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July 27, 2023

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)

**Application for Approval of a Certificate of Public Convenience and Necessity
(CPCN) for the Okanagan Capacity Upgrade (OCU) Project (Application)
FEI Reply Submission on Need for Further Process**

FEI writes to provide its reply submissions on the need for further regulatory process, pursuant to the regulatory timetable established by the British Columbia Utilities Commission (BCUC) in Order G-106-23.

FEI is in receipt of the submissions from four interveners on the need for further process. Submissions were filed by the BC Sustainable Energy Association¹ (BCSEA), the Residential Consumer Intervener Association² (RCIA), the British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, Tenants Resource and Advisory Centre, and the Together Against Poverty Society³ (collectively BCOAPO), and the Commercial Energy Consumers Association of British Columbia⁴ (CEC).

With the one caveat in BCSEA's submissions, all interveners who filed submissions on the need for further regulatory process are prepared to proceed to written final argument. BCSEA submits that, but for evidence regarding the status of an agreement between FEI and the Penticton Indian Band (PIB), the proceeding is ready to move to final written arguments. RCIA

¹ Exhibit C1-14.

² Exhibit C2-16.

³ Exhibit C3-10.

⁴ Exhibit C4-19.

submits that it does not require further process and is comfortable moving to written final arguments. From BCOAPO's perspective, no further process is warranted before proceeding to written argument, and the CEC is content to proceed to final argument. The PIB has not provided any procedural submissions opposing proceeding to final argument.

BCSEA submits that the proceeding should be adjourned until FEI files an update on its potential agreement with the PIB and that if FEI files such an agreement, there should be a round of information requests on the agreement and the impact of the agreement on the OCU Project. BCSEA submits that evidence regarding the existence and content of such agreement is necessary for BCSEA to determine its final position and the BCUC Panel to ultimately decide whether the OCU Project is in the public interest.

FEI submits that it should not be required to provide an update on the agreement with the PIB before proceeding to final argument. Indigenous consultation is not required to be complete for the BCUC to issue a CPCN. In fact, FEI will be undertaking ongoing Indigenous engagement throughout the life of the OCU Project⁵ and Crown consultation with Indigenous groups will be part of other ongoing regulatory processes, which includes the BC Energy Regulator permitting process.⁶

Furthermore, there is already sufficient evidence on the record in this proceeding for the BCUC to review consultation with Indigenous groups with respect to the OCU Project to date and anticipated cost implications, and conclude that the OCU Project as proposed is in the public interest. Specifically, FEI's Supplementary Filing included FEI's most up-to-date understanding of the implications of the requirements of an agreement with Indigenous communities on the OCU Project.⁷ FEI also provided the following in response to information requests (IRs):

- an update of all meetings, other communications and actions with the PIB from April 2021 to the present;⁸ and
- an update on the latest issues and concerns raised by the PIB and the actions taken by FEI to address them.⁹

With respect to engagement with the PIB in particular, FEI's engagement with the PIB is at an advanced stage and has been accounted for in the latest OCU Project cost estimate. As described in FEI's IR responses on its Supplementary Filing, FEI remains optimistic in obtaining the PIB's consent for the OCU Project, which has not yet been determined by the PIB.¹⁰ FEI is committed to obtaining the PIB's consent for the OCU Project.¹¹ In FEI's submission, consistent with past BCUC decisions, there is sufficient evidence on the record for the BCUC to be able to conclude that consultation has been adequate to date.

FEI is prepared to update the BCUC on any material change in its anticipated costs of an agreement with Indigenous communities on the OCU Project, should such a change occur,

⁵ Exhibit B-35, FEI Supplementary Filing, page 11.

⁶ Exhibit B-14, BCUC IR2 62.4 and 62.6; Exhibit B-20 PIB IR2 23.1.

⁷ Exhibit B-35, FEI Supplementary Filing, pages 8-9. See also Exhibit B-35-1, CEC Supplementary (Confidential) IR1 7.1 and 10.1; Exhibit B-40-1, RCIA Supplementary (Confidential) IR1 52.1.

⁸ Exhibit B-36-1, BCUC Supplementary (Confidential) IR1 22.1

⁹ Exhibit B-36-1, BCUC Supplementary (Confidential) IR1 22.2.

¹⁰ Exhibit B-41, BCOAPO Supplementary IR1 8.3.

¹¹ Exhibit B-41, BCOAPO Supplementary IR1 8.6.

before or after the issuance of a CPCN. However, the public convenience and necessity of the OCU Project can already be assessed with the evidence on the record, and further details of any agreements with Indigenous communities are not necessary in order to do so.

Finally, FEI submits that the topic of whether the BCUC can determine if the OCU Project is in the public interest in the absence of final agreement with the PIB can be a subject of final argument from the parties. Based on the evidentiary record and full submissions from the parties, if the BCUC ultimately concludes that it cannot make a public interest determination without a final agreement with the PIB, then FEI submits that the BCUC can determine the correct course of action at that time. This would be preferable to further delaying the proceeding at this stage.

As such, FEI submits that the BCUC should determine that no further process is required at this time and the proceeding should move to final written argument submissions in accordance with the regulatory timetable already established in Order G-160-23.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Sarah Walsh

cc (email only): Registered Interveners