



LETTER L-11-15

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

ERICA HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

Log No. 49737

VIA EMAIL

March 16, 2015

TO: Interested Stakeholders
Registered Interveners in FBC 2014-2019 Multi-Year PBR

Re: FortisBC Inc.

Section 71 Application for Acceptance of the Capacity and Energy Purchase
and Sale Agreement between FortisBC Inc. and Powerex Corp.

On March 6, 2015, pursuant to section 71 of the *Utilities Commission Act* (UCA), FortisBC Inc. (FBC) filed with the British Columbia Utilities Commission (Commission) a Capacity and Energy Purchase and Sale Agreement dated February 17, 2015 (the Agreement) between Powerex Corp. (Powerex) and FBC (Application). FBC states the Agreement is a master agreement that sets up the terms and conditions for future market transactions entered into by FBC with Powerex. Under the Agreement, FBC will purchase all of its market energy requirements from Powerex and will sell any surplus capacity that may be available after meeting its load requirements to Powerex. FBC is seeking an Order from the Commission that the subject Agreement is in the public interest and should be accepted for filing.

By Commission Order G-61-12 dated May 17, 2012, the Commission established "Rules for Energy Supply Contracts for Electricity" to facilitate the Commission review of energy supply contracts for electricity. A copy of the Commission's "Rules for Energy Supply Contracts for Electricity" can be found at:

http://www.bcuc.com/Documents/Guidelines/2012/DOC_4237_G-61-12_BCUC%202012_Energy_Supply_Contract_Rules_for_Electricity.pdf

As stated in the Commission Rules, the Commission will rely on all information it considers necessary to determine whether an energy supply contract is in the public interest. In doing so it will be guided by the factors referred to in subsection 71(2.1) of the UCA.

The relevant subsections of section 71 of the UCA are attached to this Letter. As set out in subsection 71(2.1), the factors the Commission are to consider are as follows:

In determining under subsection (2) whether an energy supply contract filed by a public utility other than the authority is in the public interest, the commission must consider

- (a) The applicable British Columbia's energy objectives,
- (b) The most recent long-term resource plan filed by the public utility under section 44.1, if any,
- (c) the extent to which the energy supply contract is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act*,
- (d) the interests of persons in British Columbia who receive or may receive service from the public utility,
- (e) the quantity of the energy to be supplied under the contract,
- (f) the availability of supplies of the energy referred to in paragraph (e),

- (g) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (e), and
- (h) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (e)

Ministerial Order No. M407, issued on December 3, 2004 pursuant to section 22 of the UCA “exempt[s] from section 71 of the [UCA], persons ... who enter into an energy supply contract with Powerex for the delivery of power services to Powerex, and Powerex, in respect of such contracts.” Under section 13 of Order in Council (OIC) No. 097, Special Direction No. 7, approved and ordered on March 5, 2014, “[t]he commission may not exercise any power under Part 3 of the [UCA] in regard to the gas and electricity trading activities of Powerex Corp.” The sale by FBC of surplus capacity and occasionally surplus energy to Powerex is therefore exempted from Part 3 regulation, limiting the Commission’s jurisdiction to only review FBC’s purchases from Powerex under the Agreement.

The Commission wishes to provide interested stakeholders the opportunity to provide submissions to determine if the subject Agreement is in the public interest with regard to the applicable agreement sections relevant to the section 71 Application. Stakeholders in regard to the Application may submit comments to the Commission in writing specifically in regard to the acceptance under section 71 of the UCA of the subject sections 1, 2, 6, 7, 9 through 17 of the redacted Capacity and Energy Purchase and Sale Agreement dated February 17, 2015, between Powerex and FBC. When preparing submissions, stakeholders are to consider the Commission’s jurisdiction and are to limit comments to issues that are within the Commission’s jurisdiction.

Submissions, if any, from stakeholders are due by **Tuesday, March 24, 2015**. FBC is to file any reply comments by **Friday, March 27, 2015**. Parties submitting comments are to state the nature of their interest as a stakeholder and the manner in which they may be impacted by the Agreement.

FBC provided a copy of the redacted Agreement to interveners in the FBC 2014-2019 Multi-Year Performance Based Rate Making Plan proceeding on March 6, 2015. Other stakeholders who require a copy of the redacted Agreement should request a copy from FBC.

FBC requests that the un-redacted version of the terms and conditions of the Agreement be held confidential as it contains market sensitive information which, if disclosed, would be detrimental to FBC, its customers and Powerex. The Commission will hold the un-redacted version of the Agreement confidential at this time.

Yours truly,

Erica Hamilton

HC/nd

Attachment

cc: BC Hydro Regulatory Affairs Group
bchydroregulatorygroup@bchydro.com

FortisBC Inc.
electricity.regulatory.affairs@fortisbc.com

Powerex Corp.
mike.macdougall@powerex.com

Excerpt from section 71 of the *Utilities Commission Act*:

Energy supply contracts

71 (1) Subject to subsection (1.1), a person who, after this section comes into force, enters into an energy supply contract must

- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
- (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

(1.1) Subsection (1) does not apply to an energy supply contract for the sale of natural gas unless the sale is to a public utility.

(2) The commission may make an order under subsection (3) if the commission, after a hearing, determines that an energy supply contract to which subsection (1) applies is not in the public interest.

(2.1) In determining under subsection (2) whether an energy supply contract filed by a public utility other than the authority is in the public interest, the commission must consider

- (a) the applicability of British Columbia's energy objectives,
- (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any,
- (c) the extent to which the energy supply contract is consistent with the applicable requirements under sections 6 and 19 of the [Clean Energy Act](#),
- (d) the interests of persons in British Columbia who receive or may receive service from the public utility,
- (e) the quantity of the energy to be supplied under the contract,
- (f) the availability of supplies of the energy referred to in paragraph (e),
- (g) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (e), and
- (h) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (e).

(2.2) Subsection (2.1) (a) to (c) does not apply if the commission considers that the matters addressed in the energy supply contract filed under subsection (1) were determined to be in the public interest in the course of considering a long-term resource plan under section 44.1.

(2.21) In determining under subsection (2) whether an energy supply contract filed by the authority is in the public interest, the commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider and be guided by

- (a) British Columbia's energy objectives,
- (b) an applicable integrated resource plan approved under section 4 of the [Clean Energy Act](#),
- (c) the extent to which the energy supply contract is consistent with the requirements under section 19 of the [Clean Energy Act](#),
- (d) the quantity of the energy to be supplied under the contract,
- (e) the availability of supplies of the energy referred to in paragraph (d),
- (f) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (d), and

(g) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (d).

(2.3) A public utility may submit to the commission a proposed energy supply contract setting out the terms and conditions of the contract and a process the public utility intends to use to acquire power from other persons in accordance with those terms and conditions.

(2.4) If satisfied that it is in the public interest to do so, the commission, by order, may approve a proposed contract submitted under subsection (2.3) and a process referred to in that subsection.

(2.5) In considering the public interest under subsection (2.4) with respect to a submission by a public utility other than the authority, the commission must consider

- (a) the applicable of British Columbia's energy objectives,
- (b) the most recent long-term resource plan filed by the public utility under section 44.1,
- (c) the extent to which the application for the proposed contract is consistent with the applicable requirements under sections 6 and 19 of the [Clean Energy Act](#), and
- (d) the interests of persons in British Columbia who receive or may receive service from the public utility.

(2.51) In considering the public interest under subsection (2.4) with respect to a submission by the authority, the commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider and be guided by

- (a) British Columbia's energy objectives,
- (b) an applicable integrated resource plan approved under section 4 of the [Clean Energy Act](#), and
- (c) the extent to which the application for the proposed contract is consistent with the requirements under section 19 of the [Clean Energy Act](#).

(2.6) If the commission issues an order under subsection (2.4), the commission may not issue an order under subsection (3) with respect to a contract

- (a) entered into exclusively on the terms and conditions, and
- (b) as a result of the process

referred to in subsection (2.3).

(3) If subsection (2) applies, the commission may

- (a) by order, declare the contract unenforceable, either wholly or to the extent the commission considers proper, and the contract is then unenforceable to the extent specified, or
- (b) make any other order it considers advisable in the circumstances.

(4) If an energy supply contract is, under subsection (3) (a), declared unenforceable either wholly or in part, the commission may order that rights accrued before the date of the order under that subsection be preserved, and those rights may then be enforced as fully as if no proceedings had been taken under this section.

(5) An energy supply contract or other information filed with the commission under this section must be made available to the public unless the commission considers that disclosure is not in the public interest.