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Subject: FortisBC Inc. Advanced Metering Infrastructure CPCN - Procedural Conference in
Kelowna, November 8, 2012 (PC) [BLC-ACTIVE.FID1476786]

Kaslo

FORTISBC INC ADVANCED METERING INFRASTRUCTURE CPCN
EXHIBIT C13-4

Tuesday, October 30

Attention: Erica M. Hamilton, Commission Secretary

This is to advise that due to other commitments related to my role as an elected official I cannot attend the procedural conference in person or by phone. That said I wish to make a written statement to the Commission with regard the manner in which these proceedings are conducted.

In appearing before the Commission, I do so solely in my own right as the Electoral Area Director for D, Regional District Central Kootenay (RDCK), and make no claim to represent the RDCK Board, other than myself in my capacity as an elected local government official. I am also currently President of the Association of Kootenay Boundary Local Governments and a member of the Executive Board of the Union of British Columbia Municipalities, but again nothing should be construed that I am representing either of those bodies.

Summary of Observations

- 1. These proceedings should be suspended until such time as FortisBC has provided the Commission with the ability to consider a comprehensive wired smart meter option**
- 2. All of the proceedings in this hearing should contain an oral component so as to maximize the ability of lay persons to make their views, concerns, questions and opinions known to the Commission panel.**

How Should We Proceed in These Hearings?

It should be observed to the Commission at the outset that the decision to install smart meters and the decision about which technology to use for their operation has been mishandled in British Columbia. In fact the government of British Columbia, BC Hydro and Industry Canada have acted much like Pontius Pilot did as Roman Prefect of Judaea - with benign indifference to what citizens and customers alike thought and wanted.

The Intervenor Request No 1 of citizen Keith Miles speaks volumes to the abject failure of the provincial government, the largest public electrical utility, and of Industry Canada, the federal agency responsible for smart meters, to recognize that we supposedly live in a democracy, where policy should be thoroughly discussed before implementation.

Consequently my first recommendation to the Commission is that:

1. These proceedings should be suspended until such time as FortisBC has provided the Commission with the ability to consider a comprehensive wired smart meter option

One of the saddest aspects of this whole debate, to date, is that few of those currently concerned or opposed to FortisBC's application would have got involved if FortisBC had proposed a wired option. On January 19th, 2012, when representatives of Citizens for Safe Technology appeared before the Board of the Regional District Central Kootenay, in answer to the question would you be here if FortisBC was proposing a wired option, their answer was no.

Therefore the single largest issue before the Commission panel is not whether FortisBC should be installing smart meters, but should they be wired or wireless.

Consequently FortisBC has to date only supplied part of the information required by the Commission for it to make an informed decision. Further, FortisBC, by only supplying part of the information required for a thorough discussion of the options that should be before the Commission panel, has also equally skewed the public discussion on the usefulness of smart meter technology.

As noted elsewhere in this submission, BC Hydro's corporate behaviour around installation of wireless smart meters is not one that should be emulated in a democracy. The Commission is therefore urged to pause and consider, in light of the considerable opposition to wireless, the possibility that it might save us all a lot of time and money if FortisBC placed a wired option on the table for equal consideration, before we proceed any further.

Having a wired option before the Commission panel will, in my opinion, allow the Commission to better deduce which option FortisBC customers are more readily willing to accept and adopt. With only the wireless option on the table, the focus is more likely to become the technology used to collect smart meter data, not whether it is useful to the customer and the utility to have smart meters.

In this context the Commission is advised to move with extreme caution. No FortisBC customer has ever objected to FortisBC collecting consumption data on use of electricity, including that collected with digital meters. There is, however, a huge perceptual change in switching from electro-mechanical meters to wireless ones that emit electro-magnetic radiation. Rightly or wrongly some citizens and customers view these latter meters as a danger to their persons - both health wise and as a potential invasion of privacy.

In the normal course of marketplace consumer transactions in this society, if a consumer does not like a product he or she can simply avoid coming into contact with it by not purchasing it. In the situation of FortisBC and the sale of electricity, in this instance, the consumer cannot avoid purchasing electricity from FortisBC who holds a monopoly across its service area. The consumer does not have the option of purchasing electricity from a utility that uses a wired smart meter as, to date, no other utility offering that option exists within FortisBC's service area.

In this context the Commission, as a representative of the state, and responsible for upholding a citizen's constitutional rights, has a "Duty to Care". One way the Commission can exercise that responsibility is for it to require FortisBC to provide a wired option in its application package.

The second recommendation to the Commission is that:

2. All of the proceedings in this hearing should contain an oral component so as to maximize the ability of lay persons to make their views, concerns, questions and opinions known to the Commission panel

The Commission has, wisely, already determined that it will hold three oral community input sessions. Further, to date I am aware of only six intervenors submitting written questions to FortisBC, beyond the Commission itself, in the first round of Intervenor Requests. This in my opinion underscores the fact that, while many citizens have applied to participate in discussing FortisBC's application, few like Mr Keith Miles fully understand the quasi-judicial process by which the Commission now operates.

In *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER 233) Lord Hewart, CJ stated:

"...a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

In a hearing where more lay people plan to participate than usual, where thousands of citizens have already been denied the right to appear before their Commission to discuss installation of smart meters by BC Hydro, the Commission panel should err on the side of the broadest possible commitment to democratic participation, as a means to redress the inherent injustice of the overall situation concerning smart meter installation in British Columbia.

It is for this reason, primarily, that I continue to raise the strongest possible objection to the British Columbia Energy Association's proposal that matters of an operational and financial nature be dealt with solely by written process. I do not believe that issues of health, security and privacy can be neatly separated from operations and finance. Further, I would also refer the Commission to FortisBC's responses to the Commission's own questions 31.2 to (page 50, line 11) and 33.1 (page 59, line 11) filed as **B6: Responses to Commission Information Request No 1**. Here I simply note that FortisBC's oral discussion with myself and the then President of Kaslo informationNetwork (KiN) on August 7, 2012 was far more instructive and forthright than the written responses to the Commission.

In this regard I take strong exception to Ms Herbst's letter to the Commission dated October 30th, 2012, in which she tries to limit even further the matters that may be discussed at the oral hearing, especially as with regard point 3 on page 2 of her letter. I cannot reiterate enough to the Commission their need to understand that, so far, this is the only proceeding allowing citizens of British Columbia to question the introduction of smart meters. I therefore wish to retain the right to orally cross-examine FortisBC on any aspect of the information they have so far provided and/or may provide in answers to the Intervenor Requests for Information.

In conclusion I believe that it would be a huge error in judgment for the Commission to restrict any aspect of these proceedings to a written submission-only process. At minimum, and in the interests of a need for a thorough discussion, I submit that any registered intervenor should be guaranteed the right to orally cross examine FortisBC on any aspect of their application in these proceedings.

A Duty to Care

In a democracy those elected to represent and those appointed to regulate should care about the opinions of those citizens they serve. Part 2, Division 1, sections 8 (3) g, h (including 64 (a), (b) and (j)), i and l, and 9 (a) and (d) of the BC Community Charter grants local governments the fundamental power to make bylaws, regulate, prohibit and impose requirements, including under concurrent jurisdiction, in matters of "public health" and with regard to "buildings and other structures".

The specific jurisdiction for a "Duty to Care" for an Electoral Area Director can be found under Division 4 Health, Health Protection Authority at Section 523 of the Local Government Act and under Part 21 Division 2 - Regional District Building Regulations section 694 (1) (b)...*"electrical wiring and equipment"* and *"appliances and accessories of every kind"*, and the power to act can be found at (1.1)(d)...*"A Board may exercise powers conferred by subsection (1) for the following purposes"...the health, safety or protection of persons or property"*.

Protection in this context means the right of citizens to protect themselves by the powers granted them under the Constitution Act, 1982, Canadian Charter of Rights and Freedoms, from a threat that is perceived or real, and the "Duty of Care" of an elected politician is to ensure that that "protection" is upheld. Specifically sections 2(d), 7 and 15 of the Constitution Act, 1982, Canadian Charter of Rights and Freedoms, grant a citizen and customer of FortisBC the right to determine whether or not they want a smart meter on their property, and as such I, as an elected official, have a duty and responsibility to uphold that right.

Further, in *Spraytech and Chemlawn versus the Town of Hudson Quebec*, in which the town, by bylaw, had banned several forms of lawn and garden pesticides from being used to kill insects and weeds, the Supreme Court of Canada upheld the town's right to implement such a bylaw by a vote of 9-0. Neither Hudson nor the Supreme Court sought to ban outright certain chemicals, however the Supreme Court agreed that Hudson had the inherent jurisdiction to regulate where and for what purposes the pesticides could be used:

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1878/index.do>

If no zoning bylaw has to date been forthcoming in Area D of the Regional District Central Kootenay, it is in part due to the fact that BC Hydro in particular, and FortisBC to a lesser extent, have been less than forthcoming in explaining how exactly, beyond installing wireless smart meters, they plan to collect the data. The absence of an ability to cross examine FortisBC orally on their particular operational plans will make drafting any future regulatory bylaw that much harder.

An Explanation as to Why Local Government has Become Involved in the Smart Meter Discussion

"No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time" Winston Churchill, House of Commons, November 11, 1947.

I was born in 1950, five years after a Second World War that saw some fifty million combatants and civilians lose their lives. At the tender age of thirteen I advised my father, a life long conservative, that I wished to be involved in politics...something I have been active in for approximately fifty years since. At the time he advised me that, in a democracy, if one did not defend a person's right to speak, in fact if one did not defend the right of persons opposed to your point of view to speak, then it was likely you no longer lived in a democracy.

In this regard, while I personally support installation of smart meters, I find the notion of a utility corporation being granted permission to install wireless smart meters on the properties of their customers, against those customers' expressed permission and will, repugnant. If Canada and British Columbia are a democracy, the very idea of nearly all the permanent and temporary residents of a community in Area D petitioning BC Hydro in opposition to installation of smart meters, and that public crown corporation subsequently refusing to come to that community and discuss the concerns of those citizens, should be disturbing to the Commission panel.

Likewise, when in the spring of 2012 BC Hydro and FortisBC were invited to make a presentation to the Association of Kootenay Boundary Local Governments (AKBLG), BC Hydro's refusal to appear in a joint panel, and subsequent refusal to meet with the then President of KiN, showed an unwillingness to genuinely discuss the technical problems associated with installation of smart meters, such as disruption of Wi-Fi services using 900 MHz. Further, while BC Hydro did present separately at the AKBLG AGM and later meet with the BC Broadband Association in Vancouver, requests by the President of KiN to meet and discuss at a field operational level resulted in myself as an elected official having to threaten BC Hydro with intervention by a lawyer before that organization would come to the table.

Clearly, when the lead corporation engaged in installing smart meters in British Columbia shows no desire to be held accountable for any disruptions that might or might not be occurring due to that installation, someone in government or a regulatory agency responsible for exercising oversight needs to intervene. To

the contrary, when my own sister-in-law in Victoria saw her electric utility bill double after a smart meter was hooked up, and no one at the corporation was willing to discuss redress, I again had to intervene and find someone who would speak to her. After the meter was changed out her bill then halved.

Beyond the arrogance of not being prepared to deal appropriately with customers, it appears that there is almost an air of "you cannot touch me so I do not have to listen to you". There is in my opinion a complete breakdown in the understanding that more than a few customers see a huge difference between collecting data by electro-mechanical means and that which emits electromagnetic radiation. Rightly or wrongly, a cross-section of the electrical consuming public do not want these devices on their properties, or installed at all.

Based on these observations and other experiences, delegates to the Union of BC Municipalities AGM on Friday, September 30th, 2011, held in Vancouver, endorsed a resolution 55.4% in favour to 44.6% against, as follows:

Therefore Be It Resolved that a moratorium be placed on the mandatory installation of wireless smart meters until the major issues and problems identified regarding wireless smart meters are independently assessed and acceptable alternatives can be made available at no added cost to the consumer.

Then on January 19th, 2012 the RDCK Board had two delegations appear before it - Cliff Paluck and Helga and Ken Auld of Citizens for Safe Technology, and Blair Weston, Community and Aboriginal Relations Manager for FortisBC (see http://www.rdck.bc.ca/publications/boardmeetings/2012-01-19_BRD_Minutes.pdf, pages 627 and 628). Later in that same meeting the Board passed resolution 16/12:

"In consideration that FortisBC is the hydro service provider for a significant portion of the RDCK population, we recommend FortisBC commit to proactively engage in public discussion on potential impacts of the AMI program, including impacts of specific technologies considered, and that they commit to outline a clear "opt out" policy, especially as it relates to health concerns".

Subsequently, on April 12th, 2012, the Board passed resolution 325/12 (see <http://www.rdck.bc.ca/publications/boardmeetings/2012-04-12-BRD-Minutes.pdf>, page 21), by a vote of 15 to 3, with 2 Directors absent, which stated:

Whereas the Kootenay Lake and Lardeau Valley portion of Electoral Area 'D' Official Community Plan Bylaw No. 996, 2009 (http://rdck.bc.ca/publications/bylaws/1996_Kootenay%20Lake%20Lardeau%20Valley%20OCP.pdf), under 8.0 Commercial and Industrial, General Commercial (C1) policies, 9, page 18 and 19 states that the Board:

Supports the right of communities to be informed of any changes to the electromagnetic spectrum, by all operators of cell phone towers, wi-fi systems, microwave systems, etc, that create man made electromagnetic fields; and also supports the right of communities to propose zoning designations that apply to these operations.

Be It Resolved that the Board supports the right of any property owner not to have smart metres or any smart metre adjunct equipment placed on their property without their express written permission, especially as it relates to health issues and concerns.

Here I want the Commission to observe that the RDCK Board established with the Province of British Columbia, well prior to the debate over installation of wireless smart meters, the right of the Board to enact zoning designations for equipment "*that create man made electromagnetic fields*" - at least inside that portion of Area D covered by the Official Community Plan. Previous to adoption of the Official Community Plan (OCP), OCPs and land use bylaws were sent out for provincial review. Currently, under arrangement with the province, some such bylaws are now adopted without provincial review.

Sadly the atmosphere into which FortisBC has brought its application to install smart meters has been badly tainted by a previous decision to prevent both citizens and customers from discussing smart meter policy and installation - a decision that attempted to exclude the Commission from the process altogether. In conclusion I simply note that the Commission has, beyond the duty and responsibility to care, an opportunity to show how corporations should be held accountable for their actions in a democratic society. I would also like to further observe that none of us have anything to fear, and certainly should not try to restrict ordinary citizens in the exercising of their democratic rights to orally cross examine a corporation on a proposed application to install what some now view as a questionable piece of technology on their property.

Respectfully submitted,
Andy Shadrack
Director Area D
Regional District Central Kootenay