FARRIS

25th Floor
700 W Georgia St

Vancouver, BC
Canada V7Y 1B3

Tel 604 684 9151
Fax 604 661 9349

www.farris.com

Reply Attention of: Ludmila B. Herbst
Direct Dial Number: (604) 661-1722
Email Address: lherbst@farris.com

Our File No.: 05497-0216-0000

December 11, 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. (FortisBC) – Application for a Certificate of Public Convenience and Necessity for the Advanced Metering Infrastructure Project (AMI Project)

Introduction

We write in response to the following correspondence:

(a) the letter dated December 7, 2012 (emailed on December 6) from Mr. Atamanenko (**BCSI**) with respect to the Regional District Central Kootenay (**RDCK**) and Nelson-Creston Green Party Constituency Association (**NCGPCA**) suspension requests (the **Suspension Applications**) (Exhibit C1-3). Exhibit C1-3 is supported by Mr. Flynn's email dated December 7, 2012 (Exhibit C6-6);

(b) the email dated December 7, 2012 from Mr. Shadrack / Area D (Regional District Central Kootenay) (**RDCK**) (Exhibit C13-9[1]), which addresses the Suspension Applications and also sets out a new application, for reconsideration of the scope of the oral hearing (the **Reconsideration Application**), as well as Mr. Shadrack's further email dated December 10, 2012 (Exhibit C13-10[2]);

(c) NGCPA's correspondence dated December 7, 2012 (Exhibit C18-7) with respect to the Suspension Applications.

---

1 We have used this exhibit number for ease of reference because we are not aware of any other documents filed by Mr. Shadrack after Exhibit C13-8. We ask that our correspondence be read as referring to the appropriate exhibit number if the December 7 correspondence is assigned a different designation than we have assumed.

2 See footnote 1.

In summary, our position is that:

(a) the above-noted submissions should not be considered in support of the Suspension Applications. While FortisBC is reluctant to restrict the scope of debate, the fact is that these submissions are largely beyond the proper scope of RDCK and NCGPCA reply and thus outside the process that Order G-169-12 set for the exchange of submissions;

(b) alternatively, if any portions of Exhibits C1-3, C13-9, C13-10 or C18-7 that raise new issues or evidence are considered in support of the Suspension Applications, the brief response to those points that FortisBC provides later in this correspondence should be considered as well, as FortisBC did not have the opportunity to address these matters prior to its November 30 filing deadline; and

(c) the Reconsideration Application should be denied without the necessity of further process.

Exhibits C1-3, C13-9, C13-10 and C18-7 Should Not Be Considered in Support of the Suspension Applications

Order G-169-12 provided that RDCK and NCGPCA were to "file their reply submissions...on or before December 7, 2012". No provision was made for a further filing by BCSI, and no provision was made for RDCK or NCGPCA to re-argue or expand on their November 16 submissions. Those submissions had earlier been set out in part, as well, in Exhibits C13-4 and C13-5, as well as C18-4 and C18-5.

The submissions provided on December 6, 7 and 10, 2012 go well beyond what Order G-169-12 permits. Certain portions of Exhibits C13-9 and C18-7 are simply re-argument of points already made by Mr. Shadrack and NCGPCA in earlier submissions. Other portions of Exhibits C13-9 and C18-7, as well as Exhibits C1-3 and C13-10, introduce new issues and evidence to which FortisBC had no opportunity to respond in its November 30, 2012 correspondence. Indeed, certain of these points (*e.g.*, the response that BCSI reports from Health Canada) are advanced as new and different justifications for the relief sought in the Suspension Applications.

FortisBC does not wish to curtail debate on its application. However, this does not mean that debate specifically on the Suspension Applications should be extended indefinitely. The present regulatory schedule set out in Order G-177-12 provides Interveners with ample opportunity to advance evidence and arguments on health-related matters or "wired" options in the course of the process as a whole. Interveners were also provided with ample opportunity, through two rounds of information requests, to ask the kinds of questions posed in Exhibit C13-9. There is no need for Exhibits C1-3, C13-9, C13-10 and C18-7 to be inserted into the suspension-related process set by Order G-169-12.

Interveners' New Points Regarding the Suspension Applications

In the event that Exhibits C1-3, C13-9, C13-10 and/or C18-7 are to be considered in relation to the Suspension Applications, FortisBC provides a brief response to the newly raised points in those exhibits to which it did not have the opportunity to respond in its November 30, 2012 correspondence. FortisBC

has confined its submissions in this manner because, as the Intervener submissions of December 7 were simply to be reply, Order G-177-12 likewise did not contemplate a further round of FortisBC argument.

(1) Exhibit C1-3: Health Canada's response to Mr. Atamanenko

Just as the earlier arguments advanced by Mr. Shadrack, NCGPCA and others regarding "wired" options do not warrant a suspension of the proceeding, neither does Health Canada's response to Mr. Atamanenko. In this regard:

- It has been known throughout that Health Canada Safety Code 6 (the **Code**) is subject to review. The establishment of a further panel or target reporting date does not change that underlying premise. The Preface to the existing Code notes that the safety limits "are based on an ongoing review of published scientific studies" and that the Code is "periodically revised" (Exhibit B-1, Appendix B-6 p. 5 of 30). The Royal Society itself has previously been involved in this exercise.

- There is no basis to assume that any revisions to the Code would be either recommended or, if recommended, significant. It is apparent from the context that an expert panel has been struck because of public comment on the issue rather than because of an underlying, objective concern. Notably the concern expressed by prominent Quebec scientists in their recent "Open Letter to the Public" ("Wireless Technologies: For an Informed and Responsible Debate Guided by Sound Science") has been not with the technology (indeed, to the contrary), but with the nature and content of the public discussion.

- Given that advanced meters operate on average at a level 10,000 times less than the current Code limit and that the proposed advanced meters meet the strictest exposure limits in the world (which are approximately 100 times lower than Canada), it is highly unlikely that any change would have any impact on the AMI Project.

- The Commission is accustomed to proceeding in circumstances where further research is being done into an issue. For example, in its Vancouver Island Transmission Reinforcement Project decision, the Commission directed British Columbia Transmission Corporation to file updates on EMF risk assessments and any changes in guidelines developed by the World Health Organization, International Commission on Non-Ionizing Radiation Protection, Health Canada and others where relevant (Decision dated July 7, 2006 at p. 72).

- FortisBC's application is made in a context where many customers in Canada and the United States already have wireless advanced meters. Radio frequency (**RF**)-mesh based solutions have captured approximately 90 percent of the Canadian smart meter communications market (FBC response to BCUC IR1 113.1.4). More generally, by the time of FortisBC's Request for Proposals (**RFP**), the North American AMI market had generally shifted to RF technologies (FBC response to BCSEA IR1 74.2).

- In the highly unlikely event that the Code limit is lowered enough to make the proposed AMI meters non-compliant, there would be time to halt the deployment of the meters as this is not scheduled until 2014.

(2) Exhibits C13-9 and C18-7: Mr. Shadrack and NCGPCA's Invocation of the Commission's 2008 AMI Decision

In Exhibits C13-9 and C18-7, Mr. Shadrack and NCGPCA both refer for support to the Commission's 2008 denial of FortisBC's earlier AMI application (the **2008 AMI Decision**), and argue that it points in favour of suspending the present proceedings. This is not the case. To the contrary, the 2008 AMI Decision encouraged FortisBC to coordinate with BC Hydro. FortisBC's application should not be suspended because of the fact it focuses on the same technology that BC Hydro adopted. In addition, the evidence filed prior to the 2008 AMI Decision made clear that FortisBC would rely heavily on an RFP process to determine how the project would be implemented. FortisBC subsequently did so and, despite a "technology agnostic" process, all proposals that FortisBC received were for systems employing RF technology (FBC response to BCUC IR1 38.3, BCSEA IR1 74.2, CEC IR1 44.2, Shadrack IR1 1). For FortisBC to have ensured that it would receive bids from any particular vendor based on technology, presumably it would have needed to issue multiple, nearly identical RFPs (RF, power line carrier [**PLC**], fibre optic, telephone, and various combinations), the only difference among them being a restriction of bids to a particular alternative. The notion is entirely impractical and not without significant cost.

(3) Exhibit C13-9: Suggestion that FortisBC Evidence Is Inadmissible

Mr. Shadrack suggests in Exhibit C13-9 that evidence that FortisBC has advanced as to project alternatives should be considered inadmissible because of a conflict of interest or other defect. The Commission is always at liberty to weigh the evidence supplied from any source in reaching its ultimate determination, but neither the cases cited by Mr. Shadrack nor any other authority would support the proposition that evidence from Itron cannot be considered.

Mr. Shadrack describes as preferable to consulting Itron the third party investigation of complaints that occurred in California regarding Pacific Gas and Electric's deployment of smart meters. This was an entirely different scenario: a technical expert was retained to test and validate meter and billing accuracy in a given area after complaints were made. Underlining the anomaly of the situation, in a related public statement the California Public Utilities Commission noted that "[t]here are millions of Smart Meters installed and operating around the globe with no complaints...."

Given the centrality that Mr. Shadrack's allegations in relation to Itron have assumed (in contrast to a passing mention of potential conflict in Exhibit C13-6), it should also be noted that the negotiated AMI contract allows Itron to propose and/or substitute alternative, functionally-similar LAN solutions (such as PLC or direct cellular connection) where they are more economic than the main RF solution (FBC response to BCUC IR1 106.1). There is no reason for Itron to have shied away from or been conflicted in exploring "wired" alternatives.

(4) Exhibits C13-9 and C18-7: Suggestion that "Quick Facts About Smart Meters" Evidences Commission Bias

In Exhibits C13-9 and C18-7, both Mr. Shadrack and NCGPCA suggest that the existence of "Quick Facts About Smart Meters" (a document which is prefaced as being in answer to questions "about BC

Hydro's Smart Metering Program") on the Commission's website may evidence a Commission bias in favour of wireless meters.

NCGPCA then uses that premise to suggest that the Commission should rule in favour of the Suspension Applications, in order to counteract the supposed impression of bias. NCGPCA proposes an entirely arbitrary trade-off. If Interveners are dissatisfied with the "Quick Facts About Smart Meters", the solution would be to ask the Commission to remove it from the website. The existence of this document should not, however, be the basis for action against FortisBC.

Mr. Shadrack relies on the "Quick Facts About Smart Meters" in support of other relief: broadening the scope of the oral hearing. This is returned to below in connection with Mr. Shadrack's Reconsideration Application.

(5) Exhibit C13-9: Wireless Smart Meters "not an absolute right for FortisBC"

Mr. Shadrack argues in Exhibit C13-9 that "[t]he option to install wireless smart meters is not an absolute right for FortisBC". That statement by Mr. Shadrack is correct, which is why FortisBC is before the Commission to obtain approval for the proposed AMI Project. What cannot be extrapolated from this is that FortisBC has no right to control the projects for which approval is sought.

(6) Exhibits C13-9 and C18-7: Wired "Opt-Out" Possibilities

Mr. Shadrack and NCGPCA refer in Exhibits C13-9 and C18-7 to the possibility of a wired "opt-out" provision. FortisBC's position in its application is that no opt-out option is required based on the evidence.

(7) Exhibit C13-9: Alleged BC Hydro-Related Disruption of Internet Service

Mr. Shadrack alleges on page 13 of Exhibit C13-9 a disruption of internet service in the Cariboo and the Kootenays which he attributes to the installation of BC Hydro smart meters. If in fact this is the case, the issue may be arising from the temporarily incomplete nature of the BC Hydro RF mesh network (FBC response to Shadrack IR1 37). FortisBC has proactively met with wireless providers in its service territory, and believes that any issues will be negligible (FBC response to Shadrack IR1 21, 22).

(8) Exhibit C18-7: Alleged FortisBC Self-Interest

NCGPCA alleges that FortisBC has "put its own interests ahead of those of its customers" and "abused its mandate as a utility to do what is best for its customers" (Exhibit C18-7, p. 6). Obviously NCGPCA disagrees with FortisBC's view of what best advances the public interest, but a difference in viewpoint does not translate into any defect in FortisBC's motivations or conduct.

The Reconsideration Application Should Be Denied

Mr. Shadrack's Reconsideration Application should also be denied.

The Commission has already made two determinations on the appropriate scope of the oral hearing: preliminarily on September 26, 2012, in Order G-135-12, where it "concluded there is merit" to reviewing certain issues by way of a written process (Exhibit A-7), and then on November 23, 2012, in Order G-177-12, where it ordered that "[f]inancial, operations, fire safety and privacy issues will be reviewed by way of the written process" and "[h]ealth, security and environmental issues will be reviewed by way of the oral hearing" (Exhibit A-14).

Further, the community input sessions provided for in Order G-137-12 of September 25, 2012 (Exhibit A-8) and held on November 6, 7 and 8 provided a forum for oral public comment before the Commission panel.

Before each of Orders G-135-12, G-137-12 and G-177-12, Interveners had the opportunity to provide comments, including (with respect to the Order G-177-12) orally at the procedural conference. Indeed, several Interveners continued to provide submissions on the scope of an oral hearing even after the deadlines which the Commission set for those submissions had passed.

Respectfully, at this point the process on this issue should not be further extended. There is no *prima facie* case that any of the reconsideration criteria set out in the Commission's Guidelines have been met.

The Commission properly exercised its discretion to order that part of the hearing in this case be oral and part written. As FortisBC noted at the procedural conference, there is no legal requirement that any part of a hearing on a CPCN application be held orally or, indeed, that there be a hearing at all (*Utilities Commission Act*, ss. 46(2), 86.2(1)). In this context, no error of law or fact has occurred. Nor has there been a fundamental (or any) change in circumstances or facts since the decision, there is no basic principle which had not earlier been raised, and no new principle has arisen as a result of the decision. There is no other just cause to reconsider.

Mr. Shadrack uses an argument that he could equally have made in the earlier rounds of submissions – Mr. Shadrack's supposed success in the oral hearing associated with FortisBC's 2009 Cost of Service and Rate Design Application – to support his argument for an oral hearing now. Apart from the fact that this argument is advanced too late, its substance is flawed. While the Commission Panel cited various of Mr. Shadrack's points in its 2010 decision, what it cited were predominantly materials filed in written form, including his written argument and a written opening statement (though repeated aloud as well). Mr. Shadrack also conducted an oral cross-examination, which he referred to in his written submissions, but those submissions heavily relied on his own observations on the points at issue.

Mr. Shadrack also refers in this context to the "Quick Facts About Smart Meters" on the Commission's website, and suggests that a broadened oral hearing is the "only way for the Commission to be seen to keep an open mind" (Exhibit C13-9, p. 15). This again suggests that the procedure should be changed for reasons that do not relate to the conduct of FortisBC. Such an outcome would not be appropriate.

It is important that FortisBC, Interveners and other participants be able to organize themselves in accordance with the procedural orders made to date and move efficiently toward the resolution of the application that FortisBC has made. Mr. Shadrack notes the difficulty of planning without knowing "what the rules of engagement are going to be". The only uncertainty in relation to the oral hearing at

this point, however, is created by Mr. Shadrack's ongoing attempt to change the rules that the Commission has set.

Conclusion

In the circumstances, FortisBC:

(a) reaffirms its request that the Suspension Applications be dismissed; and

(b) asks that the Reconsideration Application be dismissed without the necessity of further process in relation to it.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: 

Ludmila B. Herbst

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