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October 29, 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, Q.C.

Dear Sirs:

**Re: FortisBC Utilities (FortisBC or the Companies) Submissions on Interim Report in the Independent Review of the British Columbia Utilities Commission (BCUC Review)**

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By email dated October 9, 2014, the Task Force, appointed by the Ministry of Energy and Mines (MEM) and the Minister Responsible for Core Review to conduct an independent review of the British Columbia Utilities Commission (BCUC Review), advised stakeholders that its Interim Report was submitted to the MEM on October 1, 2014 as per the MEM's terms of reference.

The Task Force invites stakeholders, by October 29, 2014, to provide final comments on the Interim Report to the MEM. In response, FortisBC provides its specific comments on each of the issues discussed in Part 2 of the Interim Report.

FortisBC notes that the Task Force has not provided its recommendations to government in the Interim Report, instead specific recommendations will be provided in the Final Report. FortisBC requests the opportunity to provide comments on the specific recommendations of the Task Force that will be made in the Final Report prior to its submission to government.

**1. Governance**

*a. Independence of the BCUC*

FortisBC agrees with the Task Force's conclusions with respect to the independence of the BCUC within the exercise of its mandate as set by the government. While no specific recommendations have been made, the Task Force notes that the government should

establish clear, general policies to be applied to utility regulation for the BCUC. The Task Force also notes that the government may want to revisit the energy policy and legislative framework set out in the 2007 Energy Plan and the 2010 *Clean Energy Act* (CEA) given the changing energy policy priorities. FortisBC would support such consideration.

FortisBC agrees that establishing policies could be helpful to inform the BCUC's interpretation of energy policy. However, FortisBC stresses that – as the Task Force has indicated – these policies should be both clear (that is, easy to understand) and general. FortisBC has stated in previous submissions that there are opportunities for more effective interpretation of policy that would not require the amending of legislation. Furthermore, the establishment of policies to inform the interpretation of legislation should not replace the BCUC liaising with government. The re-establishment of an executive director position at the BCUC staff level would enable the BCUC, through the Chair and executive director, to better liaise with government to ensure effective interpretation of policy on a more frequent and timely basis. Re-establishing the executive director role will allow greater focus on the policy and direction matters of the Commission by both the BCUC Chair and the executive director.

#### *b. Legislative Framework*

FortisBC generally agrees with the conclusions of the Task Force with respect to the legislative framework. However, FortisBC makes the following two observations with respect to the Task Force's discussions on the legislative framework.

First, the Task Force suggests potential amendments to the UCA, such as a change to the definition of "public utility", to expressly enable the BCUC "to limit or forgo active regulation where the BCUC finds that regulation is not in the public interest due to the existence of competition or other factors such as the size or number of customers." FortisBC believes that amendments to the UCA should not be done as a means to "fix" some of the issues that have faced the BCUC in recent years, such as regulation of new and emerging energy solutions. To a large extent, regulatory frameworks have been developed under the existing legislative framework through various regulatory proceedings and Commission decisions with respect to regulation of, for instance, thermal energy services, biomethane upgraders, and natural gas for transportation services. In FortisBC's opinion, the regulatory frameworks with respect to the regulation of these services are working. To amend the legislation now will be counter-productive, undoing some of the work that the Commission and the utilities have accomplished so far, and may result in further confusion to customers receiving these services and the potential for more regulatory processes to clarify and implement the amendments. Moreover, FortisBC cannot concretely assess and comment on what effect the amendments will have on the various aspects of FortisBC's operations without a full review of the proposed wording.

Second, the Task Force suggests a more streamlined exemption processes. FortisBC agrees, but notes that the current exemption processes have been successfully used in several proceedings recently. If a streamlined exemption process is recommended by the Task Force in its final report, FortisBC requests an opportunity to comment on that recommended process.

*c. Commissioners*

FortisBC agrees with the conclusions of the Task Force with respect to the BCUC Commissioner compensation and structure.

The Task Force's Interim Report notes that the top five FortisBC employees' average compensation is \$780,000.<sup>1</sup> FortisBC offers the following explanation with respect to this note. The average is based on the total compensation of these five FortisBC executives that includes both regulated and non-regulated compensation. Long-term incentive amounts are included in total compensation, but are not recovered from FortisBC ratepayers, and thus should not be included in the calculation of compensation of employees when comparing regulated entities.<sup>2</sup> For clarification, the top five FortisBC employees' average regulated total compensation is \$548,000.

*d. Staff Remuneration*

FortisBC agrees with the conclusions of the Task Force with respect to BCUC staff remuneration.

The Task Force's Interim Report notes that the FortisBC Chief Financial Officer's (CFO) total compensation is \$567,704. As noted in item c. above, this is a total compensation figure that includes both regulated and non-regulated compensation to the CFO. The regulated total compensation for FortisBC's CFO is approximately \$450,000.<sup>3</sup>

## **2. BCUC Processes**

*a. General Comments*

FortisBC has no comments with respect to the Task Force's general comments regarding BCUC processes. In FortisBC's experience, the guidelines and policies provide helpful information, guiding the participants in BCUC processes.

*b. Guidelines and Policies*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding BCUC guidelines and policies.

*c. Scoping or Defining Issues in Proceedings*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the scoping or defining of issues in advance of regulatory proceedings.

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<sup>1</sup> The Interim Report references the following report found on the Investor Centre page of FortisBC's website: [http://www.fortisbc.com/About/InvestorCentre/GasHoldingCompany/Documents/ExecCompOnly\\_FHI\\_B1\\_Post\\_Audit\\_Comp\\_Mar\\_14\\_2014\\_SEDAR.pdf](http://www.fortisbc.com/About/InvestorCentre/GasHoldingCompany/Documents/ExecCompOnly_FHI_B1_Post_Audit_Comp_Mar_14_2014_SEDAR.pdf)

<sup>2</sup> Orders G-138-14 and G-139 in the FEI and FBC 2014-2018 Performance Based Ratemaking Plan Applications, respectively, summarize executive compensation. The Commission has also ordered for 2014 through 2019 that 30 percent of executive short term incentive plan costs are to be to the account of the shareholder, which further reduces the regulated compensation portion of FortisBC executive.

<sup>3</sup> Refer also to footnotes 1 and 2.

*d. Alternatives to Oral or Written Hearings*

FortisBC is generally in agreement with the Task Force's conclusions regarding alternatives to oral or written hearings.

In this section the Task Force also provides a list of opportunities to improve processes by drawing on best practises from other jurisdictions. The list includes the development of a mandatory application completion checklist. It is unclear what a mandatory application completion checklist would entail, however FortisBC notes that it would likely be redundant to the BCUC guidelines that already exist (for example the CPCN guidelines). FortisBC does not support the development of additional checklists or guidelines that are redundant to those already in use. With respect to the Task Force's suggestion to define scope and narrow issues at the outset of hearings, FortisBC submits that defining the scope and narrowing issues will be most effective if the Commission panel for an application process is appointed early enough in the process to ensure that the panel has input into the scoping process.

With respect to the suggestion that Commission staff review draft applications, FortisBC's comments are provided in the section below.

*e. Information Requests*

FortisBC is generally in agreement with the Task Force's conclusions regarding BCUC information requests. However, FortisBC does not agree with the Task Force's suggestion that BCUC staff reviewing draft applications will ultimately save time and costs in regulatory processes. FortisBC is strongly opposed to the Task Force's suggestion for the following reasons.

First, the details of an application are always subject to change throughout the drafting process, as analysis, refinement and review of information is ongoing. In effect, the utility would not be providing a draft application to Commission staff, but rather a final internally reviewed and approved version of the application. Providing an "advance copy" of the application to Commission staff prior to the actual filing of the application is an additional step before filing an application that will serve to delay the actual start of public regulatory processes and ultimately lengthen the time required to get a Commission decision.

Second, providing this "advance copy" of the application to Commission staff prior to the actual filing of the application results in the addition of an "informal" regulatory process for an application prior to the actual public regulatory process. FortisBC sees no benefit to this additional "informal" regulatory process that may not reduce information requests in the public process, but will certainly add an additional round of review. Even if formal information requests are fewer in the regulatory process as a result of the Commission staff's review prior to the actual filing of the application, FortisBC does not believe that any time or costs will be saved by undertaking two review processes for an application (the informal review prior to filing and the actual regulatory process after filing) as opposed to just one formal regulatory review process. At best, it will take the same amount of time to complete both processes as it currently takes without the informal process prior to filing, and at worst it will lengthen the time taken for the review and disposition of an application.

Finally, FortisBC already meets with Commission staff in advance of filing its major applications to provide staff with an overview of the application, with the intent to focus the

regulatory process and to gain feedback. FortisBC usually provides an outline or executive summary of the application, including the type of evidence that will be provided, supported in many cases by a table of contents and list of appendices. FortisBC believes that meeting and having discussions with Commission staff, as appropriate, in advance of filing an application is a more efficient and effective process for gaining valuable feedback from BCUC staff and provides staff with the opportunity to comment on its expectations as to the requirements for a complete application. This approach has the advantage of not lengthening the regulatory processes, since meeting with Commission staff can be done at the same time as application preparation and review are proceeding. FortisBC submits that this is a more appropriate and efficient process than the Task Force's suggestion to provide a draft application to Commission staff for the reasons stated above.

*f. Intervener Participation*

The Task Force suggests that the 2007 PACA Guidelines should be reviewed to more frequently allow partial cost awards in advance of a decision, subject to a reduction in the total amount if the intervener's contribution did not meet expectations. FortisBC does not support an update to the PACA Guidelines that would allow more frequent advance funding for an intervener, even if that funding is subject to a reduction if the contribution does not meet expectations. FortisBC has previously stated that the denial of intervener funding (while not a common occurrence) is important to ensure that intervention is appropriate. Allowing even partial funding at the outset of a process ensures that an intervener will get at least some funding. If the participation that this partial funding permits or encourages is outside the scope of the proceeding, most of the damage may well have been done by the time consideration is later given to reducing the total. It is important to keep in mind, in this regard, that the cost of interventions is not simply in the funds paid to the particular intervener in question, but also in the time, effort and money that the utility and other participants must themselves expend in addressing points that the intervener raises. More frequent advance partial cost awards will potentially result in a much greater likelihood of ratepayers bearing the multi-faceted cost of interventions that are not beneficial to the process.

*g. Application Cycle (Turnaround Times)*

FortisBC is generally in agreement with the Task Force's conclusions regarding application turnaround times.

*h. Generic Proceedings and Coordinated Regulatory Processes*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the BCUC's use of generic and coordinated regulatory processes.

*i. Compliance and Reporting*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding compliance and reporting.

*j. Mandatory Reliability Standards (MRS)*

FortisBC makes the following observations with respect to the Task Force's discussions on MRS.

First, FortisBC agrees that an entity responsible for MRS compliance monitoring and enforcement needs to have the resources, cost recovery capability, and expertise to carry out its responsibilities for MRS compliance.

Second, under the current provisions of the UCA, the BCUC has the authority to adopt MRS based on assessment by BC Hydro. The BCUC also has the authority and responsibility for MRS compliance enforcement. Further, the Western Electricity Coordinating Council (WECC), which has expertise and experience in administering MRS in the western United States, provides the administrative role in MRS compliance monitoring in British Columbia for the BCUC. FortisBC stresses that the current roles and responsibilities should not be changed without a thorough understanding of the deficiencies (if any) of the current model and a proper analysis of the potential alternatives.

Third, since there are no specific recommendations made with respect to the MRS compliance process in the Interim Report, as mentioned above, FortisBC requests an opportunity to comment on specific recommendations (if any) in this regard.

### **3. BCUC Structure, Organization, and Performance**

*a. Levy Funding Model*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the current levy funding model.

*b. Executive Director Function*

FortisBC is generally in agreement with the Task Force's conclusions regarding the reinstatement of an executive director function.

*c. Use of BCUC Counsel*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the BCUC's use of legal counsel.

*d. Capacity and Resource Needs*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the capacity and resource needs of the Commission.

*e. Performance Measures*

FortisBC has no comments with respect to the Task Force's comments regarding performance measures for the Commission.

#### 4. Other Matters

##### *a. BC Hydro: A Different Regulatory Approach*

FortisBC agrees with the Task Force's statement on page 37 of its Interim Report, as follows:

In response to the Minister's letter, the Task Force held another round of written submissions and met with interested stakeholders. The consensus was that, in theory, there should not be a different regulatory model for Crown corporations providing monopoly services as compared to investor-owned utilities. **The Task Force agrees with this view.** [emphasis added]

The Task Force then notes what appears to have been the historical reality with respect to BC Hydro, and outlines a possible hybrid approach.

While FortisBC appreciates that the Task Force is seeking to adopt a pragmatic view and acknowledges that the hybrid approach would at least preserve in some respects for Crown corporations the regulatory oversight experienced by investor-owned utilities, FortisBC does not agree that the Task Force's goals need to be set so low. In particular, FortisBC encourages the Task Force to hold fast to its agreement on page 37 that there should "not be a different regulatory model". The review in which the Task Force is now engaged is an opportunity to identify those elements of past practice that should not be adhered to going forward. Differentiation in regulatory models is one of the elements that should be relegated to the past rather than maintained going forward. FortisBC does not agree that in respect of BC Hydro, the Commission should review and recommend, while the government makes the final decisions. FortisBC does not believe it is necessary, or appropriate, that a different regulatory approach should be taken for Crown corporations as compared to investor-owned utilities.

The differing regulatory treatment of utilities, by virtue of their ownership, can have unintended consequences where common legislation is applied differently for every utility and its ratepayers. Common government policy and legislation is important to effect the government's objectives.

Further, it is unclear what benefit would be gained by having a hybrid regulatory treatment for BC Hydro. In fact, the Task Force sets out seven key findings in its Interim Report<sup>4</sup> for restoring a strong and independent BCUC. Item 1 states specifically that "government should delineate policies to the Commission clearly, and in advance of Commission processes, then leave the Commission to act independently within its mandate". The Task Force's later presentation of the option that BC Hydro be regulated by a hybrid approach wherein the Commission reviews and recommends, and the government makes the final decision pursuant to UCA section 5, is contrary to the objective of restoring a strong and independent BCUC. FortisBC further notes that an inquiry under section 5 can be complicated, as evidenced by the 2009 Section 5 Transmission Inquiry.

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<sup>4</sup> Interim Report, Overall Findings, pp. 1-2

*b. Investor Owned Water Utilities*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the regulation of investor owned water utilities.

*c. ICBC*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the regulation of ICBC.

*d. Public Communication*

FortisBC has no comments with respect to the Task Force's comments and conclusions regarding the Commission's role in communicating with the public.

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