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May 30, 2013

**Via Email**  
**Original via mail**

Commission Secretary  
BC Utilities Commission  
Sixth Floor, 900 Howe Street, Box 250  
Vancouver, BC V6Z 2N3

Attention: Ms. Erica M. Hamilton, Commission Secretary

Dear Ms. Hamilton:

**Re: Project No. 3698595 / R-72-12**

**British Columbia Utilities Commission – An Inquiry into Potential Adjustments  
for the British Columbia Mandatory Reliability Standards (BC MRS) Program  
(the Inquiry)**

**FortisBC Inc. (FBC) Final Written Submissions**

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Pursuant to British Columbia Utilities Commission (BCUC or the Commission) Order R-10-13, which amended the Regulatory Timetable with respect to the above noted Inquiry, please find enclosed FBC's Final Written Submissions.

Sincerely,

**FORTISBC INC.**

***Original signed:***

Dennis Swanson  
Director, Regulatory Affairs

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

**And**

**British Columbia Utilities Commission  
Inquiry into potential adjustments for the British Columbia  
Mandatory Standards Program**

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**Final Written Submissions of FortisBC Inc.**

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***Introduction - The MRS Inquiry***

1. By Order No. R-72-12 (“the Order”), the British Columbia Utilities Commission (“the Commission”), advised that Policy Action No. 14 of the Government of British Columbia’s 2007 “BC Energy Plan: A Vision for Clean Energy Leadership” was for the purpose of ensuring “that the Province remains consistent with the North American transmission reliability standards”.
2. The recitals to the Order also made reference to section 125.2(2) of the *Utilities Commission Act* (“the Act”) wherein the Commission is provided with exclusive jurisdiction to determine whether a reliability standard established by a standard-making body for the purpose of being a mandatory reliability standard for planning and operating a North American power system is in the public interest and should be adopted in British Columbia.
3. In the Order, the Commission also referred to the Mandatory Reliability Standards Regulation, BC Reg. 32/2009, Ministerial Order M039, (“the MRS Regulation”) and the Rules of Procedure for reliability standards in British Columbia (“the BC Rules of Procedure”) which includes a registrations manual and a compliance monitoring program for the BC MRS Program.

4. In the Order, the Commission refers to the North American Electric Reliability Corporation (“NERC”) having recommended significant changes to the definition of the Bulk Electric System (“BES”) and revisions to the NERC Rules of Procedure to provide an exception process to be used in conjunction with the proposed new NERC BES definition. The Order advises that the US Federal Energy Regulatory Commission (“FERC”) has indicated in a Notice of Proposed Rule Making issued June 22, 2012 that FERC proposes to approve NERC’s recommendation for a new BES definition and the new exception process.
5. Neither the Act nor the MRS Regulation provides for an exception process in British Columbia. Accordingly, the Order advises that if NERC’s recommended new BES definition is adopted for use in the United States, the Commission may recommend to the Government of the Province of British Columbia (“Government”) changes to the MRS Regulation to provide for the adoption of NERC’s BES definition and exception process for BC.
6. The Commission advises in the Order that if NERC’s recommended new BES definition is not adopted in a reasonably timely matter, the Commission may nonetheless recommend changes to the MRS Regulation to provide for Commission authority to grant exceptions in the BC MRS Program.
7. The recitals to the Order make reference to the Commission monitoring compliance of reliability standards and the imposition of administrative penalties for violations of the BC MRS Program requirements. The Commission advised that the assessment of severity and risk levels for violations under the BC MRS Program has been identified as an area where specific input from the BC MRS Program participants and stakeholders may be helpful to the Commission.
8. In the result, in the Order, the Commission established this MRS Inquiry into potential adjustments to the BC MRS Program to consider:
  - (a) Changes to the BC Rules of Procedure to provide for a possible exception process; and
  - (b) A process for assessing severity and risk for violations.

***Procedural History***

9. The Inquiry commenced with an Information Workshop convened by the Commission on Wednesday, November 21, 2012. The Information Workshop was very well attended by registered parties. During the Information Workshop, a number of specific issues and concerns were raised by the representatives of registered parties and, as well, the process and regulatory timetable for the MRS Inquiry were discussed.
10. By way of letter dated November 15, 2012 (Exhibit C18-2) FortisBC had requested an amendment to the Information Workshop Agenda. Specifically, FortisBC suggested that certain issues and concerns that had been raised in a March workshop convened by the Commission on March 27, 2012 be included within the MRS Inquiry. In particular, the issues of concern related to the costs and benefits of reliability standards, as well as an examination of the BC system configuration toward a better understanding of the technical characteristics of the system configuration in BC that might protect against reliability risk and, potentially, render some mandatory reliability standards redundant.
11. By letter dated November 19, 2012 (Exhibit A-4) the Commission responded to FortisBC's November 15, 2012 letter advising that the MRS Inquiry was not focused on a program cost issue but rather was focused on ensuring bulk power system reliability, minimizing risk and ensuring compliance with the legislation and regulatory provisions.
12. Following the Information Workshop, by way of letter dated November 28, 2012 (Exhibit C14-2), the Association of Major Power Customers of BC ("AMPC") wrote a letter to the Commission requesting the Commission take immediate steps to forebear from enforcing existing BC MRS reporting and audit functions and directing BC Hydro and FortisBC to negotiate assignment agreements, with further steps if those referenced negotiations were not "successful". The AMPC letter also proposed that the Commission consider the effectiveness of procedures assigning MRS compliance responsibility.
13. The Commission responded to Exhibit C14-2 by way of letter dated December 11, 2012 (Exhibit A-6) advising that the Commission had considered the letter of the AMPC and as well a related letter of comment submitted by BC Hydro on December 7, 2012 (Exhibit C17-2). The Commission went on to advise that it would not respond

substantively to the AMPC letter as the relative merits of those positions were outside the scope of the MRS inquiry.

14. Nonetheless, in Exhibit A-6, the Commission noted that the assignments referred to in the AMPC letter (Exhibit C14-2) are not mandated in the MRS Program's legislative and regulatory framework. The Commission advised that assignments of responsibility for MRS compliance would be considered as voluntary matters between entities, which do not proceed at the Commission's direction.

### *The Straw Dogs*

15. On Friday, December 21, 2012, by way of letters dated December 20, 2012, (Exhibits A-7, A-8 and A-9) the Commission delivered Straw Dogs No. 1, 2 and 3.
16. The purpose of the three Straw Dogs was for Commission staff to put forward drafts of proposed legislative and regulatory changes to the BC MRS Program. The subject matter of the three Straw Dogs was divided as follows:
  - (a) Straw Dog No. 1 (Exhibit A-7) provided, in Part A, a draft proposed transition process for the current bulk power system definition to the new BES definition in BC. Part B of Straw Dog No. 1 provided a draft proposed BC-specific exception process for review and comment by registered parties.
  - (b) Straw Dog No. 2 (Exhibit A-8), provided a draft process for assessing severity and risk for possible violations of MRS and a penalty process, again, for consideration and comment by registered parties;
  - (c) Straw Dog No. 3 (Exhibit A-9) was a draft provided for comment by registered parties on the mission and purpose of a non-binding Technical Advisory Committee ("TAC"). Straw Dog No. 3 proposed a constitution for TAC in regard to mission, purpose, membership and rights. Straw Dog No. 3 also outlined the proposed obligations of members of TAC and a process for the conduct of meeting and the operations of TAC.
17. By way of letter dated January 31, 2013, FortisBC provided the Commission with its comments on the draft Straw Dogs (Exhibit C18-3). Similarly, on January 31, 2013, a

number of other registered parties submitted to the Commission their respective comments on the Commission Staff's Straw Dogs No. 1, 2 and 3.

18. On January 31, 2013, AMPC, in its letter providing comments on the Straw Dogs, recommended a bifurcation of the inquiry process. In a responding letter of February 20, 2013 (Exhibit C17-3), BC Hydro advised that it was opposed to the AMPC's proposed changes to the Inquiry's regulatory process. BC Hydro suggested it was not clear that a bifurcated inquiry process, as proposed by AMPC, would result in a more efficient and straight forward process.
19. Subsequently, BC Hydro, with the support of other registered parties, advised the Commission that it would be helpful to have an opportunity for further discussion with Commission Staff in regard to the draft Straw Dogs. It was suggested this discussion could provide clarification of certain issues and allow the parties to freely exchange their concerns and issues with Commission Staff in regard to the draft Straw Dogs.
20. Subsequently, a conference call with Commission Staff was held on March 20, 2013. It was agreed by Commission Staff and all parties attending on the conference call that the discussion on the conference call did not form part of the evidentiary record of the MRS Inquiry. There was a helpful discussion and exchange with Commission Staff and the parties attending on the telephone call. FortisBC appreciated the opportunity to discuss the issues in the MRS Inquiry informally with Commission Staff.
21. On March 28, 2013, the Commission and a number of registered parties, including FortisBC, in accordance with the Regulatory Schedule, forwarded Information Requests No. 1 to registered parties.
22. On April 26, 2013, parties who had received Information Requests from the Commission and other registered parties responded to the Information Requests.
23. During the course of the Inquiry, the regulatory timetable was amended by the Commission to provide that final written submissions from registered parties required to be delivered by May 30, 2013.

***FortisBC Submissions***

24. In this Inquiry and, in particular, the comments provided in response to the Straw Dogs and the Information Response process, a number of key issues and concerns arose. From FortisBC's perspective those key issues include:
- (a) The need for certainty and clarity in any legislative and regulatory amendments of the BC MRS Program. There must be clarity in the definition prescribing the systems and entities that are the subject of the MRS Program;
  - (b) A clear, rational and strong foundation for any BC-specific variances from NERC to be included in an amended BC MRS Program;
  - (c) An efficient and workable exception process;
  - (d) A fair transition process for the implementation of any amended BC MRS Program;
  - (e) A practical process for the creation and operation of the Technical Advisory Committee ("TAC"), giving it the best chance to succeed with its important mandate; and
  - (f) A fair and just process for findings of contravention and non-compliance with MRS, including administrative transparency in the imposition of penalties.
25. FortisBC will provide below its submission on these issues by reference to the order in which they arise in the Straw Dogs.

***Straw Dog No. 1***

26. There are a substantial number of challenges and complications facing the Commission and the participants in looking toward amendments to the MRS Program in BC where the objective is to ensure the Province remains consistent with North American transmission reliability standards, while also considering the introduction into the MRS Program of provisions where justified for BC-specific characteristics.

27. While it is in the public's interest to have the best MRS Program possible for British Columbia, any variance from the standards, rules or codes established by a standard-making body such as NERC or the Western Electricity Coordinating Council ("WECC") gives rise to a risk of inconsistency in the program, posing challenges for administration, compliance and enforcement.
28. FortisBC is generally supportive of the adoption of the new BES definition as proposed by the NERC amendments, as well as the legislative and administrative amendments that will be required in order to implement the change. FortisBC also understands that there may be multiple phases to the definition over time.
29. FortisBC is also supportive, subject to the submissions below in regard to the proposed partial exclusion process, of the proposal for the adoption of the exception process as described in draft Straw Dog No.1.
30. The evidence on the record in this Inquiry well establishes that great care must be taken towards any legislative or administrative changes in regard to MRS. In particular, FortisBC suggests that in regard to the definition of the "bulk electric system" and the "bulk power system", using those terms interchangeably raises a risk of uncertainty.
31. FortisBC is opposed to the partial exclusion exception process. There is a risk that the partial exclusion exception will weaken the program. The purpose of the BES definition is a good and sound purpose to provide certainty to parties as to where, when and by whom compliance with mandatory reliability standards is required. There is also a risk, however, that the partial exclusion exception will introduce confusion, in particular, in regard to the allocation (or mis-allocation) of responsibility for compliance with mandatory reliability standards. The partial exclusion exception would pose risk of additional burdens on major utilities and the Commission in the implementation and administration of the BC MRS Program.
32. As noted from the evidentiary record above on this Inquiry, an early step in the process for some participants was a proposal to inject into this Inquiry a requirement that the Commission impose directions to utilities as to assignments of responsibility for compliance with the MRS Program. FortisBC respectfully submits that the importance of

reliability for the public interest may be prejudiced where a primary objective of certain parties will be directed toward exclusion from the process rather than compliance. A primary objective of some entities may be to “offload” responsibility rather than securing the public interest of compliance with the legislative and administrative requirements of the MRS Program. FortisBC agrees with the position of BC Hydro in BC Hydro’s comments on the Straw Dogs and BC Hydro IR responses in regard to the opposition to the partial exclusion exception.

33. There is no support on the evidence of the Inquiry for a partial exclusion exception as a matter of experience from other jurisdictions. FortisBC is not aware of any other jurisdiction where a partial exclusion exception process has been introduced.
34. Nonetheless, there will, of course, be occasions for contractual agreements between parties, including voluntary bi-lateral agreements that include assignments and acceptance of responsibility for compliance with the MRS Program. These will be private and contractual arrangements between parties, without Commission involvement. FortisBC is opposed to any amendment to the MRS Program whereby the Commission would compel a utility, or any party, to accept an assignment of responsibility for the MRS Program from another party.

***Straw Dog No. 2***

35. FortisBC is supportive of the Find Fix Track process. The Find Fix Track process allows a responsible entity to comply with the BC MRS Program in a reasonable fashion and to respond and mitigate events which are appropriately resolved without any necessity for further MRS process involving a finding of contravention or penalty.
36. On the evidentiary record, a number of concerns were raised as to the draft penalty matrix included in Straw Dog No. 2. This matrix provides for monetary penalties different from – and indeed higher than – the comparable NERC matrix. FortisBC understands that the difference is intended to be BC specific; however, there is no evidence on the record establishing any characteristic of the BC system which would suggest that the monetary penalty matrix for violations in British Columbia should be different from NERC’s.

37. FortisBC wishes to emphasize the importance of legal and administrative fairness in the determination of contravention and the imposition of penalties for violations of the BC MRS Program. Fairness can only be achieved where there is certainty as to the process for, not only the finding of a violation, but the imposition of a monetary penalty. It is essential that there be full disclosure by the Commission to the subject person and an opportunity of that person to make a full and fair argument prior to the Commission finding a contravention and fixing a penalty amount.
38. While the Act at section 109.1(1) expressly provides that the Commission will not find a contravention of a reliability standard without first giving a person an opportunity to be heard, neither the Act nor Straw Dog No. 2 expressly provide a process whereby a person will have a full right to be heard prior to the Commission determining, by order, the amount of any penalty to be imposed. There should be a process provided whereby a person, after disclosure by the Commission of the applicable penalty matrix factors and levels under consideration by the Commission, has an opportunity to contest the suggested applicable matrix factors and range of penalty under consideration.
39. FortisBC wishes to confirm its understanding that the TAC will not have any involvement in specific events, including alleged violations and the assessment of a penalty against a person.
40. Straw Dog No. 2 provides a process whereby the Commission would have information provided by the TAC and possibly other third parties. Full disclosure, with appropriate protection of confidential information, of this information to the person involved is in the interest of a fair and open process.
41. It is also essential that any amendments to the relevant legislation, regulations and Commission orders provide for a clear transition process and expressly state that the amendments shall have no retroactive or retrospective aspects.
42. FortisBC supports the intended transition period of 24 months with respect to elements that are newly included. However, care must be taken to ensure, moving forward with an amended MRS Program, that there is no retroactive nor retrospective aspect to enforcement or compliance.

***Straw Dog No. 3***

43. FortisBC is supportive of the proposal in Straw Dog No. 3 for the creation of a Technical Advisory Committee for the purpose of the MRS Program. FortisBC understands that the TAC is formed at the discretion of the Commission, however, it must be emphasized that the success of such an advisory non-binding committee is achieved through the dedication of the members of committee and the Commission to achieve the objectives. This will likely be an evolving process.
44. In regard to the number of members on the committee, it is FortisBC's submission that 10 members is an unworkably high number of members to have on any committee. FortisBC suggests that TAC initially have 5 members (each to have an alternate) and that the membership be formed as provided in Straw Dog No. 3.
45. Straw Dog No. 3 proposes a very substantial and important mandate to TAC. It will be important that TAC has the support of the Commission, including with regard to resources and funding. It may be necessary for the TAC to obtain the assistance of the Commission in the striking of sub-committees and retention of consultants.
46. Additionally, FortisBC anticipates that there will be confidential information considered in the deliberation in the TAC and there must be certainty as to the protection of this confidential information.

***Conclusion***

47. FortisBC wishes to express its appreciation for the participation of the Commission, Commission staff and registered parties in this Inquiry. FortisBC looks forward to the report of the Commission after its deliberations.

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ALL OF WHICH IS RESPECTFULLY  
SUBMITTED

May 30, 2013