

2900 – 550 Burrard Street  
Vancouver, British Columbia, Canada V6C 0A3

604 631 3131 Telephone  
604 631 3232 Facsimile  
1 866 635 3131 Toll free



**Matthew Ghikas**  
Direct +1 604 631 3191  
Facsimile +1 604 632 3191  
mghikas@fasken.com

February 22, 2016  
File No.: 240148.00742/14797

**BY E-MAIL**

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

**Attention: Laurel Ross**  
**Acting Commission Secretary and Director**

Dear Sirs/Mesdames:

**Re: An Application by FortisBC Energy Inc. - Common Equity Component and Return on Equity (ROE) for 2016**  
**FortisBC Energy Inc.'s Reply Comments on Exhibit A-11 Procedural Matters**

I write to provide FortisBC Energy Inc.'s ("FEI" or the "Company") response to interveners regarding the procedural matters raised in the Commission's correspondence of February 16, 2016 (Exhibit A-11). This letter focusses on the appropriate scope of the oral hearing.

The Commercial Energy Consumers Association of British Columbia (CEC) does not acknowledge or address the fact that its position is at odds with the Commission's determination on scoping in its November 9, 2015 procedural order, Order No. G-177-15.

The Association of Major Power Customers of BC (AMPC) argument for why the Commission should re-interpret its Exhibit A-2 reference to "Oral Evidence (limited scope Expert Evidence)" as including company evidence and witnesses is unpersuasive for four reasons.

- **First, AMPC's submission ignores the context of Order No. G-177-15.**

AMPC is ignoring the context in which the Commission issued Order No. G-177-15. The wording "Oral Evidence (limited scope Expert Evidence)" is identical to what

appears in the timetable that had been proposed by FEI in its cover letter to the Application. FEI's cover letter (quoted in my initial letter of February 18) was unequivocally referring to expert evidence in the traditional sense, i.e. non-company witnesses. Furthermore, the Commission, by reference to the phrase "limited scope Expert Evidence" directed a limitation of the Oral Hearing. By definition, a hearing that treats all evidence as being in scope is not "limited scope".

- **Second, utility evidence is routinely assessed in written processes.**

AMPC's suggestion that taking the Commission's wording at face value would be "diverting from normal practice" is incorrect.

FEI agrees that the Company's own evidence draws on the input of subject matter experts within the Company. However, this is no different from any other utility application. And in the majority of utility applications, the Company evidence is heard by way of written proceeding, not oral hearings.

In fact, the GCOC Stage 2 proceeding, which addressed the business risk of multiple utilities, proceeded by way of written process. In that process, the Commission received evidence from the utilities of similar nature and scope to what is presented in this proceeding, as well as evidence of external experts. In the GCOC Stage 2 proceeding, the utilities supported a written process while customer group interveners, Industrial Customer Group and BCOAPO<sup>1</sup> suggested an oral process. In Reasons issued with Order G-77-13, Appendix A, the Commission Panel was not persuaded that an oral hearing was justified.<sup>2</sup> Similarly, all of the cost of capital evidence - which included the evidence of an external cost of capital expert as well as company business risk evidence - in the application addressing the amalgamation of the three FortisBC Energy utilities was also assessed in a written process. The Commission's reliance on written proceedings in most cases is intuitive and unsurprising, since the Commission must always weigh regulatory efficiency considerations against the additional insight that might be obtained through having an oral hearing on every proceeding. In the present Application, that balancing exercise would need to account for the apparent consensus that there is significant continuity in FEI's business since 2012, when the business risks of the Company were fully examined in a Generic Cost of Capital proceeding.

---

<sup>1</sup> The British Columbia Public Interest Advocacy Centre representing the British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and the Tenant Resource and Advisory Centre *et al.*

<sup>2</sup> In Order G-77-13, the Commission Panel deferred a decision on whether to proceed with an oral or written hearing on the cost of capital for FortisBC Inc. until the filing of its evidence. FortisBC Inc.'s cost of capital ultimately did proceed with a written process.

The Commission's approach of limiting the scope of the oral hearing early in this proceeding - an approach which FEI submits it should uphold now - is consistent with the recommendations of the November 2014 Core Review Report, which emphasized the benefits associated with focusing Commission process on the most pertinent matters:

A number of stakeholders felt that contested proceedings would benefit greatly from increased scoping of issues at an early stage in order to limit the number of information requests and cross examination questions to those relevant to the proceeding. Others warned that excessively detailed issues lists can lead to procedural delays and arguments about whether or not matters are "in scope" and whether parties are sufficiently affected by an application in order to be granted standing (discussed in section 2.f).

#### Conclusions

The Task Force agrees that while an issues list can never be completely final, additional scoping of issues early in a proceeding would be beneficial. Issues lists published by the NEB and AUC rarely exceed one page and are widely perceived as helpful.<sup>3</sup>

As indicated previously, there appears to be agreement among FEI and the experts that there is considerable continuity in FEI's risk profile. An oral hearing devoted to hearing from Mr. Coyne and Dr. Booth will encompass the most significant issues in this proceeding, including the fair ROE and capital structure, capital market conditions, and the use of an Automatic Adjustment Mechanism.

- **Third, interveners should have raised this issue months ago.**

AMPC and CEC have had months to ask the Commission to re-visit this issue, and have said nothing. This factor must weigh in favour of FEI's submission on the original scoping order.

AMPC says "FEI prepared the evidence and should be able to speak to it if requested to do so." It goes without saying that FEI is prepared to speak to the Company evidence if requested to do so. However, AMPC's comment misses the point: the Commission considered this issue in November of last year and explicitly decided **not** to ask FEI to speak to the Company evidence as part of the oral hearing. It would, without question, be "diverting from normal practice" for the Commission to reverse a long-standing

---

<sup>3</sup> Report, p.21. Found at:

[http://www.empr.gov.bc.ca/EPD/Electricity/BCUC\\_Review/Documents/BCUC%20Review%20Final%20Report%20-%20Nov%2014%20-%20FINAL.PDF](http://www.empr.gov.bc.ca/EPD/Electricity/BCUC_Review/Documents/BCUC%20Review%20Final%20Report%20-%20Nov%2014%20-%20FINAL.PDF).

procedural determination of this nature on in an application as significant as this one, on two-weeks notice. The fairness concerns that would arise in such circumstances are self-evident.

- **Fourth, AMPC’s attempt to draw a different inference from the scheduled number of hearing days is unpersuasive.**

AMPC suggests that the number of hearing days currently set aside implies a full hearing without any scoping limitations. Both the logic, and factual basis, of this argument are flawed. In the GCOC Stage 1 Oral Hearing, the two Cost of Capital experts (Ms. McShane and Dr. Booth) were themselves on the stand in excess of three days.

FEI respectfully requests that the Commission proceed on the basis of an Oral Hearing limited to Mr. Coyne and Dr. Booth, with the entirety of their respective evidence in scope for the Oral Hearing. FEI respectfully reiterates its previous request that the Commission provide clarity as soon as possible.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[Original signed by]*

Matthew Ghikas

MTG