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January 12, 2023

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Sara Hardgrave, Acting Commission Secretary

Dear Ms. Hardgrave:

Re: FortisBC Inc. (FBC)

FBC Annual Review for 2023 Rates – British Columbia Utilities Commission (BCUC) Decision and Order G-382-22

FBC Request for Reconsideration and Variance (Reconsideration Application)

On December 22, 2022, the BCUC issued its Decision and Order G-382-22 with regard to FBC's Annual Review for 2023 Rates (2023 Annual Review). In accordance with Section 26.02 of the BCUC's Rules of Practice and Procedure (Rules), issued with Order G-178-22, Part V – Reconsideration, the BCUC may on application reconsider a decision and may confirm, vary or rescind a decision. As the applicant in the 2023 Annual Review giving rise to Decision and Order G-382-22, FBC may apply for reconsideration within 60 days of the issuance of the underlying order without prior approval of the BCUC.[1]

Therefore, pursuant to section 99 of the *Utilities Commission Act* (UCA), FBC is seeking a reconsideration and variance of the BCUC's determinations in the Decision regarding:

- The removal of $27.959 million relating to the Corra Linn Spillway Gate Replacement Project (Corra Linn Project) from FBC's 2023 rate base, as reflected in Directive 1 of Order G-382-22; and
- The establishment of permanent 2023 rates and a rate base deferral account to capture the difference between FBC's 2023 permanent rates, and any future rate impact resulting from the BCUC's final determinations on Stage 1 of the BCUC's Generic Cost of Capital (GCOC) proceeding, as reflected in Directives 1 and 2 of Order G-382-22.

For the reasons set out below, FBC submits that the BCUC erred in determining that $27.959 million of the Corra Linn Project should be removed from FBC's 2023 rate base and that rates

[1] BCUC Rules of Practice and Procedure, ss. 27.01 and 27.02.

should be set on a permanent basis. The remedy that FBC is seeking is for Directive 2 of Order G-382-22 to be rescinded and Directive 1 of Order G-383-22 to be varied such that FBC is approved to increase its rates for 2023 by 3.98 percent on an interim basis, effective January 1, 2023, and that rates will remain interim pending the outcome of Stage 1 of the BCUC's GCOC proceeding.

FBC submits that this Reconsideration Application establishes reasonable grounds for reconsideration of BCUC Decision and Order G-382-22 consistent with the Rules, and that the BCUC should establish a reconsideration hearing in the manner the BCUC deems appropriate.

As a preliminary matter, and in recognition that this Reconsideration Application does not automatically stay or suspend the operation of Decision and Order G-382-22,[2] FBC requests that the following Directions in Order G-382-22 be suspended pending the resolution of this Reconsideration Application:

- Directive 1 which sets FBC's 2023 rates on a permanent basis effective January 1, 2023;
- Directive 2 which directs FBC to establish a rate base deferral account to capture the difference between FBC's 2023 permanent rates, and any future rate impact resulting from the BCUC's final determinations on Stage 1 of the BCUC's GCOC proceeding; and
- Directive 7 which requires FBC to file a compliance filing within 30 days of the issuance of Order G-382-22.

With respect to Directive 7, given that the compliance filing is due to be filed on January 23, 2023, if practical, FBC respectfully requests confirmation from the BCUC before January 23, 2023 that it is not required to file the compliance filing pending review of this Reconsideration Application.

FBC outlines below the basis for its request for reconsideration and variance of the two determinations in Decision and Order G-382-22.

1. Removal of Corra Linn Spillway Gate Replacement Project Capital from 2023 Rate Base

FBC is seeking reconsideration of the BCUC's determination on pages 18 and 19 of the Decision and Directive 1 of Order G-382-22 directing the removal of $27.959 million relating to the Corra Linn Project from its 2023 rate base, as follows:[3]

> **Therefore, the Panel directs FBC to remove $27.959 million relating to the Corra Linn Spillway Gate Replacement Project from its 2023 rate base and to place this amount into rate base in the year following completion of the project. The Panel also directs FBC to adjust depreciation, financing and return on equity for 2023 to reflect the removal of the $27.959 million from the 2023 rate base**. [emphasis in original]

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2 BCUC Rules of Practice and Procedure, s. 28.
3 Decision and Order G-382-22, pp. 18-19.

In accordance with Section 27.05 of the Rules, FBC seeks reconsideration of this determination on the basis that the BCUC has made an error of fact or, in the alternative, that there is otherwise just cause. This determination would have the material impact of not allowing FBC to include capital additions and cost of removal in its rate base for 2023 and not allowing the recovery of the associated depreciation, financing and return on equity related to these costs, totaling to approximately $1.73 million of revenue in 2023.

On page 18 of the Decision, the BCUC references the submission of the BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, and the Tenant Resource and Advisory Centre (BCOAPO) that "some or all of the Corra Linn Project capital costs should be included in the year after the project is completed, with the associated costs removed from the 2023 rate base, considering that the substantial completion date has been revised to Q1 2023." The BCUC, as part of its determination on this matter, notes that FBC did not reply to BCOAPO's submission, and performs its own calculation of the amount that the BCUC considers should be removed from 2023 rate base due to the delay in the Corra Linn Project's completion.

FBC acknowledges that it inadvertently missed responding to BCOAPO's submission on the Corra Linn Project capital; however, as was stated in FBC's reply submission, silence in the reply submission on a particular statement in an intervener submission does not indicate FBC's agreement.

The BCUC has erred in two respects related to its determination on the Corra Linn Project capital. First, regardless of the substantial completion of the Corra Linn Project being delayed to Q1 2023, it is entirely appropriate for FBC to forecast an amount of capital to enter rate base in 2023 as the final spillway gates were expected to be completed and in-service by the end of 2022. Second, even if FBC were to revise its forecast additions to rate base to reflect the slight delay to the substantial completion of the Corra Linn Project, the BCUC erred in undertaking its own calculation of the remaining capital additions associated with the Corra Linn Project without a sufficient evidentiary basis, resulting in an adjustment that is incorrect. FBC further explains these errors below.

As stated in the response to BCOAPO IR1 28.1 in the 2023 Annual Review, CPCNs and Major Projects are included in rate base for the full year in the year following completion of either the entire project with all assets placed into service **or** individual assets of the project completed in phases being placed into service.

In the 2023 Annual Review application, FBC included $16.151 million of 2023 rate base additions for the Corra Linn Project which were related to the final capital expenditures and AFUDC (not including cost of removal).[4] Of the total $16.151 million rate base additions, $13.611 million was related to the completion of the final spillway gates, while the remaining $2.540 million was related to close-out costs such as lighting, outstanding claims, and clean-up. The replacement of the final spillway gates is complete, and the gates were placed in-service in Q3 2022; therefore, only the close-out activities (and associated costs) were delayed, resulting in the substantial completion date for the Corra Linn Project being delayed

[4] FBC 2023 Annual Review Application, Exhibit B-2, p. 51.

to Q1 2023, as discussed in the response to BCOAPO IR1 33.1 and as referenced in the Decision.

Accordingly, the only forecast rate base additions which could potentially be excluded from entering rate base in 2023 are the $2.540 million of capital costs related to the Corra Linn Project's close-out activities. The BCUC has, therefore, erred in its determination of the impact that the delay in the Project's substantial completion has on the forecast 2023 rate base additions. For clarity, please refer to Table 1 below which shows the amounts that FBC has added to rate base from 2020 to 2022 as components of the Project, such as the individual spillway gates, have been placed in-service. Table 1 also shows the $13.611 million of capital costs which are appropriately forecast as 2023 rate base additions related to the completion of the final spillway gates (i.e., gates 1, 2, and 3) in Q3 2022.

For the purposes of clarifying the different types of costs included in the $16.151 million forecast provided in the 2023 Annual Review application, FBC has separated out the $2.540 million related to the close-out costs in Table 1 below and included these costs as additions to rate base in 2024 to reflect the delay in the substantial completion date of the Project; however, as explained further below, FBC does not believe it is necessary to adjust its 2023 forecast rate base additions to exclude the close-out costs.

The total forecast capital cost of the Corra Linn Project continues to be $79.727 million as referenced in Section 7.3 of the 2023 Annual Review application. The $79.727 million includes a forecast of the total cost of removal of $11.808 million for the entire Corra Linn Project since 2018.

Table 1: Annual Capital Additions and Cost of Removal included in Rate Base ($ millions)

Year	2018 Actual	2019 Actual	2020 Actual	2021 Actual	2022 Actual	2023 Forecast	2024 Forecast	TOTAL
Actual/Forecast Capital Additions (incl. AFUDC) Included to Rate Base	-	-	11.840	21.248	18.680	13.611	2.540	67.919
Actual/Forecast Removal Costs Included to Rate Base	0.915	2.358	4.216	4.260	0.059	-	-	11.808
Total Project Costs	**0.915**	**2.358**	**16.056**	**25.508**	**18.739**	**13.611**	**2.540**	**79.727**
Description of Assets that were Completed and Included to Rate Base			New and refurbished gantry; Remediation of concrete; Replaced sill beams and lateral embeds	Completed Gates # 6-11 in 2020	Completed Gates # 4, 5, 12, 13, 14 in 2021	Completed Gates 1, 2, 3 in 2022	Close-out costs complete in 2023	

In addition to the error explained above, the BCUC's decision to direct the removal of $27.959 million of forecast capital additions has erroneously included the full cost of removal in the calculation. As discussed above and explained on page 66 of the 2023 Annual Review application, the $11.808 million relates to the cost of removal for the <u>entire</u> Corra Linn Project since 2018 and to the end of 2022, of which $11.749 million was already added to FBC's rate base from 2018 to 2021, with a further $0.059 million projected to the end of 2022 (at the time of the filing of the 2023 Annual Review application). FBC notes there is no cost of removal in 2023 associated with the project close-out. Given that $11.749 million of removal costs are already in FBC's rate base (the costs were added from 2018 to 2021) and the remaining forecast of $0.059 million of removal costs are associated with the remaining spillway gates which, as explained above, were completed in 2022, it is not appropriate to exclude any of the removal costs from FBC's rate base in 2023.

In summary, the impact of the delay in the substantial completion of the Corra Linn Project to Q1 2023 is minor and is only associated with the close-out costs. If FBC were to remove a forecast amount for the close-out costs from its 2023 rate base, the amount would be $2.540 million only, not the $27.959 million directed by the BCUC in the Decision. The impact on 2023 rates would be a small reduction of 0.04 percent (from 3.98 percent to 3.94 percent).

To implement the change in rates due to a reduction to 2023 rate base of $2.540 million, FBC would need to adjust rates and refund customers the difference in rates. For example, if the change were to be implemented effective February 1, 2023, FBC estimates that the average residential customer would receive a refund of approximately 4 cents.

Given that the reduction to rate base of $2.540 million would have a very minor revenue requirement impact (i.e., depreciation, financing and return on equity), FBC submits that a revision to its forecast additions to 2023 rate base and consequent change to the interim rates currently in place is not warranted. As capital costs related to CPCNs and Major Projects receive flow-through treatment, any difference between the forecast and actual additions to rate base will be trued up in the following year through the flow-through mechanism.

2. Permanent 2023 Rates

FBC is also seeking reconsideration of the BCUC's determinations on pages 26 to 28 of the Decision and Directives 1 and 2 of Order G-382-22 setting rates for 2023 on a permanent basis and establishing a rate base deferral account to capture the difference between FBC's 2023 permanent rates, and any future rate impact resulting from the BCUC's final determinations on the GCOC proceeding. The BCUC's determination was as follows:

> For the reasons outlined below, the Panel finds 2023 rates should be set on a permanent basis, effective January 1, 2023.
>
> […]
>
> The Panel considered several issues raised by interveners and FBC when determining whether rates should be interim or permanent pending the outcome of the GCOC proceeding, including: the importance of cost predictability for customers, the challenge that interim rates pose for municipal utilities, and the fact that the GCOC proceeding is still underway. The Panel finds that a deferral account approach balances these considerations and is consistent with past practice in the BCUC's decision on FBC's 2016 Annual Review. The Panel recognizes that a deferral account adds additional costs in the form of carrying charges for ratepayers and could result in additional rate implications to 2024 if there is a change to FBC's ROE and capital structure in 2023. However, the

> change would be identifiable and can be incorporated into any general rate increase for 2024 rates, if appropriate, thus providing rate certainty for all customers in 2023.
>
> For the above reasons, **the Panel directs FBC to establish a rate base deferral account to capture the difference between FBC's 2023 permanent rates and any future rate impact resulting from the BCUC's final determinations on Stage 1 of the BCUC's GCOC proceeding, with the amortization period to be determined in a future proceeding.** The Panel finds that a rate base deferral account, which is implicitly financed at FBC's WACC, is reasonable because this results in the amounts expended on behalf of customers being financed for rate-making purposes at the same rate as they are financed by the utility. [emphasis in original]

The impact of these determinations is material as they are unfair to both FBC and its customers by requiring the utility to defer implementation of the BCUC's final determinations in the GCOC proceeding to 2024 through a deferral account. As the BCUC acknowledges, "a deferral account adds additional costs in the form of carrying charges for ratepayers and could result in additional rate implications to 2024 if there is a change to FBC's ROE and capital structure in 2023".[5] In particular, if there is a change to FBC's ROE and capital structure, the utility must forgo the implementation of 2023 permanent rates to reflect the outcome of the GCOC proceeding and recover the balance in the deferral account in 2024. As such, FBC would forego earning its fair return in 2023 and FBC's customers would be forced to bear in 2024 the resulting rate impact for both 2023 and 2024, in addition to any potential rate increase for 2024 if FBC also forecasts a revenue deficiency.

FBC seeks reconsideration of these determinations on the basis that the BCUC has made an error of fact or, in the alternative, that there is otherwise just cause.[6] The BCUC states that it considered several issues raised by FBC and interveners in reaching these determinations, including: (1) the importance of cost predictability for customers; (2) the challenge that interim rates pose for municipal utilities; and (3) the fact that the GCOC proceeding is still underway. FBC submits that these considerations do not properly reflect a fair or appropriate balancing of the relevant considerations in setting just and reasonable rates in this instance, and therefore, amount to an error of fact or otherwise amount to a need for reconsideration based on just cause.

First, the BCUC failed to consider the fairness to FBC of setting 2023 rates on a permanent basis, given that the utility is entitled to a reasonable opportunity to recover a reasonable return, including its cost of capital.[7] The importance of this consideration was recognized by the BCUC in Decision and Order G-352-22 in setting the 2023 delivery rates for FortisBC Energy Inc. (FEI) on an interim basis pending the BCUC's decision in the GCOC proceeding. In that Decision, the BCUC stated (page 29):

> The Panel acknowledges that in most cases, interim rates are set in anticipation that permanent rates will generally not differ substantially from approved interim

5 Decision and Order G-382-22, p. 28.
6 BCUC Rules of Practice and Procedure, s. 27.05 (a) and (e).
7 British Columbia Electric Railway Co. v. Public Utilities Commission, [1960] S.C.R. 837 at p. 848.

> rates as the time interval between the two is insignificant. In this case, however, the Stage 1 of the BCUC's GCOC proceeding may have a material impact on FEI's 2023 permanent rates depending on its outcome. In light of that, the Panel finds that it would be unfair to FEI to establish permanent rates as of January 1, 2023 at this time, and, thereby, effectively requiring FEI to forego the implementation of 2023 permanent rates to reflect the outcome of that proceeding in 2023 or to defer that implementation to 2024 through a deferral account. [emphasis added]

FBC submits that fairness to the utility in this context is an important factor that must be considered. By making rates permanent for 2023, the BCUC Panel has forced FBC to forego any opportunity to recover its fair return, to be determined in the GCOC proceeding, in 2023. FBC submits that this is a material impact to the utility and should have been given significant weight in the balancing of factors undertaken by the BCUC Panel.

Second, the BCUC Panel's consideration of cost predictability for customers does not support setting 2023 rates on a permanent basis. Any cost predictability achieved for customers in 2023 is achieved at cost unpredictability for customers in 2024 and subsequent years. By deferring the potential 2023 impact of the GCOC proceeding to 2024, FBC's customers will need to bear this impact in 2024, potentially doubling the impact of the GCOC proceeding in that year. Further, rate volatility will also result from recovering a potentially material amount in 2024, followed by a reduction in rates (all else equal) once that amount has been recovered. In short, FBC submits that requiring that the impact of the GCOC proceeding be deferred to 2024 has the effect of decreasing, rather than increasing, rate predictability for customers. A consideration of rate predictability, therefore, supports maintaining rates as interim so that the best approach to managing rate impacts to customers can be determined following a decision in the GCOC proceeding, which may include beginning to recover costs in 2023. Further, the use of interim rates is a widely used feature of regulatory rate setting which provides the appropriate signal to customers that rates may change in the future.

Third, FBC submits that the BCUC placed undue weight on the challenges that interim rates pose for municipal utilities, as raised by the British Columbia Municipal Electrical Utilities (BCMEU). There is no basis on the record to support BCMEU's position in this regard and FBC submits that the BCUC should have given its argument minimal weight. The BCUC summarizes BCMEU's position as follows in the Decision:

> The BCMEU requests that the Panel approve FBC rates as final and recommends that any determinations made by the BCUC in Stage 1 of the GCOC proceeding should apply going forward from the date of that decision. The BCMEU is composed of wholesale customers of FBC who operate municipal utilities in the municipalities of Nelson, Penticton, Summerland, and Grand Forks. The BCMEU explains that municipal utilities do not have the ability to implement interim rates and accordingly, will risk a shortfall if there is a retroactive rate increase, effective January 1, 2023, due to the results of the GCOC proceeding. As such, the BCMEU submits that the proper time to implement any decisions on FBC's cost of capital should be on or subsequent to the date of the BCUC's final decision on Stage 1 of the BCUC's GCOC proceeding. To retroactively apply rates to customers, particularly wholesale

> customers who cannot apply rates retroactively, is punitive to those customers. [citations omitted]

BCMEU has provided no reasonable support for its assertion that there is a risk of a shortfall for the municipalities if there is a retroactive rate increase.[8] Notably, it is not necessary for municipalities to have the power to implement interim rates in order to guard against a shortfall. While it may be the practice of municipal utilities to set rates for the entirety of a given year effective as of January 1, there is nothing preventing municipalities from adjusting rates part-way through the year to reflect the BCUC's determination in the GCOC proceeding, or recovering costs in future years. Moreover, FBC's proposal to set 2023 rates on an interim basis is not novel. BC Hydro, for example, which also serves wholesale customers, has requested that its rates be set on an interim basis, pending the outcome of the utility's revenue requirements applications. BC Hydro also serves municipal customers, notably, the City of New Westminster. BC Hydro's requests have been approved by the BCUC.[9]

Municipal utilities have also had considerable notice of the potential impact of the GCOC proceeding on the setting of FBC's rates. In particular, the BCUC issued the notice initiating the GCOC proceeding in January 2021 and FBC identified the revised capital structure it would be seeking in January 2022. Therefore, municipal utilities have had time to mitigate the risk of a shortfall if the BCUC's determination in the GCOC proceeding applies retroactively.

While BCMEU notes that the BCUC would be "protect[ing] all customers" from retroactive rate adjustments which could amount to over a half-year of retroactivity, the setting of FBC's rates on a permanent basis is not necessarily beneficial to customers. As discussed above, any predictability achieved in 2023 is achieved at the cost of unpredictability in 2024 and future years. Put another way, the BCUC's Decision effectively prioritizes the interests of wholesale customers, without evidentiary support, at the expense of other customer classes who will need to bear a greater rate impact in 2024 due to deferring the impact of the GCOC proceeding.

Fourth, consideration of the fact that the GCOC proceeding is still underway strongly supports maintaining rates as interim. Given that the GCOC proceeding is still underway, its timing and impact is not yet known, making it impossible for the Panel in this proceeding to weigh all of the competing factors at this stage. This is a key reason why it is more appropriate to maintain rates as interim so that the appropriate approach to implementation can be considered after a decision is issued in the GCOC proceeding. Leaving rates on an interim basis preserves the most optionality for the BCUC for implementing permanent rates following the GCOC decision, when the impact is known. The choice to make rates permanent effectively ties the hands of future BCUC panels based on incomplete information.

Finally, while the BCUC notes that a deferral account approach is "consistent with past practice in the BCUC's decision on FBC's 2016 Annual Review",[10] both deferral accounts and interim rates have been used in the past. Notably, most recently, the BCUC set 2023 delivery rates for FEI on an interim basis pending the outcome of the GCOC proceeding. Most recent

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8 BCMEU Final Argument, p. 1.

9 See e.g., Decision and Order G-187-21, BC Hydro's F2022 Revenue Requirement Application. Online: https://docs.bcuc.com/Documents/Other/2021/DOC_63154_G-187-21-BCH-F2022-RRA-Final-Order-Decision-Public_Redacted.pdf.

10 Decision and Order G-382-22, p. 28.

practice, therefore, supports using interim rates. Further, as recognized by the BCUC Panel in setting FEI's 2023 delivery rates on an interim basis, and unlike FBC's 2016 Annual Review where the potential change in FBC's cost of capital was limited,[11] the GCOC proceeding may have a material impact on permanent rates, depending on its outcome. In addition to tying the hands of future panels, using a deferral account to capture the difference between FBC's 2023 permanent rates and any future rate impact resulting from the GCOC proceeding has significant disadvantages for both customers and the utility. As described above, requiring that the impact of the GCOC proceeding be deferred to 2024 decreases rate predictability for customers while also forcing FBC to forego an opportunity to earn its fair return, as determined in the GCOC proceeding, in 2023. While past practice is not determinative, FBC submits that the BCUC should give considerable weight to the factual similarities between this proceeding and FEI's Annual Review for 2023 Delivery Rates and the BCUC's approach in Decision and Order G-352-22.

In summary, FBC submits that the balance of relevant factors strongly supports maintaining rates as interim. There is no need for the BCUC to set permanent rates, as interim rates are a well-accepted and widely used feature of regulatory rate setting and provide the appropriate signal to customers that rates may change in the future. Leaving rates as interim does not mean that 2023 rates will necessarily change following the GCOC proceeding, but preserves options for a future BCUC panel to consider the best approach to implementing the GCOC proceeding, including the option to begin recovery of FBC's fair return in 2023. FBC, therefore, submits that the BCUC Panel erred in setting rates for 2023 on a permanent basis and in its related directions, and that a consideration of all the relevant factors demonstrates that 2023 rates should remain interim at this time.

Conclusion

For the reasons set out above, FBC submits that it has established reasonable grounds for reconsideration of Decision and Order G-382-22. In summary, FBC is seeking the following remedies:

- **Varying of Directive 1 of Order G-382-22**, as follows: FBC is approved to increase its rates for 2023 by 3.98 percent on an interim basis, effective January 1, 2023. Rates will remain interim pending the outcome of Stage 1 of the BCUC's Generic Cost of Capital proceeding.

- **Rescinding of Directive 2 of Order G-382-22**.

As set out above, as a preliminary matter, FBC respectfully requests that Directives 1, 2 and 7 of Order G-382-22 be suspended pending the resolution of this Reconsideration Application. If practical, FBC respectfully requests confirmation from the BCUC before January 23, 2023 that it is not required to file the compliance filing per Directive 7, pending review of this Reconsideration Application.

[11] Unlike in the current GCOC proceeding where both FEI and FBC are seeking changes to their cost of capital, in the 2016 cost of capital proceeding, only FEI was seeking changes to its cost of capital (i.e., FEI's 2016 Application for Changes to its Common Equity Component and ROE). The potential impact on FBC in 2016 would therefore have resulted from a change to FEI's ROE as FEI is the benchmark utility.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC INC.

Original signed:

Diane Roy

cc (email only): Registered Interveners