



**ORDER NUMBER**  
**G-293-20**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Inc.  
Annual Review for 2020 and 2021 Rates

**BEFORE:**

T. A. Loski, Panel Chair  
C. Brewer, Commissioner  
E. B. Lockhart, Commissioner

on November 13, 2020

**ORDER**

**WHEREAS:**

- A. On June 22, 2020, the British Columbia Utilities Commission (BCUC) issued its Decision and Orders G-165-20 for FortisBC Energy Inc. (FEI) and G-166-20 for FortisBC Inc. (FBC) approving a Multi-Year Rate Plan for 2020 through 2024 (MRP Decision). In accordance with the MRP Decision, FBC is to conduct an annual review process to set rates for each year;
- B. By letter dated July 20, 2020, FBC proposed a regulatory timetable for its annual review for 2020 and 2021 rates;
- C. By Order G-211-20 dated August 11, 2020, later amended by Order G-274-20 and G-287-20, the BCUC established a regulatory timetable for the annual review of FBC's 2020 and 2021 rates, which included the anticipated date for FBC to file its annual review materials, the deadline for intervener registration, one round of information requests (IRs), a workshop, FBC's response to undertakings requested at the workshop, and written final and reply arguments;
- D. On August 19, 2020, FBC submitted its Annual Review for 2020 and 2021 Rates Application (Application). FBC also submitted evidentiary updates to the Application on October 9, 2020 (First Evidentiary Update) and October 28, 2020 (Second Evidentiary Update);
- E. On October 1, 2020, FBC responded to BCUC and intervener IRs, and declined to respond to the information requested in the Industrial Customers Group's (ICG) IR 8 series as the questions request information that is relevant to a cost of capital proceeding and are outside the scope of this Annual Review;
- F. On October 8, 2020, the ICG filed a letter with the BCUC requesting that FBC be directed to respond to its questions in ICG IR 8 series (Exhibit C4-3);

- G. On October 13, 2020, FBC responded to ICG's request (Exhibit B-11) and on October 29, 2020, ICG replied to FBC's response (Exhibit C4-4); and
- H. The BCUC has considered the ICG and FBC submissions and determines that the nature of the information requested is outside the scope of this proceeding.

**NOW THEREFORE** for the reasons attached as Appendix A to this order, the BCUC directs that FBC is not obligated to respond to the ICG's questions in IR 8 series and denies ICG's request to direct FBC to respond to these questions.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 13<sup>th</sup> day of November 2020.

BY ORDER

*Original signed by:*

T. A. Loski  
Commissioner

Attachment

FortisBC Inc.  
Annual Review for 2020 and 2021 Rates

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**REASONS FOR DECISION**

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**1.0 Background**

On August 19, 2020, FortisBC Inc. (FBC) submitted its Annual Review for 2020 and 2021 Rates (Annual Review) Application (Application).

By Order G-211-20, the BCUC established a regulatory timetable for the review of the Application. The timetable included one round of information requests (IRs) from the British Columbia Utilities Commission (BCUC) and interveners, a workshop, FBC's response to undertakings requested at the workshop, and written final and reply arguments.<sup>1</sup>

On October 1, 2020, FBC responded to BCUC and intervener IRs, in accordance with Order G-211-20, but declined to respond to the information requested in the Industrial Customers Group's (ICG) IR 8 series. FBC submitted, "[it] respectfully declines to respond to this series of IRs because they are all requesting information that is relevant to a cost of capital proceeding and outside the scope of this Annual Review."<sup>2</sup> Specifically, FBC stated:

- FBC's capital structure and return on equity (ROE) were approved by the BCUC pursuant to Order G-47-14. In that Order and accompanying Decision, the BCUC determined that it was appropriate for FBC to receive a 40 basis points premium over the benchmark utility's ROE.
- By Order G-129-16 the BCUC determined that FortisBC Energy Inc. (FEI) would continue to serve as the benchmark utility and directed that FEI's ROE would remain at 8.75 percent.
- FBC has applied the current BCUC-approved capital structure and ROE in the calculation of its 2020 and 2021 revenue requirements.

FBC submitted that a review of its ROE and/or capital structure is outside the scope of this Annual Review and accordingly declined to provide the information requested by ICG.<sup>3</sup>

**2.0 Disputed Information Requests**

On October 8, 2020, ICG filed a letter with the BCUC (Exhibit C4-3), requesting that FBC be directed to respond to the questions in ICG IR 8 series.

On October 13, 2020, FBC responded to ICG's request (Exhibit B-11) and on October 29, 2020, ICG replied to FBC's response (Exhibit C4-4).

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<sup>1</sup> Order G-211-20 was later amended by Order G-274-20 dated October 29, 2020, following the receipt of FBC's response to undertakings requested at the workshop and the filing of an evidentiary update.

<sup>2</sup> Exhibit B-8, ICG IR 8 series.

<sup>3</sup> *Ibid.*

## 2.1 ICG Submission

In Exhibit C4-3, ICG submits that the cost of capital IRs contained in ICG IR 8 series are within the scope of this Annual Review because the cost of capital is a significant component of the revenue requirement used to determine fair and reasonable rates.<sup>4</sup> Since BCUC Orders G-129-16 and G-47-14 do not make any determinations that reference 2020 or 2021, ICG disagrees with FBC's submission that cost of capital is outside the scope of this Annual Review because it has been previously determined by the BCUC.<sup>5</sup> ICG further states "[f]or this reason, the ICG submits that the Commission should conclude that the cost of capital is within scope of this Annual Review."<sup>6</sup>

In ICG's view, the cost of capital needs to be considered before setting rates. ICG acknowledges that the BCUC could agree with FBC that the cost of capital should be set in accordance with Orders G-47-14 and Order G-129-16. However, in doing so, ICG submits, "the Commission Panel will first need to conclude that the application to 2020 and 2021 of Order G-47-14 and Order G-129-16 will result in fair and reasonable rates."<sup>7</sup> ICG expects that the information requested in ICG IR 8 series will demonstrate whether Orders G-47-14 and G-129-16 can be relied upon to determine the cost of capital in this proceeding.<sup>8</sup>

ICG further submits that Orders G-47-14 and G-129-16 were "based on no change to the circumstances of the financial markets since 2012." ICG explains that the evidence used to determine Order G-129-16 is now more than five years old, and as noted in that Decision, FEI submitted that cost of capital be reviewed in a three to five-year time frame. ICG submits that these circumstances provide further reasons for the BCUC to direct FBC to respond to the cost of capital IRs.<sup>9</sup> Additionally, ICG expects that the responses to the IRs will provide "objective market evidence that the circumstances of Order G-47-14 and Order G-129-16 have changed since October 2015." For that reason, ICG also submits the cost of capital IRs should be considered within the scope of this proceeding.<sup>10</sup>

Finally, ICG submits, "that it is now necessary for the Commission to vary in a timely manner the cost of capital approved by Order G-47-14 and Order G-129-16 because such Orders can no longer be relied upon for setting rates." Accordingly, ICG believes that the BCUC should not approve final or permanent rates in this proceeding, stating:

The FBC position that the [cost of capital] IRs are outside the scope of this proceeding will deny customers the opportunity to challenge the FBC position that the cost of capital in this proceeding should be set by applying Order G-47-14 and Order G-129-16. Moreover, no other adjudicative process has been established to determine the cost of capital for FortisBC for 2020 and 2021. The ICG respectfully submits that the adjudicative process to determine the cost of capital for 2020 and 2021 should be a cost of capital proceeding.<sup>11</sup>

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<sup>4</sup> Exhibit C4-3, p. 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, pp. 1–2.

<sup>9</sup> *Ibid.*, p. 2.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, pp. 2–3.

## 2.2 FBC Submission

In response to the request from ICG, FBC submits Exhibit B-11 stating that it disagrees with ICG for four reasons:<sup>12</sup>

1. Reliance on past BCUC orders approving its cost of capital is consistent with past practice before the BCUC;
2. This proceeding is designed to be a relatively abbreviated and efficient process, and is not an appropriate forum in which to assess FBC's cost of capital;
3. The BCUC's approved cost of capital orders can remain valid despite changes in financial markets; and
4. This is not an appropriate time to initiate a cost of capital proceeding due to the ongoing uncertainty caused by the COVID-19 pandemic.

Expanding on these reasons, FBC submits that it is reasonable for it to rely on existing and valid BCUC orders that have set its capital structure and ROE. FBC states, "Orders (*sic*) G-129-16 and Order G-47-14 set FBC's capital structure and ROE until the BCUC orders otherwise and, therefore, do not need to reference 2020, 2021 or any other year."<sup>13</sup> In its view, this is consistent with the BCUC's regular practice, in which the cost of capital is considered in separate proceedings designed for that purpose, and revenue requirements and rates are set based on the capital structure and ROE approved at the time.<sup>14</sup>

Second, FBC submits that annual reviews are designed to be a relatively abbreviated and efficient process for setting rates within the context of FBC's approved multi-year rate plan. FBC argues, "[i]t is neither efficient nor feasible to turn Annual Reviews into a forum in which the merits of every past order of the BCUC are subject to IRs and argument." FBC submits that determining the cost of capital is a complex exercise, examining many topics, that requires a separate proceeding specifically for that purpose. In FBC's view, it is not plausible that the record in this proceeding could or should be developed to the extent necessary for the BCUC to determine FBC's cost of capital.<sup>15</sup>

Third, with respect to ICG's assertion that the BCUC must conclude that there has been no change in the financial markets since October 2015 in order to conclude there should be no change to the cost of capital of FBC since Order G-129-19, FBC disagrees<sup>16</sup>. FBC states changes in market conditions may not necessarily mean a change in an investor's opportunity cost because determining a utility's cost of capital is a complex exercise, driven by multiple factors. FBC submits that the BCUC need not engage in this exercise in this proceeding and that it "can and should" rely on its past decisions approving FBC's cost of capital.

Finally, FBC submits that this not a good time to initiate a cost of capital proceeding considering that "we are in the midst of a pandemic that has brought extraordinary turmoil and uncertainty to the capital markets and utilities' risk profiles."<sup>17</sup> FBC cites recent decisions from the Alberta Utilities Commission and the Régie de L'énergie in Quebec in March 2020 and August 2020, respectively, in which a generic cost of capital proceeding was suspended indefinitely and the Gazifere's cost of capital was accepted for 2021 and a detailed review deferred to 2022 or later. FBC submits that, given that the current volatile state of capital markets is expected to continue for some time, undertaking a cost of capital review at this time would lead to evidence that is based on

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<sup>12</sup> Exhibit B-11, pp. 1–2.

<sup>13</sup> *Ibid.*, p. 2.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p. 3.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, p. 4.

speculative and reactive data. Therefore, FBC view's that "it is wise to keep monitoring the market environment and consider the timing of a potential cost of capital proceeding after the pandemic is over and its impacts are somewhat diminished."<sup>18</sup>

### 2.3 ICG Reply Submission

In reply, ICG submits, in the circumstances of this Application, that the *Utilities Commission Act* (UCA) compels the BCUC to determine the cost of capital before final approval of rates.<sup>19</sup> ICG submits that section 58(1) of the UCA requires a hearing before rates are set and a determination that the rates are just, reasonable and sufficient before making changes to rates. ICG states, "[t]hat determination cannot be made if even one component of the revenue requirement has not been adequately explored or is unfair."<sup>20</sup> As well, ICG indicates that the intent of the legislature expressed in section 58(1) establishes that "[e]ach previous order needs to be considered by the Commission when the [s]ection 58(1) determination is made."<sup>21</sup>

ICG submits that there are many established principles that help regulators determine rates that are just, reasonable and sufficient; one of those principles is that current day conditions must be given consideration to ascertain the rate of return to be allowed utilities. It argues, "FBC would have the Commission ignore current capital market conditions and apply a ROE determined in very different market conditions. The purpose of the [cost of capital] IRs was to provide objective market evidence that Order G-47-14 and Order G-129-16 can no longer be relied upon [for rate setting purposes]."<sup>22</sup> On this point, ICG submits that the need for a review of the cost of capital and interim rates has been prompted, and in all cases, the issue of whether a previous order can be relied upon must be within the scope of a rate hearing.<sup>23</sup>

ICG notes, "[t]here may from time to time be a regulatory lag between capital market changes and the rate of return to be allowed. However, every time the Commission changes rates the Commission must first determine that the rates to be approved are fair and reasonable. To allow the regulated utility to freely determine when to adjust one component of the revenue requirement and not another will inevitably lead to rates that are unfair and unreasonable."<sup>24</sup>

ICG submits that in Exhibit B-11:

FBC now agrees that market conditions have changed since Order G-129-16 was issued. Based on the same FBC submissions, the ICG submits that the Commission may now conclude that Order G-47-14 and G-129-16 can no longer be relied upon and not direct FBC to respond to the CoC [Cost of Capital] IRs. In the event the Commission disagrees, the ICG submits the Commission direct FBC as requested in Exhibit C4-3.<sup>25</sup>

ICG further states that "it is now necessary for the Commission to vary in a timely manner the cost of capital approved by Order G-47-14 and Order G-129-16 because such [o]rders can no longer be relied upon for setting rates. For that reason, the Commission should not approve final rates in this proceeding."<sup>26</sup>

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<sup>18</sup> Exhibit B-11, p. 4.

<sup>19</sup> Exhibit C4-4, p. 1.

<sup>20</sup> *Ibid.*, p. 2.

<sup>21</sup> *Ibid.*, p. 3.

<sup>22</sup> *Ibid.*, p. 2.

<sup>23</sup> *Ibid.*, p. 3.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, pp. 2–3.

<sup>26</sup> *Ibid.*, pp. 1–2.

### 3.0 Panel Determination

The Panel has considered the submissions of ICG and FBC on the disputed cost of capital IRs. The Panel has also considered previous orders, including the order related to the FBC Multi-Year Rate Plan (MRP)<sup>27</sup> and this Annual Review proceeding, and the orders related to previous Generic Cost of Capital proceedings – Order G-47-14 and Order G-129-16. In addition, the Panel considered the probative value of the requested information in relation to the determinations that the Panel must make in this Annual Review.

The Panel will first address the order related to the FBC MRP and this Annual Review proceeding.

At pages 165– 168 of the Decision accompanying Order G-166-20 on the FBC MRP (MRP Decision), the BCUC set out the following framework for the Annual Review process.

The Annual Review process has evolved over the course of the Current PBR Plans and includes most of the processes that are normally part of a revenue requirements proceeding. The format has worked reasonably well in that it has provided all parties the opportunity to openly discuss the Utilities' performance as well any issues that have arisen in the previous year. The Panel believes it is reasonable to use current practice as a guide for Annual Reviews within these MRPs as no specific concerns were raised with respect to the content of the Annual Review process or suggestions for change. Therefore, with consideration given to FortisBC's submissions on content, the Panel has determined that the following topics will provide a framework for the MRP Annual Reviews:

1. Review of the current year projections and the upcoming year's forecast. These include the following items:

- Customer growth, volumes and revenues;
- Year-end and average customers, and other cost driver information including inflation;
- Expenses, determined by the indexing formula plus items forecast annually;
- Capital expenditures (as provided for by the capital forecast with FEI's Growth capital determined by the indexing formula), plus other items forecast annually;
- Plant balances, deferral account balances and other rate base information and depreciation and amortization to be included in rates; and
- Projected earnings sharing for the current year and true-up to actual earnings sharing for the prior year;

2. Identification of any efficiency initiatives that the Utilities have undertaken, or intend to undertake, that require a payback period extending beyond the PBR plan

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<sup>27</sup> The FBC MRP was approved by Order G-166-20 and the attached Decision, dated June 22, 2020.

period with recommendations to the BCUC with respect to the treatment of such initiatives;

3. Review of any exogenous events that the Company or stakeholders have identified that should be put forward to the BCUC for review;
4. Review of the Utilities' performance with respect to SQIs [Service Quality Indicators]. Bring forward recommendations to the BCUC where there have been a "sustained serious degradation" of service;
5. Assess and make recommendations with respect to any SQIs that should be reviewed in future Annual Reviews;
6. Reporting on the Innovation Fund status; and
7. Assess and make recommendations to BCUC on potential issues or topics for future Annual Reviews.

In addition to these specific topics, the list may be expanded to include any other topic where the BCUC considers there to be a need for review.

FBC refers to this scope at Section 1.3 of its current Annual Review filing.<sup>28</sup> The Panel considers that the FBC Annual Review filing is consistent with the framework set out in the MRP Decision. The Panel also agrees that it is neither efficient nor feasible to turn annual reviews into a forum in which any past order of the BCUC is subject to review and variation. The BCUC has a separate process for an interested party to request a review and variation of previous orders, and that process would allow all interested parties an opportunity to comment.

The Panel disagrees with the characterization embedded in ICG's submission that "to allow the regulated utility to freely determine when to adjust one component of the revenue requirement and not another will inevitably lead to rates that are unfair and unreasonable." Public utilities in British Columbia are not free to determine their revenue requirements and rates on their own. Rather, the rates for public utilities must be approved by the BCUC, pursuant to the UCA. For the approval of FBC rates in this proceeding, the Panel will make its determinations pursuant to sections 59– 61 of the UCA. As part of the rate approval process established in the FBC MRP Decision, FBC is following the most recently approved orders from the BCUC to set its cost of capital.

Although ICG is requesting that the Panel compel FBC to answer IRs, ICG is more broadly calling for a review of the approach that the BCUC previously set for determining the cost of capital. Reviewing a utility's cost of capital is a complex task that is best undertaken by way of a separate proceeding established for that purpose. The scope and framework of this Annual Review process, as determined by the previous BCUC decision on the FBC MRP, does not contemplate a review of Order G-129-16.

Order G-129-16 included the following direction: "The common equity component and return on equity will remain in effect until otherwise determined by the Commission."<sup>29</sup> This determination is consistent with section 59 (1) (b.1) of the UCA, which provides the BCUC the discretion to use any mechanism, formula or other method of setting rates that it considers advisable.

Even if the information requested by ICG may be relevant to the current proceeding, the Panel must also be convinced that the requests are reasonable and the information would have sufficient evidentiary value to the

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<sup>28</sup> Exhibit B-2, pp. 3–4.

<sup>29</sup> Order G-129-16, Directive 5.



decision the Panel must make in this proceeding: that is, any adjustment to FBC's cost of capital in the test period. The Panel is not convinced that the requested information would provide sufficient evidentiary value in that regard.

ICG has not demonstrated sufficient reasons to convince the Panel that "it is now necessary for the BCUC to vary in a timely manner the cost of capital approved by Order G-47-14 and Order G-129-16."<sup>30</sup>

The Panel acknowledges ICG's submission that several years have passed since the BCUC issued Orders G-47-14 and G-129-16. However, the passage of time, alone, is not a sufficient reason to initiate a cost of capital proceeding. Further, the volatility in financial markets by itself does not imply that FBC's risk profile, or its investor's opportunity costs, have changed sufficiently to warrant a review. Economic and market conditions are always in flux.

The Panel must take into account many factors to determine the appropriate time and process to undertake such a review. In this regard, the Panel agrees with FBC that this proceeding is not the appropriate process to initiate such a review. Such a review would have implications that extend beyond the scope and framework of this Annual Review and would engage a broad range of interests that would necessitate a separate proceeding designed for that purpose. ICG has not presented sufficient reasons to warrant undertaking such a review.

For these reasons, the Panel considers that ICG's IR 8 series is outside the scope of this proceeding. **The Panel directs that FBC is not obligated to respond to the ICG's questions in IR 8 series and denies ICG's request to direct FBC to respond to these questions.**

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<sup>30</sup> Exhibit C4-4, pp. 1–2.