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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-26-15**

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

**and**

**An Application by the FortisBC Energy Utilities consisting of FortisBC Energy Inc.,  
FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. for  
Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU,  
Currently Restricted to Canada**

**BEFORE:** L. A. O'Hara, Panel Chair/Commissioner  
N. E. MacMurchy, Commissioner  
K. A. Keilty, Commissioner

February 24, 2015

**O R D E R**

**WHEREAS:**

- A. On August 1, 2014, the FortisBC Energy Utilities (FEU) applied to the British Columbia Utilities Commission (Commission) for removal of the restriction on the location of data and servers providing service to FEU (Application) based on FEU's view that the restriction is no longer necessary and that removal is required to ensure consistency with other utilities in British Columbia, and to enable FEU to source information and technology solutions to provide the best value and benefit for customers;
- B. By Orders G-126-14, G-150-14, and G-184-14, the Commission established the public hearing process and the regulatory timetable for the Application, which included an FEU reply submission on December 18, 2014;
- C. Three interveners registered for the proceeding including the Commercial Energy Consumers Association of British Columbia (CEC), British Columbia Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), and British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);
- D. On December 23, 2014, the Commission received a letter from BCSEA raising concerns regarding the FEU Reply Submission;
- E. By letter dated December 30, 2014, the Commission requested submissions from the participants regarding the alternative relief proposed by FEU (Exhibit A-8);

- F. By letter dated January 20, 2015, the Commission found that the alternative relief could be pertinent to the possible outcomes of the Application and established a procedural conference (Exhibit A-9);
- G. On Wednesday, February 18, 2015, the Commission held a procedural conference requesting FEU and the three interveners to address following matters:
- i. Whether the evidentiary record should be re-opened to include the proposed alternative relief as part of the Application;
  - ii. What additional evidence and process, if any, are needed if the proposed alternative relief is to be included as part of the Application; and
  - iii. How to deal with the submissions that have been challenged by interveners on the basis that they inappropriately contain new evidence.
- H. The Commission considered the submissions received and determines that re-opening the evidentiary record for evidence related to the proposed alternative relief and further process are warranted.

**NOW THEREFORE** the Commission orders as follows:

1. For the reasons set out in Appendix A to this order:
  - a. The evidentiary record is re-opened for evidence related to the proposed alternative relief.
  - b. The FortisBC Energy Utilities are directed to file evidence on the alternative relief sought. A further hearing process will include one round of written information request on the alternative relief evidence.
  - c. A Streamlined Review Process (SRP) is established with the scope covering the entire proceeding. The SRP will be held on Friday, June 12, 2015, commencing at 9:00 a.m., in the Commission's Hearing Room on the 12th Floor, 1125 Howe Street, Vancouver, BC V6Z 2K8.
2. The Regulatory Timetable is attached as Appendix B to this order.

**DATED** at the City of Vancouver, In the Province of British Columbia, this 24<sup>th</sup> day of February 2015.

BY ORDER

*Original signed by:*

L. A. O'Hara  
Commissioner

An Application by the FortisBC Energy Utilities consisting of FortisBC Energy Inc.,  
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**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

On August 1, 2014, the FortisBC Energy Utilities (FEU) filed an application with the British Columbia Utilities Commission (Commission) for the removal of a restriction on the location of the FEU's data and servers. The current restriction states:

“[T]he Commission orders that the location of data and servers providing service to the [FEU] is to be restricted to Canada and that any proposal to locate data and servers providing services to the [FEU] (including data and servers providing back-up services) outside Canada will require the Commission's approval.”<sup>1</sup>

FEU request the Commission issue an order directing that the current restriction imposed under Orders G-116-05, G-75-06, and G-49-07, that the location of data and servers providing service to FEU be restricted to Canada, is removed and no longer in effect.<sup>2</sup>

By Orders G-126-14, G-150-14, and G-184-14, the Commission established the public hearing process and the regulatory timetable for the Application, which included an FEU reply submission on December 18, 2014. Three interveners registered for the proceeding, including the Commercial Energy Consumers Association of British Columbia (CEC), British Columbia Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA), and British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO).

On December 23, 2014, the Commission received a letter from BCSEA raising concerns regarding the FEU Reply Submission. By letter dated December 30, 2014, the Commission requested submissions from the participants regarding the alternative relief proposed by FEU.<sup>3</sup>

The alternative relief proposed by FEU is as follows:

...if the Commission does not grant the relief sought by the FEU, then the Data Restriction should be rescinded, and replaced with an order that:

- (a) directs that FEU data of or about customers that meets the definition of “personal information” under PIPA must be stored on servers located within Canada;
- (b) permits the FEU to store data about customers that would otherwise meet the definition of

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<sup>1</sup> Commission Order G-75-06.

<sup>2</sup> Exhibit B-1, p. 6.

<sup>3</sup> Exhibit A-8.

- “personal information” outside of Canada if it is either (a) de-identified or (b) encrypted;
- (c) confirms that data of any kind, customer or otherwise, that does not meet the definition of “personal information” under PIPA is permitted to be stored outside of Canada; and
- (d) permits the FEU to apply for specific exemptions from the revised Data Restriction.<sup>4</sup>

By letter dated January 20, 2015, the Commission found that the alternative relief could be pertinent to the possible outcomes of the Application and established a procedural conference.<sup>5</sup>

On February 18, 2015, the Commission held a procedural conference requesting FEU and the three interveners to address following matters:

- i. Whether the evidentiary record should be re-opened to include the proposed alternative relief as part of the Application;
- ii. What additional evidence and process, if any, are needed if the proposed alternative relief is to be included as part of the Application; and
- iii. How to deal with the submissions that have been challenged by interveners on the basis that they inappropriately contain new evidence.

**For the reasons that follow, the Panel determines that re-opening the evidentiary record for evidence related to the proposed alternative relief and further process are warranted. The Regulatory Timetable is attached as Appendix B to this order.**

## **2.0 SUBMISSIONS BY THE PARTIES**

At the February 18, 2015 procedural conference, FEU and interveners addressed the matters as noted in the January 20, 2015 Commission letter. The sections below summarize the submissions received by FEU and interveners.

### **2.1 Re-open evidentiary record to include alternative relief**

FEU emphasize their position that the primary relief sought in the Application that the data restriction is removed entirely should be granted. If absence of granting the primary relief, FEU characterize the alternative relief as follows: “At its core the alternative relief is basically the primary relief with an added measure of protection, being the encryption and de-identification of information that meets the definition of personal information.”<sup>6</sup>

FEU submit that the Commission may grant partial relief under section 89 of the *Utilities Commission Act*

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<sup>4</sup> FEU Reply Submission, p. 9, para. 28.

<sup>5</sup> Exhibit A-9.

<sup>6</sup> Transcript Volume 1, p. 5.

without reopening the evidentiary record. However, FEU are agreeable to re-opening the evidentiary record if the Commission or interveners find that further information is necessary.

CEC submits that “the onus is on the applicant to make their case. It is their application and their duty to provide the evidence to justify approval or -- in the case you’re not satisfied, denial of the application.”<sup>7</sup> CEC agrees to re-opening the record to assess the proposed alternative.

BCSEA’s primary position is that the Commission should not re-open the evidence but rather should reject the Application based on BCSEA’s view that FEU “had not made its case that a blanket removal of the restriction was in the public interest.”<sup>8</sup> In the alternative, BCSEA submits that if the Panel wishes to continue with the proceeding then re-opening the evidentiary record is necessary. BCSEA also suggests that the Panel should give some guidance to FEU and interveners about whether FEU’s primary relief is “still on the table” as an option for the Panel.<sup>9</sup>

BCOAPO takes two positions on whether the evidentiary record should be re-opened. On one hand, BCOAPO submits that the evidentiary record should not be re-opened as it agrees with CEC that the onus is on FEU to make their application and in BCOAPO’s view the application is deficient. On the other hand, BCOAPO submits that the record should be re-opened to consider the alternative relief proposal, and be limited only to the issue of the alternative, and that the original proposal would be rejected.<sup>10</sup>

In its reply, FEU submits that it does not consider it appropriate for the Panel to make a preliminary ruling or decision on the primary relief at this time.<sup>11</sup>

## **2.2 Additional evidence and process to include alternative relief**

FEU propose to file further written evidence should there be further process, and proposes that the hearing should conclude using something similar to the Streamlined Review Process (SRP) format.<sup>12</sup> FEU do not believe a round of information requests (IR) on the new evidence is necessary.

In terms of the SRP’s format and scope, FEU submit:

Interveners and the Panel could ask questions. And the scope of that hearing or workshop or whatever you want to call it, we’d say at that point should be the whole proceeding. And the rationale is this. It would be one last chance to work through the issues face-to-face, get the critical questions addressed and aired out, and to give people direct access to FEU’s subject matter experts. People that can talk about encryption and de-identification, privacy. They would be there.<sup>13</sup>

CEC identifies three areas that FEU should address in its evidence: (i) the efficacy of encryption in protecting

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<sup>7</sup>Transcript Volume 1, p. 17.

<sup>8</sup>Transcription Volume 1, p. 26.

<sup>9</sup>Transcript Volume 1, p. 30.

<sup>10</sup>Transcript Volume 1, p. 39.

<sup>11</sup>Transcript Volume 1, p. 43.

<sup>12</sup>Transcript Volume 1, pp. 9-10.

<sup>13</sup>Transcript Volume 1, p. 10.

data that may be held abroad, (ii) consequences and remedies if a breach occurs, and (iii) the benefits to ratepayers. CEC believes that an IR process should be established if the FEU file evidence.<sup>14</sup>

BCSEA submits that it expects FEU to provide “evidence on the feasibility of having data storage regimes or requirements, or methods for personal information, so-called, and other company information.”<sup>15</sup> It expects an opportunity to ask IRs on the newly filed evidence from FEU, and then possibly submit intervenor evidence on encryption and tokenization and the protection of personal information and data security.

BCOAPO submits that de-identification and encryption of personal information and non-personal information would be subjects that FEU evidence should address. BCOAPO prefers a written IR process. With respect to the SRP, BCOAPO is concerned that it would have to make an oral submission right after hearing the information and prefers written submissions or oral submissions at later date.

### **2.3 Submissions challenged by interveners**

With respect to the treatment of the submissions that have been challenged by interveners on the basis that they inappropriately contain new evidence, FEU reiterate their submissions filed subsequent to their Reply Submission in response to interveners. If further process is established, then the FEU consider that the submissions challenged by interveners are non-issues as the record will be re-opened.

CEC has no comment on the submissions challenged by interveners on the basis that they inappropriately contain new evidence. BCSEA and BCOAPO take no position if the Commission decides to re-open the evidentiary record as long as those submissions form part of the record.

## **3.0 COMMISSION DETERMINATION**

The Panel has considered the submissions received. The follow sections explain the Panel’s decision on any further process.

### **3.1 Re-open evidentiary record**

The Panel finds that further information on the proposed alternative relief is necessary due to the technical nature of subject matters discussed in the proceeding. The Panel acknowledges that FEU are agreeable to providing additional evidence in support of the alternative relief. The Panel also shares the view of interveners that the onus falls on FEU to make their case. The Panel is not in a position, and it would be premature, to make a preliminary ruling on any approvals requested by FEU at this time when the evidentiary record is still open.

**The Panel determines that the evidentiary record is re-opened for evidence related to the proposed alternative relief. FEU are directed to file evidence on the alternative relief sought.**

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<sup>14</sup>Transcript Volume 1, p. 19.

<sup>15</sup>Transcript Volume 1, p. 30.

### **3.2 Evidence and process**

As determined above, the Panel considers that further evidence is warranted to consider the alternative relief proposed by FEU. The Panel views that having one round of written information requests focusing on the alternative relief would add value to the proceeding because of the complexity and technical nature of the subject matter and the technical jargon used, including encryption, decryption, tokenization, and de-identification.

**A further hearing process will include one round of written information requests on the alternative relief evidence.**

The Panel finds that there are merits to holding an SRP because the SRP facilitates a dialogue among participants, including subject matter experts, Commission staff, and the Panel. The Panel further refers to the SRP Policy, Guidelines, and Procedures to remind parties that an SRP may be used in combination with an oral or written hearing process.<sup>16</sup> Accordingly, the Panel wishes to retain flexibility at the end of the SRP day to determine what additional steps may be required to conclude the review.

Regarding the scope of the SRP, while the re-opening of the record is limited to the filing of evidence with respect to the proposed alternative relief, the Panel agrees with FEU that it is appropriate that the SRP would deal with the entirety of the evidentiary record. The Panel in the SRP, or shortly after SRP, will determine whether the final argument phase will be at the SRP, or afterwards, as oral or written submissions.

**A SRP is established with the scope covering the entire proceeding. The SRP will be held on Friday, June 12, 2015, commencing at 9:00 a.m., in the Commission's Hearing Room on the 12th Floor, 1125 Howe Street, Vancouver, BC V6Z 2K8.**

The Panel notes that interveners may wish file evidence. The Panel is establishing a process that is consistent with the determination on having one round of IRs on the proposed alternative relief evidence. Any intervenor evidence is limited to the issues surrounding the alternative relief proposed by FEU. The Regulatory Timetable accommodates that possibility.

**The regulatory timetable is attached as Appendix B to this order.**

### **3.3 Other matters**

The Panel considers that the third item in the January 20, 2014 letter is moot. The evidentiary record is re-opened to include all submissions, which participants can further examine at the appropriate forum: (i) written IRs on alternative relief evidence and/or (ii) SRP on the entire proceeding.

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<sup>16</sup> Commission Order G-37-12, Appendix A, p. 5.

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**REGULATORY TIMETABLE**

ACTION	DATE (2015)
FEU Evidence on Alternative Relief	Tuesday, March 17
Commission and Intervener Information Request No. 1 to FEU on FEU's Alternative Relief Evidence	Tuesday, April 7
FEU IR No. 1 Responses	Thursday, April 23
Notice of Intervener Evidence on Alternative Relief	Monday, April 27
Intervener Evidence on Alternative Relief (if any)	Monday, May 4
IRs on Intervener Evidence (if any)	Thursday, May 14
Intervener IR Responses on Intervener Evidence (if any)	Wednesday, May 27
FEU Rebuttal Evidence (if any)	Wednesday, June 3
Streamlined Review Process*	Friday, June 12 commencing at 9 a.m.
Final Arguments	To be determined

\* Location: Commission Hearing Room  
12<sup>th</sup> Floor, 1125 Howe Street  
Vancouver, BC V6Z 2K8