



ORDER NUMBER
G-212-23

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

and

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Okanagan Capacity Upgrade Project

BEFORE:

R. I. Mason, Panel Chair
D. A. Cote, Commissioner
A. K. Fung, KC, Commissioner

on August 9, 2023

ORDER

WHEREAS:

- A. On November 16, 2020, FortisBC Energy Inc. (FEI) submitted an application to the British Columbia Utilities Commission (BCUC) for, among other things, a Certificate of Public Convenience and Necessity pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA) for the Okanagan Capacity Upgrade Project (Application);
- B. By Order G-106-23 dated May 5, 2023, the BCUC established a further regulatory timetable, which included submissions from parties on further process, and written final arguments if no further regulatory process is ordered by the BCUC;
- C. By July 24, 2023, submissions were filed by BC Sustainable Energy Association, British Columbia Old Age Pensioners' Organization et al., Commercial Energy Consumers Association of British Columbia, Residential Consumer Intervener Association. On July 27, 2023, FEI filed its reply. On July 27, 2023, Penticton Indian Band filed a late submission;
- D. On August 1, 2023, the BCUC issued Panel Information Requests (IRs) to FEI. On August 4, 2023, filed its responses to Panel IRs; and
- E. The BCUC determines that the remainder of the regulatory timetable established by Order G-106-23 continues to stand.

NOW THEREFORE for the reasons outlined in Appendix A of this order, the BCUC orders as follows:

1. The deadlines for written final arguments and FEI written reply argument outlined in the regulatory timetable established by Order G-106-23 continue to stand.
2. Parties are requested to address certain matters in final arguments, as outlined further in the Reasons for Decision attached to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of August 2023.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

FortisBC Energy Inc.
Application for a Certificate of Public Convenience and Necessity
for the Okanagan Capacity Upgrade Project

REASONS FOR DECISION

1.0 Introduction

On November 16, 2020, FortisBC Energy Inc. (FEI) submitted an application to the British Columbia Utilities Commission (BCUC) for, among other things, a Certificate of Public Convenience and Necessity (CPCN) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA) for the Okanagan Capacity Upgrade (OCU) Project (Application).

By Order G-106-23 dated May 5, 2023, the BCUC established a further regulatory timetable, which included submissions from parties on further process, and written final arguments if no further regulatory process is ordered by the BCUC.

By July 24, 2023, submissions on further process were filed by the following parties:

- BC Sustainable Energy Association (BCSEA);
- British Columbia Old Age Pensioners' Organization et al. (BCOAPO);
- Commercial Energy Consumers Association of British Columbia (the CEC); and
- Residential Consumer Intervener Association.

On July 27, 2023, FEI filed its reply. Additionally, on July 27, 2023, Penticton Indian Band (PIB) filed a late submission which was accepted by the BCUC.

On August 1, 2023, the BCUC issued Panel Information Requests (IRs) to FEI. On August 4, 2023, filed its responses to Panel IRs.

In these reasons for decision, the Panel outlines parties' submissions on further process, and outlines its determination regarding the regulatory timetable. Additionally, the Panel outlines certain matters which parties are requested to address in final arguments.

2.0 Submissions on Further Process

BCOAPO¹, the CEC² and RCIA³ submit that they are content to proceed to final arguments.

¹ Exhibit C3-10.

² Exhibit C4-19.

³ Exhibit C2-16.

BCSEA submits the proceeding should be adjourned until FEI files an update on its potential agreement with the PIB regarding the OCU Project. BCSEA further submits that if, at that time, FEI files an agreement with the PIB regarding the OCU Project, there should be a round of information requests on the agreement and the impact of the agreement on the proposed Project. Noting that FEI has stated it is seeking PIB's "consent for the OCU Project in that agreement," BCSEA submits that evidence regarding the existence and content of such agreement (or evidence that such an agreement is no longer contemplated) is a necessary prerequisite for BCSEA to determine its final position, and the Panel to ultimately decide, on whether the OCU Project is in the public interest under the UCA.⁴

PIB makes no submissions on the necessary next steps in the process. It is PIB's position that the content of any future agreement between the PIB and FEI is confidential and the information placed on the record is sufficient as contemplated by FEI's letter of May 2, 2023 (Exhibit B-34) that addressed BCSEA's similar submission.⁵

In reply to BCSEA, FEI submits it should not be required to provide an update on the agreement with the PIB before proceeding to final argument, and notes Indigenous consultation is not required to be complete for the BCUC to issue a CPCN. FEI adds there is already sufficient evidence on the record in this proceeding for the BCUC to review consultation with Indigenous groups with respect to the OCU Project to date and anticipated cost implications, and argue that the OCU Project as proposed is in the public interest. FEI states that it is prepared to update the BCUC on any material change in the anticipated costs of an agreement with Indigenous communities on the OCU Project, should such a change occur, before or after the issuance of a CPCN. However, its position is the public convenience and necessity of the OCU Project can already be assessed with the evidence on the record.⁶

Panel Determination

The Panel determines that the remainder of the regulatory timetable established by Order G-106-23 continues to stand.

The Panel disagrees with BCSEA's submission that the proceeding should be adjourned until FEI files an update on its potential agreement with the PIB regarding the OCU Project. Having reviewed FEI's responses to Panel IRs, the Panel is satisfied that there is sufficient evidence on the record regarding the implications of the potential agreement between FEI and the PIB, including its cost implications, for interveners to formulate their final arguments. Moreover, FEI has stated that it has no expectation that the BCUC will issue a CPCN prior to there being a final agreement between the PIB and FEI. The Panel also notes FEI's commitment to update the BCUC should any material change occur in the anticipated costs of any agreement with Indigenous communities on the OCU Project. If BCSEA is of the view that there is insufficient evidence to recommend the BCUC grant FEI a CPCN for the OCU Project, BCSEA may make that argument in its final submission.

The Panel agrees with FEI that there is no requirement for Indigenous consultation to be complete before the BCUC issues a CPCN for the OCU Project. The BCUC's obligation is to assess the adequacy of Indigenous consultation as part of its decision-making process, to the point at which the CPCN is issued or denied. Therefore, the absence of a definitive agreement between FEI and the PIB is not an obstacle to the parties submitting their final arguments for the OCU Project.

⁴ Exhibit C1-14.

⁵ Exhibit C5-28.

⁶ Exhibit B-43, pp. 2-3.

3.0 Issues to be Addressed in Final Argument

In response to BCUC Supplementary Information Request 23.5, FEI stated:

if the OCU Project is not placed into service within its proposed timeline, FEI would likely be unable to connect any new gas customers to meet growth in the region.

Panel Discussion

The Panel requests that in its final argument, FEI reconciles the above statement with respect to section 28 of the *Utilities Commission Act*, which states in part:

On being requested by the owner or occupier of the premises to do so, a public utility must supply its service to premises that are located within 200 metres of its supply line or any lesser distance that the commission prescribes suitable for that purpose.

Intervenors may also address this issue in their final arguments.