FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

550 Burrard Street, Suite 2900
Vancouver, British Columbia V6C 0A3
Canada

T +1 604 631 3131
+1 866 635 3131
F +1 604 631 3232

fasken.com

Matthew Ghikas
Direct +1 604 631 3191
Facsimile +1 604 632 3191
mghikas@fasken.com

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

Attention: Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Energy Inc. – Regional Gas Supply Diversity Development Account Cost Recovery Application

We enclose for filing in the above proceeding the Final Submission of FortisBC Energy Inc., dated March 19, 2025.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Matthew Ghikas
Personal Law Corporation

Enclosure

British Columbia Utilities Commission

FortisBC Energy Inc.

Regional Gas Supply Diversity Development Account Cost Recovery Application

Final Submission of FortisBC Energy Inc.

March 19, 2025

Fasken Martineau DuMoulin LLP
Matthew Ghikas and Niall Rand

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PART ONE: INTRODUCTION

1. FortisBC Energy Inc. (FEI) is seeking approval, pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA), to recover the development costs incurred for the Regional Gas Supply Diversity project (RGSD Project or Project). These costs, which total $4.281 million before-tax ($3.749 million net of tax and including allowance for funds used during construction (AFUDC)), are currently in the non-rate base RGSD Development Account.[1] As proposed, the development costs of $4.281 million, as well as the regulatory proceeding costs associated with this Application,[2] will be transferred to a rate base deferral account and recovered over three years, commencing January 1, 2026. FEI has provided a draft final order in Appendix C-2 to the Application.[3]

2. The BCUC's test for assessing prudence presumes in the first instance that the utility has acted prudently, and if this presumption is rebutted, that disallowances of costs based on hindsight are not permitted. In 2022, when FEI filed the RGSD Development Account Application with the BCUC,[4] it faced a choice of *which* regional infrastructure option to support as being in the best interest of FEI's customers, as opposed to whether or not to participate at all. Enbridge had announced that it was pursuing an expansion to its T-South system (T-South) (i.e., the Sunrise Project) to serve demand from regional market participants other than FEI. The fact that FEI did not need any new capacity itself would not matter. FEI knew that, simply by virtue of T-South's rolled-in toll design and the fact that FEI is the largest shipper, it would have to contribute significantly to the capital cost and cost of service of any T-South expansion. FEI's costs would, in turn, be recovered from its customers. Simply put, FEI recognized that doing nothing guaranteed its customers would pay significantly higher gas costs with no added benefit – an unwelcome value proposition for its customers.

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1 By Order G-253-22, the BCUC granted approval to establish the RGSD Development Account, with disposition of its balance to be determined in the future – which is the purpose of this proceeding.

2 As explained in the response to BCUC IR1 5.3 (Exhibit B-3), FEI forecasts regulatory proceeding costs of approximately $45 thousand.

3 Exhibit B-1.

4 Exhibit B-1, Application, Appendix A.

3. FEI had also long understood that extending its Southern Crossing Pipeline (SCP) westwards from Oliver to some point on T-South – which became known as the RGSD Project – offered potentially significant benefits for FEI's customers by, in particular:[5] (1) diversifying FEI's supply resources; (2) reducing FEI's heavy dependence on T-South to serve the Lower Mainland, Vancouver Island and parts of the Interior system; and (3) reducing exposure to toll increases on T-South from the Sunrise Project and subsequent expansions undertaken to meet growing regional demand.[6] In short, the RGSD Project potentially offered a much better value proposition than doing nothing and acquiescing to paying progressively higher tolls on T-South.

4. FEI incurred development costs for preliminary and conceptual work, essential early engagement and consultation, and for a detailed route screening analysis.[7] FEI filed quarterly progress reports from Q4 of 2022 to Q2 of 2024, enabling the BCUC to oversee progress of the development work.[8] FEI's measured and staged approach to undertaking the RGSD Project development work resulted in FEI incurring far less costs than anticipated and allowed FEI to cease development activities at the appropriate time in Q1 of 2024.

5. In summary, the evidence demonstrates that the development costs FEI incurred in furtherance of the RGSD Project were prudent based on what was known and ought to have been known at the time. The incurred costs are properly recoverable through rates as reasonable costs of providing service to customers. FEI respectfully submits that the BCUC should grant the orders sought.

6. These Final Submissions are organized as follows:

- Part Two outlines the BCUC's well-established prudence test.
- Part Three demonstrates that FEI's decision to undertake the work, and the associated costs, were reasonable.
- Part Four explains why the proposed three-year amortization period commencing on January 1, 2026 is appropriate.

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5 Exhibit B-1, Application, p. 3.

6 FEI also identified additional long-term benefits, including: (1) facilitating decarbonization of the regional gas system by improving access to renewable and low-carbon gas supply from new sources; and (2) advancing FEI's efforts towards Indigenous partnerships, inclusion and reconciliation: Exhibit B-1, Application, Appendix A, p. 20.

7 Exhibit B-1, Application, Table 4-3 (p. 16).

8 Exhibit B-1, Application, p. 5.

PART TWO: THE LEGAL TEST FOR REVIEWING PRUDENCE IS WELL-ESTABLISHED

7. A utility's statutory rights under sections 59(5)(c) and 60 of the UCA to have rates set so as to recover its cost of service, as well as having an opportunity to earn a fair return on its investment, require recovery of prudently incurred costs.[9] The BCUC has long applied[10] the test set out by the Ontario Court of Appeal in *Enbridge Gas Distribution Inc. v. Ontario (Energy Board)* ("Prudence Test"):[11]

> … The "prudence" inquiry described by the Board has two stages. At the first stage, the decision of Enbridge is presumed to have been made prudently unless those challenging the decision demonstrate reasonable grounds to question the prudence of that decision. At the second stage of the inquiry, reached only if the presumption of prudence is overcome, Enbridge must show that its business decision was reasonable under the circumstances that were known to, or ought to have been known to, Enbridge at the time it made the decision.

8. The Ontario Court of Appeal in *Enbridge* emphasized that hindsight could only be used in rebutting the presumption of prudence (Stage One), thus triggering a prudence review. Subsequent events cannot be used in the stage two analysis to find imprudence and justify a disallowance of costs incurred by the utility to provide service to customers. The Court stated:[12]

> In the above quoted extract from its reasons, the OEB expressly alluded to the limited role played by hindsight. <u>Hindsight, that is knowledge of facts relevant to the prudence of the business decision gained after the decision was made, could not be used at the second stage of the "prudence" inquiry to determine the ultimate question of whether the decision was prudent</u>. Those facts could, however, be taken into consideration at the first stage in determining whether the presumption of prudence had been rebutted …
>
> [emphasis added]

9. In the *Application for Approval of the Fiscal 2018/2019 Revenue Requirements and Cost of Service Rates for the Thermal Energy Service to Delta School District No. 37*, the BCUC found

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9 *Enbridge Gas Distribution Inc. v. Ontario Energy Board*, 2006 CanLII 10734 (Ont. C.A.) at para. 8 [*Enbridge*].

10 See, e.g., Decision and Order G-84-19, p. 37; Decision and Order G-16-09, p. 38.

11 *Enbridge* at para. 11.

12 *Enbridge* at para. 12.

that the customer (DSD) had not provided sufficient evidence to rebut the presumption of prudence:[13]

> The Panel finds that DSD has not provided adequate evidence to rebut the presumption of prudence and therefore denies DSD's request for a prudency review of the project capital costs. The Panel also finds that FAES has taken appropriate and reasonable steps to improve the optimization of the TES.

10. The BCUC cited the fact that the actual spend, while over the original budget, was within the original estimate range:[14]

> As for DSD's request for a prudency review, the Panel finds that DSD has not provided adequate evidence to rebut the presumption of prudence and therefore denies DSD's request for a prudency review of the project capital costs.
>
> Based on the evidence, the actual capital costs of the project when compared to the forecast capital costs included in the compliance filing to Order G-71-12 are within the AACE Class 3 accuracy range of minus 20 percent/plus 30 percent. This degree of accuracy is prescribed in the BCUC's CPCN Guidelines and supports the presumption of prudency.

11. As discussed later, in this case, FEI incurred only a fraction of the original forecasted development costs. FEI submits that this is a factor that suggests the presumption of prudence has not been rebutted.

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13 Decision and Order G-84-19, p. i.

14 Decision and Order G-84-19, p. 28.

PART THREE: THE RGSD DEVELOPMENT COSTS WERE PRUDENTLY INCURRED

12. In this Part, FEI demonstrates why these development costs should be recoverable under the BCUC's Prudence Test. FEI makes the following supporting points:

- The presumption of prudence has not been rebutted;
- Regardless, FEI's decision to initiate development work was prudent and based on what was known and ought to have been known at the time;
- The amount and nature of costs incurred between November 2021 and March 2024 was reasonable. The costs were much lower than anticipated, reflecting FEI's measured and staged approach;
- Although the prudence of the costs incurred should be assessed without the benefit of hindsight, even with hindsight the work undertaken has value; and
- Recovery of pre-construction development costs for the RGSD Project is consistent with prior BCUC decisions.

A. THE RGSD DEVELOPMENT COSTS ARE PRESUMPTIVELY PRUDENT

13. The BCUC's Prudence Test (Stage One) provides for a rebuttable presumption that public utility decisions and actions in relation to the provision of service are prudent, as it serves neither regulatory interests nor the economic interests of ratepayers to examine every expenditure for prudence. FEI submits that the evidence in this instance, even with the benefit of hindsight at this stage, does not rebut that presumption of prudence.

14. It is part of FEI's normal role as a regulated public utility to examine opportunities to control costs and enhance service for customers. It is abundantly clear from information requests and intervener arguments in every utility revenue requirements proceeding that the BCUC and interveners expect utilities to make efforts in this regard.

15. Sometimes a utility must incur costs, as FEI did in this case, to find and realize opportunities for greater cost savings or benefits for customers.[15] Significant portions of any utility's revenue requirements, including sustainment capital and preventative maintenance, represent spending to allow the utility to provide reliable and cost-effective service.

16. The mere fact that that the RGSD Project development costs were recorded in a deferral account does not alter their essential character as costs incurred in furtherance of reliable and cost-effective service in the future. Utilities, including FEI, routinely defer costs; regulatory deferral accounts have long been an accepted part of ratemaking in this province. The BCUC should be evaluating these costs in the same way that it would evaluate any committed costs in a revenue requirements process. That is, FEI must benefit from a rebuttable presumption of prudence.

17. Moreover, the mere fact that FEI is no longer pursuing the RGSD Project is insufficient to rebut the presumption of prudence in this instance. First, the typical scenario where the presumption of prudence is deemed to have been rebutted is where costs incurred dramatically exceed the expected or budgeted amounts. That is not the case here. The costs that FEI ultimately incurred were a fraction of the $52.4 million that FEI had forecasted in the RGSD Development Account Application to complete the Pre-FEED work.[16] The lower costs were a direct result of a measured and staged approach, which allowed FEI to assess its next steps after achieving certain development milestones.

18. Second, this is a situation where the underlying motivation for FEI to undertake the development work was based on a clear rationale that remains valid. In 2022, FEI faced the prospect of having to underwrite a significant portion of the cost of a T-South expansion without needing any additional capacity itself. That is still true. It also remains true that an SCP expansion

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[15] The BCUC has recognized the value of such investments in the context of, for example, performance based regulation and multi-year rate plans: "The Panel agrees with BC Hydro's expert, Dr. Weisman, that a longer test period, all else equal, improves the incentives for the utility to make investments in productivity improvements because it allows the utility to retain the gains from those investments for a longer period of time before the utility's rates are rebased.": Decision and Order G-388-21, p. 16.

[16] Exhibit B-1, Application, p. 14.

offers a potential way for FEI customers to obtain benefits from a regional capacity expansion that will not come with a T-South expansion.

19. Third, the development work for the RGSD Project has preserved optionality in how the market addresses ongoing regional pipeline capacity constraints and persistent market pricing volatility. Had FEI not undertaken the development work completed for the RGSD Project, there would not be any basis for FEI to collaborate with other regional market participants on a potential integrated solution for the benefit of FEI's customers.[17] Whether or not another proponent steps forward with an alternative to the Sunrise Project, the rising demand in the region (and the fact that the Sunrise Project is only addressing capacity lost to Woodfibre LNG) leaves the potential for additional regional pipeline expansions. In that case, it will be advantageous to FEI customers for any other market participants to understand the potential pipeline alternatives that exist in the region.

20. Utilities are typically encouraged to realize value for customers when incurring costs, and FEI was looking for a way to achieve value for the very significant increase in annual tolls customers were facing. A finding that it was unreasonable for FEI to spend a comparably small amount to capture potentially significant benefits for customers without absolute certainty of success would be punitive and counterproductive. Uncertainty of recovery would discourage utilities from seeking benefits, cost reductions or to avoid costs.

B. FEI'S DECISION TO UNDERTAKE THE DEVELOPMENT WORK WAS REASONABLE AT THE TIME

21. In any event, even if the BCUC concludes that the presumption of prudence is rebutted, FEI has demonstrated that its decision to undertake development work was prudent based on what was known and ought to have been known at the time. As discussed below, FEI's decision to investigate and develop the RGSD Project was informed by: (a) recognition that market developments would lead to a pipeline expansion and higher costs for FEI customers; and (b) FEI's existing knowledge about the benefits of pipeline diversity and a preliminary assessment of

[17] Exhibit B-4, BCOAPO IR1 1.2.

the relative costs of regional pipeline options. The RGSD Project development work would allow FEI to understand the risks, the options available to mitigate these risks, and ultimately, to develop a project that would potentially be more beneficial for customers than the T-South Sunrise Project.

(a) Regional Market Developments Would Lead to Pipeline Expansion and Higher Costs for FEI Customers

22. In 2022, at the time of filing the RGSD Development Account Application, the market conditions discussed below suggested that FEI and its customers would end up underwriting a T-South expansion by virtue of rolled-in tolls and despite not needing any new capacity.[18] FEI relies on the T-South pipeline for more than 80 percent of the gas entering its system, meaning that the cost of 80 percent of the gas that customers receive would increase due to the Sunrise Project.[19] These market conditions persisted throughout the period when FEI was investigating and undertaking development work on the RGSD Project, and have persisted since this work ceased in Q1 of 2024.[20]

Regional Pipeline Capacity Was Fully Contracted and Regional Demand Was Increasing

23. T-South has been supplying natural gas to the Pacific Northwest region for decades, currently providing 1.8 Bcf per day (1,800 MMcf/d) of winter capacity.[21] In 2022, T-South was (and remains) fully subscribed, meaning there was no pipeline capacity to accommodate new load in the Pacific Northwest.[22] Constrained regional pipeline capacity, which provides long duration gas supply in the winter, is the primary reason for higher commodity prices and increased pricing volatility in the region.[23] Neither on-system nor off-system storage was capable of addressing these constraints.[24]

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18 Exhibit B-1, Application, p. 6.

19 Exhibit B-1, Application, Appendix A, p. 9.

20 Exhibit B-1, Application, p. 11.

21 Exhibit B-1, Application, Appendix A, p. 8.

22 See Exhibit B-1, Application, Figure 3-1 which shows the fully subscribed capacity holdings on T-South.

23 Exhibit B-5, CEC IR1 6.1.

24 Exhibit B-5, CEC IR1 6.1.

24. The evidence also demonstrates that regional demand was (and is) expected to grow. This increased demand was driven in particular by: (1) the Woodfibre LNG project, which FEI knew would be proceeding when it filed the RGSD Development Account Application; and (2) the development of natural gas-fired power generation in the US Pacific Northwest and western America.[25] Market participants expected the loss of capacity with Woodfibre entering service in 2027 alone to result in a shortfall in T-South capacity to meet regional demand.[26]

25. The Pacific Northwest continued to experience significant supply constraints after FEI initiated development work. Natural gas-fired generators, in particular, continued to strain peaking resources and baseload and storage resources during the winter period, as well as elongating natural gas requirements across the year.[27]

26. In this constrained environment, FEI reasonably expected growth in regional demand to result in higher sustained prices over the winter period, including even greater price volatility than what was already being experienced at that time.[28] As FEI explained in the RGSD Development Account Application:[29]

> At current capacity levels, demand from power generation facilities during the winter season will continue to cause price volatility at Huntingdon. Historically, the Huntingdon market has witnessed price spikes that occur whenever demand is high in the winter months due to cold weather or a capacity constraint occurs on the pipeline due to outages. Even relatively small changes in demand levels or constraints can trigger price spikes at Huntingdon that Regional market participants will recognize could be alleviated by adding new pipeline infrastructure.

These conditions favoured the construction of new pipeline capacity.

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25 Exhibit B-1, Application, pp. 7-8.

26 Exhibit B-1, Application, p. 8.

27 Exhibit B-1, Application, pp. 11-12 and Figure 3-2; Exhibit B-5, CEC IR1 6.1.

28 Exhibit B-1, Application, p. 8.

29 Exhibit B-1, Application, Appendix A, pp. 13-14.

Development of Enbridge's Proposed Sunrise Project Was Progressing in Parallel

27. When FEI filed the RGSD Development Account Application, Enbridge had already proposed the Sunrise Project, a 300 MMcf/d expansion of T-South with an original estimated cost of $2.5 billion.[30] FEI was rightfully reluctant to simply acquiesce to the Sunrise Project, without exploring other options, given how significant the financial impacts would be for FEI customers. This was especially so when an alternative, such as the RGSD Project, could benefit its customers in various ways that the Sunrise Project could not.

28. T-South has a rolled-in tolling structure,[31] meaning that all costs incurred to expand the system are allocated among shippers based on the proportion of their capacity holdings. Assuming the original estimate for the Sunrise Project of $2.5 billion, and based on FEI's capacity holdings on T-South, FEI calculated that the costs borne by its customers would increase by 45 percent in comparison to the T-South system's 2022 interim tolls. This represented an increase of approximately $65 million per year.[32] This cost to FEI's customers would increase if the capital cost of the Sunrise Project increased – which it did. Enbridge's cost estimate increased to $3.6 billion by late 2022 and approximately $4 billion by late 2023.[33] Assuming the $3.6 billion alone, the costs borne by customers could potentially increase by 65 percent or approximately $94 million per year.[34]

29. Second, FEI believed that more than 300 MMcf/d of incremental capacity would be needed in response to long-term regional demand growth, and therefore expected that Enbridge would ultimately need to develop a larger Sunrise Project expansion or proceed with a second expansion in the future – either of which would cost FEI's customers even more.[35] In particular,

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[30] Exhibit B-1, Application, p. 8.

[31] As the largest shipper on Enbridge's T-South pipeline, FEI incurs the bulk of any capital costs for expansions or improvements to the pipeline. This outcome flows from the Canadian Energy Regulator (CER) approved tolling methodology which shares the cost of expansions and/or improvements amongst all shippers: see Exhibit B-1, Application, p. 9.

[32] Exhibit B-1, Application, p. 9; Exhibit B-3, BCUC IR1 1.1.

[33] Exhibit B-5, CEC IR1 3.1; Exhibit B-1, Application, p. 9.

[34] Exhibit B-1, Application, p. 9; Exhibit B-3, BCUC IR1 1.1.

[35] Exhibit B-1, Application, p. 9.

the Sunrise Project, as proposed, would only meet the Woodfibre LNG demand, and would not meet the growing demand for gas in the region.

(b) FEI's Preliminary Evaluation Indicated the RGSD Project Was the Superior Option

30. Before applying for the deferral account and starting development work, FEI had performed a preliminary analysis of various options. The results of this evaluation further supported the reasonableness of FEI's decision to proceed with the development work for the RGSD Project.

31. FEI had identified and assessed three potential regional expansion options against non-financial criteria. FEI used a rating system to determine the best value proposition from the perspective of FEI and its customers.[36] While preliminary, the methodology used by FEI was appropriate for the stage of development, and was included in the RGSD Development Account Application. As shown in the table below (which was originally provided in the RGSD Development Account Application), FEI considered: (1) a T-South expansion; (2) the RGSD Project; and (3) a Northwest Pipeline (NWP) Gorge Expansion in the Pacific Northwest.[37]

Table 3-1: Summary of Options Assessment

Category	Criteria	Option 1 - (T-South Expansion)	Option 2 - (RGSD)	Option 3 - (NWP Gorge Expansion)
Decarbonization & Access to Renewable and Low-Carbon Gas Supply	Access to Renewable and Low-Carbon Gas Supply	✓	✓	✓
	Pipeline Hydrogen Readiness		✓	
Pipeline System Resiliency	New Path to Lower Mainland		✓	
	Alternative Supply Source		✓	✓
Regional Capacity Growth and Efficient Future Expandability	Regional Capacity Growth	✓	✓	✓
	Efficient Future Expandability		✓	

The results of the qualitative evaluation clearly favoured the RGSD Project as the most beneficial option compared to the other options. The RGSD Project would have, in particular, provided FEI's

36 Exhibit B-1, Application, p. 10.

37 Exhibit B-1, Application, p. 10 and Appendix A, Table 4-1 (p. 39).

customers with access to renewable and low-carbon gas supply over the long-term, beneficial pipeline system resiliency, and capacity growth at Huntingdon to meet long-term needs.[38]

32. FEI had also undertaken a preliminary financial comparison which showed that FEI's proposed RGSD Project and Enbridge's proposed Sunrise Project were similar, with a similar cost impact on FEI's gas cost portfolio. This comparison was based on Enbridge's original $2.5 billion estimate (which had increased to $3.6 billion by late 2022 and to $4.0 billion by late 2023, with further annual cost impacts).[39] The non-financial criteria, which identified the RGSD Project as providing significant long-term benefits to FEI's customers, were therefore an important differentiator.[40]

33. FEI submits that the preliminary analysis supported FEI's conclusion that it was in the best interest of its customers to further assess and develop the RGSD Project. The value proposition of getting something for customers, rather than getting nothing for a significant investment, was an obvious one.

C. COSTS INCURRED TO UNDERTAKE THE DEVELOPMENT WORK WERE REASONABLE

34. FEI submits that the amount and nature of the costs incurred was reasonable. As discussed below, the development work undertaken was important. FEI's work between November 2021 and March 2024 was measured and appropriately staged. The costs incurred were well-below the amount set out in the RGSD Development Account Application, and FEI ceased development work at the appropriate time.

(a) The Work Was Important to Understand and Evaluate Risk and Potential Mitigation Opportunities

35. FEI incurred $4.281 million ($3.75 million net of income tax recovery and including AFUDC) to undertake the RGSD Project development activities. The work that FEI performed was

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[38] Exhibit B-1, Application, Appendix A, p. 38. See also Section 4.2.2 of the RGSD Development Account Application for the complete results of the preliminary evaluation.

[39] Exhibit B-5, CEC IR1 3.1; Exhibit B-1, Application, p. 9.

[40] Exhibit B-1, Application, Appendix A, p. 43.

important to understanding and evaluating the risks facing customers and whether the RGSD Project would provide an opportunity to mitigate those risks.

36. Table 4-3 in the Application provides a summary of the activities and associated costs completed during the Preliminary and Conceptual Phase (Pre-Phase 1), totalling $1.4 million, and Screening and Pre-FEED Phase (Phase 1), totalling $2.88 million.[41] The costs incurred predominantly related to early engagement with Indigenous groups ($1.890 million),[42] as well as work on the Pre-Phase 1 and Phase 1 Pipeline Assessment ($1.04 million).[43]

37. The Pre-Phase 1 work was significant and important for subsequent development work. The investigative work to prepare the reports and analysis, which are required by the BCUC's CPCN Guidelines, take many months to complete.[44]

38. FEI engaged with Indigenous communities nearest to the proposed pipeline corridor, including 30 Indigenous communities directly and six Tribal Councils, and provided capacity funding to facilitate engagement through six separate agreements.[45] The early engagement work afforded an opportunity for FEI to share information on the RGSD Project concept, understand Indigenous interests and impacts, discuss potential mitigations, and build relationships and trust – all of which needed to be undertaken if the Project were to proceed.[46] This work also enabled FEI to introduce Indigenous ownership concepts at a high level.[47]

39. FEI could not have explored the viability of a potentially beneficial project for customers, or been adequately prepared to seek regulatory approvals, without early engagement work. Early engagement with Indigenous groups is most-effective when it occurs well-before the project

41 Exhibit B-1, Application, p. 16. See also Table 4-1 (p. 15), which provides a breakdown of costs per year and by phase.

42 See Exhibit B-3, BCUC IR1 2.3 for a cost breakdown of Indigenous and Community Engagement activities.

43 See Exhibit B-3, BCUC IR1 3.3 for a cost breakdown of pipeline assessment activities.

44 Exhibit B-4, BCOAPO IR1 2.2.

45 Exhibit B-1, Application, p. 17; see also Exhibit B-3-1, Confidential Attachment 2.2 for a summary of the engagement activities with the Indigenous communities.

46 Exhibit B-3, BCUC IR1 2.1.

47 Exhibit B-3, BCUC IR1 2.2.

application, when flexibility is highest and changes or adjustments can more easily be made.[48] It is widely considered to be a "best practice and essential work", as recognized by regulators in British Columbia.[49] The RGSD Project used the approach to early engagement that has been taken for other FEI projects of a similar scope and stage of development.[50] In addition to being part of FEI's approach to project development, early engagement is also a core part of the BC Energy Regulator and BC Environmental Assessment Office approval processes and policies.[51]

40. FEI elaborated on the importance of undertaking the development work in the RGSD Development Account Application (which is included as an appendix to this Application):[52]

> As set out in FEI's Statement of Indigenous Principles, FEI is committed to dialogue through clear and open communication with Indigenous Nations on an ongoing and timely basis for the mutual interest and benefit of all parties. This commitment aligns with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Truth and Reconciliation Commission of Canada's Calls to Action, and the Government of B.C.'s Declaration on the Rights of Indigenous Peoples Act. FEI recognizes UNDRIP as a reconciliation framework across its business and aims to achieve Call to Action 92, which calls on the Canadian corporate sector to "commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects." The RGSD Project partnership as contemplated could provide lasting and intergenerational economic opportunities for Indigenous Nations. Through the early engagement and dialogue required for the Project, FEI will develop new and existing relationships with Indigenous Nations, which in addition to ensuring the input, knowledge and expertise of Indigenous people is incorporated into the Project, will benefit interaction with FEI's ongoing operations. (pp. 30-31)
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> […]
>
> … consistent with FEI's commitment to meaningfully engage Indigenous Nations in a manner consistent with its Statement of Indigenous Principles, UNDRIP and the Truth and Reconciliation Commission of Canada's Calls to Action, FEI must substantially progress Indigenous engagement activities in advance of commencing the British Columbia Environmental Assessment (BC EA) process. In

48 Exhibit B-3, BCUC IR1 2.1.

49 Exhibit B-3, BCUC IR1 1.1.

50 Exhibit B-3, BCUC IR1 2.1.

51 Exhibit B-3, BCUC IR1 2.1.

52 Exhibit B-1, Application, Appendix A, pp. 30-31, p. 45.

> particular, FEI intends to develop new and existing relationships with Indigenous Nations through deepened engagement, fostering economic opportunities through partnership and equity ownership opportunities, and ultimately, advancing reconciliation through the Project's development and the economic opportunities for Indigenous peoples. As explained in Section 3.4, inclusion, reconciliation and partnership with Indigenous Nations is a foundational component of the RGSD Project, and the development work as proposed in this Application will enable FEI to proactively engage and collaborate with Indigenous Nations to appropriately inform Project development from the outset. (p. 45)

41. Ultimately, as noted above, FEI could not have explored the viability of the RGSD Project and the benefits it could provide to customers without undertaking this early engagement work.[53] Utilities like FEI are being encouraged to undertake early engagement, and Indigenous groups expect it. Disallowing such costs on the basis that the work ought not to have been done would be misaligned with the expectations of Indigenous groups and could have significant ramifications for the now standard approaches to engagement with these groups.

42. FEI provided regular progress reports to the BCUC which enabled a high degree of regulatory oversight over its progress on the development work and the costs incurred.[54]

(b) Development Costs Were Well-Below the Forecast Amount Due to Adoption of Staged Approach

43. As noted previously, the costs that FEI ultimately incurred were a fraction of the $52.4 million that FEI had forecasted in the RGSD Development Account Application for work up to Q3 of 2024 to complete the Pre-FEED work.[55] The lower costs were a direct result of a measured and staged approach, which allowed FEI to assess its next steps after achieving certain development milestones.

44. FEI did not incur the full forecast cost because it decided to undertake a detailed screening assessment in Q2 of 2023, before the Pre-FEED work.[56] The timing of this decision to undertake the screening work, rather than proceeding with the Pre-FEED work, was primarily driven by the

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53 Exhibit B-3, BCUC IR1 1.1.

54 Exhibit B-1, Application, p. 14.

55 Exhibit B-1, Application, p. 14.

56 Exhibit B-1, Application, p. 14.

information gathered as part of FEI's early engagement with Indigenous groups. The information gathered indicated that constructing a greenfield pipeline on a new route to the Lower Mainland involved significant risks that could be explored through the screening process. The screening assessment allowed FEI to continue engagement and collaboration with Indigenous groups and stakeholders prior to beginning regulatory approval processes, as well as providing an opportunity to increase support for the Project concept and design from Indigenous groups and stakeholders.[57] The screening work was also a required step of the project phase gate processes.[58]

45. Ultimately, undertaking the screening assessment was a measured response to the feedback received during early engagement, and prudently limited spending prior to any further development work being undertaken.

(c) The Amount Incurred Was Small Compared to the Amount that the Customers Would Be Facing with a T-South Pipeline Expansion

46. It is important not to lose sight of the fact that FEI was undertaking this work to potentially avoid greater costs for customers and deliver valuable benefits in the process. FEI had originally forecast spending $52.4 million in development costs, and even that amount was dwarfed by the costs that FEI customers were facing (and continue to face). FEI ended up spending only a fraction of the expected amount of development costs. The amount incurred, $4.281 million ($3.749 million net of income tax recovery and including AFUDC), represents only 0.094 percent of the expected cost of Enbridge's Sunrise Project.[59] The costs were also only a fraction of the <u>annual</u> cost that customers would pay in tolls due to the Sunrise Project.[60] As noted above, FEI customers faced an increase in tolls of approximately $65 million per year at the original Sunrise Project estimate,[61] and approximately $94 million per year based on the revised estimate in late 2022.[62]

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57 Exhibit B-3, BCUC IR1 3.1.

58 Exhibit B-3, BCUC IR1 3.1.

59 Exhibit B-3, BCUC IR1 1.1; Exhibit B-5, CEC IR1 3.1.

60 Exhibit B-5, CEC IR1 3.1.

61 Exhibit B-1, Application, p. 9; Exhibit B-3, BCUC IR1 1.1.

62 Exhibit B-1, Application, p. 9; Exhibit B-3, BCUC IR1 1.1.

The project cost had increased another $400 million by late 2023, with further annual impacts.[63] At that time, future expansions beyond the Sunrise Project also remained possible, given that the Sunrise Project would only replace the capacity lost when Woodfibre LNG comes into service and regional demand continues to grow.

D. FEI CEASED INCURRING DEVELOPMENT COSTS AT THE APPROPRIATE TIME

47. FEI's measured and staged approach to undertaking the RGSD Project development work allowed FEI to cease development activities on the RGSD Project at the appropriate time in Q1 of 2024. The decision to end development work was informed by the following considerations and properly limited spending on the development work.

48. First, by this time, the results of the screening work which, as explained above, was a prudent and necessary step of the development process, had yielded important information regarding potential route options.[64] In particular, discussions with Indigenous groups led FEI to further explore a route from Oliver to Kingsvale, which required co-commitments and support from other market participants that went beyond the scope of the RGSD Project.[65] Further, the earliest possible completion date for the Oliver to Kingsvale section of the pipeline would be 2030 – extending beyond short-term market needs and making it more beneficial for FEI's customers to collaborate with other regional market participants on an integrated solution.[66]

49. Second, Enbridge was at the very early stages of its project development in November 2022 when it announced the Sunrise Project open season was fully subscribed. For example, Enbridge had not yet applied for the regulatory and permitting approvals it would need to proceed with the expansion, or progressed environmental, geotechnical or Indigenous engagement work.[67] Further, FEI and other shippers retained an opportunity to intervene in any Canadian Energy Regulator (CER) process and present viable alternatives.[68] Therefore, FEI

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[63] Exhibit B-5, CEC IR1 3.1; Exhibit B-1, Application, p. 9.

[64] Exhibit B-4, BCOAPO IR1 1.1.

[65] Exhibit B-5, CEC IR1 2.1.

[66] Exhibit B-1, Application, p. 13; Exhibit B-5, CEC IR1 8.1.

[67] Exhibit B-4, BCOAPO IR1 2.3 and 2.4.

[68] Exhibit B-4, BCOAPO IR1 2.3.

continued to consider that the RGSD Project could be built to a capacity that would better meet market needs, at a similar cost, while providing additional benefits to its customers.[69] However, by Q1 of 2024 (when FEI ceased development work), Enbridge had progressed development on the Sunrise Project further and had filed a Project Description with the CER.[70]

50. In summary, it became clear to FEI that advances in project development by Enbridge, coupled with longer RGSD Project timelines, increased the probability that the Sunrise Project was the clear market "front runner".[71] Therefore, FEI made the prudent decision to cease the RGSD Project development work, thus minimizing the overall development costs incurred on the RGSD Project.[72]

E. INQUIRIES ABOUT THE ENDURING VALUE OF THE DEVELOPMENT WORK ARE AT ODDS WITH THE *ENBRIDGE* "NO-HINDSIGHT" TEST

51. FEI was asked by interveners about the "enduring value" of the RGSD Project development work.[73] FEI submits that the presence or absence of "enduring value" should have no bearing on whether the development costs are recoverable at Stage Two of the BCUC's Prudence Test. The concept of "enduring value" is inherently hindsight-driven. At Stage Two, the prudence of the costs incurred are to be assessed without the benefit of hindsight.

F. RECOVERY OF PRE-CONSTRUCTION DEVELOPMENT COSTS IS CONSISTENT WITH PRIOR BCUC DECISIONS

52. The BCUC has previously approved the recovery of pre-construction development costs associated with projects that have not proceeded.

53. Most recently, the BCUC approved FEI's recovery of approximately $22 million in pre-construction development costs for the Okanagan Capacity Upgrade (OCU) project as part of its decision approving a CPCN for the Okanagan Capacity Mitigation project (OCMP). While the BCUC

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[69] Exhibit B-5, CEC IR1 4.1.

[70] Exhibit B-4, BCOAPO IR1 2.4; Exhibit B-5, CEC IR1 8.1.

[71] Exhibit B-5, CEC IR1 8.1.

[72] Exhibit B-3, BCUC IR1 1.1.

[73] Exhibit B-4, BCOAPO IR1 1.2.

denied granting a CPCN for the OCU project, citing a lack of certainty that the proposed project scope was fully required, it found that the development costs for the OCU project were necessary and prudently incurred because the costs were "reasonable and directly attributable to the [OCU] project's development".[74] The RGSD Project development work was similarly directly attributable to the underlying project – in this case a regional pipeline expansion that offered potentially significant benefits for FEI's customers. Further, the OCU project had been a response to an identified risk facing customers (a capacity shortfall in that application), and the same is true in the case of the RGSD Project (increasing tolls without benefits). In both cases, the risk remained but the circumstances evolved such that the project was considered by the BCUC (in the case of the OCU project) or by FEI (in the case of the RGSD Project) to no longer be the best option for addressing the risk.

54. The BCUC has also allowed recovery of development costs in rates where projects were cancelled due to "business driver change[s]", including in relation to $6.5 million for the Metro North Transmission project advanced by BC Hydro.[75]

55. These BCUC decisions demonstrate recognition on the part of the BCUC that there is value in regulated public utilities being able to incur costs to understand risks and opportunities and to understand what is involved in risk mitigation or capturing the opportunities. Not every project that is initially conceptualized is going to be built – if they did all go forward, one might reasonably ask whether the utility is applying sufficient rigor in its assessment of project need. Precluding recovery of development costs in circumstances where the public utility has made the right decision not to move forward would send the wrong message and provide a perverse incentive. It would pose a significant obstacle for FEI and other public utilities from examining ways to improve safe, reliable and cost-effective service in the face of evolving circumstances.

56. FEI submits that, like the costs associated with the OCU and BC Hydro projects, the costs incurred in relation to the RGSD Project were directly related to the development of a project

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[74] Decision and Order C-2-25, p. 25.

[75] Decision and Order G-187-21, p. 71. See Exhibit B-2-2, Appendix L, p. 5 of that proceeding for more information regarding the cost specifics for the Metro North Transmission project.

intended to address a real risk and opportunity for customers, and those costs were prudently incurred.

PART FOUR: PROPOSED APPROACH TO RECOVER RGSD DEVELOPMENT ACCOUNT COSTS

57. FEI proposes to recover the RGSD Project development costs, which total $4.281 million pre-tax ($3.749 million net of tax and including AFUDC)[76], and the regulatory proceeding costs associated with the review of the Application, by transferring the balance in the existing non-rate base RGSD Development Account to rate base on January 1, 2026 and amortizing the rate base deferral account over three years. This approach is consistent with the treatment of previous deferral accounts approved by the BCUC,[77] and is reasonable and appropriate for the reasons described below.

A. THREE-YEAR AMORTIZATION STRIKES AN APPROPRIATE BALANCE

58. FEI explained that it selected a three-year amortization period after considering other periods ranging from one to five years. Revised Table 5-2 of the Application, reproduced below, shows that a three-year amortization period strikes an appropriate balance by minimizing the immediate delivery rate impact with some degree of rate smoothing.[78]

Revised Table 5-2: Delivery Rate Impact for One- to Five-Year Amortization Periods for Deferral Costs

	Amortization Period				
	1 Year	2 Years	3 Years	4 Years	5 Years
Incremental Delivery Margin in 2026 ($ millions)	5.304	2.617	1.765	1.339	1.083
Delivery Rate Impact in 2026, compared to 2024 Approved (%)	0.46%	0.23%	0.15%	0.12%	0.09%

59. In particular, a three-year amortization period avoids more significant rate impacts from shorter durations and better addresses intergenerational equity issues that may arise if a longer

[76] Please refer to the responses to BCUC IR1 4.1 and 5.3, which provide a detailed breakdown of revisions to the WACC return and estimated regulatory proceeding costs.

[77] Exhibit B-3, BCUC IR1 5.1.

[78] Exhibit B-3, BCUC IR1 4.1.

amortization period were selected. Further, a three-year amortization period aligns well with the length of time the costs associated with the development work were recorded in the deferral account and the period during which the deferral account was active (i.e., from mid-2021 to mid-2024). It minimizes the passage of time from when the RGSD Project development costs were first incurred to when the costs would be fully recovered.[79]

B. COMMENCING AMORTIZATION OF THE DEFERRAL ACCOUNT IN 2026 AVOIDS UNNECESSARY COMPLEXITY

60. FEI proposes to commence amortization of the deferral account on January 1, 2026 instead of January 1, 2025 because interim delivery rates for 2025 have already been established. Incorporating the forecast amortization of the RGSD Development Account as part of the 2026 revenue requirement and delivery rates thus avoids the need to incorporate the associated rate impact when FEI files for permanent 2025 delivery rates. FEI submits that this approach is both simpler and less subject to variables, such as when FEI may be required to file for permanent 2025 delivery rates.[80]

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[79] Exhibit B-1, Application, pp. 23-24; Exhibit B-4, BCOPAO IR1 3.2 and 3.3.

[80] Exhibit B-3, BCUC IR1 5.1.

PART FIVE: CONCLUSION

61. When customers eventually face significant increases in the cost of gas due to the expansion of a regional pipeline, they will ask whether the costs are necessary – or more pointedly, ask whether FEI took reasonable steps to minimize the costs and maximize benefits. Those are fair questions for customers to ask when faced with rate increases. The work that FEI undertook to investigate the potential for the RGSD Project was necessary to answer those questions.

62. Not every project will proceed; however, a public utility's decisions and actions in relation to the provision of service are presumed to be prudent. Where this presumption is rebutted, the BCUC evaluates the prudence of those decisions and actions to determine cost recovery *without* the benefit of hindsight. The evidence shows that FEI took measured and reasonable steps to understand the risks and costs associated with a promising alternative to a T-South expansion. It managed that work in such a way as to have incurred far less costs than the original estimate. FEI discontinued the work when it became clear that the RGSD Project as originally envisioned would not be able to meet market timing and required broader involvement from market participants. In short, throughout the RGSD Project development work, FEI has acted in a manner consistent with good utility practice, with the best interest of customers top of mind.

63. FEI respectfully submits that it is reasonable and appropriate to recover the costs incurred on the terms sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated:	March 19, 2025	***[original signed by Matthew Ghikas]***
		Matthew Ghikas Counsel for FortisBC Energy Inc.
Dated:	March 19, 2025	***[original signed by Niall Rand]***
		Niall Rand Counsel for FortisBC Energy Inc.