



ORDER NUMBER
G-140-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Inc.
Self-Generation Policy Stage II Application

BEFORE:

H. G. Harowitz, Panel Chair
M. Kresivo, QC, Commissioner
R. I. Mason, Commissioner
D. M. Morton, Commissioner

on July 26, 2018

ORDER

WHEREAS:

- A. On November 10, 2016, FortisBC Inc. (FBC) filed with the British Columbia Utilities Commission (BCUC) its Self-Generation Policy Stage II Application, seeking among other things, approval of the Self-Supply Obligation Guidelines and the Stand-by Billing Demand (Application);
- B. On January 8, 2018, the BCUC issued Order G-2-18, amending the Regulatory Timetable to include the issuance of BCUC Information Request (IR) No. 2 and Intervener IR No. 1 on February 8, 2018, followed by FBC responses to IRs on March 8, 2018;
- C. On February 8, 2018, BCUC staff submitted into evidence as Exhibit A2-1, Witness Statement of Dennis Swanson in the matter of an arbitration under chapter eleven of the North American Free Trade Agreement (NAFTA) and the ICSID arbitration (additional facility) rules (Dennis Swanson Statement);
- D. By letter dated May 18, 2018, the BCUC sought written submission from participants regarding procedural process moving forward with provisions for a reply submission;
- E. By June 5, 2018, the BCUC received submissions from FBC, British Columbia Hydro and Power Authority, British Columbia Municipal Electrical Utilities, BC Sustainable Energy Association and Sierra Club BC, Commercial Energy Consumers Association of British Columbia and Zellstoff Celgar Limited Partnership (Celgar) with a reply submission from FBC;
- F. In its submission on further process dated May 30, 2018, Celgar requests removal of the Dennis Swanson Statement from the evidentiary record stating that, if removed, Celgar will not object to BCUC IR No. 2 (Exhibit A-8) and FBC's responses to BCUC IR No. 2 (Exhibit B-6) remaining on the record with no deletions. If Exhibit A2-1 is not removed, Celgar requests a further regulatory timetable to include: i) an opportunity for

Intervener IR No. 2; ii) an opportunity to file intervenor evidence; and iii) an oral hearing, in part to cross-examine Dennis Swanson;

- G. On June 12, 2018, the BCUC issued a letter requesting that Celgar provide further information regarding its requests and invited all other parties in this proceeding to provide written submissions on the issue and advise whether they object or agree to the removal of the Dennis Swanson Statement from the evidence;
- H. By July 5, 2018, the BCUC received submissions from Celgar, FBC, British Columbia Hydro and Power Authority, BC Sustainable Energy Association and Sierra Club BC and Commercial Energy Consumers Association of British Columbia, with a reply submission from Celgar; and
- I. The Panel has considered the submissions and determines that removal of the Dennis Swanson Statement (Exhibit A2-1) is justified and a regulatory timetable to establish further process for the Application is warranted.

NOW THEREFORE, for the reasons attached as Appendix B to this order, the BCUC orders as follows:

- 1. Exhibit A2-1, Witness Statement of Dennis Swanson in the matter of an arbitration under chapter eleven of the North American Free Trade Agreement (NAFTA) and the ICSID arbitration (additional facility) is removed from the record of this proceeding.
- 2. The remainder of the Regulatory Timetable for the Application is established, as set out in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of July 2018.

BY ORDER

Original Signed By:

H. G. Harowitz
Commissioner

Attachments

FortisBC Inc.
Self-Generation Policy Stage II Application

REGULATORY TIMETABLE

Action	Date (2018)
FBC Final Argument	Thursday, August 16
Intervener Final Arguments	Thursday, September 6
FBC Reply Argument	Thursday, September 27

FortisBC Inc.
Self-Generation Policy Stage II Application

REASONS FOR DECISION

1.0 Application

On November 10, 2016, FortisBC Inc. (FBC) filed with the British Columbia Utilities Commission (BCUC) its Self-Generation Policy Stage II Application, seeking among other things, approval of the Self-Supply Obligation Guidelines and the Stand-by Billing Demand (Application). By Order G-14-17 dated February 2, 2017, the BCUC established a public hearing process for the review of the Application and a regulatory timetable to include the issuance of BCUC Information Request (IR) No. 1, BCUC IR No. 2 and Intervener IR No. 1, followed by FBC responses to IRs and with further process to be determined. By Order G-90-17 dated June 9, 2017, the BCUC suspended the regulatory timetable established by Order G-70-17 until further notice. On January 8, 2018, the BCUC issued Order G-2-18 resuming the proceeding and amending the Regulatory Timetable to include the issuance of BCUC IR No. 2 and Intervener IR No. 1 on February 8, 2018, followed by FBC responses to IRs on March 8, 2018 with further process to be determined.

On February 8, 2018, BCUC IR No. 2 and Intervener IR No. 1 were filed and BCUC staff submitted into evidence as Exhibit A2-1, Witness Statement of Dennis Swanson in the matter of an arbitration under chapter eleven of the North American Free Trade Agreement (NAFTA) and the ICSID arbitration (additional facility) rules (Dennis Swanson Statement).

2.0 Further process for the proceeding

By letter dated May 18, 2018, the BCUC sought written submission from participants regarding further procedural process with provisions for a reply submission. By June 5, 2018, the BCUC received submissions from FBC, British Columbia Hydro and Power Authority (BC Hydro), British Columbia Municipal Electrical Utilities (BCMEU), BC Sustainable Energy Association and Sierra Club BC (BCSEA-SCBC), Commercial Energy Consumers Association of British Columbia (CEC) and Zellstoff Celgar Limited Partnership (Celgar) with a reply submission from FBC.

On May 24, 2018, FBC filed its submission stating it would be content to proceed directly to final arguments based on the comprehensive evidentiary record before the BCUC. FBC also states that “FBC’s *preferred* process for concluding the proceeding would be a negotiated settlement process (NSP).”

In its submission dated May 25, 2018, BCSEA-SCBC notes that the evidentiary record is adequate for the proceeding to move to the resolution phase and states that it would be content with proceeding directly to written final arguments. BCSEA-SCBC also supported the NSP option preferred by FBC.

On May 30, 2018, Celgar filed its submission and requests that Exhibit A2-1 be removed from the record of this proceeding before any further process is established. Celgar states that, provided that the Dennis Swanson Statement is removed from the record, Celgar does not object to BCUC IR No. 2 (Exhibit A-8) and FBC’s responses to BCUC IR No. 2 (Exhibit B-6) remaining on the record with no deletions. Further, in the event that Exhibit A2-1 is not removed from the record, then Celgar requests, as a matter of procedural fairness, a further regulatory timetable to include: i) an opportunity for Intervener IR No. 2; ii) an opportunity to file intervenor evidence; and iii) an oral hearing, in part to cross-examine Dennis Swanson.

CEC, BC Hydro and BCMEU filed their submissions on further process on May 31, 2018 stating that the process should move to final arguments.

In its reply submission dated June 5, 2018, FBC notes that, given that there is limited support among the parties for an NSP and because most parties have expressed a preference for proceeding with final arguments, FBC is agreeable with moving to final written submissions instead of an NSP.

3.0 Celgar's request regarding the Dennis Swanson Statement

Following Celgar's request for the removal of Exhibit A2-1 from the evidentiary record, the BCUC issued a letter on June 12, 2018 requesting that Celgar provide further information regarding its request, specifically:

- a. What is the subject matter of the Dennis Swanson Witness Statement that Celgar intends to explore if a further round of IRs on the statement is allowed and how would the Panel be assisted by an exploration of that subject matter?
- b. What is the nature of the intervener evidence that Celgar wants to put into evidence if the Dennis Swanson Witness Statement is not removed from the record?
- c. If an additional round of IRs is allowed as set out above, what is the basis for the additional request to have an oral cross-examination?

Also, all other parties in this proceeding were invited to provide submissions on the issue and advise whether they object or agree to the removal of the Dennis Swanson Statement as requested by Celgar.

On June 21, 2018, Celgar submitted additional information regarding its request stating the following:

- a) The Dennis Swanson Statement addresses many issues that may be considered by the Panel as being relevant to this proceeding, such as FBC's:
 - approach to Generator Baseline (GBL) determinations, transmission capacity and power generation;
 - relationship and discussions with BC Hydro;
 - past negotiations and historic agreements with Celgar, including GBL negotiations;
 - discussions with Ministry staff;
 - Rate Schedule 3808 and the Power Purchase Agreement; and
 - application and interpretation of Commission decisions.

Celgar believes it is going to be necessary to explore all of these issues and others if Exhibit A2-1 is not removed from the record of the proceeding. Celgar notes that the Panel will be assisted by an exploration of this subject matter because otherwise, the Panel will have heard from FBC but not from any other interested parties, including Celgar, on the subject matter raised in the Dennis Swanson Statement;

- b) If the Dennis Swanson Statement is not removed from the record of this proceeding, then the nature of the evidence that Celgar expects to file will include evidence relevant to all the issues listed above. In the NAFTA proceeding, Celgar filed extensive evidence related to Mr. Swanson's Witness Statement. Similar evidence would need to be filed in this proceeding, in the event that this exhibit is not removed from the record of this proceeding.

- c) Celgar submits that the Panel should not rely on Mr. Swanson's Witness Statement in the NAFTA proceeding without the benefit of an oral cross-examination. Procedural fairness requires cross-examination because, without it, the Panel is unlikely to benefit from a record that is adequate to enable the Panel to critically examine the testimony by Mr. Swanson in the NAFTA proceeding. Also, without the benefit of cross-examination, the Panel would hear FBC's view of the subject matter of Exhibit A2-1 and not have the benefit of Celgar being able to challenge and dissect Mr. Swanson's Witness Statement. Celgar believes that oral cross-examination of Mr. Swanson was necessary and helpful to the tribunal in the NAFTA proceeding and should also be helpful to the Panel.

FBC filed its submission on June 28, 2018 stating it does not object to the removal of Exhibit A2-1 from the record, which is a preferable outcome to the alternative of further processes proposed by Celgar (if the Exhibit A2-1 remains on the record). Further, in case the evidence remains on the record, FBC submits that Celgar has not provided sufficient justification for further process arising from the Dennis Swanson Statement, with the possible exception of the filing of other materials from the NAFTA arbitration proceeding in which the witness statement was made. FBC also submits that, in case Celgar is granted leave to file evidence of this nature, then FBC would request leave to file any rejoinder or other evidence from the NAFTA proceeding that is related to the additional material Celgar files.

BCSEA, CEC and BC Hydro filed submissions in response to the BCUC's invitation to comment on the issue stating they take no position with regard to Celgar's request for the removal of the Dennis Swanson Statement from the record.

On July 5, 2018, Celgar filed its reply statement and reiterates its request for the removal of the Dennis Swanson Statement from the evidentiary record for the reasons that: i) this evidence has not been tested in this proceeding; ii) Celgar has not had an opportunity to be heard regarding the issues raised in this evidence; and iii) FBC has not objected to its removal and has not sought to rely on it. Celgar states that the Dennis Swanson Statement should be first removed from the record and the next steps in this process should be final arguments.

4.0 BCUC determination

The Panel has reviewed all the submissions provided on the issues, namely: 1) Celgar's request for the removal of the Exhibit A2-1 from the evidentiary record; and 2) further process for the proceeding.

With respect to Celgar's request regarding the Dennis Swanson Statement, the Panel notes that this evidence was filed by BCUC staff and at the same time the interveners filed their first round of IRs. Consequently, the interveners did not have an opportunity to test the evidence in the IR process. The Panel further notes that FBC explicitly stated that it had no objection to the removal of this evidence. Given that Celgar does not object to BCUC IR No. 2 (Exhibit A-8) and FBC's responses to BCUC IR No. 2 (Exhibit B-6) remaining on the record with no deletions if the Dennis Swanson Statement is removed from the record, **the Panel approves the removal of the Dennis Swanson Statement, filed as Exhibit A2-1, from the record of this proceeding.**

The Panel takes into consideration submissions by the parties on further process and notes support for the proceeding to continue with final arguments. The Panel considers there is sufficient information on the evidentiary record and determines that a regulatory timetable to establish the filing of final arguments is warranted. **The remainder of the Regulatory Timetable for the FBC Self-Generation Policy Stage II Application is established, as set out in Appendix A of this order.**