



422 - 1080 MAINLAND STREET | VANCOUVER, BC | V6B 2T4
RECEPTION SUITE 300 | T 604.681.4146 F 604.681.0959

Tarlan Razzaghi
Direct: 604.558.8044
Email: tarlan@mandellpinder.com

July 9, 2021

VIA BCUC e-filing

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

**Attention: Patrick Wruck, Commission
Secretary**

Dear Mr. Wruck:

**Re: FortisBC Energy Inc. (FEI)
Project No. 1599152**

**Application for a Certificate of Public Convenience and Necessity for the Okanagan
Capacity Upgrade (OCU) Project (Application)**

Further to the BCUC's correspondence of May 28, 2021 establishing further regulatory timelines, we write on behalf of Penticton Indian Band (PIB) to make submissions on necessary further process for the BCUC to assess the public interest of the OCU Project and satisfy its obligations of procedural fairness and the Crown's duty to consult and accommodate PIB.

As set out in our correspondence of March 12, 2021, PIB, as title holder, is entitled to a high degree of procedural fairness in addition to the OCU Project being proposed through a highly culturally significant area.

Basic principles of procedural fairness entitle PIB a meaningful opportunity to present its own case (see, *Trinity Western University v. The Law Society of British Columbia*, 2015 BCSC 2326 at para. 124; *Khan v Savino*, 2020 BCSC 555 at para. 36). Deep Crown consultation often requires participation in an oral hearing process (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 at para. 47).

We have reviewed FEI's correspondence of July 5, 2021 and do not agree with the truncated process proposed. Of note, FEI has eliminated PIB's basic right to present its own case to the BCUC. FEI states the BCUC has "ample record" to make a public interest determination. FEI fails to acknowledge that this record only consists of its own evidence in support of its own case. This is unfair and egregious because of FEI's early acknowledgement that PIB would present its own

evidence. On March 25, 2021, in justifying a delay in providing PIB with its confidential filings, FEI wrote:

FEI believes that it would be most efficient for any additional regulatory process required to determine access to the Confidential Information to occur concurrent with the recommencement of the regulatory process, as discussed in FEI's submission regarding PIB's extension request (Exhibit B-10). Given that PIB also indicated an intent to file Intervener Evidence, there will be ample opportunity to schedule an additional round of information requests specific to Confidential Information for PIB, if required. [emphasis added]

In light of what now appears a dispute between FEI and PIB, PIB will not undertake to incur costs in the preparation of its evidence, including expert reports until it receives a decision from the BCUC on the regulatory process to be established. Assuming a decision will be made by July 21, 2021, we propose the following timeline for further regulatory process:

Action	Date (2021)
Interveners File Evidence	September 27, 2021
Oral Evidence of PIB is Presented	October 27, 2021
FEI and BCUC Questions for PIB at Oral Hearing	October 28, 2021
Written Final Argument to be Presented at Oral Hearing	November 10, 2021

The timeline proposed to file intervener evidence is necessary for the following reasons:

- Adequate time to prepare PIB's evidence is necessary based on PIB's experts' current availability and schedule which includes PIB's environmental advisors' busy summer field season;
- Opportunity for PIB's environmental experts' environmental field work to proceed over the summer months in order to collect the information necessary for their expert reports to file with the BCUC. This is partly acknowledged by FEI in its responses to PIB Information Requests No. 3 (See IR3 81.1.1); and
- The extreme heat and active fire season during the summer months requires PIB's attention and resources and should not be diverted to defending its lands from the OCU Project.

Submitted to the BCUC under a separate cover, is PIB's Participant Assistant Cost Award Form to correspond with the process set out above. The completed form does not directly align with the fee schedules set out in Participant Assistance and Cost Award Guidelines G-143-16 but instead provides estimated actual costs to be incurred by PIB in its participation in the BCUC process. Consideration of actual costs is consistent with section 11 of the Participant Assistance and Cost

Award Guidelines G-143-16 and the requirement for participant funding as part of meaningful aboriginal consultation (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40).

Thank you for the consideration. We look forward to hearing from you.

Yours truly,

MANDELL PINDER LLP

A handwritten signature in blue ink, appearing to read "T. Razzaghi".

Tarlan Razzaghi

TR/ea

cc: Diane Roy, Vice President <gas.regulatory.affairs@fortisbc.com>