

**Fred James**

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December 12, 2017

Mr. Patrick Wruck
Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: Project No. 1598933
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Waneta 2017 Transaction Application**

BC Hydro writes to provide a response to the FortisBC Inc. (**FortisBC**) letter dated December 7, 2017 regarding the above-noted proceeding. In its letter, FortisBC is seeking public access generally to the unredacted Waneta 2017 Business Case filed confidentially with the Commission, or alternatively, to make the redacted information available to it specifically. FortisBC is also seeking an extension to the deadline for intervenor information requests found in the regulatory timetable set by Commission Order No. G-169-17. BC Hydro addresses each of these requests below.

Access to Redacted Information

In its request, FortisBC is asking that the Commission make the confidentially filed unredacted Appendix N public, or to be available to FortisBC. BC Hydro requests that the Commission hold the unredacted Waneta 2017 Business Case confidential for the reasons set out in the Application pursuant to Part IV of the Commission's Rules of Practice and Procedure, and section 42 of the *Administrative Tribunals Act*.¹

The unredacted Waneta 2017 Business Case filed confidentially with the Commission includes personal information, confidential third-party information, or is information that if made public could compromise BC Hydro's bargaining position with regard to Teck and other parties that have an interest in the subject matter of the Application. In each case, BC Hydro redacted just enough information to make it clear what the nature of the confidential information was. For example, personal information redacted in the

¹ The Application; Process Issues; page 5 of 7.

Business Case includes the Document Owners name on every page. Providing unredacted access would result in that persons private information becoming publicly available. An example of confidential third-party information redacted in the Business Case includes potential regulatory and First Nations risks associated with facilities in the Kootenays. Redactions that could potentially harm BC Hydro's future bargaining position if released include, for example, BC Hydro's capacity adjusted energy price forecast comparison and BC Hydro's forecast of extrapolated market prices.

With respect to the potential release of the confidential information to FortisBC only, the request should be denied, as access to such information would impair BC Hydro's negotiating position with FortisBC as it relates to future Canal Plant Agreement negotiations; and would tilt future negotiations pertaining to sustaining capital activities and operations of Waneta in favour of FortisBC to the detriment of BC Hydro's rate payers (including FortisBC who takes service under Rate Schedule 3808). Regarding the potential for asymmetry of information during future negotiations, BC Hydro is of the view that maintaining confidentiality of this information maintains competitive tension between BC Hydro and FortisBC, which is to the benefit of both parties. BC Hydro reminds the Commission that in the past, FortisBC has guarded its own competitive information in its proceedings, and BC Hydro believes that this should be the preferred case for this Application.

BC Hydro also notes that Fortis Inc., (an affiliate of FortisBC) was the successful bidder in the Teck sale of the two thirds interest in the Waneta Dam (subject to BC Hydro's ROFO), and it would be expected that FortisBC has a very good understanding of the facts and commercial relationships that underlie the Application. BC Hydro is mindful of the fact that Fortis Inc. could still become the purchaser of Teck's interest in Waneta if for any reason the Waneta 2017 Transaction does not close. In its letter, FortisBC has failed to acknowledge any commonality of interest with BC Hydro regarding information that is competitive vis-à-vis Teck and has made a broad request for disclosure of information that includes, for example, disclosure of personal information, proposing to make that information publicly available. For these reasons BC Hydro has some concerns with FortisBC's request. In the circumstances FortisBC should be required to indicate specifically which redacted portions of the Waneta 2017 Business Case they believe they require to understand the Application.

In support of its alternative request that it alone have access to the confidential information, FortisBC offers to "provide a Declaration and Undertaking", as provided for in the Commission's Rules of Practice and Procedure. In light of its foregoing concerns about FortisBC's interest in this proceeding, BC Hydro takes no comfort from this offer, and urges the Commission to not do so either. In this regard, BC Hydro notes that the Commission's form of undertaking is a personal one, and not one which a company can give, as FortisBC wrongly suggests. BC Hydro also notes that neither the Commission's form of undertaking nor the Rules of Practice and Procedure provide for any sanctions in the event of a breach of the undertaking.² While the Rules of Practice and Procedure

² Lawyers who provide undertakings are subject to sanction by the Law Society.

call the undertaking a “binding commitment”, there is no mechanism that makes it binding (to non-lawyers) in a legally relevant way. In these circumstances, BC Hydro submits that FortisBC offer should be rejected. BC Hydro reserves the right to make further submissions, if necessary, regarding possible mitigation of the deficiencies in FortisBC’s offer.

Regulatory Timetable

The other request in FortisBC’s letter is for an extension to the deadline for intervener information requests from December 15, 2017 to January 5, 2018. In support of their request, FortisBC noted that December 15, 2017 is one week after the intervener registration deadline, and that the extension is required to accommodate the unavailability of key personnel during the holiday period. BC Hydro is also facing resource constraints, and is supportive of the requested delay. Key BC Hydro resources needed to answer approximately one third of the Commission Information Requests (IRs) will be unavailable during the holiday period.

Based on the FortisBC and BC Hydro resource constraints, BC Hydro is recommending that the Commission amend its order and allow for Intervener IRs to be submitted January 5, 2018, with all responses to IRs, including the Commission’s Round 1 IRs to be filed on January 26, 2018. This results in a two-week delay to the current regulatory timetable issued in Commission Order No. G-169-17. In BC Hydro’s submission, the proposed dates will still allow for the review of the Application to be concluded in time for the closure of the Waneta Transaction on August 1, 2018. The following table provides amended dates for the Commission to consider and approve.

Table 1 Regulatory Timetable - Revisions to Order No. G-169-17

Action	Date
Intervener Registration	Friday, December 8, 2017
Commission Information Request No. 1	Friday, December 8, 2017
Intervener Information Request No. 1	Friday, December 15, 2017 January 5, 2018
BC Hydro Response to Information Request No. 1	Friday, January 12 26, 2018
Procedural Conference (if required)	Thursday, February 1, 2018

FortisBC also indicated in their letter of December 7, 2017 that a second round of information requests will be required, and it intends to submit intervener evidence regarding certain aspects of the application and impacts on FortisBC. With respect to a second round of information requests, BC Hydro included in its proposed regulatory timetable at page 1-21 of the Application, a second round of information requests to accommodate clarification questions on BC Hydro’s responses to IR 1, and to allow for questions on the Transmission Agreements that BC Hydro is anticipating filing in

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January. Regardless, BC Hydro is of the view that the regulatory schedule will allow all of a second round of IRs, intervener evidence and final orders before August 1, 2018.

For further information, please contact Geoff Higgins at 604-623-4121 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



Fred James
Chief Regulatory Officer

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