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December 20, 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**

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BC Hydro writes in regard to FortisBC's request for disclosure of confidential information, and further to BC Hydro's December 12, 2017 submissions. In its December 12, 2017 submissions BC Hydro indicated that it may have further submissions regarding FortisBC's offer to have access to the confidential information through the Commission's form of Confidentiality Declaration and Undertaking (**Undertaking**).<sup>1</sup> These are those submissions.

In its December 18, 2017 submission FortisBC provided the names of five persons who would execute the Undertaking, being Ms. Herbst, Ms. Pratch, Ms. Martin, Mr. Egolf and Mr. King.

Ms. Herbst is with the firm Farris, regularly acts for FortisBC in Commission proceedings, and is well-known to BC Hydro and the Commission. BC Hydro consents to Ms. Herbst having access to the confidential information on the basis of the Undertaking, subject to the information being provided to her in hard-copy only. The provision of hard-copy information is necessary in order to ensure that the terms of the Undertaking can be complied with, in particular that it be either returned to BC Hydro or destroyed pursuant to paragraph (e) of the terms. In BC Hydro's experience electronic copies of information cannot be "returned", and destruction is virtually impossible in light of the automated backing-up of electronic data that organizations all necessarily engage in. BC Hydro proposes that it provide Ms. Herbst a single unredacted hard-copy of the Business Case filed in confidence with the Commission upon its receipt of her executed Undertaking.

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<sup>1</sup> At <http://www.bcuc.com/Documents/Participant-Info/Declaration-and-Undertaking.pdf>.

The provision of the confidential information to Ms. Herbst on the basis proposed would allow her to discuss with her client FortisBC the general nature of the confidential information sufficient only to take instructions as to whether to seek an in camera hearing before the Commission to review the confidential information. Such a review, upon application by FortisBC and with Commission approval, would be with respect to each redaction, whether it ought to remain confidential or whether its disclosure is properly and fairly needed by FortisBC to advance its legitimate interests in this proceeding. In BC Hydro's submission, such processes are regularly employed by tribunals dealing with confidential information, and can facilitate settlement discussions between the parties regarding its use and disclosure.

BC Hydro notes that the obligations on those who enter into the Undertaking include the return of "notes and memoranda based on such [confidential] information" (paragraph (e)). To avoid any later misunderstanding BC Hydro also requests that any such notes or memoranda created by Ms. Herbst, or any others at FortisBC who discuss the confidential information with her, be returned to BC Hydro with the hard-copy unredacted confidential information after the matter has been resolved.

BC Hydro understands that Ms. Pratch is the Chief Privacy Officer, Corporate Secretary and in-house counsel for FortisBC Inc., as well as other Fortis companies. While it remains unclear what role Ms. Pratch plays in this proceeding, whether she is also counsel to Fortis Inc, and what her reporting relationships are within the Fortis group of companies, BC Hydro consents to the disclosure to Ms. Pratch of the confidential information on the same terms and conditions as Ms. Herbst.

BC Hydro understands that none of Ms. Martin, Mr. Egolf and Mr. King are lawyers and that FortisBC has not provided any particulars of their responsibilities or reporting lines within the Fortis group of companies, or their particular role in regard to this proceeding. No explanation has been provided as to why they need to see the confidential information. BC Hydro notes that once confidential information is disclosed it cannot be undisclosed; it will inevitably remain in the minds of those who have been party to it; and it can be very difficult to determine whether it has been used solely for the purpose of the proceeding and consistent with the requirements of the Undertaking. FortisBC seems to have a focus on BC Hydro's confidential transmission-related information despite the fact that the Transmission Agreements are currently under negotiation between BC Hydro and Teck and are expected to be filed with the Commission before the second round of IRs in this proceeding.<sup>2</sup> For these reasons BC Hydro maintains its opposition to the disclosure of the confidential information to these individuals regardless of whether they execute the Undertaking, subject to potential further process as described above after Ms. Herbst and Ms. Pratch have reviewed the confidential information.

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<sup>2</sup> Page 5 of the cover letter to the Waneta 2017 Transaction.

BC Hydro notes that the Waneta 2017 Transaction to which the confidential information relates is a \$1.2 billion transaction that if it closes will have lasting financial implications for decades. BC Hydro accepts that while that observation may argue in favour of disclosure, it also means that the Commission ought to be very careful of artificially tilting the competitive playing field by requiring the disclosure of information that would normally never be available to parties in a commercial negotiation.

With respect to FortisBC's assertions relating to the Canal Plant Agreement that is expected to remain in force until at least 2036, at page 1-4 of the Application BC Hydro notes that the Canal Plant Agreement will require amendments in order to accommodate BC Hydro's undivided interest in the Waneta Dam after the transaction closes. FortisBC is a party to that (unregulated) agreement, and can be expected to make the most of whatever competitive information it has in the forthcoming discussions regarding its amendment.

Similarly, FortisBC's assertion that there are no other near-term negotiations pending with BC Hydro ignores its own recent Reply submission regarding its Long Term Electric Resource Plan & Long Term Demand Side Management Plan. From its November 24, 2017 submission, at page 22:

“82. The CEPSA [Capacity and Energy Purchase and Sale Agreement between Powerex and FortisBC], as CEC acknowledges, is only in effect until 2018 and can be renewed annually on mutual agreement thereafter until 2025. FBC cannot guarantee or assume that Powerex will agree to renewals of the CEPSA to 2025 or that it will enter a new CEPSA on comparable terms thereafter.”

FortisBC makes its request in terms of understanding the financial impact of the transaction. BC Hydro reiterates that FortisBC's corporate parent, Fortis Inc, made a binding offer for the two-thirds interest in Waneta and so is more than capable of explaining to FortisBC why it made good business sense to do so.

For further information, please contact Geoff Higgins at 604-623-4121 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Fred James  
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