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Our File No.: 05497-0240

March 17, 2015

BY EMAIL

British Columbia Utilities Commission  
6th Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Erica M. Hamilton, Commission Secretary**

Dear Sirs/Mesdames:

**Re: FortisBC Inc. – Self-Generation Policy Application**

We have reviewed and write in response to the submissions provided by the B.C. Sustainable Energy Association et al. (**BCSEA**), the British Columbia Municipal Electrical Utilities (**BCMEU**), the British Columbia Old Age Pensioners' Organization et al. (**BCOAPO**), the Association of Major Power Customers (**AMPC**), the Commercial Energy Consumers Association of British Columbia (**CEC**), Zellstoff Celgar Limited Partnership (**Celgar**) and the British Columbia Hydro and Power Authority (**BC Hydro**) with respect to the issues listed in Appendix C to Order G-32-15 (**Preliminary Issues List**) and our letter of March 6, 2015.

We start by addressing what appear to us to be the most closely related submissions, namely those of BCSEA, BCMEU, BCOAPO and AMPC (as well as, to an extent, CEC and BC Hydro). In summary:

- BCSEA, BCMEU, BCOAPO and AMPC, together with FBC, favour organizing submissions at this stage around questions to which participants would provide their respective answers. Our understanding of BC Hydro's submission is that it favours this approach as well, though it has not formulated or adopted a particular set of questions and, rather, leaves it to the Commission to do so based on its Preliminary Issues List. We also understand that CEC sees the merit of questions at least in part.
- BCSEA, BCMEU, BCOAPO, AMPC and BC Hydro, together with FBC, consider that legislation and policies (such as the BC Energy Plan) should be addressed in the context of addressing other topics. Like FBC, it appears that BCSEA, BCMEU, BCOAPO and AMPC also see the virtue of addressing past Commission decisions in the context of particular subject matter.

- BCMEU supports the particular questions advanced by FBC in our March 6 letter. We also continue to support that list, though are open to the alternatives advanced by BCSEA and, in part, AMPC and CEC, as well.
- BCSEA, BCOAPO and AMPC support an alternative set of questions advanced by BCSEA. If the Commission considers BCSEA's list to be more helpful in the context of organizing this stage of the proceeding, FBC has no objection to that list being adopted. In our view, BCSEA's approach also helpfully distills items 4-9 of the Preliminary Issues List into questions; contemplates infusing the answers to those questions with discussion of Commission decisions as well as legislation and policies; and as particularly noted by BCSEA, anchors the continuing process in the FBC application that is before the Commission. We agree that this is an important aspect of the process – not in order to “overly restrict the scope”, as Celgar suggests, but to ensure that the process can unfold both fairly and efficiently.
- AMPC has also proposed a further alternative list of issues, set out in Appendix “A” to its letter. With the exception of item 5, FBC has no objection to that list being adopted instead of the FBC or BCSEA suggestions if the Commission considers it to be helpful. FBC has reservations regarding AMPC's proposed item 5, as the full range of details of how a GBL should be determined would likely best be considered as part of a process following the filing of draft GBL Guidelines. With this exception, AMPC's alternative list is similar to FBC's version of March 6 and, though differently organized and worded, captures the issues that we consider to be relevant at this stage.
- CEC, as well, has proposed an alternative list of issues. Items 4(a)-(d), 5(a), 6(a)-(d), 7(a) and 9(a) in CEC's list are similar to FBC's list, and FBC has no objection to those formulations. However, if CEC intends to suggest that participants could address other aspects of the headings that precede each of its questions, and not simply the questions, we would have a concern about the breadth of issues that would raise. We also have a concern specifically with the formulation of heading no. 5, “Purpose of Incenting Self-Generation”; the question under that heading itself leaves open (as it should) whether that should be a purpose of the self-generation policy. Further, for the reasons stated in our March 6 correspondence, in our view items 1-3 in CEC's list would better be addressed not as freestanding items but in the context of addressing other issues. We are also concerned with the breadth of CEC's proposed item 10.

As the above illustrates, we are open to suggestions other than the list advanced in our March 6 letter, and thought we had made that clear in our letter. We noted there that FBC would “be pleased to consider and comment in its reply (to be submitted by March 17, 2015) on suggestions that other participants may have regarding the formulation of issues to be addressed”. And of course, all the points advanced, by all participants including FBC, can only be suggestions, given that this process is intended first and foremost to be helpful to the Commission; the Panel is obviously in control of the process and will make its decision on how best to proceed after hearing what participants have had to say. Items in our list related back to items on the Preliminary Issues List, with items 1-3 addressed in the preamble at the bottom of page 2 and top of page 3, and items 4-9 addressed through our proposed questions. As such, we were somewhat taken aback to see how offensive Celgar seemed to find our approach to have been. While FBC went first, in accordance with the regulatory timetable and its status

as the applicant, and in doing so attempted to put forward suggestions that it thought would be useful (together with the reasoning behind its approach), it was not to the exclusion of other views. Most participants seemed to view FBC's comments in the manner intended.

We have also considered, in this regard, the substantive points advanced by BC Hydro and Celgar.

As noted above, BC Hydro appears to see merit in the idea of having questions for participants to answer, but as between the Preliminary Issues List and the questions that FBC has suggested, favours the content (although reformulated into questions, and with the exception of items 2 and 3) of the Preliminary Issues List. We do not entirely follow BC Hydro's reasoning with respect to FBC's formulation of the issues. While even BC Hydro appears to now be prepared to accept that topics such as "Potential Benefits of Self-Generation" (item 4 on the Preliminary Issues List) do not require an evidentiary foundation and can be addressed on the basis of past Commission decisions, BC Hydro seems to consider that FBC's manner of converting item 4 into its proposed question transforms the nature of the record required to deal with the issue. We do not agree, but if the Commission accepts BC Hydro's view that FBC's March 6 formulation could require evidence (which is not contemplated by the Commission's Order G-32-15 and FBC believes should not be pursued at this high level stage), then FBC commends the alternative proposed by BCSEA, on which BC Hydro did not comment, or (with the exception of its item 5) the alternative proposed by AMPC, which we believe was submitted after BC Hydro's filing.

With respect to Celgar's proposed additional issue, "The Obligation to Serve" (Celgar's item 11 on page 3 of its letter), we do not see anything in the FBC, BCSEA or alternative AMPC formulations of issues that would prevent a participant from arguing in its submissions that some outcome specific to the content of the self-generation policy should flow because that participant views FBC's obligation to serve in a certain way. More generally, participants are free to justify their positions on certain questions in whatever manner they choose, without needing to have the category of subject matter into which each justification falls separately listed on an issues list. "The Obligation to Serve" is a good illustration of why listing each potential category of argument that may be advanced on a particular issue would be unworkable. The topic of "The Obligation to Serve" has filled many pages in various regulatory texts, and applies in an immense range of contexts. The objective here should not be a dissertation on that or other broad topics in all their facets and applications, but to allow matters to be addressed in the context of this application. In our view, that opportunity exists in any of the FBC, BCSEA or AMPC approaches.

Likewise, we do not know what participants would reasonably be supposed to do with a topic like "Discrimination amongst customers, including amongst self-generators" (Celgar's proposed item 13, on page 3). "Discrimination amongst customers", what constitutes undue discrimination, and where discrimination is unlawful, are issues that have been the subject of much scholarly writing and, of course, various decisions in various contexts. If Celgar believes that a particular question relevant to the self-generation policy should be answered in a particular way because to do otherwise would constitute undue discrimination, nothing in the FBC, BCSEA or alternative AMPC formulations prevents it from making such an argument. Again, however, this does not require the entire subject category of discrimination to be listed as an issue.

Similarly, contrary to Celgar's concern on page 2 of its submission, we do not see how anything in the FBC, BCSEA or alternative AMPC formulations restricts participants in their choice of past Commission decisions to invoke, as long as relevant to the application. That should not be a controversial threshold, nor a difficult one to meet; the Commission itself summarized a good range of decisions in its May 6, 2014 PPA decision, and we do not see how any of those decisions would be excluded from the discussion. As an aside, however – and this is a topic that can be addressed in participants' written submissions, when dealing with the issues in this application – we should flag an area of likely disagreement; Celgar seems to view Order G-60-14 as simply one of the mix, but we would suggest it bears additional weight given that in it the Commission already made considerable effort to explain and reconcile past decisions.

With respect to the additional issues that Celgar raises, we do not quite understand what some of them are intended to capture (underlining the importance of formulating points as questions, which Celgar has not done). However, while we are mindful of not excluding points that should be addressed, we expect that most are subsumed in other issues to the extent capable of being addressed at this stage. For example, Celgar's proposed item 19 ("Incentives for self-generation customers for the benefits of self-generation") seems to fall within FBC's items 1-3, and part of Celgar's item 16 (discussion of "...entitlement as defined by the APA") seems to fall within FBC's item 7. With respect specifically to Celgar's item 14, we expect that participants would agree that any GBL Guidelines should be internally consistent and transparent; it would likely be at a later stage of the process that these points would be engaged in a substantive sense (*e.g.*, in determining whether the GBL Guidelines as in fact drafted are transparent, whether the GBL Guidelines make sense as drafted, etc.). However, with respect to Celgar's item 15, a possible question to add to the issues list may be:

- "Should the FBC GBL Guidelines be drafted in a manner that is consistent with other utility GBL Guidelines?"

If FBC's March 6 suggestions were adopted, the above question could become issue 8.

Finally, while in our view the breadth of submissions that may be made in relation to particular issues is wide, we do have concerns with not limiting what the issues that should be addressed in participants' submissions are (even if the Commission would prefer to state them differently than FBC has proposed). Celgar comments: "It is far too early in the process for the Commission panel to be asked to make these sorts of exclusionary rulings, particularly as they have not yet heard submissions as to the relevance and applicability of past decisions". However, those submissions must necessarily be about the relevance and applicability of past decisions to something, which we hope to be the issues that the Commission considers would helpfully be addressed. Those submissions are the next step at this stage of the process, and follow a long series of earlier processes in which aspects of the issues have been discussed – it is not premature to address the content of those submissions now.

Thank you for the opportunity to provide the above comments.

March 17, 2015

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FARRIS

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: 

Ludmila B. Herbst

LBH/lts

c.c.: Registered Interveners  
Paul Miller  
client