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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-1-12**

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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.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives**

BEFORE: N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner January 4, 2012
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. By Commission Order G-141-09 dated November 26, 2009, the British Columbia Utilities Commission (Commission) approved for FortisBC Energy Inc. (FEI, then Terasen Gas Inc.) a Negotiated Settlement Agreement (NSA) for the 2010 and 2011 Revenue Requirements and Delivery Rates proceeding which included approval for the provision of Alternative Energy Services defined as geo-exchange, solar thermal and district energy systems;
- B. The NSA accepted General Terms and Conditions Section 12A: Alternative Energy Extensions (GT&C 12A) as the economic screening tool for Alternative Energy Services projects and provided that FEI could make application for acceptance of project-specific contracts as a rate under the Alternative Energy class of service. The NSA also provided that when the Commission reviews these applications it may review and adjust the economic test and GT&C 12A;
- C. The NSA prescribed that a Certificate of Public Convenience and Necessity (CPCN) threshold of \$5 million would apply to Alternative Energy Services projects brought forward in 2010 and 2011;
- D. Since 2009 the Commission has reviewed a number of applications filed by FEI in new businesses related to Alternative Energy Solutions that cover a broader range of technologies than was considered in the NSA (the broad range of services will be referred to as AES in this Order) and other New Initiatives;
- E. On July 15, 2010, the FortisBC Energy Utilities (FEU) filed their 2010 Long Term Resource Plan (LTRP) with the Commission. The LTRP described FEU's plans to transform themselves into one complete, integrated energy provider of AES. Interveners in the proceeding and other parties subsequently raised issues about the scope of regulation in respect to AES and other New Initiatives projects;
- F. The Commission determined that an Inquiry into FEI's transformation into an integrated energy power provider was warranted and issued Order G-95-11 to establish an Inquiry into the products and services offered by FEI, pursuant to sections 23, 72, 82 and 83 of the *Utilities Commission Act*;

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- G. The Commission held a Procedural Conference on June 15, 2011, and on July 8, 2011, issued Order G-118-11 to establish the Scope and Issues, Terms of Reference and Regulatory Timetable for the Inquiry. In Reasons for Decision, the Panel stated that ongoing proceedings where there is some overlap with the issues being considered in the Inquiry will need to be decided on the basis of the evidence in that proceeding, and that it would be inefficient and potentially unfair for the ongoing proceedings to be delayed;
- H. By Order G-164-11 dated September 23, 2011, the Commission scheduled a Second Procedural Conference for the Inquiry on January 25, 2012;
- I. On November 3, 2011, FEU filed their responses to Information Requests from the Commission and Interveners;
- J. On November 28, 2011, FEI filed an application for a CPCN for the construction and operation of thermal energy projects at 19 individual sites for Delta School District Number 37 (Delta SD) and for the approval of rates and a rate design for Delta SD, and requested a decision by March 1, 2012. Order G-205-11 established a written public hearing and regulatory timetable for the review of the Delta SD application;
- K. On December 8, 2011, FEI advised Commission staff that it is working on a significant number of AES projects, for which it intended to file applications in December 2011, 2012 and early 2013;
- L. By Order G-223-11 dated December 22, 2011, the Commission declared the economic test and GT&C 12A for Alternative Energy Services projects as interim effective January 1, 2012;
- M. The Commission considers that the CPCN threshold that applies to AES and other New Initiatives projects should be reviewed.

NOW THEREFORE for the Reasons stated in Appendix A attached to this Order, the Commission orders as follows:

- 1. A CPCN threshold of zero dollars is established for AES and other New Initiatives projects on an interim basis effective the date of this Order.
- 2. Parties may file written submissions on the appropriate CPCN threshold(s) for AES and other New Initiatives projects that are extensions of a public utility plant or system which had not begun construction at least 30 days prior to the date of this Order, and for other AES and other New Initiatives projects, including whether or not there should be a CPCN threshold. The submissions may also address the identification and/or scope of those AES and other New Initiatives projects that qualify as extensions.
- 3. Written submissions are to be filed by Monday, January 16, 2012, and written replies to the submissions of others are to be filed by Monday, January 23, 2012.

DATED at the City of Vancouver, in the Province of British Columbia, this *Fourth* day of January 2012.

BY ORDER

Original signed by:

N.E. MacMurchy
Panel Chair

Attachment

Orders/G-1-12_FEI_AES CPCN Threshold-Reasons for Decision



IN THE MATTER OF

AN INQUIRY INTO FORTISBC ENERGY INC.'S OFFERING OF PRODUCTS AND SERVICES IN ALTERNATIVE ENERGY SOLUTIONS AND OTHER NEW INITIATIVES

REASONS FOR DECISION

January 4, 2012

BEFORE:

N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

**An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives**

REASONS FOR DECISION

BACKGROUND

British Columbia Utilities Commission (Commission) Order G-141-09 approved the Negotiated Settlement Agreement (NSA) for the 2010-2011 Revenue Requirements Application of FortisBC Energy Inc. (FEI, formerly Terasen Gas Inc.). The NSA allowed FEI to apply for Commission approval of certain Alternative Energy Services projects. Parties to the NSA agreed to a proposed GT&C, Section 12A-Alternative Energy Extensions. The NSA prescribed that a Certificate of Public Convenience and Necessity (CPCN) threshold of \$5 million would apply to such projects brought forward in 2010 and 2011. Since 2009 the Commission has reviewed a number of applications filed by FEI in new businesses related to Alternative Energy Solutions that cover a broader range of technologies than was considered in the NSA (the broad range of services will be referred to as AES in these Reasons) and other New Initiatives.

On July 15, 2010, the FortisBC Energy Utilities (FEU) filed their 2010 Long Term Resource Plan (LTRP) with the Commission. The LTRP described FEU's plan to transform themselves into a complete, integrated energy provider of AES. Interveners in that proceeding and several parties subsequently raised concerns about the scope of regulation in respect to AES and other New Initiatives. Commission Order G-95-11 established an Inquiry into FEI's transformation into an integrated energy power provider, and the products and services offered by FEI. By Order G-118-11, the Commission issued the Scope and Issues, Terms of Reference and Regulatory Timetable for the Inquiry. In the Reasons for Decision, the Panel stated that ongoing proceedings where there is some overlap with the issues being considered in the Inquiry will need to be decided on the basis of the evidence in that proceeding, and that it would be inefficient and potentially unfair for the ongoing proceedings to be delayed.

On November 28, 2011, FEI filed a CPCN for the construction and operation of thermal energy projects at 19 individual sites for Delta School District Number 37 (Delta SD), and requested approval of the application by March 1, 2012. Commission Order G-205-11 established a written hearing process for this proceeding, which is taking place concurrently with the AES Inquiry. FEI has advised Commission staff that it is working on a significant number of other AES projects for which it will be filing applications in 2012 and early 2013.

SECTIONS 45 AND 46 OF THE *UTILITIES COMMISSION ACT* AND THE ROLE OF A CPCN THRESHOLD

Sections 45 and 46 of the *Utilities Commission Act* (Act) are attached, for ease of reference. A CPCN threshold may apply as discussed in this section.

As a general rule, by subsection 45(1) of the Act, a public utility must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining a CPCN.

However, by subsections 45(2) and 45(5), a public utility that is operating a public utility plant or system is deemed to have a CPCN to construct and operate extensions to the plant or system unless the Commission, not later than 30 days after construction of the extension is begun, orders that the deemed CPCN provision for extensions does not apply. The Commission may also, by regulation under subsection 45(4), exclude utility plant or categories thereof from the operation of subsection 45(1).

The Commission has approved threshold levels of expenditures by public utilities for extensions to their plants or systems, on an individual utility basis, for which CPCNs are generally not required. For FEI, the NSA set this threshold for Alternative Energy Services projects brought forward in 2009 and 2010 at \$5.0 million. The effect of this threshold was to confirm that the Commission required a CPCN for all such extensions to existing systems which involve expenditures of \$5.0 million or more. Conversely, extensions which involve expenditures which are less than \$5.0 million did not require a CPCN.

The Panel anticipates that the Inquiry will address the issue of which AES and other New Initiatives projects qualify as extensions of the FEU public utility plant and system. A FEU project that is not an extension of their public utility plant or system will require a CPCN unless the Commission excludes it by regulation under section 45(4). The same requirement applies for such a project by another service provider where the proponent cannot claim that the project is an extension of its public utility plant or system.

A considerable number of questions in Information Request No. 1 to FEU in the Inquiry have addressed matters related to CPCNs.

COMMISSION DECISION

The Commission Panel considers that there is an undesirable amount of uncertainty about the level of any CPCN threshold that applies for AES and other New Initiatives projects commencing January 1, 2012. This uncertainty arises in part because the NSA indicates that the \$5 million threshold it references was for 2010 and 2011, and also because of the NSA's relatively narrow definition of Alternative Energy Services. There is also uncertainty as to whether there is a CPCN threshold for AES and other New Initiatives projects that are not extensions of the FEU public utility plant or system, and about which projects qualify as extensions.

The Panel concludes that it should review whether a CPCN threshold is appropriate for AES and other New Initiatives projects as part of the Inquiry. If a CPCN threshold is appropriate, the Panel will need to determine whether it should be set at zero or some higher level. The Panel notes that, by their nature, AES projects are typically smaller than many other FEI capital projects. Nevertheless, most if not all of these projects are expected to require a project-specific application of some nature to the Commission. Due to the uncertainty about the amount of the applicable CPCN threshold and also about which projects qualify as extensions to an existing utility plant or system, the Panel determines that it should approve a CPCN threshold of zero dollars on an interim basis for all AES and other New Initiatives projects. **Therefore, the Panel determines that a CPCN threshold of zero dollars is established for AES and other New Initiatives projects on an interim basis effective the date of this Order.**

FEI has applied for a CPCN for the Delta SD, but it is reasonable to expect that FEI will also bring forward applications for other projects before the issues of CPCN threshold(s) and the definition of projects that qualify as extensions can be dealt with in the normal course by the Inquiry. In order to provide certainty for these other applications, the Panel concludes that it needs to establish a written comment process as part of the Inquiry that is expected to result in further determinations on a timely and interim basis regarding the CPCN threshold for AES and other New Initiatives projects. The Panel expects that it will revisit and address these issues on a permanent basis after it has all the evidence and submissions in the Inquiry before it.

Parties may file written submissions on the appropriate CPCN threshold(s) for AES and other New Initiatives projects that are extensions of a public utility plant or system which had not begun construction at least 30 days prior to the date of this Order, and for other AES and other New Initiatives projects, including whether or not there should be a CPCN threshold. The submissions may also address the identification and/or scope of those AES and other New Initiatives projects that qualify as extensions.

Written submissions are to be filed by Monday, January 16, 2012, and written replies to the submissions of others are to be filed by Monday, January 23, 2012.

Certificate of public convenience and necessity

- 45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.
- (2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it
- (a) to operate the plant or system, and
 - (b) subject to subsection (5), to construct and operate extensions to the plant or system.
- (3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a reviewable project under the *Environmental Assessment Act*.
- (4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).
- (5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.
- (6) A public utility must file with the commission at least once each year a statement in a form prescribed by the commission of the extensions to its facilities that it plans to construct.
- (6.1) and (6.2) [Repealed 2008-13-8.]
- (7) Except as otherwise provided, a privilege, concession or franchise granted to a public utility by a municipality or other public authority after September 11, 1980 is not valid unless approved by the commission.
- (8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest.
- (9) In giving its approval, the commission
- (a) must grant a certificate of public convenience and necessity, and
 - (b) may impose conditions about
 - (i) the duration and termination of the privilege, concession or franchise, or
 - (ii) construction, equipment, maintenance, rates or service,as the public convenience and interest reasonably require.

Procedure on application

- 46 (1) An applicant for a certificate of public convenience and necessity must file with the commission information, material, evidence and documents that the commission prescribes.
- (2) The commission has a discretion whether or not to hold any hearing on the application.
- (3) Subject to subsections (3.1) to (3.3), the commission may issue or refuse to issue the certificate, or may issue a certificate of public convenience and necessity for the construction or operation of a part only of the proposed facility, line, plant, system or extension, or for the partial exercise only of a right or privilege, and may attach to the exercise of the right or privilege granted by the certificate, terms, including conditions about the duration of the right or privilege under this Act as, in its judgment, the public convenience or necessity may require.
- (3.1) In deciding whether to issue a certificate under subsection (3) applied for by a public utility other than the authority, the commission must consider
- (a) the applicability of British Columbia's energy objectives,
 - (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any, and
 - (c) the extent to which the application for the certificate is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act*,
- (3.2) Section (3.1) does not apply if the commission considers that the matters addressed in the application for the certificate were determined to be in the public interest in the course of considering a long-term resource plan under section 44.1.
- (3.3) In deciding whether to issue a certificate under subsection (3) to the authority, the commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider and be guided by
- (a) British Columbia's energy objectives,
 - (b) an applicable integrated resource plan approved under section 4 of the *Clean Energy Act*, and
 - (c) the extent to which the application for the certificate is consistent with the requirements under section 19 of the *Clean Energy Act*.
- (4) If a public utility desires to exercise a right or privilege under a consent, franchise, licence, permit, vote or other authority that it proposes to obtain but that has not, at the date of the application, been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.
- (5) On application under subsection (4), the commission may make an order declaring that it will, on application, under rules it specifies, issue the desired certificate, on the terms it designates in the order, after the public utility has obtained the proposed consent, franchise, licence, permit, vote or other authority.
- (6) On evidence satisfactory to the commission that the consent, franchise, licence, permit, vote or other authority has been secured, the commission must issue a certificate under section 45.
- (7) The commission may amend a certificate previously issued, or issue a new certificate, for the purpose of renewing, extending or consolidating a certificate previously issued.
- (8) A public utility to which a certificate is, or has been, issued, or to which an exemption is, or has been, granted under section 45 (4), is authorized, subject to this Act, to construct, maintain and operate the plant, system or extension authorized in the certificate or exemption.