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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-95-11**

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IN THE MATTER OF
the Utilities commission Act, R.S.B.C. 1996, Chapter 473

and

An Inquiry into FortisBC Energy Inc.
regarding the Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

BEFORE: N.E. MacMurchy, Panel Chair/Commissioner May 24, 2011
D.A. Cote, Commissioner
A.A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. On February 27, 2007, the BC government released its Energy Plan: A Vision for Clean Energy Leadership. The 2007 Energy Plan contains, among others, policy actions that call for support in the development of clean power and energy efficiency technologies, implementation of a provincial Bioenergy Strategy, as well as reductions in Greenhouse Gas (GHG) emissions from transportation;
- B. On June 3, 2010, the *Clean Energy Act* (CEA) received Royal Assent. Section 2 of the CEA sets out British Columbia's energy objectives which, in part, encourages switching from one kind of energy source or use to another that decreases GHG emissions. In addition, it encourages reducing waste through the use of biogas and the use and development of technologies that support energy conservation and efficiency;
- C. After the regulatory proceeding with respect to the Terasen Gas Inc. [(TGI) as FortisBC Energy Inc. (FEI) was formerly known] 2010-2011 Revenue Requirements Application (RRA) that resulted in a Negotiated Settlement Agreement (NSA) in November 2009, TGI began taking over the alternative energy program activities from Terasen Energy Services (TES). According to the Terasen Utilities [as FortisBC Energy group of utilities were formerly known] in its Long term Resource Plan responses to BCUC Information Requests (IR) No. 1 Question 2.1 and IR No. 2 Question 6.1, TES alternative energy services have never been actively regulated by the British Columbia Utilities Commission (Commission), and TES has been, in effect, treated as a Non-Regulated Business (NRB). The Terasen Utilities believed that some of these assets should actually be subject to regulation. With the approval of rate structures within TGI, TGI believed that a logical approach would be to transfer ownership of the appropriate assets from TES to TGI;
- D. Since 2009, the Commission has reviewed a number of applications filed by FEI in new businesses related to Alternative Energy Solutions (AES) and other New Initiatives;

- E. On April 16, 2009, the Commission issued Order G-36-09 following a review of the Energy Efficiency and Conservation Programs (EEC) Application from TGI and Terasen Gas (Vancouver Island) Inc. [(TGVI) as FortisBC Energy (Vancouver Island) Inc. was formerly known]. That Order accepted expenditures for programs or initiatives directed at fuel switching from fossil fuels to natural gas to reduce GHG emissions. The Order also rejected expenditures in the sum of \$3 million for Innovative Technologies, Natural Gas Vehicles and Measurement, among others;
- F. On November 26, 2009, Commission Order G-141-09 approved the NSA arising from TGI's application for approval of 2010 and 2011 RRA. The NSA contains certain agreements related to expenditures on innovative technologies with the conditions that those Innovative Technology programs would be managed by TGI as a separate segment of the overall portfolio to have a weighted average Total Resource Cost of 1.0 or more. The parties also agreed to a deferral account as a mechanism to allocate costs between natural gas customers and AES customers;
- G. In the RRA NSA, TGI withdrew certain requests for approval related to the Natural Gas Vehicle (NGV) initiative and biogas initiative in order to facilitate the settlement of other issues. The 2010-2011 RRA NSA package included letters of comments and the one from the British Columbia Old Age Pensioners Organization *et al.* stated that "ultimately appropriate corporate and regulatory formats for these lines of business (AES) are subject-matters which may require eventual determination by the Commission";
- H. TGI filed a Biomethane Service Offering Application (Biomethane Application) with the Commission on June 8, 2010. The application consists of a supply model which involved a move up the TGI supply chain as well as a rate offering and a cost allocation and recovery model;
- I. The Commission approved the Biomethane Application by Order G-194-10 on December 14, 2010. In its Decision, the Commission made no finding on the acceptability of the biogas upgrading business for TGI and directed that the business be kept distinct and severable. It also determined that the upgrading project be segregated from its other operations and clarified that the decision to accept the application was made to facilitate the biomethane service as a test program only;
- J. On July 15, 2010, the Terasen Utilities filed their 2010 Long Term Resource Plan (LTRP) with the Commission for acceptance. Terasen described its LTRP as a plan to build on steps to transform themselves into a complete, integrated energy provider of AES incorporating the reliability of conventional energy services. Interveners of the proceeding raised the issues of the scope of regulation with respect to the new initiatives;
- K. In the Decision dated February 1, 2011 accepting the LTRP, the Commission stated that an additional process may be required to determine how these new ventures would fit within the context of a regulated utility. It further stated that if the issue of evolution of new initiatives and the related business models is left to be answered on an *ad hoc* basis, the Commission and Interested Parties would miss the opportunity for a comprehensive and systematic consideration of complex regulatory issues embedded in the New Initiatives applications;

- L. TGI applied to the Commission for approval of a service agreement for Compressed Natural Gas (CNG) Service in December 2010. In its Reasons for Decision accompanying Order G-6-11, the Commission made a number of general comments on TGI providing CNG fueling stations. The issues commented on included CEA implications, whether providing CNG fueling service is an appropriate role for TGI in stimulating demand for NGVs; the extent to which other ratepayers benefit; and whether the risk other ratepayers may bear is appropriate;
- M. By Commission Letter L-30-11 dated April 18, 2011, the Commission initiated a proceeding to examine whether it was appropriate for FEI to change the scope of the Innovative Technologies programs to include NGV purchase incentives via the EEC Program, and the consequent implications on the treatment of EEC expenditures;
- N. By letter dated April 27, 2011, the Energy Services Association of Canada (ESAC) filed an application (the Complaint) with the Commission requesting a process to review FEI's AES activities. ESAC states its major concerns are related to lack of public consultation, use and distribution of EEC funding, delivery of AES by a regulated utility, potential cross-subsidization of AES activities by natural gas rate payers, and use of sensitive market information with FEI;
- O. By letter dated May 6, 2011, Corix Utilities Inc. filed a letter in support of the Complaint;
- P. The Commission Panel has considered the determinations in the orders and decisions of the foregoing applications relating to EEC programs and funding, RRA, AES and New Initiatives filed by FEI and its affiliated companies. The Commission Panel has also reviewed the comments contained in the Complaint. The Commission Panel has determined that an Inquiry into FEI's transformation into an integrated energy power provider is warranted.

NOW THEREFORE pursuant to sections 23, 72, 82 and 83 of the *Utilities Commission Act*, the Commission orders as follows:

1. The Commission establishes an Inquiry into FEI offering Products and Services in Alternative Energy Solutions and New Initiatives. A timetable attached as Appendix A to this Order includes a Procedural Conference on Wednesday, June 15, 2011, commencing at 9:00 a.m. in the Commission Hearing Room on the 12th Floor, 1125 Howe Street, Vancouver, BC, V6Z 2K8 to discuss the Inquiry process, timing and preliminary submissions on issues and scope.
2. The Commission Panel has requested Commission staff to prepare a working paper on scoping of issues to provide a starting point for discussions for all participants. The staff working paper is attached as Appendix B to this Order.
3. FEI must publish, by Thursday, June 2, 2011, in display-ad format, the Notice of Inquiry and Procedural Conference attached as Appendix C to this Order, in the local and regional news publications in all the service areas of the FortisBC Energy Utilities to provide adequate notice to the public. The non-exhaustive list of publications include the Vancouver Sun, Vancouver Province, Financial Post, Globe and Mail, Victoria Times Colonist, Cranbrook Daily Townsman, Kimberley Daily Bulletin, Kamloops Daily News, Kelowna Daily Courier,

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Alberni Valley Times, Nanaimo Daily News, Nelson Daily News, Penticton Herald, Prince George Citizen, Trail Daily Times, Fort Nelson News, 24 Hours Vancouver, and Metro News Vancouver. Also, FEI must post this Notice of Inquiry and Procedural Conference on its website.

4. FEI is to provide a copy of this Order by Thursday, June 2, 2011 to: (a) registered interveners and interested parties to the following proceedings: Terasen Utilities 2010 Long Term Resource Plan, FortisBC Energy Utilities 2012 and 2013 Revenue Requirements Application, TGI 2010 and 2011 Revenue Requirements Application, Terasen Gas (Vancouver Island) Inc. 2010 and 2011 Revenue Requirements and Rate Design Application, Terasen Gas (Whistler) Inc. 2010 and 2011 Revenue Requirements and Rates Application, Terasen Gas Inc. Fort Nelson Service Area 2011 Revenue Requirements Application, TGI and TGVI Energy Efficiency and Conservation Programs Application, TGI Biomethane Application, FortisBC Energy Inc. Application for Approval of a Service Agreement for Compressed Natural Gas Service; and (b) participants of or those who received invitations to the FEI Resource Planning Advisory Group and the FEI Energy Efficiency and Conservation Advisory Committee.
5. Intervenors and Interested Parties are to register with the Commission, in writing or by electronic submission, by end of day Thursday, June 9, 2011. Intervenors are to state the nature of their interest in the proceeding and advise of their intent to attend the Procedural Conference on Wednesday, June 15, 2011.
6. FEI and Registered Intervenors are to provide their comments, if any, on the preliminary issues, scope and process of this Inquiry by Thursday, June 9, 2011.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of May 2011

BY ORDER

Original signed by:

D.A. Cote
Commissioner

Attachments

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REGULATORY TIMETABLE

ACTION	DATE (2011)
FEI to Publish Notice of Inquiry and Procedural Conference	Thursday, June 2, 2011
Registration of Interveners and notice of intention to attend Procedural Conference	Thursday, June 9, 2011
FEI and Intervener Preliminary Comments on Issues, Scope and Process	Thursday, June 9, 2011
Procedural Conference on Process, Timing and Preliminary Discussions of Issues and Scoping	Wednesday, June 15, 2011 Commencing at 9:00 a.m. Commission Hearing Room 12 th Floor, 1125 Howe Street Vancouver, BC V6Z 2K8
Subjection to Further Regulatory Order:	
Participant Assistance Cost Award Budgets	To be determined
Second Procedural Conference on Scoping and Scheduling, if required	To be determined
Information Requests to FortisBC and/or other Parties by Commission and Registered Interveners	To be determined

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STAFF WORKING PAPER ON SCOPE OF THE ISSUES

Purpose of Inquiry:

Against a background of new trends in the energy policies, changing customer needs and new energy market characteristics, the Commission is conducting an Inquiry with the purpose to obtain a full view of 'new' energy solutions in the marketplace from all stakeholders; and to make determinations in the form of guidelines for FortisBC Energy Inc. (FEI) in its move towards providing Alternative Energy Services and other New Initiatives.

Although this staff working paper explicitly refers to FEI, the Commission anticipates that findings and conclusions from the Inquiry process could extend to other existing regulated utilities and future entities that may become public utilities in British Columbia.

Issue 1 Is FEI the only integrated energy provider (core natural gas distribution and 'new' solutions), and will it likely remain the only one in B.C.?

Scope:

- Whether the Inquiry should proceed as a generic proceeding or whether FEI or FortisBC Energy Utilities (FEU) should be the subject of this Inquiry.
- Are members of Energy Services Association of Canada (ESAC) public utilities as defined in the *Utilities Commission Act* (UCA)?

Issue 2 Do regulatory issues related to Alternative Energy Solutions (AES), biogas, and Natural Gas Vehicles (NGV) overlap?

Scope:

- Should a hearing process be limited to a single activity, e.g., AES only? Should the hearing include all 'new' energy solutions but have them reviewed by phases within a hearing? Should all 'new' energy solutions be within one hearing?

Issue 3 Appropriateness of FEI providing Alternative Energy Solutions (AES) and other 'new' solutions as a traditional gas distribution utility

Scope:

- Where should the new rate structures be examined – revenue requirements, *ad hoc* applications, portfolios in resource plan/action plan, Certificate of Public Convenience & Necessity (CPCN)?
- Degree of integration with the core natural gas services and how severable should the 'new' projects be within an entity.
- The desirability of conducting new solutions under a separate regulated entity or non-regulated business entity.
- Project risks, stranded assets and recovery from natural gas ratepayers; prospect and the extent of cross-subsidization; and if a project fails, who pays?
- Do tariff provisions, if flowing from a commission order approving an NSA, imply a regulatory policy? To what extent do issues resolved in an NSA become policy positions at the Commission? Should the Commission approval be limited to the duration of the test period?
- Should general terms and conditions for New Initiatives be used as a framework for future AES and New Initiatives customers?

Issue 4 Fair Competition

Scope:

- Potential partners and competitors to FEI in AES and New Initiatives. Impact on FEI's stakeholders and the role/need of public consultation with affected stakeholders.
- Provision of district energy systems and compression and fuelling services by parties other than FEI; the importance to have FEI kick start the market.
- Where approval for Energy Efficiency & Conservation (EEC) funding should be examined – revenue requirements, ad hoc applications, EEC long term plans, CPCN?
- Non-discriminatory availability of EEC incentive funding to non-FEI affiliated entities.
- How EEC incentive funding should be determined, applied, and monitored to ensure cost-effectiveness.
- Accessibility of EEC incentive funding through a transparent call for tenders.
- Should internal business cases be subject to regulatory review and reporting; should subsequent filings be streamlined once the first AES and New Initiatives are approved?
- Does the Commission have a role in its public interest decision-making to protect a competitive environment?
- What is the potential of certain AES, Natural Gas Vehicles (NGV) or biogas undertakings being named as a 'prescribed undertaking' for the purpose of reducing greenhouse gas emissions in British Columbia as set out in section 18 of the Clean Energy Act? In setting rates under the UCA for a public utility carrying out a prescribed undertaking, the Commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

Issue 5 Public Utility Services

Scope:

- Can an AES and fuelling service provider remain unregulated under the UCA?
- Treatment of an integrated energy service provider as a public utility -- what should be the appropriate regulatory format?
- As a gas distribution utility, should FEI be allowed to move up the supply chain and keep this activity within the regulated format as proposed in its biogas business model?
- Should there be a "call for energy (natural gas)" to ensure a competitively priced supply of biogas?
- Should AES applications be heard before or in conjunction with an EEC funding request?
- Do existing regulatory guidelines disallow FEI from trading on its market profile?
- Should there be a Code of Conduct and Transfer Pricing Policy to forbid use of market sensitive information to assist in non-core businesses?
- What products and services related to AES and New Initiatives are in the proper domain of a public utility?
- Is there appropriate separation of regulated and non-regulated businesses in the current website of the utility fortisbc.com similar to the previous separation of businesses in the websites of terasengas.com (regulated) and terasen.com (non-regulated)?

Issue 6 Retail Markets Downstream of the Utility Meter Guidelines (RMDM) and Resource Planning (RP) Guidelines

Scope:

- Are the RMDM and RP Guidelines still relevant and applicable in regulating FEI's entry into 'new' business or should they be updated to reflect the current energy operational and planning environment. Have there been deviations from the RMDM Guidelines by FEI in some of its activities?
- Should the products and services to be offered by a regulated public utility be defined by the Commission? What should be the Commission's jurisdiction to limit FEI's participation in the 'new' solutions?
- Do the RMDM Guidelines adequately address generation and delivery infrastructure for thermal energy as part and parcel of 'core utility assets'?
- How should the Commission deal with programs or activities that in some ways go outside the RMDM Guidelines?
- Should the transfer of assets and services from TES to FEI be subject to review?
- Are there potential conflicts of interest in FEI taking steps to transform itself into an integrated energy provider? If so, what are these?
- Are the AES, refueling stations, and district energy systems' core monopoly products as contemplated in RMDM?
- Is there appropriate separation of regulated and non-regulated business and FEI? Should there be distinct separation of regulated and non-regulated businesses to avoid any potential for cross-subsidization and would that ensure a level-playing field?



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NOTICE OF INQUIRY AND PROCEDURAL CONFERENCE

The British Columbia Utilities Commission (BCUC, Commission) has established an Inquiry and a Procedural Conference has been set up to hear comments on issues arising from the new business initiatives of FortisBC Energy Inc (FEI) (formerly known as Terasen Gas Inc. [TGI]).

DATE:	Wednesday, June 15, 2011
TIME:	9:00 a.m.
LOCATION:	Commission Hearing Room 12 th Floor, 1125 Howe Street, Vancouver

THE INQUIRY

FortisBC Energy Inc. is a public utility regulated by the BCUC. The BCUC's mandate is to ensure utility rates are fair, just and reasonable and that utility shareholders are afforded an opportunity to earn a reasonable return on investment. As a result of the Province's rapidly changing energy policies and the objectives set out in the *Clean Energy Act*, FEI has begun integrating a range of alternative energy solutions and services into their core natural gas transportation and delivery business, as well as increasing expenditures on energy efficiency and conservation programs.

The Energy Services Association of Canada (ESAC) recently wrote to the Commission to request a process to review FEI's activities in Alternative Energy Solutions, citing concerns related to, among other things, lack of public consultation by FEI, the use and distribution of incentive funding related to energy efficiency and conservation programs, and the potential cross-subsidization of FEI's new activities by natural gas rate payers.

The Commission has determined that the changes being undertaken and contemplated by FEI and the issues arising from these changes are significant enough to warrant a formal process to address them.

THE REGULATORY PROCESS

The Commission will hold a Procedural Conference on June 15, 2011 in Vancouver, BC to discuss the scope of issues for this Inquiry. The Commission also wishes to hear from affected parties before determining what type of public process is appropriate for conducting the Inquiry.

The following is a summary of what the Commission views as substantial issues. The details are contained in a Commission staff working paper attached as Appendix B to Commission Order G-95-11.

- The potential risk to natural gas ratepayers

- The BCUC's regulatory role in a competitive environment that is different from the traditional natural gas distribution utility environment
- The ability of FEI to meet British Columbia's energy objectives
- How incentive funding for energy efficiency and conservation programs should be distributed and monitored

REGISTERING TO PARTICIPATE

Persons who wish to participate actively in this proceeding must register as Interveners with the Commission via the Commission's website or register in writing by June 9, 2011. Interveners will receive an Executive Summary of the Commission Decision on the Terasen Utilities (as FortisBC Energy Utilities were formerly known) 2010 Long Term Resource Plan and a copy of the letter to the Commission from ESAC. Once registered, Interveners are expected to copy all other participants their correspondence and any filed documents. Filings and submissions by email are preferred; an email address should be provided if available.

Persons who do not want to participate actively, but who have an interest in the proceeding, should register as an Interested Parties with the Commission via the Commission's website or register in writing by June 9, 2011 and identify their interest in the Inquiry. Interested Parties will receive an Executive Summary of the Commission Decision on the Terasen Utilities 2010 Long Term Resource Plan and a copy of the letter to the Commission from ESAC. They will also receive a copy of the Commission's Decision on the Inquiry when it is issued.

PUBLIC INSPECTION OF DOCUMENTS

Supporting materials such as the following applications and Commission decisions will be made available for public inspection:

1. Terasen Utilities 2010 Long Term Resource Plan
2. Terasen Gas Inc. and Terasen Gas (Vancouver Island) Inc. 2010 and 2011 Revenue Requirements Application
3. TGI and TGVI 2008 Energy Efficiency and Conservation Programs Application
4. TGI Biomethane Application 2010
5. FortisBC Energy Inc. Application for Approval of a Service Agreement for Compressed Natural Gas Service 2010
6. FortisBC Energy Utilities 2012-2013 Revenue Requirements and Rates Application

at the following locations:

FortisBC Energy Inc.
16705 Fraser Highway
Surrey, B.C. V4N 0E8

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

The documents are also available for viewing on the following websites: <http://www.fortisbc.com> and <http://www.bcuc.com>.

All submissions and/or correspondence received from active participants or the general public relating to the Inquiry will be placed on the public record and posted to the Commission website.

FURTHER INFORMATION

For further information, please contact Ms. Alanna Gillis, Acting Commission Secretary, by telephone at 604-660-4700 or BC Toll Free at 1-800-663-1385, by fax at 604-660-1102, or by email at Commission.Secretary@bcuc.com.