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British Columbia Utilities Commission
Suite 410, 900 Howe Street Vancouver, BC
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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 Approval of the Advanced Metering Infrastructure (AMI) Project (Application) ~ Project 1599211

FEI Position on Need for Oral Hearing

Introduction

We are legal counsel for FEI in respect of the above-noted Application.

In Order G-92-22, the British Columbia Utilities Commission (**BCUC**) included a step in the regulatory timetable "for parties to make submissions to request an oral hearing one week after the filing of rebuttal evidence from FEI". At the time of the Procedural Conference on March 11, 2022, FEI's view was that it was unlikely that an oral hearing component would be needed, but that it might be, depending on CORE's yet to be filed evidence. In light of CORE's intervener evidence, associated responses to information requests (**IRs**), and FEI's rebuttal evidence, which have all been filed since Order G-92-22, FEI confirms its position that, for the reasons set out in this letter, an oral hearing is not required in this proceeding.

FEI submits that the BCUC should instead set a schedule for final written submissions (following the IRs on FEI's rebuttal evidence and evidentiary update already provided for in the current regulatory timetable). To the extent that any interveners file submissions requesting an oral hearing, FEI reserves the right to seek to file written reply regarding any specific points or matters not addressed herein.

Applicable Legal and Regulatory Principles

Section 86.2(1) of the *Utilities Commission Act,* R.S.B.C. 1996, c. 473 (***UCA***) provides that, "Despite any other provision of this Act, in any circumstance in which, under this Act, a hearing may or must be held, the commission may conduct a written hearing". The BCUC recently confirmed, in respect of BC

Hydro's ongoing F2023-F2025 Revenue Requirements Application proceeding that, "an oral hearing should not be the default regulatory process".[1]

Similarly, in a decision made in the course of BC Hydro's F2017 to F2019 Revenue Requirements Application, which FEI referenced at the March 11th Procedural Conference, the BCUC has also previously held that, "The UCA does not require the starting point to be an oral hearing nor does it require the applicant to demonstrate otherwise".[2]

In the same procedural decision, the Panel described other appropriate considerations for when an oral hearing is required, at pages 7-8 of Decision and Order G-7-17, including that, the "quality and breadth of the evidence on the record is a significant consideration in deciding whether or not an oral hearing is required". The Panel noted it "understands that interveners require adequate evidence for argument but disagrees that an oral hearing is the only way to obtain that evidence and that interveners would be unduly prejudiced without one". Further, while the Panel agreed "that '[t]here is always going to be more information at a greater level of granularity that you can obtain'", "[t]he key question…is not whether you can obtain more information, but rather the benefit and necessity of that additional information and whether suitable evidence can be obtained from written responses alone". In that Panel's view "applications that are complex and voluminous, under certain circumstances, can be better addressed through a written hearing process". The Panel also noted, in this regard, that many interveners in that proceeding – a number of whom are also interveners in this CPCN Application – "have participated in complex and voluminous applications before the Commission" and that "many of these proceeding have been heard solely through a written process".

Background and Regulatory Context

The potential need for an oral hearing component in this proceeding was the subject of submissions and comment at the Procedural Conference on March 11, 2022. Of the interveners participating at the Procedural Conference, only CORE expressed any clear preference or need for an oral hearing. None of the other interveners was in favour of an oral hearing at that time, subject to review of CORE's intervener evidence.[3] CORE, for its part, proposed a one-week oral hearing in August or September, involving "direct, cross, and final argument".[4]

While making no determination on the need for an oral hearing in this proceeding, the BCUC did comment on this topic in its Decision and Order G-92-22, at p. 18:

> Oral hearings are expensive and time-consuming compared to the written alternatives for testing evidence. CORE, the only participant in this proceeding to request an oral hearing, has not provided a compelling reason why the evidence in this proceeding cannot be tested in written form. In the Panel's view, the issues relevant to CORE's intervention in this proceeding, namely the potential harmful effects of electromagnetic fields and radiofrequency on human health, are technical in nature and appear well-suited to written

[1] BCUC Decision and Order G-136-22, p. 5
[2] BCUC Decision and Order G-7-17, p. 6
[3] See summary of intervener positions in BCUC Decision and Order G-92-22, p. 17-18
[4] Procedural Conference Trans. Vol. 1, p. 67 (Mr. McElhanney, Q.C.)

examination. Further, the credentials of CORE's experts and experts FEI might introduce may also be evaluated in written form.

As of the time of this letter, the BC Sustainable Energy Association (**BCSEA**) has filed submissions, dated June 27, 2022, regarding the need for an oral hearing (Ex. C2-11). BCSEA does not request an oral hearing and "believes that by the time FEI responds to information requests on its rebuttal evidence and evidentiary update the evidentiary record will be extensive and complete". BCSEA supports moving to written final arguments at this point.

An Oral Hearing is Not Required in this Application Proceeding

The Evidence in the Written Record is More than Adequate

FEI submits that the breadth and quality of the written record compiled to date in this proceeding is more than adequate for interveners to make arguments on and the BCUC to adjudicate the CPCN Application.

The only subject for a potential oral hearing raised to date are the health and safety issues CORE alleges regarding radiofrequency (**RF**) emissions from the proposed AMI meters. Based on CORE's filed evidence and IR responses, FEI considers that its opportunity to file rebuttal evidence (including from its expert consultant, Exponent) and to respond to IRs in respect of that evidence is adequate process to address the applicable RF health issues. FEI does not believe that additional *viva voce* cross-examination is required nor would it be beneficial. FEI submits that, when considered in totality, the evidence in the Application, CORE's intervener evidence, and FEI/Exponent's Rebuttal Evidence, together with all associated IRs is a robust written record and more than adequate for the applicable issues.

In addition, FEI notes it has responded to two initial rounds of IRs, comprising 1,104 total IRs to date, including IRs responded to by Exponent. FEI and Exponent will also be responding to another round of IRs arising from rebuttal evidence. FEI submits that CORE has had a sufficient opportunity to present evidence in support of its positions and to test FEI's evidence through written IRs. Additional oral cross-examination is not needed or appropriate.

FEI submits that the adequacy of the written record must also be considered in the context of the BCUC's previous decision on substantially similar issues in FortisBC Inc. (**FBC**)'s 2013 application regarding electric AMI meters and the processes used in that proceeding. At the time of the FBC's 2013 application, health issues related to RF emissions from AMI meters, as well as the substance and applicability of Health Canada's Safety Code 6 were matters of first impression for the BCUC. A thorough, two-week oral hearing to explore these and certain other security issues took place and was justified in those circumstances. The situation is different now. AMI has been in use for electric utility customers across BC for many years and the issues CORE wishes to address are not new to the BCUC or participants in this proceeding.

The BCUC has already made applicable determinations regarding many of the RF health matters at issue. For example, the BCUC's 2013 decision approving FBC's AMI project (the **2013 AMI Decision**)

determined that: Safety Code 6 applies to AMI and AMI meters must comply with its requirements;[5] and Safety Code 6 adequately protects utility customers from thermal and non-thermal effects of RF emissions and incorporates an adequate degree of precaution.[6] The 2013 AMI Decision also addressed a number of the same topics to which CORE's intervener evidence is directed in this proceeding, such as the alleged flaw in Safety Code 6 not accounting for non-thermal effects, the situation of customers living near a "bank" of meters, the cumulative effect of RF emissions from all sources, electromagnetic hypersensitivity, and the frequency of RF transmissions from AMI meters.[7]

The Nature of CORE's Evidence Does Not Necessitate an Oral Hearing

In addition to the foregoing, the substance of CORE's filed intervener evidence does not demonstrate the need for or benefit of an oral hearing on RF health issues.

In FEI's submission, the main RF health issue to be determined in this proceeding is whether the new AMI gas meters comply with Safety Code 6. FEI submits that its evidence, including Exponent's RF Technology Report (Appendix F-1 to Exhibit B-1), overwhelmingly establishes that the proposed AMI meters are not only compliant with Safety Code 6, but emit RF at orders of magnitude below the applicable limits.

CORE's expert witnesses appear to accept this is the case. For example, in response to a BCUC IR asking CORE to "confirm, or otherwise explain that the proposed Sensus Sonix IQ meters meet Health Canada Safety Code 6", Dr. Héroux did not deny that this was the case, but instead responded that, "Almost any device that radiates intermittently meets SC6, irrespective of power, because SC6 is based on average heat over 6 minutes, and takes only heat into account".[8] In another response, Dr. Héroux acknowledged that a meter would only be capable of breaking the Safety Code 6 limit at 26 cm if it "was irradiating continuously (not a foreseen condition)" and then noted that, "… the duty cycle is very small: 55 msec every 4 hours … which provides a very large reduction factor of ~6,545, as the signal is averaged over 6 minutes, according to SC6. So, by the metric of energy averaging, the meter is perfectly safe for everyone".[9]

CORE's evidence challenging the adequacy of Safety Code 6 is effectively repetitive of arguments made in respect of FBC's previous AMI application and is a topic that the BCUC has already addressed at length in its 2013 AMI Decision. Further, in Order and Decision G-177-12 in the 2013 AMI proceeding, at p. 5, the BCUC Panel acknowledged that "evidence concerning health will be part of this hearing", but reminded "all parties that it has no jurisdiction over regulations made by Health Canada and other agencies" and that "it is not within the Commission's mandate to consider any changes to these regulations".

To the extent CORE raises ancillary health or other issues it says arise from the AMI gas meters (e.g. EMS sensitivity or cumulative RF exposures), these also have been previously addressed and/or can

[5] BCUC Decision and Order C-7-13, p. 108
[6] Ibid., p. 114
[7] Ibid, p. 109-111, 120-130, 132-137
[8] CORE Response to BCUC IR1 3.1 (Ex. C7-13, p. 10)
[9] CORE Response to BCUC IR1 3.4 (Ex. C7-13, p. 12)

be adequately addressed through the written record, including IR responses. Oral cross-examination is not required.

Conclusion

For the foregoing reasons, FEI submits that an oral hearing phase for the Application is not warranted or required. FEI respectfully requests that the BCUC set a schedule for the filing of final written argument following completion of the steps currently in the Regulatory Timetable. To the extent any interveners file submissions seeking an oral hearing, FEI reserves the right to request an opportunity to file brief reply submissions regarding any matters not addressed herein.

If an oral hearing component is ordered, FEI takes the position (like BCSEA) that it should be on a limited scope of topics, not open-ended, and that final arguments should be submitted in writing following the oral phase.

Yours truly,

FARRIS LLP

Per:

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NTH/kl
c.c.: Registered Interveners;
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