

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-177-11**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

and

**Application by the FortisBC Energy Utilities
(comprising FortisBC Energy Inc., FortisBC Energy Inc. Fort Nelson Service Area,
FortisBC Energy (Whistler) Inc., and FortisBC Energy (Vancouver Island) Inc.)
for Approval of 2012 and 2013 Natural Gas Rates**

BEFORE: D.A. Cote, Panel Chair/Commissioner
A.A. Rhodes, Commissioner
N.E. MacMurchy, Commissioner
October 20, 2011

ORDER

WHEREAS:

- A. On May 4, 2011, the FortisBC Energy Utilities (FEU or the Companies) filed an application (Exhibit B-1) for their Revenue Requirements for FortisBC Energy Inc. (FEI), the Fort Nelson Service Area of FEI (Fort Nelson), FortisBC Energy (Whistler) Inc. (FEW), and FortisBC Energy (Vancouver Island) Inc. (FEVI), and for approval of interim and permanent natural gas delivery rates effective January 1, 2012 and permanent rates effective January 1, 2013, pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act* (the Act), with any variance between 2012 interim rates and permanent rates to be refunded to or collected from customers by way of a rate rider following the approval of 2012 permanent rates (2012/2013 RRA Application);
- B. On July 7, 2011, the British Columbia Utilities Commission (Commission) held a Procedural Conference at which interim rates, among other things, were addressed;
- C. On July 20, 2011, the Commission issued Order G-129-11 in which it stated: "The FEU's request, pursuant to section 89 of the Act, for interim rates as proposed in the Application for January 1, 2012 is rejected. FEU is asked to resubmit their request for interim delivery rates by October 1, 2011.";
- D. On July 19, 2011, the FEU filed an Evidentiary Update (Exhibit B-11) and on September 12, 2011, the FEU filed a second Evidentiary Update (Exhibit B-21) to reflect changes in circumstances since the 2012/2013 RRA Application was filed;
- E. On September 26, 2011 the FEU resubmitted an application for Interim Rates seeking approval, pursuant to section 89 of the Act, of interim delivery rates effective January 1, 2012 based on the updated rate request in the Application for 2012 (the Application) which includes the following:

- For FEI, a natural gas delivery rate increase of 5.6 percent and the Rate Stabilization Adjustment Mechanism (RSAM) rider for applicable rate classes for 2012 as set out in the Application;
 - For Fort Nelson, a natural gas delivery rate decrease of 6.7 percent effective January 1, 2012 and the RSAM rider for applicable rate classes for 2012 as set out in the Application;
 - For FEW, a natural gas delivery rate increase of 5.0 percent and the RSAM rider for applicable rate classes for 2012 as set out in the Application; and
 - For FEVI, to maintain current natural gas rates for all customers other than those with specified rates in their transportation service agreements, effective January 1, 2012;
- F. FEVI further seeks interim approval pursuant to section 89 of the Act and section 2.10(a)(i) of the Vancouver Island Natural Gas Pipeline Agreement Special Direction (the Special Direction), of its forecast cost of service for 2012, such that the difference between the interim delivery rate and the interim cost of service can be recorded in the existing Rate Stabilization Deferral Account (RSDA) pending the Commission's final determination of the Application;
- G. The FEU further seek final acceptance pursuant to section 44.2 of the Act for a reduced amount of Energy Efficiency and Conservation (EEC) expenditures in the amount of \$5 million to allow the existing programs to continue under the currently approved framework (with the expansion of the interruptible industrial programs to FEVI and the expansion of eligibility for all EEC programs to customers of FEW and Fort Nelson) between January 1, 2012 and the Commission's final decision in this Application;
- H. On October 3, 2011, the Commission began an oral public hearing to review the 2012/2013 RRA Application (the Oral Public Hearing);
- I. On October 3, 2011, in evidence at the Oral Public Hearing, FEU suggested the option of maintaining Fort Nelson rates at current levels. This would allow for a smoothing of rates over the 2012/2013 period for that utility. Effective January 1, 2012, natural gas delivery rates would remain consistent with the prior year and would be made interim pending the outcome of the proceeding of 2012/2013 RRA Application;
- J. On October 3, 2011, FEU and registered interveners made oral submissions related to FEU's applications for interim rates and for final acceptance of the reduced amount of EEC expenditures;
- K. The Commission has reviewed and considered the Application for Interim Rates effective January 1, 2012 and the application for final acceptance of the reduced amount of EEC expenditures and has considered the submissions of the parties.

NOW THEREFORE for the Reasons for Decision attached hereto as Appendix A, the Commission orders as follows:

1. Pursuant to section 89 of the Act, the following interim approvals are granted for FEI:
 - a. Approval of delivery rates, on an interim basis, for all non-bypass customers effective January 1, 2012, representing an increase of 5.6 percent for 2012. The increase is to be applied to the delivery charge, and the basic charge will remain at 2011 levels.
 - b. Approval, on an interim basis, of the RSAM rider for customers served under FEI Rate Schedules 1, 1B, 1S, 1X, 2, 2U, 2X, 3, 3U, 3X and 23 effective January 1, 2012 of (\$0.032)/GJ as set out in Section 3.4.3 of the Application.
2. The following interim approvals are granted for FEVI:
 - a. Pursuant to section 89 of the Act and section 2.10 of the Special Direction, approval on an interim basis of rates for Core Market sales and transportation customers, other than customers who have specified rates in their transportation service agreements, at the same level as 2011 rates.
 - b. Pursuant to section 89 of the Act and section 2.10(a)(i) of the Special Direction, approval on an interim basis of FEVI's forecast Cost of Service for 2012 as set out in Section 7, Tab 7.2, Schedules 5 and 6 of the September 12, 2011 Evidentiary Update to the Application (Exhibit B-21).
3. Pursuant to section 89 of the Act, the following interim approvals are granted for FEW:
 - a. Approval of delivery rates, on an interim basis, for all customers effective January 1, 2012, representing an increase of 5.0 percent for 2012. The increase is to be applied to the delivery charge, holding the basic charge at 2011 levels.
 - b. Approval, on an interim basis, of the RSAM rider for customers served under FEW Rate Schedules SGS 1/2, LGS 1, LGS 2 and LGS 3 effective January 1, 2012 of \$0.524/GJ as set out in Section 3.4.3 of the Application.
4. Pursuant to section 89 of the Act, the following interim approvals are granted for Fort Nelson:
 - a. Approval on an interim basis to hold the delivery charge and the minimum monthly service charge at the same level as 2011 rates and establish a related deferral account to record the revenue surplus in 2012 for return to customers in 2013.
 - b. Approval, on an interim basis, of the RSAM rider for customers served under Fort Nelson Rate Schedules 1, 2.1, 2.2 and 25 effective January 1, 2012 of (\$0.011)/GJ as set out in Section 3.4.3 of the Application.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-177-11

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-177-11

5

5. Pursuant to section 89 of the Act, the Commission accepts, on an interim basis, an expense schedule totalling \$5 million for EEC expenditures to permit the FEU to continue the existing portfolio, with expansion of the interruptible industrial programs to FEVI and the expansion of eligibility for all EEC programs to customers of FEW and Fort Nelson, in the period prior to the Commission's final decision in this Application. The EEC expenditures would be divided among the Utilities as follows:
- \$4.45 million for FEI (including Fort Nelson)
 - \$0.5 million for FEVI; and
 - \$0.05 million for FEW.
6. Any refund or under-collection following the granting of permanent rates will be addressed by way of a rate rider to refund or collect from customers the variance in interim rates versus permanent delivery rates approved.

DATED at the City of Vancouver, In the Province of British Columbia, this 21st day of October 2011.

BY ORDER

Original signed by:

D.A. Cote
Commissioner

Attachment



IN THE MATTER OF

**FORTISBC ENERGY UTILITIES
FOR APPROVAL OF 2012 AND 2013 NATURAL GAS RATES**

APPLICATION FOR INTERIM RATES EFFECTIVE JANUARY 1, 2011

REASONS FOR DECISION

October 20, 2011

BEFORE:

D.A. Cote, Panel Chair/Commissioner
A.A. Rhodes, Commissioner
N.E. MacMurchy, Commissioner

TABLE OF CONTENTS

	<i>PAGE No.</i>
1.0 BACKGROUND	3
2.0 THE APPLICATION	3
3.0 INTERVENER SUBMISSIONS	5
4.0 COMMISSION PANEL DECISION	6

1.0 BACKGROUND

On May 4, 2011, the Fortis Energy Utilities (FEU, Companies), comprising FortisBC Energy Inc. (FEI), FortisBC Energy Inc. Fort Nelson Service Area, FortisBC Energy (Whistler) Inc. (FEW) and FortisBC Energy (Vancouver Island) Inc. (FEVI) filed their F2012 and F2013 Revenue Requirements and Natural Gas Rates Application (Application) pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act (Act, UCA)*.

In making the Application, FEU requested among other things, that interim rates be approved for across-the-board increases of 5.04% for FEI, 2.23% for FEW and 6.51% and for Fort Nelson effective January 1, 2012. FEU further requested the rates for FEVI be frozen for 2012.

On July 20, 2011, the Commission issued Order G-129-11 which rejected the FEU request for interim delivery rates as proposed at that time. FEU were asked to resubmit their interim delivery rates request by October 1, 2011.

2.0 THE APPLICATION

By letter dated September 26, 2011, FEU re-submitted their Application, pursuant to section 89 of the *Act* and section 15 of the *Administrative Tribunals Act* for approval of interim delivery rates effective January 1, 2012 (Interim Rates Application). The Companies have requested that interim delivery rates be approved as follows: an increase of 5.6 percent for FEI, a decrease of 6.7 percent for Fort Nelson, an increase of 5.0 percent for FEW and maintenance of the current rate for FEVI. Subsequently, in evidence on October 3, 2011, the Companies suggested the option of maintaining Fort Nelson rates at current levels as a means of smoothing out delivery rates over the 2012/2013 periods for that public utility. (T2: 274) In addition, FEU also has applied pursuant to section 42.2 of the *Act* for Commission acceptance on a permanent basis of an expenditure schedule totaling \$5 million for Energy Efficiency and Conservation (EEC) expenditures to allow existing programs to continue under the currently approved framework (plus expansion of the interruptible industrial programs to FEVI and expanding eligibility for all EEC programs to customers of FEW and Fort Nelson). This would cover the period between January 1, 2012 and the Commission's final decision in this Application. The EEC expenditures would be divided among the Utilities as follows:

- \$4.45 million for FEI (including Fort Nelson)
- \$0.5 million for FEVI; and
- \$0.05 million for FEW.

The interim delivery rates request is based upon information that has been filed by FEU to date in the proceeding which includes the Evidentiary Update dated September 12, 2011. (Exhibit B-21) Following the approval of permanent rates, any variance between interim and permanent rates will be collected from or refunded to customers by way of a rate rider. (Exhibit B-23, p. 5)

(i) Interim Rates

FEU submits that the requirement for interim rates and the interim rate amount are two distinct issues.

FEU further submits that allowing applicants to seek interim rates addresses the practical issue that arises when the date where new rates are to take effect will be earlier than the completion of the rate setting process and, as a result, has become an important part of rate regulation in the Province. Further, the approval of an interim rate does not restrict the Commission from adjusting rates back to the date they were made interim with no violation of the retroactive ratemaking rule.

In support of their position, the Companies cite *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)* [1989] S.C.J. No. 68 which states that interim rate orders are granted to relieve the applicant from the harmful effect caused by the length of proceedings and points out that an order of this nature does not result in a decision on the merits of an issue which is to be settled in the final decision. The Companies note that this principle underlies interim rate provisions as outlined in the *UCA* where rates must be just and reasonable and argue that reflecting the true cost of service by readjusting rates for the period preceding the final order is integral to the principle of setting just and reasonable rates.

With respect to the requested interim rates, FEU argues that firstly, the evidence provides a prima facie case warranting some change from the current rates and secondly, the request is fair to both the Companies and its customers. FEU notes that in the case of FEI over half of the increase sought is for approvals previously granted by the Commission and the FEU increase is related to forecast declines in volume. While acknowledging the Commission will assess in detail the evidence supporting the precise amount of the revenue efficiency and rate change, the Companies state the proposed rates are appropriate as interim rates. (Exhibit B-24, pp. 2-5)

(ii) EEC Expenditures

Funding for existing EEC programs and the administrative framework to support them does not cover the period beyond the end of 2011. Within the Application FEU submit they have sought acceptance of expenditure schedules pursuant to section 44.2 of the *UCA* for a base level funding of \$20 million to be reflected in 2012 rates plus the ability to undertake further expenditures above that base level if there is demand. At this time the Companies are seeking final acceptance of \$5 million which is the amount they say is required to maintain the existing programs in the period spanning from January 1, 2012 to the date of the Commission's final decision on the Application. FEU proposes that the status quo be maintained over this period with programs from existing program areas only and evaluations done under the currently approved TRC test. (Exhibit B-24, pp. 5-6)

The Companies further note that the outlook for 2011 EEC spending is approximately \$16.8 million and the proposed delivery rates for 2012 and 2013 are based on \$20 million, a number which is close to 2011 expected levels. The Commission decision on the Application is expected in the spring of 2012 and because of this, FEU believes it follows that the \$5 million requested is consistent on a pro rata basis with the total amount requested.

In making the request for final acceptance of expenditure schedules totaling \$5 million in EEC funding, FEU state that the following framework will apply:

- “The FEU will limit the use of this \$5 million to EEC program areas previously accepted by the Commission, although FEU would ask for approval for the expansion of the interruptible industrial program area eligibility to customers of FEVI and all EEC program eligibility to customers of FEW and Fort Nelson;
- EEC expenditures in the period before the final decision will be subject to the currently approved financial treatment; and
- FEU will continue to evaluate EEC expenditures during this time according to the TRC test previously approved by the Commission.

Finally, FEU submit that final acceptance of the reduced expenditure schedules is necessary. In the view of the Companies, acceptance on an interim basis would provide insufficient comfort that expenditures can be recovered as demand side measures by way of the EEC approved financial treatment. (Exhibit B-24, pp. 6-7)

3.0 INTERVENER SUBMISSIONS

The British Columbia Old Age Pensioners’ Organization et al (BCOAPO), Commercial Energy Consumers Association of British Columbia (CEC) and B.C. Sustainable Energy Association and the Sierra Club of British Columbia Chapter (BCSEA) all provided submissions on interim delivery rates and approval of EEC expenditures. None of the Interveners opposed the granting of interim delivery rates.

With respect to approval of the \$5 million on a permanent basis for ongoing EEC expenditures, the views of the Interveners were less supportive.

The BCOAPO submits that it has no interest in eliminating funding for EEC programs during the period from January 1, 2012 onward and it is not in the interests of ratepayers to interrupt access to these programs over this period. BCOAPO has no objection to this being approved on an interim basis but does object to it being a permanent or final approval pointing out that the Applicants have no comfort that they will be successful in any of the requests contained within the Application. In the view of BCOAPO approval of this request will set a bad precedent and urges the Commission to deny the request for a permanent order.

CEC shares the discomfort of BCOAPO pointing out that it is not aware of any precedent for approval as part of an interim rate application of matters still before the Commission. In considering that the Commission may decide to approve such a request, CEC cautions that the Commission should be careful to word any such approval as a unique circumstance which is something it is not particularly comfortable with. CEC supports the idea of interim approval of the \$5 million.

BCSEA notes that it strongly supports the continuity of EEC programs in general and would not support any Commission decision which would threaten the continuity of these programs. BCSEA suggests the matter can be dealt without creating a precedent that may apply in other circumstances. BCSEA points out that request before the Panel is EEC specific and the spending is not included in the general operating and maintenance (O&M) budget. While expressing some hesitation as to whether this provides unqualified support for the a permanent decision BCSEA notes that “if there is any element to which not providing approval would threaten the continuation of programs, then BCSEA would certainly support approval of the money”. (T2: 97-102)

In Reply FEU submits that the request for EEC dollars under section 44.2 is a unique request and is unlike other O&M requests which are going into rates. It is the position of the Companies that O&M funding and EEC funding are “different beasts” where O&M funding is managed within an overall envelope and the funding can be moved around while an EEC portfolio only gets the financial treatment for that which is in the portfolio. FEU submits that the EEC funds benefit customers and there are no issues in evidence that the funding, if granted, will not be put toward programs which will deliver positive benefits to customers. (T2: 103-105)

4.0 COMMISSION PANEL DECISION

The Commission Panel notes that there were no objections raised by any of the Interveners with respect to interim delivery rates as requested by FEU. Further, the practice of granting such requests is not unique and given the size of rate increases requested and the justifying factors, we see no reason why interim approval should be withheld. **Accordingly, the Panel approves the interim delivery rates as outlined in the Interim Rates Application amended by the alternative option for Fort Nelson as being in the public interest.**

The bigger issue lies in FEU’s request for permanent funding in the amount of \$5 million to support continuity of existing EEC programs. The Commission Panel is in complete agreement with both the Applicant and the Interveners that there is a need to maintain continuity in the EEC programs and an interruption of access to these programs over the period of January 1, 2012 to the Commission’s final decision would not serve the public interest. Moreover, the Commission Panel sees no value in putting up barriers which unnecessarily frustrate the Applicant’s ability to continue to move forward with EEC initiatives such as these.

However, the Panel notes that there was a level of discomfort expressed by each of the Interveners with respect to FEU’s request for final acceptance of the expenditure schedules totalling \$5 million for EEC funding. Both the BCOAPO and CEC expressed concerns with the precedent setting nature of this request. The two Interveners indicated that there was no concern with an interim approval of the requested funds. The BCSEA, while hesitant to say there was not an issue with precedent, did state that it would be prepared to support permanent approval of the money if continuation of the programs was threatened.

The Commission Panel is also concerned with FEU’s request for final acceptance of the expenditure schedules totaling \$5 million in EEC expenditures. Our discomfort with this unique request lies with the fact the Commission is being asked to approve expenditures before there has been a thorough examination of the evidence. This, in effect, overrides the purpose of conducting a hearing process.

Perhaps even more important is whether there is actually a need for final approval at this time. The Panel notes the concerns raised by FEU with respect to their comfort with proceeding without a final approval. These concerns have been referenced by FEU in oral submissions with respect to prudence issues related to the natural gas vehicle incentive decision. (T2:92-93) The Panel would like to point out that the Reasons for Decision for Order G-145-11 clearly refer to demand-side measures as those defined in the *Clean Energy Act*. The Panel sees no reason for FEU to be concerned with the recovery of expended EEC funds under section 44.2 after January 1, 2012 as long as the activities undertaken are prudent and fall under this definition. **Accordingly, the Commission Panel rejects FEU’s request for final approval of \$5 million in EEC expenditures to cover the period from January 1, 2012 to the Commission’s final decision. The Commission, pursuant to section 89 of the UCA, does approve a maximum of \$5 million in funds on an interim basis for the continuance of EEC programs to be expended in accordance with the framework laid out on p. 7 of the Application (the Panel understands that the interim delivery rates which have been approved incorporate this amount). These will**

be divided among the utilities as follows: \$4.45 million for FEI (including Fort Nelson), \$0.5 million for FEVI and \$0.05 million for FEW. This will provide funding to allow the EEC programs to continue without interruption. Additionally, it will provide FEU with sufficient comfort to move forward with the knowledge that all prudent expenditures falling under the definition of “demand side measure” and fitting under the framework currently in place (described on page 5 of these Reasons for Decision) will be recoverable.