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May 19, 2022

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
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Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: British Columbia Utilities Commission (BCUC) – 2022 Generic Cost of Capital Proceeding – Project No. 1599176
FortisBC Energy Inc. (FEI) and FortisBC Inc. (FBC) (collectively FortisBC) Submission Regarding Out of Scope Information Requests

FortisBC writes with respect to Industrial Consumers Group (ICG) IR2 1.1 to Dr. Lesser (Exhibit C5-8) and Residential Consumer Intervener Association (RCIA) IR2 44.1 to Dr. Lesser (Exhibit C1-8). FortisBC respectfully objects to these two questions posed to Dr. Lesser on the basis that they contemplate having Dr. Lesser take on a role that goes beyond what is proper under the BCUC's Order G-106-22 (Exhibit A-13) and the principles of procedural fairness that underpinned that Order. FEI seeks direction from the BCUC in that regard.

ICG IR2 1.1 to Dr. Lesser is Contrary to the BCUC's Procedural Order and Procedurally Unfair

ICG's sole information request in Exhibit C5-8 calls for Dr. Lesser to recommend an allowed ROE and deemed capital structure of FEI and FBC. The request represents a poorly veiled attempt to expand Dr. Lesser's role in this proceeding – a result that ICG had sought at the April 14, 2022 procedural conference, and which the BCUC had intended to preclude in Order G-106-22 for reasons of procedural fairness. FortisBC submits that the BCUC should determine that ICG's information request is out of scope in light of Order G-106-22 and direct Dr. Lesser not to respond.

At the procedural conference, ICG submitted that "Dr. Lesser should provide evidence on all scope items in Order G-281-21".¹ With respect to the nature of Dr. Lesser's involvement, the Panel did not accept ICG's submission and held as follows:

¹ Order G-106-22, Appendix A, p. 3.

As for further involvement from Dr. Lesser, the Panel notes that none of the interveners plan to retain their own expert and instead wish to leverage Dr. Lesser's expertise to gain more evidence on the record. Intervener submissions vary in terms of the extent to which Dr. Lesser should be involved, and the Panel acknowledges FortisBC's concern regarding procedural fairness if the BCUC changes Dr. Lesser's role part way through the proceeding. The Panel confirms that Dr. Lesser's role in Stage 1 of the GCOC Proceeding continues to serve as the BCUC's independent expert for cost of capital technical expert services. Thus, the Panel recognizes that Dr. Lesser's professional background will likely add value if questions directed to Dr. Lesser pertain to the evidence of Mr. Coyne, filed as Appendix C of Exhibit B1-8-1, and any associated IR No. 1 responses filed by FortisBC or Mr. Coyne.²

[Emphasis added.]

Consistent with this determination, in Appendix B to Order G-106-22 the Panel described the action in the regulatory timetable as "IR No. 2 to Dr. Lesser regarding Mr. Coyne's evidence" [Emphasis added].

ICG's information request is seeking a cost of capital analysis "from the ground up", rather than pertaining to the evidence of Mr. Coyne and any associated information request responses filed by FortisBC or Mr. Coyne.

FortisBC notes as well that the Terms of Reference for Dr. Lesser's report, as provided in Appendix D to Order G-156-21, called for a report that: i) discussed major methodologies generally employed in cost of capital proceedings; and ii) provided history and a jurisdictional scan of cost of capital approaches in Canada. The Terms of Reference did not call for Dr. Lesser to provide a cost of capital recommendation for FEI and FBC.

As FortisBC submitted at the procedural conference, this proceeding was initiated 16 months ago (in January 2021), such that ICG has had ample opportunity to engage its own cost of capital expert or otherwise provide evidence as to a recommended ROE and deemed capital structure for FEI and FBC. It would be procedurally unfair to so significantly change Dr. Lesser's role, particularly at this stage in the proceeding, after FortisBC's has prepared and filed its own cost of capital report.

The unfairness of this change in Dr. Lesser's role is only amplified by the fact that he is now being asked by ICG to provide evidence on the central question that the BCUC must decide in this proceeding, namely the allowed ROE and deemed capital structure for FEI and FBC that is just and reasonable. Counsel for the Commercial Energy Consumers Association of British Columbia acknowledged this concern in submissions at the procedural conference stating: "But we're cognizant of the expert not looking like he's writing the decision on the topics."³

The current regulatory timetable provides a good indication that the BCUC did not intend the sweeping role for Dr. Lesser contemplated in ICG's information request. The allotted two weeks for FortisBC to file rebuttal evidence would be inadequate to provide enough time for FortisBC to provide rebuttal evidence to a new cost of capital report. Further, the regulatory

² Order G-106-22, Appendix A, p. 5.

³ Tr. 1, p. 58, ll. 20-21 (C. Weafer).

schedule would not provide an opportunity for FortisBC (or other parties) to make information requests on a new cost of capital report. FortisBC notes that there have been two rounds of information requests on Mr. Coyne's cost of capital report, and that in prior cost of capital proceedings, information requests have been made with respect to cost of capital reports filed by interveners. Such an asymmetrical treatment of cost of capital reports would be grossly unfair to FortisBC, and cannot have been intended by the BCUC.

The fundamental fairness issues identified above are not resolved by simply extending the timetable to afford FortisBC more time and adding additional procedural steps. Procedural fairness requires that the BCUC confirm ICG IR2 1.1 is out of scope and direct Dr. Lesser not to respond.

RCIA IR2 44.1 to Dr. Lesser Should Be Reformulated or Answered After the BCUC Has Provided Guidance

While perhaps not the intent, RCIA IR2 44.1 to Dr. Lesser (Exhibit C1-8) also appears to go beyond the scope of information requests to Dr. Lesser provided for by the Panel in Order G-106-22. RCIA IR2 44.1 asks for Dr. Lesser's CAPM and Multi-Stage DCF calculations. While FortisBC submits that it would be appropriate for Dr. Lesser to be asked to comment upon Mr. Coyne's CAPM and Multi-Stage DCF calculations, a request for Dr. Lesser to prepare such calculations on his own is akin to being asked to prepare a new cost of capital report.

FortisBC submits the BCUC should either direct RCIA to reformulate IR2 44.1 to accord with Dr. Lesser's role as set out in Order G-106-22, or direct that Dr. Lesser's response be provided with consideration of the guidance it provided in Order G-106-22.

If further information is required, please contact the undersigned.

Sincerely,

on behalf of FORTISBC

Original signed:

Diane Roy

cc (email only): Registered Parties