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June 26, 2017

File No.: 240148.00825/18407

Patrick Wruck

Commission Secretary and Manager,
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Dear Mr. Wruck:

Re: SSL-Sustainable Services Ltd. (“SSL”)
SSL Geothermal System Status as a Public Utility under the *Utilities*
Commission Act

As you know, we act for FortisBC Energy Inc. (“FEI”) in this proceeding.

FEI provides this submission in response to the correspondence of the City of Langford (Ex. C1-9) in accordance with the Commission’s timetable established for submissions on further regulatory process in this proceeding (Ex. A-14).

FEI repeats its view expressed in its June 19, 2017 correspondence that a “shotgun” approach to argument strikes a sensible balance in these circumstances and that no oral argument is necessary or warranted. As set out below, FEI does not support the regulatory process and timetable proposed by the City of Langford.

In its correspondence, the City of Langford proposed a regulatory timetable that:

- Contemplates SSL and the City of Langford staggering its argument (including reply), with a separation of 3 weeks between filings;
- Is unclear as to when FEI and other interveners would file their argument; and

- Does not afford FEI or other interveners an opportunity of reply.

The City of Langford and SSL Should File Argument Concurrently

FEI submits that the Commission should reject the City of Langford's recommendation that it and SSL be permitted to file argument separately (and separate from the interveners), with a three week gap between filings.

As the City of Langford notes in its June 16, 2017 submission, the City and SSL share the common goal in this proceeding of resisting the regulation of SSL as a public utility.¹ FEI also observes that the City of Langford has seemingly adopted the lead role thus far in this proceeding in advancing that position. There is no suggestion from either SSL or the City of Langford that the City requires time to address or respond to SSL argument, nor has any other reason been put forward as to why separate filing dates are proposed. Given this, FEI submits that SSL and the City of Langford should be required to file their argument and reply at the same time.

It is Not clear when the City of Langford Proposes Intervenors File Written Argument

In the text of its submission, the City of Langford proposes that "those taking the position that SSL is a utility regulated under the *Act*, ... submit their Written Argument prior to the parties opposing that position".² However, this proposal does not seem to be reflected in the proposed timetable, in which the City proposes that intervenors file written argument following the filing of argument by SSL and the City of Langford.

The "Shotgun" Approach Affords all Parties a Fair Opportunity to Make Argument and Reply

FEI agrees with the City of Langford that this is not a "typical" proceeding where an applicant seeks a particular order or orders from the Commission. This is a Commission initiated proceeding convened to canvass the legal issues arising from a complaint.

A regulatory timetable that permits all parties the opportunity of argument and reply, filed concurrently, ensures that each party is afforded a fair opportunity to advance its position and address any competing arguments that may be advanced by other parties. Not only will this approach ensure "that SSL and the City, as two parties directly affected by the current proceeding, have the opportunity to address the legal issues as they

¹ Exhibit C1-9, City of Langford Round 1 Submission, page 1.

² Ibid.

develop.”³ - as the City of Langford framed it - but also affords the same opportunity to the other parties that have an interest in this proceeding, including FEI.

At the Procedural Conference, Commission counsel raised a concern with the “shotgun” approach leading to the potential for new positions to be advanced in parties’ reply argument and the possibility that SSL and/or the City of Langford could be prejudiced were that to occur.⁴ In FEI’s view, that risk is low. Each party in this proceeding is sophisticated and represented by counsel that undoubtedly understand the proper scope of a reply argument. Moreover, at the Procedural Conference SSL indicated its comfort with that potential risk, noting that were a party to raise new issues in its reply argument that warranted a response, it would be open to a party to seek leave to file sur-reply to that.⁵

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[original signed by]

David Both

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³ Ibid.

⁴ Procedural Conference Transcript, pp. 29-30.

⁵ Ibid, p. 31.