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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-118-11**

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

BEFORE: N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner July 8, 2011
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

ORDER

WHEREAS:

- A. On February 27, 2007, the B.C. Government released the "BC 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 include, among others, encouragement of the switching from one kind of energy source or use to another that decreases GHG emissions, encouragement of the use of biogas, and promotion of energy efficiency;
- C. Following Commission approval of its 2010-2011 Revenue Requirements Negotiated Settlement Agreement, FortisBC Energy Inc. (FEI) (formally Terasen Gas Inc.) began taking over the alternative energy program activities provided by Terasen Energy Services (TES). According to the FortisBC Energy Utilities (FEU), TES' alternative energy services activities have never been actively regulated by the British Columbia Utilities Commission (Commission), and TES has been, in effect, treated as a Non-Regulated Business. The FEU submit that some of these activities should be subject to regulation;
- 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 July 15, 2010, the FEU filed their 2010 Long Term Resource Plan (LTRP) with the Commission. The FEU described their 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 in the proceeding raised the issue of the scope of regulation in respect to the New Initiatives. In its Decision dated February 1, 2011 accepting the LTRP, the Commission Panel stated: "The Commission Panel considers that the issues raised above are beyond the scope of the 2010 LTRP and are therefore not further addressed in this Decision. However, the Panel believes that the changes

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being contemplated and the issues arising from them are significant enough to warrant a formal process to address them at a future date in the not too distant future.”;

- F. By letter dated April 27, 2011, the Energy Services Association of Canada (ESAC) filed an application with the Commission requesting a process to review FEI’s AES activities. ESAC states its major concerns as related to the lack of public consultation, use and distribution of Energy Efficiency and Conservation (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 by FEI;
- G. By letter dated May 6, 2011, Corix Utilities Inc. supported the ESAC application;
- H. 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*;
- I. The Commission held a Procedural Conference on June 15, 2011 to hear submissions from all Parties on the issues and scope contained in the Staff Working Paper attached as Appendix B to Order G-95-11, and the alternative regulatory process and timelines. FEI and Registered Interveners provided written comments on preliminary issues, scope and process of the Inquiry by June 9, 2011 and made further comments orally at the Procedural Conference on June 15, 2011;
- J. The Commission has considered the views of FEI (used interchangeably with FEU in this Order and its attachments) and Interveners as expressed through written comments or orally at the Procedural Conference.

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

1. The Inquiry will address the issues as set out in the Reasons. The Commission expects the Parties to file evidence on the issues in accordance with the issue headings and topics listed in the Scope and Issues section in Appendix A.
2. The Inquiry will address the issues at a principles level. The Terms of Reference are set out in Appendix B to this Order.
3. A Regulatory Timetable is set out in Appendix C to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this *Eighth* day of July 2011.

BY ORDER

Original signed by:

N.E. MacMurchy
Panel Chair

Attachments



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

July 8, 2011

BEFORE:

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

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1.0 INTRODUCTION

1.1 Background to the Inquiry

As cited in the preambles in Order G-95-11, FortisBC Energy Inc. (FEI) has filed a number of applications to the British Columbia Utilities Commission (Commission) for approval: (a) to provide products and services in the alternative energy services sector; and (b) of other new initiatives. These applications led to a series of *ad hoc* Commission Decisions and Orders with respect to Energy Efficiency and Conservation Programs (EEC), the framework for regulating Biomethane Services, and, within the negotiated settlement agreement of Terasen Gas Inc.'s (Terasen) (as FEI was formerly known) 2010 and 2011 Revenue Requirements Application, treatment related to expenditures on innovative technologies. In each of these proceedings Registered Interveners have raised issues with respect to the scope of regulation as it relates to these new initiatives.

In its Decision, dated February 1, 2011, accepting Terasen's Long Term Resource Plan, the Commission Panel stated that an additional process may be required to determine how these new ventures would fit within the context of a regulated utility. The Commission Panel further stated that without such a process 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.

By letter dated April 27, 2011, the Energy Services Association of Canada (ESAC) filed an application with the Commission requesting a process to review FEI's Alternative Energy Solutions (AES) activities. It stated its major concerns are related to the lack of public consultation, use and distribution of EEC funding, delivery of alternative energy services by a regulated utility, potential cross-subsidization of alternative energy service activities by natural gas rate payers and use of sensitive market information by FEI. On May 6, 2011 Corix Utilities Inc. (Corix) filed a letter of support for this Complaint.

The Commission determined that an Inquiry into FEI's transformation from a traditional gas distribution utility into an integrated energy provider is warranted and issued Order G-95-11 on May 24, 2011.

The AES are a part of FEI's responses to the emerging public concerns around global warming and greenhouse gas emissions. These concerns are reflected in the B.C. Government's "Energy Plan: A Vision for Clean Energy Leadership" of February 27, 2007 which was followed by the passage of the *Clean Energy Act (CEA)*. This *Act* received Royal Assent on June 3, 2010. It sets out British Columbia's energy objectives which in part encourage switching energy sources where this leads to decreased greenhouse gas emissions, encourages waste reduction through the use of biogas and the use and development of technologies that support energy conservation and efficiency.

1.2 Key Stakeholders

The key stakeholders in this Inquiry are FEI, its shareholders and ratepayers, ESAC, Corix and other Registered Interveners that may be affected by the way FEI does business in the AES and innovative technologies area. Impacts on the Registered Interveners may vary depending on their business focus. In the case of other utilities, while the Inquiry is dealing with issues flowing from FEI activities, the outcome, in the form of principles, guidelines or criteria may well have a direct impact on their future actions in providing AES or developing and applying innovative technologies.

2.0 SCOPE OF THE INQUIRY

2.1 Level of Analysis

One issue that has been raised is to what level of detail participants in the Inquiry should be expected to go into when dealing with the issues before the Inquiry. ESAC put forward the argument that FEI should be required to describe “in detail” how it is operating in the AES space and how EEC funds are being applied and allocated. (T1: 44) On the other hand the BCOAPO argues that what is required is for parties to file “high-level” analyses of the AES sector, both in British Columbia and perhaps more generally. The BCOAPO also argues that the Inquiry process would be enriched if the record includes high-level studies of the emerging energy market and the role of regulated utilities within. (T1: 67) Corix stated that issues should be dealt with at a principle level. (T1: 57)

The Panel agrees that this Inquiry should address the issues at a principles level. Detailed assessment of specific expenditures or programs is not seen as useful except where it may be illustrative to support principles or policies that are of broader application. The Panel also encourages parties to provide industry studies or reviews of the emerging energy market, both within British Columbia and elsewhere, and the role of regulated utilities in such markets.

2.2 Generic versus FEI Focus

An area of disagreement in the initial filings and arguments at the Procedural Conference was whether the Inquiry should be a generic Inquiry or an Inquiry focused on FortisBC Energy Utilities (FEU) activities. FEU (used interchangeably with FEI in this document) argued that since decisions that are made by the Panel will impact more than just FEU that the Inquiry should be generic in nature (T1:26). FEU believe that other AES providers should be involved in putting witnesses forward and being subjected to cross examination. (T1: 30) However, despite their position on the Inquiry as being a generic one, FEU wish to have the right of reply which they would argue flows from the complaints filed against them (T1: 126-127).

A number of other Interveners took the view that the Inquiry should focus on FEI activities. Corix argued that the Inquiry should be limited to FEI, although Corix recognizes that the principles established for FEI “can and likely will” be applied to others where appropriate. (T1: 57-58) BCOAPO expressed the view that to do the job of properly examining the complaints brought against FEI “generalized high-level analysis must take place.” (T1: 68)

Since 2009 the Commission has reviewed a number of applications filed by FEI in new businesses related to Alternative Energy Solutions and other new initiatives. In a number of these proceeding Interveners have raised concerns about the scope of regulation with respect to AES and new initiatives. While other utilities may encounter the same issues that have been raised in FEI proceedings and in the letters from ESAC and Corix the issues in this proceeding have all arisen from activities undertaken by FEI.

The Panel finds that based on the identification of issues raised in past FEI proceedings and the complaints filed against FEI that it is appropriate that the proceeding should be focused on FEI. The Panel agrees with those parties that suggest that the outcome of the proceedings may have application beyond FEI to other utilities engaged, or who become engaged, in similar activities or programs. In addition to the evidence to be put forward by FEI, the Panel strongly encourages all the parties to put forward evidence to assist the Commission in reaching decisions that indeed may have consequences beyond FEI.

2.3 Impact on Previous Decisions or on Regulatory Processes Before the Commission

In its submissions to the Panel, FEU argued at some length that the principles of regulatory efficiency, the administration of justice and substantive fairness require that the Commission not revisit and potentially change the decisions of the past. (T1: 14-25) The B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA) supported this position, pointing out that if a party felt a past decision was wrong, it should pursue this concern through the legal processes set down for this purpose, not through the Inquiry process. (T1: 82) ESAC argued that while it doesn't really disagree with the principle that there needs to be finality in decisions, it qualified that as being limited to where the issues of concern are dealt with in a comprehensive way in a proceeding before the Commission. It believes that this has not been the case to date. (T1: 46)

ESAC requested the Commission to make an order that would suspend the use and application of EEC funds in the AES space, particularly if the Inquiry proceeding is to be a protracted process. (T1: 116)

The Panel agrees that it is not appropriate for this Inquiry to be used as a vehicle to re-open past Decisions of the Commission. With respect to ongoing processes that may have some degree of overlap with the issues being considered by this proceeding, the Panel believes that such processes will be decided on the basis of the evidence put before them. While it may be beneficial to have the outcome of this proceeding known before similar issues are dealt with in other ongoing proceedings, it would be inefficient and potentially unfair for such proceedings to be delayed. The Panel sees the outcome of this proceeding as being applied in a forward looking manner and not impinging on past or current ongoing proceedings. The Commission does encourage interested parties to look at past Decisions and only where appropriate bring forward portions of decisions that may be of assistance to the Panel in determining the principles that should be applied to resolve the issues before the Inquiry.

2.4 Issues to be Addressed

There was a variety of views expressed on the scope of the proceeding. Commission staff on instructions from the Panel had prepared a working paper on the scope of the issues. This paper was attached to Order G-95-11. FEU called for a much more restricted scope, with a focus on issues related to AES. It stated that it welcomes the opportunity to explore the scope of the Commission's jurisdiction. FEU also raised concerns about the formulation of the issues, specifically that they should be formulated on a neutral basis, eliminating any preconceived notions of the nature of FEU's business as a public utility. FEU would also like to have the issues expanded to include assessment of the benefits to customers from AES activities (Exhibit B-1, pp. 29-32). FEU defines AES services as only related to geo exchange systems, solar thermal and water systems and district energy systems. (T1: 13) It would exclude EEC and DSM expenditures and NGV and biomethane programs.

ESAC stated its major concerns are in the area of public consultation by FEI, use and distribution of EEC funding, the role of a regulated utility in delivery of services and the potential cross-subsidization of AES activities by natural gas rate payers, and the use of sensitive market information within FEI (Exhibit C-1). ESAC's focus is on FEI's activities in the AES market space. It is not directly concerned with NGV or biogas market activities at this time, but it sees there are many common issues particularly in relation to (a) the use of EEC funding, (b) whether there is any public interest or other jurisdiction for FEI to engage in these activities as a regulated utility and (c) whether FEI is engaging in cross-subsidization or other abuses of its monopoly to compete unfairly. Corix expressed its concerns as related to how the Commission regulates FEI's AES business activities with respect to (a) fair competition in the emerging alternate energy service market, and (b) fair regulation of alternate energy public utilities (Exhibit A2-2). Corix does not see NGV or biomethane as necessarily having to form part of the Inquiry (T1: 55). Corix believes the Inquiry should cover both EEC and AES. It submits that the core AES and EEC principles that should be considered include: limits on natural gas ratepayers subsidizing FEI's shareholders,

competitive endeavours or cross-subsidizing other forms of energy users (T1: 58).

BCOPAO characterized its concern as: “What fields of activity and what lines of business are appropriate to the utility in the context of a changing and evolving energy sector?” (T1: 63) BCSEA saw the staff scoping paper as being far too broad. BCSEA advocates a policy creation focus to the Inquiry as opposed to a complaint focus. (T1: 81, 85) BC Hydro and Power Authority (BC Hydro) proposes that the Inquiry should be narrow in scope focusing on FEI’s AES activities. BC Hydro states that a starting point for analysis of AES activities by FEU would be to assess which of three categories they fall into. Category 1 includes activities that are clearly public utilities services within the meaning of the *Utilities Commission Act*. Category 2 covers activities intended to ensure that, in regard to FEU’s public utility service obligations, its load-resource balance is maintained through demand side or supply side investments. Category 3 encompasses AES activities that are not regulated utility services, nor are they in the nature of investments to ensure maintenance of the utility’s load-resource balance, but instead are more in the nature of a revenue-generating business. BC Hydro would see the focus of the Inquiry on those activities of AES that do not fall clearly into one of these categories (Exhibit C7-1). The BC Ministry of Energy and Mines suggests that the focus of the Inquiry should be fairly narrow and should exclude biomethane and NGV as part of the Inquiry (T1: 93).

The Panel in establishing the scope of issues agreed with parties that advocated the major focus of the Inquiry should be on AES and innovative energy initiatives. As this Inquiry is to focus at a principles level and is not a vehicle to impinge on past or current ongoing processes before the BCUC, the Panel does not see merit in narrowly defining the term Alternative Energy Services or new and innovative energy technologies. The intent of the Panel is to take a measured view of AES and innovative energy technologies, both existing and potential, to assess the appropriate role of regulation in the changing energy market place. To the extent parties believe some of these issues have been addressed to some degree in other proceedings both before the BCUC or in other jurisdictions, the Panel encourages parties to bring this information forward in their filed evidence.

After assessing the variety of views by parties to the proceeding, the Panel has concluded that the Issues to be put before the Inquiry are as outlined in the attached Scope and Issues document. The Panel encourages all parties to view AES and other new energy initiatives from a broad perspective including both existing activities and programs and potential activities and programs that deal with market activities beyond what has been the case in traditional gas utilities.

3.0 ALLOCATION OF COSTS

The finding of the Panel that the hearing has arisen from issues raised in previous FEU proceedings and in complaints with respect to FEU activities, leads the Panel to conclude that the costs of the Inquiry should be allocated in the usual manner, i.e., as if FEU were the applicant. The Panel notes that this treatment of FEU also provides them with the rights normally associated with an applicant, including the right of reply. If at the time of final argument FEU is of the view this allocation of costs is not appropriate, the Panel will consider arguments on how this allocation might be amended.

4.0 REGULATORY PROCESS AND TIMELINES

The regulatory timelines are set out in Appendix C. The decision as to whether to proceed with an oral or written proceeding will be made at the second procedural conference scheduled for December 14, 2011.

Scope and Issues

ISSUE 1 Evaluating AES and Other New Initiatives

Scope

Given British Columbia's energy objectives as set out in the *Clean Energy Act*, the responsibilities of the Commission under that Act and the *Utilities Commission Act* and the emergence of new and innovative technologies in the areas of alternative energy services and other new initiatives, the scope of this new issue includes:

- a) When evaluating AES and other new initiatives, what principles or guidelines should be followed by the BCUC to protect the public interest including:
 - o the interests of utility ratepayers;
 - o the impact on the broader public including potential competitors;
 - o the furthering of British Columbia's energy objectives; and
 - o the rights of the utility shareholder?
- b) What process should the BCUC utilize and how comprehensive should its analysis be before it allows the utility to undertake AES or other innovative technologies as part of its regulated business?
- c) To what extent and under what conditions could EEC or other funding be made available to support AES and other new initiatives?

ISSUE 2 Regulated versus Non-regulated Activities

Scope

- a) What are the principles that should be applied to determine whether an AES or other new initiatives activity can or should be pursued as a regulated business?
- b) Where an AES activity or other new initiative has been undertaken by a regulated utility to allow it to be proven or established and after that it is determined that it should be spun out as an unregulated activity, what costs/benefits should accrue to the ratepayer and/or the utility shareholder? What principles or guidelines should the Commission follow in assessing an application to spin out a regulated activity to a non-regulated entity?
- c) What are the practices in other jurisdictions with respect to AES and other new initiatives (including the application of EEC) that are allowed to be undertaken as part of the regulated business and what is the degree of oversight by the regulator in approving and monitoring these activities?
- d) Under what conditions should a regulated utility be allowed to share market sensitive information it has obtained through its regulated business activities with non-regulated businesses (a) that are related businesses or (b) unrelated businesses?

ISSUE 3 Evaluation of Approved Regulated AES and Other New Initiatives

Scope

- a) When ratepayers are paying for AES and other new initiatives what standards should the BCUC apply to determine whether the activity is being carried out in the most cost-effective manner?
- b) What principles or guidelines should be applied to ensure that where feasible competitive forces can be utilized to maximize the efficiency and effectiveness of AES activities and other new initiatives?
- c) What guidelines should utilities follow in making EEC incentive funds available for addressing issues such as (i) who can access the funds, and (ii) transparency of funding programs?
- d) What criteria should be used to assess whether an AES or new initiative activity has been successful in meeting the initial objectives set out for the activity? If the activity has not been fully meeting the goals set out in the initial application, what criteria should be used to determine when the program should be terminated? What portion of the risk of program failure should rest with the ratepayer?

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TERMS OF REFERENCE

1. The Inquiry will not be a means to re-open past decisions of the Commission or to impinge on any regulatory processes currently underway before the Commission. It is a forward looking assessment with the aim to establish principles that can be applied to future regulatory processes in the area of AES and other new initiatives. The Commission invites parties to assess all types of AES and new initiative activities, including the application of EEC or other funding. This should include addressing potential new business activities where these new initiatives could be seen to be regulated activities.
2. The Commission recognizes that previous decisions of the Commission may have dealt with some aspects of the issues being examined in this Inquiry. Parties are invited to bring forward relevant aspects of past decisions in their evidence that illustrate relevant principles or policies. The purpose in doing so should be to assist the Commission in determining what general principles or guidelines could be applied in future proceedings to ensure fairness, equity and protection of the public interest. The Commission would not find it appropriate for parties to argue the specific merits of past decisions, as the Inquiry is not a vehicle to re-open decisions.
3. The Inquiry will focus on the activities of FEI. However it is the expectation of the Commission that principles established in this Inquiry may be of wider application beyond FEI to other utilities in dealing with the same subject matter in future proceedings.

In addition to the evidence that will be put forward by FEI, the Commission strongly encourages ESAC, Corix and other interested parties to file evidence with respect to the issues set out in Appendix A.

An Inquiry into FortisBC Energy Inc.'s
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REGULATORY TIMETABLE

ACTION	DATE (2011)
FEI to file Evidence	Monday, August 29
Commission and Interveners Information Request (IR) No. 1 to FEI	Friday, September 16
FEI Responses to IR No. 1	Thursday, October 6
ESAC/Corix/Other Interveners to file Evidence, if any	Wednesday, October 19
Participation Assistance/Cost Award Budget submissions	Monday, October 24
Commission and all Parties IR No. 1 to ESAC/Corix/Other Interveners	Monday, November 7
ESAC/Corix/Other Interveners Response to IR No. 1	Tuesday, November 22
FEI to file Rebuttal Evidence, if any	Wednesday, December 7
Submissions on the Format of the Proceeding	Monday, December 12
Second Procedural Conference	Wednesday, December 14