

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-133-09**

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by Shaw Cablesystems Limited and Shaw Business Solutions Inc.
to continue to allow use of FortisBC Inc. Transmission Facilities**

BEFORE: D.A. Cote, Commissioner
P.E. Vivian, Commissioner November 12, 2009
A. A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. On October 26, 2009 Shaw Cablesystems Limited and Shaw Business Solutions Inc. (collectively "Shaw") applied for an order directing FortisBC Inc. ("FortisBC") to allow Shaw to continue to use FortisBC's electric transmission facilities for Shaw's telecommunication facilities throughout the FortisBC service area pursuant to section 70 of the Utilities Commission Act (the "Application"); and
- B. The Application requests that the British Columbia Utilities Commission (the "Commission") issue an Order directing FortisBC to allow Shaw to install, operate and maintain telecommunications cables and related interconnection facilities on FortisBC's electric transmission facilities including the facilities located on FortisBC's 11 line, 40 line, 50 line and 76 line and setting reasonable terms and rates for Shaw's use of FortisBC's facilities; and
- C. Shaw believes that the issues in the Application are narrow which centre on fair and reasonable terms and rates and that a Negotiated Settlement Process be set as soon as possible; and
- D. On February 13, 2009, FortisBC notified Shaw that the Transmission License Agreement will terminate effective February 12, 2019; and
- E. On April 3, 2009, FortisBC notified Shaw to remove its facilities from FortisBC poles along lines 50 and 54 by April 3, 2010 and from poles along line 40 by October 31, 2010 in accordance with good utility practice and the decommissioning of line 40; and

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- F. Shaw disputes the validity of the April 3, 2009 notices and believes they are related to unresolved issues on other matters principally the ownership of Kettle Valley telecommunication facilities and FortisBC's dissatisfaction with the Transmission License Agreement rates and FortisBC's proposal to increase the annual fee from approximately \$40,000 to \$927,000; and
- G. Shaw states that FortisBC recently filed a court action in the British Columbia Supreme Court that seeks:
- 1) a declaration that the Transmission Agreement has been terminated,
 - 2) an injunction to have Shaw remove its telecommunications facilities from FortisBC transmission facilities and land, and
 - 3) an injunction to restrain Shaw from using its telecommunications facilities on FortisBC transmission facilities; and
- H. The Commission has considered Shaw's request that the Application be reviewed in a Negotiated Settlement Process.

NOW THEREFORE the Commission orders as follows:

1. The Commission requires a submission from FortisBC by Friday, November 20, 2009 on whether the Application should be reviewed through a Negotiated Settlement or some other process before the Commission.
2. The Commission requires Shaw to make a reply submission (if any) by Friday, November 27, 2009 on the FortisBC submission.
3. Following a review of the Application, the FortisBC and Shaw submissions, the Commission will determine the necessary review process to be followed.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of November 2009.

BY ORDER

Original signed by:

D. A. Cote
Commissioner