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November 30, 2012

BY EMAIL

British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, BC V6Z 2N3

**Attention: Erica M. Hamilton,
Commission Secretary**

Dear Sirs/Mesdames:

**Re: FortisBC Inc. – Application for a Certificate of Public Convenience and
Necessity for the Advanced Metering Infrastructure Project
(AMI Project)**

Introduction

Further to Order G-169-12, we write in response to:

- (a) the applications advanced by Mr. Shadrack/Area D (Regional District Central Kootenay) (**RDCK**) (at Exhibits C13-4 to C13-6) and the Nelson-Creston Green Party Constituency Association (**NCGPCA**) (Exhibits C18-3 to C18-5) (the **Applications**) to suspend the above-noted proceeding; and
- (b) the additional submissions that certain other participants have filed in support of the Applications, namely Exhibits C1-2 (Mr. Atamanenko), C11-4 (Mr. Miles), C14-4 (Ms. Hayes), C19-5 (Mr. Paluck) and C19-6 (West Kootenay Concerned Citizens).

B.C. Sustainable Energy Association and the Sierra Club of British Columbia (Exhibit C4-6) as well as the Commercial Energy Consumers Association of British Columbia (Exhibit C17-7) oppose the Applications.

FortisBC also opposes the Applications, for the reasons set out below.

Why the Applications Should Be Dismissed

The Applications seek extraordinary relief, involving the suspension of a process which was commenced in late July 2012, which has already consumed very considerable effort (including on the part of the Commission, Interveners, Interested Parties and FortisBC), and in which the evidentiary record has not yet been closed.

Despite the severity of the relief sought, none of the Interveners who advances or supports the Applications appears to identify any jurisdictional basis for them. To the extent that passages of the *Utilities Commission Act (UCA)* or CPCN Guidelines are cited (by NCGPCA, at Exhibit C18-5), there is no reference in those passages to the type of order sought.

This correspondence addresses each of three possible ways in which the Applications can be interpreted – namely, as applications for:

- (1) an order that FortisBC file additional information in respect of its existing application and that the process be suspended pending that filing;
- (2) alternatively, an order that FortisBC amend its application to seek approval for an alternative proposal and that the process be suspended pending that amendment; or
- (3) alternatively, an order effectively dismissing FortisBC's application.

As set out below, no matter how the Applications are interpreted, they should be dismissed.

1. Applications for an order that FortisBC file additional information in respect of its existing application and that the process be suspended pending that filing

The first interpretation of the Applications is that they seek, in effect, a two-pronged order within the context of FortisBC's existing application: first, that FortisBC file additional information in respect of that application, and second, that the proceedings be suspended until it does so. The two orders are separate and distinct. Neither order is warranted.

(a) Filing of additional information

Submitting information requests (**IRs**) to an applicant utility is the contemplated process for obtaining additional information in respect of an existing application. Both the Commission and Interveners have had the opportunity to obtain information from FortisBC through two rounds of IRs, and have made very substantial use of that opportunity. Further, many of the IRs that have been posed to FortisBC relate to "wired" alternatives to FortisBC's proposal. FortisBC either has answered those requests (round 1) or is in the course of doing so (round 2). By December 14, 2012, FortisBC will have addressed "wired" alternatives in at least 100 IR responses. This result will be achieved without any change to the regulatory process.

Further, also without any change being required to the regulatory process, Interveners will have the opportunity to put additional information on the record after December 14 (including in respect of “wired” alternatives) by:

- (a) filing Intervener evidence on or before the January 24, 2013 deadline for doing so. RDCK, for example, has already advised that it will be relying on related evidence from Mr. McLennan (p. 2 of Exhibit C13-5). FortisBC will at that point have the opportunity to pose IRs to Interveners. To date, the often inaccurate assumptions about “wired” alternatives that certain Interveners have made in their submissions have been sheltered from such challenge. Those untested statements should not be used as the basis for an order against FortisBC such as sought in the Applications.
- (b) requesting that a third IR round be directed to FortisBC, if Interveners consider additional information to be required upon receipt of FortisBC’s December 14, 2012 IR responses. The Commission determined in Order G-177-12 that “[a]n Intervener may renew its request for a third round of Information Requests following the filing of FortisBC’s responses to Commission and Intervener Requests No. 2”. Whether or not there is a need for a third IR round can be examined by the Commission in light of the information known at that stage.
- (c) cross-examining FortisBC witnesses at the oral hearing in respect of any alleged health, security or environmental implications of “wired” vs. “wireless” alternatives. Those issues are within the scope of the oral hearing for which Order G-177-12 provides.

Again, no change to the existing regulatory process is required in order for the above opportunities to arise. There is no basis on which to require additional information to be provided or that it be provided in a form other than already contemplated in this regulatory process.

(b) Timing

Even if the Commission were to order the filing of additional information by FortisBC, there would still be no basis on which to suspend the proceeding until FortisBC does so. If additional information were ordered to be provided, the Interveners would have ample time to process it within the existing regulatory process. The Interveners’ evidence is not due until January 24, 2013, the oral hearing will not proceed until March 4, 2013, and Interveners’ written arguments are not due until April 18, 2013.

A suspension of the proceeding could indirectly achieve or further the result that certain of the Interveners seek: jeopardizing FortisBC’s ability to proceed with its contract with Itron. The Interveners should not be able to achieve or further that result by indirect means.

2. Applications for an order that FortisBC amend its application and that the process be suspended pending that amendment

The second possible interpretation of the Applications is that they seek an order compelling FortisBC to *amend* its application to put forward “wired” (in addition to, if not instead of, “wireless”) meters for approval, and suspending the proceeding until that amendment is made. Indeed RDCK refers to a possible outcome of its Application being that “FortisBC will be required to amend its application” (Ex.

C13-6, pp. 1-2, 6) and says that the Commission should “require FortisBC to provide a wired option in its application package” (Ex. C13-4, p. 2). In this regard, the Applications may be intended by applicant Interveners to give the Commission the option, at the end of the process, of granting a certificate of public convenience and necessity for “wired” meters rather than “wireless” ones.

Respectfully, the suggestion that FortisBC should be compelled to amend its application to seek approval of other alternatives is not consistent with the CPCN-related provisions of the UCA.

The CPCN process requires a utility to bring forward a proposed project for approval. It does not involve the utility being ordered to apply for and proceed with matters that it does not wish to undertake.

In this case, FortisBC determined to bring the “wireless” option forward for approval. That application should be permitted to proceed.

3. Applications for an order effectively dismissing FortisBC’s application

The third possible interpretation of the Applications is that they seek an order that FortisBC be blocked from proceeding with any application unless and until it “agrees” to the amendment that the Commission cannot (for the reasons stated above) order directly. If a utility does not “agree”, such an order would in effect result in the dismissal of its application.

However, the Commission could only dismiss an application at this stage if it were clear that there is no point in continuing, because there is no way that ultimately the Commission could make the order sought by the utility. There is no basis on which this can be said.

Firstly, if the provision of information regarding wired alternatives were required, such information has been provided, including at pages 111-115 and Appendix D of the Application, and in numerous FortisBC responses to IRs. Further, additional information is pending, including in response to the second round of IRs. The evidentiary record has not been closed.

Secondly, if there is an expectation of more detailed investigation in certain circumstances, it arises only in relation to “feasible” alternatives (in the wording of the CPCN Guidelines). Whether or not “wired” alternatives are “feasible” should not be pre-determined by the Commission at this stage in favour of the opponents of “wireless” meters, particularly in the absence of filed Intervener evidence and IRs directed to that evidence.

Thirdly, to the extent that any expectations of more detailed investigation arise, it is under the CPCN Guidelines. By their nature, the Guidelines provide guidance and are not requirements. By their wording, they are to be applied flexibly.

Finally, the considerations that the Commission takes into account in determining the public interest on a CPCN application are broad. The breadth of that consideration should not be narrowed to a single issue, whether at this stage or at all.

November 30, 2012

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F A R R I S

Conclusion

Given all the above, FortisBC asks that the Applications be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Ludmila B. Herbst

LBH/lb

c.c.: Registered Interveners
Boughton Law Corporation – Attention: Gordon Fulton, Q.C.
FortisBC Inc. – Attention: Dennis Swanson