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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-12-13**

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

**and**

**An Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Advanced Metering Infrastructure Project  
Objection to Request for Confidentiality**

**BEFORE:** L.F. Kelsey, Commissioner  
D.M. Morton, Commissioner January 22, 2013  
N.E. MacMurchy, Commissioner

**ORDER**

**WHEREAS:**

- A. By Order G-177-12, the British Columbia Utilities Commission (Commission or BCUC) established an Amended Regulatory Timetable for the regulatory process (Proceeding) to review FortisBC Inc.'s application for the Advanced Metering Infrastructure project (Application);
- B. On December 14, 2012, FortisBC Inc. submitted a request for confidentiality (Exhibit B-14-1) for specific responses it provided to BCUC Information Request No. 2 questions 19.1, 19.1.1, 32.1 and 92.1;
- C. On December 27, 2012, the Citizens for Safe Technology Society (CSTS), an Intervener in the Proceeding, submitted a letter of objection to the request for confidentiality (Exhibit C9-6);
- D. By letter dated September 12, 2007, the Commission issued a Confidential Filings Practice Directive consistent with the statutory provisions of the *Administrative Tribunals Act*, SBC 2004, Chapter 45, attached as Appendix B to this Order. The Confidential Filings Practice Directive, establishes filing protocol for confidentiality requests as well as process for handling objections to requests for confidentiality;
- E. By letter dated December 28, 2012 (Exhibit A-20), pursuant to the Confidential Filings Practice Directive, the Commission requested FortisBC Inc. to reply to the objection including any comments from its proposed supplier, Itron;

- F. On January 11, 2013, FortisBC Inc. responded with additional information including Itron counsel's submissions on the request for confidentiality. In that response Itron provided the contract section related to BCUC IR No. 2, question 19.1.1 as public information but requested continued confidential treatment of the responses to questions 19.1, 32.1 and 92.1;
- G. The Commission has considered the submissions of the affected parties and determines that limited disclosure of the confidentially filed materials is necessary in this Proceeding.

**NOW THEREFORE** as set out in the Reasons for Decision attached as Appendix A to this Order, the Commission orders as follows:

1. The information filed by FortisBC Inc. in response to BCUC IR No. 2, questions 19.1, 32.1 and 92.1 shall be treated as confidential by the Commission.
2. Participants, limited to Intervener counsel and Interveners who are publicly elected officials, will be provided access to the confidential materials described, subject to filing an Undertaking of Confidentiality with FortisBC Inc., with a copy to the Commission in satisfactory form.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 23<sup>rd</sup> day of January 2013.

BY ORDER

*Original signed by:*

D.M. Morton  
Commissioner

Attachments

An Application by FortisBC Inc.  
for a Certificate of Public Convenience and Necessity  
for the Advanced Metering Infrastructure Project  
Objection to Request for Confidentiality

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REASONS FOR DECISION

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On December 14, 2012, FortisBC Inc. submitted a request for confidentiality (Exhibit B-14-1) for specific responses it provided to the British Columbia Utilities Commission (Commission) Information Request (IR) No. 2. The request for confidentiality to Commission IR No. 2 questions 19.1, 19.1.1, 32.1 and 92.1 deals with the contract(s) and written estimates between FortisBC Inc. and Itron, the proposed supplier of smart meter infrastructure and implementation services in the titled Proceeding. In its request FortisBC Inc. stated that disclosure could reasonably be expected to harm Itron's negotiating position for its product with other potential clients.

On December 27, 2012, Mr. David Aaron, representing the Intervener, Citizens for Safe Technology Society (CSTS) submitted an objection to the confidentiality request (Exhibit C9-6) in the interest of transparency. On December 31, 2013, Michael Jessen, on behalf of the Intervener, Nelson Creston Green Party Constituency Association (NCGP) submitted a letter supporting the objection to the request for confidentiality (Exhibit C18-9).

By letter dated December 28, 2012 (Exhibit A-20), pursuant to the Commission's Confidential Filings Practice Directive, the Commission requested FortisBC Inc. to reply to the objection including any comments from Itron by Monday, January 7, 2013. FortisBC Inc. subsequently requested and was granted an extension to include Itron's reply to January 11, 2013. (Exhibit A-23)

Commission Confidential Filings Practice

The Commission established a Confidential Filings Practice Directive to address statutory provisions and the interests of affected parties related to confidential filings, attached as Appendix B. The Practice Directive is made pursuant to sections 13 of the *Administrative Tribunals Act* (ATA). Section 2(4) of the *Utilities Commission Act* makes certain section of the ATA applicable to the Commission and its proceedings including sections 41 (Hearings open to public) and 42 (Discretion to receive evidence in confidence).

Section 41 provides that:

- (1) An oral hearing must be open to the public.
- (2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that
  - a. The desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or
  - b. It is not practicable to hold the hearing in a manner that is open to the public.
- (3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2)(a) or section 42 applies to that document.

Section 42 provides that:

The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Item 9 of the Commission's Confidential Filings Practice Directive states that "the Commission may, upon request, consider whether access to the confidential information should be provided to all other parties to the proceeding, or only to their counsel or consultants and experts. If the Commission grants such request, each party or individual eligible to receive a copy of the confidential information shall first sign and file a declaration or undertaking, in the form consistent with Attachment A".

FortisBC and Itron Reply to Objection (Exhibit B-21)

The FortisBC Inc. January 11, 2013 reply letter included a letter from Itron describing its specific issues related to the confidentially filed information and included suggested means by which access could be provided to the information at issue. The specific responses to Commission IR No. 2 questions 19.1, 19.1.1, 32.1 and 92.1 provided by Itron are provided in Exhibit B-21. The concerns raised by Itron are that the contract information contained in the IR questions contain pricing, technical product information, specific warranty terms and other commercially sensitive information that public disclosure would make this information available to its competitors and could unfairly harm Itron's and its shareholders commercial interests. Itron further expresses concern that disclosure to all Interveners even under a Confidential Undertaking (Undertaking) could result in inadvertent or careless disclosure and increased risk of public disclosure.

BCUC IR No. 2 question 19.1.1 contains contract terms for the disposal provisions for the existing FortisBC meters. Itron provided this section of the contract in full with its response which now forms part of the publicly available record.

BCUC IR No. 2 questions 19.1 and 92.1 include the complete contract between FortisBC Inc. and Itron and the section on warranty respectively. Itron treats its contracts which include pricing, technical product information, warranty terms and others as confidential. Itron requests confidentiality be maintained but that limited disclosure to Interveners is an option. Itron proposes a contract summary of key contract terms and conditions for confidential disclosure to all Interveners as included in its reply.

BCUC IR No. 2 question 32.1 contains an estimate for the Powerline Carrier Communications (PLC) capital costs provided by Itron to FortisBC Inc. Itron requests continued full confidentiality of this information, expressing concerns about disclosure of planned PLC technologies, product capabilities, pricing and availability dates. Itron further states that should BCUC elect to provide the information against its objections then it requests that only the "recipient's representative" be provided such information after executing a confidential Undertaking per the Commission's Confidential Filings Practice Directive.

## COMMISSION DETERMINATION

1. The Panel finds that the information filed in response to BCUC IR No. 2 questions 19.1, 32.1 and 92.1 shall be treated as confidential.
2. Participants, limited to Intervener counsel and Interveners who are publicly elected officials, will be provided access to the confidential materials described, subject to filing an Undertaking of confidentiality with FortisBC Inc., with a copy to the Commission in satisfactory form.

The Commission as a general rule finds that evidence and information filed in respect to a public proceeding should be made publicly available in a form that reasonably protects the legitimate interests of the parties involved.

In dealing with the request for confidentiality by FortisBC Inc. the Commission relies on the *Freedom of Information and Protection of Privacy Act* and generally uses this legislation as the test to apply in cases where parties seek confidentiality in filing information with the Commission; this legislation is relied upon and applied in conjunction with the *Utilities Commission Act* and the *Administrative Tribunals Act*. The Commission Panel accepts the submissions of FortisBC and Itron to withhold the information contained in IR No. 2 responses 19.1, 32.1 and 92.1 given that the parties have sufficiently demonstrated that release of such information would “harm significantly the competitive position or interfere significantly with the negotiating position of the third party” (section 21(1)(c)(i) of the *Freedom of Information and Protection of Privacy Act*).

The Panel notes FortisBC’s and Itron’s willingness to release additional information in its reply to the objection for confidentiality. The Panel agrees with Itron that a redacted public version of the contract is not practical. The Panel finds that the PLC estimate is material to this Proceeding and should be made available in a limited way to Interveners in this Proceeding.

The Commission must ensure that persons that are a party to the disclosure of confidential information have procedures in place to protect confidentiality. In the Panel’s view, “limited” disclosure to Intervener counsel and elected officials will allow public scrutiny of this evidence, while ensuring that commercially sensitive information is kept confidential.

ROBERT J. PELLATT  
COMMISSION SECRETARY  
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Log No. 21200

**VIA EMAIL**

September 12, 2007

TO: Regulated Utilities  
BCH 2007 Rate Design  
BCH Revelstoke Unit 5 CPCN  
BCH\_F2007-08 Revenue Requirements  
BCTC F2008-2017 TSCP

FortisBC Big White Rate Design  
ForitsBC Naramata Substation  
ICBC\_2007 Revenue Requirements  
ICBC\_2007Rate Design  
TGVI-TGI Mt. Hayes LNG Facility CPCN

Re: Practice Directive of the British Columbia Utilities Commission  
"Confidential Filings"

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Further to the Commission's letter dated July 11, 2007, the Commission would like to thank all those who provided comments by the August 12, 2007 deadline on the proposed "Confidential Filings Practice Directive". Comments were received from the following:

Chris Daley  
Karl Gustafson, Lang Michener  
British Columbia Public Interest Advocacy Centre  
EPCOR  
City of New Westminster  
Joint Industry Electricity Steering Committee  
Columbia Power Corporation  
Central Coast Power Corp.  
B.C. Sustainable Energy Association, et al.

British Columbia Transmission Corporation  
Pacific Northern Gas Ltd.  
Terasen Gas Inc.  
FortisBC Inc.  
Insurance Corporation of British Columbia  
British Columbia Hydro and Power Authority

The Commission has considered the comments received and has issued the attached Practice Directive related to Confidential Filings in Commission public hearings, written or oral.

The Commission would note that this Practice Directive is intended to provide direction or guidance as to the approach that the Commission will take and how the Commission will deal with requests by parties that information be filed on a confidential basis during Commission public hearings. While intended to be helpful to all parties, it is a guideline and, by virtue of section 11 of the Practice Directive, the Commission may vary or utilize other procedures when it considers it necessary or appropriate to do so.

As well, the Commission would note that the Practice Directive is subject to other related statutory provisions and exceptions or exclusions by law (sections 1 and 10).

The Commission accepts the revisions proposed to section 2(a) and has replaced “the specific harm that would result” with “the specific harm that could reasonably be expected to result”.

The Commission does not consider it necessary at this time, as suggested by Terasen Gas and Columbia Power Corporation, to implement guidelines similar to those of sections 5.1.12 to 5.1.14 of the Ontario Energy Board’s Practice Direction on Confidential filings. As noted by the Joint Industry Electricity Steering Committee, if the Commission determines that a document is to be disclosed, a party has the right to apply to the Commission for an order that the document remain confidential pending an appeal.

The Commission agrees with Terasen Gas and Central Coast Power that the process should be flexible enough to permit information to be filed with the Commission contemporaneously with the request for confidentiality.

While the Commission recognizes the concerns of Terasen Gas, BC Hydro and others that non-participating third parties may be affected by requests for the disclosure of certain information, the Commission is concerned that the public hearing process remain efficient and effective while affording an opportunity, in appropriate circumstances, to obtain the views of affected persons. Accordingly, the Commission anticipates that the party claiming confidentiality will work with non-participating third parties when making a request or replying to an objection.

As noted above, the Commission appreciates the comments received and trusts that this new Practice Directive will, as suggested by the BC Old Age Pensioners Organization *et al.*, represent an improvement to the Commission’s processes.

Yours truly,

*Original signed by:*

Robert J. Pellatt

cms  
Enclosure

## Practice Directive of the British Columbia Utilities Commission

### “Confidential Filings”

This Practice Directive is made pursuant to section 13 of the *Administrative Tribunals Act*, SBC 2004, Chapter 45 (ATA).

Section 2(4) of the *Utilities Commission Act* (UCA) makes certain sections of the ATA applicable to the Commission and its proceedings, including sections 41 (Hearings open to public) and 42 (Discretion to receive evidence in confidence) of the ATA.

Section 41 provides that:

- (1) An oral hearing must be open to the public.
- (2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that
  - a. The desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or
  - b. It is not practicable to hold the hearing in a manner that is open to the public.
- (3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2)(a) or section 42 applies to that document.

Section 42 provides that:

The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any intervenors, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Consistent with these statutory provisions, the Commission wishes to provide further guidance with regard to the handling of confidential information in the context of its public hearings.

1. Subject to the following, and subject to other related statutory provisions and exceptions or exclusions by law, including the *Freedom of Information and Protection of Privacy Act*, the ATA, and the UCA, the information filed by parties in a public hearing will be placed on the public record.

If a party wishes to keep confidential any information in a document filed in a public hearing, the party must file a request that all or any part of the document be held in confidence and serve a copy of the request on the other parties.



2. The request for confidentiality should:
  - (a) briefly describe the nature of the information in the document and the reasons for the request for confidentiality, including the specific harm that could reasonably be expected to result if the document were placed on the public record, and
  - (b) indicate whether all or only a part of the document is the subject of the request.
3. The request for confidentiality shall be placed on the public record.
4. A party may object to a request for confidentiality by filing an objection with reasons in a timely manner and serving the objection on the other parties to the hearing and the Commission will give the party claiming confidentiality, together with a person who may be affected by disclosure, an opportunity to reply to an objection.
5. The Commission may, with or without a hearing or further process, grant a request for confidentiality on any terms it considers necessary.
6. Where the Commission holds a hearing to consider the request for confidentiality, the Commission may direct that the hearing be held in the absence of the public.
7. In determining whether the nature of the information or documents require a confidentiality direction, the Commission will have regard to matters that it considers relevant, including,
  - (a) whether the disclosure of the information could reasonably be expected to result in
    - i. undue material financial loss or gain to a person, or
    - ii. significant harm or prejudice to that person's competitive or negotiating position, and
  - (b) whether the information is financial, commercial, scientific or technical information that is confidential and consistently treated as confidential by the person,
  - (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing, and
  - (d) whether it is practicable to hold the hearing in a manner that is open to the public.

8. Documents that are filed with the Commission or with the Hearing Officer on a confidential basis or that contain confidential material must be clearly so designated on the cover letter and the document. If accepted by the Commission as confidential, these documents or portions thereof will not be placed on the record for the public hearing and will not be posted to the Commission website. The Commission's Document Filing Protocols provide further directions concerning the filing of confidential information.
9. If the Commission grants a request for confidentiality, the Commission may, upon request, consider whether access to the confidential information should be provided to all other parties to the proceeding, or only to their counsel or consultants and experts. If the Commission grants such request, each party or individual eligible to receive a copy of the confidential information shall first sign and file a declaration or undertaking, in a form consistent with Attachment A, in respect of the use of the confidential information and stating that the party or individual will hold the document in confidence and use it only for the purpose of the public hearing, as the Commission considers appropriate. The Commission may impose any other additional conditions or safeguards as it considers appropriate.
10. For greater certainty, nothing in this Practice Direction is intended to serve to limit the operation of any statutory provision that protects the confidentiality of information of documents.
11. Notwithstanding the guidance provided above, the Commission, in accordance with subsection 13(2) of the ATA, is not bound by this Practice Directive.
12. To comply with subsection 13(3) of the ATA, this Practice Directive dated **September 1, 2007** will be made available on the Commission's website at <http://www.bcuc.com>>*Guidelines & Resources*>*Other Resources and Documents*.

**ATTACHMENT A**

**Undertaking**

I, \_\_\_\_\_, am a participant \_\_\_\_\_ in the matter of \_\_\_\_\_.

In this capacity, I request access to the confidential information in the record of this proceeding. I understand that the execution of this undertaking is a condition of an Order of the Commission, and the Commission may enforce this Undertaking pursuant to the provisions of the *ATA*.

I hereby undertake

- (a) to use the information disclosed under the conditions of the Undertaking exclusively for duties performed in respect of this proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access to such information or to staff of the Commission;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking except for purposes of the proceeding;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking;
- (e) to return to \_\_\_\_\_, under the direction of the \_\_\_\_\_, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the Commission a certification of destruction at the end of the proceeding or within a reasonable time after the end of my participation in the proceeding; and
- (f) to report promptly to the Commission any violation of this Undertaking.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_