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Our File: 30960/0015

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VIA ELECTRONIC MAIL

British Columbia Utilities Commission  
6<sup>th</sup> Floor, 900 Howe Street  
Vancouver, B.C. V6Z 2N3

**Attention: Patrick Wruck, Commission Secretary  
and Manager, Regulatory Support**

Dear Sirs/Mesdames:

**Re: FortisBC Energy Inc. and FortisBC Inc. ~ Application for Approval of a Multi-Year  
Rate Plan 2020 through 2024 – Project No. 1598996**

On behalf of our client the British Columbia Municipal Electrical Utilities (the “BCMEU”), a registered intervener in this proceeding, attached is their Final Submissions with respect to the above-noted matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/js  
cc: client  
cc: FortisBC Energy Inc.  
cc: FortisBC Inc.  
cc: Registered Interveners

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## **INTRODUCTION**

The British Columbia Municipal Electrical Utilities (the “**BCMEU**”) represents the municipal electrical utilities operated by the cities of Penticton, Nelson, Summerland, and Grand Forks in this proceeding. Each of the BCMEU members are wholesale customers of FortisBC Inc. (“**FBC**”) pursuant to FBC tariffs. The BCMEU members serve a variety of customers within their subject municipalities, including a range from residential, commercial, and critical infrastructure such as hospitals, care homes, clinics, and other like facilities. The aim of providing consistent high-quality, low cost, and reliable service to the BCMEU’s customers informs the BCMEU submissions and position in this proceeding and in all proceedings before the British Columbia Utilities Commission (the “**BCUC**” or the “**Commission**”).

The BCMEU has participated in this BCUC proceeding regarding the approval of a multi-year ratemaking plan (the “**Proposed MRP**”) for the FortisBC Energy Inc. (“**FEI**”) and FBC utilities (FEI and FBC together, “**FortisBC**”, the “**Companies**” or the “**Utilities**”), and provides the following submissions as its final argument. As customers primarily of FBC, the BCMEU’s submissions are focused on the electric utility.

In summary, the BCMEU does not take a firm position with respect to whether cost of service regulation or performance-based regulation (“**PBR**”), such as contained in the Utilities’ Proposed MRP, is more appropriate at this time. The BCMEU is primarily concerned with the delivery of fair, just, and reasonable rates maintained at the lowest possible costs while maintaining or improving quality of service and reliability. With a unique perspective stemming from its hybrid identity as both utilities and ratepayers, the BCMEU encourages and appreciates

regulatory efficiency, and recognizes that certain benefits in that regard may be realized through PBR.

The Utilities have operated under PBR longer than any utility in Canada,<sup>1</sup> and as a resulting consequence have been – and currently remain – benchmarked as relatively efficient among their peers.<sup>2</sup> The BCMEU praises the Utilities for achieving these efficiency results under PBR regulation and hopes similar results will continue through the next term under the ratemaking design scheme deemed appropriate by the BCUC in this proceeding.

The BCMEU has reviewed and is generally supportive of the evidence of Mr. Russ Bell filed by the British Columbia Old Age Pensioners' Organization in this proceeding. Mr. Bell highlights certain changes to the Proposed MRP from the just expired MRP that have the effect of reducing risk for each of FEI and FBC.<sup>3</sup> The BCMEU agrees with Mr. Bell that certain changes in the Proposed MRP are unnecessary as both FEI and FBC were able to earn an adequate rate of return under the previous MRP.<sup>4</sup> There is insufficient reason to change the Proposed MRP in the fashion suggested by the Utilities,<sup>5</sup> and the BCMEU submits the totality of changes in the Proposed MRP are weighted excessively in favour of the Utilities.

The BCMEU has some further concerns regarding the Proposed MRP. The Utilities and ratepayers alike have benefitted over previous PBR terms due in part to the attributes of the ratemaking formulas and designs in those plans that have promoted and

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<sup>1</sup> FortisBC Final Argument page 50.

<sup>2</sup> FortisBC Final Argument page 49.

<sup>3</sup> Exhibit C7-5 page 11.

<sup>4</sup> Exhibit C7-5 page 12.

<sup>5</sup> Exhibit C7-5 page 13.

incentivized efficiency. FortisBC notes that the just expired MRP has been successful,<sup>6</sup> but that the Proposed MRP is designed to respond “to challenges experienced with the 2014-2019 PBR Plans, changes in operating environment, and stakeholder feedback”.<sup>7</sup> While certain responses to stakeholder feedback are appreciated, as will be discussed later in these submissions regarding the creation of a new SQI, the BCMEU is concerned about the lack of a productivity factor in the Proposed MRP.

FortisBC describes certain changes contained in the Proposed MRP as reflecting stakeholder feedback gained through consultation and outreach. With respect to the elimination of a positive productivity factor, the BCMEU inquired whether any ratepayer stakeholder had indicated to the Companies that a productivity factor was not a desirable part of a PBR plan.<sup>8</sup> The Companies responded that MoveUP had raised concerns with respect to the availability of realizable efficiencies.<sup>9</sup> When responding to a further question regarding whether MoveUP could be considered a ratepayer stakeholder, the Companies responded that MoveUP represents employees, many of whom are also ratepayers.<sup>10</sup> The BCMEU cautions the Commission from considering MoveUP’s position as reflecting a ratepayer perspective rather than its primary identity as a representative of FortisBC employees who may have concerns about the impact of cost reductions.<sup>11</sup> From BCMEU’s assessment of the evidentiary record in this proceeding, no ratepayer intervenor group has advocated for the removal of a productivity factor.

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<sup>6</sup> FortisBC Final Argument page 1.

<sup>7</sup> FortisBC Final Argument page 6.

<sup>8</sup> Exhibit B-4 BCMEU IR 1.3.1.2.

<sup>9</sup> Exhibit B-4 BCMEU 1.3.1.2.

<sup>10</sup> Exhibit B-13 BCMEU IR 2.19.1.

<sup>11</sup> Exhibit B-13 BCMEU IR 2.19.2.

The productivity factor is one way in which customers receive a benefit in exchange for the Companies receiving the opportunity to earn a rate of return above its present approved return on equity under a Cost of Service regime. The Commission in its decision on the just expired MRP noted that if an inappropriate X- Factor is set that favours either party, it can result in additional gains for that party.<sup>12</sup> The BCMEU cautions against approving an inappropriate productivity factor that skews gains in favour of one party and urges the Commission to consider the Utility's history in achieving gains in each of the five years in the just expired MRP, as noted by Mr. Bell.<sup>13</sup> The BCMEU agrees that achieved return on equity is the only metric in determining if the Utilities had a reasonable opportunity to recover prudently incurred costs.<sup>14</sup>

#### **A 0% PRODUCTIVITY FACTOR**

For the first time since being regulated under PBR, the Utility's Proposed MRP includes a 0% productivity factor. The BCMEU submits that a 0% productivity factor reduces the ratepayer's expected benefits under the Proposed MRP and, accordingly, ratepayer support for the Proposed MRP. While the regulatory compact ensures that a public utility has a reasonable opportunity to recover its prudently incurred costs and earn a fair rate of return, the BCMEU submits that broader context dictates that a positive productivity factor still gives the Utilities a reasonable opportunity to recover its costs and earn a fair return. The BCMEU questions the Utilities' position that the structure needs changing in this respect – as posited by

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<sup>12</sup> Exhibit C7-5 page 6.

<sup>13</sup> Exhibit C7-5 page 6.

<sup>14</sup> Exhibit C7-5 page 7.

Mr. Bell, conceptually the structure of the Proposed MRP does not need to change from the success of the just expired MRP.<sup>15</sup>

While the Utilities' Proposed MRP contains a zero percent productivity factor, the Commission has wide jurisdiction in determining and setting formulas for ratemaking. Pursuant to section 60 of the *Utilities Commission Act*, RSBC 1996, c 473:

**SETTING OF RATES**

**60** (1) In setting a rate under this Act

- (a) the commission must consider all matters that it considers proper and relevant affecting the rate,
- (b) the commission must have due regard to the setting of a rate that
  - (i) is not unjust or unreasonable within the meaning of section 59,
  - (ii) provides to the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands, and
  - (iii) encourages public utilities to increase efficiency, reduce costs and enhance performance,
- (b.1) the commission may use any mechanism, formula or other method of setting the rate that it considers advisable, and may order that the rate derived from such a mechanism, formula or other method is to remain in effect for a specified period.

Accordingly, the Commission is not bound to approving or denying the Proposed MRP in its current form, and can use its jurisdiction to modify the Proposed MRP as the Commission deems necessary.

In support of its Proposed MRP, FortisBC notes that the change to the 0% productivity factor is to align with productivity growth trends in the industry,<sup>16</sup> and they have based their Proposed MRP productivity factor on determinations by regulators in other

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<sup>15</sup> Exhibit C7-5 page 7.

<sup>16</sup> FortisBC Final Argument page 42.

jurisdictions. Further, productivity growth studies submitted and used in other jurisdictions have been referenced as the basis for using a 0% productivity factor in the Proposed MRP.<sup>17</sup> FortisBC also notes that their reliance on extra-jurisdictional reports is reasonable in that their potential report would likely show similar results. Productivity growth has been declining industry-wide for the last 10-15 years – this is not a new trend with increased relative relevance specific to this MRP.<sup>18</sup>

However, FortisBC also recognizes that productivity growth studies are now of reduced importance in determining an appropriate productivity factor.<sup>19</sup> FortisBC has not prepared a productivity growth study specifically for this proceeding, due in part to the complexity, regulatory burden, and cost of preparing such a report.<sup>20</sup> While the importance of such a report has been reduced, there has been a corresponding increase in the importance of regulatory judgment in determining the appropriate productivity factor.<sup>21</sup>

The BCMEU cautions the Commission against relying too heavily on generalized data not specifically relating to FortisBC and their operational history of success in finding efficiencies while pursuing and achieving a higher than allowed rate of return. In each year of the just expired MRP, the Utilities have been successful in finding efficiencies sufficient to realize savings and profits above the positive productivity factor and the allowed rate of return. As indicated in Mr. Bell's evidence:

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<sup>17</sup> FortisBC Final Argument page 52.

<sup>18</sup> Exhibit B-7 CEC IR 1.38.2

<sup>19</sup> FortisBC Final Argument page 53.

<sup>20</sup> FortisBC Final Argument page 53.

<sup>21</sup> FortisBC Final Argument page 53.

		2014	2015	2016	2017	2018	Average
FEI ROE	Actual	9.20%	9.19%	9.28%	9.04%	8.93%	9.13%
	Formula	8.75%	8.75%	8.75%	8.75%	8.75%	8.75%
	Higher (Lower) than formula	0.45%	0.44%	0.53%	0.29%	0.18%	0.38%

		2014	2015	2016	2017	2018	Average
FBC ROE	Actual	9.22%	9.26%	9.38%	9.31%	9.29%	9.29%
	Formula	9.15%	9.15%	9.15%	9.15%	9.15%	9.15%
	Higher (Lower) than formula	0.07%	0.11%	0.23%	0.16%	0.14%	0.14%

The data clearly demonstrates that for both FEI and FBC, the utility achieved a return that exceeded the allowed rate of return, and on average, FEI exceeded that return by 38 Bp and FBC by 14 Bps.

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The Utilities have been able to achieve these profits, savings, and efficiencies even in a broader context of declining industry productivity growth as a whole over the last 10-15 years.<sup>23</sup>

The Utilities themselves recognize the importance of assessing performance and setting standards based on the subject utility’s actual performance rather than potentially-applicable industrywide benchmarks. In reviewing their SQI benchmarks for the Proposed MRP, the Utilities note they have focused on reviewing performance during the prior MRP to determine if modifications were required:

This approach reflects FortisBC’s view that recent performance is a better measure of an acceptable level and cost of service for its customers. By basing the proposed benchmarks on performance in recent years, rather than general industry standards, the

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<sup>22</sup> Exhibit C7-5 page 7.

<sup>23</sup> Exhibit B-7 CEC IR 1.38.2.

benchmarks are also reflective of the costs required to provide the service. [emphasis added]<sup>24</sup>

The BCMEU submits that a similar logic applies when assessing efficiency trends of the Utilities and their ability to consistently achieve higher than allowed return on equity. This application of specific utility knowledge and experience is one of the intended design improvements of MRP over Cost of Service regulation – the use of specific knowledge and characteristics of a utility is engrained in the design of MRP.<sup>25</sup>

While realizing efficiencies and excess return on equity in each year of the prior MRP, the Utilities have consistently highlighted in Annual Reviews that finding new productivity opportunities is increasingly difficult.<sup>26</sup> In assessing motivations to find these new efficiencies, FortisBC submits that the incentive for utilities to pursue efficiency gains declines over the term of a multi-year MRP because the reward for a utility is greatest when efficiency savings are made in the first year of a plan.<sup>27</sup> Despite this alleged declining incentive in the later years of an MRP, each year has still led to rates of return for the Utility in excess of the allowed rate. While the BCMEU appreciates that finding new efficiencies may be a challenge, it is a challenge that the Utilities have been able to consistently overcome throughout recent history. Productivity growth can be difficult to accurately forecast, as the Utilities recognize growth can come from sources not yet known, including technological improvements and economies of scale.<sup>28</sup>

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<sup>24</sup> FortisBC Final Argument page 205.

<sup>25</sup> Exhibit B-7 CEC IR 1.3.2.

<sup>26</sup> FortisBC Final Argument page 107.

<sup>27</sup> FortisBC Final Argument page 85.

<sup>28</sup> FortisBC Final Argument page 80.

In the previous MRP decision the Commission included a stretch factor as there was no evidence of FortisBC's relative efficiency.<sup>29</sup> As part of that decision, the Commission recommended that the Utilities pursue a benchmarking study to assess the Utilities' relative efficiency. The study showed that the Utilities were relatively efficient among their peers and have been so for some time.<sup>30</sup> The BCMEU submits that the Utilities - at the outset of the prior MRP - were relatively efficient compared to their peers. During the term of the prior MRP, the Utilities and their competitors were in an era of declining industry productivity growth and yet the Utilities were still able to find efficiencies and achieve a higher than allowed rate of return. The BCMEU submits the circumstances are not sufficiently different today – a comparatively efficient utility, in the same era of declining productivity growth, still able to find efficiencies and potentially earn a higher than allowed rate of return.

#### **SERVICE QUALITY INDICATORS**

The Utilities have described certain changes in the Proposed PBR as stemming from a need to be responsible to changing expectations regarding customer interactions while continuing to meet strong demand for its services.<sup>31</sup> BCMEU is uniquely able to relate to this development, as it similarly is faced with rising expectations of its customers – the ultimate users of electricity provided by FBC to the BCMEU members. While BCMEU's customers and ratepayers are not directly customers of the Utilities, the BCMEU faces like challenges with respect to these rising expectations, and those flow through to the BCMEU reiterating certain concerns.

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<sup>29</sup> FortisBC Final Argument page 68.

<sup>30</sup> FortisBC Final Argument page 68.

<sup>31</sup> FortisBC Final Argument page 20.

The BCMEU has participated in the annual review proceedings through the previous MRP and has provided feedback to FBC in those proceedings. Through the annual reviews, FBC has indicated a willingness to work and consult with BCMEU's members in order to maintain a positive working relationship. Among the BCMEU's members there have been mixed experiences in that regard. Regardless of the Commission's decision in this proceeding, the BCMEU will continue to participate in review proceedings in order to bring member concerns to the Commission's attention.

The BCMEU recognizes that the Utility has been responsive to certain stakeholder feedback and is appreciative of FortisBC's efforts in this regard, including the establishing of the new Interconnection Utilization Service Quality Indicator ("SQI"). However, the BCMEU has some concerns with the Interconnection Utilization SQI. There is some concern that the new SQI is only an informational indicator, with limited consequence if there is degradation. Perhaps more importantly, the BCMEU has had experiences that cause concern regarding the accuracy of the information underlying the new SQI.

As outlined in BCMEU IR 1.5.1, on the day of a June meeting between BCMEU members and FortisBC representatives there was an outage impacting Penticton that did not show up on the Utilities' online outage detection tool<sup>32</sup>. The undetected outage caused concern for BCMEU members that the information underlying the Interconnection Utilization SQI may not be as accurately tracked as possible. If the Interconnection Utilization SQI is not accurately tracked then it can be of limited utility to the BCMEU, even as an informational indicator with no degradation consequences flowing to the Utilities.

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<sup>32</sup> Exhibit B-4 BCMEU IR 3.1.2.

Given the nature of BCMEU's customers and the critical infrastructure served by the municipal utilities, the BCMEU is supportive of initiatives that recognize the unique nature of such customers. While the BCMEU recognizes that the nature of the interconnection utilization informational SQI reflects certain scenarios outside of FBC's control,<sup>33</sup> the BCMEU reiterates its position that degradation of service to its members is an appropriate ground for consequences through the earnings sharing mechanism. The BCMEU will monitor the informational SQI, and the quality and reliability of the service it receives, and will provide further feedback to FBC and the Commission as the need arises.

Support for all of the BCMEU's customers remains a focus of the BCMEU, particular for those customers providing critical infrastructure services. While FBC has largely provided reliable service to most of the BCMEU members, the BCMEU recognizes that its concerns in this regard are largely event-driven. The BCMEU will continue to advocate in Commission proceedings for initiatives that improve or maintain high quality reliable service regardless of the ratemaking methodology applied by the Commission.

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<sup>33</sup> Exhibit B-13 BCMEU IR 2.22.1.