



ORDER NUMBER
A-4-16

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for the Customer Choice Program Cost Recovery

BEFORE:

D. A. Cote, Panel Chair/Commissioner
W. M. Everett, Commissioner
N. E. MacMurchy, Commissioner

on June 7, 2016

ORDER

WHEREAS:

- A. FortisBC Energy Inc. (FEI) obtained a Certificate of Public Convenience and Necessity on August 14, 2006 for the Commodity Unbundling Project for Residential Customers (Customer Choice) in accordance with the provincial government's 2002 energy policy, which allows for the direct sale of natural gas to residential and small volume commercial customers through gas marketing companies licensed by the British Columbia Utilities Commission (Commission);
- B. On September 29, 2015, the Commission issued Order A-12-15, which, among other things, directed FEI to submit a Customer Choice program cost recovery application (Application) by March 31, 2016;
- C. By Order A-1-16, and upon request by FEI for an extension to the filing date for the Application, the Commission extended the filing deadline to April 14, 2016;
- D. On April 14, 2016, FEI filed the Program Cost Recovery Application, recommending a new fee structure for the recovery of costs associated with the Customer Care program and seeking approvals for specific items for the new fee structure;
- E. In its Application, FEI requests the following:
 - i. The proposed allocation of program costs based on the analysis described in Section 3.2 of the Application, on an ongoing basis;
 - ii. Recovery of program costs from gas marketers with a monthly fixed fee of \$2,000 per gas marketer, two monthly variable fees, and service fees (as further described in Section 5.7 of the Application);
 - iii. The annual adjustment of the transaction fees on April 1 of each year starting on April 1, 2017, by letter notice included in the Annual Program Statistics submitted in February based on i) the previous year's actuals and ii) any annual variance experienced between cost allocation and actual recoveries;
 - iv. The expenditure of approximately \$3,000 to implement system changes to accommodate the recommended new fee structure; and

- v. The recuperation of all remaining program costs from non-bypass delivery rates;
- F. FEI proposes the Application be heard through a written process that includes a workshop, one round of information requests and followed by written arguments;
- G. FEI requests that the Commission hold Section 5.6 of the Application and Appendix D to the Application confidential on the basis that they contain market share information that would disclose the competitive position of each gas marketer;
- H. On May 9, 2016, by Order A-3-16, the Commission: directed FEI to supplement the Application with the additional information outlined in Appendix A to the order; directed FEI to revise or further explain its request to hold Section 5.6 of the Application confidential prior to the Commission making a determination on the matter; approved FEI's request to hold Appendix D to the Application confidential; and established a preliminary Regulatory Timetable for the review of the Application including a request for comments on options for the review process as set out in Appendix C of the order;
- I. On May 20, 2016, FEI filed additional information to supplement the Application and a revised request to hold Section 5.6 of the Application confidential;
- J. On May 27, 2016, FEI, Access Gas Services Inc. (Access Gas), Direct Energy Marketing Ltd., Just Energy (BC) Limited Partnership (Just Energy), the BC Old Age Pensioners' Organization *et al.* (BCOAPO) and the Commercial Energy Consumers Association of BC made submissions on the review process;
- K. On May 27, 2016, Access Gas requested access to Section 5.6 and Appendix D of the Application with only the names of the gas marketers other than Access Gas redacted;
- L. On May 31, 2016, BCOAPO filed a Confidential Direction and Undertaking Form seeking access to Section 5.6 and Appendix D of the Application with no redactions;
- M. On June 6, 2016, Just Energy requested access to Section 5.6 and Appendix D of the Application with only the names of the gas marketers other than Just Energy redacted; and
- N. The Commission has reviewed the submissions and considers establishing a regulatory timetable for the review of the Application is warranted.

NOW THEREFORE, pursuant to section 71.1 of the *Utilities Commission Act* and for the reasons in Appendix A hereto, the British Columbia Utilities Commission orders as follows:

1. A process for the review of the Customer Choice Program Cost Recovery Application is hereby established in accordance with the Regulatory Timetable attached as Appendix B to this order; and
2. The Commission will hold Section 5.6 confidential on the basis that the information to be held confidential could reasonably be expected to potentially result in harm to the gas marketers' competitive and negotiating positions.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of June 2016.

BY ORDER

Original signed by:

D. A. Cote, Commissioner
Attachments

FortisBC Energy Inc.
Application for the Customer Choice Program Cost Recovery

REASONS FOR DECISION

1.0 INTRODUCTION

On April 14, 2016, FortisBC Energy Inc. (FEI) filed an application regarding the Customer Choice program cost recovery (Application). On May 9, 2016, by Order A-3-16, the BC Utilities Commission (Commission) directed FEI to supplement the Application with the additional information outlined in Appendix A to the order; directed FEI to revise or further explain its request to hold Section 5.6 of the Application confidential prior to the Commission making a determination on the matter; approved FEI's request to hold Appendix D to the Application confidential; and established a preliminary Regulatory Timetable for the review of the Application including a request for comments on options, including a modified streamlined review process (SRP), for the review process.

On May 20, 2016, as directed, FEI filed additional information to supplement its Application and a revised request to hold Section 5.6 of the Application confidential. On May 27, 2016, FEI filed submissions on the review process.

Certain interveners filed submissions regarding their preferences for the review process and its timing by May 27, 2016.

These reasons for decision outline the Panel's determinations to accept FEI's revised request to hold Section 5.6 confidential, at this time, and to establish a regulatory timetable that includes an SRP with written argument following.

2.0 CONFIDENTIALITY REQUEST

FEI requests that two sections of the Application be held confidential, Section 5.6: Evaluation of the Cost Recovery Options Considered, and Appendix D: Cost Recovery Options by Marketer on the basis that they contain sensitive market share information that would disclose the competitive position of each gas marketer.

Upon review of the confidentiality request, the Commission issued order A-3-16 and attached reasons for decision which:

- directed FEI to revise or further explain its request to the Commission to hold Section 5.6 of the Application confidential prior to the Commission making a determination on the matter because the Commission was concerned that if the whole section is confidential some of the key participants in this proceeding will not have access to the analysis of the four options presented in this section and may be unable to fully understand FEI's reasons for recommending its proposed option; and
- approved FEI's request to hold Appendix D in confidence because the Commission found that public release of this section could reasonably be expected to result in harm to the gas marketers' competitive and negotiating positions.

As directed, FEI filed a revised request to hold Section 5.6 confidential on May 20, 2016.

Section 20.01 of the Commission's Rules of Practice and Procedure governs Commission decisions made regarding confidentiality. The rule states:

In determining whether the nature of the information or documents require a confidentiality direction, the Commission will have regard to matters that it considers relevant, including:

- (a) whether the disclosure of the information could reasonably be expected to result in:
 - (i) undue material financial loss or gain to a person, or
 - (ii) significant harm or prejudice to that person's competitive or negotiating position, or
 - (iii) harm to individual or public safety or to the environment;
- (b) whether the information is personal, financial, commercial, scientific, labour relations or technical information that is confidential and consistently treated as confidential by the person;
- (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing;
- (d) whether the person submitting the document has any legal obligation to maintain confidentiality; and
- (e) whether it is practicable to hold the hearing in a manner that is open to the public.

Commission determination

The Commission will hold Section 5.6 confidential because the Panel finds that public release of this section could reasonably be expected to potentially result in harm to the gas marketers' competitive and negotiating positions. However, the Panel notes that on May 27, 2016, May 31, 2016 and June 6, 2016, it received requests from interveners to access the confidential material. Two interveners, Access Gas and Just Energy, request access to Section 5.6 and Appendix D of the Application with only the names of the gas marketers (other than their own) redacted. Another intervener, BCOAPO, has filed a Confidential Declaration and Undertaking Form seeking to access Section 5.6 and Appendix D of the Application with no redactions. Prior to making a determination on these requests for access, the Panel will seek submissions by letter from FEI, interveners and all gas marketers licensed under the Customer Choice program. With consideration to the submissions received on this matter, the Commission may adjust or require FEI to change the redaction for both Section 5.6 and Appendix D of the Application with what it deems necessary for transparency and public interest.

3.0 REVIEW PROCESS

By May 27, 2016, FEI and interveners filed submissions as to their preferences regarding the review process options presented in Appendix C to order A-3-16 and their preferred dates.

FEI prefers its proposed option of a written hearing process that includes one round of information requests and no modified SRP on the basis that: the issues in this proceeding are not complex and do not warrant a more expensive, in-person review process that involves legal counsel; the confidential nature of some of the material limits the practicality of a modified SRP; and a written hearing process is more efficient than a modified SRP and is consistent with historical Customer Choice proceedings.¹

¹ Exhibit B-2.

Access Gas Services Inc. (Access Gas), Direct Energy Marketing Ltd. (Direct Energy), Just Energy (BC) Limited Partnership (Just Energy), the BC Old Age Pensioners' Organization *et al.* (BCOAPO) and Commercial Energy Consumers Association of BC (CEC) prefer Commission staff's proposed process, which includes a modified SRP. In particular, CEC submits that because a modified SRP follows, rather than precedes, the round of information requests, the discussion following information requests is more valuable as interveners are better versed in materials and issues.

BCOAPO agrees with FEI that the confidential material will make a modified SRP procedurally complex because different confidential information is available to different parties, but submits "the cost allocation issues inherent in the application raise policy questions which may be better explored in an SRP setting."²

Commission determination

The Panel establishes the regulatory timetable attached to the order as Appendix B on the basis that all but one of the proceeding participants agrees with Commission staff's proposed process, which includes an SRP followed by written argument, and on the basis that discussions following the information requests will be more valuable as interveners will be better informed on the issues.

The Panel does note FEI and BCOAPO's concerns related to managing confidential material at an SRP and identifies this as a factor for FEI and interveners to consider when providing their submissions on the requests to access confidential material in the process discussed above. As well, the Panel will issue an agenda for the SRP prior to July 21, 2016 that may identify strategies and protocols to manage any issues, including confidentiality, regarding the efficient conduct of the SRP.

² Exhibit C3-2, p. 1.

FortisBC Energy Inc.
Application for the Customer Choice Program Cost Recovery

REGULATORY TIMETABLE

ACTION	DATE (2016)
Commission information request no. 1	Thursday, June 16
Intervener information request no. 1	Thursday, June 23
FEI response to information requests no. 1	Thursday, July 7
Streamlined review process	Thursday, July 21
FEI written final argument	Thursday, August 4
Intervener written final argument	Thursday, August 11
FEI written reply argument	Thursday, August 18