

M 026

MINISTER'S ORDER NO. M-22-0101**IN THE MATTER OF THE SALE, PURCHASE OR PRODUCTION OF A POWER SERVICE AND AN EXEMPTION FROM THE PROVISIONS OF PART 3 AND SECTION 71 OF THE UTILITIES COMMISSION ACT, R.S.B.C. 1996, c. 473, AS AMENDED ("THE ACT")**

WHEREAS, Pacifica Power Co. Ltd. ("Powerco"), a wholly-owned subsidiary of Pacifica Papers Inc. ("Pacifica"), owns hydroelectric generation and transmission facilities (the "Power Facilities") with a combined installed nominal capacity of 82 MW on Powell River and at Lois Lake, British Columbia which are used to generate electricity for the use by Pacifica in its pulp and paper mill (the "Mill") at Powell River, British Columbia;

AND WHEREAS, Pacifica has agreed to sell (the "Sale") an interest in the Power Facilities to Powell River Energy Inc. ("PREI"), a company incorporated under the laws of Canada, through a sale of Powerco and subsequent reorganization, following which the Power Facilities will be owned by PREI and the economic interest in PREI will be owned on an approximately even basis, as between Pacifica and Powell River Energy Trust ("PRET");

AND WHEREAS, PREI and Pacifica, as general partner for and on behalf of Pacifica Papers Co. Limited Partnership ("PPLP"), is entering into a power purchase agreement which sets forth and governs the terms and conditions of the purchase and sale of energy generated by the Power Facilities from PREI to Pacifica (the "Power Purchase Agreement");

AND WHEREAS, Maclaren Energy Management Services Inc. ("Maclaren") will operate and manage the Power Facilities on behalf of PREI;

AND WHEREAS, Pacifica, PREI and PRET have formed Powell River Energy Limited Partnership (the "Partnership") for the purpose of marketing and selling to public utilities in the Province subject to Part 3 of the Act electricity generated by PREI which from time to time may not be needed or used in the Mill operations, subject to the circumstances set forth in sections 2(b) to (d), (e)iii (f) and 3 ("Surplus Power");

AND WHEREAS, the Partnership may also market and sell Surplus Power to participants in the wholesale electricity market who are not public utilities subject to Part 3 of the Act ("Wholesale Customers");

AND WHEREAS, PREI will produce a power service as defined in section 22 (1) of the Act, namely electricity generated at the Power Facilities (the "Power Service"), and will sell

- (a) the Power Service to Pacifica for the continued use by Pacifica, on its own behalf and for and on behalf of PLPP, in the Mill, and
- (b) Surplus Power, directly or indirectly through the Partnership, to public utilities in the Province or to Wholesale Customers;

AND WHEREAS the Sale will permit Pacifica to invest approximately \$100,000,000 in the Mill over the term of the Order;

AND WHEREAS following the Sale, PREI will invest in excess of \$35,000,000 in the Power Facilities over the term of the Order;

AND WHEREAS, pursuant to section 22 of the Act, the Minister of Employment and Investment (the "Minister") is empowered to exempt persons who produce, purchase or sell a power service and their equipment, facilities, plant, project or system from any or all of the provisions of Part 3 and section 71 of the Act;

AND WHEREAS, the Minister considers that it is in the public interest, among other things, to facilitate the investments mentioned above, that the exemptions in this Order be made;

NOW THEREFORE, the Minister pursuant to section 22 of the Act, hereby makes the following Order:

1 The following exemptions are made:

- (a) PREI, Maclaren and the Power Facilities are exempt from Part 3 of the Act, in respect of the production and sale of
 - (i) the Power Service to any of Pacifica and PPLP, and their affiliates, successors or assigns that acquire a controlling interest in the Mill (collectively with Pacifica and PPLP, the "Pacifica Parties") for use in the Mill;
 - (ii) Surplus Power to public utilities and Wholesale Customers, and
 - (iii) Surplus Power to the Partnership for marketing and sale to public utilities and to Wholesale Customers;
- (b) the following persons are exempt from section 71 of the Act:
 - (i) PREI in respect of an energy supply contract, as defined in section 68 of the Act, for the sale of the Power Service to any of the Pacifica Parties, the Partnership and for the sale of Surplus Power to Wholesale Customers;
 - (ii) any of the Pacifica Parties, and the Partnership, in respect of an energy supply contract, as defined in section 68 of the Act, for the purchase of the Power Service from PREI, and Wholesale Customers for the purchase of Surplus Power from PREI;
 - (iii) the Partnership in respect of an energy supply contract, as defined in section 68 of the Act, for the sale of the Surplus Power to Wholesale Customers;
 - (iv) Wholesale Customers in respect of an energy supply contract, as defined in section 68 of the Act, for the purchase of Surplus Power from the Partnership or from PREI.

- 2 The exemptions in this Order are subject to the condition that the Minister, at the Minister's sole discretion, may rescind all or part of the exemptions referred to in section 1, if any of the following requirements are contravened:
- (a) without the consent of the Minister, which consent will not be unreasonably withheld,
 - (i) PREI will not dispose of the Power Facilities or any interest in them, and
 - (ii) Pacifica will not dispose of its 50 percent economic interest or of its majority shareholding interest in PREI to any person other than: (1) PRET pursuant to the terms of the agreements between Pacifica, PREI and PRET; or (2) in conjunction with the sale of the Mill to a third party purchaser that assumes Pacifica's obligations under the Power Purchase Agreement,

except in connection with the granting of security to lenders and the realization of such security by such lenders;
 - (b) during the ten-year period commencing at the date of this Order,
 - (i) PREI will sell all of the available energy generated by the Power Facilities to the Pacifica Parties, and
 - (ii) the Pacifica Parties will make all of that energy available for the use of the Mill,

unless such energy is not needed in the ordinary course of the Mill's business;
 - (c) during the ten-year period commencing as at the date of this Order, the Pacifica Parties will purchase, for the use of the Mill all of the available energy generated by the Power Facilities from PREI, and will purchase the energy in priority to purchasing energy from B.C. Hydro, unless such energy is not needed in the ordinary course of the Mill's business;
 - (d) during the ten year period commencing at the date of this Order, the electricity generated by the Power Facilities will be made available to the Mill before any of the generated electricity from the Power Facilities is made available to others, unless such energy is not needed in the ordinary course of the Mill's business;
 - (e) notwithstanding paragraphs (b) to (d), the written arrangements under which the Power Service will be made available to the Pacifica Parties for the use of the Mill
 - (i) will be substantially the same as those provided to the Ministry of Employment and Investment before the signing of this Order,
 - (ii) will be supplied by Pacifica to the Minister as soon as practicable after they have been entered into, and

- (iii) will not be materially amended or terminated, during the ten-year period commencing at the date of this Order, without the prior written consent of the Minister, which consent will not be unreasonably withheld, but the consent of the Minister is not required if the amendment or termination of the written arrangements is due to
 - (A) a bona fide event of default in respect of a party's obligations thereunder, which has not been cured in accordance with the written arrangements between the parties, by the defaulting party, acting in good faith and using all commercially reasonable efforts to do so, or any party acting on its behalf or under its authority, or
 - (B) the occurrence of an act of insolvency or bankruptcy by a party to the written arrangements unless there is a reasonable possibility that a receiver will continue to operate the Mill or the Power Facilities, and take and pay for, or provide the Power Service according to the written arrangements and provide reasonable security for payment for the Power Service;
- (f) subject to the occurrence of any events referred to in section 2 (e) (iii) (A) and (B), commencing on the 10th anniversary of this Order, PREI will offer annually for sale to the Pacific Parties, before offering it to anyone else, the energy generated by the Power Facilities for the use of the Mill, on terms and conditions reasonably consistent with those in the written arrangements in place during the first ten years of this Order and at rates equal to the greater of
 - (i) \$34.95 per megawatt-hour plus 20 percent of the annual increase in the Consumer Price Index for Canada calculated annually from the date of this Order;
 - (ii) rates then in effect and available to comparable large industrial users of power within British Columbia and including those offered by any utility whose service area includes the Mill.

3 The requirements in section 2(b) to (d) and (f) are subject to

- (a) events of force majeure, which do not include lack of finances, loss of markets, inability to perform due to the financial condition of exempted persons, or labour disturbances;
- (b) temporary suspensions or reductions due to labour disturbances and commercial contingencies related to the purchase and sale of energy as set forth in the written arrangements in respect thereof between the parties provided that such arrangements do not defeat the over all intent of section 2 (b) to (d), and
- (c) the occurrence of any events referred to in section 2 (e) (iii) (A) and (B).

- 4 . Without prejudice to FRET's ability to apply to extend, renew or modify this Order, the exemptions in this Order end, and this Order is rescinded, 20 years following the date of this Order.

Ordered this 30th day of January, 2001


Minister of Employment and Investment