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March 12, 2021

**VIA BCUC E-Filing**

Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Marija Tresoglavic, Acting  
Commission Secretary**

Dear Ms. Tresoglavic:

**Re: FortisBC Energy Inc. (FEI)  
Application for a Certificate of Public Convenience and Necessity for the Okanagan  
Capacity Upgrade Project (OCU Project)  
Project Number 1599152**

We have recently been retained to act on behalf of Penticton Indian Band (PIB) in the British Columbia Utilities Commission (BCUC) public hearing on the OCU Project.

**Request for Extension of Time and Input on Further Process**

We write to seek an extension of the timelines set out in the BCUC's Order No. G-335-20 (Exhibit A-2) to submit information requests (IR) to FEI. We make this request pursuant to section 77 of the *Utilities Commission Act*, RSBC 1996, c 473 (UCA). An extension until April 15<sup>th</sup>, 2021 is requested.

We also request that no further procedural steps or timelines be imposed without an opportunity for input by PIB regarding necessary procedural steps and timing.

**Basis for Request**

**a. Penticton Indian Band is Entitled to High Degree of Procedural Rights**

The BCUC's decision on the OCU Project may result in significant impacts to the constitutional rights of PIB. Accordingly, PIB is owed a high degree of procedural fairness based on the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

Further, the BCUC's decision-making process engages the Crown's duty to consult and accommodate PIB. Therefore, procedural safeguards are required to satisfy the constitutional duty and the Honour of the Crown to ensure PIB has a meaningful opportunity to participate in the

BCUC's process (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 (CanLII), [2017] 1 SCR 1069).

As set out in PIB's request to Intervene of February 3, 2021 (Exhibit C5-1), the OCU Project is proposed within k̄səlx̄w̄ik̄n̄. k̄səlx̄w̄ik̄n̄ is a treasured hunting and gathering place for the Syilx people for generations. The location of the OCU Project is within Syilx Territory, and in particular PIB's area of responsibility over which PIB exercises their inherent Syilx title, rights and responsibilities and asserts aboriginal rights and title recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

The OCU Project has the potential to significantly impact the lands, waters, terrestrial and aquatic resources and wildlife and the exercise of Syilx title and rights by PIB. The OCU Project has the potential to harm PIB's Indigenous land use, governance and management.

PIB disputes FEI's claims in its application that "there are no known outstanding issues or concerns with regard to the Project, which cannot be addressed through planned future engagement." (Exhibit B-1 at p.107). From PIB's perspective, engagement with PIB remains at its early stages as PIB has not yet had an opportunity to complete its assessment of OCU Project impacts on PIB's rights and title.

Further the OCU Project proposes to transfer property rights to a third party, being FEI. This transfer without PIB's consent, which has not been given, is a meaningful diminution amounting to a *prima facie* infringement of PIB's aboriginal title (*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCR 257).

**b. Timelines Imposed Without Submissions from PIB and Prevent Meaningful Opportunity to Participate in BCUC Public Hearing**

We understand that the BCUC did not seek input from PIB on its existing time and capacity restraints before issuing the regulatory timetable in Order No. G-335-20. Unfortunately, the regulatory timeline imposed will not provide PIB a meaningful opportunity to participate in the BCUC process on the OCU Project.

The first round of IRs were due just one week after PIB registered as an intervener. The second round of IRs are due now in just two weeks. This is all insufficient time to obtain a complete application from FEI; retain experts and legal counsel to conduct a review of the application materials and obtain advice on Confidential Declaration and Undertaking; and then conduct a review of the application to draft two rounds of IRs.

We can advise that PIB is in the process of concluding its retention of experts. More time is needed to advise on, and submit, if appropriate, a Confidential Declaration and Undertaking; obtain a complete application; and then prepare the necessary IRs. Accordingly, we request an extension of the current IR deadline of March 25, 2021 date to April 15, 2021. We also reserve the right to seek a further opportunity to provide additional IRs at a later date.

Thank you for consideration of this request. We ask for an opportunity to reply to any response the BCUC may receive from FEI.

Yours truly,

MANDELL PINDER LLP



Tarlan Razzaghi

TR/ea