ALANNA GILLIS
ACTING COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: http://www.bcuc.com

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 36730

VIA EMAIL
gas.regulatory.affairs@fortisbc.com

May 11, 2012

Ms. Diane Roy
Director, Regulatory Affairs
FortisBC Energy Inc.
16705 Fraser Highway
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: FortisBC Energy Utilities
[comprising FortisBC Energy Inc., FortisBC Energy Inc. Fort Nelson Service Area,
FortisBC Energy (Whistler) Inc., and FortisBC Energy (Vancouver Island) Inc.]
Project No. 3698628/Order G-81-11

Request for Clarification of Order G-44-12 and Decision on the
2012 - 2013 Revenue Requirements Application
and Natural Gas Rates Application

On April 12, 2012, the British Columbia Utilities Commission (Commission) issued Order G-44-12 and the related Decision on the FortisBC Energy Utilities' (FEU) 2012 and 2013 Revenue Requirements and Natural Gas Rates Application (the Decision). On May 4, 2012, the FEU wrote to the Commission requesting clarification on four points related to this Decision.

In particular, the FEU requested clarification as follows:

1) Clarification that the request to expand EEC program eligibility to interruptible industrial customers of FEVI is approved.

Response: This point of clarification is confirmed. Although not specifically noted on page 170 of the Decision, the Commission Panel found that these programs are reasonable and warrant their expansion and intended to approve expanding EEC program eligibility to interruptible industrial customers of FEVI.

2) Clarification that the FEU will manage its innovative technologies programs as being exempt from the 33% cap set out in subsection 4(1.5) of the DSM Regulation.

Response: The Demand-Side Measure Regulation (DSM Regulation) provides definitions of a number of terms. The term *technology innovation program* is defined in the DSM Regulation. Also defined is *specified demand-side measure,* which, among other things, is noted to specifically include a *technology innovation program*. Based on these definitions, the Commission clarifies that a program which meets the DSM Regulation definition of a *technology innovation program* is also, by definition, a *specified demand-side measure*.

.../2

Subsection 4(4) of the DSM Regulation indicates that the cost effectiveness of a *specified demand-side measure* proposed in a plan portfolio (which is the class of demand-side measures composed of all demand-side measures proposed under the *Utilities Commission Act* section 44.1) or an expenditure portfolio (which is composed of all demand-side measures proposed under the *Utilities Commission Act* section 44.2) is determined by evaluating the portfolio cost-effectiveness as a whole.

Therefore, as noted on page 175 of the Decision, the Commission confirms that the cost-effectiveness of programs which meet the definition of a *technology innovation program* as defined by the DSM Regulation is to be determined on the basis of the DSM portfolio as a whole and not individually.

3) Clarification that the proposal outlined below to implement the Commission's direction regarding the holding of EEC funds for projects in which the FEU are participants is satisfactory.

For funds issued in the 2012-2013 test period, the FEU propose to hold in a separate EEC deferral account any EEC funds issued in the test period for an EEC measure that is or becomes part of a TES or AES project, if the FEU have signed a contract making any of them a participant in the TES or AES project at the time the EEC funds are issued or sign such a contract within a year of the EEC funds being issued.

Response: There are two parts to this point of clarification.

The first point of clarification relates to the starting point for applying the direction on page 183 of the Decision. This item directs the FEU to hold EEC distributions related to projects in which an FEU company is a participant separately. The FEU propose to commence this treatment in the 2012-2013 test period. The Commission confirms this treatment.

In the second point of clarification, the FEU note that not all EEC distributions can be immediately associated with projects in which an FEU company is a participant. As such, the FEU propose that funds should be held in accordance with the Decision for up to one year from the point EEC funds are issued for projects that are or become part of a TES or AES project. On this point of clarification, the Commission acknowledges that these projects are not always clearly identifiable at the time of issuing EEC Funds. Given this uncertainty, the Commission finds that a holding period of a minimum of two years is reasonable. Therefore, the Commission clarifies that the FEU should hold funds in the manner specified by the Decision for a period of at least two years, not the one year suggested within the Letter.

4) Clarification that item 17 of Order G-44-12 should have specified that if the interim rates were lower than the final approved rates, then the FEU could have collected the difference from customers.

Response: The Commission notes this request for clarification and given that this matter has no impact in this instance, will not consider the issue at this time.

Yours truly,

Alanna Gillis

KB/cms
cc: Registered Interveners
(F2012-F2013 RRA)

Diane Roy
Director, Regulatory Affairs - Gas
FortisBC Energy Inc.

16705 Fraser Highway
Surrey, B.C. V4N 0E8
Tel: (604) 576-7349
Cell: (604) 908-2790
Fax: (604) 576-7074
Email: diane.roy@fortisbc.com
www.fortisbc.com

Regulatory Affairs Correspondence
Email: gas.regulatory.affairs@fortisbc.com

May 4, 2012

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Alanna Gillis, Acting Commission Secretary

Dear Ms. Gillis:

Re: FortisBC Energy Utilities[1] ("FEU")

Request for Clarification on 2012 and 2013 Revenue Requirements and Natural Gas Rates Application (the "Application")

British Columbia Utilities Commission ("Commission") Order No. G-44-12

The FEU have received Commission Order No. G-44-12 and the accompanying decision (the "Decision") with respect to the Application. The FEU are seeking clarification of four aspects of Order No. G-44-12 and the Decision as set out below.

1. Page 170 of the Decision and item 14 b. of the Order indicate that the Commission approves the expansion of energy efficiency and conservation ("EEC") program eligibility to "interruptible industrial" customers. The FEU are seeking clarification that this approves the FEU's request to expand EEC program eligibility to interruptible industrial customers of FEVI.

2. Page 175 of the Decision states that the expenditures in the Innovative Technologies Program Area "are subject to the 33 percent cap for expenditures that do not pass the MTRC test as written in the DSM *Regulation* as discussed in section 8.2." The FEU respectfully submit that the expenditures in the Innovative Technologies Program Area are not subject to the 33 percent cap. While this does not impact the approved rates, the FEU wish to clarify now (to avoid any confusion in the future) that it will manage its innovative technologies expenditures as not being subject to the 33 percent cap.

3. On page 183 of the Decision, the Commission directs the FEU "to hold all EEC incentives that are provided for AES or TES technologies for projects in which the Companies are a participant in a separate deferral account." The FEU propose to

[1] FortisBC Energy Inc. ("FEI"), FortisBC Energy (Vancouver Island) Inc. ("FEVI"), FortisBC Energy (Whistler) Inc. ("FEW"), and FortisBC Energy Inc. Fort Nelson Service Area ("Fort Nelson")

implement this direction by holding in a separate deferral account any EEC funds which are provided in connection with a Thermal Energy Services ("TES") or Alternative Energy Services ("AES") project for which FEU has a signed contract making it a participant. The FEU are seeking clarification that this proposal will implement the direction in a manner satisfactory to the Commission.

4. Item 17 of Order No. G-44-12 indicates that if the interim rates are lower than the final approved rates, then the interim rates are to be made permanent. While the interim rates are in fact higher than the final rates, the FEU are seeking clarification that if the interim rates were lower than the final rates, then the FEU should be able collect the difference from customers.

The FEU discuss each of these matters below.

Expansion of EEC Program Eligibility to Interruptible Industrial Customers of FEVI

Page 170 of the Decision and item 14 b. of the Order approve the expansion of EEC program eligibility to "interruptible industrial" customers. The FEU are seeking clarification that this approves the FEU's request to expand EEC program eligibility to interruptible industrial customers of FEVI.

As noted on page 170 of the Decision, the FEU's request is found in Exhibit B-1, Appendix K-1, p. 17, which describes the FEU's proposal "to expand eligibility for participation in programs to **Interruptible Industrial customers of FEVI**". [Emphasis added.] Approval of funding for interruptible industrial customers of FEI was granted in Order G-141-09.

The Decision at p. 170 states

> *"The Commission Panel believes the requests of the FEU are reasonable and approves the request to expand EEC program eligibility to interruptible industrial, FortisBC Energy (Whistler) Inc. and FortisBC Energy Inc. Fort Nelson Service Area customers."*

Item 14 b. of the Order is worded similarly. The approval does not indicate that the interruptible industrial customers in question are the "customers of FEVI".

The FEU are therefore seeking clarification that the request to expand EEC program eligibility to interruptible industrial customers of FEVI is approved.

Innovative Technologies and the 33% Cap in the DSM Regulation

The second matter relates to the statement at page 175 of the Decision that the expenditures in the Innovative Technologies Program Area "are subject to the 33 percent cap for expenditures that do not pass the MTRC test as written in the DSM *Regulation* as discussed in section 8.2." As explained below, the FEU submit that the Innovative Technologies Program Area is not subject to the 33% cap in the Demand-Side Measures Regulation (the "DSM Regulation"). The FEU are therefore seeking clarification that it can manage its innovative technologies program as being exempt from the 33% cap.

The DSM Regulation came into force during the proceeding and the FEU made submissions on its impact in Exhibit B-92. The FEU addressed the application of the 33% cap on page 4, paragraph (b). As explained there, under section 4(1.5) of the DSM Regulation there is a 33% cap on program expenditures within a portfolio that pass the modified total resource cost test set out in section 4(1.1) of the DSM Regulation (known as the "MTRC"), but otherwise are not cost-effective. The FEU also explained that specified demand-side measures (including innovative technology programs) are not subject to the cap. The FEU expand on these submissions below.

The 33% cap is set out in subsection 4(1.5) of the DSM Regulation which states:

> *Despite subsection (1.1) and* ***subject to subsections (4)*** *and (5), the commission must determine that a demand-side measure that is part of an expenditure portfolio and* ***that is cost effective when applying subsection (1.1)*** *is not cost effective if*
>
> *(a) The demand-side measure* ***is not cost-effective without applying subsection (1.1),*** *and*
>
> *(b) the total expenditures respecting*
>
> *(i) the demand-side measure, and*
>
> *(ii) all other demand-side measures that are part of the expenditure portfolio,* ***that are not cost effective without applying subsection (1.) and that are cost effective when applying subsection (1.1)****,*
>
> *are more than*
>
> *(iii) 33% of the total expenditures for the expenditure portfolio, in the case of a utility that recovers the expenditures in gas rates, or*
>
> (iv) *10% of the total expenditures for the expenditure portfolio, in the case of a utility that recovers the expenditures in electricity rates.* [Emphasis added.]

As emphasized in the quote above, the 33% percent cap is applicable to expenditures that pass the MTRC (i.e. "when applying subsection (1.1)"), but are not otherwise cost-effective (i.e. "not cost effective without applying subsection (1.1)"). In effect, this means that programs that pass the total resource cost test are not subject to the 33% cap.[2]

As also emphasized in the quote above, section 4(1.5) is subject to subsection 4(4) of the DSM Regulation. Subsection 4(4) states:

> *(4) The commission must determine the cost-effectiveness of a specified demand-side measure proposed in a plan portfolio or an expenditure portfolio by determining whether the portfolio is cost effective as a whole.*

As defined in section 1 of the DSM Regulation:

[2] All but one of the innovative technology programs passes the total resource cost test. See the final page of Exhibit B-92.

> *"specified demand-side measure" means …(d) a technology innovation program…*

Thus, the 33% cap is subject to the assessment of cost effectiveness of innovative technologies programs on a portfolio basis. In effect, this means that innovative technology programs are not subject to the 33% cap.

This issue does not impact the approved rates. However, given that the DSM Regulation is new, the FEU are raising this issue now to avoid future confusion when it comes to reporting actual cost-effectiveness results on its EEC programs. Thus, the FEU are seeking clarification from the Commission that it can manage its innovative technologies program as being exempt from the 33% cap in subsection 4(1.5) of the DSM Regulation.

EEC Incentives for AES or TES Projects

On page 183 of the Decision, the Commission directs the FEU "to hold all EEC incentives that are provided for AES or TES technologies for projects in which the Companies are a participant in a separate deferral account." The FEU are seeking clarification regarding how to implement this direction with the intent of establishing a clear rule up front as to which EEC incentives will be charged to the separate deferral account.

For background, it is important to understand when the FEU become a participant in an AES or TES project. An FEU TES or AES project may come about in different ways as described in the FEU's evidence in the AES Inquiry (section 6.3.1). Typically, the FEU will first engage in informal discussions with the potential TES or AES customer regarding the opportunity to develop a project or a project already developed. If discussions continue, the FEU may define a scope of work for a potential project (if needed) for consideration by the potential customer. If discussions progress favourably, a memorandum of understanding may be signed, signaling the FEU and the entity's intent to enter into a commercial arrangement for a project. Again, if discussions progress favourably, the FEU will sign a contract for the FEU to construct and/or own and operate the project. As an alternative to the above, a potential customer may issue a request for proposals or information, which the FEU may respond to and which may ultimately lead to a signed contract for service. In either case, it is not until the contract is executed that FEU is actually a participant in the project. Before a contract is executed, the potential AES or TES customer may decide to proceed on its own or pursue a different model for the construction and operation of its facilities.

If the FEU have a contract in place for a AES or TES project and EEC funds are issued in connection with some component of the project in accordance with the terms and conditions of the EEC program, then according to the Commission's direction it is clear that the EEC funds should be held in a separate deferral account.

However, the FEU anticipate that in some cases it will sign a contract for an AES or TES project after EEC funds have been issued in connection with some component of the project prior to the signing of the contract. It is conceivable, for instance, that an AES or TES-type project for a school district could involve a commercial boiler used by the district that qualified for an EEC incentive in 2006. In this case, the FEU do not believe that it was the intent of the Commission that in this type of case the EEC funds would be moved to a separate

deferral account. Rather, the FEU believe that the direction applies to EEC funds issued in the 2012-2013 test period.

Furthermore, in order to facilitate the administration of EEC funds, there needs to be a limit in the time period between when EEC funds are issued and when a contract is signed for a AES or TES project. The FEU suggest that one year is a reasonable time period. In other words, if EEC funds are issued for a qualifying EEC measure and the FEU do not enter into any contract associated with a TES or AES project that involves that measure within the following year, then the EEC funds do not need to be held in a separate deferral account. The FEU submit that one year is a sufficient time between the incentive and the project to ensure there is no connection between the two. It also balances the need of the FEU to track and administer funds in an efficient manner, as shifting funds between one account and another becomes more complex over time.

Therefore, the FEU propose to implement the Commission direction as follows:

> The FEU will hold in a separate EEC deferral account any EEC funds issued in the test period for an EEC measure that is or becomes part of a TES or AES project, if the FEU have signed a contract making it a participant in the TES or AES project at the time the EEC funds are issued or sign such a contract within a year of the EEC funds being issued.

When the FEU file the next revenue requirement application, the FEU will forecast the balance of the deferral account based on a forecast of the EEC funds to be issued in the test period and AES or TES project contracts to be signed.

The FEU are seeking clarification that this proposal will implement the direction in a manner satisfactory to the Commission.

Refund/Recovery of Difference between Interim and Permanent Rates

The final matter relates to the treatment of the difference between interim and permanent rates. Item 17 of Order No. G-44-12 indicates that if the interim rates are lower than the final approved rates, then the interim rates are to be made permanent. While the interim rates are in fact higher than the final rates, the FEU submit that if the interim rates were lower than the permanent rates the difference should be collected from customers. The FEU are seeking clarification that this is what the intention of the Commission was in item 17 of the Order.

Item 17 states in full:

> *"If the 2012 permanent rates are less than the interim rates, the FEU are to refund to customers the difference in revenue with interest at the average prime rate of the principal bank with which the FEU conduct their business**. If the 2012 permanent rates exceed the interim rates, the interim rates from January 1, 2012 to the date of this order are confirmed as permanent.**"*
> [Emphasis added.]

The FEU respectfully submit that the second half of item 17 of Order No. G-44-12 (the bolded portion) should instead state that if the 2012 permanent rates exceed the interim rates, the FEU are to collect the difference from customers. This would reflect the Commission Order approving the interim rates and the just and reasonable rates approved by the Commission in Order No. G-44-12. The FEU expand on this below.

The FEU may only charge just and reasonable rates as approved by the Commission. Section 59(1) of the *Utilities Commission Act* (the "UCA") states:

> *"A public utility must not make, demand or receive (a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia…"*

The final rates approved by Order No. G-44-12 have been determined to be just and reasonable by the Commission for the test period pursuant to sections 59 to 61 of the UCA. It follows that the interim rates, if lower or higher than the final rates, are unjust and unreasonable for the test period and any difference between the two should be refunded or collected from customers.

Item 17 of Order No. G-44-12 therefore appropriately orders the FEU to refund to customers any over-collection due to interim rates that are higher than the final rates. For the same reason, however, it would be appropriate for the FEU to collect from customers any under-collection due to interim rates that are *lower* than the final rates.

The applicable legal principle is the same as that pronounced by the B.C. Court of Appeal in *Hemlock Valley Electrical Services Ltd. v. B.C. Utilities Commission and AGBC*, 1992 66 B.C.L.R. (2d) 1. Paragraph 64 of the case states:

> *"The Utilities Commission Act empowers the commission to determine what is a fair and reasonable rate of return upon the appraised value of the property of regulated utilities, but, having done so, requires the commission to set rates so as to allow recovery of a rate which permits an opportunity to earn that return. In this case, the commission correctly exercised its discretion to determine what a just and reasonable return was, but wrongly failed to permit HVES to charge a rate which gave it an opportunity to earn that return."*

In the present case, the FEU submits that the Commission has determined what a just and reasonable rate is and must permit the FEU to charge that rate over the test period so that the FEU have an opportunity to recover their costs and earn a fair return.

The proper treatment of variances between interim rates and permanent rates approved by the Commission is set out in Order G-177-11, which granted the interim rates. Order No. G-177-11 states:

> *"Any refund or under-collection following the granting of permanent rates will be addressed by way of a rate rider to refund or collect from customers the variance in interim rates versus permanent delivery rates approved."*

This reflects how the Commission has treated variances between permanent and interim rates in the past. Two examples from past revenue requirement decisions for the FEU where rates were finalized after the test year had begun are provided below.

Order No. G-35-09 dated April 7, 2009, on an Application by Terasen Gas (Whistler) Inc. for Approval to Amend its Schedule of Rates Effective January 1, 2009 and for a Return on Equity and Capital Structure, states:

> *"15. The Commission Panel approves TGW's request to recover any potential difference between interim rates and permanent rates by way of a rate rider."*

Order No. G-7-02 dated February 4, 2003, on an Application by BC Gas Utility Ltd. for Approval of 2003 Revenue Requirements, states:

> *"3. BC Gas is also directed to amend its permanent rates effective March 1, 2003 to reflect the annual revenue requirement approved by this Decision and is further directed to add a ten-month rider to its 2003 billings* ***to recover the difference*** *between its interim rates and permanent rates for the months of January and February 2003." [Emphasis added.]*

In these cases a rate rider was the approved methodology for collecting the difference between interim and permanent rates.

The FEU submit that the UCA is clear that the FEU may only charge just and reasonable rates as approved by the Commission. As Order No. G-44-12 has approved the final rates for the test period as just and reasonable, it follows that any difference in the final rates and the interim rates must be refunded to or collected from customers.

The FEU have calculated the impact of the Decision on its proposed rates and have determined that the final rates of the FEU are lower than the interim rates. While there is no impact to the FEU in this case, the FEU request clarification that item 17 of Order No. G-44-12 should have indicated that the FEU should collect or refund the difference between interim and permanent rates, whether the final rates were lower or higher than the interim rates.

Given that there is no impact in this case, if the Commission does not wish to consider this issue at this time, the FEU will raise the issue in the next proceeding in which it seeks interim rates.

Conclusion and Process

In summary, the FEU are seeking the following:

1) Clarification that the request to expand EEC program eligibility to interruptible industrial customers of FEVI is approved.

2) Clarification that the FEU will manage its innovative technologies programs as being exempt from the 33% cap set out in subsection 4(1.5) of the DSM Regulation.

3) Clarification that the proposal outlined above to implement the Commission's direction regarding the holding of EEC funds in which the FEU are a participant is satisfactory.

4) Clarification that item 17 of Order G-44-12 should have specified that if the interim rates were lower than the final approved rates, then the FEU could have collected the difference from customers.

The FEU seek these clarifications pursuant to section 99 of the UCA. Given the nature of these matters, the FEU respectfully submit that these issues can be resolved with minimal process. In particular, the FEU submit that the two-phase process outlined on pages 36 to 37 of the BCUC's "A Participants' Guide to the B.C. Utilities Commission" can be truncated in this instance to a one stage process.

If you require further information or have any questions regarding this submission, please contact the undersigned.

Yours very truly,

on behalf of the FORTISBC ENERGY UTILITIES

Original signed:

Diane Roy

cc: Registered Parties