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Via Electronic Submission

February 11, 2020

British Columbia Utilities Commission
ATTN: Mr. Patrick Wruck, Commission Secretary
900 Howe Street
Sixth Floor
Vancouver, British Columbia
V6Z 2N3

**RE: Project No. 1599020
Application of CB Powerline Ltd. for an exemption from Part 3 of the *Utilities Commission Act*, pursuant to section 88(3)
Reply Argument to FortisBC Inc.**

Dear Mr. Wruck,

Pinter Electrical Consulting Inc., on behalf of CB Powerline Ltd. ("**CBP**") and in accordance with the regulatory timetable established by the British Columbia Utilities Commission ("**BCUC**"), writes to provide its Reply Argument to FortisBC Inc.'s ("**Fortis**") Final Argument.

CBP thanks Fortis for its concluding remarks and for its support to bring electricity to the community of Cosens Bay and to do so with a "light-handed" approach to regulation. However, CBP categorically rejects Fortis' opinion that it has not demonstrated justification for the exemption. To the contrary, in its original application and supporting Information Request ("**IR**") process, CBP has continually and reasonably demonstrated, for example:

- all alternatives to CBP undertaking the Project have been practicably exhausted (and with no practicable alternative available to CBP, it has diligently moved the Project forward, investing a considerable amount (>\$300,000) of its Buyers' money).
- the need for the exemption (although CBP may look like a "traditional" utility to some, it is not – it is a purely pass-through (i.e., not for profit) vehicle for actual input costs on behalf of its Buyers, all of whom are both the customers and shareholders bound by contract).
- implications for this small, community owned and funded Project should an exemption not be granted.
- the Project is in the public interest, namely the public that is represented by the landowners of Cosens Bay (the very landowners Fortis notes it does not want to stand in the way of receiving electrical service).

The balance of our reply is divided into two themes: underpinning points and normal course activities – each of which is addressed below.

A. Underpinning Points

In CBP's view many of the underpinning points Fortis relied upon fail to support its arguments and thus require a clarifying reply from CBP. Rather than rebut each individual point, CBP believes the following examples are demonstrative of the failings:

- claim #1: insufficient basis exists to determine whether CBP has adequate resources and expertise to operate in a manner that is safe, adequate and fair at just and reasonable rates.
 - reply:
 - i) CBP has experienced industry representatives on its current Board, these officers/directors will stand for re-election, there is a large interdisciplinary talent pool available to CBP, and officers/directors will be supported with third-party expertise as required (e.g., IR response Nos 20.3, 20.6, 20.6.1, and 29.1¹).
 - ii) Community consultation was undertaken in development of the Shareholders' Agreement and Power Purchase Agreement ("**PPA**") (e.g., IR response Nos 2.14, 2.14.1, 7.1.1.ii and 7.1.1.iii) – agreements that have been reasonably shown to be fair, just, reasonable, and non-discriminatory (e.g., IR response Nos 2.6.1, 22.3, and 36.8).
 - iii) Design and construction of the Project will follow all applicable codes, regulations, and standards and employ good engineering practice (e.g., IR response Nos 9.1, 29.3, and 31.1). All design drawings and studies issued for construction will be sealed by a professional engineer registered in the Province of British Columbia.
 - iv) Operation of the Project will follow all applicable codes, regulations, and standards, and employ good operating practice, including safety and emergency response (e.g., IR response Nos 19.2, 21.4, 21.4.2, and 21.6.2).
- claim #2: CBP has declined to adequately address its refusal of a secondary metering alternative proposed by BCH.
 - reply: to be clear, there is no regulatory requirement for BCH to install secondary meters on CBP's owned and operated system. Consequently, no detailed rationale needs to be given by CBP. Nevertheless, CBP did provide reasonable rationale for not selecting this design option (e.g., IR response Nos 22.1 and 32.1.2).

Further, as shown in Attachment 4.10, BCH simply presented this as an unsolicited design option for CBP's consideration. BCH also noted that this option would, as a first consideration, require good cell reception for smart metering communication (Attachment 4.10). Anyone who has spent time in Cosens Bay can directly attest to the area's spotty cellular coverage (e.g., due to inclement weather or terrain).
- claim #3: CBP has yet to finalize a location to take service from BCH.

¹ Examples throughout are provided simply as examples and are therefore non-exhaustive of the total information presented by CBP during the BCUC process. For the information recorded in its totality, please refer to the original application, the IRs, closing argument, and reply arguments.

- reply: the Project's point of connection with BCH was first identified to BCH on October 03, 2019; it has not changed since this time (e.g., IR response Nos. 9.3 and 22.4 and Attachment 9.3, drawing no. 103-5).
- claim #4: CBP does not yet have the necessary property rights on the west shore of Kalamalka Lake.
 - reply: while CBP believes this so-called "gap" is not material to its request for exemption, it is noted on the west shore for its portion of the Project (i.e., excluding BCH's works), that: i) private land agreements are in place (e.g., IR response No 10.2 and 22.4); ii) an application to the ALC has been submitted and review is ongoing; and iii) the Board of Directors of the Regional District of North Okanagan passed a Resolution authorizing and directing it to enter into a crossing agreement with CBP (e.g., IR response Nos. 7.1.1ii).
- claim #5: CBP's proposal remains insufficiently developed to assess whether it would meet its [BCH] technical standards – in this instance the reference is to the submarine cable.
 - reply: as BCH is neither constructing nor operating this submarine cable, there is no requirement for CBP to match BCH's internal design criteria. Nevertheless, CBP has designed the submarine cable to: i) meet all applicable codes and regulations; and ii) have the equivalent operating life (i.e., 40 years), which by extension includes general maintainability, as BCH (e.g., IR response Nos. 9.1, 29.3, and 31.1).
- claim #6: a CBP director would serve as the mediator of dispute resolution (a conflict of interest).
 - reply: We agree with Fortis that should their claim have been correct a conflict of interest would clearly exist. However, in actuality, this is not the case.

IR 2.11 is a specific response to BCUC's question of whom would be responsible for the dispute resolution process *on behalf of CBP*. Within this context, and not the context purported by Fortis (i.e., that a CBP officer/director would be the mediator), there is no conflict of interest because a third-party mediator is specifically provided for in the PPA. For continued reference, Section 13 (a) of the PPA is abundantly clear on the point of mediator selection by the parties (i.e., CBP and Buyer): "...a mediator whom they choose together."
- claim #7: dispute resolution process imposes an obligation on the complainant for 50% of the cost of mediation (a barrier to advancing a complaint).
 - reply: the equal cost share approach was adopted by CBP following consultation with the community and is correctly noted by Fortis. However, the same section of the PPA also notes (Section 13 (a)), "...the Parties shall meet for at least three (3) hours with a mediator whom they choose together." Given the material investment in the Project by the Buyers, mediation may be as short as three hours, and the fact that mediation costs are shared (and not one-sided), no reasonable barrier exists to advancing a legitimate complaint.

Further, based upon consultation, the community felt that ensuring the complainant has some skin in the game (and again noting that the cost of three hours of mediation would not be overly expensive), would be in the best interests of both parties given Buyers and shareholders are one and the same.

- claim #8: result of the dispute resolution process is a non-binding outcome (promoting uncertainty).
 - reply: correct only insofar as mediation is concerned; which is not an uncommon outcome throughout Canada. However, as shown in IR response No. 2.11.1 and Section 13 (b) of the PPA, should either party (i.e., Buyers and/or CBP) believe the mediation outcome has a materially adverse effect on them, they have the option of recourse through the courts. This stepped-process provides not only clarity for the parties, but fairness and certainty in the process.
- claim #9: that a dispute resolution mechanism exists is CBP's acknowledgement that interests may not always be aligned between CBP and its Buyers and that the means by which those disputes are to be resolved needs to act as a meaningful counterbalance to the natural monopoly CBP would enjoy.
 - reply: as shown above, Fortis has mis-understood the actual dispute resolution process and that mis-understanding disassembles their summary argument. Further, it's CBP's belief that most commercial agreements throughout Canada have a dispute resolution process. This is a common place, and common sense, practice – it is not an implicit or explicit acknowledgement or evidence of monopoly power.

Insofar as Fortis' claims about CBP enjoying a monopoly, CBP reasonably structured itself to avoid this perceived potential (e.g., IR response Nos. 3.1 and 20.1.1). At the end of the day, this is a small, community owned and operated corporation, serving only the landowners of the community of Cosens Bay (i.e., its shareholders).
- Claim #10: examples provided by CBP (i.e., Barrier, Yoho, McNair, and Tyson Creek) do not provide validation for the approach CBP proposes – in this context justification for an unconditional exemption from all of Part 3 of the *Utilities Commission Act* ("**UCA**").
 - reply: the examples provided by CBP in IR response No. 20.5 were strictly within the context of other corporations using the same or similar management approach as CBP (i.e., utilizing third-party expertise in support of its duly elected officers/directors).

Contrary to the claim, these examples were not provided for justification of an unconditional exemption of UCA, Part 3. Had CBP sought to provide examples in this specific regard, it may have made reference to the BCUC exemptions provided to the Cove Power Society, Templeton Limited Partnership, or other like exemptions; exemptions that establish precedent for cases akin to CBP.

The differences between Synex Energy Resources (i.e., a for-profit, publicly-traded hydropower developer and operator) and CBP (i.e., a not-for-profit, community funded, owned, and operated single purpose corporation) should be immediately evident (e.g., CBP owns no generation, but singularly would own a medium voltage distribution system where its customers and shareholders are one and the same). Attempting to draw a meaningful comparison to CBP is neither a practical nor functional argument.

CBP's position, with regard to qualified exemption, remains as set out in its response to IR Nos. 1.1, 1.1.1, 1.1.2, and 2.11.3.

B. Normal Course Activities

It is CBP's view that the other issues raised by Fortis (e.g., the need to design backfeed protection, consideration of unexploded ordinance, and any applicable permit from Technical Safety BC) are taken into consideration as a matter of normal project execution works; and are neither material nor germane to the request for exemption. Nevertheless, where these issues are actually relevant to the Project, CBP is moving forward on them (e.g., IR response Nos. 24.1, 27.1, 35.1, and 35.3.1).

Further and so fairly unbeknownst to Fortis: i) BCH has accepted the most recent revision of the design put forward by CBP that includes backfeed protection for customer owned and operated distributed generation; ii) in consultation with Technical Safety BC, they have indicated they are not aware of any applicable permit as public utilities are exempt from the British Columbia Electrical Code; and iii) the Ministry of Transportation and Infrastructure issued CBP a conditional permit for works within its right-of-way.

Summary

CBP submits that:

- i) most of the underpinning points Fortis relied upon to support its arguments have been shown to be not exact and/or not relevant to the exemption sought, and
- ii) the remaining points are normal course project execution works that CBP is progressing with as applicable to the Project,

Fortis' arguments in support of a Certificate of Public Convenience and Necessity, rather than an exemption, have been reasonably shown to be deficient and in some cases not relevant to the matter at hand. Further, and similarly to the exemption precedents noted herein, CBP is firmly of the view that it has met the burden to qualify for exemption.

Finally, it is also noted that the British Columbia Hydro and Power Authority, whose service area the Project falls under, has recorded its non-objection to CBP's exemption request. As such, and for the various reasons set out in CBP's submissions to BCUC, CBP continues to respectfully request exemption.

We remain obliged to BCUC for its consideration during this exemption request process. For further information please contact Jim Pinter at 403-701-1563 or by email at jim@pinterco.ca.

Yours truly,

Jim Pinter