



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-63-10

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**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 use FortisBC Inc.'s Transmission Facilities**

BEFORE: A.A. Rhodes, Commissioner
M.R. Harle, Commissioner
L.A. O'Hara, Commissioner

April 1, 2010

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 (the Application) pursuant to section 70 of the *Utilities Commission Act* (the Act); and
- B. The Application requests that the British Columbia Utilities Commission (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. Shaw submits that such an order is in the public interest; and
- C. Shaw has accessed FortisBC's transmission and distribution poles for the placement of telecommunication facilities since 1972 with the agreement and cooperation of FortisBC and its predecessors; and
- D. Shaw submits that the issues in the Application are narrow and centre on fair and reasonable terms and rates and asks that a Negotiated Settlement Process be set as soon as possible; and
- E. On February 13, 2009, FortisBC notified Shaw that the Transmission License Agreement will terminate effective February 12, 2019; and
- F. 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 lines 40 and 76 by October 31, 2010 in accordance with good utility practice and the decommissioning of line 40 (the April 3, 2009 Notices); and
- G. Shaw disputes the validity of the April 3, 2009 Notices and submits they are related to unresolved issues on other matters, principally the ownership of the 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

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-63-10**

2

- H. Shaw states that FortisBC recently commenced an action in the Supreme Court of British Columbia that seeks:
- 1) a declaration that the Transmission License Agreement has been terminated,
 - 2) a mandatory injunction to have Shaw remove its telecommunications facilities from FortisBC's transmission facilities and land,
 - 3) an injunction to restrain Shaw from using its telecommunications facilities on FortisBC's transmission facilities; and
- I. By Order G-133-09, the Commission required that FortisBC provide a submission by November 20, 2009 on whether the Application should be reviewed through a Negotiated Settlement or some other process before the Commission and for Shaw to make a reply submission by November 27, 2009 on the FortisBC submission; and
- J. The Commission reviewed the Application and the November 20, 2009 submission from FortisBC and the November 27, 2009 reply submission from Shaw and, by Order G-170-09, scheduled a Preliminary Procedural Conference for January 6, 2010 to address a List of Issues and procedural matters; and
- K. Following its consideration of the submissions received at the Preliminary Conference on January 6, 2010, the Commission issued Order G-10-10 with Reasons for Decision dated January 14, 2010 whereby it requested additional submissions from Shaw and FortisBC relating to the applicability of section 70 of the Act in the context of the circumstances existing as between them; and
- L. By letter dated January 14, 2010 FortisBC advised Shaw that it had extended the April 3, 2010 deadline contained in the April 3, 2009 Notices to October 1, 2010; and
- M. The Commission Panel reviewed the additional submissions received and determined by Order G-24-10 with Reasons for Decision attached, that it has the jurisdiction to and would hear the Application at this time. The Commission Panel requested that Shaw and FortisBC provide written submissions in respect of further process and proposed Regulatory Timetables on or before Friday, February 26, 2010. Following a request by FortisBC the Commission extended its submission deadline to Friday, March 5, 2010; and
- N. On February 26, 2010 Shaw submitted a proposed Regulatory Timetable that included an oral public hearing commencing on June 21, 2010, the possibility of a Negotiated Settlement Process, with a Decision anticipated by September 3, 2010; and
- O. On March 5, 2010, FortisBC filed a request for Reconsideration of Order G-24-10, served a Leave to Appeal application to the B.C. Court of Appeal from that Order and filed a proposed Regulatory Timetable. The Regulatory Timetable included a one-half day hearing for the Reconsideration Application, and if the Reconsideration or stay was not granted, provided for an oral public hearing commencing on September 20, 2010; and
- P. The Commission Panel considered FortisBC's Reconsideration Application and determined that FortisBC had put forward a prima facie case to allow the matter to proceed directly to Phase 2 of the reconsideration process; and
- Q. By Order G-39-10, the Commission Panel scheduled a one-half hearing day for March 17, 2010 subject to comments from Shaw.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-63-10

3

- R. The hearing of the Reconsideration Application proceeded on March 17, 2010 with additional submissions from the parties in response to outstanding questions from the Commission Panel; and
- S. The Commission Panel has considered the arguments of the parties in the Reconsideration Application.

NOW THEREFORE the Commission Panel orders, with Reasons attached as Appendix A, that:

1. The Reconsideration Application is dismissed.
2. The Commission Panel establishes an oral hearing process for the review of the Shaw Application to proceed in accordance with the Regulatory Timetable attached as Appendix B.
3. Shaw will publish, in display ad format, the Notice of Application and Procedural Conference attached as Appendix C to this Order, in the Vancouver Sun, Province and such appropriate local news publications as may properly provide adequate notice to interested parties.
4. The Procedural Conference will be held at the Holiday Inn Express, 2429 Hwy 97 North, Kelowna BC on Tuesday, May 11, 2010, commencing at 1:00 p.m.

DATED at the City of Vancouver, in the Province of British Columbia, this *First* day of April 2010.

BY ORDER

Original signed by:

A.A. Rhodes
Panel Chair/Commissioner

Attachments



IN THE MATTER OF

AN APPLICATION BY

**SHAW CABLESYSTEMS LIMITED
AND SHAW BUSINESS SOLUTIONS INC.**

TO CONTINUE TO USE FORTISBC INC.'S TRANSMISSION FACILITIES

REASONS FOR DECISION

BEFORE:

A.A. Rhodes, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
M.R. Harle, Commissioner

TABLE OF CONTENTS

Page No.

1.0	INTRODUCTION.....	1
2.0	ISSUE	1
3.0	ANALYSIS.....	1
3.1	Statutory Interpretation.....	1
3.1.1	The Modern Approach.....	2
3.1.2	The Grammatical and Ordinary Meaning of Section 70	2
3.1.3	Scheme, Objective and Context of the <i>Utilities Commission Act</i>	4
4.0	HISTORICAL BACKGROUND	5
5.0	POLICY OBJECTIVES	8
6.0	CONCLUSION	8

1.0 INTRODUCTION

This is an application by FortisBC Inc. (FortisBC) for a reconsideration of Commission Order G-24-10 dated February 17, 2010. In Order G-24-10 the Commission Panel determined that it had the jurisdiction under s. 70 of the *Utilities Commission Act* R.S.B.C. 1996 c. 473 (*Act*) to hear an application by Shaw Cable Systems Ltd. and Shaw Business Solutions Inc. (collectively, Shaw) for an Order allowing Shaw to continue to use the electricity transmission facilities belonging to FortisBC for its telecommunication equipment.

The Commission Panel heard the application on March 17, 2010 and received answers to certain outstanding questions asked during the hearing by way of undertaking from FortisBC on March 19, 2010, with subsequent additional comments from both Shaw and FortisBC.

For the reasons which follow, the application is dismissed.

2.0 ISSUE

The sole issue in this Reconsideration Application is the jurisdiction of the Commission to hear Shaw's application pursuant to s. 70 of the *Act*. Specifically, the issue is the scope of the Commission's jurisdiction over FortisBC, not over Shaw.

3.0 ANALYSIS

3.1 Statutory Interpretation

It is common ground that FortisBC, as "a person...who owns or operates in British Columbia, equipment or facilities for (a) the production, generation, storage, transmission, sale, delivery or provision of electricity ... to or for the public or a corporation for compensation" and who does not fall within the exceptions listed in the definition of public utility found in s. 1 of the *Act* (which are not relevant in this case), is a "public utility" within the meaning of the *Act*. Section 21 provides that Part 3 of the *Act*, which relates to the regulation of public utilities "only applies to a public utility that is subject to the legislative authority of the Province." As FortisBC also meets that criterion, it is subject to regulation by the Commission.

The definition of public utility in s. 1 of the *Act* also includes "a person ...who owns or operates in British Columbia, equipment or facilities for (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable...optical fibre or radiocommunications if that service is offered to the public for compensation". The same list of exceptions (which are again not relevant in this case) applies.

It is arguable that Shaw might fall within the meaning of the second part of the definition of public utility. However, Shaw is not subject to the legislative authority of the Province and is, therefore, not subject to regulation by this Commission.

3.1.1 The Modern Approach

The parties are in agreement that the following excerpt from E. A. Driedger's *Construction of Statutes* (2nd ed. 1983 at p. 87) which is quoted by the Supreme Court of Canada in *Bell ExpressVu v. Rex* [2002] 2 S.C.R. 559 (at para. 26) and *Barrie Public Utilities v. Canadian Cable Television Association* [2003] 1 S.C.R. 476 (at para. 20) sets out the correct approach to statutory interpretation:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

3.1.2 The Grammatical and Ordinary Meaning of Section 70

Section 70, which is found in Part 5 of the *Act*, states:

- (1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a public utility, to use the electricity transmission facilities of the public utility if the commission finds that
 - (a) the person and the public utility have failed to agree on the use of the facilities or on the conditions and compensation for their use,
 - (b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and
 - (c) the public interest requires the use of the facilities by the person.
- (2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.
- (3) After a hearing, the commission may, by order, vary or rescind an order made under this section.
- (4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies.

Section 68, which is also found in Part 5 of the *Act* provides definitions which are relevant to the interpretation of s. 70. Specifically, s. 68 states:

“In this Part:

“electricity transmission facilities” means conductors, circuits, transmission towers, substations, switching stations, transformers and any other equipment or facilities that are necessary for the purpose of transmitting electricity;

“public utility” means a public utility to which Part 3 applies;...”

The Commission Panel is of the view that a plain reading of s. 70, in its grammatical and ordinary sense, supports Shaw’s position that the Commission has jurisdiction to hear its application.

FortisBC, as noted above, falls within the definition of “public utility” found in s. 1 of the *Act*. It is also a public utility to which Part 3 of the *Act* applies, as it is subject to the legislative authority of the Province. FortisBC therefore also falls within the meaning of “public utility” in Part 5, and hence, s. 70.

Shaw, on the other hand, is not a public utility to which Part 3 of the *Act* applies, as it is not subject to the legislative jurisdiction of the Province. Accordingly, Shaw is not a public utility but rather, “a person other than a public utility”.

The “electricity transmission facilities” of the public utility (FortisBC) are the facilities which Shaw seeks to continue to access. FortisBC takes the position that the definition of “electricity transmission facilities” is “both physical and purposive” (Tr. Vol. 2 p. 82) such that unless the person seeking access to the electricity transmission facilities is doing so for the purpose of transmitting electricity, s. 70 has no application. FortisBC refers to the words at the end of the definition: “that are necessary for the purpose transmitting electricity” as supplying the purposive component of the definition. Shaw, on the other hand, is of the view that the definition of “electricity transmission facilities” is a broad definition and is in no way restricted as argued by FortisBC.

The Commission Panel is of the view that the term “electricity transmission facilities” is broadly defined and that its definition in no way limits the availability of s. 70 as a remedy to a person who is not a utility seeking access to the electricity transmission facilities of a public utility, so long as the additional criteria set out in s. 70 are met. In the Commission Panel’s view, it would have been simple for the additional criteria to include a requirement that the facilities be used for the transmission of electricity if that was the intent, rather than to try to read this unstated requirement into the definition.

In the Commission Panel’s view, the words “that are necessary for the purpose of transmitting electricity” do no more than describe the “other equipment or facilities” included in the definition.

3.1.3 Scheme, Objective and Context of the *Utilities Commission Act*

FortisBC argues that the title of Part 5 (in which s. 70 is located) “Electricity Transmission” supports its position that s. 70 applies only to the use of electricity transmission facilities for the transmission or “wheeling” of electricity.

The Commission Panel disagrees. In the Commission Panel’s view the title of Part 5 provides no contextual assistance. The definitions in Part 5 relate not only to electricity but also to natural gas and Part 5 also provides for the licensing of gas marketers.

In the Commission Panel’s view the scheme of the *Act* also supports its conclusion that the Commission does have the jurisdiction to make an Order providing for the use of FortisBC’s electricity transmission facilities for a purpose other than the transmission or wheeling of electricity.

The British Columbia Utilities Commission has the general responsibility to supervise all public utilities under s. 23 of the *Act*. As noted by Bastarache, J. in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* [2006] 1 S.C. R. 140 at paras. 3-4

“Public utilities are typically natural monopolies: technology and demand are such that fixed costs are lower for a single firm to supply the market than would be the case where there is a duplication of services by different companies in a competitive environment....The utility regulations exist to protect the public from monopolistic behaviour and the consequent inelasticity of demand while ensuring the continued quality of an essential service...As in any business venture, public utilities make business decisions, their ultimate goal being to maximize the residual benefits to shareholders. However, the regulator limits the utility’s managerial discretion over key decisions, including prices, service offerings and the prudence of plant and equipment investment decisions.”

The *Utilities Commission Act* provides the Commission with broad powers to achieve its mandate, the regulation of public utilities, which are essentially monopolies. For example, the Commission has the jurisdiction to determine what is “reasonable, safe, adequate and fair service” of a public utility (s. 25); to approve the construction or operation of a public utility plant or system, or an extension of either through the issuance of a Certificate of Public Convenience and Necessity (s. 45); to restrain the disposition of a utility’s property (s. 52); to set rates for the utility (ss. 59, 60) and to consider the effect of a public utility’s application to consolidate, amalgamate or merge with another person on the public interest (s. 53); to name a few.

As noted by counsel for Shaw,

“...the Commission’s power cover (sic) a great deal of utility operations, construction of facilities, the operation of facilities, the rates charged to customers, terms and service, financing, sale of assets, mergers, ownership. In exchange for this heavy degree of supervision, the Commission allows the

public utility to build certain facilities and allows (sic) to operate and charge certain rates. So with that regulatory burden goes (sic) extraordinary rights. This is sometimes referred to as the regulatory compact, which is actually referred to in the *ATCO* case. So the ability to serve the public and develop facilities is a carefully regulated aspect of the utilities' operation. It's not a normal business." (T2: 132-133)

Of particular interest, as well, are a number of sections which, in the Panel's view, are designed to prevent duplication of infrastructure. Section 32 provides for Commission jurisdiction over a public utility's use of a street or other place within a municipality if the public utility and the municipality cannot come to an agreement on the use or terms of use. Section 36 provides for Commission jurisdiction to order the terms on which a public utility may use a highway in a municipality or a public bridge, viaduct or subway constructed or to be constructed by a municipality, whether by itself or jointly with another municipality, corporation or government.

Section 27, in the Commission Panel's view, is similar to s. 70, but provides for the joint use of facilities as between two public utilities. Section 27 was enacted prior to s. 70 and provides in part:

If the commission, after a hearing, finds that

- (a) public convenience and necessity require the use by a public utility of conduits, subways, poles, wires or other equipment belonging to a public utility, and
- (b) the use will not prevent the owner or other users from performing their duties or result in any substantial detriment to their service,

the commission may, if the utilities fail to agree on the use, conditions or compensation, make an order it considers reasonable, directing that the use or joint use of the conduits, subways, poles, wires or other equipment be allowed and prescribing conditions of and compensation for the use.

There is similarity to s. 70 in that both sections require: (1) a failure to agree on the use or on the conditions or compensation for the use of the equipment or facilities, (2) that the use will not prevent the owner (or public utility in the case of s. 70 as, under that wording, the public utility would be the owner) or other users from performing their duties or result in any substantial detriment to their service, and (3) that the public convenience and necessity (or public interest in s. 70) requires the use.

4.0 HISTORICAL BACKGROUND

Counsel for FortisBC also relies on the debates of the Legislative Assembly as reported in *Hansard* in June of 1988, when Bill 46 was introduced, in support of FortisBC's position that s. 70 (formerly s. 85.2) should be read to restrict it to allowing for wheeling only. Bill 46 -1988 (the *Utilities Commission Amendment Act*) introduced a number of new sections including the

definition of “electricity transmission facilities” and what is now s. 70. Some other sections which were introduced, however, did not survive further amendments to the *Act*.

In the Panel’s view, although the discussion in the Legislative Assembly did include mention of the “wheeling or transportation of electricity in high voltage lines by BC Hydro... and others engaged in that line of activity”, there was no suggestion that what is now s. 70 should be restricted to that activity.

The Hon. Mr. Davis stated:

“Bill 46 increases the powers of the British Columbia Utilities Commission. Its principal function is to regulate the activities of monopolies, particularly those incorporated provincially which produce, transport and sell energy, more particularly those in the electricity supply business and in the production and transportation of natural gas.

The definition of regulated projects has expanded to include high-voltage transmission lines, which were previously excluded....” (*Hansard*, June 27, 1988, p. 5408)

Counsel for FortisBC submitted that “[i]t would be a surprising departure to parachute into ...section 70, this completely unstated so-called right of a cable company to be stringing cable on electricity poles.” (T2: 100). He further submitted that “... nothing in the scheme of the *Act* as a whole purports to address public electrical utilities having to accommodate the commercial interests of unregulated telecommunication companies, either generally, or through the use of electricity transmission facilities” (T2: 122).

The Commission Panel disagrees. As noted by counsel for Shaw, at the time Bill 46 was introduced in 1988 and up until the time of the Supreme Court of Canada decision in *Alberta Government Telephones v. Canada (CRTC)* [1989] 2 S.C.R. 225 in 1989, the Commission regulated provincial telecommunication facilities. At the time of the introduction of s. 70 the Commission would arguably have had the jurisdiction to order FortisBC (as a public utility) to carry the cable of a (regulated) telecommunication provider (another public utility) on its poles, pursuant to s. 27 of the *Act*, dealing with the joint use of facilities.

Nothing in the *Hansard* discussion indicates any narrowing of the powers of the Commission by virtue of the introduction of Bill 46. Rather, as noted above, the opposite is the case.

Counsel for FortisBC referred to the decision of the Supreme Court of Canada in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* [2006] 1 S.C.R. 140 in support of its argument that the Commission’s regulatory powers are restricted to matters which are expressly contemplated in the enabling legislation or otherwise required by “necessary implication” and that s. 70 cannot be expanded to include jurisdiction over telecommunications cable going on the facilities of an electricity utility. (T2: 106)

The Commission Panel agrees that the Commission's powers are not without limits and are to be construed in accordance with the principles of statutory interpretation and the "modern approach" discussed above. However, the Commission Panel does not agree that the *ATCO* decision is relevant to the situation before it. The *ATCO* decision dealt with the purported power of the Alberta Energy and Utilities Board to order a division of the proceeds from the sale of land belonging to *ATCO* as between *ATCO* and its ratepayers pursuant to a general power to impose conditions found in the *Alberta Energy and Utilities Board Act*, R.S.A. 2000, c. A-17. In this case, the Commission Panel is of the view, as outlined above, that s. 70 of the *Act* provides the necessary jurisdiction on its plain reading, without any "expansion" as well as when considered in its context. The Commission Panel is of the view that it would, in effect, be expanding s. 70 beyond its plain words by including words which are not present, as well as overly restricting or "sterilizing" the powers of the Commission by way of an overly technical interpretation of the statute, were it to conclude that s. 70 was to be limited to provide only for the wheeling of electricity.

Further, the Commission Panel does not agree that its interpretation of s. 70 as allowing for the possibility of use by a person, other than a public utility, (i.e. Shaw) of the electricity transmission facilities of the utility (i.e., FortisBC) for the stringing of telecommunication cable is an unreasonable interference with the property rights of FortisBC. The property in issue (i.e. the electricity transmission facilities) is regulated by the Commission and is currently used, in part, for that purpose. FortisBC ratepayers pay for the existing telecommunications equipment on the FortisBC system that is used in the provision of service to them, such as necessary communications between FortisBC substations. As well, rental income from Shaw's use of the FortisBC transmission poles serves to reduce FortisBC's revenue requirements, and hence, rates. (FortisBC Response to Undertaking dated March 19, 2010, pp. 1, 3)

There is also protection against unreasonable interference with the property of the public utility in s. 70 in that the use must not prevent the public utility from performing its duties or result in a detriment to its service and the Commission is able to set rates payable for its use.

Similarly, the Commission Panel does not agree with FortisBC that the Supreme Court of Canada decision in *Barrie Public Utilities v. Canadian Cable Television Association* [2003] 1 S.C.R. 476 is on point. As noted by counsel for Shaw, the *Barrie* case involved the application by the (federally regulated) Canadian Cable Television Association to the CRTC, to obtain access to the power poles of provincially-regulated utilities under the Telecommunications Act (S.C. 1993 c.38) (T2: 142). The Court held that the CRTC did not have jurisdiction over the utilities' power poles based on a straight forward statutory interpretation (para. 44) and that policy objectives alone could not confer such jurisdiction (para. 42). In this case, as set out above, the Commission Panel is of the view that it does have the jurisdiction in question on a straight forward interpretation of the *Act*.

5.0 POLICY OBJECTIVES

Although the Supreme Court of Canada in *Barrie* found the CRTC did not have jurisdiction over the power poles of the provincially-regulated utilities, it did not disagree with the CRTC's conclusion that "an approach that forces each operator to construct its own duplicate infrastructure is not in the public interest." (paras. 40, 41))

The Commission Panel notes that the Commission is required to consider the public interest in its regulation of public utilities. Section 70 is but one of a number of sections in the *Act* where the public interest must be considered.

In the Commission Panel's view, the policy objective against duplication of infrastructure is clear on a reading of the *Act* as a whole, for the reasons discussed above.

6.0 CONCLUSION

FortisBC's Reconsideration Application is dismissed. The Commission Panel confirms its earlier decision that the broad language of s. 70 of the *Utilities Commission Act* does not restrict the use of transmission facilities to the wheeling of electricity as argued by FortisBC. The Commission Panel is of the view that such an interpretation is overly restrictive and would not accomplish the objective of promoting the efficient use of what might be considered to be monopoly infrastructure which is subject to regulation by the Commission. The Commission Panel finds that an interpretation which restricts such use to wheeling is contrary to the plain meaning of s. 70 in its grammatical and ordinary sense and, as well, is inconsistent with the scheme of the *Act*, the object of the *Act*, and the intention of the Legislature.

An Application by Shaw Cablesystems Limited and Shaw Business Solutions Inc.
to continue to use FortisBC Inc.'s Transmission Facilities

REGULATORY TIMETABLE

ACTION	DATE (2010)
Shaw Public Notice of Application / Shaw files all evidence upon which it intends to Reply in support of its section 70 application including all evidence concerning the proposed legal and commercial terms of access	Tuesday April 13
Deadline for Intervener Registration	Thursday, April 29
Procedural Conference (Kelowna)	Tuesday, May 11
BCUC / FortisBC / Intervener Information Request No. 1 to Shaw	Friday, May 14
Shaw Response to Information Request No. 1	Friday, June 11
BCUC / FortisBC / Intervener Information Request No. 2	Tuesday, June 22
Shaw Response to Information Request No. 2	Tuesday, July 20
FortisBC / Intervener Evidence	Friday, July 30
Information Requests on FortisBC / Intervener Evidence	Tuesday, August 10
FortisBC / Intervener response to Information Requests	Tuesday, September 7
Oral Hearing (Kelowna)	Monday, September 20- Friday, September 24
Shaw Argument	Friday, October 1
FortisBC / Intervener Argument	Friday, October 15
Shaw Reply Argument	Friday, October 22
Commission Determination	TBD



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**Application by Shaw Cablesystems Limited and Shaw Business Solutions Inc.
to continue to use FortisBC Inc.'s Transmission Facilities**

**NOTICE OF APPLICATION
AND PROCEDURAL CONFERENCE**

PROCEDURAL CONFERENCE

TIME:	Tuesday, May 11, 2010 1:00 p.m.
LOCATION:	Holiday Inn Express 2429 Hwy 97 North Kelowna, BC

THE APPLICATION

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 (the Application) pursuant to section 70 of the *Utilities Commission Act* (the Act).

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. Shaw submits that such an order is in the public interest.

THE REGULATORY PROCESSES

The Commission reviewed the Application and the various submissions received and determined by Order G-24-10 dated February 17, 2010 with Reasons for Decision attached that it had the jurisdiction to and would hear the Application. On March 5, 2010, FortisBC filed a request for Reconsideration of Order G-24-10, served a Leave to Appeal application to the B.C. Court of Appeal from that Order and filed a proposed Regulatory Timetable. The Commission held a one-half day hearing for the Reconsideration Application and by Order G-63-10 dismissed the Reconsideration Application and established a Regulatory Timetable for the review of the Application.

The Commission will hold a Procedural Conference on May 11, 2010 in Kelowna, BC to discuss procedural matters in the Application.

PUBLIC INSPECTION OF THE APPLICATIONS

The Application is available for inspection at the following locations:

Shaw

c/o Bull Housser & Tupper
3000 Royal Centre
1055 West Georgia Street
Vancouver, BC V6E 3R3
Telephone: (604) 641-4969

British Columbia Utilities Commission

Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3
Telephone: (604) 660-4700

REGISTERING TO PARTICIPATE

Persons who expect to actively participate in the review process and Procedural Conference should register as Interveners. Interveners will receive copies of the Application, all correspondence and filed documents. Persons not expecting to actively participate should register with the Commission as Interested Parties and will receive a copy of the Application summary and the Commission's Decision.

Interveners and Interested Parties should inform the Commission Secretary, in writing or online web registration, by Thursday, April 29, 2010 of their intention to become Interveners or Interested Parties with respect to the Application and their intention to attend the Procedural Conference.

All submissions and/or correspondence received from active participants or the public relating to the Application will be placed on the public record and posted to the Commission's web site.

FURTHER INFORMATION

For further information, please contact Ms. Erica M. Hamilton, Commission Secretary, as follows:

Telephone: (604) 660-4700
Facsimile: (604) 660-1102

BC Toll Free: 1-800-663-1385
E-mail: commission.secretary@bcuc.com