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**VIA EMAIL**

May 15, 2013

**FORTISBC INC. – CPCN FOR THE  
ADVANCED METERING INFRASTRUCTURE PROJECT EXHIBIT A-43**

TO: FortisBC Inc.  
Registered Interveners  
(FBC AMI-RI)

Re: FortisBC Inc.  
Application for a Certificate of Public Convenience and Necessity  
for the Advanced Metering Infrastructure Project  
Citizens for Safe Technology Society Request to Reopen the Evidentiary Record

Further to the submissions received in response to the above noted request, enclosed please find British Columbia Utilities Commission Order G-80-13 with Reasons for Decision reopening the evidentiary record to admit the International Agency for Research on Cancer (IARC) Report relating to its designation of RF radiation as a possible cancer agent.

Yours truly,

Erica Hamilton

cms  
Enclosure



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-80-13**

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IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Advanced Metering Infrastructure Project

Citizens for Safe Technology Society Request to Reopen the  
Evidentiary Record and Amend the Regulatory Timetable

**BEFORE:** L.F. Kelsey, Commissioner  
D.M. Morton, Commissioner  
N.E. MacMurchy, Commissioner  
May 15, 2013

**ORDER**

**WHEREAS:**

- A. The evidentiary record for the Advanced Metering Infrastructure Project proceeding was closed March 15, 2013, subject to the filing of outstanding undertakings and specified responses to information requests;
- B. On April 19, 2013, the British Columbia Utilities Commission (Commission) received a letter via email from Mr. Aaron, on behalf of the Citizens for Safe Technology Society (CSTS), advising the Commission of the release that day of the International Agency for Research on Cancer (IARC) monograph (Report). The letter provided a hyperlink to the Report;
- C. Mr. Aaron stated that the Report may constitute a fundamental change in circumstances or facts and requested the Commission reopen the record to admit the Report into evidence and that the Regulatory Timetable be extended by 10 days to provide parties with an opportunity to review the Report and reference it in argument;
- D. By letter dated April 22, 2013, the Commission, while denying the request to extend the Regulatory Timetable, established a process for written submissions on the reopening of the record to admit the Report. Parties supporting the reopening of the record were to file their submissions with the Commission by 12:00 p.m., May 2, 2013, and those opposing to file their submissions by 12:00 p.m., May 9, 2013. Any Reply from those supporting was to be filed by 12:00 p.m., May 13, 2013;
- E. Submissions in support of the application to reopen the evidentiary record to admit the Report were received from:
  - Riding of BC Southern Interior (BCSI),
  - West Kootenay Concerned Citizens (WKCC),
  - Area D, Regional District of Central Kootenay (RDCK),
  - Mr. Jerry Flynn,

**BRITISH COLUMBIA  
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- Nelson Creston Green Party Constituency Association (NCGP),
  - B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC); and
- F. FortisBC Inc. (FortisBC) filed a submission opposing reopening the record and admitting the Report. BCSEA-SCBC filed a Reply on May 13, 2013, after the 12:00 p.m. deadline. RDCK adopted the BCSEA-SCBC Reply. Mr. Flynn and NCGP filed Replies on May 14, 2013. CSTS advised it would not be filing a Reply; and
- G. The Commission Panel has considered the submissions and determines that the Report will be admitted into evidence and Supplemental Submissions on the Report will be allowed.

**NOW THEREFORE** as set out in the Reasons for Decision attached as Appendix A to this Order, the Commission orders as follows:

1. The Report is admitted into the evidentiary record as Exhibit C9-25.
2. The Applicant and Interveners may file Supplemental Submissions limited to the Report and whether any new information that may be in the Report changes the weight, if any, the Commission should give the other evidence on the record relating to the previously published summary of the views and expert opinions of the IARC Working Group. The Supplemental Submissions must provide specific references to the Report.
3. At FortisBC's option, the schedule for submissions will be as follows:  

Intervener Submissions – 4:00 p.m., Thursday, May 23, 2013 and;  
FortisBC Reply - 4:00 p.m., Thursday, May 30, 2013.

or,

FortisBC Submission – 4:00 p.m., Thursday, May 23, 2013;  
Intervener Submissions – 4:00 p.m., Thursday, May 30, 2013;  
FortisBC Reply - 4:00 p.m., Monday, June 3, 2013.
4. FortisBC is to advise the Commission Secretary and the Interveners in writing of the option it chooses by no later than 4:00 p.m., Thursday, May 16, 2013.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 15<sup>th</sup> day of May 2013.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner

Attachment

An Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Advanced Metering Infrastructure Project

Citizens for Safe Technology Society Request to Reopen the  
Evidentiary Record and Amend the Regulatory Timetable

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**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

The evidentiary record for this proceeding was closed March 15, 2013, subject to the filing of outstanding undertakings and specified responses to information requests.

On April 19, 2013, Mr. Aaron, on behalf of the Citizens for Safe Technology Society (CSTS), by letter via email advised the British Columbia Utilities Commission (Commission) of the release that day of the International Agency for Research on Cancer (IARC) monograph (Report). The letter provided a hyperlink to the Report. Mr. Aaron, stated that the Report may constitute a fundamental change in circumstances or facts and requested that the Commission reopen the record to admit the Report into evidence and extend the Regulatory Timetable by 10 days to provide parties with an opportunity to review the Report and reference it in argument.

By letter dated April 22, 2013, the Commission denied the request for an extension, but established a process for written submissions on the reopening of the record to admit the Report into evidence and for the filing of Supplemental Submissions, if the report is admitted into evidence.

The Riding of BC Southern Interior (BCSI), West Kootenay Concerned Citizens (WKCC), Area D, Regional District of Central Kootenay (RDCK), Mr. Jerry Flynn, Nelson Creston Green Party Constituency Association (NCGP), and B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA-SCBC) filed submissions in support of the reopening of the record to admit the Report. CSTS filed a further Submission on May 1, in response to the BCSEA-SCBC Submission. FortisBC Inc. (FortisBC) filed a Submission opposing the application. BCSEA-SCBC filed a Reply on May 13, 2013, after the 12:00 p.m. deadline set for the filing of a Reply. RDCK adopted the BCSEA-SCBC Reply late in the evening on the same day. On May 13, also after the deadline, CSTS advised it would not be filing a Reply

**1.1 The Application**

In its application, CSTS states that the Report is the “most up-to-date, comprehensive and, arguably, the most independent review available to the Commission on the health issues at stake in these proceedings.” CSTS further states that “the publication of this [R]eport today may constitute ‘a fundamental change in circumstances or facts’, subsequent to the closure of the evidentiary record.” CSTS requests that the record be reopened to admit the Report and further requests an opportunity in the proceeding timetable to review the Report and make reference to it in argument.

**1.2 Intervener Submissions**

The following Interveners support the application to re-open the record to admit the Report:

- (1) Riding of BC Southern Interior;
- (2) Western Kootenay Concerned Citizens;

- (3) Regional District of Central Kootenay;
- (4) Mr. Jerry Flynn;
- (5) Nelson Creston Green Party Constituency Association;
- (6) B.C. Sustainable Energy Association and the Sierra Club of British Columbia.

None of the Interveners cite any new or fundamentally different information in the Report, but simply state that they support the Application (Mr. Flynn, NGCP) or that this newly released, comprehensive Report (~ 480 pages) having a direct bearing on health concerns related to Radio Frequency (RF) exposure should be considered in the evidentiary record for this Proceeding. (BCSI, WKCC, RDCK)

BCSEA-SCBC provide the most detailed submission stating that the Report is “the full report that corresponds to a short article published in *Lancet* (Baan *et al.* (2011)) announcing and providing summary reasons for a decision by IARC to categorize non-ionizing radiofrequency (RF) radiation in the 30 kHz to 300 GHz range as possibly carcinogenic to humans, Group 2B.” [Footnote omitted.] BCSEA-SCBC further state that the Report appears to represent an elaboration upon the summary report that was relied upon by the expert witnesses during the proceeding and provides the rationale of the Working Group on the Evaluation of Carcinogenic Risks to Humans (IARC Working Group) for its decision in 2011 to categorize RF as being in Group 2B. BCSEA-SCBC submit that “While there is abundant evidence on the record already concerning the Group 2B categorization, the IARC Report provides the best currently available evidence of the IARC Working Group’s rationale for that categorization.” Further, BCSEA-SCBC submits that public confidence in the Commission’s forthcoming decision would be bolstered if the Commission’s consideration of the Group 2B categorization of RF was informed by the best evidence of the IARC Working Group’s rationale for that categorization.

BCSEA-SCBC submits that if the Report is admitted into evidence, there should be an opportunity for Supplemental Submissions on the Report. They propose an abbreviated process with a short turn-around time given the parties have had access to the Report since April 19, 2013.. The process contemplates submissions from Interveners followed by Reply from FortisBC.

CSTS filed a further Submission endorsing the BCSEA-SCBC Submission with the exception that the CSTS takes no position on whether the IARC Report raises any new issues. CSTS further submits and provides references to where the prospective publication of the IARC Report was discussed during cross-examination at the Oral Hearing.

WKCC filed a second Submission on May 2<sup>nd</sup>, which concludes with its support of the CSTS application consistent with WKCC’s first Submission on April 22<sup>nd</sup>. This second submission includes re-statement of its argument already on record in this proceeding.

### 1.3 FortisBC Submission

FortisBC opposes the application. FortisBC submits that the Report does not constitute a fundamental change in circumstances, nor is there any other basis to reopen the record. FortisBC refers to the title page of the Report which describes the Report as “represent[ing] the views and expert opinions of an IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, which met in Lyon, 24-31 May 2011”. FortisBC submits that “Those views and opinions were publicly known since 2011” and further submits that the Report confirms that “[a] summary of the findings in the present volume has appeared in the *Lancet Oncology* (Baan *et al.*, 2011).” [Footnote omitted] FortisBC submits that matters relating to the IARC Working Group were already the subject of extensive evidence in the proceeding. FortisBC argues that it was known that the Report was yet to be issued and none of the Interveners argued holding the evidentiary record open to permit the filing of the Report once released. Alternatively, FortisBC submits that should the Commission

decide to reopen the evidentiary record, no further submissions should be permitted. It submits that Participants “were already well able to and did make closing submissions related to the IARC Working Group’s views and opinions by referencing for the most part the material in the existing record.”

#### **1.4 Reply by Supporting Parties**

As noted in the Introduction, CSTS submitted an email confirming it would not be filing a Reply.

BCSEA-SCBC provided a Reply which RDCK supports. No other Intervener filed a Reply by the end of the day on May 13. Mr. Flynn and NCGP filed Replies late in the afternoon of May 14 also supporting the BCSEA-SCBC Reply.

In its Reply BCSEA-SCBC acknowledges that parties had an opportunity to make final submissions on the summary report (*Lancet*, Baan *et al.* (2011)). However, they submit that as a matter of fairness, if the Report is admitted into evidence, parties should be allowed to “argue that something in the full Report changes the weight the Commission ought to give to the conclusions and opinions of the IARC committee.” [Emphasis in original]

#### **1.5 Commission Determination**

The Commission Panel notes the late filing of the BCSEA-SCBC and RDCK Replies and of the email filed by CSTS. While all were filed beyond the time provided for in the Commission’s April 22<sup>nd</sup> letter, in the Commission Panel’s view the delay was not of such a degree that would warrant the Commission Panel refusing to consider them for the purposes of this application. They were all filed on May 13, if late on that day. Therefore, in the circumstances the Commission Panel accepts the late Submissions received on May 13. Mr. Flynn and NCGP filed their Replies late in the afternoon of May 14 supporting the position taken by BCSEA-SCBC in its Reply.

The late filing by Mr. Flynn and NCGP is more troubling as they were both over a day late. The Commission Panel expects parties in a proceeding before it to adhere to the timelines set by the Commission Panel. If a party cannot meet a Commission imposed deadline, that party should seek leave providing an explanation as to why the deadline cannot be met. If a party fails to seek leave, the party risks a Commission Panel not considering its submission. While the Commission Panel in this instance is prepared to overlook a late filing that occurs on the day set by the Commission, it is not prepared to overlook a filing that takes place any later. Therefore, the Commission Panel will not consider the Replies of Mr. Flynn and NCGP in arriving at its determination.

The Commission Panel is generally reluctant to reopen an evidentiary record unless there are exceptional circumstances for it to do so. There must be finality to the Commission’s process. However, in this instance, the Commission Panel considers there to be exceptional circumstances for the reasons that follow.

First, while FortisBC points out that the views and opinions of the IARC Working Group have been publicly known since 2011, that matters relating to the Working Group were the subject of extensive evidence in the proceeding and that the Working Group’s views and opinions were widely canvassed during the oral hearing, the fact remains that the evidence to date is based only on a summary of the Report. In the Commission Panel’s view, the Report is the best evidence of the Working Group’s views and opinions.

Second, at this point the Panel has not been made aware of any new or fundamentally different information related to the Group 2B categorization of RF exposures contained in the Report compared to that already well canvassed in the evidence.

There may not be any new or fundamentally different information as FortisBC suggests. In the Commission Panel's view, however, its decision making process may benefit if the Report better informs the Panel on the IARC Working Group's rationale for the Group 2B categorization beyond the information in the summary.

And third, the Report was published on April 19, 2013. This date is only a little over a month after the closing of the evidentiary record. Allowing the record to be reopened to admit the Report into evidence and providing for an abbreviated process and a short-time period for Supplemental Submissions focused on the Report should not impact on the time it takes for the Commission Panel to make its decision on the CPCN Application. Further, in the Commission Panel's view, the fact that parties have had the Report for almost a month has provided them with ample time to meet either of the schedules of submissions outlined below.

The Panel will therefore re-open the evidentiary record to admit the Report as Exhibit C9-25. The Panel agrees with BCSEA-SCBC that as a matter of fairness parties ought to be afforded the opportunity to comment on the Report. Accordingly the Commission Panel will allow Supplemental Submissions limited to the Report and whether any new information that may be in the Report changes the weight, if any, the Commission should give the other evidence on the record relating to the previously published summary of the views and expert opinions of the IARC Working Group. The Supplemental Submissions are not to be used to re-state argument that has already been made such as was done by WKCC in its May 2<sup>nd</sup> Submission. The Panel will place no weight on those parts of Supplemental Submissions which merely restate submissions already made. The Supplemental Submissions must provide specific references to the Report.

As for the order and timing of the Supplemental Submissions, ordinarily FortisBC, as Applicant for the CPCN, would file its submissions first, followed by Interveners and then by FortisBC Reply. The process proposed by BCSEA/SCBC contemplates only Intervener submissions followed by FortisBC Reply. FortisBC took the position that if the Commission Panel reopened the evidentiary record, no further submissions should be permitted. It made no proposal for the order or timing of submissions in the event the Commission Panel allowed further submissions.

In the unique circumstances surrounding the reopening of the evidentiary record in this matter, the Commission Panel is prepared to allow FortisBC the option of deciding whether it prefers the BCSEA/SCBC proposal for the order of submissions, or it wishes to follow the usual order.

If FortisBC decides to adopt the BCSEA/SCBC proposal, the schedule for submissions will be as follows:

Intervener Submissions – 4:00 p.m., Thursday, May 23, 2013;  
FortisBC Reply - 4:00 p.m., Thursday, May 30, 2013.

If FortisBC prefers the usual order of submissions, the schedule for submissions will be as follows:

FortisBC Submissions – 4:00 p.m., Thursday, May 23, 2013;  
Intervener Submissions – 4:00 p.m., Thursday, May 30, 2013;  
FortisBC Reply - 4:00 p.m., Monday, June 3, 2013.

FortisBC is to advise the Commission Secretary and the Interveners in writing of the option it chooses by no later than 4:00 p.m., Thursday, May 16, 2013.