



David M. Aaron

January 18, 2013

BY EMAIL

BC Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC V6Z 2N3

Attention: Erica Hamilton, Commission Secretary

Dear Sirs / Mesdames:

**Re: FortisBC Inc. Application for a Certificate of Public Convenience and
Necessity for the Advanced Metering Infrastructure Project
~ Project No.3698682**

In accordance with the Commission's letter dated January 11, 2013, we provide the following comments in response to Fortis' submissions dated January 16, 2013. Within this context, we also make a submission advancing our position in favour of adjustments to the present regulatory timetable.

By our letter of December 21, 2012, we requested an opportunity to put a third round of information requests to Fortis regarding information about meter emissions comparable to that provided in an Itron document authored by Jeff Gilbert. We characterized the information request as follows:

With respect to the enclosed paper by Jeff Gilbert on behalf of Itron, how do the emissions from the meters described by Mr. Gilbert in this paper compare to the emissions from the proposed Fortis AMI meters? Will Fortis please provide the same information about the proposed AMI meters as is provided with respect to the meters described by Mr. Gilbert?

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Fortis responds by emphasizing that “...the evidentiary record already includes substantial technical information about the meters proposed to be used for the AMI Project.” Fortis refers to specific documents on record containing “such information”.

Fortis’ submissions obscure the fact that the evidentiary record does not contain the information sought by way of the opposed information request. We appreciate that substantial technical information about the meters has been put on record. However, there is further information that we require that has not yet been provided.

The information that CSTS seeks in relation to the Gilbert paper is relevant to the issues in these proceedings as it relates to Itron’s own analysis of meter emission characteristics and the impact of same on human health.

CSTS is entitled to request information about the characteristics of meter emissions, whether or not that information relates to material that has been put on the record at the initiative of Fortis.

Between December 8, 2012, (when the prospective information request was proposed) and now, Fortis could have provided answered the above-referenced questions, thereby eliminating the need for a third round of information requests on the topic. As such, Fortis’ argument regarding delay is disingenuous.

In any case, we submit that a third round of information requests will be necessary due to the fact that Fortis has said that it will be making “a further evidentiary filing” next week.

Regardless of how “brief” the prospective filing will be, all parties have a legitimate expectation that the totality of evidence put on record by Fortis will be subject to information requests. This legitimate expectation has been established as a result of the past practice of the Commission as applied in the instant proceedings. As such, the *doctrine of reasonable expectations* demands that a third round of information requests be ordered.

The doctrine of reasonable expectations is a recognized component of the common law duty of procedural fairness. See, for example:

- *Baker v. Canada (Min. of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 26;
- *Old St. Boniface Residents Assn. v. Winnipeg (City)*, [1990] 3 SCR 1170; and

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- *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525.

In *Moreau-Berube v. New Brunswick (Judicial Council)* [2002] 1 SCR 249 at paragraph 78, Arbour J. stated for the Court:

The doctrine of reasonable expectations does not create substantive rights, and does not fetter the discretion of a statutory decision-maker. Rather, it operates as a component of procedural fairness, and finds application when a party affected by an administrative decision can establish a legitimate expectation that a certain procedure would be followed: *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525, at p. 557; *Baker*, supra, at para. 26. The doctrine can give rise to a right to make representations, a right to be consulted or perhaps, if circumstances require, more extensive procedural rights. But it does not otherwise fetter the discretion of a statutory decision-maker in order to mandate any particular result: see D. Shapiro, *Legitimate Expectation and its Application to Canadian Immigration Law* (1992), 8 J.L. & Social Pol'y 282, at p. 297.

Legitimate expectations with respect to procedural matters “may arise either from express promise or from existence of past practice”: *Attaran v. UBC* (1998), 4 Admin LR (3d) 44 (BCSC) at paragraph 62.

As stated by Edwards J. in *Pharmaceutical Manufacturers Assn. of Canada v. BC (Attorney General)* (1996), 135 DLR (4th) 587 (SC) at para. 140:

Decisions which would not otherwise attract the requirements of procedural fairness may do so where the decision-maker has created a legitimate expectation that no decision will be taken without the affected party being heard. That expectation may arise from the express promise or the regular practice of the decision-maker to consider the submissions of the affected party before making the decision.

The procedural diversion, by way of Fortis’ anticipated evidentiary filing next week, is attributable to Fortis’ failure to include in its application comprehensive particulars concerning the PLC option. The exigency of an evidentiary filing at this stage should not shield Fortis from the usual course of information requests in response to material filed.

We submit that the present regulatory timetable, including the intervener deadline of January 24, 2013, needs to be adjusted given that interveners may wish to adduce evidence that relates to or is affected by:

1. Documents subject to pending determinations with respect to confidentiality;
2. Fortis' further evidentiary filing; and
3. Information that Fortis' may provide in response to a third round of information requests.

It would not be fair to hold the interveners to an evidentiary filing deadline at a time where the record of the applicant's materials remains to be finalized and completed.

The cost of these proceedings to all parties is dwarfed in comparison to the potential health and environmental costs associated with the implementation of the proposed meter program in the absence of due process and regulatory oversight.

All of which is respectfully submitted.

Yours truly,



DAVID M. AARON

cc: clients
cc: FortisBC Inc.
cc: Interested parties