

William J. Andrews

Barrister & Solicitor

1958 Parkside Lane, North Vancouver, BC, Canada, V7G 1X5
Phone: 604-924-0921, Fax: 604-924-0918, Email: wjandrews@shaw.ca

May 1, 2013

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
Attn: Erica Hamilton, Commission Secretary
By Web Posting

Dear Madam:

Re: FortisBC Inc. (FBC, Application for a Certificate of Public Convenience and Necessity (CPCN) for the Advanced Metering Infrastructure (AMI) Project
Project No. 698682; Orders G-105-12, G-12-13, G-51-13, G-6213;
Evidentiary Record, Comment

This is on behalf of the B.C. Sustainable Energy Association and Sierra Club British Columbia in response to the Commission's April 22, 2013 letter to David Aaron, counsel for the intervenor Citizens for Safe Technology Society (CSTS). The Commission's letter invites submissions by May 2, 2013 from parties that support the reopening of the record.

By letter of April 19, 2013, counsel for CSTS asked the Commission to reopen the evidentiary record to allow admission into evidence of Monograph 102¹ of the International Agency for Research on Cancer ("Report") issued April 19, 2013. He also asked for an extension of the timetable for submissions.

In its April 22, 2013 letter, the Commission Panel denied CSTS's request to amend the regulatory timetable. The Panel stated that it "is, however, prepared to allow written submissions [1] on the reopening of the record to admit the Report into evidence and [2] to allow for the filing of Supplemental Submissions, if the Report is admitted into evidence."

1. Reopening the record to allow admission of the IARC Report

BCSEA-SCBC support reopening the record to admit the IARC Report into evidence.

The IARC Report is the full report that corresponds to a short article published in *Lancet* (Baan *et al.* (2011)²) announcing and providing summary reasons for a decision by IARC to categorize non-ionizing radiofrequency (RF) radiation in the 30 kHz to 300 GHz range as possibly carcinogenic to humans, Group 2B.

¹ *Non-ionizing Radiation, Part 2: Radiofrequency Electromagnetic Fields, volume 102*, IARC Working Group on the Evaluation of Carcinogenic Risks to Humans (2011: Lyon, France)
<http://monographs.iarc.fr/ENG/Monographs/vol102/mono102.pdf>

² Baan R, Grosse Y, Lauby-Secretan B, El Ghissassi F, Bouvard V, Benbrahim-Tallaa L, Guha N, Islami F, Galichet L, Straif K. Carcinogenicity of radiofrequency electromagnetic fields. *Lancet Oncol* 12: 624-626, 2011.

The fact of the Group 2B categorization was discussed in the *Exponent Report*³ and has been the subject of considerable written and oral attention throughout the proceeding. At the time of the oral hearing, and at the time of the closing of the evidentiary record, the “full” IARC Report had not been published or publicly released. However, publication and public release was anticipated to occur at some undefined point in the future.⁴ As noted above, the IARC Report was in fact published and released publicly on April 19, 2013 (i.e., after the closure of the evidentiary record).

The author has been unable to locate in the evidence a copy of the summary report on the IARC decision (Baan *et al.* (2011)).⁵ A URL for the summary⁶ is provided in Exhibit B-26, FBC IR 4.19 to CSTS. If indeed the summary is not in the evidentiary record, then it is acknowledged that an argument could be made that the full report need not be in the evidentiary record either. However, BCSEA-SCBC submit that presumably the contents of the summary were well known to the expert witnesses who addressed the topic, including FortisBC’s witness Dr. Bailey, and were the basis for their evidence on this topic.

It should be noted that although the IARC Report was published in 2013 it is apparently based on the data (i.e., reports) available to the IARC Working Group on the Evaluation of Carcinogenic Risks to Humans (Working Group) that met in 2011 in Lyon, France.⁷ The authors of the full Report state: “A summary of the findings in the present volume has appeared in *The Lancet Oncology* (Baan *et al.*, 2011).”⁸ Accordingly, it appears that the IARC Report represents an elaboration upon the summary report that was at least relied upon by the expert witnesses during the proceeding, if not included in the evidentiary record.⁹ As such, the IARC Report provides evidence regarding the Working Group’s rationale for its decision in 2011 to categorize RF as being in Group 2B.

The Commission has authority to reopen the evidentiary record and admit the IARC Report pursuant to the Commission’s general authority to control its own procedures. It is acknowledged that the Commission’s usual practice would be not to reopen the evidentiary record. However, it is submitted that special circumstances that warrant admission of the IARC Report.

There has been a high level of public interest in the present CPCN application. Much of the input the Commission has received from members of the public has focused on the possibility of adverse health impacts from implementation of the AMI Project. In turn, much of the input about health concerns has referred to the 2011 IARC categorization of RF as being in Group 2B. While

³ Exhibit B-1, Appendix C-5, pp.13-14, pdf pp.538-539 of 747.

⁴ T3:536 lines 7-15.

⁵ During the proceeding, the author relied on a copy of the summary that came from the Internet.

⁶ The full text of the IARC summary is on the Internet at <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2811%2970147-4/fulltext>.

⁷ See the Cataloguing in Publication Data on pdf p.4 of the Report.

⁸ IARC Report, p.33.

⁹ In the alternative, if the Commission determines as a fact that the IARC Report refers to data that post-dates the IARC Working Group’s deliberations that were summarized in Baan *et al.* (2011), then BCSEA-SCBC concede that the Report should not be admitted into evidence because that would amount to reopening the whole proceeding, contrary to the requirement for finality.

there is abundant evidence on the record already concerning the Group 2B categorization, the IARC Report provides the best currently available evidence of the IARC Working Group's rationale for that categorization. It is submitted that public confidence in the Commission's forthcoming decision on the CPCN application would be bolstered if the Commission's consideration of the Group 2B categorization of RF was informed by the best evidence of the Working Group's rationale for that categorization.

Further, it is submitted that the IARC Report does not introduce any new issues into the proceeding; it is merely an elaboration of the rationale already provided by Baan, *et al*, 2011.

2. Allowing for the filing of Supplemental Submissions, if the Report is admitted into evidence

If the IARC Report is allowed into evidence, then it is submitted that there should be an opportunity for supplemental written submissions regarding the Report, with a deadline for submissions from intervenors followed by a deadline for a reply submission from FortisBC.

It is submitted that the deadline for supplemental submissions by intervenors should follow shortly after the Panel's decision regarding this application. The parties have had access to the IARC Report since April 19, 2013, and the IARC Report merely elaborates on Baan, *et al*, 2011, to which the parties have had access since at least February 8, 2013 (when Exhibit B-26 was posted on the Commission's website). The intervenor submissions should be limited to the IARC Report. BCSEA-SCBC take no position on the timing of a reply submission from FortisBC, having not yet heard FortisBC's views on that point.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



Barrister & Solicitor

cc. Distribution List by email