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Our File No.: 05497-240

June 28, 2018

## BY ELECTRONIC FILING

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

**Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support**

Dear Sirs/Mesdames:

**Re: FortisBC Inc. Self-Generation Policy Stage II Application –  
BCUC Project No. 3698820**

Pursuant to a letter from the British Columbia Utilities Commission (**BCUC** or the **Commission**), dated June 12, 2018 (Ex. A-12), Zellstoff Celgar Limited Partnership (**Celgar**) was requested to provide additional information on its request for alternative process if Exhibit A2-1, the Dennis Swanson Witness Statement (the **Witness Statement**), is not removed from the record. In its letter, the Commission also set a regulatory schedule for FortisBC Inc. (**FBC**) and the other Interveners to provide submissions in response to the additional information provided by Celgar.

Celgar filed its additional information and submissions in response to Exhibit A-12 on June 21, 2018 (Ex. C6-5). This letter provides FBC's response to Celgar's Exhibit C6-5.

First, we reiterate that, as stated in our letter of June 5, 2018 (Ex. B-14), FBC does not object to the removal of Exhibit A2-1 from the regulatory record in this proceeding.

Second, if the alternative of maintaining Exhibit A2-1 on the record will necessitate further process in the form of information requests (**IRs**), additional evidence, or an oral hearing with cross-examination (though, as we explain below, we do not consider this necessarily to be the case), then FBC's *preference* is for the Witness Statement to be removed from the record. This would allow the parties to proceed with final written argument, which was the stated preference of FBC and generally all Interveners in response to the Commission's request for comments on further regulatory process in Exhibit A-11. Celgar's requests for alternative process if Exhibit A2-1 remains on the record would, if granted in whole or part, complicate and lengthen this proceeding and FBC is unclear regarding the relevance of the evidence in the Witness Statement to this proceeding that would justify such further steps being taken.

FBC's response to the other information provided in Celgar's Exhibit C6-5 is as follows.

***The Subject Matter of the Witness Statement that Celgar Intends to Explore***

Although Celgar's Exhibit C6-5 lists some general topics raised in Exhibit A2-1 that it proposes to explore through further process, it does not explain how the content on those topics in the Witness Statement would impact the issues being determined in this proceeding or how Celgar's position on such issues would be prejudiced without further regulatory process in this proceeding. Celgar's only contention in this regard is that, without further process, "the Panel will have heard from FortisBC, but not from any other interested parties, including Celgar, on the subject matter raised in Exhibit A2-1".

We do not agree with this sentiment. Exhibit A2-1 was filed by Commission staff in this proceeding. It is not evidence FBC filed in support of the current application. Further, the Witness Statement was from a NAFTA arbitration proceeding between Mercer International Inc. (**Mercer**) and the Government of Canada. FBC was not a party to that proceeding with a direct interest in the outcome and the Witness Statement was not filed on FBC's behalf. Mr. Swanson was a witness in the arbitration. The NAFTA arbitration engaged distinct legal and factual issues that do not necessarily (or at all) overlap with the issues of self-generation policy that are raised in this proceeding. The arbitration hearing also took place approximately three years ago and the Witness Statement itself was made approximately four years ago. Accordingly, it is not appropriate to conflate the Witness Statement, as Celgar does, with an FBC filing in this proceeding that is being relied upon to support FBC's position on the issues engaged in this proceeding and to which Celgar should be entitled to respond.

***The Nature of the Intervener Evidence that Celgar Proposes***

Celgar submits that it would need to file "similar evidence" to the evidence "Celgar" filed in relation to the Witness Statement in the NAFTA arbitration proceeding if Exhibit A2-1 remains on the record in this proceeding. We note that Mercer, not Celgar, was a party to the NAFTA arbitration hearing.

In FBC's submission, if any additional evidence is necessary to contextualize the Witness Statement, then it should be limited to additional material from the NAFTA proceeding itself, such as responsive witness statements filed by Mercer or transcript from Mr. Swanson's cross-examination. It would not be appropriate for Celgar to file updated and current evidence whose purpose and intent is to respond to a Witness Statement of an FBC representative made approximately four years ago in an unrelated proceeding. Doing so would effectively turn this proceeding into an opportunity for Celgar to re-litigate the factual matters that were addressed in a different forum with respect to different legal issues.

***The Basis for Celgar's Request to Have an Oral Cross-Examination of Mr. Swanson***

For an oral cross-examination of Mr. Swanson to be ordered as Celgar requests, Celgar bears the burden of establishing both that (i) an oral hearing is necessary in this proceeding; and (ii) that compelling the attendance and cross-examination of a witness not put forward by the applicant to testify is necessary, relevant and possible.

In FBC's submission, Celgar has not met its burden in either of these respects. An oral hearing, even on a limited basis, is not necessary or appropriate here. The Commission has already amassed a

comprehensive evidentiary record pertaining to the relevant issues through this proceeding as well as FBC's Self-Generation Policy Stage I Application. The Interveners have had a reasonable opportunity to participate and test the evidence through the IR process. FBC also believes that the relevant facts are clear and non-contentious, although the broader policy issues to which they relate may not be. Finally, the factual matters raised by the Witness Statement and the self-generation issues raised in this proceeding more broadly are technical in nature and lend themselves to determination through a written process. We note that all of the other Interveners, save Celgar, submitted that proceeding to final written argument was appropriate notwithstanding that Exhibit A2-1 was on the regulatory record at the time their submissions on further process were filed.

Further, Celgar has not met its burden of showing the relevance of the matters it would seek to address in an oral cross-examination of Mr. Swanson to the specific issues raised in this proceeding, nor has it shown that the evidentiary matters it says are in issue could not be tested in another way. In FBC's view, Celgar's concerns with the Witness Statement being on the record in a de-contextualized fashion could be appropriately addressed through the filing of the transcript of Mr. Swanson's cross-examination from the NAFTA arbitration, which is a publically available document. It is not procedurally fair or appropriate to require Mr. Swanson to appear as a witness, despite FBC not seeking to rely on his testimony in support of the application, and to be cross-examined on a Witness Statement that was made approximately four years ago in a different litigation context.

### ***Conclusion***

In summary:

- FBC does not object to the removal of Exhibit A2-1 from the record.
- FBC considers the removal of Exhibit A2-1 from the record to be a preferable outcome to the further alternative processes proposed by Celgar if it remains on the record.
- If Exhibit A2-1 is not removed from the record, FBC submits that Celgar has not provided sufficient justification for further process arising from Exhibit A2-1, with the possible exception of the filing of other materials from the NAFTA arbitration proceeding in which the Witness Statement was made. If Celgar were granted leave to file evidence of this nature, then FBC would request leave to file any rejoinder or other evidence from the NAFTA proceeding that is related to the additional material Celgar files.
- Celgar has not established a justification for either an oral hearing in this proceeding or for Mr. Swanson to be compelled to be cross-examined on the Witness Statement. These proposals should be rejected in any event.

June 28, 2018

- 4 -

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All of which is respectfully submitted.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Nicholas T. Hooge

NTH/cn

c.c.: Registered Interveners  
FBC Regulatory Affairs