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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-105-10

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

and

**An Application by Shaw Cablesystems Limited and Shaw Business Solutions Inc.
to continue to use FortisBC Inc.'s Transmission Facilities**

BEFORE: A.A. Rhodes, Panel Chair/Commissioner
M.R. Harle, Commissioner June 14, 2010
L.A. O'Hara, Commissioner

ORDER

WHEREAS:

- A. On October 26, 2009, Shaw Cablesystems Limited and Shaw Business Solutions Inc. (collectively, Shaw) applied for an order directing FortisBC Inc. (FortisBC) to allow Shaw to continue to use FortisBC's electric transmission facilities for Shaw's telecommunication facilities throughout the FortisBC service area (the Application) pursuant to section 70 of the *Utilities Commission Act* (the Act); and
- B. The Application requests that the British Columbia Utilities Commission (Commission) issue an order directing FortisBC to allow Shaw to install, operate and maintain telecommunications cables and related interconnection facilities on FortisBC's electric transmission facilities including the facilities located on FortisBC's 11 line, 40 line, 50 line and 76 line and setting reasonable terms and rates for Shaw's use of FortisBC's facilities. Shaw submits that such an order is in the public interest; and
- C. Shaw has accessed FortisBC's transmission and distribution poles for the placement of telecommunication facilities since 1972 with the agreement and cooperation of FortisBC and its predecessors; and
- D. Shaw submits that the issues in the Application are narrow and centre on fair and reasonable terms and rates and asks that a Negotiated Settlement Process be set as soon as possible; and
- E. On February 13, 2009, FortisBC notified Shaw that the Transmission License Agreement will terminate effective February 12, 2019; and
- F. On April 3, 2009, FortisBC notified Shaw that it required Shaw to remove its facilities from FortisBC poles along lines 50 and 54 by April 3, 2010 and from poles along lines 40 and 76 by October 31, 2010, in accordance with good utility practice and the decommissioning of line 40 (the April 3, 2009 Notices); and
- G. Shaw disputes the validity of the April 3, 2009 Notices and submits they are related to unresolved issues on other matters, principally the ownership of the Kettle Valley telecommunication facilities and FortisBC's dissatisfaction with the Transmission License Agreement rates and FortisBC's proposal to increase the annual fee from approximately \$40,000 to \$927,000; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-105-10**

2

- H. Shaw states that FortisBC recently commenced an action in the Supreme Court of British Columbia that seeks:
- 1) a declaration that the Transmission License Agreement has been terminated;
 - 2) a mandatory injunction to have Shaw remove its telecommunications facilities from FortisBC's transmission facilities and land; and
 - 3) an injunction to restrain Shaw from using its telecommunications facilities on FortisBC's transmission facilities; and
- I. By Order G-133-09, the Commission required that FortisBC provide a submission by November 20, 2009 on whether the Application should be reviewed through a Negotiated Settlement or some other process before the Commission and for Shaw to make a reply submission by November 27, 2009 on the FortisBC submission; and
- J. The Commission reviewed the Application, the November 20, 2009 submission from FortisBC and the November 27, 2009 reply submission from Shaw and, by Order G-170-09, scheduled a Preliminary Procedural Conference for January 6, 2010 to address a List of Issues and procedural matters; and
- K. Following its consideration of the submissions received at the Preliminary Conference on January 6, 2010, the Commission issued Order G-10-10 with Reasons for Decision dated January 14, 2010 whereby it requested additional submissions from Shaw and FortisBC relating to the applicability of section 70 of the Act in the context of the circumstances existing as between them; and
- L. By letter dated January 14, 2010, FortisBC advised Shaw that it had extended the April 3, 2010 deadline contained in the April 3, 2009 Notices to October 1, 2010; and
- M. The Commission Panel reviewed the additional submissions received and determined, by Order G-24-10 with Reasons for Decision attached, that it has the jurisdiction to and would hear the Application. The Commission Panel requested that Shaw and FortisBC provide written submissions in respect of further process and proposed Regulatory Timetables on or before Friday, February 26, 2010. Following a request by FortisBC, the Commission extended its submission deadline to Friday, March 5, 2010; and
- N. On February 26, 2010, Shaw submitted a proposed Regulatory Timetable that included an oral public hearing commencing on June 21, 2010, the possibility of a Negotiated Settlement Process, with a Decision anticipated by September 3, 2010; and
- O. On March 5, 2010, FortisBC filed a request for Reconsideration of Order G-24-10, served a Leave to Appeal Application to the B.C. Court of Appeal from that Order, and filed a proposed Regulatory Timetable. The Regulatory Timetable included a one-half day hearing for the Reconsideration Application, and if the Reconsideration or stay was not granted, provided for an oral public hearing commencing on September 20, 2010; and
- P. The Commission Panel considered FortisBC's Reconsideration Application and determined that FortisBC had put forward a prima facie case to allow the matter to proceed directly to Phase 2 of the reconsideration process; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-105-10**

3

- Q. By Order G-39-10, the Commission Panel scheduled a one-half hearing day for March 17, 2010, subject to comments from Shaw. The hearing of the Reconsideration Application proceeded on March 17, 2010, with additional submissions from the parties in response to outstanding questions from the Commission Panel; and
- R. By Order G-63-10 with Reasons attached, the Commission Panel dismissed the Reconsideration Application, established an oral hearing process for the review of the Shaw Application and a Regulatory Timetable that scheduled a Procedural Conference for May 11, 2010 in Kelowna, BC; and
- S. The Commission Panel considered the submissions of the parties at the May 11, 2010 Procedural Conference in Kelowna and issued Order G-93-10 which included among other things a Revised Regulatory Timetable; and
- T. On June 2, 2010 the Court of Appeal granted FortisBC leave to appeal; and
- U. By letter dated June 9, 2010 Shaw requested that the Commission extend the deadline to file Information Request responses until June 18, 2010 to allow the Commission sufficient time to deal with any request by FortisBC to stay this proceeding; and
- V. By letter dated June 10, 2010 FortisBC opposed Shaw's request for an extension; and
- W. Further exchanges occurred by letters dated June 11, 2010 from each party; and
- X. The Commission Panel has considered the June 9, 10 and 11, 2010 submissions of the parties and considers that a determination is required.

NOW THEREFORE the Commission Panel orders, with Reasons attached as Appendix A, that Shaw's request to extend the deadline to file Information Request responses until June 18, 2010 is approved.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of June 2010.

BY ORDER

Original signed by:

A.A. Rhodes
Panel Chair/Commissioner

Attachment



IN THE MATTER OF

AN APPLICATION BY

**SHAW CABLESYSTEMS LIMITED
AND SHAW BUSINESS SOLUTIONS INC.**

TO CONTINUE TO USE FORTISBC INC.'S TRANSMISSION FACILITIES

REASONS FOR DECISION

BEFORE:

A.A. Rhodes, Panel Chair/Commissioner
L.A. O'Hara, Commissioner
M.R. Harle, Commissioner

By letter dated June 9, 2010 Shaw Cablesystems Limited and Shaw Business Solutions Inc. (collectively, Shaw) requested an extension of the deadline for it to file its responses to Information Requests from June 11, 2010 to June 18, 2010.

The Commission Panel grants Shaw's request. Shaw's responses to Information Requests will now be due on June 18, 2010.

The Commission Panel grants this request as it considers that the extension will not have any serious implications for the existing Regulatory Timetable.

The Commission Panel notes that Fortis BC Inc. (FortisBC) has indicated that it will seek to stay the Commission proceedings in the event of a successful application for leave to appeal on the issue of the Commission's jurisdiction to hear Shaw's application. The application for leave was granted by the B.C. Court of Appeal on June 2, 2010.

Despite FortisBC's comments about seeking a stay, no such application is presently before the Commission Panel. The Panel further notes that it is also open to Shaw to apply for a stay. Whether such an application is brought by FortisBC or Shaw, the Commission Panel expects it to be made in a timely manner.