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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-39-04

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by Fortis Pacific Holdings Inc. to Acquire
A Reviewable Interest in Aquila Networks Canada (British Columbia) Ltd.**

BEFORE: L.A. Boychuk, Panel Chair and)
Commissioner)
L.F. Kelsey, Commissioner) April 30, 2004
R. Milbourne, Commissioner)

O R D E R

WHEREAS:

- A. On December 1, 2003, Fortis Pacific Holdings Inc. ("Fortis Pacific") applied pursuant to Section 54 of the Utilities Commission Act ("the Act") for an Order approving the acquisition of a reviewable interest in Aquila Networks Canada (British Columbia) Ltd. ("Aquila") from Aquila Networks British Columbia Ltd. ("ANBC"); and
- B. Fortis Pacific is a company incorporated in British Columbia and is an indirect wholly-owned subsidiary of Fortis Inc., a diversified Canadian electric utility holding company with assets of over \$2 billion and annual revenues of about \$800 million; and
- C. ANBC currently owns 100 percent of the issued and outstanding Common Shares of Aquila; and
- D. Fortis Inc. has entered into a September 15, 2003 Agreement with ANBC and has assigned the right to purchase all of the issued and outstanding Common Shares of Aquila to Fortis Pacific; and
- E. Section 54(9) of the Act states:

"The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected."; and
- F. Fortis Pacific notes that various services are provided to Aquila by ANBC or its affiliates, and states that Fortis Inc. will provide these services through its affiliates or cause Aquila to develop the necessary capacity to provide these services on a stand-alone basis in a manner that ensures that there is no adverse effect on services provided to customers; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-39-04

2

- G. Fortis Pacific and Aquila jointly undertook a stakeholder communication and consultation program in the Aquila service area and have submitted a summary of the comments to the Commission as part of the Application (the Report); and
- H. Fortis Pacific states that a primary concern raised in the Report respecting the acquisition related to the treatment of the premium to be paid by Fortis Pacific for the Common Shares and Fortis Pacific stated that it would not seek to recover the premium in customer rates; and
- I. Based on the January 27, 2004 response of Fortis' counsel to the Commission's letter dated January 21, 2004 (Commission Information Request No. 1), among other things, the Commission noted that there were no general notices or invitations to participate in the stakeholder communication and consultation process undertaken by Fortis Pacific and Aquila and that this process was not open to all stakeholders in the service area; and
- J. Given the level of interest and concern expressed by the general public in the most recent proceedings of a similar nature involving the utility, by Order No. G-18-04, the Commission established a written public hearing process to review the Applications; and
- K. In its Application and in its stakeholder consultation and communication program, Fortis Pacific stated a number of plans and intentions for the management and operation of the utility and reported that strong public support was received. Fortis Pacific, however, was not prepared to provide or commit at this time to any specific or more detailed plans, financial evaluation or timetable; and
- L. The Commission has considered the Applications and submissions obtained during the written hearing process and has determined that the public utility and the users of the service will not be detrimentally affected.

NOW THEREFORE the Commission orders as follows:

- 1. The Commission approves, pursuant to Section 54 of the Act, the acquisition by Fortis Pacific Holdings Inc. of a reviewable interest in Aquila Networks Canada (British Columbia) Ltd.
- 2. Fortis Pacific, and as appropriate Aquila, is to file quarterly reports on its acquisition and transition activities as required in the Reasons for Decision attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of April 2004.

BY ORDER

Original signed by:

Lori Ann Boychuk
Panel Chair and Commissioner

Attachment

**An Application by Fortis Pacific Holdings Inc.
for Approval of the Acquisition of a Reviewable Interest
in Aquila Networks Canada (British Columbia) Ltd.**

and

**An Application by Aquila Networks Canada (British Columbia) Ltd.
to Register a Transfer of its Common Shares to Fortis Pacific Holdings Inc.**

REASONS FOR DECISION

1.0 THE APPLICATIONS

On December 1, 2003, Fortis Pacific Holdings Inc. (“Fortis Pacific”) applied (the “Fortis Application”) to the British Columbia Utilities Commission (“Commission”, “BCUC”) pursuant to Section 54 of the Utilities Commission Act (the “Act”) for an order approving the acquisition by Fortis Pacific of a reviewable interest in Aquila Networks Canada (British Columbia) Ltd. (“ANCBC”, “Aquila”, “the Utility”) from Aquila Networks British Columbia Ltd. (“ANBC”). ANBC currently owns 100 percent of the issued and outstanding Common shares of ANCBC.

On December 2, 2003, ANCBC applied to the Commission, on its own behalf and on behalf of Aquila Inc. (“AI”) and ANBC for an order approving the registration on the books of ANCBC of a transfer from ANBC to Fortis Pacific of a reviewable interest in ANCBC and for an order that the proceeds of sale of the issued and outstanding Common shares in the capital of ANCBC be allocated to the benefit of the shareholders of ANBC (the “ANCBC Application”).

For convenience, the above Applications are also referred to as the “BC Transaction”.

Fortis Pacific is a company incorporated in British Columbia and is an indirect wholly-owned subsidiary of Fortis Inc., a diversified Canadian electric utility holding company. Fortis Inc. owns 100 percent of Fortis West Inc., which in turn owns 100 percent of Fortis Alberta Holdings Inc. and Fortis Pacific (collectively the “Fortis Group”). Canadian regulated utilities in which Fortis Inc. presently has an interest are Newfoundland Power Inc., Maritime Electric Company, Ltd., and Fortis Ontario Inc., each managed, operated and financed on a stand-alone basis, with local management and direction in accordance with Fortis Inc.’s policy as stated in the Fortis Application. Fortis Pacific and Fortis Inc., for convenience, may also be referred to as “Fortis” in this Decision.

ANCBC is a public utility regulated by the Commission. ANCBC was formerly known as UtiliCorp British Columbia Ltd. (“UtiliCorp BC”), a subsidiary of UtiliCorp United Inc. (“UtiliCorp United”) of Kansas City Missouri, USA. On September 12, 1986, UtiliCorp BC and UtiliCorp United applied to the Commission to acquire a reviewable interest in West Kootenay Power and Light Company Ltd. (“WKPL”). WKPL also applied to register on its books the transfer of shares to UtiliCorp BC. The Commission ordered a public hearing into these applications and commencing in November 1986 and extending through to February 1987, hearings were held in several service area locations. The hearings generated considerable public interest and participation.

Commission Order No. G-31-87 and Reasons for Decision issued in June 1987 (“UtiliCorp Decision”), approved the transactions, subject to certain Conditions.

Fortis Inc. entered into an Agreement dated September 15, 2003 with ANBC (the “BC Agreement”) and pursuant to the terms of that Agreement assigned the right to purchase all of the issued and outstanding Common Shares of ANCBC to Fortis Pacific. The BC Agreement forms part of the ANCBC Application, Tab B, and contains certain closing conditions covering the basis on which Fortis Inc. will complete the transaction, including, with narrow exception, that no conditions be imposed by the BCUC.

On September 15, 2003, Fortis Inc. also entered into an agreement (the “Alberta Agreement”) with Aquila Networks Canada Ltd. (“ANCL”) to purchase the shares of Aquila Networks Canada (Alberta) Ltd. (“ANCA”). As explained in the ANCBC Application, at paragraphs 6 and 11 and Tab D, the “Aquila Group Corporate Structure” is as follows: ANCBC and ANCA are affiliates of each other and of each of ANBC, ANCL and AI; and each of ANCBC, ANCA, ANBC and ANCL is an indirect, wholly-owned subsidiary of AI. As noted above, ANCBC is regulated by the Commission. ANCA is regulated by the Alberta Energy and Utilities Board (“AEUB”).

As part of the Fortis Application, Fortis Inc., among other things, represents that it will unwind the integration of ANCBC with ANCA and establish and operate ANCBC on a stand-alone basis [paragraph 37(f)]. It will maintain the head office of ANCBC within its service area, include local representation on its board of directors and, in addition, senior officers of ANCBC will reside within the service area (paragraph 27). Fortis Inc. also intends to cause ANCBC to be capitalized with an equity to total capitalization ratio of 40 percent following closing (paragraph 39). As well, the premium that Fortis Pacific will pay to ANBC over the book value for ANCBC’s shares will not be recovered in regulated electricity rates (paragraph 29).

2.0 THE UTILITIES COMMISSION ACT

Section 54(7) of the Act states:

“A person must not acquire or acquire control of such numbers of any class of shares of a public utility as

- (a) in themselves, or
- (b) together with shares already owned or controlled by the person and the person's associates, cause the person to have a reviewable interest in a public utility unless the person has obtained the Commission's approval.”

Section 54(4) states that for the purposes of Section 54,

“a person has a reviewable interest in a public utility if

- (a) the person owns or controls, or
- (b) the person and the person's associates own or control,
in the aggregate more than 20% of the voting shares outstanding of any class of shares of the utility.”

Section 54(9) states:

“The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.”

3.0 THE REGULATORY PROCESS

The Act provides the Commission with discretion in regard to its process for assessing the acquisition of a reviewable interest.

In November 2003, before filing their Applications with the Commission, Fortis Pacific and ANCBC jointly undertook a stakeholder communication and consultation program in the service area to explain the Applications. In its Application, Fortis Pacific included as Schedule A a summary of the stakeholder comments obtained during this communication and consultation process (“Report on Stakeholder Consultation”). Related applications were filed in Alberta with the AEUB on October 20, 2003 and a Notice of Hearing was issued by AEUB on October 31, 2003, establishing a public oral hearing process which was subsequently, in mid-February 2004, converted to a written process.

Based on the January 27, 200, response from counsel for Fortis Pacific to the Commission’s letter dated January 21, 2004 [Commission Information Request (“IR”) No. 1], among other things, the Commission noted in its letter dated February 11, 2004, that there were no general notices or invitations to participate in the stakeholder communication and consultation process undertaken by Fortis Pacific and ANCBC and the process was not open to all stakeholders in the service area. The Commission also noted the level of interest and concern expressed by the general public in past proceedings of a similar nature involving the Utility and the ongoing concerns expressed by the general public in the service area with respect to the performance of the Utility. Therefore, to ensure there was a broader opportunity for public input, the Commission determined that, in the circumstances, it would be appropriate to conduct a public process to consider the Applications.

Concurrently with its letter dated February 11, 2004, the Commission issued Order No. G-18-04 which established a written public hearing process. The Commission directed Fortis Pacific and ANCBC to jointly publish the Notice of Application/Written Process in the Vancouver Sun and Province Newspapers and in appropriate local news publications in the service area so as to properly provide adequate notice to customers. On February 11, 2004, the Commission also issued Commission IR No. 2.

Appendix A to Order No. G-18-04 provided a regulatory timetable with deadlines for interventions, information requests and responses, and comments and submissions by Intervenor and the Applicants. Fifteen requests for intervenor status were received by the due date and eight further letters of comment were received related to the applications and the written process.

On March 4, 2004, the Commission granted a request by an intervenor, Mr. Hans Karow, for additional time to prepare information requests and the Commission extended the period for Intervenor Written Comments to March 22, 2004. Comments were filed by the extended deadline and the Applicants responded with a Final Submission. Mr. Karow also filed revised comments on March 24, 2004, which were considered by the Commission though the Commission was cognizant of ANCBC’s concern, as stated in its March 26, 2004 letter, that participants who are knowledgeable of the Regulatory Process are constrained to remain within its bounds.

4.0 THE INTERVENOR SUBMISSIONS COMMENTS

In its letter dated March 18, 2004, the Interior Municipal Electrical Utilities indicated that, as a group, they were all in support of the “Sale of Aquila” and that they believed this is a positive move for all current ANCBC customers “...who will receive nothing but high-quality service from the potential new owner.”

The City of Trail stated in its letter dated March 18, 2004, that it had no objection to the proposed sale. However, “Trail Council is concerned how the sale will impact the company’s management function in Trail and employment levels in their Trail operations in general.” Trail Council requested, as a condition of the purchase, that the Commission take the appropriate measures to ensure the head office and management function of the B.C. operations remain in Trail, which has been the location of the company’s head office for over 80 years.

On March 19, 2004, Lila Parsons, another Intervenor, requested that public meetings be held in each city and township to explain the sale to the citizens, particularly in respect of potential effects on power exports.

In a letter dated March 4, 2004, the Regional District of Okanagan-Similkameen (“RDOS”) requested that if the Commission were to approve the sale with conditions, its Board would like the Commission to ensure that Fortis Pacific would not be able to divert power and service to the detriment of Fortis Pacific’s customers. The RDOS had also filed a letter dated March 2, 2004 (the “Cardoso letter”) expressing concern that the November 2003 meeting with a few of the RDOS Directors did not represent meaningful consultation regarding the Fortis Pacific acquisition. By letter dated March 9, 2004 to the Commission, Fortis advised that it had arranged to meet with representatives of the RDOS to address their concerns. The Commission Panel understands that a meeting occurred on March 18, 2004 and notes that no further submissions have been filed by the RDOS or Mr. Cardoso.

Mr. Hans Karow submitted a number of requests for information to both Fortis and ANCBC. In a submission dated March 22, 2004, Mr. Karow asked that the Commission’s decision contain a binding closing date and a reasonably short transition period which best serves the interest of the public. Mr. Karow recommended “...that the Commission’s sale-approval decision should contain detailed [National Energy Board] permit(s) issued for [exporting Kootenay generated power directly or indirectly to non-Canadian customers]”. As well, since there is no Canadian legislation that is similar to the U.S. Public Utility Holding Company Act, he recommended that the Commission’s decision contain similar restrictions on public utility holding companies. Mr. Karow was concerned that the Commission’s decision should contain the same conditions for ownership as determined in Commission Order No. G-31-87, which approved the 1987 acquisition by UtiliCorp BC of a reviewable interest in the shares of the Utility, referred to above as the “UtiliCorp Decision”. These conditions are outlined and discussed below.

5.0 THE UTILICORP DECISION CONDITIONS

In 1986 UtiliCorp United and UtiliCorp BC (now ANBC) applied to the Commission to acquire a reviewable interest in WKPL (now ANCBC). During the hearing of that application, the question of foreign ownership of Canadian public utilities occupied a central and overriding concern for almost all of the participants.

In its Reasons for Decision which approved that acquisition, the Commission recognized that the jurisdiction to control foreign investment resided with the federal government rather than the Commission. The Commission also recognized that it had no general jurisdiction over the owners of utilities it regulates; instead it depends upon its jurisdiction over the utility itself to ensure that the utility is run in the public interest in a responsible and efficient manner (UtiliCorp Decision, p. 16). Accordingly, the Commission focused on an evaluation of the potential detrimental effects on the Utility and its customers.

During the proceedings, UtiliCorp United and UtiliCorp BC filed a statement of the commitments and objectives to be undertaken in the event that the acquisition of a reviewable interest was approved. The purpose, effectiveness and enforceability of the commitments and objectives were addressed by the Commission in the body of its Decision, in conjunction with its assessment of the particular issues to which they relate. The Commission added the commitments to Appendix B of the Decision and stated that these commitments were an integral part of the Decision and that approval of the application was based in part on the protection of the public interest which they provide.

The Commission then approved the application, subject to the conditions set out below.

1. UtiliCorp United, UtiliCorp B.C., and WKPL will not take any step or adopt any measure which has the direct or indirect purpose or effect of recovering from the customers of WKPL any premium paid over book value by UtiliCorp United or UtiliCorp B.C. for the shares of WKPL.
2. UtiliCorp United and UtiliCorp B.C. will not cause and WKPL will not divert power or energy required in any way whatsoever by WKPL's actual or potential customers to any other use and, in particular, may not use or cause to be used such power or energy for an export or non-utility purpose.
3. UtiliCorp United Inc. and UtiliCorp B.C. Ltd. will not themselves and will not cause WKPL to alter the basis or procedures for determining the appropriate water levels in the Kootenay Lake systems or in the river systems which are dammed as part of WKPL's water storage assets.
4. UtiliCorp United and UtiliCorp B.C. will provide WKPL with whatever form of financial support is necessary to allow WKPL to obtain the full benefit of UtiliCorp B.C. and UtiliCorp United's financing ability, including without limitation, guaranteeing the indebtedness of WKPL and providing the full faith and credit of UtiliCorp United and UtiliCorp B.C.
5. UtiliCorp United and UtiliCorp B.C. will not cause WKPL and WKPL will not lend direct financial support to either UtiliCorp United or UtiliCorp B.C. and in particular will not guarantee any indebtedness of theirs or their affiliates.
6. WKPL will reduce its dividend payouts to 44% of its earnings for the next five years

7. UtiliCorp United and UtiliCorp B.C. will cause WKPL to elect and maintain a board of directors comprising five independent directors resident within the WKPL service area, two nominees of WKPL management resident in the service area and two nominees of UtiliCorp United.
8. UtiliCorp United and UtiliCorp B.C. will cause WKPL to maintain an efficient capital structure satisfactory to the Commission and UtiliCorp United or UtiliCorp B.C. will contribute equity within three months of any request by the Commission to achieve or maintain the required capital structure. If UtiliCorp United or UtiliCorp B.C. are unable or unwilling to contribute the required equity themselves, they will, without delay, cause WKPL, and WKPL will use its best efforts, to make an offering of and to issue, equity securities to Canadian investors.
9. WKPL will retain its head office and management function in Trail for at least ten years from the date of this Decision and will maintain the head office and management function in the WKPL service area for so long as UtiliCorp United and/or UtiliCorp B.C. own a controlling interest in WKPL.
10. UtiliCorp United will not sell all or part of its shares in UtiliCorp B.C. and UtiliCorp B.C. will not issue securities in such a way as to directly or indirectly convey a reviewable interest as defined in Section 61 of the Act in UtiliCorp B.C. to any other person without the prior approval of this Commission.
11. UtiliCorp B.C. will retain in Canada all dividends paid by WKPL to it in the five years from the date of this Decision.

Any of Conditions 1 to 11 inclusive not stipulating a specific time limit were to remain in force so long as UtiliCorp United Inc. and UtiliCorp BC. owned WKPL. Except for those commitments which have been extinguished by the passage of time, the Conditions remain in full force and effect on the Utility and its present owner.

6.0 THE APPROVAL CRITERIA

In past decisions, the Commission has applied certain criteria to assist in determining whether there is potential for detrimental effects to the utility and its customers and, in the broader sense, to the public interest.

In the UtiliCorp Decision, the Commission stated, at page 6, that “It is important to note that such criteria, while a useful guide to the public interest, cannot be rigidly applied in every case since the circumstances may be significantly different in each case.” The criteria referred to were that:

1. The Utility's current and future ability to raise equity and debt financing not be reduced or impaired;
2. There be no violation of existing covenants that will be detrimental to the customers;
3. The conduct of the utility's business, including the level of service, either now or in future, be maintained or enhanced;
4. The application be in compliance with appropriate enactments and/or regulations;
5. The structural integrity of the assets be maintained in such a manner as to not impair utility service; and

6. The public interest be preserved.

In its Application, particularly at Section G, “Reasons for Approval”, Fortis Pacific uses the above criteria in an attempt to demonstrate that its acquisition of a reviewable interest in ANCBC will not detrimentally affect ANCBC or any of its customers and that its plans for the management and operation of ANCBC will beneficially affect the Utility, its users and the public interest. Fortis Pacific's evidence and submissions and those of the Intervenor and Interested parties are examined below.

1. The Utility's current and future ability to raise equity and debt financing not be reduced or impaired.

Fortis Pacific explained that ANCBC's current owner is working through financial difficulties and wishes to exit the B.C. electricity marketplace. Fortis Pacific, however, is a willing entrant and its parent is a well-capitalized Canadian electric utility holding company with assets of over \$2 billion and annual revenues of about \$800 million. In response to Commission IR No. 2, question 2, Fortis provided a Dominion Bond Rating Service (“DBRS”) press release of November 5, 2003 confirming both ANCBC's corporate credit rating and secured debt rating as BBB (high). The DBRS Release stated:

“The confirmations reflect Fortis Inc.'s intention to continue to allow ANCBC to operate on a stand-alone basis as a regulated vertically-integrated utility, including the maintenance of its capital structure in line with the deemed structure of 60% debt/40% equity, and to have ANCBC conduct all of its debt financing activities at the operating company level. The confirmations also reflect Fortis Inc.'s ability to provide equity injections going forward to maintain ANCBC's capital structure, particularly given that ANCBC will require equity injections over the next two to three years, given the large planned capital expenditure program over this period.”

In paragraph 39 of the Fortis Application, Fortis Pacific suggests that, given Fortis Inc.'s ability to obtain supportive financing to acquire the shares of ANCBC and ANCA and Fortis Inc.'s intention to cause ANCBC to be capitalized with an equity to total capitalization ratio of 40 percent following closing, the BC Transaction will not reduce or impair the current and future ability of ANCBC to raise equity and debt financing. Rather, as suggested in its response to Commission IR No. 2, in the circumstances, it “would be enhanced”.

2. There be no violation of existing covenants the effect being detrimental to the customers.

Fortis Pacific states that there are no covenants, agreements or legislative restrictions on it which would adversely affect or limit Aquila's ability to access capital markets.

It is Fortis Pacific's position that the continuation of the conditions in Order No. G-31-87 is not appropriate. In their letter dated January 27, 2004, in response to Commission IR No. 1, counsel for Fortis Pacific explained that “If the Commission approves its Application without conditions, there will be no breach of the UtiliCorp Conditions” in that the owners “...will have done everything required of them by Order No. G-31-87 and the purposes for which UtiliCorp Conditions were imposed will have been fully satisfied”.

The Commission Panel notes that this position is correct to the extent that, if not renewed, the Conditions will be effectively extinguished upon the issuance of a new order by the Commission. The Commission Panel nevertheless agrees that the background to and nature of the UtiliCorp Conditions suggests that they are not relevant or appropriate in the current circumstances.

The Commission Panel notes, for example, the concerns of some parties with respect to the export of power. Fortis Pacific asserts (Final Submission, p. 10) that the Commission had expressly found in the UtiliCorp Decision that there was no basis for concern regarding the export of power and that, in any event, such a concern would no longer be relevant because of subsequent amendments to the Act, which provide for the filing and Commission review of energy supply contracts. Fortis Pacific suggests that these provisions effectively ensure that ANCBC would not be able to divert power and service to export markets to the detriment of its customers. In the UtiliCorp Decision, at page 50, the Commission concluded that "...the control of exports by both levels of government and in particular the fact that export licenses are not issued unless or until domestic Canadian requirements are covered, is sufficient to protect Canadian interests." It therefore could find no detrimental effects on the Utility on that basis. This Commission Panel shares the same view.

In the Report on Stakeholder Consultation, Fortis Pacific and ANCBC stated that a primary concern related to the treatment of the premium to be paid by Fortis Pacific for the Common Shares of ANCBC. Fortis Pacific stated that it would not seek to recover the premium in customer rates. No further concerns were raised during this process by interested persons or parties.

During the process to examine the Applications, ANCBC acknowledged in response to an information request from Mr. Karow that:

"With respect to Condition 7, ANCBC's shareholder has, since the 1987 Order, maintained a board comprising five independent directors resident within the ANCBC service area, two nominees of ANCBC management and two nominees of Aquila, Inc. Within the last two years, the two nominees of ANCBC management have been resident outside the ANCBC service area.

With respect to Condition 9, ANCBC retained its head office and management function in Trail for at least ten years from the date of the 1987 Order. Although within the last two years many management functions for ANCBC have been carried out at Aquila Networks Canada's (ANCL) Calgary headquarters, ANCBC continues to maintain executive and other fully-staffed offices in its service area, and certain of its senior executives spend significant amounts of time in the service area, discharging their responsibilities."

ANCBC also reported that all executive and officer functions have been provided by employees of ANCL to ANCBC on a fee-for-service basis.

The Commission Panel considers that the matter of whether ANCBC has fully complied with Conditions 7 and 9, though identified in the context of this proceeding, is a distinct matter from the Applications before the Commission at this time. Accordingly, it will be addressed separately and apart from this process.

3. The conduct of the Utility's business, including the level of service, either now or in future, will be maintained or enhanced.

Fortis states, in its Report on Stakeholder Consultation, that it is “committed to improving the overall quality of service provided to ANCBC’s customers.” Fortis advised that a number of stakeholders had raised concerns related to the quality of service provided by ANCBC subsequent to the consolidation of certain functions for British Columbia and Alberta. Fortis’ intentions to separate British Columbia and Alberta’s respective utility service functions resonated well with stakeholders and seemed to satisfy many of the concerns raised.

Fortis’ plans for “Future ANCBC Operations” is outlined in Section D of the Fortis Application, specifically, paragraph 27 and 28, and is expanded upon in response to Commission IR No. 2, question 1, where it is stated that the:

“Application of [the Fortis Inc.] operating philosophy will result in each of ANCA and ANCBC having local call centre operations, line operations, engineering services and finance and human resources administration capabilities, and a separate executive management team and board of directors with local representation.”

Stakeholders also raised a variety of questions and concerns related to local issues. These concerns ranged from the location of certain ANCBC facilities or offices in the future, to ANCBC's future staffing levels. The Report on Stakeholder Consultation states that Fortis' representatives had indicated to stakeholders that “...decisions on such matters are made within the Fortis Group with a view to ensuring that (i) utility service and responsiveness meet customers’ reasonable expectations, and (ii) the utility is run on [an] economically efficient basis”. Fortis also stated that it “would not be in a position to make such decisions until after closing of the acquisition”.

In any event, Fortis notes that the BC Transaction does not alter the regulatory oversight of the Commission over ANCBC. ANCBC will continue to be obliged to comply with all regulatory requirements with regard to its operations and its levels of service as set by the Commission and other agencies having jurisdiction. The Commission will continue to regulate the operations of ANCBC, including the rates and other terms and conditions of the services provided by it, and the construction of new facilities.

4. The Application be in compliance with appropriate enactments and/or regulations.

The acquisition is subject to various consents and approvals of the Commission and other regulatory authorities. These requirements must be met before Fortis Pacific will be able to close the transactions contemplated in the September 15, 2003 BC Agreement.

5. The structural integrity of the assets be maintained in such a manner as to not impair utility service.

Fortis Inc. intends to retain ANCBC’s current capital expenditure program to upgrade transmission and distribution lines and generation plants in British Columbia [Fortis Application, paragraph 37(d)]. Fortis Inc. expects ANCBC’s rate base to grow by approximately \$780 million by 2008 as a result of a comprehensive capital expenditure program aimed at meeting customer growth, improving reliability and lowering operating costs. Again, the BC Transaction does not alter the Commission’s jurisdiction over the Utility or ANCBC’s obligation to provide safe, reliable, and secure service to its customers.

6. The public interest be preserved.

Fortis Pacific submits that the completion of the BC Transaction will not detrimentally affect ANCBC or the users of its services and that approval of the Application will not only preserve, but will positively benefit the public interest. In its Application and related responses and submissions, Fortis Pacific has stated that there is broad public support for the BC Transaction. The potential benefits of the transaction as communicated by Fortis Pacific and ANCBC to stakeholders are outlined in Sections D and G of the Fortis Application, including particularly paragraphs 27 and 28.

Fortis Pacific states in its Application at paragraph 43 that:

“Fortis’ intentions regarding maintenance and enhancement of the conduct of ANCBC’s business will address many of the concerns expressed historically by key stakeholder customers of ANCBC. The stakeholder consultation process has produced consistent and strong support for the Fortis purchase of ANCBC.”

Fortis Pacific states the following in its Final Submission:

“Fortis Pacific submits that the Transaction will benefit ANCBC and its customers and is in the public interest in that:

- (i) it will resolve the material concerns expressed by ANCBC’s customers as reflected in the Stakeholder Consultations;
- (ii) Fortis Pacific’s plans for the management and operation of ANCBC will in fact beneficially affect the utility and its customers; ...” (p. 3)

“There is no evidence on the record of this proceeding to indicate that the Transaction will detrimentally affect ANCBC or its customers. Indeed, although the Act does not require a positive finding by the Commission that the Transaction is in the public interest, Fortis Pacific submits that the record shows that the public interest will be well served by approval of the Application.” (p. 3)

“In summary, with respect to the basic question under section 54 of whether ANCBC or the users of its services will be detrimentally affected by the Transaction, we submit that there is no evidence to support such a conclusion. The evidence is overwhelmingly to the contrary and the record indicates that ANCBC and its customers will benefit as a result of Fortis Pacific’s ownership of the shares of ANCBC.” (p. 4)

The Commission Panel considers that, as reported by Fortis Pacific and as referenced in the Fortis Application, Information Request Responses and the Final Submission, the positive public support for the acquisition of a reviewable interest in ANCBC is largely based on Fortis’ stated plans and intentions for the management and operation of the Utility. The Commission Panel also notes that Fortis would not commit at this time to any detailed plans, financial evaluation or timetable for its stated plans and intentions referred to above. In response to Commission IR No. 2, question 1, Fortis states that it anticipates that ANCBC will file a general rate application in the fourth quarter of 2004 which will “set out in detail the plans for re-establishing ANCBC on a stand-alone basis”. Fortis also states that the rate application would “provide a basis for full public scrutiny of a more detailed plan (including a definitive timetable, a forecast of proposed costs and an assessment of customer benefits) as well as a reasonable record for the Commission’s consideration of matters relating to this issue.”

7.0 COMMISSION PANEL DETERMINATION

Notwithstanding the absence of documentation of Fortis' detailed plans, financial evaluation or timetables, the Commission Panel finds that there is no evidence of detrimental impact resulting from approval of the proposed acquisition and, as suggested by the Applicant, there may be beneficial impacts. The Commission Panel notes the stated intentions of Fortis Inc. to maintain a high quality of service to ratepayers and to re-establish the British Columbia operations as a stand-alone utility headquartered and managed within the service area. The Commission Panel also notes that, as acknowledged by the Applicant, the Commission's ongoing jurisdiction with respect to the Utility is not altered as a result of the BC Transaction.

The Commission Panel expects that, in due course and in a timely manner, steps will be taken to further consider and implement the plans and fulfill the commitments made in the presentations to stakeholders, in the Fortis Application and in the course of this public process. The Commission Panel agrees with Fortis that the next rate application "will provide a basis for full public scrutiny of a more detailed plan including a definitive timetable, a forecast of proposed costs and an assessment of customer benefits". In the meantime, the Commission Panel considers that it would be helpful and appropriate for Fortis to advise and keep the Commission informed of its plans related to the Utility.

The Commission Panel approves the application by Fortis Pacific to acquire a reviewable interest in ANCBC. The Commission Panel directs Fortis Pacific and, as appropriate, ANCBC to file with the Commission quarterly reports, commencing June 1, 2004 through June 1, 2005, identifying the stated plans and intentions contained within the Fortis Application and record of this proceeding and outlining planning activity, timetables and financial evaluation and impacts of their implementation. The Commission Panel expects that requests for approval, as required, for these initiatives, will be filed with the Commission in a timely manner.

Fortis opposed the imposition of any conditions similar to those contained in Commission Order No. G-31-87. Fortis stated that such impositions "likely represents an abuse of the Commission's powers under the Act since it would not be founded upon an express finding, based on the record, that conditions or other requirements are 'necessary or desirable in the public interest'." Fortis' counsel used very strong language to suggest that the imposition of conditions in the circumstances of the Fortis Application and the record before the Commission would be, among other things "arbitrary regulation".

While the Commission Panel has determined in this instance that the imposition of conditions is not necessary in the circumstances, this however does not mean that Fortis' submissions are accepted concerning the Commission's general authority or ability to impose conditions.

The Commission Panel agrees with Fortis' counsel that the Commission has broad ongoing regulatory authority under the Act over the utilities which it regulates. The Commission Panel notes that Section 54 of the Act also expressly grants to the Commission the power and authority to approve an application to acquire a reviewable interest in a utility "subject to conditions and requirements it considers necessary or desirable in the public interest". The Commission Panel therefore, does not accept, as suggested in the Final Submission that the "...imposition of conditions necessarily means that the Commission *must have determined that some detrimental affect would result* from Fortis Pacific's acquisition of the ANCBC shares *that warranted extraordinary measures to protect the public interest*" (emphases added). The Commission Panel does not accept the restricted interpretation of its powers or discretion, as suggested by Fortis' counsel.

Further, the argument that other applications under Section 54 have been approved without conditions is not relevant. In the Final Submission, Fortis' counsel repeats the concern initially raised in response to Commission IR No. 1 that the imposition of conditions "...would signal that Fortis Pacific is less trustworthy or suitable as an owner of a utility in British Columbia than are others". The Commission Panel reiterates that each application presents unique circumstances and considerations, and that the Commission, in exercising its authority under Section 54(9) must, in all cases, ensure that the conditions or requirements it considers necessary or desirable in the public interest are fulfilled.