



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-173-14**

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

and

FortisBC Energy Inc. and FortisBC Inc.
Multi-Year Performance Based Ratemaking Plans for 2014 through 2019
approved by the British Columbia Utilities Commission Decisions and Orders G-138-14 and G-139-14
Application for Reconsideration and Variance

BEFORE: D. M. Morton, Commissioner/Panel Chair
D. A. Cote, Commissioner November 12, 2014
N. E. MacMurchy, Commissioner

O R D E R

WHEREAS:

- A. On June 10, 2013 and July 5, 2013, FortisBC Energy Inc. (FEI) and FortisBC Inc. (FBC), respectively, applied to the British Columbia Utilities Commission (Commission) for approval of a proposed multi-year Performance Based Ratemaking (PBR) plan for the years 2014 through 2018;
- B. On September 15, 2014, the Commission issued Order G-138-14 for FEI and Order G-139-14 for FBC, with accompanying Decisions, setting out the approved PBR plans for FEI and FBC (collectively FortisBC) for the period from 2014 through 2019 (PBR Decisions);
- C. By letter dated October 3, 2014, FortisBC filed a Request for Clarification and Request for Reconsideration and Variance of certain aspects of the PBR Decisions;
- D. By letter dated October 9, 2014, the Commission established Phase One of the reconsideration process wherein it requested comments from interveners on whether the Commission should proceed to Phase Two of the reconsideration process. FortisBC was also given the opportunity to respond to intervener comments;
- E. On October 17, 2014, Commercial Energy Consumers Association of British Columbia (CEC) filed a letter with the Commission requesting an extension for filing intervener comments, stating that additional time was required due to the significant, detailed evidence contained in the PBR proceeding;
- F. By letter dated October 20, 2014, the Commission granted CEC's request for a filing extension;

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- G. Between October 20 and October 24, 2014, the following Interveners filed comments on the reconsideration application:
- British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA);
 - British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);
 - Industrial Customers Group (ICG);
 - Irrigation Ratepayers Group (IRG);
 - CEC;
- H. On October 31, 2014, FortisBC submitted a response to Intervener comments; and
- I. The Commission reviewed the submissions and considers it warranted to proceed to Phase Two of the reconsideration process.

NOW THEREFORE as set out in the reasons for decision attached as appendix A to this order, the British Columbia Utilities Commission orders as follows:

1. Phase Two of the reconsideration process is established for FortisBC's application for reconsideration and variance of certain aspects of Orders G-138-14 and G-139-14 and accompanying Decisions.
2. Phase Two submissions shall be heard by way of a written hearing process. The Regulatory Timetable for the review of Phase Two of the reconsideration is set out in Appendix B of this order.
3. Phase Two of the reconsideration will focus on the issues contained in FortisBC's October 3, 2014 application for reconsideration and variance.
4. The reconsideration record will be comprised of the evidence and submissions from the proceedings that resulted in Orders G-138-14 and G-139-14 and accompanying Decisions, and submissions made in Phase One of the reconsideration process. No new evidence will be admitted and new parties will not be given the opportunity to participate in Phase Two.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of November of 2014.

BY ORDER

Original signed by:

D. M. Morton

Commissioner/Panel Chair

Attachments

FortisBC Energy Inc. and FortisBC Inc.
Multi-Year Performance Based Ratemaking Plans for 2014 through 2019
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Application for Reconsideration and Variance

REASONS FOR DECISION

1.0 Background

On June 10, 2013 and July 5, 2013, FortisBC Energy Inc. (FEI) and FortisBC Inc. (FBC), respectively, applied to the British Columbia Utilities Commission (Commission) for approval of a proposed multi-year Performance Based Ratemaking (PBR) plan for the years 2014 through 2018.

On September 15, 2014, the Commission issued Order G-138-14 for FEI and Order G-139-14 for FBC, with accompanying Decisions, setting out the approved PBR plans for FEI and FBC (collectively FortisBC) for the period from 2014 through 2019 (PBR Decisions).

By letter dated October 3, 2014, FortisBC filed a Request for Clarification and Request for Reconsideration and Variance of certain aspects of the PBR Decisions.

By letter dated October 9, 2014, the Commission established Phase One of the Reconsideration process.

The following Interveners filed comments on the reconsideration:

- Commercial Energy Consumers Association of British Columbia (CEC);
- British Columbia Sustainable Energy Association and Sierra Club of British Columbia (BCSEA);
- British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);
- Industrial Customers Group (ICG);
- Irrigation Ratepayers Group (IRG).

On October 31, 2014, FortisBC filed a response to the Interveners' comments.

2.0 Reconsideration process

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission.¹

The Commission established Phase One of the reconsideration process on October 9, 2014, and requested comments from the interveners registered in the original PBR proceedings and from FortisBC. Submissions were requested on the following questions:

¹ A Participants' Guide to the B.C. Utilities Commission, July 2002, p. 36.

1. Should there be a reconsideration by the Commission?
2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
3. If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

Between October 20 and October 24, 2014, five interveners provided comments. FortisBC replied on October 31, 2014.

3.0 Should the Commission reconsider Decisions and Orders G-138-14 and G-139-14?

The Commission's reconsideration guidelines include the following criteria to determine whether or not a reasonable basis exists for proceeding to Phase Two of reconsideration:

- the Commission has made an error in fact or law that:
 - is substantiated on a *prima facie* basis; and
 - has significant material implications;
- there has been a fundamental change in circumstances or facts since the Decisions;
- a basic principle had not been raised in the original proceedings;
- a new principle has arisen as a result of the Decisions; or
- the Commission considers there to be other just cause to reconsider the Decisions.²

4.0 FortisBC's Reconsideration and Variance Application

In its October 3, 2014 Application, FortisBC seeks reconsideration and variance of certain aspects of the Commission's determinations in Orders G-138-14 and Order G-139-14 and the accompanying Decisions. Specifically, FortisBC seeks reconsideration and variance of the following three determinations in the PBR Decisions:

- (i) The use of prior year actuals for the Growth Term in the formula for FEI and FBC;
- (ii) The adoption of the Uniform System of Accounts (USoA) for FEI; and
- (iii) The recovery of the 2012 Biomethane Application costs for FEI.

The Commission Panel will discuss each of the above items and will make determinations on the three reconsideration questions in the following sections.

4.1 Use of prior year actual growth term

FortisBC alleges the Commission made an error of fact by not accurately summarizing FortisBC's evidence when the Commission stated on page 122 of the FEI Decision and on page 118 of the FBC Decision:

² paraphrased from A Participants' Guide to the B.C. Utilities Commission, July 2002, p. 37.

...In Fortis' proposed PBR mechanism, if there is an over estimate, there is never an opportunity for true-up. This is a [sic] similar to the potential for bias that we observed in the case of a forecast inflation term.

FortisBC alleges that the above statement is not an accurate summary of its evidence for two reasons:

- (i) As stated in the PBR Application, a BCUC IR Response, and in the Oral Hearing, formula amounts are subject to true-up going forward for actual customer growth. Therefore, there is no compounding of any variances between forecast and actual customer counts and the impact of any variance is limited to the upcoming forecast year.
- (ii) FortisBC demonstrates in Appendix E5 of the PBR Application for FEI that variances in customer additions do not have a significant impact on earnings because under the PBR plan an overestimate of customer additions would lead to higher O&M and capital amounts under the formula as well as higher forecast revenues. Therefore, the impact of over-estimating customer additions would be offsetting to the annual revenue requirements and thus would not create a bias for FortisBC to overestimate customer additions.

Intervener submissions

1. Should there be a reconsideration by the Commission?

CEC submits that a reconsideration has not been justified by FortisBC on a *prima facie* basis. Regarding FortisBC's alleged error of fact, CEC submits: "The evidence cited by the Companies is not compelling, and FortisBC has provided no discussion of the issue as to why the Commission's finding represents an 'error of fact' rather than a different view of the body of evidence under consideration."³

BCSEA, BCOAPO, ICG and IRG submit that FortisBC has established a *prima facie* case for error of fact and support a Phase Two reconsideration.

2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

CEC submits that there is already an extensive record and that no new evidence is required if there is a reconsideration.

BCSEA takes no position on whether there is a need for new evidence.

BCOAPO submits that it does not anticipate submitting any new evidence if there is a reconsideration but that it does not object to other parties submitting new evidence.

ICG provides no comments.

IRG anticipates that new evidence should not be required.

³ Exhibit C1-2, p. 5.

3. If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

CEC submits that the growth factor is “fundamental to the PBR formula, and that the evidence is that elements of the formula should not be evaluated in isolation...” CEC further submits that a reconsideration of the growth factor could “shift the balance as determined by the Commission and accordingly, would require a review of the PBR formula altogether.”⁴

BCSEA, BCOAPO and IRG submit that if there is to be a reconsideration, it should focus on the three items identified by FortisBC.

ICG provides no comments.

FortisBC reply

FortisBC submits that it has established a *prima facie* case for reconsideration of the Growth Term and that CEC has not confined its comments to whether FortisBC has made a *prima facie* case, but is instead arguing the substance of the issues.⁵

4.2 Uniform System of Accounts

FortisBC alleges that the Commission erred in determining that FEI’s adoption of the USoA would result in the following benefits: (i) consistent and comparable information over time; (ii) enable comparison of forecast to actual results at the account level that would be more transparent, reduce the number of IRs and increase efficiency in future RRAs; and (iii) assist with the bench marking study by increasing the comparability of FortisBC Energy Utilities’ (FEU’s) reporting with other jurisdictions that use the USoA.

FortisBC requests in its reconsideration application that in the event the Commission does not approve Phase Two of reconsideration for this item, the Commission Panel direct Commission staff to “work collaboratively with FEI in making modifications to the 1961 USoA to bring it into compliance with more recent developments in the industry.” FortisBC submits that this point was raised in response to BCUC IR 2.308.9⁶ in the FEI PBR proceeding and that the Commission Panel did not address this point in the PBR Decision.

Intervener submissions

1. Should there be a reconsideration by the Commission?

CEC submits that there is no error in fact or law with the regards to the Commission requiring FEI to convert to the USoA and that the Commission’s determination was a “re-affirmation” of earlier Commission decisions regarding the USoA. CEC further notes that the Commission has the jurisdiction to require the reporting of information in the manner it so chooses as prescribed by the *Utilities Commission Act*. CEC considers it a reasonable approach for FortisBC to work with Commission staff to address issues with the current USoA, as

⁴ Exhibit C1-2, p. 14.

⁵ Exhibit B-2, pp. 2, 7.

⁶ Exhibit B-24.

proposed by FortisBC in the reconsideration application; however, the PBR Decision does not prevent such collaboration from occurring.⁷

BCSEA and BCOAPO submit that FortisBC has established a *prima facie* case of mistake of fact and that this issue has material financial implications.

ICG and IRG do not comment on this issue.

FortisBC reply

FortisBC submits that there is a mistake of fact by the Commission because the PBR Decision is based on the assertion of benefits flowing from the adoption of the USoA; whereas, it is FortisBC's assertion that the evidence shows that these benefits will not occur.

Additionally, FortisBC does not agree with CEC that the PBR Decision provides the "latitude to develop a suitable plan to bring the USoA to a level that is appropriate for its intended purpose." For this reason, FortisBC submits that a reasonable alternative to a reconsideration would be for the Commission to issue a direction that Commission staff work collaboratively with FortisBC to update the USoA.

2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

CEC submits that there is already an extensive record and that no new evidence is required if there is a reconsideration.

BCSEA takes no position on whether there is a need for new evidence.

BCOAPO submits that it does not anticipate submitting any new evidence if there is a reconsideration but that it does not object to other parties submitting new evidence.

3. If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

CEC submits that any reconsideration on this issue should focus on the items from the application and include prior Commission decisions.⁸

BCSEA and BCOAPO submit that if there is to be a reconsideration, it should focus on the three items identified by FortisBC.

4.3 Biomethane application costs

FortisBC alleges that the Commission made an error of fact by incorrectly characterizing the 2012 Biomethane Application Costs as being Biomethane Program costs. FortisBC cites an excerpt from page 46 of the 2012 Biomethane Decision attached to Order G-210-13 where the Panel defines Biomethane Program Overhead Costs

⁷ Exhibit C1-2, pp. 15-16, 20-21.

⁸ Exhibit C1-2, p. 24.

as follows: “For clarity, in the Decision, the Panel will refer to “Biomethane Program Overhead Costs” as including education, marketing, direct administration costs of enrollment and the cost of IT upgrades.”

FortisBC submits that the Commission’s determination in the FEI PBR Decision to include the 2012 Biomethane Application Costs in the Biomethane Variance Account (BVA) contradicts the Commission’s prior Order G-210-13 which did not contemplate including the 2012 Biomethane Application Costs as part of the Biomethane Program Costs in the BVA.

FortisBC further submits that the Commission’s determination to include the 2012 Biomethane Application Costs in the BVA would result in a material increase to the Biomethane Energy Recovery Charge (BERC) rate that could significantly affect customer uptake of the Biomethane Program.⁹

Intervener submissions

1. Should there be a reconsideration by the Commission?

CEC submits that FortisBC did not establish a *prima facie* case that the Commission made an error in fact or law because the Commission is not bound by precedent; however, CEC submits that FortisBC did establish the materiality of the issue. CEC asserts that a new principle may have arisen as a result of the FEI PBR Decision. CEC submits that consistency of treatment between decisions is desirable and appropriate where there is no obvious case for differentiation and that the Commission’s decision regarding the 2012 Biomethane Application Costs may single out customers for differential treatment versus other customers without due consideration for the change. Therefore, the CEC supports reconsideration of this issue.

BCSEA and BCOAPO submit that FortisBC has established a *prima facie* case of mistake of fact and that this issue has material financial implications.

FortisBC reply

FortisBC submits that the mischaracterization of the 2012 Biomethane Application costs as costs that should be included in the BVA in accordance with the 2013 Biomethane Decision is a mistake of fact that warrants reconsideration.

FortisBC further submits: “Whether on the basis of mistake of fact, a new principle, or just cause... a *prima facie* case has been made for reconsideration given that the 2013 Biomethane Decision did not include application costs amongst the category of costs to be included in the BVA and the fact that similar generic application costs are recovered from all customers.”¹⁰

2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

CEC submits that there is already an extensive record and that no new evidence is required if there is a reconsideration.

⁹ Exhibit B-1, p. 18.

¹⁰ Exhibit B-2, p. 9.

BCSEA takes no position on whether there is a need for new evidence.

BCOAPO submits that it does not anticipate submitting any new evidence if there is a reconsideration but that it does not object to other parties submitting new evidence.

3. If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

CEC submits that the reconsideration should include items from the application and prior Commission decisions regarding the Biomethane Variance Account.¹¹

BCSEA and BCOAPO submit that if there is to be a reconsideration, it should focus on the three items identified by FortisBC.

Commission determination

Should the reconsideration proceed to Phase Two?

The Commission finds that FortisBC in its application for reconsideration of the Growth Term and the Uniform System of Accounts has presented a reasonable *prima facie* case to proceed to Phase Two of the reconsideration process. In the case of the request for reconsideration of the 2012 Biomethane Application Costs, the Panel is of the view that a new principle may have arisen as a result of the Decision and this matter should proceed to Phase Two of the reconsideration process.

Should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

Given that there are no substantial submissions supporting the need for hearing new evidence or for new parties being given the opportunity to present evidence, **the Commission finds that no new evidence will be heard and that no new parties will be given the opportunity to participate in Phase Two of the reconsideration.**

Should the reconsideration focus on the items from the application for reconsideration, a subset of these items, or additional items?

With the exception of CEC, all other parties commented that if there is to be a reconsideration, it should focus on the items from FortisBC's application for reconsideration. CEC asserts that a reconsideration of the growth factor could "shift the balance" of the approved PBR plans; therefore, if there is to be a reconsideration, the entire PBR formula needs to be reviewed.

The issue of achieving an appropriate balance in the PBR plans was discussed at length by many parties and in particular by FortisBC throughout the PBR proceeding and in the evidence. While the Panel agrees that it is important to holistically view the PBR mechanism, the Panel does not agree with CEC that a reconsideration of the growth factor could "shift the balance" of the entire PBR formula and thus would require a review of the

¹¹ Exhibit C1-2, p. 26.

entire PBR formula. The Panel's determinations on the remainder of the PBR plans were made independently and did not rely on the determination made on the growth factor. **Accordingly, the Commission Panel finds that the reconsideration will focus on the issues contained in FortisBC's October 3, 2014 application for reconsideration and variance.**

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REGULATORY TIMETABLE

ACTION	DATE (2014)
FortisBC Energy Inc. and FortisBC Inc. Phase Two Submission(s)	Tuesday, November 25
Intervener Submissions	Tuesday, December 16
FortisBC Energy Inc. and FortisBC Inc. Reply	Tuesday, December 23