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British Columbia Utilities Commission
Suite 410, 900 Howe Street
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Attention: Ms. Sara Hardgrave, Acting Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Inc. Application for Approval to Sell the Princeton Bridge Street Properties

We enclose for filing in the above proceeding the Final Argument submission of FortisBC Inc., dated January 12, 2023.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Christopher Bystrom*
*Law Corporation

Encl.



**BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT,
R.S.B.C. 1996, CHAPTER 473**

AND

**FORTISBC INC.
DISPOSITION OF PRINCETON OFFICE PROPERTIES**

**FINAL SUBMISSION
OF
FORTISBC INC.**

JANUARY 12, 2023

Table of Contents

Part One: INTRODUCTION	1
Part Two: PROPOSED SALE OF PRINCETON OFFICE PROPERTIES IS IN THE PUBLIC INTEREST.....	1
A. The Princeton Office Properties Are No Longer Needed for Utility Service and the Sale Results in No Harm to Customers	2
B. The Sale Maximizes the Benefit to FBC’s Customers.....	3
C. Princeton Office Disposition Deferral Account Will Ensure Customers Receive Benefit of Sale	4
D. A Decision by January 31 Would Aid the Town of Princeton and Allow Time for Conditions Precedent to be Satisfied	5
Part Three: CONCLUSION	6

PART ONE: INTRODUCTION

1. On December 5, 2023, FBC filed an application for approval from the British Columbia Utilities Commission (BCUC) pursuant to section 52 of the *Utilities Commission Act* (UCA) to sell the Princeton Bridge Street properties (Princeton Office Properties) to the Town of Princeton (Application). The Princeton Office Properties are no longer needed for utility service, and the sale to the Town of Princeton is the best option to maximize the value of the properties. Notwithstanding the determination of the Supreme Court of Canada that the proceeds of sale are to the account of the shareholder,¹ FBC proposes that customers receive the benefit of the gain on the sale of the Princeton Office Properties. Therefore, FBC is also seeking approval pursuant to sections 59 to 61 of the UCA to establish a non-rate base deferral account (Princeton Office Disposition deferral account) to capture the gain on the sale of the Princeton Office Properties. FBC proposes that the account will attract FBC's weighted average cost of capital (WACC), be transferred to rate base on January 1, 2024, and amortized over one year commencing January 1, 2024.

PART TWO: PROPOSED SALE OF PRINCETON OFFICE PROPERTIES IS IN THE PUBLIC INTEREST

2. FBC submits that the sale of the Princeton Office Properties is in the public interest and, therefore, should be approved under section 52 of the UCA. FBC makes the following four points below:

- (a) The Princeton Office Properties are no longer needed for utility service, and the sale of the properties results in no harm to customers.
- (b) Given FBC's proposal that customers retain the proceeds of sale, the sale of the Princeton Office Properties to the Town of Princeton maximizes the benefits for customers.
- (c) FBC's proposed Princeton Office Disposition deferral account will allow for the benefits of the sale to flow to customers in a timely fashion.

¹ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4. The decision is available online at the following: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/17/1/document.do>.

- (d) A Decision by January 31, 2023 would aid the Town of Princeton and allow for time for condition precedents to be satisfied.

A. The Princeton Office Properties Are No Longer Needed for Utility Service and the Sale Results in No Harm to Customers

3. In determining whether to approve the disposition under section 52 of the UCA, FBC submits that the BCUC's public interest assessment should center on whether the sale results in harm to customers. In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, the Court discussed a property disposition in the context of a similar provision in the Alberta legislation, stating: "The provision can only be meant to ensure that the asset in question is indeed non-utility, so that its loss does not impair the utility function or quality."² FBC submits that the evidence clearly shows that the Princeton Office Properties are no longer needed for utility service and the sale will result in no negative impacts to customers.

4. The key fact is that the Princeton Office Properties are no longer needed for utility service. Since 2014, FBC has been leasing the Princeton Office Properties to FEI for mustering and for storage purposes. However, FEI provided notification of its lease termination in August 2022. FEI has re-evaluated its storage needs and has determined that it now only requires meter and small material storage to support this area. Given this reduced storage requirement, and in consideration of FBC and the Town of Princeton reaching an agreement to sell the Princeton Office Properties, it made sense for FEI to seek other storage options going forward into 2023.³

5. FBC does not foresee any prospect that it will need the Princeton Office Properties for utility service in the future.⁴

6. In short, there is no negative impact or harm to the utility or to customers from the sale of the Princeton Office Properties.

² *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at 168. Also see the Court's discussion at pages 181-182. The decision is available online at the following: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/17/1/document.do>.

³ Exhibit B-3, BCUC IR1 1.3.

⁴ Exhibit B-1, Application, p. 5.

B. The Sale Maximizes the Benefit to FBC's Customers

7. Notwithstanding the determination of the Supreme Court of Canada that the proceeds of sale are to the account of the shareholder,⁵ FBC proposes to provide the gain on the sale of the Princeton Office Properties to customers. The sale of the properties to the Town of Princeton at the (confidential) sale price maximizes the value of the properties for the benefit of customers.⁶

8. Compared to attempting to lease the properties or sell them to other parties, the proposed sale of the Princeton Office Properties to the Town of Princeton is the best option and achieves the most benefits for FBC and its customers. The potential leasing market for the Princeton Office Properties is very limited due to the location of the building and the size and function of the space, and FBC has marketed the building for sale in past years with no interest other than from the Town of Princeton. As set out in FBC's response to BUC IR1 1.4, leasing or selling to another party has a number of disadvantages and would mean that FBC would continue to hold on to the properties at a cost to customers, instead of taking advantage of the Town of Princeton's current desire to purchase the properties. Given that FBC no longer requires the use of the properties and in consideration of the limited and changing leasing/selling market, there are no advantages to FBC holding on to the Princeton Office Properties.⁷

9. As noted above, the Supreme Court of Canada has previously determined that a public utility may retain the proceeds of the sale to the account of the shareholder.⁸ Had FBC opted to retain the proceeds, the financial benefit of the sale would have been maximized for the utility (i.e., the shareholders), rather than customers. Nonetheless, FBC considers that the Application would have been in the public interest. This is a moot point, however, as FBC has maximized the benefit to customers in the case of the sale of the Princeton Office Properties.⁹

⁵ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4.

⁶ Exhibit B-3, BCUC IR1 1.2.

⁷ Exhibit B-3, BCUC IR1 1.4.

⁸ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4.

⁹ Exhibit B-3, BCUC IR1 1.2.

C. Princeton Office Disposition Deferral Account Will Ensure Customers Receive Benefit of Sale

10. As FBC is proposing that customers receive the benefit of the sale of the Princeton Office Properties, FBC is requesting approval of the Princeton Office Disposition deferral account to enable FBC to flow the gain to customers in a timely fashion. The Princeton Office Disposition deferral account would be a non-rate base deferral account attracting WACC. FBC proposes to record the actual revenues and costs associated with the sale of the Princeton Office Properties (i.e., the net gain on the sale) in the non-rate base deferral account and then transfer the balance to a rate base deferral account on January 1, 2024. FBC proposes to amortize this balance over one year in 2024.

11. FBC explained the reason for requesting a non-rate base deferral account as follows:¹⁰

The reason that FBC is requesting a non-rate base deferral account initially with the balance to be transferred to a rate base deferral account on January 1, 2024 is due to timing. At the time of filing the Application, the evidentiary record was closed in FBC's Annual Review for 2023 Rates proceeding, and the completion of the sale of the Princeton Office Properties (if approved) will occur in the first half of 2023. As such, FBC is not able to introduce a rate base deferral account (which would reduce the 2023 revenue requirement due to the earned return and taxes on the credit balance rate base deferral account) without adjusting 2023 rates.

For further clarity, if FBC only requested approval of a rate base deferral account commencing on January 1, 2024, FBC would not be able capture the credit related to the half-year rate base return as well as the related income tax in 2023 for the net gain on sale of the Princeton Office Properties due to the 2023 rates already being approved through the 2023 Annual Review process. As such, in order to capture the credit rate base return as well as the related income tax in 2023, FBC requires a non-rate base deferral account to record the net gain in 2023. This non-rate base deferral account will attract FBC's weighted average cost of capital return until it is placed into rate base on January 1, 2024, when it will be amortized as a credit to customer rates as shown in the response to BCUC IR1 2.2. FBC also clarifies that once the non-rate base deferral account is transferred to the rate base deferral account, the non-rate base deferral account would no longer be used (i.e., it would be discontinued).¹¹

¹⁰ Exhibit B-3, BCUC IR1 2.1.

¹¹ Exhibit B-3, BCUC IR1 2.1.

12. An amortization period of one year is the most reasonable because it provides the credit to customers as soon as possible, it helps offset potential rate pressures that FBC may experience in 2024, and there would be very minimal rate smoothing or other benefits associated with a longer amortization period given the relatively small impact to FBC's revenue requirement. A one-year amortization period also aligns with the fact that the sale of the Princeton Office Properties, if approved, will be completed over a short period of time (i.e., within the first quarter of 2023).¹²

D. A Decision by January 31 Would Aid the Town of Princeton and Allow Time for Conditions Precedent to be Satisfied

13. As stated in the Application, in order to facilitate the sale of the Princeton Office Properties in a timely manner, FBC respectfully requests BCUC approval to be provided by January 31, 2023.¹³ FBC appreciates the BCUC's willingness to set the process for the review of this Application to potentially accommodate this request.

14. There are two key reasons for FBC's request for a decision by January 31, 2023.

15. First, a decision approving the sale by January 31, 2023 would aid the Town of Princeton, which desires to acquire the Princeton Office Properties as soon as possible, as the Town is facing space issues and is hoping to begin the expansion of their office space as soon as possible.¹⁴

16. Second, a decision by January 31, 2023 would allow more time for conditions precedent in Article 8 of the Purchase and Sale Agreement to be satisfied and waived, site clean-up coordination, and preparation of closing documents for the Sale and Purchase to complete by the end of March 2023. If a BCUC decision was not received in time for the conditions precedent in Article 8 to be satisfied and waived, which requires a minimum of 30 days from the date of a BCUC decision, and the sale was therefore not finalized/closed until the second quarter of 2023, the net book value, disposal costs and property taxes would all require revision and the net gain

¹² Exhibit B-3, BCUC IR1 2.2.

¹³ Exhibit B-1, Application, p. 8.

¹⁴ Exhibit B-3, BCUC IR1 4.1.

on the sale for FBC customers would be reduced. This would negatively impact both FBC's customers and the Town of Princeton.¹⁵

17. Therefore, if it is practical for the BCUC to issue a decision approving the sale by January 31, 2023, this would be appreciated by the parties, and especially by the Town of Princeton who is seeking to gain possession and address their office space issues as soon as possible.

PART THREE: CONCLUSION

18. FBC submits that the proposed sale of the Princeton Office Properties is in the public interest and should be approved. The sale will have no impact on FBC's service to customers and has maximized the value for FBC's customers. The proposed Princeton Office Disposition deferral account will enable FBC to flow the net gain on the sale to customers in a timely fashion. If the sale is approved, FBC will report on the actual net gain on sale recorded in the Princeton Office Disposition deferral account as part of FBC's Annual Review for 2024 Rates application.¹⁶

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated:

January 12, 2023

[original signed by Chris Bystrom]

Chris Bystrom

Counsel for FortisBC Inc.

¹⁵ Exhibit B-3, BCUC IR1 4.1.

¹⁶ Exhibit B-1, Application, pp. 7 and 8.