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May 21, 2021

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

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI or the Company)

Application for a Certificate of Public Convenience and Necessity (CPCN) for the Tilbury Liquefied Natural Gas (LNG) Storage Expansion (TLSE) Project (Application)

FEI Reply to Intervener Submissions on Non-Disclosure Agreement

In accordance with British Columbia Utilities Commission (BCUC) Order G-147-21, FEI provides the following reply to intervener submissions regarding the proposed Non-Disclosure Agreement (Agreement) attached to FEI's submission dated May 3, 2021.

FEI appreciates the concerns raised by all interveners regarding the scope of the phrase "any breach of this Agreement" in clause 3. Accordingly, FEI is amenable to adopting the language proposed by RCIA for clause 3 (for which support was generally expressed by others¹), which is consistent with FEI's original intent.²

In response to the concerns raised by the CEC³ and others⁴, FEI is also amenable to deleting the language regarding costs, fees and expenses that FEI may incur in enforcing the Agreement.

Attached as Appendix A is a copy of the revised Agreement and attached as Appendix B is a copy of a blackline showing the adopted revisions.

The Agreement, particularly with these additional changes advanced by interveners, allows intervener participation on reasonable terms, while recognizing that disclosure of the security-sensitive information in the confidential filing could result in significant harm to FEI's system.

In response to MS2S, nothing in the Agreement would restrict "the right of free expression of our opinions on fossil-fuel infrastructure in general" nor could it "be used as a permanent gag

¹ Ex. C3-4, MS2S Submission, p. 1; Ex. C6-5, Sentinel Submission, p. 1; Ex. C4-4, BCOAPO Submission, p. 1.

² Ex. C1-5, RCIA Submission, para. 3.

³ Ex. C5-6, CEC Submission, p. 1.

⁴ Ex. C4-4, BCOAPO Submission, p. 1; Ex. C6-5, Sentinel Submission, p. 1.

order on any observations or criticisms an intervenor would have of this project, or any other project involving FEI”,⁵ so long as confidential information is not disclosed. In this respect, the Agreement aligns with the typical obligations under the BCUC’s standard form Confidentiality Declaration and Undertaking, which obliges interveners to keep information confidential and prohibits divulging or reproducing confidential information except for the purposes of the proceeding.

In reply to BCSEA,⁶ FEI acknowledges that the Agreement is a contract that extends legal obligations in favour of FEI, the owner of the confidential information. However, in essence, the Agreement simply extends the existing intervenor obligations (set out in the BCUC Confidentiality Declaration and Undertaking) while providing FEI with an avenue for legal recourse in the event of disclosure contrary to the Agreement. This is warranted given the potential risk FEI incurs in disclosing the security-sensitive information to the recipients.

Finally, in reply to MS2S’s request,⁷ FEI also confirms that it will provide access to the Confidential Application to interveners in a searchable format, through a special secured website where the encrypted Confidential Application will be made available. Interveners will be required to perform a one-time download of a special PDF viewer which contains the decryption key in order to view the document. With the special PDF viewer, interveners will be able to view the document on-screen or temporarily download/save the Confidential Application.

FEI also proposes the following timetable for recommencement of the regulatory review process which gives consideration to providing interveners access to the Confidential Application following a BCUC’s decision on the Agreement:

| Action | Date (2021) |
|-------------------------------------|------------------------|
| BCUC Information Request (IR) No. 1 | Thursday, June 17 |
| Intervener IR No. 1 | Thursday, June 24 |
| FEI Response to IRs No. 1 | Thursday, July 29 |
| BCUC and Intervener IRs No. 2 | Wednesday, September 8 |
| FEI Response to IRs No. 2 | Monday, October 18 |
| Procedural Conference | Thursday, October 28 |

⁵ Ex. C3-4, MS2S Submission, pp. 1-2.

⁶ Ex. C2-4, BCSEA Submission, p. 2.

⁷ Ex. C3-4, MS2S Submission, p. 1.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

cc (email only): Registered Interveners

Appendix A

REVISED NON-DISCLOSURE AGREEMENT

Non-Disclosure Agreement and Undertaking

WHEREAS:

- A. FEI has filed confidential materials and information (Confidential Information) in the British Columbia Utilities Commission (BCUC) proceeding in relation to FortisBC Energy Inc.'s (FEI) Application for a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project (Proceeding); and
- B. _____ (Recipient) wishes to obtain access to the Confidential Information for the purposes of participating in the Proceeding; and
- C. The Recipient has executed or will execute the BCUC's form of Confidentiality Declaration and Undertaking Form in the Proceeding.

THE PARTIES HEREBY AGREE:

1. Upon execution of both the BCUC's Confidentiality Declaration and Undertaking Form and this Agreement, FEI will provide the Recipient with a hard copy, or at its sole discretion an electronic copy, of the Confidential Information.
2. In consideration for receiving access to the Confidential Information the Recipient undertakes and agrees:
 - (a) to use the Confidential Information exclusively for duties performed in respect of this Proceeding;
 - (b) not to divulge the Confidential Information except to a person granted access to such information by virtue of having executed a similar Agreement or to staff of the British Columbia Utilities Commission;
 - (c) not to reproduce, in any manner, the Confidential Information except for purposes of the Proceeding;
 - (d) to keep confidential and to protect the Confidential Information;
 - (e) to return to FEI all documents and materials containing Confidential Information, including notes and memoranda based on such information, or to destroy such documents and materials within fourteen (14) days of the British Columbia Utilities Commission's final decision in the Proceeding, and upon request of FEI to provide an affidavit attesting to the same; and
 - (f) to report promptly to the British Columbia Utilities Commission and FEI any violation of this Agreement.
3. The Recipient acknowledges and agrees that any disclosure of Confidential Information contrary to the provisions of this Agreement will cause injury to FEI for which monetary damages would be an inadequate remedy and that, in addition to all other remedies at law, FEI may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach. The Recipient further agrees that it will not oppose the granting of such relief on the basis that FEI has an adequate remedy at law.

AGREED TO BY THE RECIPIENT:

Signed at _____ this _____.

Signature: _____

Name (please print): _____

Email address: _____

Representing (if applicable): _____

AGREED TO BY FORTISBC ENERGY INC:

Signed at _____ this _____.

Authorized Signatory

Appendix B

NON-DISCLOSURE AGREEMENT - BLACKLINED

Non-Disclosure Agreement and Undertaking

WHEREAS:

- A. FEI has filed confidential materials and information (Confidential Information) in the British Columbia Utilities Commission (BCUC) proceeding in relation to FortisBC Energy Inc.'s (FEI) Application for a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project (Proceeding); and
- B. _____ (Recipient) wishes to obtain access to the Confidential Information for the purposes of participating in the Proceeding; and
- C. The Recipient has executed or will execute the BCUC's form of Confidentiality Declaration and Undertaking Form in the Proceeding.

THE PARTIES HEREBY AGREE:

1. Upon execution of both the BCUC's Confidentiality Declaration and Undertaking Form and this Agreement, FEI will provide the Recipient with a hard copy, or at its sole discretion an electronic copy, of the Confidential Information.
2. In consideration for receiving access to the Confidential Information the Recipient undertakes and agrees:
 - (a) to use the Confidential Information exclusively for duties performed in respect of this Proceeding;
 - (b) not to divulge the Confidential Information except to a person granted access to such information by virtue of having executed a similar Agreement or to staff of the British Columbia Utilities Commission;
 - (c) not to reproduce, in any manner, the Confidential Information except for purposes of the Proceeding;
 - (d) to keep confidential and to protect the Confidential Information;
 - (e) to return to FEI all documents and materials containing Confidential Information, including notes and memoranda based on such information, or to destroy such documents and materials within fourteen (14) days of the British Columbia Utilities Commission's final decision in the Proceeding, and upon request of FEI to provide an affidavit attesting to the same; and
 - (f) to report promptly to the British Columbia Utilities Commission and FEI any violation of this Agreement.
3. The Recipient acknowledges and agrees that any ~~breach~~disclosure of Confidential Information contrary to the provisions of this Agreement will cause injury to FEI for which monetary damages would be an inadequate remedy and that, in addition to all other remedies at law, FEI may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach. The Recipient further agrees that it will not oppose the granting of such relief on the basis that FEI has an adequate remedy at law ~~and will pay any costs, fees and expenses, including legal fees, that FEI may incur in enforcing this Agreement.~~

AGREED TO BY THE RECIPIENT:

Signed at _____ this _____.

Signature: _____

Name (please print): _____

Email address: _____

Representing (if applicable): _____

AGREED TO BY FORTISBC ENERGY INC:

Signed at _____ this _____.

Authorized Signatory

Document comparison by Workshare Compare on May-20-21 1:44:46 PM

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