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

Dear Commission Secretary:

Re: FortisBC Energy Inc. and FortisBC Inc. - Application for Establishment of Equity Issuance Cost Deferral Accounts and Recovery of Equity Issuance Costs

We enclose for filing in the above proceeding the Reply Submission of FortisBC Energy Inc. and FortisBC Inc., dated April 10, 2025.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Matthew Ghikas
Personal Law Corporation

cc (email only) Registered Interveners

Enclosures

British Columbia Utilities Commission

FortisBC Energy Inc. and FortisBC Inc.

Application for Establishment of Equity Issuance Cost Deferral Account and Recovery of Equity Issuance Costs

Reply Submission of FortisBC Energy Inc. and FortisBC Inc.

April 10, 2025

Matthew Ghikas and Courtney Gibbons

Fasken Martineau DuMoulin LLP

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A. INTRODUCTION

1. This Reply Submission provides the FortisBC utilities' (**FortisBC or the Companies**) response to the two interveners who filed arguments: the Commercial Energy Consumers Association of British Columbia (**CEC**) and the BC Old Age Pensioners' Organization, *et al* (**BCOAPO**). FortisBC's reply is focused, given the extent of the alignment among the parties.[1] Both interveners agree that the 2023 GCOC Stage 1 Decision requires recovery of issuance costs, and that FortisBC's method for calculating issuance costs is reasonable.[2] CEC supports full recovery of FortisBC's proposed issuance costs for 2023 and 2024. BCOAPO accepts the need for the proposed accounts and supports full recovery in 2023, only taking issue with the inclusion of certain 2024 proposed costs in the proposed accounts at this time.

2. For the reasons set out in FortisBC's Final Submission and augmented below, FortisBC submits that the BCUC should grant the approvals sought. The proposed orders comply with the Fair Return Standard and ensure that FortisBC's rates are just and reasonable, as contemplated in the 2023 GCOC Stage 1 Decision.

3. These submissions are organized around the following points:

- **Section B**: CEC's proposed modification to FortisBC's implementation approach is less practical and unwarranted.
- **Section C:** BCOAPO objects to the inclusion of certain 2024 issuance costs in the accounts at this time and proposes an interim approval to facilitate their exclusion. BCOAPO's position is inconsistent with the BCUC's prior approval of the equity issuances, disregards the role of those issuances in maintaining compliance with BCUC orders, and introduces complexity with little practical difference in outcome.

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1 FortisBC's silence on a matter should not be interpreted as agreement. FortisBC continues to rely on its Final Submission.

2 BCOAPO Final Argument at pp. 3, 9; CEC Final Argument at paras. 1-2, 51.

B. CEC'S PROPOSAL TO FORECAST AND TRUE-UP IS LESS BENEFICIAL THAN FORTISBC'S PROPOSAL TO USE ACTUAL COSTS

4. CEC supports the Application, agreeing with FortisBC that "the GCOC Decision is clear that the Utilities are entitled to recover any actual costs incurred by their parent company, Fortis Inc., under the stipulations provided by the BCUC."[3] CEC also agrees that "the Utilities have provided a solid explanation in the application with adequate supporting evidence."[4] However, CEC suggests a different approach to implementation, which FortisBC submits is less practical and unjustified.

5. CEC proposes that the BCUC should order FEI and FBC to estimate their future flotation costs and then true-up the costs in a subsequent revenue requirements proceeding. CEC maintains that its implementation approach will allow the costs to be reflected in rates at the time the expenditures are incurred.[5] However, the benefits that CEC expects to achieve are predicated on FortisBC being able to forecast issuance costs with a degree of precision. This is not the case. There is a significant amount of uncertainty around (i) the timing of issuances, (ii) the size of issuances, and (iii) the sources of equity capital (including the issuance methodology and the associated issuance cost for the adopted methodology). Specifically, the decisions regarding the issuance methodology are beyond the control of FortisBC, being at the discretion of Fortis Inc.'s Board of Directors.[6] Fortis Inc.'s choice of the appropriate source of equity capital depends on its own funding needs, timing, and the administrative requirements of each offering type.[7] The costs associated with a particular issuance methodology are also impacted by market conditions that may be beyond Fortis Inc.'s control. Further, equity issuances can be "lumpy", as circumstances will vary from year to year.[8]

6. FortisBC's proposed method of implementation is a more straightforward and practical method for recovery of issuance costs and there is no compelling reason to deviate from it.

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3 CEC Final Argument at para. 7.

4 CEC Final Argument at para. 14.

5 CEC Final Argument at para. 25.

6 Exhibit B-5, CEC IR1 3.1.

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

8 This "lumpiness" can be seen in Fortis Inc.'s past issuance costs: Exhibit B-1, Application, Appendix C.

C. RESPONSE TO BCOAPO ON CERTAIN 2024 ISSUANCE COSTS

7. BCOAPO accepts the need for FortisBC's proposed deferral account and ". . . agrees with FortisBC's submission that an issuance (flotation) cost of 2.0 percent after tax is just and reasonable."[9] BCOAPO nonetheless objects to including 2024 issuance costs in the accounts at this time to the extent that they relate to equity issued in excess of the BCUC-approved deemed equity percentage. BCOAPO contends that the BCUC should, on an interim basis, deny FBC's 2024 incurred issuance costs and only approve a portion of FEI's incurred issuance costs for future recovery in customer rates, subject to finalization once actual results for 2024 are available.[10] BCOAPO adds that, in the event that part or all of that equity obtained in 2024 is required in future years to achieve the BCUC's approved deemed equity percentage, FortisBC should be able to include actual costs in the account at that time.[11] FortisBC submits, for the reasons set out below, that BCOAPO's reasoning is flawed. These costs are reasonable and properly included in the accounts in 2024 for full recovery.

(a) There Was a Compelling Reason to Incur All of the 2024 Issuance Costs

8. The BCUC has confirmed that issuance costs are a legitimate cost of service that are recoverable from ratepayers.[12] In order for rates to be just and reasonable, these legitimate costs must be recoverable from customers unless they are determined to have been imprudently incurred. All of the issuance costs incurred in 2024 under BCUC-approved common equity issuances, were reasonable to ensure compliance with the BCUC's allowed capital structure and FEI's "ring-fencing" conditions. BCOAPO misapplies the BCUC's prudence test by relying on hindsight as a basis for excluding certain issuance costs from the account.

9. The BCUC has long applied[13] the test set out by the Ontario Court of Appeal in *Enbridge Gas Distribution Inc. v. Ontario (Energy Board)* (**Prudence Test**):[14]

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9 BCOAPO Final Argument, p. 9.

10 BCOAPO Final Argument, p. 10.

11 BCOAPO Final Argument, p. 7.

12 2023 GCOC Stage 1 Decision, pp. 126-127.

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

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

10. 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:[15]

> In the above quoted extract from its reasons, the OEB expressly alluded to the limited role played by hindsight. 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. Those facts could, however, be taken into consideration at the first stage in determining whether the presumption of prudence had been rebutted …
>
> [emphasis added]

11. BCOAPO has not provided any compelling basis to rebut the presumption of prudence that arises by virtue of the BCUC having already approved these equity issuances in equity injection applications.[16]

12. Moreover, contrary to the BCUC's Prudence Test, BCOAPO is asking the BCUC to use knowledge of facts gained long after the decision to raise capital – the actual equity percentages – as the basis for not including actual incurred issuance costs in the account. The proper application of the BCUC's Prudence Test would instead require the BCUC to presume prudence in the first instance, and only preclude costs from being included in the account based on information that was known or ought to have been known at the time of issuance.

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15 *Enbridge* at para. 12.

16 Order G-298-24 (FBC 2024 Q4 Common Share Issuance Equity Injection). Order G-331-23 (FEI 2024 Q1 Common Share Issuance Equity Injection) and Order G-231-24 (FEI 2024 Q3 Common Share Issuance Equity Injection).

13. In that regard, the evidence is clear that there is a high degree of uncertainty in estimating the required equity injections. There are many variables related to the timing and amounts of earnings and capital expenditures that could influence the actual equity percentage amount.[17] In light of the considerable uncertainty, the only way for FortisBC to ensure compliance with the BCUC-ordered equity ratio and the BCUC's "ring-fencing" condition for FEI[18] is to maintain an equity "cushion" or "buffer" above the amount required by BCUC order to finance rate base. Ensuring compliance with BCUC orders is the epitome of prudent governance. BCOAPO's approach assumes a level of accuracy in forecasting financial requirements that is not reasonable.

14. The fact that FortisBC incurred the costs at all is compelling evidence that, based on the available information, it was prudent to do so. FortisBC is strongly incentivized to avoid maintaining excess equity, as the Companies only earn the (much lower) cost of debt on any equity above the BCUC-allowed percentage. In effect, using equity to finance the debt portion of the BCUC-approved capital structure (all else equal) erodes shareholder earnings. It is reasonable to conclude that FortisBC incurred these issuance costs due to their inability to predict the exact amount of capital required to precisely meet the allowed equity percentage, no more and no less. The financial incentive on FortisBC to minimize the buffer underlies the BCUC orders approving, for each company, issuance of common shares *up to* a specified maximum value (with which FortisBC complied).

15. BCOAPO cites in support of its position the fact that, under the BCUC's former ROE adder approach, the adder was only applied to the allowed equity ratio.[19] This analogy is inapt. Under the BCUC's previous approach, the ROE adder was applied to the *entire* common equity portion of the rate base. By contrast, this Application is concerned only with recovery of the issuance costs for newly issued equity.

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17 Exhibit B-4, BCOAPO IR1 3.2.

18 The BCUC imposed a "ring-fencing" condition on the approval of Fortis Inc.'s acquisition of Terasen Gas (now FEI): "(1) Each Terasen Utility shall maintain, on a basis consistent with BCUC orders and accounting practices, a percentage of common equity to total capital that is at least as much as that determined by the Commission from time to time for ratemaking purposes." See Order G-49-07, Decision, pp. 1-2 and 15.

19 BCOAPO Final Argument, p. 7.

(b) BCOAPO's Approach Introduces Complexity with Little Practical Significance

16. Any excess equity costs incurred in 2024 will be needed to finance 2025 rate base in any event. In times of increasing rate base (which this is), any actual equity cushion in one year is effectively negated in the following year, as it is then required to finance the additional capital expenditures and rate base amounts from that year.[20] Based on FortisBC's proposed approach, the Companies will not start to recover 2024 issuance costs until 2025 and even then the issuance costs will likely be amortized over a number of years. As such, in addition to BCOAPO's proposed approach being legally unsound and more administratively complex and burdensome, it would not lead to a significantly different timing of cost recovery.

(c) The BCUC Already Has the Necessary Information to Issue Final Approvals

17. BCOAPO contends that the BCUC should, on an interim basis, deny FBC's 2024 incurred issuance costs and only approve a portion of FEI's incurred issuance costs for future recovery in customer rates, subject to finalization once actual results for 2024 are available.[21] BCOAPO's sole justification for interim approval is that the final equity *percentages* are not yet known, and it needs those *percentages* to determine the extent to which the actual *percentage* exceeds the allowed *percentage*. While the equity *percentages* are currently unknown because actual information on rate base is unavailable, the actual *issuance costs* are known and presented in the Application.

18. Waiting until the percentages are known, as BCOAPO suggests, would result in a delay of up to two years before the actual issuance costs were included in rates. For example, if FEI issues equity in March 2025, the actual equity thickness would not be known until April 2026 when the Annual Report is prepared, and the flotation costs would then be incorporated in the 2027 Annual Review filed in July/August 2026, and the decision would follow several months later.

19. In the 2023 GCOC Stage 1 Decision, the BCUC determined that FEI and FBC can each "request recovery of actual costs incurred by the parent".[22] That is what FortisBC is doing. There

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20 Exhibit B-4, BCOAPO IR1 3.2.

21 BCOAPO Final Argument, p. 10.

22 Stage 1 GCOC Decision, p. 126.

is no need for interim approvals in this regard, considering the BCUC's prior equity issuance approvals and the BCUC's test for prudent cost recovery.

D. CONCLUSION

20. On the limited issues where CEC and BCOAPO disagree with FortisBC's Application, their arguments do not withstand scrutiny. Allowing FortisBC to record and recover all of the actual issuance costs from 2023 and 2024 is essential to comply with the Fair Return Standard and ensure that FortisBC's rates are just and reasonable, as contemplated in the 2023 GCOC Stage 1 Decision. FortisBC respectfully submits that the BCUC should approve the orders sought, as outlined in Section 1.1 of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated:	April 10, 2025	***[original signed by Matthew Ghikas]***
		Matthew Ghikas Counsel for FortisBC Energy Inc. and FortisBC Inc.
Dated:	April 10, 2025	***[original signed by Courtney Gibbons]***
		Courtney Gibbons Counsel for FortisBC Energy Inc. and FortisBC Inc.