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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-68-13**

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

and

**An Application by FortisBC Inc.
for a Certificate of Public Convenience and Necessity
for the Purchase of the Utility Assets of the City of Kelowna
Phase 2**

BEFORE: D.M. Morton, Panel Chair/Commissioner
A.A. Rhodes, Commissioner
B.A. Magnan, Commissioner
May 2, 2013

O R D E R

WHEREAS:

- A. On November 13, 2012, FortisBC Inc. (FortisBC) filed an application with the British Columbia Utilities Commission (Commission) pursuant to sections 45 and 46 of the *Utilities Commission Act (Act)* for a Certificate of Public Convenience and Necessity (CPCN), for an extension of its distribution system resulting from its purchase of the electricity distribution assets of the City of Kelowna (Transaction), and further sought an order pursuant to sections 59 and 60 of the *Act* to include the impact of the Transaction in its revenue requirements (Original Application);
- B. The Commission determined on Day 1 of the Oral Hearing for the Original Application that it considers potential rate discrimination issues to be within the scope of the proceeding and subject to a second Phase process;
- C. By Order C-4-13 dated March 1, 2013, the Commission approved FortisBC's Original Application subject to certain conditions;
- D. By Directive 9 of Order C-4-13, the Commission directed that the rate currently charged by the City of Kelowna to Tolko Industries Ltd. (Tolko) is set as interim, pending a further determination after the Transaction has been approved by the Board of Directors of FortisBC;
- E. On March 29, 2013, FortisBC advised the Commission, among other matters, that the Transaction had received final approval by FortisBC's Board of Directors;

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- F. By letters dated April 9, 2013, the Commission wrote to FortisBC and Tolko seeking further information from them. FortisBC and Tolko responded to the Commission's requests by letters dated April 12, 2013. The Commission letters and the responses of FortisBC and Tolko are marked as Exhibits A-11, A-12, B-22, and C1-5 respectively;
- G. On April 18, 2013, the Commission issued a letter to FortisBC and potential interveners and interested parties, informing these parties that a Phase 2 process will take place to address issues of potential rate discrimination arising from Tolko now becoming a direct customer of FortisBC (Phase 2 Application). The Commission also stated that FortisBC will remain as the Applicant for Phase 2 and that FortisBC's April 12, 2013 response letter, Exhibit B-22, will form the basis of the Phase 2 Application;
- H. The April 18, 2013 Commission letter, marked as Exhibit A-13, included a proposed Regulatory Timetable attached as Appendix A. The Commission invited all parties to provide written comments on the proposed Regulatory Timetable by Friday, April 26, 2013;
- I. The Commission received comments from FortisBC, Tolko and Zellstoff Celgar Limited Partnership (Celgar), marked as Exhibits B-23, C1-6 and C5-4, respectively, regarding the proposed Streamlined Review Process, and the content and timing of Intervener Evidence to be filed;
- J. The Commission has reviewed the submissions from FortisBC, Tolko and Celgar, and considers that establishing a Regulatory Timetable for review of the Phase 2 Application is warranted.

NOW THEREFORE the Commission orders as follows:

- 1. The Regulatory Timetable as set out in Appendix A to this Order for the reasons set out in Appendix B to this Order is established.
- 2. Persons who wish to participate in the hearing as Intervenors or Interested Parties should register with the Commission via written or electronic submission by Monday, May 13, 2013.

DATED at the City of Vancouver, in the Province of British Columbia, this 2nd day of May 2013.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachments

FORTISBC INC.
Application for a Certificate of Public Convenience and Necessity
for the Purchase of the Utility Assets of the City of Kelowna
Phase 2

REGULATORY TIMETABLE

ACTION	DATE (2013)
Intervener and Interested Party Registration	Monday, May 13
Celgar to file Intervener Evidence	Monday, May 20
Other parties to file Intervener Evidence (if any)	Monday, June 3
Commission and Intervener Information Request No. 1 to FortisBC	Friday, June 14
Participant Information Request No. 1 on Intervener Evidence	Monday, June 17
Filing of Participant Assistance/Cost Award Budgets	Wednesday, June 19
FortisBC Responses to Commission and Intervener Information Request No. 1	Friday, June 28
Intervener Responses to Information Requests on Intervener Evidence	Tuesday, July 2
Further Process	To be determined

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REASONS FOR DECISION

1.0 INTRODUCTION

On April 18, 2013, the British Columbia Utilities Commission (Commission) issued a letter with a proposed Regulatory Timetable for a Phase 2 process stemming from Commission Order C-4-13, which approved FortisBC Inc.'s (FortisBC) Application for a Certificate of Public Convenience and Necessity for the Purchase of the Utility Assets of the City of Kelowna (Transaction), subject to certain conditions. Directive 9 of Order C-4-13 provided that the rate currently charged by the City of Kelowna to Tolko Industries Ltd. (Tolko) was to be set as interim, pending a further determination if the Transaction were approved by FortisBC's Board of Directors. On March 29, 2013, FortisBC advised the Commission, among other matters, that the Transaction had received final approval from its Board of Directors.

The Phase 2 process was set out to address issues of potential rate discrimination arising from Tolko now being a direct customer of FortisBC. The April 18, 2013 letter was sent to all Registered Interveners in the original CPCN proceeding, as well as Interveners in four other FortisBC proceedings. The letter set out FortisBC as the Applicant for Phase 2, with Exhibit B-22 forming the basis of the Phase 2 Application. The letter requested comments from "FortisBC, as well as all parties that intend to register as Interveners for Phase 2" on the Commission's proposed Regulatory Timetable by April 26, 2013.

2.0 SUBMISSIONS

The Commission received submissions from FortisBC, Tolko, and Zelstoff Celgar Limited Partnership (Celgar). The parties support the Commission's proposed Regulatory Timetable with the exceptions and/or suggestions below.

2.1 Process

Celgar supports the Commission's proposal of a Streamlined Review Process (Exhibit C5-4) while both FortisBC and Tolko suggest a written process (Exhibits B-23 and C1-6). Tolko suggests that Intervener Evidence and one round of Information Requests with written argument will be more efficient than a Streamlined Review Process.

2.2 Content of Intervener Evidence

Celgar submits that it expects Tolko will file Intervener evidence related to its service characteristics. (Exhibit C5-4) Tolko submits that general information about Tolko's operations, generation capability and commercial power sales intentions has been provided in Exhibit C1-5.

Tolko expects Celgar to address the issue of potential rate discrimination in its evidence in Phase 2 because Celgar raised the issue of rate discrimination in the original CPCN proceeding and it did not provide evidence at that time to substantiate its views. (Exhibit C1-6, pp. 1-2)

2.3 Sequence of Intervener Evidence

Tolko suggests staggered timing for filing of Tolko and other Intervener evidence because filing evidence at the same time will result in:

“...serious procedural unfairness to Tolko. Celgar is effectively challenging two existing orders of the Commission in favour of Tolko without the normal process protections afforded other parties in a normal review and consideration process. Tolko must be given a full opportunity to know and meet the case against it. Without any changes to the schedule, Tolko will not be in a position to provide evidence to respond to the merits of Celgar’s claim of discrimination, when it is Tolko’s rights that are at issue.” (Exhibit C1-6, p. 2)

FortisBC agrees that Celgar should submit its evidence in advance of other parties because Celgar effectively initiated the process by claiming potential rate discrimination during the original CPCN proceeding, but did so without providing evidence. FortisBC submits that it would be unfair to other participants to have to file evidence without the benefit of the context that Celgar’s evidence would provide. (Exhibit B-23, p. 3)

2.4 Other Matters

Celgar submits:

“[t]here are few, if any, other matters of fact to consider in this proceeding. The other issues to be considered in Phase 2 are matters related to regulatory decisions, including contractual provisions that have been the subject of regulatory decisions...In these circumstances, Celgar submits that a more effective and efficient process, than that contemplated by the Proposed Regulatory Timetable, will be established if Interveners are given an opportunity to comment on the matters related to regulatory decisions prior to the Oral Hearing. This further process step, “Intervener Comments”, could be added to the process steps with a due date of July 9, 2013.” (Exhibit C5-4, p. 1)

3.0 COMMISSION DETERMINATION

The Commission Panel establishes the Regulatory Timetable attached as Appendix A for the following reasons.

All parties agreed to the Commission’s proposed regulatory timetable save for four issues. Therefore, most of the proposed timetable will be maintained.

Celgar agrees with a Streamlined Review Process, while FortisBC and Tolko submit that they prefer a written hearing. The Commission Panel makes no determination at this time on whether the process will be through a written or streamlined review process; rather, the Commission Panel will address this issue after the responses to Information Requests are received. This timing will allow the Commission Panel to determine the most efficient process given the evidence on record at that time.

Regarding the content of Intervener Evidence, the Commission Panel agrees with FortisBC and Tolko that Celgar raised the issue of potential rate discrimination in the original CPCN proceeding but has not yet provided particulars of its claim, or the evidence it will be relying on to substantiate this claim. The Commission Panel views these particulars as necessary information for the process to move forward. **The Panel therefore directs Celgar to include details relating to its claim of discriminatory rates made during the original CPCN proceeding¹ along with any evidence it intends to file in support.** The Commission Panel further directs Celgar to provide particulars of “matters related to regulatory decisions,” as were referred to during the original CPCN proceeding, at the same time.

Regarding sequencing of Intervener Evidence, the Commission Panel agrees that Celgar effectively initiated this Phase 2, and thus accepts Tolko and FortisBC’s suggestions to stagger the evidence so all parties have the benefit of the particulars of Celgar’s claim to provide context for their evidence. Tolko may therefore file any evidence in addition to that which it has already filed as Exhibit C1-5 on or before Monday, June 3, 2013, as set out in the Regulatory Timetable.

¹ Oral Hearing Day 1, Transcript Volume 2, pages 133, 135, 138-9