



LETTER L-89-10

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VIA EMAIL

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November 4, 2010

**FORTISBC – 2010 ANNUAL REVIEW
2011 REVENUE REQUIREMENTS EXHIBIT A-3**

Mr. David Bursey
Bull, Houser & Tupper
Barristers & Solicitors
PO Box 11130
3000, 1055 West Georgia Street
Vancouver, BC V5E 3R3

Dear Mr. Bursey:

Re: FortisBC Inc.
2010 Annual Review, 2011 Revenue Requirements
and Negotiated Settlement Process

Further to your October 22, 2010 letter requesting Late Intervener status in the above noted proceeding, the **Commission grants only *limited* Intervener status to discuss the rate impact of the 2011 revenue forecast relating to third party pole attachments.** The issues contained in the existing Shaw application regarding ongoing access to FortisBC's transmission and distribution facilities and FortisBC's "dark fibre" issue are found to be out of scope in this proceeding.

BACKGROUND

British Columbia Utilities Commission (Commission) Order G-58-06 approved for FortisBC Inc. (FortisBC) a Settlement Agreement for its 2006 Revenue Requirements and a Performance Based Regulation Settlement for the years 2007, 2008 and potentially 2009 (the PBR Settlement). The PBR Settlement requires FortisBC to hold an Annual Review, Workshop and Negotiated Settlement Process (NSP) each November with the goal of achieving firm rates by December 1st for the following year.

Pursuant to Commission Order G-193-08, the terms of the PBR Settlement was extended to 2011 along with the approval of the 2009 Revenue Requirement and Negotiated Settlement Agreement.

By Commission Order G-142-10 dated September 16, 2010, the Commission approved the regulatory timetable for the 2010 Annual Review and 2011 Revenue Requirement Application (Application, Proceeding) which determined, amongst other dates, the Intervener registration deadline for this Proceeding of October 8, 2010.

SHAW'S REQUEST FOR LATE INTERVENTION

On October 22, 2010, Shaw Cablesystems Limited and Shaw Business Solutions Inc. (collectively, Shaw) applied to the Commission for Late Intervener status in this Proceeding. Shaw's interests, stated on page 2 of their letter, are related to the following issues:

- Shaw's continued use of the FortisBC system for attaching its communications cable,
- FortisBC's plans to remove and replace Shaw's cable with FortisBC's own communication cable in FortisBC's service area,
- FortisBC's proposed use of the dark fibre (unused capacity) excess [sic] to its public utility system requirements, and
- The optimization of the existing and future fibre optic facilities and the associated revenue implications.

Shaw also expressed its intent on participating in the upcoming 2010 Annual Review and the 2011 Workshop and Negotiated Settlement Process on November 16 and 17, 2010, scheduled in Kelowna.

INTERVENER SUBMISSIONS

On October 25, 2010, FortisBC and the BC Old Age Pensioners' Organization, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, federated anti-poverty groups of BC, and Tenant Resource and Advisory Centre (collectively known as BCOAPO) submitted letters to the Commission opposing Shaw's request for late intervenor status.

FortisBC argued, amongst other things, that Shaw's request follows on the heels of its request for intervenor status in the FortisBC Capital Expenditure Plan, is advanced concurrently with other proceedings before the Commission, and raises issues which are outside this Proceeding from a factual and legal perspective. FortisBC also argued that Shaw's request would detract all parties and registered intervenors' ability to deal with the matters that are actually at issue in this Proceeding.

BCOAPO's letter indicated that Shaw provided no explanation for its lateness and notes that while amendments to the regulatory process can be made where there is merit, there is no such merit in this case.

On October 26, 2010, the Commission requested other intervenors in the current Proceeding to provide submissions regarding Shaw's request for late intervention. Mr. Norman Gabana replied on the same day supporting Shaw's intervention indicating that best business practices will prevail when the Commission and the intervenors have access to more information. The British Columbia Municipal Electrical Utilities (BCMEU) makes no objection to the participation of Shaw in their October 28, 2010 letter to the Commission. BCMEU notes that Shaw is not seeking any additional process and sees no particular prejudice to any party in their late intervention.

SHAW'S REPLY SUBMISSIONS

On October 26, 2010 Shaw responded to FortisBC's objection with a letter to the Commission stating the following, amongst other things:

- While the deadline for submitting interventions has passed, the proceeding is still in a preliminary stage.
- Shaw has a direct interest in the issues that touch on FortisBC's plans for third party pole attachments and FortisBC's planned use of "dark fibre."
- The Commission has specifically questioned FortisBC on the issues of third party pole attachments and the status of the Shaw dispute with FortisBC.

Shaw states that it intends to pursue only the issues that are relevant and in scope in the current Application .

In response to Commission letter dated October 29, 2010, Shaw replied to BCOAPO's objection in their November 1, 2010 letter stating that their intent is to explore the revenue requirement implications related to FortisBC's plans for the attachment of telecommunications cables to its infrastructure.

COMMISSION DETERMINATION

The Commission acknowledges submissions from the BCMEU and Mr. Norman Gabana in support of Shaw's intervention and agrees that additional information is valuable, however only to the extent that it is in scope in the Proceeding at hand. The Commission acknowledges that while Shaw did not provide the rationale as to its lateness (as noted by BCOAPO), there is some merit to its participation in the upcoming NSP. Furthermore, the Commission agrees with BCMEU and recognizes that Shaw is not seeking an amendment to the regulatory timetable.

The Commission is of the opinion that matters identified in Shaw's October 22 letter relate to items that are addressed in other proceedings. The Commission recognizes that there is already an application regarding the dispute between Shaw and FortisBC on continued access to FortisBC's transmission and distribution infrastructure. Any issues regarding that subject matter should be discussed and resolved in that proceeding if the court determines that the Commission has jurisdiction to hear the application. Other issues relating to FortisBC's fibre optic facilities and other capital infrastructure will be determined in the Capital Expenditure Plan proceeding currently before the Commission.

The Commission is not convinced that the issues Shaw wishes to pursue are appropriate or in scope for the upcoming 2010 Annual Review, 2011 Workshop, or NSP to establish 2011 customer rates under the terms of the current Performance Based Regulation mechanism. Accordingly, limited intervener status is granted.

Yours truly,

Erica M. Hamilton

YD/cms

cc: FortisBC Inc.
Registered Interveners
(FBC-10AR-11RR-RI)