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July 25, 2022

Sent via eFile

FEI - CPCN FOR THE TILBURY LNG STORAGE EXPANSION PROJECT EXHIBIT A-38

To: FortisBC Energy Inc.
Registered Interveners

Re: FortisBC Energy Inc. – Application for a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project – Project No. 1599170 – Regulatory Timetable

Further to the above-noted matter, enclosed please find British Columbia Utilities Commission Order G-208-22 with a regulatory timetable and reasons for decision.

Sincerely,

Original signed by:

Sara Hardgrave
Acting Commission Secretary

PS/dg
Enclosure



ORDER NUMBER
G-208-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Tilbury Liquefied Natural Gas Storage Expansion Project

BEFORE:

A. K. Fung, QC, Panel Chair
T. A. Loski, Commissioner
R. I. Mason, Commissioner
D. M. Morton, Commissioner

on July 25, 2022

ORDER

WHEREAS:

- A. On December 29, 2020, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for the approval of a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project (Application);
- B. By Order G-132-22 dated May 16, 2022, the BCUC established a regulatory timetable, which included FEI and intervener submissions on further regulatory process;
- C. On June 27, 2022, FEI filed its submission regarding further process. On July 6, 2022, submissions on further process were filed by BC Sustainable Energy Association; BC Old Age Pensioners Organization et al.; Commercial Energy Consumers of BC; Residential Consumer Intervener Association; and Tsleil-Waututh Nation (TWN). On July 14, 2022, FEI filed its reply submission; and
- D. The BCUC has reviewed the parties' submissions on further process and determines that establishing a further regulatory timetable is warranted.

NOW THEREFORE for the reasons outlined in Appendix B of this order, the BCUC orders as follows:

- 1. A further regulatory timetable is established, as outlined in Appendix A of this order.
- 2. TWN's Oral Final Argument will be held *in camera*, with representatives of TWN, FEI and the BCUC (including their respective legal counsel) in attendance only, along with the BCUC Hearing Officers for transcription purposes.

3. TWN is directed to file with the BCUC for review and approval its proposed redactions to the transcript for its Oral Final Argument no later than one week following TWN's receipt of the transcript.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of July 2022.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Tilbury Liquefied Natural Gas Storage Expansion Project

REGULATORY TIMETABLE

Action	Date (2022)
FEI Written Final Argument	Thursday, August 25
TWN Oral Final Argument	Monday, September 26*
Intervener Written Final Arguments	Wednesday, October 26
FEI Written Reply Argument	Thursday, December 15

*Time to be determined.

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Tilbury Liquefied Natural Gas Storage Expansion Project

REASONS FOR DECISION

1.0 Introduction

On December 29, 2020, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (BCUC) for the approval of a Certificate of Public Convenience and Necessity (CPCN) for the Tilbury Liquefied Natural Gas Storage Expansion Project (Application).

By Order G-132-22 dated May 16, 2022, the BCUC established a regulatory timetable, which included FEI and intervener submissions on further regulatory process. The Panel requested parties' written submissions on further regulatory process to address the following matters:

- The appropriate regulatory process following FEI's responses to information requests (IRs) on its rebuttal evidence, including but not limited to:
 - the need for an oral hearing (with rationale), and
 - whether the evidentiary record is sufficient to advance to final arguments;
- If parties consider an oral hearing is needed, the specific issues that should be addressed at the oral hearing; and
- Availability for an oral hearing (if needed).

On June 27, 2022, FEI filed its submission regarding further process. On July 6, 2022, submissions on further process were filed by BC Sustainable Energy Association; BC Old Age Pensioners Organization et al.; Commercial Energy Consumers of BC; Residential Consumer Intervener Association; and Tsleil-Waututh Nation (TWN). On July 14, 2022, FEI filed its reply submission.

No parties' submissions outlined a need for an oral hearing, and all parties agreed that the proceeding could advance to final arguments. Therefore, these reasons for decision only address the Panel's determinations regarding a request by TWN for both oral and written final arguments.

2.0 TWN Request for Oral and Written Final Arguments

TWN seeks to bifurcate its final arguments into both oral and written final submissions. In its oral final submissions (Oral Final Argument), TWN will submit its final arguments on the potential impacts the Project poses to TWN. In its written final submissions (Written Final Argument), TWN will submit its final legal arguments on the following: the adequacy of consultation; alignment with the United Nations Declaration on the Rights of Indigenous Peoples and reconciliation; and the appropriateness of granting a CPCN for the Project.

TWN seeks an oral component in keeping with TWN's oral tradition, and for TWN representatives to provide context to the evidence already submitted by TWN. TWN requests that TWN's Oral Final Argument occur towards the end of September 2022 and TWN's Written Final Argument be submitted in October 2022.¹

¹ Exhibit C7-22, pp. 1-2.

TWN anticipates that its Oral and Written Final Arguments will engage matters the BCUC has already deemed to be confidential during the evidentiary stages of this proceeding. TWN will work with its proposed speakers to determine if confidential information can be siloed during its Oral Final Argument to allow the interveners to be present at TWN's Oral Final Argument. However, it may be unreasonably difficult for TWN's representatives to silo confidential information. TWN requests the opportunity to provide further submissions regarding the confidentiality of its final submissions as these submissions are finalized.²

In reply to TWN, FEI submits it is not opposed to TWN delivering a portion of its final submissions orally with two safeguards in place. First, FEI states the BCUC should reiterate its expectation and direct that submissions, whether oral or written, must be confined to evidence already introduced into the evidentiary record. Second, the BCUC should direct that TWN's oral and written submissions must be truly distinct, avoiding a scenario where TWN repeats its oral submissions in a subsequent written argument. FEI submits this direction promotes fairness to FEI, and equitable treatment for all interveners.³

Panel Determination

The Panel establishes a further regulatory timetable which provides for TWN to present both Oral and Written Final Arguments in keeping with its tradition and protocol. In making this determination, the Panel recognizes the need to provide further direction regarding the confidentiality, format and scope of TWN's final arguments in light of the proposed bifurcation of its final arguments and to ensure fairness to all parties in this proceeding.

With respect to confidentiality, the Panel acknowledges TWN's willingness to provide further submissions regarding the potential to silo confidential information presented in its Oral Final Argument in order to accommodate interveners' attendance at its Oral Final Argument. However, such a proposal will necessitate further submissions from parties at an unspecified time, and uncertainty in the meantime around the process for the hearing of TWN's Oral Final Argument. The Panel is cognizant that this Application was filed almost 19 months ago (December 29, 2020) and the proceeding is still ongoing. In the interest of promoting regulatory efficiency while ensuring procedural fairness, **the Panel determines that the confidentiality of TWN's Oral Final Argument is best dealt with in a similar manner to the TWN Oral Evidence Hearing, as outlined in Order G-29-22 dated February 10, 2022.** Namely:

- **TWN's Oral Final Argument will be held *in camera*, with representatives of TWN, FEI and the BCUC (including their respective legal counsel) in attendance only, along with the BCUC Hearing Officers for transcription purposes; and**
- **TWN is directed to file with the BCUC for review and approval its proposed redactions to the transcript for its Oral Final Argument no later than one week following TWN's receipt of the transcript.**

The Panel also encourages TWN to provide a high-level summary of the redactions to interveners, in a manner similar to TWN's filing dated April 22, 2022 in respect of the redactions to the TWN Oral Evidence Hearing.⁴ Additionally, we request that TWN specify in its Oral Final Argument and/or its proposed redactions whether the redacted transcript may be made public, or whether TWN is requesting that the redacted transcript be held confidential and available to interveners only. If TWN wishes to request the latter, the Panel asks that TWN provide reasons in support of such treatment. Following the receipt of the TWN Oral Final Argument and the Panel's review of TWN's proposed redactions to the transcript of the Oral Final Argument, the Panel will make

² *Ibid.*, p. 2.

³ Exhibit B-53.

⁴ Exhibit C7-13.

such further orders regarding the confidentiality of the TWN Oral Final Argument transcript as it considers appropriate.

The Panel considers the above approach will avoid the potential need for parsing TWN's Oral Final Argument into confidential and non-confidential sessions, with separate attendance for each component. Further, we do not consider it is necessary for interveners to be present to hear TWN's Oral Final Argument, since there should be no need for cross-examination of witnesses in relation to the TWN Oral Final Argument. Furthermore, parties will have the opportunity to address as they see fit any issues arising from the TWN Oral Final Argument based on the redacted transcript as part of their respective final arguments.

Additionally, we agree with the submissions of FEI filed in reply to TWN's submissions on further process. The Panel reminds all parties, including TWN, that final arguments, whether written or oral, must not be used to introduce new evidence, and should rely only upon the existing evidentiary record which is now closed. Finally, the Panel notes that no other party to this proceeding, other than TWN, is being accorded the opportunity to provide both oral and written final arguments. While the Panel has already determined that such treatment is warranted in this case as being in keeping with TWN's tradition and protocol, the Panel directs TWN to ensure that its Oral and Written Final Arguments are not duplicative. Only by doing so can we ensure fairness to all parties in this proceeding.

Having so determined, the Panel requests that TWN advise on its preferred timing (morning or afternoon) for the delivery of its Oral Final Argument on September 26, 2022. The Panel notes this is the only date currently available to accommodate a late-September date for Oral Final Argument as requested by TWN. Should TWN not be available on that date, the only remaining dates in 2022 where the Panel would be available to hear the TWN Oral Final Argument would be October 24 and 28, and November 3 and 4, respectively.