25th Floor
700 W Georgia St
Vancouver, BC
Canada V7Y 1B3
Tel 604 684 9151
Fax 604 661 9349
www.farris.com

Reply Attention of: Jason K. Yamashita
Direct Dial Number: (604) 661-9347
Email Address: jyamashita@farris.com

Our File No.: 5497-220

December 11, 2015

BY EMAIL

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

**Attention: Erica M. Hamilton,
Commission Secretary**

Dear Sirs/Mesdames:

Re: FortisBC Inc. ("FBC") Application for a Certificate of Public Convenience and Necessity for the Kootenay Operations Centre

Enclosed please find the Reply Submissions of FortisBC Inc. dated December 11, 2015 with respect to the above-noted matter. Twenty hard copies will follow by courier.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: JKY

Jason K. Yamashita

JKY
c.c.: Registered Interveners
FortisBC Inc.

BRITISH COLUMBIA UTILITIES COMMISSION

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

and

FortisBC Inc.
Application for a Certificate of Public Convenience and Necessity
for the Kootenay Operations Centre

REPLY SUBMISSIONS OF FORTISBC INC.
DECEMBER 11, 2015

FortisBC Inc. Regulatory Affairs Department 100 – 1975 Springfield Road Kelowna, B.C. V1Y 7V7 Telephone: (604) 576-7349 Facsimile: 1-866-335-6295 electricity.regulatory.affairs@fortisbc.com **Attention: Diane Roy,** **Director of Regulatory Affairs**	*Counsel for FortisBC Inc.* Farris, Vaughan, Wills & Murphy LLP 2500 – 700 West Georgia Street Vancouver, B.C. V7Y 1B3 Telephone: (604) 661-9347 Facsimile: (604) 661-9349 jyamashita@farris.com **Attention: Jason K. Yamashita**

INDEX

PART I - OVERVIEW

1. FortisBC Inc. (**FBC** or the **Company**) sets out below its reply to the Intervener submissions delivered in this matter. Capitalized terms are used herein as defined in FBC's Final Submissions and Confidential Final Submissions, both dated November 20, 2015. FBC also uses capitalized terms to refer to the interveners British Columbia Old Age Pensioners' Organization et al. (**BCOAPO**), Commercial Energy Consumers Association of British Columbia (**CEC**), and Industrial Customers Group (**ICG**).

2. FBC continues to rely on its Final Submissions and Confidential Final Submissions, and on its Application and evidence as a whole. Points that are not specifically responded to should not be taken to be admitted.

3. On November 25, 2015, FBC filed a letter with the Commission correcting its Final Submissions with regard to the descriptions of two documents. FBC relies upon that correction as part of its Final Submissions.

PART II - PARTICULAR ISSUES

A. PBR Treatment

4. ICG states that it does not object to either Preferred Alternative 5A or Alternative 5, but argues that FBC should be required to fund the Project from within the capital funding envelope of the PBR Plan.[1]

5. FBC has provided its rationale for funding of the KOC Project outside of the PBR formula.[2] The Company has identified the Project as a future CPCN consistently in its filings since 2011, including in the PBR application that set the base for the formula capital in the PBR. The Project (referred to at the time as the Kootenay

---

[1] ICG's Final Submissions at p. 15.
[2] FBC's Final Submissions at pp. 41-43; Exhibit B-4 – FBC's Response to BCUC IR 1.10.2 at pp. 57-58.

Long Term Facilities Project) was not included in the base level of capital expenditures at that time.[3]

6. When the Application was filed, the Project met the CPCN and capital exclusion criteria in place. The Commission's July 22, 2015 decision accompanying Order G-120-15 (the **Capital Exclusion Decision**) removed non-financial criteria from FBC's capital exclusion threshold, which was maintained at the $20 million level. No adjustment was made to FBC's base capital.[4] In that proceeding, FBC had sought a $5 million threshold with removal of non-financial criteria:

> On January 30, 2015, FEI and FBC (the Companies) filed their compliance filing regarding the appropriate capital exclusion criteria under PBR. Under this proposal, the Companies proposed a $5 million capital exclusion threshold for FBC and a $15 million capital exclusion threshold for FEI, with no other criteria, and the same threshold to be applied to CPCN projects. In that filing, the Companies also discussed whether an adjustment to the capital formula base would be required based on their recommendations. Based on the recommendations of the Companies, no adjustments were put forward.
>
> On July 22, 2015, the Commission issued Order G-120-15 in which it accepted the Companies' proposal for FEI's capital exclusion and CPCN threshold, but set FBC's capital exclusion and CPCN threshold at $20 million, with no additional criteria. This was a departure from both FBC's capital exclusion threshold at the time of determining the formula capital base, and also from the proposal of the Companies in which they stated that no adjustment to the formula capital base would have been required had the Commission set FBC's threshold at $5 million.[5]

7. The KOC Project meets the $20 million PBR materiality threshold, but even if it did not, would still be appropriately excluded from formula capital for the following reasons:

---

3 Exhibit B-4 – FBC's Response to BCUC IR 1.10.2 at p. 57; FortisBC Inc. 2014-2018 PBR Ratemaking Revenue Requirements, Exhibit B-1 – FBC's Application for Approval of a Multi-Year PBR Ratemaking Plan for 2014 through 2018, Vol. 1 at pp. 54-55, 179.

4 FortisBC Energy Inc. and FortisBC Inc. Multi-Year Performance Based Ratemaking Plans for 2014 through 2019, Capital Exclusion Criteria under PBR – Compliance Filing, Appendix A to Order G-120-15, July 22, 2015 (Order G-120-15).

5 Exhibit B-4 – FBC's Response to BCUC IR 1.10.2 at pp. 57-58.

(a) The recovery of the costs of the Project is not contemplated through FBC's formula capital envelope. FBC would be unable to maintain its existing plant and equipment and meet customer growth if the capital expenditures normally allocated for sustainment and growth capital were to be reduced by the cost of the Project.[6]

(b) Projects in the nature of the KOC Project were not included in the determination of base capital under the PBR formula. Major and non-recurring types of capital, specifically including the KOC Project and other major buildings and facilities projects, were eliminated from historical expenditures when determining the level of base capital.[7]

8. The Commission stated that the less inclusive approach to capital in the Capital Exclusion Decision was meant to "protect the interests of both the ratepayer and the shareholder".[8] As the Commission previously noted in the PBR decision, factors in determining the appropriate materiality threshold include regulatory efficiency, allowing ratepayers the opportunity to realize the benefit of cost savings, and providing the Company with a reasonable opportunity to recover prudently incurred costs.[9]

9. If the Commission approves the Project as a CPCN, FBC is entitled to recover its prudently incurred costs. Should the KOC Project not meet the PBR materiality threshold, the only reasonable alternative to funding the Project outside of formula capital would be to adjust the PBR formula to include Project costs as a result of the changes introduced by the Capital Exclusion Decision. This would have a significant impact as the KOC Project cost is over $20 million while the

---

6 FBC's Final Submissions at pp. 41-43; Exhibit B-4 – FBC's Response to BCUC IR 1.10.2 at pp. 57-58.

7 FBC's Final Submissions at pp. 41-43; Exhibit B-4 – FBC's Response to BCUC IR 1.10.2 at pp. 57-58; FortisBC Inc. 2014-2018 PBR Ratemaking Revenue Requirements, Exhibit B-1 – FBC's Application for Approval of a Multi-Year PBR Ratemaking Plan for 2014 through 2018, Vol. 1 at p. 179.

8 Capital Exclusion Decision at p. 7.

9 FortisBC Inc. 2014-2018 PBR Ratemaking Revenue Requirements, Decision, September 15, 2014 (Order G-139-14) at p. 96.

2016 capital formula, for comparison purposes, is only $42.874 million.[10] FBC anticipates that adjusting the PBR formula for Project costs would have negative impacts on customers because, based on the Project spending profile, customers would be adversely affected through a substantial reduction of earnings sharing returned to customers during the PBR term.

10. In response to ICG's submission that FBC should be required to prioritize competing demands for capital,[11] FBC submits that it is already required to do so. FBC's PBR Plan limits the amount of capital the Company may spend each year, which provides challenges for FBC in meeting customer growth capital and sustaining capital requirements. ICG's statements regarding Celgar and Teck Cominco[12] are irrelevant.

11. ICG argues that FBC has not established that the KOC Project is not a combination of smaller projects. FBC submits that the Project is for a single facility[13] which realizes efficiencies through the reorganization and relocation of its component groups and facilities such as the EOC, Station Services group and Network Services group. As the analysis for Alternatives 2 and 3 illustrates, the total cost of separately addressing a limited number of the issues identified by FBC would be higher than that of the KOC Project.[14]

12. FBC notes CEC's position that the Project should appropriately be excluded from base capital, and agrees with CEC's submission that the Project is appropriately classified as a CPCN and should be treated as such under PBR.[15] In the alternative, if the Project does not meet the materiality threshold, FBC requests

---

[10] FortisBC Inc. Annual Review of 2016 Rates, Exhibit B-1-1 – FBC Submitting Annual Review for 2016 Rates Application materials, Vol. 1 at p. 44.
[11] ICG's Final Submissions at p. 3.
[12] ICG's Final Submissions at p. 3.
[13] With the exception of the $150 thousand capital expenditure for renovations at the South Slocan Generation Site (discussed in Exhibit B-8 – FBC's Response to BCUC IR 2.1.3.2 at pp. 6-7) and the $10 thousand capital expenditure for mitigating the BCC space constraints (discussed in Exhibit B-4-2 – FBC's Response to Confidential BCUC IR 1.2.1 at p. 4).
[14] FBC's Final Submissions at p. 29.
[15] CEC's Final Submissions at p. 10.

that the Commission approve funding of the Project through an increase to the PBR formula capital.

13. With regard to BCOAPO's submission that the incremental O&M impact should be outside the PBR formula,[16] FBC notes that in both Alternative 5 and Preferred Alternative 5A, the estimated net incremental O&M for the Project represents less than 0.7% of the forecast formula O&M Expense in 2016 and is not significant enough to warrant a change to base O&M Expense under the PBR Plan.[17] CEC notes as well that the effective change in O&M costs is de minimis.[18]

B. Application for Disposition of CDO

14. Both BCOAPO and CEC support Preferred Alternative 5A.[19] FBC has indicated that if the Commission approves this alternative, FBC will identify a buyer for the CDO and then apply for its disposition under section 52 of the Act.[20] FBC has supported a condition as part of the CPCN that the net book value of the CDO land and buildings should be taken out of plant in service and recorded in a deferral account once the site has been vacated; future proceeds of disposition of the CDO property would be recorded in the deferral account and addressed in the section 52 application.[21]

15. ICG criticises this proposed approach, suggesting that a section 52 application could have accompanied the Application for the KOC Project. However, ICG does not object to the process proposed by FBC, in light of FBC's commitment that proceeds of disposition will be allocated to ratepayers.[22]

16. FBC's approach is practical. At the time the Application was filed, the proposed KOC Project scope did not include replacement of the CDO, which was included

---

16 BCOAPO's Final Submissions at p. 10.
17 FBC's Final Submissions at p. 43.
18 CEC's Final Submissions at p. 10.
19 BCOAPO's Final Submissions at p. 9; CEC's Final Submissions at p. 8.
20 FBC's Final Submissions at pp. 51, 53-54; Exhibit B-8 – FBC's Responses to BCUC IRs 2.7.1.1, 2.9.1, 2.9.4 at pp. 47, 54-55.
21 FBC's Final Submissions at p. 51.

by FBC as part of Preferred Alternative 5A after analysis conducted in response to the second round of information requests in this proceeding. Once FBC has identified a buyer it will be in a position to provide detailed information regarding the proposed sale price and terms of sale. No purpose would be served by making a premature decision on a section 52 application.

17. FBC acknowledges BCOAPO's position that if Preferred Alternative 5A is approved, the disposition and application for disposition of the CDO should proceed expeditiously once the CDO is fully vacated. FBC agrees in principle, but will need time to identify a potential buyer. FBC will endeavour to file its application under section 52 of the Act (or, if a buyer has not yet been found, provide an information update) within 6 months after the CDO is fully vacated.

C. FBC's Future Position on Allocation of Net Proceeds from Sale of Castlegar District Office

18. FBC reiterates that it would be premature for the Commission to address the proceeds of a future disposition of property in the present Application, for the reasons previously stated in FBC's Final Submissions.[23] FBC has already advised of its future position on allocation of net proceeds from sale of the CDO.[24] ICG may raise any objections to that position on the section 52 application.

19. However, FBC takes this opportunity to clarify the nature of its future position on allocation of net proceeds from sale of the CDO.

20. There is no basis at law to support ICG's submission that allocation of proceeds from disposition of the CDO should be for <u>all</u> sale proceeds net of transaction costs and tax liabilities and, indeed, ICG cites no authorities to support this novel proposition.[25]

---

22 ICG's Final Submissions at p. 14.
23 FBC's Final Submissions at pp. 48-51.
24 FBC's Final Submissions at pp. 51-52.
25 ICG's Final Submissions at pp. 14-15.

21. It is the utility, not its customers, which owns the utility's assets.[26]

22. ICG's position would allocate to customers not only the profits or losses on FBC shareholders' investment in the CDO (which, in the circumstances of this matter and without prejudice to future dispositions, FBC has indicated it will support on the future section 52 application for the CDO), but also the investment itself, depriving shareholders of their property interest in this asset. This position is both fundamentally incorrect and unfair to FBC shareholders, who would be deprived of recovery of prudently incurred costs.

23. As previously stated, it would be premature to determine allocation of net proceeds of disposition of the CDO on this CPCN Application. Both BCOAPO and CEC have agreed with this position and expressed support for FBC's future position on allocation of net proceeds of disposition.[27]

24. FBC expects to make submissions on the issue of allocation of proceeds of disposition on its section 52 application, when the issue is properly before the Commission.

25. ICG provides submissions with regard to the appropriate time period for proceeds of disposition to be amortized to customers' rates.[28] To be clear, FBC's position is that the balance in the proposed deferral account be amortized to customers' rates over a period of time to be determined as part of the section 52 application.[29] FBC has not requested, and there is no need for the Commission to make at this time, a determination on the appropriate amortization period.

---

26 *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (***Stores Block***) at paras. 68, 70.
27 BCOAPO's Final Submissions at pp. 11-12; CEC's Final Submissions at p. 13.
28 ICG's Final Submissions at p. 15.
29 FBC's Final Submissions at p. 51.

PART III - CONCLUSION

26. In light of all the above, FBC reaffirms its request that a CPCN be granted to pursue the KOC Project including consolidation of the KOC Network Services Group as described in the Final Submissions (Preferred Alternative 5A) or, alternatively, that a CPCN be granted to pursue the KOC Project as described in the Application and Final Submissions (Alternative 5).

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Counsel for FortisBC Inc.:

Original signed by:

Jason K. Yamashita

Dated: December 11, 2015