



ORDER NUMBER
G-92-18

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

and

FortisBC Energy Inc. and City of Surrey Applications for
Approval of Terms for an Operating Agreement

BEFORE:

R. I. Mason, Panel Chair/Commissioner
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner

on May 14, 2018

ORDER

WHEREAS:

- A. On May 17, 2017, the City of Surrey applied to the British Columbia Utilities Commission (BCUC) for an order pursuant to subsection 32(2) of the *Utilities Commission Act* (UCA) specifying the terms under which FortisBC Energy Inc. (FEI) may install, operate and maintain its distribution equipment in public places within Surrey's boundary limits (City of Surrey Application);
- B. On May 18, 2017, FEI applied to the BCUC pursuant to section 32 of the UCA, or alternatively section 33 of the UCA, for approval of new operating terms with the City of Surrey (FEI Application). The new operating terms would, among other things, establish new protocols for interaction between the parties, address the allocation of costs when the City of Surrey requires FEI to relocate its facilities, and provide for FEI to collect operating fees on behalf of the City of Surrey from FEI customers in the City of Surrey;
- C. On December 13, 1955, the Public Utilities Commission issued a Certificate of Public Convenience and Necessity which authorized the British Columbia Electric Company (BCEC) to operate a natural gas distribution system in the District of Surrey pursuant to section 12 of the *Public Utilities Act*;
- D. On June 13, 1957, the Corporation of the District of Surrey (District of Surrey) and BCEC became parties to an operating agreement under which BCEC may install, operate and maintain its distribution equipment in public places within District of Surrey's boundary limits (1957 Agreement). In addition, the 1957 Agreement does not have an expiration date;
- E. In 1964, BCEC was amalgamated into the British Columbia Hydro and Power Authority (BC Hydro), a Crown corporation. The Lower Mainland natural gas assets of BC Hydro were privatized in 1988 and the natural gas assets transferred to 74280 B.C. Ltd. Subsequently, 74280 B.C. Ltd. became Terasen Gas Inc. and on March 1, 2011, Terasen Gas Inc. was renamed FortisBC Energy Inc.;

- F. In 1993, the District of Surrey became the City of Surrey;
- G. The 1957 Agreement is the existing agreement between FEI and the City of Surrey. The two parties have been engaged in negotiations since 2013 for replacement operating terms to reach a new agreement (Operating Agreement) to replace the 1957 Agreement;
- H. On November 8, 2016, the parties entered into an interim agreement that provided for the termination of the 1957 Agreement and its replacement by terms to be negotiated, or failing agreement, the parties would seek BCUC approval for terms that were still unresolved by May 31, 2017;
- I. FEI and the City of Surrey have settled most of the new operating terms, but the parties disagree over the issues listed in the FEI Application and the City of Surrey Application;
- J. FEI and the City of Surrey each filed their proposed Operating Agreements as Appendix A in the FEI Application and Appendix B in the City of Surrey Application, which include all settled operating terms and FEI's and the City of Surrey's respective proposals for the outstanding items;
- K. By Order G-98-17 dated June 21, 2017, the BCUC established a regulatory timetable for the proceeding which included information requests on the FEI Application and the City of Surrey Application and an opportunity for participants to provide comments on further process;
- L. By Order G-163-17 dated November 2, 2017, the BCUC established a regulatory timetable after reviewing the submissions on further process. The revised timetable included an opportunity for parties to file evidence and a second round of information requests;
- M. By Order G-201-17 dated December 29, 2017, the BCUC further amended the timetable to extend the information request no. 2 deadlines;
- N. By Order G-66-18 dated March 22, 2018, the BCUC established an amended regulatory timetable which included a Panel information request to the City of Surrey and an opportunity for participants to provide comments on further process;
- O. By April 30, 2018, FEI, City of Surrey and intervener Richard T. Landale (Landale) submitted comments on further process. FEI has conferred with the City of Surrey, Commercial Energy Consumers Association and British Columbia Old Age Pensioners Organization *et al.* and submitted that the evidentiary record in the proceeding is sufficient and these parties have agreed it is appropriate to proceed to the Final Argument stage. City of Surrey confirmed it supports moving directly to the Final Argument stage. Landale states that Final Arguments are all that is necessary to complete the hearing process, indicating that Reply Arguments are not necessary unless the Panel deems it necessary. Landale additionally suggested that an Oral Hearing should precede the argument phase; and
- P. The BCUC has reviewed the submissions on further process and considers that establishment of an amended regulatory timetable is warranted.

NOW THEREFORE for the reasons for decision attached as Appendix B to this order, the BCUC establishes an amended regulatory timetable, as outlined in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of May 2018.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachments

FortisBC Energy Inc. and City of Surrey Applications for
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REGULATORY TIMETABLE

Action	Date (2018)
FortisBC Energy Inc. and City of Surrey Final Arguments	Thursday, May 31
Intervener Final Arguments	Thursday, June 14
FortisBC Energy Inc. Response to City of Surrey Final Argument	Thursday, June 14
City of Surrey Response to FortisBC Energy Inc. Final Argument	Thursday, June 14
FortisBC Energy Inc. and City of Surrey Reply Argument	Thursday, June 28

FortisBC Energy Inc. and City of Surrey Applications for
Approval of Terms for an Operating Agreement

REASONS FOR DECISION

1.0 Background

On May 17, 2017, the City of Surrey applied to the British Columbia Utilities Commission (BCUC) for an order pursuant to subsection 32(2) of the *Utilities Commission Act* (UCA) specifying the terms under which FortisBC Energy Inc. (FEI) may install, operate and maintain its distribution equipment in public places within Surrey's boundary limits (City of Surrey Application). On May 18, 2017, FEI applied to the BCUC pursuant to section 32 of the UCA, or alternatively section 33 of the UCA, for approval of new operating terms with the City of Surrey (FEI Application).

On June 21, 2017, by Order G-98-17, the BCUC decided that it will hear both applications together in a single proceeding given that both applications are related to the new operating terms between the two parties. The order also established a regulatory timetable for the proceeding which included one round of information requests and an opportunity for participants to provide comments on further process. By Order G-163-17, on November 2, 2017, the BCUC established an amended regulatory timetable including a second round of information requests. The Panel deferred making any determination on future process, with the view that the evidence filings and second information request stage would assist in determining further process.

On April 20, 2018, the Panel requested participants to provide any additional submissions on the proposed regulatory process and related timelines for the remainder of the proceeding. The two applicants, FEI and City of Surrey, and intervener Richard T. Landale (Landale) provided comments on further process.

2.0 Submissions on further process

FEI has conferred with the City of Surrey, the Commercial Energy Consumers Association of British Columbia and the British Columbia Old Age Pensioners Organization *et al.* FEI sand submits that:

All of these parties agree that the evidentiary record in this proceeding is sufficient and no further evidentiary process is required. It is appropriate to now proceed to the argument phase, and bring this proceeding to a conclusion.¹

The City of Surrey confirms that it "supports the proceeding moving directly to written arguments on the timetable set out in FortisBC Energy Inc.'s submission dated April 27, 2018."²

Landale submits that he is "of the general opinion 'Final Argument' is all that is necessary to complete this exhaustive hearing process," and he indicates that Reply Arguments are not necessary unless the Panel deems it necessary.³ Further, Landale states:

¹ Exhibit B1-16, p. 1.

² Exhibit B2-17, p. 1.

³ Exhibit C1-7, p. 1.

Personally I really think an 'Oral Hearing' should occur ahead of any argument phase, in order to challenge both applicants in Direct Cross examination of their IRs and evidence, which at best is general in nature, lacking qualitative and quantitative details... that would assist the Commission Panel to make a full and informed decision to settle the negotiations between both parties.⁴

Landale proposes two proposed regulatory timetables, one that only has arguments, and another that includes an Oral Hearing followed by arguments.

Panel discussion

Oral hearings generally provide supplemental evidence when submissions require clarification through cross examination. Landale has suggested an Oral Hearing for cross examination; however, he does not identify which specific topics should be covered and who would be the witnesses to be cross examined. The Panel is of the view that the evidence received in two rounds of information requests and participant submissions is sufficient. The Panel believes that further evidence gathering through cross examination at an Oral Hearing would not result in a material benefit to the evidentiary record and is therefore unnecessary.

Therefore, the Panel is satisfied that the evidentiary record in the proceeding is sufficient and finds that moving into argument phase is warranted. In addition, in the argument phase the two applicants, FEI and City of Surrey, will have the opportunity to provide submissions in Response to each other's Final Argument and may each provide submissions in Reply to each other's Responses. This has been reflected in the regulatory timetable in Appendix A.

⁴ Exhibit C1-7, p. 1.