



ORDER NUMBER
A-5-16

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 23, 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 an application regarding the Customer Choice program fee structure (Program Cost Recovery Application or Application) to the Commission by March 31, 2016;
- C. By Order A-1-16, following FEI's request for an extension to the filing date of the Program Cost Recovery Application, the Commission extended the filing deadline for the Application 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 Choice program and seeking approvals for specific items for the new fee structure. In the Application, for the reasons set out in the cover letter to the Application, FEI requests that the Commission hold Section 5.6 of the Application and Appendix D to the Application confidential;
- E. 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;

- F. 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;
- G. On May 27, 2016, FEI, 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 the Commercial Energy Consumers Association of British Columbia made submissions on the review process;
- H. 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;
- I. 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;
- J. 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;
- K. On June 7, 2016, the Commission issued Order A-4-16 which directed that the Commission will hold Section 5.6 confidential on the basis that the information could reasonably be expected to potentially result in harm to the gas marketers' competitive and negotiating positions;
- L. Also on June 7, 2016, the Commission sent a letter to registered interveners in this proceeding and all licensed gas marketers requesting submissions on the requests for confidential materials submitted by Access Gas, BCOAPO and Just Energy, and on whether redaction to Company A, B, C, etc. would be sufficient redaction;
- M. By June 20, 2016, the Commission received responses from FEI, Direct Energy, Access Gas, BCOAPO, Just Energy, and Summitt Energy BCLP;
- N. By letter dated June 22, 2016, FEI informed the Commission it had inadvertently not distributed the sections of Appendix D of the Application that pertain to each gas marketer to that marketer and that it would distribute those sections;
- O. The Regulatory Timetable set by Order A-4-16 directs that Intervener Information Requests are due to the Commission and FEI by June 23, 2016; and
- P. The Commission has considered the submissions and finds amending the Regulatory Timetable as attached as Appendix B to this order, and the confidentiality order as directed below, to be warranted.

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

1. The Commission will hold Section 5.6 and Appendix D of the Application, as filed on April 14, 2016, confidential as it contains commercially sensitive information.
2. FortisBC Energy Inc. (FEI) is to file a revised public version of Section 5.6 and Appendix D of the Application with the redaction in the form of company names being replaced with the terms Company A, B, C, etc. by Friday, June 24, 2016.

3. FEI is to advise each gas marketer individually which letter corresponds to their company (A, B, C, etc.) by Friday, June 24, 2016.
4. Given the availability of the redaction information, the requests from Access Gas Services Inc., Just Energy (BC) Limited Partnership and the BC Old Age Pensioners' Organization *et al.* to access confidential material are no longer relevant.
5. The Regulatory Timetable established by Order A-4-16 is amended as attached as Appendix B to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of June 2016.

BY ORDER

Original Signed By:

D. A. Cote
Commissioner

Attachment

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

REASONS FOR DECISION

1.0 INTRODUCTION

On May 27, 2016, Access Gas Services Inc. (Access Gas) submitted a Request for Confidential Document in a Proceeding Form specifically requesting Appendix D and Section 5.6 of the FortisBC Inc. (FEI) Customer Choice Program Cost Recovery Application (Application). Access Gas submits:

FortisBC is proposing a new fee structure that will directly impact both Access and its current and future customers. Access would like to see the impact of the proposed fee structure on Access versus the impact on other market participants (not by name). Access respectfully requests a version of both Appendix D and Section 5.6 of the Application with only the names of our competitors redacted.¹

On May 31, 2016, the British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, Together Against Poverty Society, and the Tenant Resource and Advisory Centre (BCOAPO) requested "access to the confidential information in the record of this proceeding." No specific reasons were provided for the request.²

On June 6, 2016, Just Energy (BC) LP (Just Energy) requested Section 5.6 and Appendix D of the Application for the following reasons:

Just Energy is directly impacted by the outcome of this proceeding and considers it pertinent that it can analyze and understand FEI's new cost recovery fee structure proposal. Just Energy would like to see the data associated with the cost impact on Just Energy as compared to the impact on other market participants. As a result, Just Energy respectfully requests that Section 5.6 and Appendix D be provided to Just Energy redacting the names of other market participants.³

On June 7, 2016, the Commission issued a letter to all registered interveners in the proceeding and all licensed gas marketers advising them of these requests and seeking submissions on:

1. whether Access Gas should be provided with the requested confidential material with the names of gas marketers redacted, other than Access Gas' name;
2. whether Just Energy should be provided with the requested Confidential Material with the names of gas marketers redacted, other than Just Energy's name;
3. whether BCOAPO should be provided with the requested Confidential Material with no information redacted;
4. whether the Commission should hold only gas marketer names confidential in both Section 5.6 and Appendix D of the Application; and

¹ Exhibit C2-3, p. 1

² Exhibit C3-3, p. 1

³ Exhibit C4-3, p. 1

5. whether the company names can be redacted to Company A, Company B, Company C, etc. rather than blocked out.⁴

1.1 Submissions from parties on confidentiality requests

By June 20, 2016, the Commission received submissions from parties as summarized below.

BCOAPO takes no position on Access Gas' and Just Energy's requests and does not object to its access to the materials being provided with company names redacted. BCOAPO favours redaction by way of the terms Company A, B, C, etc.⁵

Just Energy supports its own and Access Gas' requests but does not support BCOAPO's access to unredacted material.⁶

Direct Energy Marketing Limited (Direct Energy) submits that it is in support of Access Gas' and Just Energy's requests only if the gas marketer names are redacted and all other gas marketers are provided the same information.⁷ Direct Energy submits that it does not support BCOAPO's request for access to unredacted information because it includes sensitive market information.⁸ Direct Energy supports redaction in the form of Company A, B, C, etc.⁹

Access Gas supports its own and Just Energy's requests for access to material with company names redacted and does not support BCOAPO's access to materials with no information redacted.¹⁰ Access Gas supports redaction, including the Company A, B, C method but submits that "Confidential Information should only be made available to interveners participating in this proceeding that sign an Undertaking of Confidentiality." Access Gas does not provide a reason for this position.¹¹

Regarding Access Gas' and Just Energy's requests, FEI submits that it "agrees with [BCOAPO's] position...that '[t]he provision of anonymized information to competitors may result in an advantage or disadvantage to some gas marketers' and that 'the gas marketers are in a better position to comment on this likely advantage/disadvantage...'"¹² FEI submits that BCOAPO's modified request with the names of the gas marketers redacted is reasonable.¹³ Regarding the redaction method of the terms Company A, B, C, etc., FEI submits it:

...believes that, if the Commission determines that replacing all Gas Marketer names with Company A, B, C, etc., is appropriate, this could facilitate the Streamlined Review Process. FEI requests that the Commission identify whether such anonymous information, if so decided, be

⁴ Exhibit A-4, p. 3.

⁵ Exhibit C3-4, p. 1.

⁶ Exhibit C4-4, p. 1.

⁷ Exhibit C1-3, p. 1.

⁸ Exhibit C1-3, p. 1.

⁹ Exhibit C1-3, p. 2.

¹⁰ Exhibit C2-4, pp. 1-2.

¹¹ Exhibit C2-4, p. 2.

¹² Exhibit B-3, p. 1.

¹³ Exhibit B-3, p. 2.

filed publicly on the record of the proceeding or only be available to registered parties upon signing of an Undertaking of Confidentiality.¹⁴

Commission determination

The Panel is persuaded the disclosure of company names could reasonably be expected to result in harm to the gas marketers' competitive and negotiating positions. Notwithstanding, the Panel believes a public version of these sections can be issued with the company names redacted in the form of Company A, B, C, etc. without resulting in such harm. Moreover, the Panel has reviewed all submissions and are of the view that this form of redaction will enable a more efficient Streamlined Review Process proceeding.

The requests from Access Gas, Just Energy and BCOAPO to access confidential material with the names of gas marketers redacted are addressed through this general confidentiality order. Under this order, all interveners will be able to access the public materials with company names redacted.

The Commission will issue a revised version of the confidential Information Request No. 1, making it publicly available, with the redaction in the form of company names being replaced with the terms Company A, B, C, etc.

2.0 FEI'S PROVISION OF APPENDIX D TO GAS MARKETERS

On June 22, 2016, FEI informed the Commission it has come to FEI's attention that the distribution of unredacted sections of Appendix D that pertain to each gas marketer was not completed and that it would be completed. FEI submits "[i]n other words, each Gas Marketer will receive a copy of only the page specific to that Gas Marketer from Confidential Appendix D."¹⁵

The Regulatory Timetable established by Order A-4-16 sets out that intervener information requests are due on Thursday, June 23, 2016.

Commission determination

Given that the established intervener information request deadline falls the day after FEI advised the Commission and interveners of the oversight in providing Appendix D to each gas marketer, **the Panel finds an extension to that deadline is warranted to allow interveners to consider the Appendix D materials they will receive from FEI.** Accordingly, the Panel has amended the deadline for intervener information requests to Monday, June 27, 2016, and allows FEI until Monday, July 11, 2016, to respond. The amended Regulatory Timetable is set out and attached as Appendix B to this order. The Panel notes interveners who have already submitted their information requests are welcome to submit further questions up until the revised deadline.

¹⁴ Exhibit B-3, p. 2.

¹⁵ Exhibit B-4, p. 1.

FortisBC Energy Inc.
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REGULATORY TIMETABLE

ACTION	DATE (2016)
Intervener Information Request No. 1	Monday, June 27
FEI response to Commission Information Request No. 1	Thursday, July 7
FEI response to Intervener Information Request No. 1	Monday, July 11
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