



VIA EMAIL

November 18, 2016

MEM.Minister@gov.bc.ca

The Honourable Bill Bennett
Minister of Energy and Mines
PO Box 9060, Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Bennett:

Re: Powell River Energy Inc.
Application for Exemptions under section 88(3) of the *Utilities Commission Act*

On May 30, 2016, Powell River Energy Inc. (PREI) filed an application with the British Columbia Utilities Commission for exemptions pursuant to section 88(3) of the *Utilities Commission Act* (Act). The Application seeks to exempt:

- the following persons from section 71 of the Act:
 - Powell River Energy Limited Partnership (PRELP) and any Wholesale Marketing Affiliate who enters into an energy supply contract with PREI for the purchase of Surplus Power from PREI; and any subsequent sale of that Surplus Power to a public utility or a Wholesale Customer; and
 - any Wholesale Customer who purchases Surplus Power from PREI, PRELP, Brookfield Power Services Inc. (BPSI), or a Wholesale Marketing Affiliate; and
- the Power Facilities from Part 3 of the Act, except for sections 25, 38, 42 and 43.

The Commission has considered the Application and seeks the approval of the Minister of Energy and Mines to issue an order under section 88(3) based on the draft order attached.

The Commission encloses the following documents in support of the described exemptions:

- Panel Report as Appendix A
- Draft Order as Appendix B
- Application dated May 30, 2016

Documents filed in connection with this matter are available on the proceeding webpage, which can be found on our website at www.bcuc.com under "Current Applications."

Yours truly,

Original signed by Patrick Wruck

for: Laurel Ross

JTS/kbb
Enclosure

cc: Mr. Paul Wieringa
Executive Director
Ministry of Energy and Mines
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Mr. David Bursey
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Powell River Energy Inc.
An Exemption pursuant to section 88(3) of the *Utilities Commission Act*

PANEL REPORT

Commensurate with the content of the draft order included with this package, the following report elaborates on matters that led to the Commission decision in support of the application for an exemption pursuant to section 88(3) of the *Utilities Commission Act* (Act) (Application). Specifically, these reasons address matters related to the public interest in approving the exemptions sought.

The Application, filed on May 30, 2016, seeks approval, pursuant to section 88(3) of the Act, to exempt:

- the following persons from section 71 of the Act:
 - Powell River Energy Limited Partnership (PRELP) and any Wholesale Marketing Affiliate who enters into an energy supply contract with Powell River Energy Inc. (PREI) for the purchase of Surplus Power from PREI; and any subsequent sale of that Surplus Power to a public utility or a Wholesale Customer; and
 - any Wholesale Customer who purchases Surplus Power from PREI, PRELP, Brookfield Power Services Inc. (BPSI), or a Wholesale Marketing Affiliate; and
- the Power Facilities from Part 3 of the Act, except for sections 25, 38, 42 and 43.

This Application is described as necessary to extend the exemptions provided by Ministerial Order M-22-0101 beyond 2021 to support PREI's commercial interests. The Act has changed since M-22-0101 was issued in 2001, which limited the exemption that the Minister responsible can grant. In order to extend the exemptions provided by M-22-0101 under the current Act, both a section 22 Ministerial Order and a section 88(3) exemption by the Commission (approved by the Minister) are being sought concurrently. A draft exemption order is attached to the Application.¹

On June 23, 2016, by Order G-98-16 the Commission established a hearing to review the Application and ordered that PREI provide a copy of that order to affected parties, including the British Columbia Hydro and Power Authority (BC Hydro), by July 5, 2016. BC Hydro and any other affected parties were invited to provide comments on the Application and the exemptions requested directly to the Commission with a copy to PREI on or before July 14, 2016. On July 4, 2016, PREI confirmed that it provided Order G-98-16 to BC Hydro and Catalyst Paper Corporation (Catalyst).² On May 20, 2016, Catalyst filed with the Commission, a letter affirming their support for the Application and the sought for exemptions, which was incorporated in and constituted a part of the Application.³ BC Hydro also submitted comments in support of the requested exemption and noted that should PREI wish to sell electricity to any party other than Catalyst, appropriate accounting and/or scheduling arrangements would need to be agreed to between BC Hydro, PREI and Catalyst to reflect such change in circumstances.⁴ On July 19, 2016, PREI submitted reply comments confirming that it will arrange the appropriate accounting and scheduling procedures with BC Hydro as required if PREI sells surplus power to an eligible customer other than Catalyst.⁵ The Panel observes that a power sale/purchase agreement related to the Powell River Mill and the electricity generator has been in operation for an extended period of time.

¹ Exhibit B-1, Application, Schedule F, Draft Order, pp.26–30.

² Exhibit B-2, p. 1.

³ Exhibit B-1, Schedule E, Catalyst's Letter of Support, pp.25–26.

⁴ Exhibit C1-1, BC Hydro Comments.

⁵ Exhibit B-3, PREI Reply Letter, p. 1.

PREI, in its Application indicates that the requested exemptions align with the objects and purposes of the Act and the public interest for the following reasons:

- PREI, PRELP, the Wholesale Marketing Affiliate and Wholesale Customers are sophisticated commercial parties who have competitive choices. There is no imbalance of market power between the seller and purchaser. There is no need for Commission regulatory oversight.
- Requiring PREI, PRELP, any Wholesale Marketing Affiliate and Wholesale Customers to comply with section 71 and Part 3 of the Act would impose unnecessary costs and administrative burdens on them and the Commission, without any public benefit.
- Extending the exemptions that are currently granted under Order M-22-0101 will accommodate renewal of the 2016 PPA, which will allow PREI to continue to supply Catalyst beyond 2021. That local electricity supply arrangement has worked well since 2001.
- BC Hydro and its customers will benefit from a continued industrial load displacement since BC Hydro can avoid adding high marginal cost energy resources or transmission reinforcement to serve the PR Mill load that PREI currently serves.
- The 2016 PPA will allow the Power Facilities to continue to fund sustaining capital improvements.
- No other participant in the wholesale electricity market will be adversely affected by this exemption since these exemptions have been in effect since 2001.⁶

No affected parties took issue with PREI's rationale for the exemption.

Commission determination

The Panel agrees with the above rationale articulated by PREI. The Panel also notes BC Hydro's support of the Application, subject to one undertaking from PREI, to which PREI has freely agreed; the parties or their predecessors currently enjoy a section 22 exemption under Ministerial Order M-22-0101 that they wish to extend and a power sale/purchase agreement related to the PR Mill and the electricity generator has been in operation for an extended period of time. For the above reasons, the Panel is of the view that approving the Application is in the public interest.

The Commission finds that approval of the Powell River Energy Inc. request for exemptions, commensurate with the directives in the draft order, is warranted and seeks the advance approval of the Minister responsible for the administration of the *Hydro and Power Authority Act* pursuant to section 88(3) of the Act.

The Panel notes for consideration by the Minister, that PREI's proposed draft order requested the Commission to exempt the Power Facilities from Part 3 of the Act, except for sections 25, 38, 42 and 43 and included a condition that PREI is to file an annual report to the Commission. This would provide information about the Power Facilities to the Commission and would enable the Commission to act on matters related to reasonable, safe, adequate and fair service. Any action or directives by the Commission in this capacity however would need to be made to a public utility under those sections. The Minister may wish to consider this in determining the scope of exemption (all of Part 3 or Part 3 except for section 25, 38, 42 and 43) that the Minister chooses to provide to the public utility, namely PREI under section 22 of the Act.

⁶ Exhibit B-1, Application, p. 12.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of November 18, 2016.

Original signed by:

R. D. Revel
Panel Chair/Commissioner

ORDER NUMBER**G-xx-xx**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Powell River Energy Inc.
An Exemption pursuant to section 88(3) of the *Utilities Commission Act*

BEFORE:

R. D. Revel, Panel Chair / Commissioner
K. A. Keilty, Commissioner
R. I. Mason, Commissioner

on [Date]

DRAFT ORDER**WHEREAS:**

A. In this order,

1. "2016 PPA" means the power purchase agreement between PREI and Catalyst, effective 1 February 2016 and as amended from time to time, under which PREI sells electricity to Catalyst for use at the PR Mill.
2. "2016 Section 22 Exemption Regulation" means the exemption regulation issued by the Minister under section 22 of the Act on [date] exempting PREI, Brookfield Power, and Catalyst from Part 3 and section 71 of the Act according to the terms and conditions set out in that regulation.
3. "Act" means the *Utilities Commission Act*.
4. "Affiliate" has the same meaning as "affiliate" in the British Columbia *Business Corporations Act*.
5. "Application" means the application filed by PREI with the Commission on May 30, 2016 requesting exemptions under section 88 of the Act.
6. "Brookfield Power" means Brookfield Power Services Inc. and its successors and assigns.
7. "Catalyst" means Catalyst Paper Corporation and its successors and assigns.
8. "Commission" means the British Columbia Utilities Commission.
9. "Energy Supply Contract" has the same meaning as "energy supply contract" under the Act.
10. "Ministerial Order M-22-0101" means Ministerial Order M-22-0101 issued by the Minister of Employment and Investment in 2001 under section 22 of the Act.
11. "Power Facilities" means the hydroelectric generation, transmission and distribution facilities together with all related equipment, works and undertakings owned or operated by PREI in the

vicinity of Powell River, British Columbia, for the generation, transmission and distribution of electricity, and includes:

- two hydroelectric generating stations – Powell and Lois – each with two generating units, and
- all related dams, powerhouses, turbines, generators, spill gates, penstocks, electrical equipment, power lines, and other associated structures and equipment.

12. “Public Utility” has the same meaning as “public utility” under the Act.

13. “PR Mill” means the Catalyst's pulp and paper mill in the vicinity of Powell River, British Columbia.

14. “PREI” means Powell River Energy Inc. and its successors and assigns.

15. “PRELP” means Powell River Energy Limited Partnership and its successors and assigns.

16. “Responsible Minister” means the minister responsible for the administration of the *Hydro and Power Authority Act*.

17. “Surplus Power” means electricity generated by PREI at the Power Facilities that from time to time may not be needed or used at the PR Mill.

18. “Wholesale Customer” means a participant in the wholesale electricity market who is not a public utility subject to Part 3 of the Act.

19. “Wholesale Marketing Affiliate” means an Affiliate of PREI to whom PREI will sell Surplus Power for resale by the Affiliate into the wholesale electricity market;

- B. Ministerial Order M-22-0101 exempts PREI, certain entities affiliated with PREI, Catalyst, the Power Facilities and the purchasers of Surplus Power from regulation under the Act in relation to the generation, transmission and sale of electricity by PREI to Catalyst for use by the PR Mill, or for the sale of Surplus Power to Public Utilities or to Wholesale Customers;
- C. Under the 2016 PPA, PREI agrees to sell the electricity generated at the Power Facilities to Catalyst for use at the PR Mill, according to the terms and conditions of the 2016 PPA. When Catalyst does not take the PREI generation at the PR Mill, PREI may sell the Surplus Power to Wholesale Customers or public utilities;
- D. PREI wishes to extend the exemptions granted by Ministerial Order M-22-0101:
1. to accommodate the renewal of the 2016 PPA beyond 31 January 2021, and
 2. to allow PREI to sell Surplus Power to a Wholesale Marketing Affiliate, in place of PRELP for resale into the wholesale electricity market;
- E. On May 31, 2016, PREI applied under section 88(3) of the Act for exemptions from section 71 and Part 3 of the Act;
- F. Concurrent with the Application, PREI has asked the Minister to issue new exemptions under section 22 of the Act to exempt PREI, Brookfield Power (the operator of the Power Facilities), and Catalyst from Part 3 and section 71 of the Act, to extend certain exemptions granted by Ministerial Order M-22-0101;
- G. The exemptions under section 88(3) of the Act are necessary to complement the new exemptions being sought by the Minister under section 22 which only apply to public utilities and not to persons that are not public utilities, so all the exemptions granted by Ministerial Order M-22-0101 may continue;

- H. On June 23, 2016, by Order G-98-16 the Commission established a hearing to review the Application with a regulatory timetable for comments from BC Hydro and other potentially affected parties;
- I. On July 13, 2016, BC Hydro submitted comments in support of the requested exemption. BC Hydro noted that should PREI wish to sell to any party other than Catalyst, appropriate accounting and/or scheduling arrangements would need to be agreed to as between BC Hydro, PREI and Catalyst to reflect such change in circumstances;
- J. On July 19, 2016, PREI submitted reply comments confirming that it will arrange the appropriate accounting and scheduling procedures with BC Hydro, as required, if PREI sells surplus power to an eligible customer other than Catalyst;
- K. Section 88(3) of the Act states the Commission may, on conditions it considers advisable, with the advance approval of the Minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, equipment or facilities from the application of all or any provisions of the Act;
- L. The Commission has considered the Application and is satisfied that an order, under section 88(3) of the Act, granting the exemptions set out in this order is in the public interest; and
- M. By [Minister's document] dated [date], the Responsible Minister granted advance approval to the Commission to grant the exemptions set out in this order.

NOW THEREFORE the British Columbia Utilities Commission orders as follows:

- 1. Pursuant to section 88(3) of the *Utilities Commission Act*, the Commission, having been granted advance approval by the Minister responsible for the administration of the *Hydro and Power Authority Act*, exempts:
 - a. the following persons from section 71 of the Act:
 - i. PRELP and any Wholesale Marketing Affiliate who enters into an Energy Supply Contract with PREI for
 - 1. the purchase of Surplus Power from Powell River Energy Inc.; and
 - 2. any subsequent sale of that Surplus Power to a Public Utility or a Wholesale Customer;
 - ii. any Wholesale Customer who purchases Surplus Power from Powell River Energy Inc., Powell River Energy Limited Partnership, Brookfield Power Services Inc., or a Wholesale Marketing Affiliate; and
 - b. the Power Facilities from Part 3 of the Act, except for sections 25, 38, 42 and 43.
- 2. The exemption granted pursuant to this order will be in effect from the effective date of the Ministerial Order replacing M-22-0101 and for the duration of the Ministerial Order replacing M-22-0101.

DATED at the City of Vancouver, in the Province of British Columbia, this [XX] day of [Month Year].

BY ORDER

R. D. Revel
Commissioner