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May 13, 2020

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI or the Company)

Application for Approval of a Tax Sharing Arrangement between FEI and Fortis Inc. (FTS)

FEI hereby applies to the British Columbia Utilities Commission (BCUC) for an Order, pursuant to section 23(1) and 54(9) of the *Utilities Commission Act* (UCA), approving a tax sharing arrangement between FEI and its parent company, Fortis Inc., on the condition that the tax sharing arrangement and all related transactions are non-utility and will have no adverse impact on FEI or its customers. Consistent with past BCUC direction when approving tax sharing arrangements, FEI will report to the BCUC within 45 days of any adverse impact to FEI or its customers resulting from the tax sharing arrangement. A draft order is attached as Appendix B.

1. BCUC Approval Required by Ring-Fencing Condition

FEI is subject to ring-fencing conditions established by the BCUC in its Decision and Order G-116-05¹ approving an application by Kinder Morgan, Inc. to acquire the common shares of Terasen Inc. (now FortisBC Holdings Inc.). The ring-fencing conditions were affirmed by the BCUC in its Decision and Order G-49-07, approving the application by Fortis Inc. to acquire the issued and outstanding shares of Terasen Inc. (now FortisBC Holdings Inc.). Effective December 31, 2014, the separate FortisBC Energy utility entities² were amalgamated as one company under the name of FEI. As a result, the ring-fencing conditions remain applicable to the amalgamated FEI utility.

¹ Section 7.2.1, pp. 49-50.

² FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. were amalgamated as one company under the name of FortisBC Energy Inc.

The specific ring-fencing condition relevant to this Application is 3(c), which reads:

(3)(c) No Terasen [now FortisBC Energy] Utility will enter into a tax sharing agreement with any affiliate of the Terasen Utility, unless the agreement has been approved by the Commission.

2. History of Tax Sharing Arrangements at FEI

FEI and its predecessors have previously entered into tax sharing arrangements called Tax Loss Utilization Plans (TLUPs) within its group of companies and affiliates. The use of TLUPs originated in the late 1990s when Terasen Gas Inc. (TGI) informed the BCUC of the intention of the company to implement a TLUP in late 1998 or early 1999.

At that time, TGI had annual taxable income and several non-regulated businesses (NRBs) had tax losses. The purpose of the TLUP was to create deductible interest expense in TGI and taxation interest income in the NRBs. This involved inter-company loans from the NRBs to the legal entity of TGI to create deductible interest expense in the legal entity of TGI and taxable interest income in the NRBs. The proposed TLUP was acknowledged by the BCUC in a letter dated December 10, 1998 confirming that the TLUP had been reviewed and that no concern had been raised.

On March 13, 2006, both TGI and Terasen Gas (Vancouver Island) Inc. (TGVI) submitted a filing to the BCUC explaining that TGI intended to continue to utilize the TLUP structures and that TGVI anticipated that it would enter into similar arrangements commencing in 2006.

In Order G-90-06 dated July 27, 2006, the BCUC decided that the TLUP transactions were tax sharing agreements, and that TGI and TGVI required approval of the TLUP transactions to satisfy Conditions 3 (c) and 5 of the ring-fencing conditions originally established by the BCUC in its Decision and Order G-116-05. In the Order G-90-06, the BCUC approved the TLUP transactions subject to the conditions that all transactions in the TLUP are to be non-utility and will have no adverse impact on TGI/TGVI or their customers.

The proposed tax sharing arrangement is discussed further below. While the proposed tax sharing arrangement is structurally different than the TLUPs previously reviewed and approved by the BCUC, the proposed tax sharing arrangement meets the conditions set by the BCUC in Order G-90-06 approving the TLUP structures of TGI and TGVI. Namely, all of the transactions in the proposed tax sharing arrangement are non-utility and have no adverse impact on FEI or its customers.

3. Proposed Part VI.1 Tax Sharing Arrangement

FTS is subject to Part VI.1 tax on certain preference share dividends it pays. This tax is calculated as 40 percent of the amount of dividends paid and is payable whether or not FTS has taxable income. The Income Tax Act (ITA) also provides a deduction under Part I (Deduction), which when applied to reduce taxable income, is intended to offset the Part VI.1 tax liability.

The ITA, pursuant to subsection 191.3(1), explicitly permits FTS to transfer or allocate its Part VI.1 tax liability, along with the Deduction, to one or more of its 100 percent owned Canadian subsidiaries. To authorize the proposed tax sharing arrangement, FTS will have to file the allocation in prescribed form along with a certified copy of a resolution of its Board of Directors authorizing the agreement to be made. As party to the transfer, FEI will also be required to file with the Canada Revenue Agency (CRA) a certified resolution from its Board of Directors authorizing the acceptance of the transfer.

Under the proposed tax sharing arrangement with FEI, FTS allocates Part VI.1 tax payable to FEI. FEI then is required to remit the Part VI.1 tax to the CRA. FEI will claim the Deduction when it files its current year *T2 Corporation Income Tax return*. FEI will realize a refund or reduction of its Part I Corporate Income tax that will offset most, but not all, of the Part VI.1 tax payable. For any remaining tax liability balance that is not recoverable from the Deduction as a result of the transfer of Part VI.1 tax, FTS will provide an indemnity to FEI and reimburse FEI for any unrecoverable tax. FEI will be “kept whole” from its participation in the tax sharing arrangement. In other words, there will be no adverse impact to FEI or its customers.

Please refer to Appendix A for an illustrative example of a Part VI.1 tax arrangement and the accounting entries, demonstrating the arrangement is non-utility will have no adverse impact on FEI or its customers.

4. Proposed Review Process

Given that FEI is seeking approval of the tax sharing arrangement on the condition that the transactions are non-utility and there is no adverse impact to FEI or its customers, FEI believes that the review of this Application should be limited to the BCUC. This would be consistent with the BCUC’s past review of tax sharing arrangements. Given the technical nature of these transactions, FEI believes that a written process is most appropriate and proposes that a single round of information requests would be sufficient.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Doug Slater

Attachments

Appendix A

**ILLUSTRATIVE EXAMPLE
FI PART VI.1 TAX TRANSFER TO FEI**

Appendix A

FortisBC Energy Inc.

Illustrative Example – Fortis Inc. Part VI.1 Tax Transfer to FortisBC Energy Inc.

Part VI.1 Tax - 2020				
Part VI.1 tax liability (per Fortis Inc.)		\$	10,000,000	
Part I Tax - 2020				
Part VI.1 tax multiple for deduction			3.5	
Part I tax deduction		\$	(35,000,000)	
Part I tax rate			27.0%	
Part I tax refund		\$	(9,450,000)	
Net tax (refund) payable		\$	550,000	
FEI Journal Entries:				
1. Record Part VI.1 tax payable				
Dr. Retained earnings			10,000,000	
Cr. Income tax payable			(10,000,000)	
2. Record Part VI.1 deduction and loss carryback to reduce Part I taxable to nil				
Dr. Income tax payable			9,450,000	
Cr. Retained earnings			(9,450,000)	
3. Record intercompany receivable due from Fortis Inc in accordance to the indemnification agreement				
Dr. Intercompany receivable			550,000	
Cr. Retained earnings			(550,000)	
4. Record receipt of cash from Fortis Inc. due to the indemnification agreement				
Dr. Cash			550,000	
Cr. Intercompany receivable			(550,000)	
5. Record payment of tax payable				
Dr. Income tax payable			550,000	
Cr. Cash			(550,000)	
Net impact of the Journal Entries in FEI's Books				
Entry #	Cash	Intercompany Receivable	Income Tax Payable	Retained Earnings
1			(10,000,000)	10,000,000
2			9,450,000	(9,450,000)
3	-	550,000		(550,000)
4	550,000	(550,000)		
5	(550,000)		550,000	
Total	-	-	-	-

Appendix B
DRAFT ORDER



ORDER NUMBER

G-xx-xx

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Application for Approval of a Non-Utility Tax Sharing Arrangement between FortisBC Energy Inc. and Fortis Inc.

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on **Date**

ORDER

WHEREAS:

- A. On May 13, 2020, FortisBC Energy Inc. (FEI) applied, pursuant to sections 23(1) and 54(9) of the *Utilities Commission Act* (UCA) for approval of a tax sharing arrangement between FEI and its parent company, Fortis Inc.(FTS) (Application);
- B. Pursuant to BCUC Order G-116-05, section 7.2.1, the BCUC set out ring-fencing conditions for FEI (then Terasen) and reaffirmed them in Order G-49-07. The ring-fencing conditions are applicable only to FEI because of the amalgamation of the separate FortisBC Energy utilities as one company under FEI, effective December 31, 2014. The relevant ring-fencing conditions to the tax sharing arrangement in this Application is Condition 3(c) requires that “No Terasen Utility [FEI] will enter into a tax sharing agreement with any affiliate of the Terasen Utility [FEI], unless the agreement has been approved by the Commission”;
- C. The proposed tax sharing arrangement between FEI and FTS will result in non-utility transactions for which FTS will reimburse or make whole FEI for, if any, non-recoverable tax liability balance. FEI will be “kept whole” from its participation in the tax sharing arrangement with no adverse impact to FEI or its customers.
- D. The BCUC has reviewed the Application and considers that approval is warranted.

NOW THEREFORE pursuant to sections 23(1) and 54(9) of the UCA, the BCUC orders as follows:

- 1. The tax sharing arrangement and all related transactions of this nature between FEI and its parent, Fortis Inc. are approved, subject to the condition that they are non-utility and there is no adverse impact on FEI or its customers.

2. FEI is required to report to the BCUC within 45 days of any adverse impact to FEI or its customers resulting from the tax sharing transactions.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner