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~~CONFIDENTIAL~~

November 14, 2024

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Patrick Wruck:

Re: FortisBC Energy Inc. (FEI)

Disposition of Prince George Customer Service Facility Application (Application)

Response to the British Columbia Utilities Commission (BCUC) ~~CONFIDENTIAL~~ Information Request (IR) No. 1

On October 7, 2024, FEI filed the Application referenced above. In accordance with the regulatory timetable established in BCUC Order G-273-24 for the review of the Application, FEI respectfully submits the attached response to BCUC Confidential IR No. 1.

FEI has filed a redacted version of the responses to BCUC Confidential IR No. 1 for the public record.

For convenience and efficiency, if FEI has provided an internet address for referenced reports instead of attaching the documents to its IR responses, FEI intends for the referenced documents to form part of its IR responses and the evidentiary record in this proceeding.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Sarah Walsh

Attachments

1.0 Reference: GENERAL

Exhibit B-1 (Application), p. 2, Exhibit B-1-1 (Confidential Application), Appendix A (Purchase Agreement), p. 1

Target Decision

On page 2 of the Application, FortisBC Energy Inc. (FEI) "requests that the BCUC [British Columbia Utilities Commission] issue its decision on this Application on or before December 31, 2024, so that there is adequate time, if approved, to complete the conditions precedent and meet the completion date of February 20, 2025 stipulated in the Purchase Agreement."

On page 1 of the Purchase Agreement, Completion Date is defined as "the later of February 20, 2025 and twenty (20) Business Days after removal of all of the Buyer's Conditions and the Seller's Conditions […]"

To the extent possible, please file non-confidential responses to the following IRs:

1.1 Given that the completion date stipulated in the Purchase Agreement is the later of February 20, 2025 and 20 business days after removal of all conditions, please explain why FEI is requesting a BCUC decision on this Application on or before December 31, 2024.

1.1.1 Please discuss the implications, if any, to FEI in the event that the BCUC's final decision on the Application is rendered after December 31, 2024.

Response:

In making its request for a decision on or before December 31, 2024, FEI took into consideration the timelines for processing both FEI's and the Buyer's Condition Precedents, as well as the requirement to prepare and approve the closing documents prior to the mutually desired completion date of February 20, 2025. FEI assumed 35 business days was reasonable from receiving a BCUC decision to complete these required processes.

Both parties are aware of the regulated approvals required and are working in good faith to close this deal. In the event the BCUC's final decision on the Application is rendered after December 31, 2024, and FEI is not able to meet the proposed February 20, 2025, target, FEI would communicate with the Buyer on the change and new expected timeline.

2.0 Reference: JURISDICTION AND PUBLIC INTEREST

Exhibit B-1, pp. 5–6, Exhibit B-1-1, p. 2; FortisBC Inc. (FBC) Disposition of Princeton Office Properties, FBC Final Argument, p. 3

Jurisdiction and Public Interest

On pages 5 and 6 of the Application, FEI refers to a Court discussion of a property disposition in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*.

On page 6 of the Application, FEI states that "the disposition will not result in any harm to customers, and FEI submits that the disposition is in the public interest and should be approved."

On page 2 of the Confidential Application, FEI states that "[i]f the BCUC approves the sale, FEI proposes to capture the NBV [net book value] of the PGO Property [Prince George Customer Service Centre Office property] less the net proceeds (including the cost of disposition and taxes payable) from the proceeds of the sale (land and building), estimated to be approximately [redacted], in a deferral account for recovery in rates."

On page 3 of FBC's Final Argument from the Disposition of Princeton Office Properties Proceeding, FBC stated:

> Notwithstanding the determination of the Supreme Court of Canada that the proceeds of sale are to the account of the shareholder, 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.

To the extent possible, please file non-confidential responses to the following IRs:

2.1 With consideration of the Supreme Court of Canada's ruling in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)* and any differences in legislation between Alberta and British Columbia with respect to property disposition by a utility, please discuss whether the BCUC has the jurisdiction to approve FEI to recover the loss of [redacted] on the disposition of the PGO Property from its ratepayers instead of its shareholders.

<u>Response:</u>

The disposition of the PGO Property in this Application involves facts and circumstances that are very different from those at issue in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)* (ATCO Case). In the ATCO Case, ATCO was selling a property that was no longer used and useful and that required no replacement or investment in utility operations as a consequence of its sale, such that the Alberta Utilities Commission (AUC) concluded that the sale would cause no harm to customers. This conclusion was key to the Court's ruling that the AUC had no jurisdiction in that case to impose conditions on the disposition requiring the proceeds of sale to be allocated to customers.

In contrast, the sale of the PGO Property is a situation where FEI's need for a customer service centre in Prince George has not changed and, although the PGO Property was physically useful for that purpose, FEI was required to move locations for the safety of its employees and the security of its operations. Importantly, the PGO Property sale is only feasible because FEI has already moved the service centre to a new leased facility from which it has continued to provide service to its customers. In other words, without a new facility from which it could continue serving customers, it would not be in the public interest for FEI to dispose of the PGO Property. For this reason, FEI's move to the new customer service centre and sale of the PGO Property are closely connected and should be viewed together as a single transaction that is driven by operational reasons and required for FEI to continue to provide safe and reliable service to its customers. In these circumstances, FEI's net loss on the sale[1] is fairly and reasonably considered part of FEI's cost to serve its customers and should be recovered in rates.

This treatment of the PGO Property disposition is consistent with the guidance from the Supreme Court of Canada in the ATCO Case where the Court contemplated the proceeds of sale being allocated to customers in circumstances where the assets being disposed of would need to be replaced, stating:[2]

> This is not to say that the Board can never attach a condition to the approval of sale. For example, the Board could approve the sale of the assets on the condition that the utility company gives undertakings regarding the replacement of the assets and their profitability. It could also require as a condition that the utility reinvest part of the sale proceeds back into the company in order to maintain a modern operating system that achieves the optimal growth of the system.

Following the above statement, the Court of Appeal of Alberta has determined that, where there is a close connection between the sale of an existing asset and the need to replace it, the AUC can order the proceeds of sale to be attributed to customers:[3]

> In our view, a more reasonable interpretation of the Supreme Court's words would permit the Board to impose a condition if there was a close connection between the sale of the asset and the immediate resulting need to replace it. For example, the utility might sell a pumping station and, in order to service the public, it might need to access a different pumping station or even replace the existing one. The sale and purchase would be closely connected. This is what the majority of the Supreme Court had in mind when it stated that in some circumstances the Board could impose a condition that required the utility to reinvest the proceeds of sale into the system.

Consistent with the above, the sale of the PGO Property is closely connected to the lease of the new customer service centre, and in these circumstances the BCUC has jurisdiction to allocate

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1 [redacted]

2 *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para. 77.

3 *AltaGas Utilities Inc., Re*, 2009 ABCA 171 (Alta. C.A.) at para. 35.

the net gain or loss to customers. This treatment appropriately encourages the utility to make decisions on the use and sale of its assets that are in the best interest of customers, rather than being encouraged to speculate on land sales or punished for losses on transactions required to maintain safe and reliable service to its customers.

Furthermore, and for clarity, the ATCO Case considered the jurisdiction of the AUC under a provision similar to section 52 of the UCA to impose conditions on the disposition of a property requiring the proceeds to be allocated to customers. In the current Application, FEI is not requesting that the BCUC impose conditions on the sale of property pursuant to section 52, but to exercise its jurisdiction under sections 59 to 61 of the UCA to allow the loss on the sale to be recovered in rates. Please refer to the response to BCUC Confidential IR1 1.2 for a further discussion of why the proposed treatment is just and reasonable.

The BCUC has approved the recovery in rates of gains and losses on a disposition in numerous past orders. For example:

- Order G-116-07: The BCUC approved FEI's disposition of vacant land at Lochburn, with $2.5 million of the gain on sale being refunded to customers.
- Order G-68-10 and Order G-181-11: The BCUC approved the sale of a portion of FEI's Tilbury property with the proceeds of sale to be applied to a deferral account to offset the balance in the account "with any positive balance returned to customers or negative balance recovered from customers."
- Order G-32-13: The BCUC approved FEI's sale of two vacant sites after the discontinuation of propane service in Whistler. FEI was approved to transfer the net book value (NBV) of the facilities less salvage value of the propane tanks and net proceeds from the sale of the land (which totaled to a loss) to a rate base deferral account for recovery in rates.
- Order G-153-17: The BCUC approved a non-rate base deferral account for FortisBC Inc. (FBC) to record the NBV of land and buildings as at the date of sale and the proceeds of sale, net of disposal costs and taxes payable, for recovery from or return to customers. The result of the sale was a gain of approximately $439.6 thousand recorded to the approved deferral account.
- Order G-14-23: The BCUC approved a non-rate base deferral account (and subsequent transfer to rate base) for FBC to record the NBV of land and buildings as at the date of sale and the proceeds of sale, net of disposal costs and taxes payable, for recovery from or return to customers. The result of the sale was a gain of approximately $406 thousand recorded to the approved deferral account.

Similar to the above cases, the BCUC has jurisdiction to approve FEI's proposal with respect to the PGO Property disposition.

2.2 Please explain how the recovery of the loss of [redacted] on the voluntary disposition of the PGO Property from ratepayers is fair and reasonable.

Response:

The recovery of the loss on the disposition of the PGO Property from ratepayers is fair and reasonable, as the move of the customer service centre and the sale of the PGO Property is driven by operational needs and is fundamentally part of FEI's ongoing business operations. Accordingly, any losses/gains on the sale are fairly and reasonably considered part of FEI's cost to service its customers.

While the timing of the sale may be "voluntary", the reasons for the sale were not within FEI's control. As discussed on page 6 of the Application, the need for a customer service centre in Prince George has not changed and continues to be required for FEI's operations to provide quality service to its customers. The move of the customer service centre to a new location in Prince George was required due to the ongoing deterioration of the environment around the PGO Property location. The crime and social disorganization in the area represented a risk to the mental and physical well-being of FEI's employees and to the security of the customer service centre.

FEI's shareholder should not bear the costs of ensuring quality customer service from the Prince George location. The recovery in rates of FEI's overall costs to move to a new location to address the safety and well-being of its employees and the security of its operations is fairly and reasonably allocated to customers.

Further, as discussed in the response to BCUC Confidential IR1 2.3, FEI's customers will benefit from the sale of the PGO Property due to the immediate and ongoing savings in O&M, property tax, depreciation, earned return and income tax. Given that FEI currently has an offer to sell the PGO Property at the appraised value, selling the PGO Property now will maximize those savings for the benefit of FEI's customers. The options of waiting for another offer in the future (with uncertainty whether another offer would occur or be at a lower price) or incurring capital costs to reconstruct the PGO Property into multiple units for leasing out (with uncertainty in the potential of securing tenants long-term given the location of the building) are speculative in nature and would require ongoing costs being recovered from customers in O&M, property tax, depreciation, earned return and income tax, which may or may not be offset by increased gains on sale. Given the uncertainty, selling the PGO Property now is the most reasonable option and in the best interest of FEI's customers. The net loss on the sale will be offset by the savings in O&M, property tax, depreciation, earned return and income tax that customers will begin to benefit from as soon as the sale is complete. It is therefore just and reasonable for the loss on the disposition to be recovered in rates.

2.3 Please explain how it is in the public interest to sell the PGO Property at this time at a loss to be recovered from ratepayers given the timing of the disposition is at the discretion of FEI as owner and the commercial real estate outlook for Prince George.

Response:

It is in the public interest to sell the PGO Property at this time for the following reasons:

- FEI currently has an offer from the Carrier Sekani Family Service Society (CSFS) to sell the PGO Property at the appraised value. [redacted]
- FEI explored the potential to lease out the PGO Property, but there has been no committed tenant. [redacted]
- As discussed on page 5 of the Application, CSFS is considered a great fit for the property as it would be providing support to the vulnerable people in the area.
- It would be purely speculative to assume the purchase price could increase in the future. [redacted]
- FEI notes that its approach to the PGO Property was to sell it at the first reasonable opportunity after it was no longer required. The alternative approach of trying to time the market would have been speculative in nature, which the BCUC has previously expressed disapproval of, as in Decision and Order G-246-20 on BC Hydro's F2020 to F2021 RRA:[4]

> The Panel remains concerned that BC Hydro's approach to holding properties no longer required to serve ratepayers amounts to speculation. To quote the Cambridge University dictionary, "speculation" is:

[4] https://docs.bcuc.com/documents/proceedings/2020/doc_59355_2020-10-02-bch-f2020-f2021-rra-decision.pdf.

> The act of buying something hoping that its value will increase and then selling at this higher price in order to make a profit.
>
> The Panel acknowledges that BC Hydro acquired these properties for utility purposes, and did not at that time intend them as investments. However, once BC Hydro has determined that properties are no longer required for utility purposes, undue delay in their sale "to maximize the return on these properties" appears to meet the definition of speculation; that is, "hoping [a property's] value will increase and then selling at this higher price in order to make a profit." It is not clear to the Panel that ratepayers should be paying the cost to carry property no longer required for utility purposes, and taking the risk that the property might fall in value.

- As shown in Table 1 below, selling the PGO Property now represents the best financial scenario for FEI's customers given the savings in O&M expense, property tax, depreciation, and earned return from the sale, instead of continuing to own the building. It has the highest savings in terms of present value (PV) of incremental cost of service over a 5-year period (from 2025 to 2029) when compared to delaying the sale by 6 months, 12 months, or leasing out the building, which is a benefit to FEI's ratepayers.

Although the PGO Property will be sold at a loss under the Purchase Agreement with CSFS, the offer aligns with the appraised value of the PGO Property, and FEI's customers will ultimately benefit from savings in O&M, property tax, depreciation, and earned return from the sale now. As such, FEI considers selling the PGO Property now is most appropriate and in the best interest of its customers, and FEI's customers will be able to benefit from savings immediately.

Table 1: Comparison of PV of Incremental Cost of Service between Proposed Sale, Delayed Sale by 6 months, Delayed Sale by 12 months, and Leasing out the PGO Property ($ millions)

NPV (5-Year)	Proposed Sale	Sale (6-mth delay)	Sale (12-mth Delay)	Lease
O&M, Net	(539)	(479)	(418)	(1,316)
Property Tax	(684)	(610)	(531)	-
Depreciation Expense	(483)	(426)	(371)	162
Amortization Expense	1,448	1,448	1,363	-
Income Tax	348	364	372	62
Earned Return	(1,375)	(1,387)	(1,036)	96
Total NPV Incremental Cost of Service ($ millions)	**(1,285)**	**(1,091)**	**(620)**	**(995)**

Notes to Table:

1) FEI assumed the same selling price at the appraised value in the 6 months delay and 12 months delay scenarios. FEI is unable to hypothetically predict whether the market value (as well as the level of changes) for the PGO Property will go up or down in the future.

2) FEI will continue to incur O&M expense and property tax, and before it can sell or lease out the building, the building will remain in FEI's rate base under the ownership of the building (including the lease scenario).

3) For the leasing scenario, FEI assumed a base rent of $16 per sq-ft, $500 thousand of capital expenditures for demising the building into multiple units, assumed it will take 24 months to lease out all units (i.e., lease out 25 percent of the building every 6 months), and a 5 percent vacancy level annually (i.e., lost revenue between old tenants moving out and new tenants moving in).

4) FEI selected 5 years for the analysis assuming a typical lease for an office building would be around 5 years. FEI confirms the results of the analysis will not change if the analysis period is extended to 10 years, i.e., the proposed sale continues to yield the highest savings for FEI's customers.

2.4 Given that the proposed sale of the PGO Property results in a loss on the sale, please explain whether FEI considered the following alternatives: (i) leasing out the PGO Property instead; and (ii) holding onto the PGO Property until its market value increased or FEI was able to obtain a better offer. If not, please explain why not. If considered, please explain why FEI rejected the alternative(s).

2.4.1 Please discuss any financial implications to ratepayers and FEI's shareholders of these alternatives (e.g. costs associated with holding on to the property, such as property taxes, insurance costs, financing costs, etc.).

Response:

Please refer to the response to BCUC Confidential IR1 2.3.

3.0 Reference: TAX IMPLICATIONS OF LOSS ON SALE

Exhibit B-1-1, Table 1, pp. 6–7

Tax Implications of Loss on Sale

On page 6 of the Confidential Application, FEI states that Table 1 on page 7 of the Confidential Application "provides a summary of the net amount of [redacted] estimated to be captured in the deferral account, on February 28, 2025." Included in Table 1 is a line item for "Tax on Capital Gain on Land" in the amount of [redacted]

3.1 Please clarify whether the date of February 28, 2025 quoted in the above preamble should instead read February 20, 2025.

Response:

FEI clarifies that the date on page 6 of the Confidential Application was a typographic error and should read February 20, 2025.

3.2 Please provide a detailed calculation of how the "Tax on Capital Gain on Land" in the amount of [redacted] was determined.

Response:

While responding to this information request, FEI noticed there was an excel error in the calculation of the tax on capital gain on land shown in Table 1, Line 12 of the Application. The correct estimated tax on capital gain on land is [redacted], which is $3 thousand less than the [redacted] shown in Table 1 of the Application. As a result of correcting this error, the estimated amount to be captured in the proposed non-rate base deferral account changes to [redacted], which is $3 thousand less than the [redacted] shown in Table 1 of the Application.

Please refer to Table 1 below for the detailed calculation of the tax on the capital gain on land of [redacted] (i.e., Line 26 of Table 1 below), which is based on a taxable capital gain/loss of [redacted] (also shown on Line 24 of Table 1 below). FEI notes that there is no capital gain on the building, as the proceeds for the building are less than the original cost of the building. Please also refer to Table 2 below which provides the calculation on the deemed building proceeds (i.e., Line 1 of Table 1 below) in accordance with *Income Tax Act* (ITA) 13 (21.1)(a)[5] used to calculate the taxable capital gain/loss.

[5] Section 1.91, https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-3-property-investments-savings-plans/series-3-property-investments-savings-plans-folio-4-capital-cost-allowance/income-tax-folio-s3-f4-c1-general-discussion-capital-cost-allowance.html.

Table 1: Calculation of Taxes Payable Including the Sale of Building, Land, and Costs Deductible for Tax

[redacted]

Table 2: Calculation of Proceeds of Disposal of Building According to ITA 13 (21.1) (a)

[redacted]

3.3 Please provide a detailed calculation of the taxable capital gain(s) and/or loss(es) FEI expects to incur from the sale of the PGO Property (including, but not limited to, the land, the building and any equipment), should the BCUC approve the sale. Please cite any relevant provisions from the *Income Tax Act* or Canada Revenue Agency, as applicable.

Response:

Please refer to the response to BCUC Confidential IR1 3.2.

4.0 Reference: PURCHASE AGREEMENT

Exhibit B-1-1, Purchase Agreement, Section 7.2, p. 12, Sections 9.11 and 9.12, p. 17

Referencing Error

In Section 7.2 of the Purchase Agreement, the Buyer's Documents clause states that "[o]n the Completion Date, the Buyer will deliver to the Seller a certification regarding GST [goods and services tax] representations and warranties of the Buyer made in section 9.12 of this Agreement."

Sections 9.11 and 9.12 of the Purchase Agreement contain clauses for GST and Currency, respectively.

4.1 Please confirm, or explain otherwise, that section 7.2 of the Purchase Agreement should refer to section 9.11 of the Purchase Agreement instead of section 9.12.

<u>Response:</u>

Confirmed. Section 7.2 of the Purchase Agreement should refer to section 9.11 of the Purchase Agreement. FEI will seek to work with the Buyer to amend the Purchase Agreement to correct the reference.

5.0 Reference: APPRAISAL OF THE PROPERTY

Exhibit B-1, pp. 1–2; Exhibit B-1-1, Appendix B, p. 3

Interior Property Inspection

On pages 1 and 2 of the Application, FEI states that it "entered into a lease for a new customer service centre facility in September 2022, and moved into the new facility in March 2024."

On page 3 of Appendix B to the Confidential Application, A-Teck Appraisals Ltd. states with respect to the PGO Property that "[t]he property was examined on April 18, 2023 (interior and exterior) and January 2, 2024 (exterior only)" and that "[t]he effective date of [the] appraisal is January 2, 2024."

5.1 Please confirm, or explain otherwise, that no substantive modifications were made to the PGO Property's interior after its inspection on April 18, 2023, and prior to moving into the new facility in March 2024.

5.1.1 If not confirmed, please explain how the modifications were incorporated into the valuation of the property as determined by the appraisal. If the modifications were not incorporated into the valuation of the property, please explain why not.

<u>Response:</u>

Confirmed. FEI has not made any substantive modifications to the PGO Property's interior after its inspection on April 18, 2023 and prior to FEI moving into the new facility in March 2024.