



June 25, 2018

Sent via email

Letter L-15-18

T.W. and C.W.

Re: FortisBC Inc. – Complaint filed by T.W. and C.W. – BCUC Review

Dear FortisBC Inc. Customer,

The British Columbia Utilities Commission (BCUC) has reviewed your complaint using the criteria of whether the utility reasonably responded to the customer's concern(s) and whether the utility followed its electric tariff (tariff) and the *Utilities Commission Act*.

The BCUC received your complaint concerning the Statutory Right of Way (SRW) to connect a permanent service to your property on October 2, 2017. Following a request by BCUC staff, FortisBC Inc. (FBC) provided its response to your concerns on November 15, 2017, December 4, 2017 and January 11, 2018. The BCUC determined further process was warranted and issued BCUC Order G-24-18, outlining a regulatory timetable to further investigate the complaint. The BCUC then proceeded with an Information Request process, requiring FBC to respond to questions raised by the BCUC and providing an opportunity for you to comment on the responses received by the BCUC.

Based on our review of your complaint and related correspondence provided in this matter, the BCUC sees no indication that FBC was in contravention of its tariff or the *Utilities Commission Act*.

Review process

In reviewing FBC's response, under the BCUC Complaints Guidelines, the BCUC has, amongst other things, referred to FBC's approved tariff, which contains the terms and conditions of service between FBC and its customers to ensure FBC's actions were in accordance with the tariff.

The current version of the tariff was approved by Order G-156-10 and came into effect January 1, 2011. The tariffs are set through a formal BCUC proceeding, which is a meticulous exercise. In the tariff, rates for each class or type of customer (residential, commercial, industrial) and terms and conditions are designed through a public consultation process to cover the cost of supplying customers in that class with electricity. As a public utility, FBC is required to strictly adhere to the tariff in its service provisions to customers and are unable to change the tariff without BCUC approval.

The issues raised in your complaint, regarding the SRW including access to your property, payment for and ownership of equipment is governed by the tariff and as such FBC needs to adhere to the terms and conditions of the tariff.

With respect to the SRW, Section 9.1 of the tariff states:

By applying for electric Service, the Customer agrees to grant to the Company such rights-of-way, easements and any applicable permits on, over and under the property of the Customer as may be necessary for the construction, installation, maintenance or removal of facilities.

With respect to Ownership of facilities, Section 3.2 of the tariff states:

Subject to any contractual arrangement and, notwithstanding the payment of any Customer contribution toward the cost of facilities, the Company shall retain full title to all equipment and facilities installed and maintained by the Company.

The BCUC notes that FBC¹ provided the following information in relation to the kind of access you would have to the SRW, whether the SRW would be utilised to benefit customers other than yourselves, and what access you could provide to communication companies:

- FBC's SRW agreement states that "...the Transferor has the right to cultivate or otherwise use the Right of Way Area so long as it does not interfere with the operation and maintenance of the Facilities." For example, trees and climbing vines are not permitted to be planted but the SRW can otherwise be landscaped (including fencing) so long as access is not impeded and, with respect to fencing, the type, height and path are reviewed by FBC. Elevation changes are not permitted without FBC's consent. Buildings or other structures are not permitted on the SRW. Pedestrian access is available throughout as well as vehicular access via a reasonably located driveway; the SRW agreement provides that the SRW may be paved.
- Since the existing SRW plan does not connect with any neighbouring properties, new extensions to future customers are not possible without the property owner's consent, which would require entering into a new or revised SRW agreement.
- Such access is for the benefit of T.W. and C.W. alone since no other customers would be connected from the SRW, and would apply to those services T.W. and C.W. requested from the communications companies.
- FBC's SRW agreement states that the Company may provide a communications and/or cable company with rights under the SRW (for services requested by the customer).

The BCUC is not directly involved in FBC's internal business practices, such as managing clauses contained in the SRW agreement. However, the SRW agreement is aligned to and is consistent with the tariff. The BCUC notes, that in order to provide reliable service, FBC requires all customers to abide by the same set of terms and conditions contained in the SRW agreement rather than having customised agreements for each customer.

The BCUC notes that FBC has stated² that an SRW is required for any sort of connection to your property:

Given the load size and the distance from the property line to the customer load, there is no option that will not require an SRW. In its response to BCUC IR 1.2.1 above, FBC has identified a potential option that could reduce the length of the required SRW.

In order to acquire an electrical connection, customers are required to follow the terms and conditions (i.e. provide the utility with a right of way, and understand that the utility maintains ownership of the equipment). It is unfortunate that you have been unable to reach an understanding with FBC regarding these matters.

¹ BCUC IR 1.1.4, 1.1.5 and 1.3.2.

² BCUC IR 1.2.4.

However, FBC is required to comply with the tariff and cannot deviate from it in order to accommodate customer specific requirements.

The BCUC notes that the consultation period of T.W. and C.W.'s initial contract created a misunderstanding about access issues regarding the right of way. The BCUC reminds FBC of the importance to communicate to all customers that Terms and Conditions as outlined in the tariff are non-negotiable.

Accordingly, your file is now closed.

Office of the Ombudsperson

If you have concerns about how the BCUC handled your complaint, you may wish to contact the Office of the Ombudsperson. The Office of the Ombudsperson receives enquiries and complaints about the practices and services of public agencies within its jurisdiction. Their role is to impartially investigate complaints to determine whether public agencies have acted fairly and reasonably, and whether their actions and decisions were consistent with relevant legislation, policies and procedures.

If you decide to file a complaint with the Ombudsperson, they will review the BCUC's process to ensure it was fair. Though this may not result in a different outcome for you, the Office could request that the BCUC reopen its investigation.

Provided is a link to the Office of the Ombudsperson's website: <https://www.bcombudsperson.ca/>. You can also call their Office toll-free at 1-800-567-3247. An employee at the Office will be able to assist you and inform you of your options.

Thank you again for contacting the BCUC.

Sincerely,

Original signed by

Patrick Wruck
Commission Secretary

KN/jo

cc: Ms. Diane Roy
Director, Regulatory Services
FortisBC Inc.
electricity.regulatory.affairs@fortisbc.com