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September 24, 2018

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: British Columbia Utilities Commission (BCUC)
Proposed New Rules of Practice and Procedure for Reconsideration Applications – Consultation Request
Comments and Feedback of FortisBC Energy Inc. and FortisBC Inc. (collectively FortisBC)

FortisBC writes in response to the BCUC's letter dated August 8, 2018, requesting stakeholders provide comments on the proposed housekeeping amendments and the Proposed New Rules of Practice and Procedure for Reconsideration Applications (the Proposed Reconsideration Rules) by the addition of Part V – RECONSIDERATION. FortisBC appreciates the opportunity to provide the BCUC with its comments and feedback.

FortisBC has no comments on the proposed housekeeping changes in sections 1 through 24.

FortisBC's provides comments on the following sections in the Proposed Reconsideration Rules for the BCUC's consideration.

- Section 26.02;
- Section 26.03;
- Section 26.05;
- Section 26.06; and
- Section 29.04.

Section 26.02

FortisBC suggests a minor revision to wording to improve clarity.

26.02 A person, other than the applicant ~~or in the original proceeding, who was not~~ an intervener in the original proceeding that gave rise to the decision, may not file an application for reconsideration without obtaining prior leave of the BCUC. In applying to the BCUC for leave to file an application for reconsideration, the person seeking leave must explain...

Section 26.03

FortisBC has concerns with the imposition of a 60 day limitation period on filing a reconsideration application, even though it is subject to obtaining leave or authorization from the BCUC.

The BCUC has never had a time limitation on reconsideration, and we submit that the BCUC should continue with that approach.

Alternatively, the BCUC could remove the limitation provision, but add something to 28.01 that contemplates summary dismissal on the basis of passage of excessive time that results in undue prejudice to an applicant or other person. For instance:

- 28.01 Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that
- (a) it fails to establish, on its face, any reasonable grounds for reconsideration of the decision, or
 - (b) an excessive amount of time has lapsed since the decision, such that a person would be unduly prejudiced by hearing the application for reconsideration.

We believe there is sound basis to continue with the current approach of having no limitation period.

While many issues arising from a decision are capable of being identified within a short period of time, the complexities of some regulatory matters make discerning the implications a challenge. Discoverability is also a problem.

FortisBC recognizes that there is a time limit for appeals to the Court of Appeal already, and that it is only 30 days. However, in practice that time limit drives parties still working through the implications of a decision to file a Notice of Appeal within the 30 days, simply to preserve rights. We have every expectation that this rule could necessitate the same approach for reconsideration applications. This is both inefficient and avoidable.

From a policy perspective, strict time limits on reconsideration are more difficult to justify in the context of the BCUC than with an appeal to the Court of Appeal. The BCUC has a public interest mandate, and a mandate to ensure that rates are just and reasonable. It should be hearing reconsideration applications unless there is a public interest reason not to do so. The simple passage of time is not, in and of itself, detrimental to the public interest. The detriment occurs when some party(ies) experience undue prejudice as a direct result of the delay.

Section 26.05

In sub-section (a) the Proposed Reconsideration Rules impose a 30 page limit. FortisBC has no concerns with the 30 page limit if it pertains to the body of the reconsideration application, excluding appendices or attachments. In the context of a large original application, it may be necessary or appropriate to attach supporting documents such as evidence referenced, new evidence, or a change in circumstance. This rule could be clarified to make clear that the 30 page limit is in reference only to the body of the reconsideration application.

Section 26.06

The new rules, in section 26.06, provides a finite list of grounds and eliminates the ground of “just cause” that has existed for many years. FortisBC submits that the “just cause” ground should be maintained.

The BCUC regulates in the public interest. Above all else, it should be ensuring that the Proposed Reconsideration Rules are not favouring process at the expense of a just and defensible outcome. The BCUC should ensure that it retains the ability to provide redress in circumstances where an order has simply produced an unjust result. Otherwise, the BCUC could face a crisis of legitimacy in the eyes of both the regulated parties and the public.

Ultimately the BCUC will determine what constitutes just cause, and is capable of ensuring that it is used judiciously.

Section 29.04

FortisBC suggests a minor change to section 29.04 (b) to be internally consistent with section 26.06 (b), (c), and (d) as new evidence could be required for reasons other than simply “a change of circumstances”. FortisBC suggests the following change:

29.04 The BCUC will determine the regulatory process for the reconsideration hearing, which may include, but is not limited to:

...

- b) a determination as to whether any new evidence ~~or evidence of a change of circumstances~~ will be permitted on the reconsideration hearing and the timing of submissions on these issues;

Additionally, replacing the word “evidence” with “facts” may also be appropriate.

Finally, FortisBC is in receipt of comments on the Proposed Reconsideration Rules filed by Allevato Quail & Roy, dated August 16, 2018, recommending a fifth ground for reconsideration be added. FortisBC has no objection in principle to this proposal, but it would be best subsumed as part of “just cause” as would be the case today.

FortisBC thanks the BCUC for the opportunity to provide these comments and feedback. If further information is required, please contact Ilva Bevacqua, Manger, Regulatory Compliance and Administration at (604) 592-7664.

Sincerely,

on behalf of FORTISBC

Original signed:

Diane Roy