmission requests made during the Open Season held from July 3 to July 31, 2007, BCTC performed a System Impact Study ("SIS"), published in November 2007, with a view to increasing firm ATC over the Intertie and onto the AIES. The SIS is attached at Tab D.
25. TCE submits that the SIS was founded on the erroneous assumption that the AIES could accept wheeled power without restriction.⁴ This assumption led to the incorrect conclusion that a firm TTC of 850 MW was possible without system upgrade, despite BCTC's acknowledgment elsewhere that this is not possible.⁵
26. In December 2007, BCTC began selling firm transmission service to various parties, including Powerex, in excess of what could reasonably flow across the Intertie into Alberta in light of the constraints on the AIES.
27. Prior to December 2007, BCTC sold firm transmission service up to 480 MW. When the Intertie was at full capacity, this level allowed those customers with firm capacity to transmit the total amounts as provided for in their service agreements. Any additional capacity would be sold by BCTC in shorter-term products or as non-firm transmission service.
28. As described above, the current level of firm capacity sold by BCTC exceeds the capacity that is capable of being accepted over the Intertie and onto the AIES.
29. As a result of BCTC's decision to increase sales of firm capacity over the Intertie, it is TCE's understanding that all parties that bought firm capacity prior to the increase, including TCE, have experienced *pro rata* curtailments.
30. According to the Glossary of WECC Terms and Acronyms, ATC is "[a] measure of the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses." ATC is made up of TTC, existing transmission commitments ("ETC"), capacity benefit margin ("CBM") and transmission reserve margin ("TRM").
31. Pursuant to the foregoing definition, BCTC must take its pre-existing firm transmission agreements, including the Service Agreement, into account in a determination of how much capacity is available "over and above already committed uses".

⁴ See SIS at pp. iii, 6-7.

⁵ See paragraph 17 above.

32. Because the ATC calculation is intended to determine what capacity a transmission provider has available without degrading or curtailing the transmission capacity of its existing customers, BCTC should have considered the actual transfer capability of its line, having regard to known constraints on neighbouring systems, including the AIES.
33. TCE submits that by calculating ATC based solely on its own system, BCTC knowingly curtailed and thereby degraded service to TCE. This calculation violates the above definition of "ATC" given that the current amount of firm capacity sold by BCTC interferes with the committed use of transmission capacity on its system.

C. Correspondence and Dealings between TCE and BCTC

34. Upon receipt of notice of BCTC's decision to increase firm transmission capacity, TCE has continuously communicated with BCTC with a view to reaching a resolution of the matter.
35. On December 21, 2007, TCE provided BCTC with a formal objection to BCTC's sale of additional firm capacity on the basis that the AIES was not capable of accommodating such an increase.
36. BCTC responded on January 2, 2008, acknowledging the concerns of TCE and committing to work with the AESO to increase Alberta's import capability.
37. On March 12, 2008, TCE inquired by email as to whether BCTC had any interest in discussing or negotiating any terms respecting the significant infringement of and financial harm to TCE's rights to firm transmission.
38. On April 9, 2008, BCTC responded by letter stating that it was not its practice to limit long-term ATC based on third party system constraints and that such practice would violate its OATT and FERC precedent. As discussed below, TCE submits that BCTC's position is in fact contrary to FERC precedent.
39. To satisfy the reciprocity requirements under FERC's *pro forma* Open Access Transmission Tariff pursuant to FERC Order No. 890, BCTC held a customer consultation meeting on April 30, 2008. TCE participated in this meeting.
40. On May 2, 2008, BCTC posted a proposed redlined Open Access Transmission Tariff and associated Business Practices, including a new proposed "conditional firm service", which seeks to implement the U.S.

Federal Energy Regulatory Commission's ("FERC") Order No. 890.⁶ TCE submitted initial written comments on this proposal on May 16, 2008.

41. On May 9, 2008, TCE staff met with BCTC's Director of Business Development, Customer and Strategy Development, as well as BCTC's Manager of Tariffs, Market Operations. During this meeting, BCTC acknowledged TCE's concerns, but reiterated its position regarding third party system constraints set out above. In this meeting, BCTC advised that by the end of June 2008 it would unveil a process or timetable to address TCE's specific concerns.
42. BCTC responded to customer comments through its May 21, 2008 Bulletin and subsequent responses, wherein it reiterated that it would continue to work with NERC and the North American Energy Standards Board to improve the consistency and transparency of the ATC calculation and associated business practices, and that it would hold an information session with respect to ATC methodology when the methodology was adopted by NERC. BCTC advised that such adoption was expected in September 2008.
43. On June 17, 2008, TCE submitted reply comments to BCTC's May 21, 2008 clarifications and participated in the second customer consultation meeting on the proposed implementation of FERC Order No. 890 held on July 14, 2008.
44. On June 3, 2008, BCTC applied to the BCUC to temporarily suspend the release of additional ATC at the Intertie and to suspend the Facilities Study related to that capacity until certain issues could be addressed in BCTC's next OATT application.
45. In response to the BCUC's letter inviting comments from interested parties dated June 4, 2008, on June 12, 2008, TCE provided its written comments regarding BCTC's application.
46. On June 4, 2008, TCE informed BCTC that TCE's payment of past and future accounts for those periods in which TCE's firm transmission capacity is or has been curtailed is done without prejudice to TCE's right to claim any appropriate relief.

⁶ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed Reg. 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) ("Order No. 890"); *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007) ("Order No. 890-A"), *order on reh'g and clarif.*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) ("Order No. 890-B").

47. On July 29, 2008, during a discussion between TCE and BCTC regarding BCTC's revisions to its OATT, TCE again asked that BCTC address the increased sales of capacity beginning November 2007. BCTC responded that it would not address these retroactive increases.
48. On August 8, 2008, BCTC submitted a report to the Commission regarding firm sales to Alberta and conditional firm service.
49. Copies of the above correspondence are attached at Tab E.

D. Prejudice to TCE

50. As a result of BCTC's increase of firm transmission capacity over the Intertie described above, TCE's firm capacity pursuant to the Service Agreement has been curtailed, resulting in substantial damages to TCE.
51. In December 2007, BCTC increased sales of firm capacity over the Intertie from 480 MW to 605 MW, causing the firm capacity of TCE to be consistently curtailed when the Intertie is at full capacity. On January 1, 2008, BCTC increased sales of firm capacity to 785 MW, causing TCE to suffer even deeper and more frequent curtailments when the Intertie is at full capacity.
52. From December 1, 2007 to August 26, 2008, the firm capacity TCE contracted for under the Service Agreement has been reduced by an average of 29.38%. This reduction amounts to a direct monetary loss to TCE of approximately \$3.6 million.
53. In addition to the foregoing, TCE has suffered damages for lost goodwill and reputation as a result of BCTC's decision to increase firm transmission capacity over the Intertie. For example, TCE's relationships with its counterparties due to TCE's inability to deliver contracted amounts of energy as a result of BCTC's increased sales of firm transmission over the Intertie.

E. Broader Implications and Public Interest Considerations

54. In addition to the prejudice specific to TCE, other parties with previously-existing firm transmission service contracts with BCTC have been adversely affected by the increase of firm capacity sold over the Intertie.
55. BCTC's decision to oversell firm transmission service has caused a reduction in service resulting in financial harm and lost goodwill and reputation to all parties with existing firm transmission service contracts.

56. In addition to the above impacts on other firm transmission customers, TCE submits that the future marketability of firm transmission service offered by BCTC may be impaired as a result of BCTC's conduct.
57. TCE also submits that the public interest is not advanced in permitting BCTC to reduce previously-contracted firm capacity of existing transmission customer in favour of subsequent transmission customers, especially to a subsidiary or related affiliate.
58. Given the affiliate relationship between Powerex and BCTC, TCE submits that it is in the public interest that the conduct of both in relation to the firm capacity increase be explored. It is clear that Powerex has received a benefit from BCTC's decision to increase firm capacity.

F. FERC Authorities

(i) FERC Precedent

59. TCE submits that FERC precedent is instructive and serves as a guide for BCTC and for the BCUC in a determination of issues before it.
60. TCE submits that in accordance with the foregoing analysis, BCTC ought to have taken into account the ability of the AIES to accept energy delivered at the Intertie in determining ATC prior to offering additional service agreements. BCTC's failure to do so is contrary to the governing legislative framework and previous FERC orders and decisions.
61. FERC's *pro forma* Open Access Transmission Tariff (<http://www.ferc.gov/industries/electric/indus-act/oatt-reform/order-890-B/pro-forma-open-access.pdf>) requires transmission providers to, *inter alia*, calculate the ATC on their systems before offering transmission services for sale. Section 17.5 of the BCTC's OATT is an identical provision, requiring that BCTC calculate the ATC prior to offering transmission services.
62. As discussed above, ATC is a measure of the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses, and includes constraints on neighbouring systems such as Alberta.
63. In Order No. 890 (<http://www.ferc.gov/whats-new/comm-meet/2007/021507/E-1.pdf>), FERC recognized at paragraph 210 that a lack of consistent and transparent methodology for calculating ATC gives transmission providers the ability and opportunity to unduly discriminate in the provision of open access transmission service. FERC further

concluded that "industry-wide consistency of all ATC components (TTC, ETC, CBM, and TRM) and certain data inputs and exchange, modeling assumptions, calculation frequency, and coordination of data relevant for the calculation of ATC will reduce the opportunities for the exercise of discretion that may lead to undue discrimination against unaffiliated transmission customers."

64. In Order No. 890, FERC held at paragraph 273 that transmission providers may set aside TRM for: (1) load forecast and load distribution error; (2) variations in facility loadings; (3) uncertainty in transmission system topology; (4) loop flow impact; (5) variations in generation dispatch; (6) automatic sharing of reserves; and (7) other uncertainties as identified through the NERC reliability standards development process.
65. In Order No. 693 (<http://www.ferc.gov/whats-new/comm-meet/2007/031507/E-13.pdf>), FERC adopted certain mandatory reliability standards and reiterated its concern and expectation with respect to the requirement for coordination between neighbouring transmission providers.
66. FERC more specifically articulated the requirement for coordination between neighbouring systems in Order No. 890-A at paragraph 52 (<http://www.ferc.gov/whats-new/comm-meet/2007/122007/E-1.pdf>), finding that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface.
67. In the FERC decision of *Progress Energy*, 123 FERC ¶61, 009 (April 3, 2008), attached at Tab F, *Progress Energy Inc.*, on behalf of its subsidiary *Progress Energy Florida, Inc. ("Progress")*, sought to establish TRM at each of Progress' interfaces by taking into account the facilities of other transmission providers. FERC rejected the proposed TRM on the ground that Progress failed to provide a list of assumptions and databases used to calculate TRM.
68. The FERC decision of *Arizona Public Service Co. v. Idaho Power Co.*, 91 FERC ¶ 63,004 (2000), attached at Tab G, also provides guidance with respect to the issue of whether a service provider may interfere with previously-contracted firm transmission.
69. In this decision, the Arizona Public Service Co. ("*Arizona*") filed a complaint against Idaho Power Co. ("*Idaho Power*") alleging that Idaho Power denied Arizona's request for long-term firm point-to-point transmission service of ATC over Idaho Power's Brownless East Path.

Because Idaho Power's total obligations over the path exceeded the circuits that made up the path's combined simultaneous capability to transfer power, there was a resulting constraint. Although Idaho Power originally indicated that it could provide Arizona with the requested transmission service, it later denied the service request, claiming that it would need any capacity produced to serve native load.

70. Arizona objected to this determination. In response, Idaho Power argued that no matter how motivated a utility may be to make commercial use of its system by selling transmission service to a third party, it can only do so after it has taken native load reliability into account through appropriate TRM and CBM deductions from TTC. FERC agreed, finding that the deduction was appropriate.

(ii) *Application of FERC Precedent*

71. TCE submits that given the foregoing, BCTC's actions, up to and including its June 3, 2008 Application to Temporarily Suspend the Release of Firm Available Transmission Capacity on the BC to Alberta Path (the "Filing"), are contrary to FERC precedent on several points:
- (a) The Filing states that BCTC is not permitted to limit transmission rights in response to third-party system conditions under the terms of BCTC's OATT and specifically Attachment C. However, BCTC's OATT, Attachment C and Business Practices derive ATC from TCC. Specifically, ATC is defined as TTC less TRM, less CBM, and less the sum of existing transmission commitments.⁷ BCTC itself acknowledges that in accordance with its Business Practice, it calculates TTC based on TRM.⁸
 - (b) The items set out in the BCTC Business Practice respecting the method by which BCTC will establish TRM do not conform to the FERC requirement that conditions on neighbouring systems be taken into account.
 - (c) BCTC's Business Practice is also deficient in that, contrary to the Progress decision, it does not set out in detail the manner in which TRM is calculated.
 - (d) The Filing also mischaracterizes firm point-to-point transmission service as being "firm" in the sense that it has priority over non-

⁷ See BCTC OATT Business Practices at Sec. 2.3.

⁸ See *Id.* at Sec. 2.3.1.

firm point-to-point transmission service and is not subject to curtailment for economic reasons. Pursuant to Order No. 890 at paragraph 209, the purpose of the ATC is to determine the physical transfer capability of a path. TCE submits that in determining whether there is sufficient ATC so as to offer an additional service agreement, BCTC must first determine that physical transfer capability exists.

- (e) Pursuant to Order 693 at paragraph 1040, FERC requires consistent use of assumptions underlying operational planning for short-term ATC and expansion planning for long-term ATC. TCE submits that BCTC determined the ATC without reference to the real transfer capability of the path for long-term firm service.

- 72. In light of the foregoing FERC authority, TCE submits that BCTC is required to consider the limitations at the Intertie when determining ATC and before offering additional firm service agreements.

G. Jurisdiction of BCUC to Deal with TCE's Complaint

- 73. Pursuant to section 72 of the UCA, the BCUC has the jurisdiction to inquire into, hear and determine an application that a party constructing, maintaining, operating or controlling a public utility service has failed to do so in accordance with the UCA or any regulation, order or direction made under the UCA:

72(1) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, complaining that a person constructing, maintaining, operating or controlling a public utility service or charged with a duty or power relating to that service, has done, is doing or has failed to do anything required by this Act or another general or special Act, or by a regulation, order, bylaw or direction made under any of them.

(2) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, requesting the commission to

(a) give a direction or approval which by law it may give, or

(b) approve, prohibit or require anything to which by any general or special Act, the commission's jurisdiction extends.

74. Upon receipt of a complaint, the BCUC has the jurisdiction pursuant to section 83 of the UCA to determine whether a hearing or inquiry ought to be held or whether any other action needs to be taken:

83 If a complaint is made to the commission, the commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.

75. In addition to its broad powers under section 72, section 25 of the UCA gives the BCUC the jurisdiction to hear complaints where the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory.
76. Section 23 of the UCA provides the BCUC with a general supervisory power over all public utilities:

23(1) The commission has general supervision of all public utilities and may make orders about

(a) equipment,

(b) appliances,

(c) safety devices,

(d) extension of works or systems,

(e) filing of rate schedules,

(f) reporting, and

(g) other matters it considers necessary or advisable for

(i) the safety, convenience or service of the public, or

(ii) the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

(2) Subject to this Act, the commission may make regulations requiring a public utility to conduct its operations in a way that does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public.

77. Section 24 of the UCA permits the BCUC to make examinations and conduct inquiries regarding certain matters:

24 In its supervision of public utilities, the commission must make examinations and conduct inquiries necessary to keep itself informed about

(a) the conduct of public utility business,

(b) compliance by public utilities with this Act, regulations or any other law, and

(c) any other matter in the commission's jurisdiction.

78. Section 72 of the UCA gives the BCUC the jurisdiction to inquire into, hear and determine an application made by a party with regard to an allegation that a party affiliated with a public utility acted in contravention of the UCA, its regulations or any related order, bylaw or direction.

79. TCE submits that in the event of downstream constraints, section 70 gives the BCUC the jurisdiction to order the prioritization of firm capacity if certain conditions are met:

70(1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a

public utility, to use the electricity transmission facilities of the public utility if the commission finds that

(a) the person and the public utility have failed to agree on the use of the facilities or on the conditions or compensation for their use,

(b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and

(c) the public interest requires the use of the facilities by the person.

(2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.

(3) After a hearing, the commission may, by order, vary or rescind an order made under this section.

(4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies

80. The UCA defines "public utility" as follows:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or

power to or for the public or a corporation for compensation, or

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement;

81. This definition of "public utility" applies to BCTC, but not TCE.
82. TCE submits that BCTC's failure to give TCE priority in the face of downstream constraints warrants an order by the BCUC pursuant to

section 70, requiring BCTC to prioritize TCE's firm capacity over subsequently acquired incremental firm capacity holders given that:

- (a) BCTC and TCE have failed to agree on the current use of the facilities;
- (b) The use of the facilities will not prevent BCTC or other users from performing their duties or result in any substantial detriment to their service; and
- (c) The public interest, as set out above, requires the use of the facilities by TCE as a previously-existing firm capacity customer.

83. TCE submits that section 25 of the UCA also allows the BCUC to prioritize the firm capacity of TCE over other users that subsequently acquired incremental firm capacity where the service is unreasonable, unsafe, inadequate or unreasonably discriminatory:

25 If the commission, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the commission must

- (a) determine what is reasonable, safe, adequate and fair service, and
- (b) order the utility to provide it.

84. "Service" is defined in the UCA as follows:

"service" includes

- (a) the use and accommodation provided by a public utility,
- (b) a product or commodity provided by a public utility, and
- (c) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is

engaged and for the use and accommodation of the public;

85. TCE submits that the firm capacity provided by BCTC to TCE is a "service" pursuant to subsection (c) above, therefore section 25 applies to so as to require that the BCUC, upon receipt of this Complaint, hold a hearing to determine whether the service of BCTC is unreasonable, inadequate or unreasonably discriminatory. Should the BCUC find in favour of TCE, it may make an order requiring BCTC to provide what the BCUC considers to be reasonable, adequate and fair service in the circumstances, including the prioritization of TCE's firm capacity.
86. TCE submits that BCTC's decision to increase firm capacity beyond the capabilities of the Intertie and the AIES is unreasonable, provides inadequate access for users with firm capacity contracts and unreasonably discriminates against those users who entered into firm capacity agreements before other users.
87. Section 26(a) of the UCA is also relevant to an order prioritizing firm capacity as it allows the BCUC to determine and set just and reasonable standards, classifications, rules, practices or service to be used by a public utility:

26 After a hearing held on the commission's own motion or on complaint, the commission may do one or more of the following:

(a) determine and set just and reasonable standards, classifications, rules, practices or service to be used by a public utility;

88. TCE submits that section 26(a) allows the BCUC to set standards, classifications, rules, practices or service respecting BCTC's provision of firm capacity to different users.
89. On the basis of the foregoing, TCE submits that the UCA affords the BCUC the jurisdiction to prioritize firm capacity offered by BCTC as requested in this Complaint.

IV. RELIEF REQUESTED

90. TCE requests that the BCUC exercise its jurisdiction to order BCTC to prioritize its firm capacity retroactive to December 1, 2007; i.e., to give priority to the firm capacity of TCE over those users that subsequently acquired incremental firm capacity, until such time as the appropriate

system structural changes are made which would accommodate all firm capacity holders. In the alternative, TCE requests that the BCUC convene on oral hearing with a view to making an Order granting the relief TCE is hereby seeking.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of October, 2008.

IN THE MATTER of a Service Agreement for Long-Term Firm Capacity Point-to-Point Transmission Service dated December 18, 2006 between TransCanada Energy Ltd. and British Columbia Transmission Corp.

AND IN THE MATTER of a complaint by TransCanada Energy Ltd. to the British Columbia Utilities Commission pursuant to the provisions of the *Utilities Commission Act*, RSBC 1996, c. 473.

I. INTRODUCTION

A. Parties and Background

1. TransCanada Energy Ltd. ("TCE"), as the Transmission Customer, and British Columbia Transmission Corp. ("BCTC"), as the Transmission Provider, are parties to a Service Agreement for Long-Term Firm Capacity Point-to-Point Transmission Service dated December 18, 2006 (the "Service Agreement").
2. The pertinent terms of the Service Agreement are as follows:
 - (a) Transaction term of five years and two months, commencing on January 1, 2007 and terminating on March 1, 2012; and
 - (b) Maximum of 100 MW of capacity and 2400 MWh of energy to be transmitted per day.
3. The Service Agreement is Attachment B to the BCTC's Open Access Transmission Tariff ("OATT"), containing additional terms that govern the relationship between the parties.
4. The OATT also includes Attachment C entitled "Methodology to Assess Available Transmission Capability".
5. The Terms and Conditions of the OATT, the Service Agreement and Attachment C, are attached at Tab A. The OATT and all attachments can be accessed electronically at the following link: http://www.bctc.com/regulatory_filings/tariff/tariff_documents/open_access_transmission_tariff_%28oatt%29/open_access_tariff.htm.

