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July 5, 2018

Via Email
Mr. Patrick Wruck
Commission Secretary and Manager, Regulatory Support
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250 Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

Re: Fortis BC Inc. – Self-Generation Policy Stage II Application- Project No. 1598895

By letter dated June 12, 2018 (Exhibit A-12), the Commission sought comments from participants related to Celgar's request to remove Dennis Swanson Witness Statement (Exhibit A2-1) from the record of this proceeding before any further process is established by the BCUC (Exhibit C6-4). By letter dated June 21, 2018 (Exhibit C6-5) Celgar provided comments in accordance with Exhibit A-12. By letter dated June 21, 2018, BCSEA (Exhibit C4-5) submitted comments in accordance with Exhibit A-12. By letters dated June 28, 2018, BC Hydro (Exhibit C2-6) and CEC (Exhibit C5-5) submitted comments in accordance with Exhibit A-12. All interveners that responded to Exhibit A-12 took no position regarding Celgar's request for removal of Exhibit A2-1.

By letter dated June 28, 2018 (Exhibit B-15), FortisBC provided comments in accordance with Exhibit A2-1; the following comments reply to a limited number of the FortisBC comments in Exhibit B-15.

FortisBC comments in Exhibit B-15 reiterate that FBC does not object to the removal of Exhibit A2-1 from the regulatory record in this proceeding, and FortisBC has not raised any additional concerns relevant to Celgar's request to remove A2-1. Instead, the FortisBC comments focus on concerns about further process in the event the Commission does not approve Celgar's request to remove A2-1 from the record, not whether A2-1 should be removed from the record.

As previously submitted in Exhibit C6-5, Celgar submits that Exhibit A2-1 should be removed from the record because: 1) it has not been tested in this proceeding, 2) Celgar has not had an opportunity to be heard regarding the issues raised in Exhibit A2-1, and 3) FortisBC has not objected to its removal and has not sought to rely on it. Just as the focus of FortisBC concerns related to further process in the event that Exhibit A2-1 remains on the record, the focus of the following reply comments will be about further process if Exhibit A2-1 remains on the record.

Relevance and Impact of Exhibit A2-1

FortisBC observes that Celgar does not comment on how the topics in the Witness Statement would impact issues being determined in this proceeding or how Celgar's position on such issues would be prejudiced without further regulatory process in this proceeding.¹ In reply, Celgar submits that identifying a number of the issues raised in Exhibit A2-1 that may be considered by the Commission as being relevant to this proceeding was the appropriate response to the Commission's requests for comments in Exhibit A-12.²

In order to provide the response that FortisBC believes was appropriate, it would be necessary to consider the merits of each of the issues raised by Mr. Swanson in his Witness Statement. However, in order to comment on the merits of issues raised by Mr. Swanson it would be first necessary to admit to the record of this proceeding all relevant NAFTA evidence, including transcripts of the oral cross-examination of Mr. Swanson, and establish further process.³ Again, contrary to the submissions of FortisBC it would not have been appropriate for Celgar to address the merits of Exhibit A2-1 in response to Exhibit A-12.

In the event that the Commission concludes that the issues in Exhibit A2-1 do not impact issues being determined in this proceeding, that is, Exhibit A2-1 is not relevant to the issues in this proceeding, then Exhibit A2-1 should be removed from the record of this proceeding because it is not relevant. Celgar objects to Exhibit A2-1 because it raises issues that are relevant to this proceeding.

FortisBC Reliance on Exhibit A2-1 and Burden re Further Process

FortisBC further submits that Celgar conflates the Witness Statement with a FortisBC filing in this proceeding that is being relied by FortisBC⁴. The meaning of this submission is not clear. Especially considering that Celgar has clearly noted that FortisBC has not sought to rely on the Witness Statement in this proceeding. In this regard, it needs to be noted that FortisBC has stated that it "has not sought to rely on the Witness Statement" not that it will not rely on Exhibit A2-1 if it remains on the record.

FortisBC submitted that Celgar bears the burden of establishing both that an (i) oral hearing is necessary in this proceeding; and (2) that compelling the attendance and cross-examination of a witness not put forward by the applicant to testify is necessary, relevant and possible. In reply, Celgar notes that evidentiary burden rests on the applicant, not interveners. Moreover, the basis of Celgar's request to remove Exhibit A2-1 from the record of this proceeding is procedural fairness. Contrary to the submissions of FortisBC, there is no onus or burden on Celgar related

¹ Exhibit B-15, p. 2, first para.

² Exhibit A-12, point a)

³ Exhibit A-12, second para., identifies the further process steps requested by Celgar.

⁴ Exhibit B-15, p. 2, end of second para.

to procedural fairness. Celgar has made submissions regarding the appropriate steps to test the evidence of Mr. Swanson in the Witness Statement, but does not bear a burden in that regard.

FortisBC submits that Celgar's only contention regarding further process is that without further process, "the Panel will have heard from FortisBC, but not from other interested parties, including Celgar, on the subject matter raised in Exhibit A2-1." In this regard, FortisBC treats a fundamental principle as less important than it is. Procedural fairness includes a right to be heard that cannot be dismissed merely because it might be "Celgar's only contention" that further process is required. .

Position of Other Interveners

FortisBC submits that all of the interveners submitted that proceeding to final argument was appropriate notwithstanding that Exhibit A2-1 was on the regulatory record at the time their submissions on further process were filed. As noted above, no intervener has taken a position regarding whether Exhibit A2-1 should remain on the record of this proceeding. It does not follow, as suggested by FortisBC, that the interveners have submitted that Exhibit A2-1 should remain on the record or that if it does remain on the record, no further process is required. On both process issues the interveners have taken no position.

FortisBC's Preferable Outcome

FortisBC has taken no position regarding Celgar's request, but has now stated that removal of Exhibit A2-1 from the record to be a preferable outcome to the further alternative processes proposed by Celgar. Unfortunately, as FortisBC seems to have done in earlier submissions, FortisBC equivocates. Instead of stating that it would prefer that Exhibit A2-1 be removed from the record if the Commission concludes that further process is necessary, FortisBC has limited its stated preference for removal of Exhibit A2-1 as compared to Commission approval of Celgar's request for further process⁵, namely, another round of information requests, intervener evidence, (which would include filing of the portions of the NAFTA record relevant to Exhibit A2-1), and oral cross-examination of Mr. Swanson.

Given that FortisBC has previously submitted that it does not object to the removal of Exhibit A2-1 from the record, Celgar submits that before any further process (not just as requested by Celgar) is approved by the Commission, Exhibit A2-1 should be removed from the record. Moreover, Celgar submits that either the alternative processes that it proposes should be accepted by the Commission, or other further process steps should be approved by the Commission in order to ensure procedural fairness. In both events, Exhibit A2-1 should be first removed from the record and the next steps in this process should be final argument.

⁵ Exhibit C6-4, p. 1, last para.

Conclusion

In conclusion, Celgar submits that Exhibit A2-1 should be removed from the record because it has not been tested in this proceeding and because FortisBC has not objected to its removal and has not sought to rely on it.

Yours truly,

(original signed)

Robert Hobbs