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July 26, 2017

BY ELECTRONIC FILING

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

Attention: Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Sirs/Mesdames:

Re: Application for Reconsideration and Variance of Order G-199-16, dated December 29, 2016 (Reconsideration Application), on FortisBC Inc.'s Net Metering Program Tariff Update Application

Introduction

We are counsel for FortisBC Inc. (**FBC**) in the above-noted Reconsideration Application. We respond here to the letter of July 11, 2017 (Exhibit A-5) in which the British Columbia Utilities Commission (the **Commission**) invited comments on a possible workshop in this proceeding. We provide these comments after having reviewed Mr. Shadrack's email dated May 31, 2017 (Exhibit C4-2), which appears to have prompted the procedural suggestion made in Exhibit A-5.

FBC values its communication with customers. That communication comes in many forms, including:

- regulatory processes (including information requests (**IRs**), exchanges of submissions, and on appropriate occasions, as in the case of annual reviews, formal workshops);
- less formal workshops that inform upcoming FBC applications (such as, for example, the workshops held in June and July 2017 in Kelowna, Osoyoos and Castlegar regarding rate design; in the Castlegar session in late June, FBC carried on after the workshop to have discussion with certain net metering (**NM**) customers in attendance); and
- conversations with FBC engineers, customer service representatives and other FBC personnel who engage with and obtain feedback from customers and contractors with views on NM and other subjects.

However, specifically in the Reconsideration Application, which is the proceeding presently before the Commission, a workshop should not be held. We say this for the reasons set out below.

Background

The Reconsideration Application has its origins in the Net Metering Program Tariff Update Application (the **NM Application**) that FBC filed on April 15, 2016. We note that by its very nature, and contrary to any implication from Mr. Shadrack that FBC has sought to undercut or eliminate the NM program, this was an application regarding the preservation and continuation of the NM program.

On May 3, 2016, in Order G-59-16, the Commission established a written hearing process with one round of IRs for the NM Application. On May 18, 2016, the Commission received a letter of comment from a group of six FBC net-metering customers from the Kaslo area asking the Commission to, among other things, “add an oral portion to the hearing after FBC has responded to the first round of information requests” and “slow down the hearing process to give them time to prepare appropriate input and consult with other FBC net-metering customers” (as summarized in the preamble to Order G-126-16).

The Commission was responsive to this in allowing for submissions on further process and taking those submissions into account.

As the Commission summarized in the preamble to Order G-126-16 on August 2, 2016:

By July 20, 2016, the Commission received submissions on further process from the BC Sustainable Energy Association and Sierra Club BC (BCSEA), British Columbia Old Age Pensioners’ Organization *et al.* (BCOAPO), Commercial Energy Consumers Association of British Columbia (CEC), FBC, Resolution Electric Ltd. (Resolution), Mr. Donald Scarlett and Mr. Andy Shadrack. BCSEA, BCOAPO, CEC and FBC have a preference for proceeding to final arguments. Resolution, Mr. Scarlett and Mr. Shadrack have a preference for a second round of written information requests followed by final arguments; ... [underlining added]

Taking all this into account, and paying heed to what the participants in the underlined sentence sought, the Commission thereupon ordered a second round of IRs and the exchange of written arguments. It did not order a workshop or other oral session of the kind now sought to be introduced into the process approximately one year later.

The Commission decided the NM Application by way of Order G-199-16 (the **NM Decision**) on December 29, 2016.

In the Reconsideration Application filed March 17, 2017, FBC sought reconsideration of part of the NM Decision. The Commission invited submissions on whether the matter should proceed to Phase Two. Mr. Shadrack opposed proceeding to Phase Two, arguing among other things that “the material implications are...miniscule and insignificant” (Exhibit C4-1 at paras. 19, 23).

In Order G-76-17 on May 17, 2017 (the **Phase One Decision**), the Commission ordered that the Reconsideration Application proceed to Phase Two.

Mr. Shadrack subsequently proceeded on May 26, 2017 to file an application for reconsideration and variance of the Phase One Decision. Mr. Shadrack's application was dismissed by Order G-110-17 on July 18, 2017.

On May 31, 2017, Mr. Shadrack wrote the email (Exhibit C4-2) that appears to be the basis for the Commission's suggestion of a workshop, despite containing what the Commission characterized in Exhibit A-5 as "inappropriate content for distribution". Apart from being laden with unfair characterizations and references to out-of-scope issues, Exhibit C4-2 also includes various attempts to re-argue certain points made by Mr. Shadrack in opposing Phase Two.

FBC Comments

As stated at the outset, we oppose the procedural suggestion that the Commission made in Exhibit A-5. We do so for the following, overlapping considerations:

1. Workshops are typically an opportunity for the utility to interact with ratepayers in the context of pending or early-stage regulatory proceedings or annual reviews. Here, participants have already been through the NM Application, Phase One of the Reconsideration Application and a portion of Phase Two. The issues and views of the participants are well known.
2. The workshop posited in Exhibit A-5 is in some respects akin to an oral hearing, given it would be transcribed, involve the panel, and potentially involve forms of examination and oral argument. However, in all 17 of the proceedings we located on the Commission's website for the period from 2009 to 2017 where a Phase Two reconsideration was ordered, a written hearing process was adopted.¹ Consistent use of the written process in this context (even where reconsideration involves numerous and complicated issues or substantial new evidence such as in respect of the FortisBC Energy Utilities' Common Rates, Amalgamation, and Rate Design application²) illustrates that it generally is considered to serve participants well. A reconsideration proceeding inherently involves a review and further decision regarding a matter that has already been before the Commission and been subject to an earlier regulatory process.

¹ See Order G-151-16 (Creative Energy 2016 Reconsideration and Variance of Order G-88-16); Order G-174-15 (BC Hydro 2015 Contracted GBL Guidelines and Reconsideration of Order G-19-14 Phase 2); Order G-106-14 (BC Hydro Reconsideration of Order G-19-14 Directive 2 Phase 1); Order G-135-15 (FEI Reconsideration G-187-14 Amend Balancing Charges RS); Order G-15-15 (FEI FBC 2015 PBR Reconsideration Phase 1 & 2); Order G-11-15 (Superior Propane 2015 Reconsideration of Order G-91-14 Phase 1 & 2); Order G-153-14 (Celgar 2014 Reconsideration G-141-14 Stepped and Stand-By Rates); Order G-100-13 (FEU 2014 Common Rates, Amalgamation, and Rate Design Reconsideration Phase 2); G-39-13 (FEI 2013 Reconsideration of G-29-13 2012 Biomethane Application); Order G-35-13 (Hemlock 2013 Revenue Requirements Reconsideration of G-66-12); Order G-168-13 (PNGWest & PNGNE 2013 RRA Reconsideration); Order G-150-12 (FortisBC Energy 2012 Reconsideration of Order C-6-12); Order G-119-11 (BC Hydro 2011 Reconsideration of G-64-11); Order F-20-11 (CEC 2011 Reconsideration of F-13-11 BC HYDRO F2011 RRA); Order G-44-10 (TGI 2010 Tilbury Reconsideration); Order G-45-10 (BC Hydro 2009 Reconsideration Request re BCTC TCE Complaint Decision); Order F-12-09 (ESVI 2009 - BCH RIB Reconsideration F-25-08)

² See Letter L-58-13 (Amended Regulatory Timetable) and Decision and Order G-21-14 (Final Decision)

3. At the same time, it appears that what Mr. Shadrack is seeking is somewhat akin to a negotiated settlement process or mediation. He notes in Exhibit C4-2: “what is needed is to get all interested parties in the same room and quite frankly cut the [REDACTED] and see the whites of each other’s eyes and hear the inflections in the tone of one’s voice and find a solution that works for everyone. The Commission could play the role of mediator rather than arbitrator...” (underlining added). However, FBC does not support such a process in the Reconsideration Application, where it has specific, crystallized legal issues (as returned to below in items 4 and 5) to address. (At one point in Exhibit C4-2, Mr. Shadrack suggested as an underpinning for an initial roundtable discussion a trade-off where he would “drop [his] appeal of FBC’s reconsideration hearing if FBC is willing to drop their reconsideration application and instead agree to an initial round table discussion followed by some oral adjudication process administered by the Commission.” As noted earlier, Mr. Shadrack’s reconsideration application has been dismissed, whereas FBC is committed to its Reconsideration Application and its resolution through the appropriate process.) Further, this negotiation/mediation-oriented aspect of Mr. Shadrack’s purpose is not consistent with the idea expressed in Exhibit A-5 of a transcribed process involving the panel that becomes part of the evidentiary record.
4. The issues raised by FBC’s Reconsideration Application are relatively narrow. (Mr. Shadrack’s view, indeed, is that “FBC is making a mountain out of a molehill”, as he stated in Exhibit C4-2.)

The underlying NM Decision resolved a number of issues regarding the net metering program that are not in issue in this reconsideration proceeding. In this regard, the Commission has determined that (1) clarifying revisions should be made to Rate Schedule (**RS**) 95 as follows – (a) that the intent of the NM program is only to allow customers to offset some or all of their own electricity consumption; (b) that new customers will not be accepted into the program if their proposed generating capacity exceeds their anticipated annual consumption; and (c) that existing NM participants must not increase their generating capacity without prior approval of FBC³; and (2) FBC’s proposed interpretation of its billing methodology under RS 95 is approved, such that customers’ net generation and net consumption will be netted prior to the calculation of the bill in each billing period going forward.⁴ These determinations are final and are not subject to further review pursuant to the Reconsideration Application.

The Phase One Decision makes clear that there are only three discrete issues to be examined in the Reconsideration Application: (1) whether Rate Schedule (**RS**) 95, properly interpreted, allows for customers to be removed from FBC’s net metering program for producing consistent annual net excess generation (**NEG**); (2) whether the kilowatt hour (**kWh**) bank proposal (which was looked on favourably by most participants) should be implemented; and (3) what rate should FBC use to compensate net metering customers for annual NEG. If there were to be a workshop held in this proceeding, no topics other than those outlined in this paragraph would be eligible to consider including in its scope. However, for the reasons set out elsewhere in this letter, a workshop should not be held.

³ NM Decision, p. 11-12.

⁴ NM Decision, p. 21.

By contrast, Mr. Shadrack's Exhibit C4-2 illustrates that the issues he seeks to advance are considerably broader than the parameters of the Reconsideration Application. We are also mindful of his statement in a letter of comment that he filed in FBC's Community Solar Pilot Project Application (Exhibit E-1 and E-1-1 in that proceeding, dated July 11 and 13, 2017) that that application is "on essentially the same subject that I am currently actively engaged in" in two other proceedings, which we take to refer to the Reconsideration Application and FBC's 2016 Long Term Electric Resource Plan Application. In fact the Reconsideration Application deals only with the specific issues noted in the previous paragraph.

5. Further, many of the arguments FBC has made in relation to the Reconsideration Application are legal arguments that are not well suited to a workshop environment. For example, the first reconsideration issue noted above is an issue of the proper interpretation, based on established legal principles, of RS 95 and FBC's Electric Tariff more broadly. We anticipate that it would be legal counsel for FBC who would communicate these points, and while there are occasions on which legal arguments can be most effectively presented orally (and if any oral process were to be contemplated here, it should be oral submissions only), we do not see that need in relation to the Reconsideration Application. Further, we do not anticipate that negotiation of the principled points that arise, including in relation to means of upholding the intent of the NM program, would be possible.
6. Intervenors such as Mr. Shadrack have been able to fully engage in a written process and will continue to be able to do so. The suggestion in Exhibit C4-2 that somehow it is only through a roundtable discussion that participants could "counter some of the claims being made by FBC and offer solutions of mutual benefit to both parties" is unfounded and unfair. In this regard, for example, Mr. Shadrack posed two rounds of detailed written IRs to FBC in respect of the NM Application. He filed a written argument in respect of the NM Application that, with appendices, was 13 pages in length (single spaced). Mr. Shadrack also submitted a detailed written response in Phase One of this reconsideration proceeding. At seven single-spaced pages, his was the longest and most detailed written response to the Reconsideration Application submitted by any participant. His written response also addressed all of the core issues being raised by FBC. While Mr. Shadrack has not been successful in these particular arguments, this is no indication whatever that the opportunity of Mr. Shadrack or others to communicate their points has been curtailed.
7. Given the nature of the points to be determined, their limited number, the thorough regulatory processes that have taken place to date, and the availability of the standard written process associated with reconsideration proceedings, the time, resources and expense for all involved in preparing for and attending the proposed workshop would not be warranted.

Conclusion

In accordance with past practice, a written process (with a round of IRs if necessary) is the appropriate course for the Reconsideration Application.

July 26, 2017

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FARRIS

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: 

Ludmila B. Herbst, Q.C.

LBH/NTH/trw

c.c.: Registered Interveners
client