



ORDER NUMBER
G-183-18

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

and

FortisBC Energy Inc.
Application to Exclude Employee Information from 2015 Data Order G-161-15

BEFORE:

D. J. Enns, Commissioner

on September 26, 2018

ORDER

WHEREAS:

- A. On May 23, 2018, FortisBC Energy Inc. (FEI) submitted an application with the British Columbia Utilities Commission (BCUC) seeking the following:
- an order pursuant to section 99 of the *Utilities Commission Act* (UCA) that Order G-161-15 be varied so as to exclude “Employee Information” as defined in that order; or alternatively,
 - an order pursuant to section 88(2), exempting from Order G-161-15 all “Employee Information” or, at minimum, particular employee data (Pension Data) held by FEI’s pension actuaries, Willis Towers Watson (WTW) (Application).
- B. On October 13, 2015, the BCUC issued Order G-161-15, permitting FEI to store the Customer Information, Employee Information, and Sensitive Information on servers outside of Canada where (i) the data is encrypted or de-identified and (ii) the encryption keys and de-identification keys are located within FEI’s data centres that are located in Canada;
- C. FEI advised in its May 23, 2018 filing that the Chief Privacy Officer, in a recent internal review, identified that WTW has held the employee information regarding employees who participate in pension plans on US-based servers (Pension Data), without encryption or de-identification, for more than 30 years. This includes former and current employee information. FEI wishes to apprise the BCUC of the issue, and to apply to the BCUC for an order that will determine how FEI proceeds;
- D. FEI submits that the BCUC’s jurisdiction under the UCA does not extend to employee data, or alternatively the BCUC should not exercise its jurisdiction in respect of Employee Information;
- E. On July 12, 2018, the BCUC issued order G-125-18, establishing a regulatory timetable to include submissions on BCUC jurisdiction by FEI and registered interveners;

- F. In their submission on August 10, 2018, MoveUP made a request to suspend the regulatory timetable to afford FEI an opportunity to consult with MoveUP and explore the possibility of finding an adequate resolution to the underlying issue of employee information protection;
- G. On August 20, 2018, registered parties were invited to provide comments on the request by MoveUP for a suspension of the regulatory timetable;
- H. By August 31, 2018, FEI and intervener Commercial Energy Consumers Association of British Columbia (CEC) submitted comments on suspension of the regulatory timetable. CEC submitted that it does not object to the proposal made by MoveUP to suspend the proceeding briefly to explore the possibility of finding an adequate resolution of the underlying issue of employee information protection. FEI submitted that it does not support a suspension of the regulatory timetable, arguing pursuing that approach at this point in the proceeding presupposes the BCUC has jurisdiction to bless any negotiated outcome. FEI suggests a more logical time to hold those discussions would be after the BCUC's determination on the preliminary issue of jurisdiction; and
- I. 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 orders as follows:

1. The original Order G-174-18 is rescinded and replaced with this order to provide clarification on the next steps in the regulatory timetable;
2. MoveUp's application to suspend the proceeding is denied; and
3. The amended regulatory timetable for further process is established, as outlined in Appendix A to this Order.

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

BY ORDER

Original signed by

D. J. Enns
Commissioner

Attachments

FortisBC Energy Inc.
Application to Exclude Employee Information from 2015 Data Order G-161-15

REGULATORY TIMETABLE

Action	Date (2018)
FEI Final Argument on Jurisdiction	Monday, October 7
Intervener Final Argument on Jurisdiction	Monday, October 21
FEI Reply Argument on Jurisdiction	Monday, October 28

FortisBC Energy Inc.
Application to Exclude Employee Information from 2015 Data Order G-161-15

REASONS FOR DECISION

1.0 Background

On May 23, 2018, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC) for the following:

- An order pursuant to section 99 of the *Utilities Commission Act* (UCA) that Order G-161-15 be varied so as to exclude “Employee Information” as defined in that order; or alternatively,
- An order pursuant to section 88(2) of the UCA, exempting from Order G-161-15 all “Employee Information” or, at minimum, particular employee data (Pension Data) held by FEI’s pension actuaries, Willis Towers Watson (WTW) (Application).

On October 13, 2015, the BCUC issued Order G-161-15, permitting FEI to store the Customer Information, Employee Information, and Sensitive Information on servers outside of Canada where (i) the data is encrypted or (ii) the encryption keys and de-identification keys are located within FEI’s data centres that are located in Canada.

FEI advised in its May 23, 2018 filing that the Chief Privacy Officer, in a recent internal review, identified that WTW has held the employee information regarding employees who participate in pension plans on US-based servers (Pension Data), without encryption or de-identification, for more than 30 years. This includes former and current employee information. FEI wished to apprise the BCUC of the issue, and to apply to the BCUC for an order that will determine how FEI proceeds. FEI submits that the BCUC’s jurisdiction under the UCA does not extend to employee data, or alternatively the BCUC should not exercise its jurisdiction in respect of Employee Information.

On July 12, 2018, by Order G-125-18, the BCUC established a regulatory timetable for the proceeding which included submissions on BCUC jurisdiction by FEI and registered interveners.

In their submission on August 10, 2018, MoveUP made a request to suspend the regulatory timetable to afford FEI an opportunity to consult with MoveUP and explore the possibility of finding an adequate resolution to the underlying issue of employee information protection. On August 20, 2018, the BCUC requested participants to provide submissions on the request by MoveUP for a suspension of the regulatory timetable. FEI and CEC provided comments on the proposed suspension of the proceeding.

2.0 Submissions on suspension of the regulatory timetable

FEI does not support a suspension of the regulatory timetable, and submits that “holding discussions at this point would be premature”¹ and “a more logical time to hold those discussions would be after the Commission’s determination on this preliminary issue of jurisdiction”² on the basis that pursuing such an approach now “presupposes the Commission has jurisdiction to bless any negotiated outcome.”³

¹ FEI Reply Submission on Jurisdiction, p.29.

² Ibid.

³ Ibid.

Further, FEI states:

A more logical time to hold those discussions would be after the Commission's determination on this preliminary issue of jurisdiction. At that point, the purpose of those discussions will be clear. If FEI and CEC's position on jurisdiction prevails, FEI and its bargaining agents will be free to discuss and resolve such issues in the normal course. If MoveUP's view on the Commission's jurisdiction prevails, then the parties to this proceeding... could discuss whether there is a more practical alternative to the 2015 Data Order as it relates to Employee Information.⁴

In its submission, CEC confirms that it "does not object to the proposal made by MoveUP to suspend the proceeding briefly" in order to facilitate the possibility of finding an adequate resolution of the underlying issue of employee information protection.

Panel discussion

Prior to a BCUC determination on the issue of jurisdiction, the outcome of any negotiations between MoveUP and FEI would still have to be reviewed and either approved or denied by the BCUC. The Panel is of the view that the regulatory timetable should not be suspended because holding discussions at this stage in the proceeding would be premature.

Panel determination

For these reasons, the Panel denies the application of MoveUP to suspend the regulatory timetable.

⁴ Ibid.