



**Roger Dall'Antonia**  
Vice President, Strategic Planning,  
Corporate Development and  
Regulatory Affairs

**FortisBC**  
10<sup>th</sup> Floor, 1111 West Georgia Street  
Vancouver, BC V6E 4M3  
Tel: (604) 443-6570  
Cell: (604) 312-5996  
Fax: (604) 443-6534  
Email: [roger.dall'antonia@fortisbc.com](mailto:roger.dall'antonia@fortisbc.com)

Regulatory Affairs Correspondence  
Gas: [gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)  
Electric: [electricity.regulatory.affairs@fortisbc.com](mailto:electricity.regulatory.affairs@fortisbc.com)

July 14, 2014

**Via Email**

BCUC Review Independent Task Force  
[bcucreview@gov.bc.ca](mailto:bcucreview@gov.bc.ca)

Attention: Messrs. Peter Ostergaard, Michael Costello, and R. Brian Wallace

Dear Sirs:

**Re: FortisBC Utilities (FortisBC or the Companies) Second Round Submissions on Terms of Reference of the Independent Review of the British Columbia Utilities Commission (BCUC Review)**

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On April 28, 2014, the Ministry of Energy and Mines (MEM) and Minister Responsible for Core Review announced an independent review of the British Columbia Utilities Commission (BCUC or the Commission). MEM appointed a Task Force to implement the independent review of the BCUC (BCUC Review). FortisBC provided its first round written submissions to the Task Force on June 13, 2014. A second round of submissions from stakeholders is due July 14, 2014.

FortisBC has reviewed the submissions on the BCUC Review from stakeholders that are posted on the Ministry of Energy and Mines website. The goal of the BCUC Review is clearly stated in the BCUC Review Terms of Reference. The BC government "initiat[ed] a review of the BCUC, through the Core Review process, with the goal of increasing the BCUC's effectiveness and efficiency". FortisBC has prepared its submissions with this scope in mind and respectfully submits that the Task Force give primary consideration to this stated goal when reviewing submissions.

FortisBC has organized its second round submissions on the BCUC Review into three parts. First, FortisBC provides its summary position on the Task Force's summary of its in-person consultations with stakeholders (Consultation Summary). Second, FortisBC provides comments on certain items that have been raised by many stakeholder submissions. Finally, FortisBC provides specific comments to certain of the stakeholder submissions.

## 1. Task Force Consultation Summary

The Task Force's Consultation Summary compiles the main points and themes of the in-person meetings and conference calls conducted with stakeholders prior to the first round of submissions. FortisBC agrees with the Task Force's summary comment that the BCUC performs a service that is essential for British Columbians. As regulated utilities, the Companies understand the value of regulation and support the BCUC Review mandate to improve the efficiency and effectiveness of the existing regulatory framework in BC.

The Consultation Summary identified four themes that appeared throughout its consultations with stakeholders. FortisBC provides the following summary of its position on certain items identified within three of the four themes set out in the Consultation Summary.

### 1. Governance

- *Independence of the BCUC* – FortisBC agrees with the summary provided by the Task Force on this point. The effectiveness of the BCUC requires it to have credibility and independence from the government while working within the government's policy parameters;
- *Clarity of roles and mandate* – FortisBC agrees the roles and mandates of the government and the BCUC should be clarified. The reestablishment of an executive director should allow the BCUC Chair to better focus on the interpretation of policy direction as set by the government instead of having to focus on administration;
- *Clean Energy Act conflicting objectives* – The focus of the *Clean Energy Act* (CEA) is on the dominance of hydroelectric power, and therefore the direction to the BCUC to consider certain applications under the framework of the CEA can create policy interpretation issues. It is likely beyond the scope of the BCUC Review to consider changes to the CEA, however the Task Force should consider ways that the BCUC, through the Chair and executive director, can better liaise with government before the filing of applications to ensure more effective interpretation of policy;
- *Clearly articulated and pre-emptive policy directives* – FortisBC agrees that the BCUC may benefit from policy clarity from the government. However, FortisBC believes that through the BCUC Chair, and the reestablishment of the executive director position, there is an opportunity for the Chair and the executive director to liaise with the government to seek policy clarity and direction on a more frequent and timely basis;
- *Appointment of Commissioners* – Commissioners should be selected based on appropriate skill sets and knowledge, and the Commissioner pool as a whole should contain varied relevant skill sets and knowledge, which can be drawn on with respect to the nature of the applications being adjudicated. FortisBC believes the number of full-time Commissioners should be increased. There is value in the continuity provided by having certain full-time Commissioners able to sit on more panels and over time gaining greater knowledge and history of certain utility matters. However, the number of full-time Commissioners should be limited, likely to no more than two to four, as the workload may vary and not always support a large slate of full time Commissioners;
- *Compensation of Commissioners* - Commissioners should be compensated at market competitive levels to attract and retain qualified individuals;

- *Staff remuneration* – BCUC staff should be compensated at market competitive levels to attract and retain qualified individuals;
- *Legislative framework and mandate* – As stated previously, the mandate of the BCUC Review is to increase the efficiency and effectiveness of the BCUC. FortisBC believes that the focus of the BCUC Review should be on the improvement of regulatory processes and does not believe an overhaul of the *Utilities Commission Act (UCA)* is necessary or appropriate at this time. However, FortisBC suggests one legislative change, as set out in its round one submission, with respect to the Administrative Penalties Regulation. The Commission has adequate authority under the UCA to oversee utilities without the need for the Administrative Penalties Regulation.

## 2. BCUC Processes

- *Oral and written processes* – The Commission has been judicious in its use of oral hearings. In general written hearings provide an adequate review and evidentiary record for applications. Usually, where cross-examination is required in order to review certain issues for the evidentiary record, oral hearings are an appropriate format;
- *Streamlined review, negotiated settlement processes* – FortisBC is supportive of the Streamlined Review Process (SRP) and supports a broader use of this process. FortisBC is also supportive of the Negotiated Settlement Process (NSP) where appropriate;
- *Intervener funding and standing* – FortisBC believes that guidelines should be developed for determining standing of possible participants to an application review process to maximize the likelihood of targeted intervener participation benefitting ratepayers and assisting the Commission and regulatory process. FortisBC is not against the review of the PACA Guideline per diems, but does not support the guaranteeing of intervener funding at the outset of a proceeding before the value of the intervener's contribution is known;
- *Consumer advocate* – A consumer advocate model should not be adopted as it is not clear that such a model would actually achieve the stated goals of the BCUC Review related to effectiveness and efficiency;
- *Compliance and reporting* – The Commission has adequate authority under the UCA to oversee utilities without the need for the Administrative Penalties Regulation;
- *Timelines* – Guidelines may assist in determining appropriate time periods for the review of applications and rendering of decisions. Therefore, FortisBC would support and participate in the development of guidelines establishing general timeframes based on the type of application in which applications are to be reviewed and a decision rendered within a specified time from the filing date. Review timelines may be extended beyond the guidelines under appropriate circumstances;
- *Information requests (IRs)* – The amount of IRs has increased substantially over time, decreasing the efficiency of application reviews. The reestablishment of an executive director position to oversee BCUC staff and help focus IRs to the important issues in an application may be one way to decrease the overall amount of IRs in each process;

- *Use of guidelines* – FortisBC would support and participate in the development of guidelines for establishing intervener standing and review timelines, as discussed above.

### 3. BCUC Structure, Organization and Performance

- *Levy funding* – FortisBC believes the current levy funding continues to be the most appropriate method;
- *Executive Director* – The executive director role should be reestablished at the Commission. The executive director would be responsible for directing and supervising staff and coordinating the review of applications. Reestablishing the executive director role will also allow the BCUC Chair to deal with policy and direction matters, and sit on panels for the review of applications more frequently.

## 2. Common Items Identified in Various Stakeholder Submissions

### *Intervener Funding*

A number of stakeholders have suggested that the Commission's PACA Guideline per diems be reviewed and adjusted for inflation, or brought to market levels. As noted above, FortisBC does not necessarily oppose the review of the per diems, and agrees that they should be reviewed from time to time to ensure they are appropriate.

Some stakeholders also suggest that the PACA Guidelines should have provisions for guaranteeing funding before a regulatory proceeding has begun. FortisBC does not support guaranteeing intervener funding at the outset of a proceeding before the value of the intervener's contribution is known. The denial of intervener funding is not a common occurrence but the ability to deny funding is important to ensure that intervention is appropriate. In recent regulatory processes, such as the FortisBC Inc. (FBC) Application for a CPCN for the Advanced Metering Infrastructure Project and Stage 2 of the BCUC's Generic Cost of Capital process, the Panel awarded significantly reduced PACA funding in cases where the intervention was not additive to the process. Without this check, there would potentially be a much greater likelihood of ratepayers bearing the cost of interventions that are not beneficial to the process. FortisBC addresses this point again in response to specific stakeholder submissions below.

## 3. Specific Comments on Stakeholder Submissions

In addition to the points above, FortisBC provides specific comments on individual stakeholder submissions. FortisBC has limited its comments to those stakeholder submissions that are within the scope of the BCUC Review and to certain issues from each of those submissions. FortisBC's lack of comment on items within the submissions of other stakeholders should not be taken as FortisBC's support of their positions.

FortisBC is not addressing submissions from stakeholders whose comments are clearly outside the scope of the BCUC Review, including those submissions from Zellstoff Celgar Limited Partnership (Celgar)<sup>1</sup>, Gwen Johannson, and Port Alice Gas. FortisBC also requests

<sup>1</sup> Celgar's submission is entirely out of scope except for recommendations 5 through 7 on page 6. FortisBC has no comments on those in scope items in any event.

the opportunity to respond to those submissions from Canadian Association of Petroleum Producers (CAPP) and Treaty 8 Tribal Association (T8TA) that have not yet been submitted.

FortisBC understands that the Task Force has retained a consultant to undertake a review of comparable utility regulatory jurisdictions, and would appreciate an opportunity to review and comment (if necessary) on the consultant's report.

### Association of Major Power Customers of BC (AMPC)

#### *1. Review of comparable regulators in other jurisdictions with key benchmarks*

AMPC recommends the review of jurisdictions where the most significant utilities are investor owned, such as Alberta, California and Arizona. FortisBC does not believe those jurisdictions offer a better model for efficiency or effectiveness. Each jurisdiction will reflect the unique characteristics of that operating environment. FortisBC's understanding is that those jurisdictions are different (size and structure of utilities, nature of energy market) and there is no clear evidence to suggest those jurisdictions are more efficient.

#### *2d(i) Review Process including: Alternative review processes including expedited hearings and negotiated settlements*

AMPC does not see the necessity of expedited hearings and states that if a hearing process is effective and efficiently run a full hearing can be completed and a decision rendered as quickly as an expedited hearing. In FortisBC's experience, the SRP has very successfully allowed for the review and rendering of applications in a very short amount of time. Even the most efficiently run full oral hearing or written process would not likely result in a decision as quickly as the SRP format allows.

FortisBC is unsure what benefit is provided by separating a full hearing process into manageable "chunks" as suggested by AMPC as an alternative to an expedited process. Splitting the review process of an application into several separate hearings will increase the overall effort and process involved as each small hearing would require scheduling and resources.

With respect to AMPC's suggestion of incentive or "price-cap" regulation in the future, FortisBC notes that the objective of the BCUC Review is to increase the effectiveness and efficiency of the BCUC. Specific rate design or revenue requirement determinations are not relevant to this objective, and are therefore outside the scope of this review. Such issues, including price-cap, are appropriately raised in the context of a specific application for approval brought forward to the Commission for determination.

AMPC also suggests that there should be coordination of proceedings (for example, rate design applications should follow revenue requirement applications). The Companies submit that timing and coordination of applications is most appropriately left to the applicant's discretion. Predetermining the sequence and timing will take away the flexibility to file applications in response to the regulatory environment or specific utility circumstances at the time. As previously stated, the Commission has the ability to request that a utility pursue a specific type of application and the timing of such application, if it is deemed appropriate to do so.

*3c Organizational Structure of the BCUC including: Full-time and Part-time Commissioners:*

AMPC recommends increasing BCUC staff to at least 50 full time employees and including provision for temporary contract staff or consultants. As noted in FortisBC's first round submissions, total staff count has increased by approximately 43 percent since 2009. FortisBC does not believe that further increases in staff count are required for improved regulatory efficiency. In FortisBC's opinion, recruiting and retaining knowledgeable and competent BCUC staff is far more important for increased efficiency than just increasing overall staff count.

*3d Efficiency, effectiveness and performance measures including: identify performance metrics*

With respect to possible performance metrics for the BCUC, AMPC notes that the most valuable aspects of job performance are often the hardest to measure. While true, the Companies submit that the measurement of "easier" metrics (such as time to decision or number of IRs) still provides valuable information and a high level picture of the overall state of BC regulatory processes.

British Columbia Hydro and Power Authority (BC Hydro)

FortisBC provides no specific comments on the submissions of BC Hydro and is generally in agreement with its submission.

BC Public Interest Advocacy Centre (BCPIAC)

*2b BCUC Processes: Cost of Reviews*

BCPIAC suggests that the BCUC should develop detailed guidelines identifying the particular evidence required for a particular type of application. FortisBC does not believe such an approach will result in any increased efficiency or effectiveness and may actually have the opposite effect. In FortisBC's particular case, how the Companies manage the utilities dictates how costs are tracked and reported. This approach may vary across utilities in the province. Thus, defining the type of evidence that is required for a type of application could result in increased process for the utility internally with questionable benefit to the regulatory process.

BCPIAC also suggests restricting the amount of money a utility is able to spend on regulatory processes in order to level the playing field with interveners. Such a restriction is unreasonable and unfair. Firstly, utilities are regulated by the BCUC and required by legislation to seek approval of their activities. Utilities should not be limited in their ability to seek the approvals required by legislation to operate their business. Secondly, regulatory costs are not entirely within the control of utilities. The utility does not know how many interveners will participate in an application review process, or to what extent. It also does not know how many information requests it will respond to. While a utility can propose a type of review process it does not know by which process type an application will ultimately proceed. An arbitrary regulatory spending restriction would impact FortisBC's ability to fully participate in regulatory proceedings for applications it has filed and proceedings in which it



holds the evidentiary burden. Participants to a regulatory proceeding expect thorough responses to information requests and from applicant witnesses at oral hearings, all of which requires time and resources from the utility. Restricting an applicant's ability to participate in a regulatory proceeding by imposing an arbitrary restriction on the amount a utility can spend on an application is to the detriment of all parties to a regulatory process. Finally, FortisBC is sensitive to regulatory costs and works hard to ensure all regulatory costs are prudently incurred. Where the costs are prudently incurred, they should be – and, by law, are – recoverable in the ordinary course.

FortisBC believes that BCPIAC's comment regarding the amount of utility staff present at regulatory proceedings unfairly characterizes the situation and therefore feels compelled to respond. Regulatory proceedings provide training at little additional cost for FortisBC's employees to better understand regulation in practice. In FortisBC's case regulatory processes offer a very cost effective opportunity for employees to learn about how regulation works and what information is sought from utilities during regulatory proceedings, which in turn helps employees to understand how to more effectively write applications, and respond to information requests. Trained employees that understand how regulatory processes work and what information is sought are more efficient and effective. In addition, during oral hearings there are often undertakings or additional information requested of utility witnesses that often requires FortisBC employees to be available to produce the requested information within very short timelines.

### *2c Funding for Interveners*

In addition to FortisBC's earlier comments regarding increasing PACA Guideline per diems and the provision of advanced or interim funding awards, FortisBC provides the following comments in response to BCPIAC's suggestion to also increase preparation days and provide more opportunities for advance cost award approvals or interim funding. Increasing the PACA Guidelines allowance for preparation days is not necessary and will not increase efficiency or effectiveness of the regulatory process because the PACA Guidelines already provide some flexibility to vary the preparation days with adequate justification from the intervener.

### *2. Intervener Role*

FortisBC supports BCPIAC's position on the risks associated with adopting a dedicated consumer advocate model in BC.

### BC Sustainable Energy Association and the Sierra Club of BC (BCSEA)

#### *2b Timeliness, effectiveness, efficiency and cost of reviews*

BCSEA has suggested a Commission-led efficiency and effectiveness initiative that includes regulated utilities, interveners and other affected parties. FortisBC submits that the purpose of the current BCUC review likely already captures what BCSEA is suggesting. It is likely premature to contemplate a Commission-led initiative at this time.

### Canadian Direct Insurance (CDI)

FortisBC has generally no comments with respect to CDI's submissions except to say that FortisBC is not supportive of CDI's suggestion for a consumer advocate. As stated previously in its first round submissions, FortisBC disagrees that a dedicated consumer advocate will increase the efficiency of the BC regulatory environment and sees no need to depart from the current intervener model in use in BC today.

### Clean Energy BC (CEBC)

#### *General Concern #1: Ratepayers' vs. the Public's Interest & More Specific Areas of Concern: BCUC Objectives should be broadened*

CEBC suggests under its first general concern and again under the heading of more specific areas of concern that utility regulation can no longer focus exclusively on ratepayers, and should take environmental and First Nation issues into account as well. CEBC also suggests the legislation empowering the Commission should require the Commission to give equal stature to environmental and First Nations considerations to the considerations of ratepayer cost and economic value. It appears that CEBC seeks to shape the public interest test to favour its own interests.

With respect to First Nations, the Commission already has a duty to consider whether the Crown's duty of consultation with First Nations has been fulfilled where First Nations interests may be affected by the application<sup>2</sup>.

In 2010, the B.C. government introduced the CEA which set out British Columbia's energy objectives. The UCA also requires that the Commission consider the applicable energy objectives set out in the CEA when reviewing and approving applications under sections 44.1, 44.2, 46, and 71.

Thus, contrary to CEBC's assertion that the current BCUC regulatory model focusses exclusively on ratepayers, the BCUC already must take into account (and does) First Nations consultation and the clean energy objectives as applicable when reviewing applications. The BCUC currently has the discretion to apply those considerations to applications where applicable.

#### *General Concern # 2: Efficiency vs. Effectiveness*

CEBC sets out as its second concern the efficiency and effectiveness of the current regulatory environment in BC. Specifically, CEBC states:

*On a scale of effectiveness, the present system rates poorly. It offers none of the benefits that are supposed to come from an effective process. No social licence is earned and, therefore, there is no long term durability for the decisions.*

*Decisions stemming from such a process are not accepted as fair, objective or unbiased. They appear to give carte blanche to whatever point of view the utility*

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<sup>2</sup> As stated at paragraph 41 of BC Court of Appeal *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)* 2009 BCCA 67



*is able to persuade upon key officials. Without the benefit of any counter evidence or contrary points of view, these officials will generally have neither the expertise nor the resources to question the utility's view. In spite of the government's confidence in its own decisions, this process is no substitute for effective utility regulation.*

*Not surprisingly, these decisions will be subject to doubt, skepticism, and challenge by parties from one end of the societal spectrum to the other. If decisions are to be accepted and enduring, they must earn a social licence.*

FortisBC disagrees with CEBC's characterization of the regulatory framework in BC. The BC regulatory framework has been and can be efficient and effective.

#### *More Specific Areas of Concern: Oral vs. Written vs. Negotiated Settlement Processes*

CEBC states that it favours oral hearings as the most transparent process over written and NSPs. In FortisBC's experience, oral hearings take more time and cost more than other regulatory process formats. Oral hearings are most appropriately used in processes where cross-examination and oral testimony is necessary to aid and complete the written evidence already on the record. There is little value in having oral testimony for every type of application, and in most cases, the oral hearing format is much more inefficient than a standard written hearing format or NSP. FortisBC is therefore opposed to moving to an oral hearing format for all applications.

#### Commercial Energy Consumers Association of British Columbia (CEC)

CEC makes several statements throughout its submissions regarding the "frustration of utilities with respect to the existence of the regulatory process"<sup>3</sup>, implying that utilities are generally unfavourable towards regulation or "perceive regulation [as] a burden"<sup>4</sup>. FortisBC takes exception to this characterization of the attitude of utilities towards regulation in BC, and as stated in its first round submissions, FortisBC is supportive of the regulation of its operations in British Columbia. Furthermore, FortisBC is actively participating in the Review of the BCUC because it is supportive of effective and efficient regulation that provides benefit to all stakeholders.

#### *2b Timeliness, effectiveness, efficiency and cost of reviews*

CEC provides an analysis and table entitled, "Evaluation of the Cost-effectiveness of the BC Utility Commission" which appears to attempt to set out the value of regulation in BC. FortisBC provides no comments on the validity of the analysis and table as FortisBC is unsure of their point. The mandate of the BCUC Review and the submissions of stakeholders at no point question the value of regulation. As stated previously, FortisBC agrees that regulation adds value and is supportive of regulation.

<sup>3</sup> CEC June 13, 2014 Submissions, page 3

<sup>4</sup> CEC June 13, 2014 Submissions, page 8

### *2c Standing/funding for interveners*

CEC raises a concern with the appropriateness of interveners pursuing supplier and competitor interests on a customer funded basis. FortisBC agrees with CEC's position regarding competitors seeking funded interventions, and refers the Task Force to its first round submissions in this regard.

### *2d(viii) Coordinated regulatory processes*

FortisBC sees little value in CEC's suggestion that the Commission pursue coordinated processes that integrate different energy issues and regulatory management issues. Coordinated regulatory processes should be at the discretion of utilities to pursue if they so choose.

### Lawson Lundell

FortisBC provides no specific comments on the submissions of Lawson Lundell and is generally in agreement with its submission.

### Nelson Hydro

Nelson Hydro suggests that a regulatory advisor should be "appointed to represent and liaise with the smaller interveners who do not have the means to otherwise effectively participate". FortisBC submits that Nelson Hydro's suggestion amounts to recommending a dedicated consumer advocate. FortisBC does not support moving away from the current intervener model as stated previously in its first round submissions, and also in response to submissions from CDI.

### Quail & Worth

#### *Procedural Reforms*

Quail & Worth suggest replacing a round of written information request processes with an oral discovery process. This suggestion simply replaces a written round of IRs with an oral round of IRs; whether it is oral or written it is still an information request from the utility's perspective. Written IRs allow the responder time to investigate (if required) and provide thorough and accurate responses; a much more efficient and effective process than on-the-spot oral information requests and responses. An oral IR phase would likely be less efficient as responses can often require time and effort from a number of individuals, historic information and/or the analysis and interpretation of data.

#### *Intervener Funding*

Quail & Worth's suggestions regarding intervener funding effectively amount to the adoption of a consumer advocate model (where BCPIAC is the consumer advocate). For the reasons stated in its first round submissions and in response to CDI above, FortisBC is not supportive

of a consumer advocate model, even one where an existing intervener assumes the role of the dedicated consumer advocate.

#### *Public Accountability*

Quail & Worth also suggest that the BCUC should play a more active role in informing and educating the public about what the Commission does in an effort to increase understanding, transparency and accountability. FortisBC is not sure what this more active role would look like, but submits that it should maintain consideration of the Commission's role as an independent and objective regulatory body.

#### *Legislative Reforms*

Quail & Worth also suggest a number of legislative reforms, including restoring the jurisdiction to the Commission taken away by certain amendments to the UCA and the enactment of the CEA, and a general cleanup of the existing UCA. The mandate of the BCUC Review is to increase the efficiency and effectiveness of the BCUC. FortisBC believes that focusing on the improvement of regulatory processes is the best way to achieve the stated goal of the BCUC Review. FortisBC does not believe an overhaul of the UCA or CEA is necessary or appropriate at this time.

The third legislative change suggested by Quail & Worth is the combining of the jurisdictions of the BCUC and Environment Assessment for energy projects. Combining the BCUC and Environment Assessment could result in projects that do not ordinarily require environmental assessments having to undergo such a process simply because the two bodies are combined. There would be little added benefit, and certainly added inefficiency if projects not normally needing an environmental assessment review are pulled into such a process.

FortisBC appreciates the opportunity to provide the above submissions. If further information is required, please contact the undersigned.

Respectfully submitted,

**on behalf of the FORTISBC UTILITIES**

**Original signed:**

Roger A. Dall'Antonia