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Our File No.: 05497-0156

August 1, 2008

Commission Secretary
BC Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC V6Z 2N3

Attention: Ms. Erica M. Hamilton

Dear Ms. Hamilton:

Re: *FortisBC Inc. An Application for a CPCN for the Okanagan Transmission Reinforcement (OTR) Project No. 3698488*

Please find enclosed twenty copies of the Reply Argument of FortisBC in regard to the above captioned Application.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



George K. Macintosh, Q.C.

c.c.: Registered Intervenors

**REPLY ARGUMENT OF FORTISBC INC. IN SUPPORT OF THE OKANAGAN
TRANSMISSION REINFORCEMENT PROJECT**

REPLY TO BC OLD AGE PENSIONERS ORGANIZATION ET AL. (“BCOAPO”)

1. BCOAPO recommends approval of the OTR Project as proposed, with Route Alternative 1A on the existing right-of-way.
2. FortisBC agrees to BCOAPO’s request to provide further information on OTR Project costs in future Capital Expenditure Plans.
3. BCOAPO states, at paragraph 15, that an earlier filing of the Application may have made possible “accommodating the need for the Project, First Nations interests, local right-of-way residents’ concerns, and environmental approvals”. FortisBC addressed the timing of its filing at paragraph 8 of its Final Argument and, when that is combined with BCOAPO’s own statement, at paragraph 5, that BCOAPO is “aware of the need to avoid interference with First Nations claims”, it is evident that an earlier filing of the Application could not reasonably be expected to have changed the outcome as to the best route for the Project.

REPLY TO SOFAR AND WILTSE

4. Before addressing the bulk of the SOFAR – Wiltse submission, FortisBC advises that it largely accepts the SOFAR and Wiltse “backup positions”, expressed at pages 19 and 20 of their submission, as follows.
5. FortisBC accepts all 3 points of SOFAR.
6. Regarding Wiltse, with regard to point 1, where Wiltse accepts Cross-Section C, i.e. Alternative 1A, the one, perhaps obvious, qualification FortisBC adds is that the incremental costs of moving the line must be determined by addressing the configuration finally approved by the Commission for the Project, whether it be Cross-Section C or some other configuration.
7. FortisBC accepts Wiltse point 2.
8. With regard to Wiltse point 3, FortisBC agrees that the decision whether to move the line based on FortisBC’s cost estimates, or to leave the line on the existing right-of-way, is a decision for Wiltse, and also accepts sub-points (a) and (c) on page 20.
9. Regarding Wiltse sub-points (b) and (d), FortisBC has agreed to full transparency with regard to the incremental costs of a line move and does not believe that any

- further regulatory process is required. However, if the Commission were to consider the matter at Wiltse's request, FortisBC respectfully asks that such process be accommodated without further delay to the Project schedule as described in FortisBC's Final Argument at paragraph 38.
10. The risk of not meeting the Project schedule for the line component is linked to the procurement schedule for the steel poles and the insulators. Detailed engineering for the line route is followed by a 3 month tender/contract award process, and a further nine months to delivery once the order has been placed. Any delay in finalizing the route and therefore the structures for this section of the line would most certainly delay the in-service date and, given a 6 month construction window (April to November) in each year, would delay construction until the following year.
 11. Turning to the rest of the SOFAR – Wiltse submission, which FortisBC will generally reference as the “SOFAR submission”, SOFAR recommends the Upland Route and states that Alternative 2B would resolve its concerns (page 2, lines 17-20). The conclusion on page 1 of the SOFAR submission that the Upland Route “faces no showstoppers” is highly questionable. There exists considerable uncertainty as to whether land rights could be obtained for the Upland Route either within a reasonable time, or at all (Application, Exhibit B-1-1, at Tab 4, page 49, line 15 – page 50, line 15; and as set out in the FortisBC Final Argument at paragraphs 21-28).
 12. In any event, the issue is not whether the Upland Route is possible. The issue instead is whether it is in the overall public interest to create a new corridor when a safe brownfield corridor is readily available. It is not enough to say, as SOFAR says at page 1, lines 12-14, that residents “have concerns” about impacts on their views, their property values and their health, or to ask that the Commission decide this issue based on inflammatory statements such as that found at page 18, lines 12 - 14: “along with stoking their fears (whether backed by science or not) about health consequences”. The very purpose of a public hearing is to address such concerns for open-minded and unbiased listeners, and the OTR hearing clearly demonstrated that the concerns expressed at pages 1 and 18 of the SOFAR submission are groundless. The fact is, based on the evidence of Mr. Grant (Exhibit B-1-3, Appendix K; Transcript Volume 2, pages 258-259) and the complete lack of evidence to the contrary, that property values will not be adversely affected by the new lines. Paragraphs 10 through 18 of FortisBC's Final Argument summarize the evidence in this Application with regard to EMF, which shows that health is not adversely affected in any way either by the existing structures or the proposed new structures, which will have even lower EMF levels than the existing ones. SOFAR invokes the “fears” of residents with regard to EMF but fails entirely to acknowledge the compelling evidence in this proceeding which demonstrates that the expressed fears are unfounded.

13. In its Final Argument at paragraph 9, bullet 3, FortisBC submitted that the visual impact of Alternative 1A will be similar to or better than the existing line. SOFAR, at page 18, urges caution in judging the photographic evidence on the record, notwithstanding the testimony of its own witness panel that if the line were to be constructed on the existing right-of-way, Alternative 1A would be preferred (Transcript Volume 3, page 556, line 17 – page 558, line 24). The photographic evidence referenced by FortisBC cannot be perfect, because it is future looking, but it is the best available evidence at this time of what the new poles will look like.
14. At page 6, line 27, SOFAR again raises the “no showstopper” test, this time in the context of environmental damage. If, by saying that there are no environmental showstoppers, SOFAR is saying that it is possible to destroy natural habitat to create a new right-of-way, it is correct. Fortunately, environmental assessments and subsequent decisions by regulators are made on more sophisticated bases, and harm to a diminishing natural habitat is generally regarded as irresponsible stewardship whenever it can be reasonably avoided.
15. SOFAR, at page 3, line 29- page 4, line 2 of its submission, says that FortisBC must obtain permission for the Project from local governments. FortisBC obviously is generally supportive of local government planning, and works extensively with local governments to coordinate operations and accommodate requests, but FortisBC cannot accede to the requests of local governments to the detriment of its other rate payers (Transcript Volume 3, page 395, lines 7-17). In any event, no local government has filed any particular by-law which it says has application and is at risk of being violated. Utilities and local governments must of necessity endeavour to work together on a daily basis, and they do so. Hopefully in this case, there will be no need for a ruling by the Commission to prevail over a requirement of a local government.
16. At page 11, lines 27-32 of its submission, SOFAR, in comparing Alternatives 1A and 2B, asserts that Alternative 1B is unworkable because it would require an expansion of the existing right-of-way by 10 metres. That is incorrect. Alternative 1B is shown in Table 4-3-1B in Exhibit B-1-1 (at section 4, page 34) as Cross-Section E, which requires the same right-of-way as the existing line. SOFAR is perhaps thinking of Cross-Section D, which would require a wider right-of-way.
17. At the top of page 7 of its submission, SOFAR is saying that the First Nations issues on the Upland Route are no different than those faced by any developer on Crown land. While the statement is true, no one can fail to be aware that First Nations claims on undisturbed Crown land can now block a project indefinitely.
18. The possibility that an upland right-of-way may be impossible to assemble was confirmed by the Integrated Land Management Bureau, which advised FortisBC

that an upland application “may not result in a right-of-way approval” (Exhibit B-1-1, Tab 4, page 59, line 11).

19. Wiltse is a developer who made a contract with FortisBC, then West Kootenay Power Ltd., to sell to it the existing right-of-way in 1965. For the sake of a developer’s increased profit through increased housing sales, Wiltse is now asking that an upland natural habitat be substantially disrupted.
20. Wiltse appears to be contemplating the construction of at least one thousand housing units, and FortisBC is prepared to cooperate fully with Wiltse to minimize the impact, so that only 205 units will be unavailable as a result (page 1, line 21 of the SOFAR submission). Wiltse received compensation for the existing right-of-way in 1965 (Transcript Volume 3, page 310, line 23 – page 311, line 15) and therefore has had the use of those funds for 43 years. Wiltse presented no evidence as to its foregone profit on the 205 units, nor a comparison of that forgone profit with the value of the funds received from the utility 43 years ago. Nor did it present evidence of the market value for the right-of-way on its property today, which it is presumably asking FortisBC to sell back to it, for the 205 units, before FortisBC moves the lines upland. The point is that Wiltse has had economic benefits and tradeoffs as a landowner with respect to the right-of-way, and it is not reasonable for it to ask, when it now wishes to develop this land, that it be given a free hand, as though the utility did not pay for the right-of-way in 1965. The public interest does not support abandoning a brownfield corridor on this basis.
21. At page 5 of the SOFAR submission, SOFAR asks that urgency be removed as a factor in the route analysis. Whether timing factors are referenced as urgency, or instead simply as part of reasonable planning (see Paul Chernikhowsky’s evidence, Transcript Volume 2, page 275, line 6 – page 279, line 24), it is not prudent utility practice to ignore the current demands of the Okanagan area. Furthermore, even if timing were somehow to be set aside as a factor, which would be unreasonable, one is still left with the issue of developing a greenfield corridor instead of utilizing the existing brownfield corridor.
22. At pages 8 and 9, SOFAR continues to raise the Big White comparison on the brownfield/ greenfield issue. Mr. Sam gave clear evidence on the difference in circumstances between the Big White and OTR transmission lines (Transcript Volume 2, page 269, line 8 – page 271, line 13). SOFAR’s disregard of this evidence is not helpful.
23. SOFAR is in error at page 17, line 18 of its submission in stating there is no evidence, other than the written submission of the National Research Council of Canada (“NRC”), regarding NRC’s concerns. Mr. Shtokalko’s testimony in this regard can be found beginning at Transcript Volume 2, page 262, page 17, and he

concludes on page 263, lines 19 – 22 that the NRC’s position in regard to an Upland Route may in fact conflict with the position of those such as SOFAR.

REPLY TO OTHER INTERVENER ARGUMENTS

24. FortisBC will reply to the remaining intervener arguments, below, more briefly, only because numerous points in these arguments have been addressed above already in answer to the submissions of BCOAPO and SOFAR – Wiltse.

REPLY TO CORE (HANS KAROW)

25. CORE’s submission, not surprisingly, is focused on EMF issues, and FortisBC relies in that regard on its Final Argument beginning at page 3, section D (“Route Selection – EMF”).
26. CORE concludes its submission by advocating an Upland Route, but does not present argument supporting the abandonment of the brownfield corridor apart from its submissions regarding EMF, which FortisBC believes it has fully addressed already in its Final Argument.

REPLY TO MR. HARLINGTON

27. Mr. Harlington’s submission makes the mistake, throughout, of advancing arguments which are not based on evidence which was presented in the hearing or the exhibits.
28. Unfortunately, Mr. Harlington, when referencing those who support maintaining the existing corridor, describes The Nature Trust as a partner of FortisBC and biased in its viewpoint. The position of The Nature Trust is set out in its letter at Exhibit B-1-2, Appendix A, pages 27-28, where it states that it is not in a position to support the Upland Route. The Nature Trust is an organization of utmost credibility and integrity, and ought not to be characterized in the manner asserted by Mr. Harlington.
29. At page 7 of his submission, Mr. Harlington speaks about corona ions as a health hazard, and references Exhibit C3-29 in doing so. That Exhibit, at best, reflects one person’s hypotheses and provides no evidence to support the particular hypothesis that exposure to corona ions causes adverse health effects.
30. With respect to Mr. Harlington’s submissions regarding EMF, FortisBC adopts its Final Argument at paragraphs 10-18. FortisBC respectfully submits that the EMF

evidence in the hearing is overwhelmingly supportive of the conclusion that there are no adverse health effects whatever from maintaining the existing corridor.

REPLY TO MS. KISTNER

31. With respect to Ms. Kistner's submissions regarding EMF, FortisBC repeats its position as referenced above and in its Final Argument.
32. Ms. Kistner reports experiencing shocks when working on her property. This may be due to ungrounded equipment, such as a fuel tank. A licensed electrician should be consulted to assess and rectify the problem and FortisBC would gladly assist in assessing the problem Ms. Kistner describes (paragraph 5 of her submission).

REPLY TO MR. WAIT

33. In answer to Mr. Wait's concern about FortisBC maintaining the new 75/76 Lines, FortisBC confirms that there are no particular difficulties anticipated in maintaining the proposed lines.
34. The Non Financial Comparison of Route Alternatives presented in Table 4-3-3D at Tab 4, page 44 of the Application (Exhibit B-1-1) shows that in terms of reliability, Alternatives 1A and 1B utilizing the existing corridor are superior to Alternatives 2A and 2B on the Upland Route, and that in terms of operation and safety, Alternatives 1A and 1B are better than Alternative 2A and equivalent to Alternative 2B. Alternatives 1A and 1B rank lower in terms of effects during construction. FortisBC obviously regrets the necessary temporary disruption during construction and will take measures to minimize the associated inconvenience.
35. Mr. Wait proposes that regulatory approval of this Project be postponed in order to examine his suggested "Option #4". With respect, this proposal cannot be entertained, nor should it have been even if engineering design had been included in the hearing issues. Mr. Wait has had available a regulatory process of more than six months' duration in which to propose alternatives. Further, even if Option 4 was technically or financially sound, which FortisBC disputes, it requires the same greenfield corridor that, for reasons summarized in this proceeding and above, should not be preferred.

CONCLUSION

36. Having examined and addressed the arguments of the interveners, FortisBC maintains its submission that the evidence overwhelmingly supports utilizing the

brownfield corridor with Alternative 1A, instead of relocating and constructing the lines on an upland (greenfield) route:

- When the Upland Route would result in harm to natural habitat, with the resulting dislocation and disturbance of wildlife;
- When the anticipated EMF levels from the new lines will be *lower* than they are from 76 Line at present, and when they will be *far below* safe EMF levels;
- When the visual impact of the new lines, using the single pole configuration will, FortisBC submits, be either similar to or better than what is there now (cross section A in Exhibit B-3, BCUC IR1 page 178), as clearly demonstrated by the *photographic evidence* seen in (a) Exhibits B-22 and B-23, (b) the Application (Exhibit B-1-1) at page 13, Figure 4-2-1-B, compared with page 14, Figure 4-2-1-C, and (c) the Application, page 17, Figure 4-2-1-F, compared with Figure 4-2-1-G;
- When the delays and uncertainties associated with the Upland Route would prevent FortisBC from having these lines in service when they are needed to serve FortisBC customers in the Okanagan;
- When a fair and independent assessment of actual competing interests as between the two routes speaks strongly in favour of maintaining the existing route; and
- When the Commission has in the past expressed the general preference for utilizing existing corridors, and not creating new ones, where that can reasonably be achieved.

37. FortisBC submits that the Penticton hearing of this application in June of this year was particularly helpful in establishing the facts to demonstrate the safety and reasonableness of maintaining the brownfield corridor. Hopefully, health concerns of open-minded attendees were put to rest so that the reasonableness of preserving the existing corridor could be recognized.

August 1, 2008

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



George K. Macintosh, Q.C.
Counsel for FortisBC Inc.