



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-9-12**

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

and

An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

BEFORE: N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner January 31, 2012
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. On May 24, 2011, the British Columbia Utilities Commission (Commission) issued Order G-95-11 establishing an Inquiry into FortisBC Energy Inc.'s (Fortis) transformation into an integrated energy service provider. A Commission staff working paper on scoping of issues was attached as Appendix B to Order G-95-11 to facilitate discussions at the First Procedural Conference scheduled on June 15, 2011;
- B. At the First Procedural Conference the Commission Panel heard submissions from all Parties on the issues and scope contained in the staff working paper, and on alternative regulatory processes and timelines. On July 8, 2011, the Commission issued Order G-118-11 setting out the scope of the proceeding along with a Regulatory Timetable set out as Appendix C to that Order;
- C. By letter dated September 19, 2011, Fortis requested an extension of time to address the Information Requests (IRs). On September 23, 2011, the Commission issued Order G-164-11 accepting Fortis' proposed extension with an Amended Regulatory Timetable. The Amended Regulatory Timetable established January 20, 2012 as the filing date for the submissions on the format of the proceeding and January 25, 2012 as the date for the Second Procedural Conference;
- D. By Letter L-91-11 the Regulatory Timetable was further amended to allow Ferus Inc. LNG Division (Ferus LNG) to file late evidence and to allow for IRs to Ferus LNG on its evidence;
- E. On January 4, 2012, by Order G-1-12, the Commission established a Certificate of Public Convenience and Necessity (CPCN) threshold level for Alternative Energy Services (AES) and New Initiatives projects of zero dollars on an interim basis. The Order also set out a process to deal with the issue as to whether it would be appropriate to establish a CPCN threshold limit for AES projects and other New Initiatives to provide certainty to projects Fortis intend to bring forward. Under this Order, written submissions were to be filed by January 25, 2012 and reply submissions by January 23, 2012;
- F. On January 19, 2012, Fortis filed its Rebuttal Evidence;

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- G. On January 25, 2012 at the Second Procedural Conference, Fortis and eight Registered Interveners addressed issues related to: (i) format of the proceeding; (ii) the need to supplement the evidentiary record; (iii) the need for further process with respect to the CPCN threshold for new AES and other New Initiatives projects; (iv) the witness panels Parties would put forward should there be an oral hearing; and (v) the proposed Regulatory Timetables;
- H. The Registered Interveners who attended the Second Procedural Conference and made submissions were: Commercial Energy Consumers Association of B.C. (CEC), Energy Services Association of Canada (ESAC), Corix Utilities Inc. (Corix), Ferus LNG, Clean Energy Fuels Corp. (Clean Energy), the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA); and Canadian Office and Professional Employees' Union Local 378 (COPE);
- I. All Parties attending the Second Procedural Conference agreed that the process related to submissions regarding the CPCN threshold was adequate and formed an appropriate basis for the Commission to make a determination;
- J. At the Second Procedural Conference, Parties made submissions on ESAC's application to exclude Fortis' Rebuttal Evidence or, in the alternative, if the Rebuttal Evidence is allowed, whether there should be an opportunity for a further round of IRs to test the evidence;
- K. All Parties were of the view that an Oral Hearing would not provide material benefits and that the evidence as currently filed was adequate for their purposes. Commission staff submitted that if the format of the proceeding was to be a Written Hearing, they would want to ask a further round of IRs to Fortis alone;
- L. ESAC and Corix submitted that all Parties in the Inquiry be allowed to reference facts in the evidence in both the FortisBC Energy Utilities 2012-2013 Revenue Requirements and Natural Gas Rates Application (FEU RRA) and the FortisBC Energy Inc. Delta School District 37 Thermal Energy Services Contract CPCN Application (Delta SD CPCN) which are being reviewed in parallel to this Inquiry;
- M. Fortis proposed the inclusion of submissions from Commission staff and Commission Counsel in the Regulatory Timetable in addition to a proposal that Interveners be afforded the right to reply to other Interveners' submissions. Ferus LNG, Corix and Clean Energy articulated that all Parties should file submissions at a common date followed by all Parties filing Reply Arguments simultaneously at a subsequent date;
- N. Fortis proposed a two-stage approach for this Inquiry. The first stage would culminate in a Commission decision on legal and regulatory principles. The second stage would involve a collaborative process to draft the wording of guidelines. Ferus LNG and Clean Energy submitted that this two-stage approach would prolong the process unnecessarily whereas ESAC, Corix, COPE and BCOAPO supported the two stage process;
- O. The Commission Panel has considered the submissions of all Parties.

NOW THEREFORE for the Reasons attached as Appendix A hereto, the Commission orders as follows:

- 1. A zero dollar CPCN threshold is established on an interim basis for AES projects and New Initiatives other than Biomethane projects. A final CPCN threshold will be determined at the completion of the Inquiry.

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2. A CPCN proceeding is not required for the following four AES projects: Tsawwassen Springs, Camden Green, Glen Valley and Gorman School.
3. A \$5 million CPCN threshold is set for Biomethane activities. A final CPCN threshold will be determined at the completion of the Inquiry.
4. The Rebuttal Evidence filed by Fortis is admitted into the record of the Proceeding.
5. The Inquiry will proceed by a Written Hearing Process with the need for an oral argument phase to be determined at a later date.
6. A further round of Information Requests to Fortis is granted to Commission staff in accordance with the Regulatory Timetable attached as Appendix B to this Order.
7. The evidentiary records from the FEU RRA and Delta SD CPCN are allowed as part of the evidentiary record of this Inquiry Proceeding.
8. The scope and structure of a second phase to the process will be determined after the filing of final submissions and reply argument.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of January 2012.

BY ORDER

Original signed by:

N.E. MacMurchy
Panel Chair

Attachments



IN THE MATTER OF

AN INQUIRY INTO FORTISBC ENERGY INC.'S

OFFERING OF PRODUCTS AND SERVICES IN

ALTERNATIVE ENERGY SOLUTIONS AND OTHER NEW INITIATIVES

REASONS FOR DECISION

January 31, 2012

BEFORE:

N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

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1.0 INTRODUCTION

The background to the Inquiry into FortisBC Energy Inc. (Fortis) Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives is set out in the preambles to Order G-118-11 dated July 8, 2011 and in the Introduction section of the accompanying Reasons for Decision. They also set out the issues and scope of the proceeding and established a Regulatory Timetable.

On September 23, 2011 the Regulatory Timetable was amended by Order G-164-11. By Letter L-91-11 dated December 6, 2011, the Timetable was further amended to allow Ferus Inc., LNG Division (Ferus LNG) to file late evidence and to allow for Information Requests (IRs) to Ferus LNG on its evidence.

Twenty parties are registered as Interveners in the Proceeding. Evidence was filed by Fortis, the Energy Services Association of Canada (ESAC), Ferus LNG, Corix Utilities Inc. (Corix), and Clean Energy Fuels (Clean Energy). Information Requests were made to, and responses received from, all parties filing evidence.

On January 4, 2012 the British Columbia Utilities Commission (Commission) issued order G-1-12 setting out a process to deal with the issue as to whether it would be appropriate to establish a dollar amount threshold limit for Certificates of Public Convenience and Necessity (CPCNs) for Alternative Energy Services (AES) projects or New Initiatives. Under this Order written submissions were to be filed by January 16, 2012 and reply submissions by January 23, 2012.

On January 18, 2012 Fortis advised the Commission that it would fail to meet the January 18, 2012 deadline for filing rebuttal evidence and would file this evidence a day late. Consequently, and at the request of Interveners, the Commission issued a letter extending the date for filing Submissions on the format of the Proceedings to Monday, January 23, 2012. Fortis, ESAC, the Commercial Energy Consumers Association of British Columbia (CEC), the B.C. Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), the British Columbia Old Age Pensioners' Association (BCOAPO), Ferus LNG, Corix, and Clean Energy made submissions on format of the Proceedings.

On January 25, 2012 a Second Procedural Conference was held where parties addressed:

- the format of the Proceeding (i.e., written or oral);
- the need (if any) to supplement the evidentiary record in this Proceeding;
- the need (if any) for a further process with respect to the CPCN threshold for new AES or New Initiatives projects;
- in the event of an Oral Hearing, the witness panels Fortis and Parties who filed intervener evidence would put forward; and
- the proposed Regulatory Timetable.

2.0 CPCN THRESHOLD FOR AES AND NEW INITIATIVES

2.1 Background

In Order G-1-12 dated January 4, 2012 Commission established a CPCN threshold level for Alternative Energy Services and New Initiatives projects of zero dollars effective the date of the Order on an interim basis, pending the potential for a more detailed review in the Inquiry. Parties were invited to make submissions on the need for further process on this issue.

Fortis, ESAC, BSCEA, Ferus LNG, BCOAPO, Corix and Clean Energy made submissions.

All parties agreed that the process that had been followed up to the Second Procedural Conference was adequate to support a decision on the appropriate interim threshold.

In the written submissions that were filed, no party objected to a zero dollar CPCN threshold for AES and New Initiatives with the exception of CPCNs for NGV and Biomethane projects and for four AES projects (Tsawwassen Springs, Camden Green, Glen Valley and Gorman School) where construction was started well in advance of the Order, and outside of the 30 day period that is described in section 45(5) of the *Utilities Commission Act* RSBC 1996, c. 473 (the *Act*). Fortis submits that NGV and Biomethane initiatives have been reviewed through extensive and robust regulatory processes, and the Commission has recently provided detailed reasons regarding these initiatives. Fortis maintains that these NGV and Biomethane decisions were made well after the CPCN threshold was set at \$5 million in the most recent Negotiated Settlement Agreement and were based on the understanding that this threshold applied. For NGV and Biomethane projects, Fortis submits that the CPCN threshold should remain at \$5 million during the interim period leading up to the final resolution of the issue in the Inquiry. BCSEA supported this approach to Biomethane and NGV projects. Ferus LNG and Clean Energy argued for a zero threshold for all projects including NGV and Biomethane projects citing the value of providing transparency into the activities of Fortis in these areas during the interim period while the AES Inquiry is considering this matter.

Commission Panel Determination

For AES projects and New Initiatives other than NGV and Biomethane projects the Commission Panel agrees with the view held by all parties that a zero CPCN threshold is appropriate. For the four AES projects cited by Fortis (Tsawwassen Springs, Camden Green, Glen Valley and Gorman School) where construction was started well in advance of the Order, and outside of the 30 day period that is described in section 45(5) of the *Act*, the Commission Panel agrees that no CPCN is required.

For NGV projects, the Panel notes that Order G-128-11 dated July 19, 2011 denied the General Terms and Conditions for CNG and LNG Service as filed, and gave direction for potential changes required before the General Terms and Conditions would be approved. Such approval has not yet occurred.

The Panel further notes that on October 11, 2011, during the oral portion of the Fortis 2012-2013 Revenue Requirements Application, the Fortis witness, Mr. Stout, when asked if the result of the NGV incentive decision would be that zero additions will be happening in the next two years replied, "That's kind of the feedback we're getting from the market today, and that's why I said we're looking at other opportunities. So that's – barring some shift by the customers in their thought processes and thinking, that's where we feel we're at today." (FEU RRA T5: 803, 804) Given that there are no approved General Terms and Conditions under which new NGV projects could operate and given that Fortis has indicated that it is not looking for much in the way of new NGV opportunities in the next two years, **the Commission Panel finds that a zero CPCN threshold for NGV projects is appropriate.** For Fortis to embark on new NGV activities, this would appear to be a change in direction from the perspective put forward in late 2011. Given the interest and concerns of parties to this proceeding, the transparency that would result from the filing of a CPCN for any new NGV activity during this interim period is appropriate.

For Biomethane projects, the Commission Panel agrees that Biomethane activities were subject to a Commission regulatory process in 2010. Under Order G-194-10 dated December 14, 2010 and the accompanying Reasons for Decision a process for dealing with further Biomethane activities was set out as part of a pilot project. Accordingly, the Commission Panel re-affirms that Fortis may pursue Biomethane activities that are in accordance with Order G-194-10. **The CPCN threshold for such Biomethane activities remains at \$5 million as was the case at the time of this decision.**

3.0 REBUTTAL EVIDENCE

By letter dated January 19, 2012 Fortis purported to file rebuttal evidence (Exhibit B-19) in this Proceeding. This evidence was objected to by ESAC on the basis that it is not properly admissible as rebuttal evidence in that:

- It is largely argument,
- It is for the most part a re-statement of or supplement to Fortis' original evidence,
- To the extent that it is neither argument nor a re-statement, it ought to have been included as part of Fortis' case in chief.

In respect of the latter point, ESAC argues that Fortis ought not to be allowed to split its case. ESAC takes the position that the entirety of the rebuttal evidence should be excluded.

ESAC argues, in the alternative, that, should the Commission allow the evidence, to the extent that there is something new, there should be an opportunity for further information requests from Commission staff and Interveners to test the evidence. ESAC itself, however, does not intend to file additional information requests. (Exhibit C1-13, T2: 164)

Corix advises that it does not accept the rebuttal evidence, but takes the position that it is not efficient to continue with the information request process at this stage. (T2: 172) Similarly, COPE advises that, should the Commission Panel admit the rebuttal evidence, it will not seek further process in relation to that evidence. (T2: 192) Ferus LNG confirms as well that it sees no need for further information requests on the Rebuttal evidence. (T2: 205) Clean Energy also advises that it does not seek an additional round of information requests. (T2: 206) The BCOAPO et al. and BCSEA et al. both also advise that they will not file further information requests on the rebuttal evidence, should it be admitted. (T2: 214-215)

BCSEA submits that the Commission need not reject the rebuttal evidence. It submits that, to the extent that there is something new in the evidence, the appropriate remedy would be to allow additional information requests on that particular new evidence. It notes that ESAC sees no need to ask further information requests, and submits that the parties can address the merits of the rebuttal evidence in argument. (T2: 215-216)

Commission staff did not take a position on the admissibility of the rebuttal evidence but did request a limited round of further information requests, to round out the evidentiary record.

Fortis submits that the rebuttal evidence is proper and ought to be admitted. Their counsel argues that the proceedings have “morphed” over time, and new issues have been introduced or nuances have changed. He further submits that, should the Commission Panel disagree, and find that some or all of the proffered evidence is not proper rebuttal, it should nonetheless be admitted, with the remedy of a further round of information requests.

ESAC submits in reply that a review of the rebuttal evidence discloses nothing new. ESAC suggests that the issues addressed are largely generic and have been issues since the outset of the Proceeding. As such, they should have been addressed in FORTIS’s evidence in chief.

Commission Panel Determination

The Commission Panel agrees with ESAC that the rebuttal evidence tendered is, for the most part, not proper rebuttal evidence. In the Panel’s view, the evidence is largely argument, thinly disguised and put forward as rebuttal evidence. The Panel also agrees that Fortis could have addressed the issues they now describe as new in their evidence in chief.

However, the Commission Panel also notes that no party sees the need for additional information requests arising from the rebuttal evidence, and finds that no prejudice will flow from allowing it to be admitted into the record.

Subsection 2 (4) of the *Utilities Commission Act* provides that certain sections of the *Administrative Tribunals Act*, SBC 2004 c. 45, including s. 40, apply to the Commission. Subsection 40 (1) of the *Administrative Tribunals Act* provides that a tribunal may receive and accept information which it considers relevant, necessary and appropriate even if it would not be admissible in a court of law.

In this case, the Commission Panel is of the view that a portion of the information contained in the rebuttal evidence is relevant to the issues before it. To the extent that the relevant portions of the evidence could have been adduced earlier, as part of Fortis’ evidence in chief, the Commission has the discretion to allow it to be received as part of the record. In the interests of having a fulsome record, and where, as here, the parties are not surprised and seek no further information requests to test the evidence, the Commission Panel is prepared to allow such evidence. Where the evidence could be described as argument, the Commission Panel is of the view that, although technically not admissible, to the extent that it is tied in with other admissible evidence and no party has chosen to identify any specific portions as objectionable, it will

allow the evidence to be admitted as a whole. Any further objections relating to specific portions of the evidence can be made in argument and can be dealt with in terms of weight.

Accordingly, the Commission Panel admits the rebuttal evidence into the record of this Proceeding.

4.0 FUTURE PROCESS

4.1 Oral versus Written Process

All parties to the Procedural Conference were of the view that an oral hearing would not provide material benefits in terms of new information or clarification of the evidence as filed. With the exception of Commission staff, all parties believed that the evidence as currently filed was adequate for parties to proceed to final submissions and that a further round of information requests was unnecessary. A process involving final submissions and reply in written form was proposed. The Parties also agreed that if the Commission Panel had questions following final and reply submissions, oral argument could be scheduled to deal with the same. **The Commission Panel finds that, given the fullness of the record, an oral hearing will not be necessary. The matter will therefore proceed by way of written submissions. The need for an oral argument process will be determined by the Panel once it has had the opportunity to review the submissions.**

4.2 Need to Supplement the Evidentiary Record

Additional Information Requests

Commission staff requested an additional round of limited and focused IRs to Fortis to complete the evidentiary record. (T2: 221) In reply, Fortis indicated that "if the Staff feel they need to have further information requests that's great. And the company takes comfort in the fact that I believe Mr. Miller described them as confined to the issues and concise,..." (T2: 236)

Given the agreement of Fortis, the Commission Panel will allow staff to provide one further round of Information Requests to Fortis. The regulatory timetable (attached) has been adjusted to accommodate this.

Incorporation of Fortis RRA and Delta School District 37 Evidence

ESAC and Corix have requested that the evidentiary record of the FortisBC Energy Utilities 2012-2013 Revenue Requirements and Natural Gas Rates Application and the FortisBC Energy Delta School District 37 Thermal Energy Services Contract CPCN be incorporated by reference into this proceeding. Fortis objected to this inclusion on the basis (a) that much of the evidence is of a very detailed nature whereas the current proceeding deals with principles or policies of broad application, and (b) any relevant issues raised in the other proceedings can be expected to have been canvassed already in this proceeding. Parties supportive of including the evidentiary record of these other proceedings argued that there has been considerable discussion of principles and policies in those proceedings that are directly relevant to this proceeding, and that those proceedings provide concrete examples of areas where the principles and policies may apply.

The Commission Panel finds that the inclusion by reference of the evidence that has been put forward in FortisBC Energy Utilities' 2012-2013 Revenue Requirements and Natural Gas Rates Application and the FortisBC Energy Delta School District 37 Thermal Energy Services Contract CPCN, is appropriate. The Panel accepts this evidence as part of the evidentiary record of this Proceeding. The Panel reminds parties that the use of the material is to be for the purpose of assisting the Panel on making determinations on the principles and policy issues which are to be addressed in this proceeding.

Some parties raised the issue as to the timing of Decisions in the FortisBC Energy Utilities 2012-2013 Revenue Requirements and Natural Gas Rates Application and the FortisBC Energy Delta School District 37 Thermal Energy Services Contract CPCN with respect to the Decision of this Inquiry. The Panel dealt with this issue in Order G-118-11 and finds no reason to alter the findings of that order.

Process for Filing Final Submissions and Reply

Fortis proposed the following sequential process for final submissions and reply:

- Fortis Submission
- Commission Staff and Counsel Submissions
- Interveners' Submissions
- Intervener Reply to Other Interveners' Submissions
- Fortis Reply
- Oral Argument (if needed)

The inclusion of submissions from Commission Staff and Counsel was put forward by Fortis on the basis that this was the process followed in the Retail Markets Downstream of the Utility Meter (RMDM) proceeding and that it would clarify staff's position. During the procedural conference it was explained that the large number of exhibits filed by staff under the A2 exhibit designation were not filed to suggest staff were taking a position or advocating any particular outcome. Instead, the filing represents a new filing protocol that has been adopted by the Commission whereby reports and other information that come to the attention of staff and that they believe may be of use to parties to the proceeding can be efficiently put on the record. The approach used before this protocol was put in place was to either include such reports or information as attachments to information requests and ask parties to comment on them, or to ask the parties to provide copies of the documents. The protocol of filing the material directly is more efficient and reduces the number of information requests that might otherwise be filed.

Commission staff objected to being asked to put forward submissions. The role of staff throughout this proceeding has been to provide assistance to all parties and to ensure there is as substantive and complete an evidentiary record as possible. Commission Counsel, as well, submitted that his role was to assist the Panel, and to ensure that the evidentiary record is as complete as possible. **The Panel agrees with the roles of Commission Counsel and staff as presented. The Commission Panel therefore finds that it is not necessary or desirable for Commission Counsel or Commission staff to file submissions in this Proceeding.**

Timing of Submissions

Ferus LNG, supported by Corix and Clean Energy suggested that instead of the process proposed by Fortis, all parties should file submissions simultaneously, followed by all parties filing reply arguments in a similar manner. Ferus LNG saw this as an appropriate approach (a) because the Inquiry is dealing with principles and policies and not specific proposals and (b) because it would speed up the process, which it submits would be beneficial to parties that may be waiting for the outcome of this Inquiry before making certain business decisions.

The Commission Panel dealt with the issue of the nature of the Inquiry and the role of Fortis in Order G-118-11. It is not persuaded that this late in the process there is merit in changing the approach put forward in that Order.

Two Stage Process

Fortis proposes that the Commission adopt a two stage process. The first stage would culminate in a decision by the Commission on legal and regulatory principles. This would be followed by a second stage where specific guidelines would be drafted by Fortis or by Commission staff. These draft guidelines would then be dealt with in a workshop or similar collaborative process. An amended version of the guidelines, developed with the input of all parties, would then be brought to the Commission for a final determination. While Fortis proposed it would prepare the first draft of the guidelines, it would be acceptable to Fortis if the first draft was prepared by Commission staff.

Ferus LNG and Clean Energy are of the view that the two stage process would unnecessarily prolong the process. Ferus LNG notes that Fortis has filed draft guidelines in its evidence, as has Ferus LNG. In their submission, a second stage would merely repeat what has already been going on for the first five months of the process.

ESAC is supportive of the two stage process but proposes that the starting point would be the existing RMDM guidelines, accompanied by a Commission staff discussion paper on amendments or changes to the guidelines. Corix supports the two stage process with a workshop. It agrees with ESAC that the RMDM guidelines form a good base. The Canadian Office and Professional Employees Union (COPE) also supports the two stage process. It does not believe it would be useful to direct Commission staff as to the content of any staff document put forward in phase 2. BCOAPO also supports a two stage process.

The Commission Panel finds the concept of a collaborative workshop approach to finalizing the wording of guidelines as potentially useful. However, the Panel is of the view that it is premature at this time to make a judgment as to the scope or structure of such a second phase prior to the filing of final submissions. The Panel invites the Parties to include their views on this issue including the potential roles of Commission staff and the Panel in any follow up process in their final submissions.

Panel Direction on Areas of Interest to be Addressed in Final Submissions

A number of parties are of the view that it would be useful in preparing their final submissions if the Panel could provide some direction as to the issues it would like to see addressed. BCSEA specifically raised the issue as to whether the Commission wants parties to address potential recommendations to government regarding changes to legislation.

The Panel will give consideration to the request for such guidance. With respect to recommending changes to legislation, the Commission is not soliciting proposed changes per se. However, the Commission is interested in the Parties' views on any obstacles that they see that inhibit the sound application of regulatory principles in a manner that is in the public interest.

An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

REGULATORY TIMETABLE

ACTION	DATE (2012)
Commission staff IR No. 2 to Fortis	Monday, February 6
Fortis Response to Staff IR No. 2	Monday, February 13
Fortis Final Submission	Thursday, March 15
Intervener Submissions	Tuesday, April 10
Fortis Reply and Intervener Reply to Other Interveners	Tuesday, April 24
Oral Argument, if needed	Tuesday, May 22
Commission Decision	
Stage 2, if necessary	TBD