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Our File No.: 05497-0162

July 23, 2010

BY EMAIL
(original via mail)

BC Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Erica M. Hamilton, Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Inc.
Project No. 3698564/Order G-139-09
2009 Rate Design Application and Cost of Service Study

Enclosed please find the Reply Argument of FortisBC Inc. dated July 23, 2010 with respect to the above-noted matter. 20 hard copies will follow by mail.

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: LBHerbst

Ludmila B. Herbst

LBH/ls
Enclosure
c.c.: All Registered Intervenors

IN THE MATTER OF

the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by FortisBC Inc.
for Approval of a 2009 Rate Design and Cost of Service Analysis

---

REPLY ARGUMENT OF FORTISBC INC.
July 23, 2010

Counsel for FortisBC Inc.

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PART 1 - OVERVIEW

1. FortisBC Inc. ("**FortisBC**", "**FBC**" or the "**Company**") sets out below its reply to the submissions filed by Intervenors on or before July 14, 2010. FortisBC's reply is organized in accordance with the framework set out in its initial submission of June 30, 2010 (the "**FBC June Submission**"). In Part 2 it will address the Intervenor arguments related to cost of service, in Part 3 the Intervenor arguments related to rate design, and in Part 4 the Intervenor arguments related to rate rebalancing.

2. FortisBC has reviewed and considered the submissions of the Intervenors. To a significant extent, including most recently in its re-filed COSA (Ex. B-35) and its agreement to consult with the Irrigation class in relation to time-based rates (see para. 118 below), FortisBC had already taken into account various issues raised by Intervenors earlier in the process. Indeed certain Intervenors have expressed support for or not addressed elements of the Application[1] in their arguments.

3. Certain Intervenors have also challenged and in some cases mischaracterized particular aspects of FortisBC's approach. In the case of the British Columbia Municipal Electrical Utilities ("**BCMEU**"), this has been done in an accusatory tone entirely at odds with FortisBC's conduct and the responsiveness of the FBC witness panel over more than three days of questioning. A review of the substantial evidentiary record in favour of FortisBC's position on these disputed items occupies much of this reply.

4. Allocating costs as well as designing and rebalancing rates requires the application of judgment to complex and varied facts. Criticism of the result or certain of its components is easier than formulating an appropriate structure commensurate with the circumstances of the particular utility involved. After careful study, FortisBC set out a reasonable approach that it believes reflects a prudent and measured approach to meeting customer needs in face of present realities. Respectfully, FortisBC reaffirms its request that its approach be accepted.

---

[1] Where not defined herein, capitalized terms are used as defined in the FBC June Submission.

PART 2 - COST OF SERVICE

A. Contractual Demand Methodology

(1) Not a "Hybrid" Approach

(a) Cost Causation for All Customers

5. Contrary to BCMEU's suggestion at paras. 34, 62 and 74 of its argument that EES Consulting, Inc. ("**EES**") used a "hybrid" approach, costs in the case of all FortisBC customers were allocated based on cost causation. As stated in the following exchange between BCMEU's counsel and Mr. Saleba, whom BCMEU concedes in its argument is an expert with significant wide-ranging experience:

> MR. WEAFER: Q: Are you aware of any situation where one class of customers is allocated costs on the contract demand methodology and others are not? In a fully allocated cost of service study.
>
> MR. SALEBA: A: Within the fully allocated cost of service study, the higher principle is cost causation. And we go to cost causation for the development of the classifier and the allocator for all classes. We're internally consistent. It just happens that some classes have different obligations to serve than other classes. And that needs to be reflected in the allocation factor, which is why we've used contract demand for some here and not for others. [underlining added]

Transcript Volume 2 p. 189 ll.4-16;
paras. 34 and 37 of BCMEU's argument

6. In accordance with Mr. Saleba's analysis, and contrary to BCMEU's suggestion at paras. 11, 21 and Part 2(B) of its argument that EES's approach is not compatible with "conventional" methodology (see also Part 2(A)(9) below), FortisBC's Vice-President, Customer & Corporate Services, Mr. Mulcahy, testified as follows:

> MR. WEAFER: Q: And would you agree with me, sir, that given the innovative nature of the proposal for the contract demand approach to COSA, that it is important that the Commission take a look at it and consider it because it is a fundamentally different approach?
>
> MR. MULCAHY: A: I wouldn't agree that it's an innovative approach. What I would agree is that it is an approach, contractual demand is an approach that appropriately reflects costs, cost recovery based on cost to serve

> plan, and contractual obligations that FortisBC has to certain classes of customers, and that the use of the contractual demand is really about fairness and having customers pay appropriate costs, and a reflection of the benefits that these particular groups of customers receive under those contracts and having those benefits reflected in their rates. [underlining added]

Transcript Volume 2 p. 130 l.18 – p. 131 l.7

7. At paras. 30 and 31 of its argument, BCMEU points to a comment by Mr. Saleba (to the effect that regulatory orders or binding bilateral contracts may be considered above cost causation) as evidence that cost causation was not the basis on which contractual demand was taken into account in this case. That comment was made without reference to the contracts at issue. Mr. Saleba's consistent position as to the relevant contracts was, instead, that their terms do cause FortisBC to incur costs. As Mr. Saleba testified during the oral hearing of May 3-7, 2010 (the "**Hearing**"):

> ....to get at cost causation, we take a look at what drives the system planning and operation for the system, and in the FortisBC situation, they have a contractual demand to provide that amount of capacity to each of those people on special contracts. And it's a bilateral binding contract, it's an obligation put on FortisBC, which FortisBC takes seriously, and which go into Paul's planning and operation of the transmission and distribution system. So, from my standpoint, when the planner says "We plan around something, we operate around something," to me that's the driving force behind the cost.... [underlining added]

Transcript Volume 5, p. 783 ll.5-18

(b) Contrasting "Contract Demand" and "Coincident Peak"

8. BCMEU suggests at paras. 14, 34, 46 and 54-55 of its argument that the "hybrid" approach it attributes to EES consists of applying contractual demand methodology to some customers "while still using coincident peaks for other customers" (underlining added; see also paras. 3 and 156 of the argument of Zellstoff-Celgar Limited Partnership ["**Celgar**"]). However, coincident peak is the underlying premise for all customers in allocating transmission; contractual obligations with respect to transmission capacity necessarily exist at the peak as well (see, for example, FBC response to Celgar IR 2.7.7 – Ex. B-7). FortisBC's approach represents the loads that it

plans for and has an obligation to meet; in that context, in accordance with the Company's differing obligations, contractual demand was used to determine the needed capacity for some customers while historic loads were used to project the needed capacity of other classes. As FortisBC noted in responding to BCMEU IR 3.3.0 (Ex. B-37):

> The alternative scenarios [in Ex. B-35] all allocate transmission plant on the basis of coincident peak. For wholesale, Rate 31 and Rate 33 customers, the number used to represent as contribution to coincident peak was the greater of the projected actual peak and the contractual demand. This is not a "hybrid" methodology but instead is a methodology based on the planning criteria and contractual obligations in place for each of the customer classes. [underlining added]

(c) Consistency as Between Contractual Customers

9. The contractual demand approach has, in turn, been consistently applied to the appropriate customer classes. While at para. 57 of its argument BCMEU points to the fact that contractual demand methodology is not used for Rate Schedule 30 customers as an example of inconsistency, this is specifically addressed at para. 12 of the FBC June Submission: not all Rate 30 customers in fact have written contracts, and the aggregate load of Rate 30 customers is sufficiently stable that actual demand is a good planning indicator. This fact is reflected in the submissions of Weyerhaeuser Company Limited on behalf of the Rate 30 (Primary Industrial) Customer Group [the "**Rate 30 Argument**"]), which provide at paras. 2.2-2.3:

> 2.2 The Rate 30 Customer Group is willing to contribute its fair share to the system's cost of service based on a fair assessment of the burden it creates, but no more than its fair share. The benefits of the stable load and financial contribution made by the Rate 30 Customer Group should also be weighed in any assessment of the fair burden.
>
> 2.3 The Rate 30 Customer Group members require large amounts of electricity for their operations. Given the nature of the industrial consumption, the Rate 30 Customer Group load is stable and relatively consistent throughout the year. From a system planning perspective, the Rate 30 Customer Group represents a predictable and constant base load that does not call significantly on system peaking resources. In fact, the constant load helps balance the system overall. [underlining added]

10. Further, FortisBC has left open the possibility of reassessing the status of Rate 30 customers in later cost of service studies. The FortisBC witnesses quoted in footnote 53 of BCMEU's argument testified that the Rate 30 customers have not been included in the contract demand approach "at this time", but that the situation might be reassessed in the future.

11. Also at para. 57 of its argument, BCMEU cites as an example of inconsistency the fact "EES...did not use contract demand for wholesale customer BCH Lardeau". However, BCMEU itself says that this was because EES "could not locate a contract for that customer" (see also FBC response to BCMEU IR 2.1.1 – Ex. B-7), which is a matter of record-keeping rather than consistency.

(2) The Concept of "Contract Demand"

12. BCMEU suggests at para. 14 of its argument that there is a "generally understood" concept of "contract demand" which does not apply to the relationship between FBC and the municipal utilities. BCMEU does not, however, explain the content or origin of its "contract demand" concept, how it should be distinguished from the Tariff definition of contract demand which applies to Rate Schedules 31, 33, 40 and 41 ("the demand reserved for the Customer by the Company and contracted for by the Customer" [Ex. B-29 – Sheet TC1]), or how contractual obligations referencing the Demand Limit (*e.g.*, "the Company shall supply up to the Demand Limit electricity required by the Customer..." [s. 4.01; BCMEU Appendix A34.2, p. 29 – Ex. B-3-3]) do not fall within this category.

13. Contrary to paras. 15 and 92 of BCMEU's argument, Mr. Carle – a witness who, as BCMEU notes, has longstanding experience in the municipal context – suggested at one point in his testimony that he understood the "Demand Limits" set out in Appendix "A" to the contracts between FBC and municipal utilities to constitute "contract demand" as defined in the Tariff. At Transcript Volume 6, p. 1069 ll.9-20, the following exchange occurred on cross-examination:

> MR. MACINTOSH: Q: And in the definitions on the second page [of Ex. B-29], the billing demand is defined as the demand used in establishing the

> demand portion of billing for service, and the contract demand is defined as the demand reserved for the customer by the company and contracted for by the customer. And can you accept that the numbers we just looked at in the Kelowna contract in Appendix A of the Kelowna contract are these numbers? That is, they are the demand reserved for the customer by the company and contracted for by the customer?
>
> MR. CARLE: A: That's correct.
>
> [underlining added]

14. As the present Tariff (excerpted in Ex. B-29) indicates, and contrary to the third paragraph of Mr. Wait's submission (in which he suggests that "Contract Demand" was "not used in billing previously"), this form of "contract demand" has long been a component of "Billing Demand". See also para. 8 and footnote 3 of the FBC June Submission. BCMEU itself does not explain how, if it had no "contract demand", it governed itself under a Tariff in which that concept was embodied.

15. At para. 15 of its argument (citing a passage quoted in its footnote 14), BCMEU relies on Mr. Swanson's statement during the Hearing that the contracts between FortisBC and the municipal utilities "don't have a contract demand". It is certainly the case that those contracts do not use the term "contract demand" (unlike the contracts between FortisBC and Rate Schedule 31 customers), but for some purposes – including as set out above – "Demand Limits" and "contract demand" were treated interchangeably.[2] In responding to a question from Mr. Wait regarding Appendix "A" to the contract between FortisBC and Grand Forks, Mr. Saleba confirmed that what Mr. Wait was calling the "contract demand" was the same as what FortisBC was calling the "demand limit" (Transcript Volume 4 p. 595 ll.18-19). Further, as Mr. Swanson testified at Transcript Volume 3 p. 363 l.16 – p. 364 l.17:

> MR. MOLLER: Q: Can I reference you to Table 2.4 at page 20 of Exhibit B-1, the rate design application. It's at page 20. It's Table 2.4.
>
> MR. SWANSON: A: We have in front of us.

---

[2] In certain other respects, of course, the terms are not used synonymously (Transcript Volume 4 p. 676 ll.7-26).

> MR. MOLLER: Q: In that table the references to Rate Schedules 31, 33, 40A time of use, 40B time of use, and 40C time of use, all reference the phrase "contract demand-based wires charge", whereas Schedules 40A, 40B and 40C reference "demand charge based on demand limit". Is contract demand and demand limit used differently having reference to these different schedules? And if so, could you please explain the meaning attributed by FortisBC to such terms?
>
> MR. SWANSON: A: In the wholesale agreements, they only have a demand limit. It's the only number. As such, demand limit, contract demand are used interchangeably when we're speaking to it, not in the contract, sorry. Sorry, the other schedule you said was 31?
>
> MR. MOLLER: Q: There was Schedules 31, 33, 40A TOU, 40B TOU and 40C TOU, all reference the contract demand-based wires charge, whereas 40A, B and C reference the demand charge based on demand limit. So you may have answered it by referencing that you treat the wholesale customers differently.
>
> MR. SWANSON: A: For the wholesale customers those contracts only contain the one term being demand limit.
>
> [underlining added]

16. At para. 16 of its argument, BCMEU describes Mr. Carle as having testified that "the BCMEU members have not under their existing agreements 'nominated' contract demands prior to this proceeding". In support of this proposition BCMEU refers to testimony from Mr. Carle where he does not say this but, rather, where he agrees with Mr. Weafer on re-direct that he was not aware of a previous instance in which he had "nominated demand in a manner in which this process involved in the fall of 2009" (Transcript Volume 6 p. 1121 at l.21 - p. 1122 l.6; underlining added). The process in the fall of 2009 involved (a) five utilities emailing, at the time on a without prejudice basis, transmission capacity nominations and (b) use of those numbers to calculate revenue-to-cost ratios. This does not detract from the fact that Demand Limits (which represented the demand reserved for the customer by the company and contracted for by the customer: see para. 13 above) have (a) long been set out by agreement in contracts between FortisBC and the municipal utilities and (b) specifically been the subject of discussion, including in the recent amendment to the Grand Forks contract ("Demand limit of 8 MVA is fine", noted Russell Leslie on behalf of Grand Forks in a February 7, 2006 email: Appendix 11.4 to Ex. B-12-5. This number was inserted into the

present contract: BCMEU Appendix A34.2 at p. 21 – Ex. B-3-3; see also BCMEU response to FBC IR 1.5.6 – Ex. C1-11 at p. 86).

(3) Evolution of the Contractual Demand Approach

17. At para. 20 and footnote 18 of its argument, BCMEU questions the veracity of FortisBC witnesses who testified about the evolution of the contractual demand approach. BCMEU's suggestion is unsupported by either the evidence or the conduct of the FBC witness panel, whose members were candid, prepared and responsive. While their view may be one with which BCMEU and certain other Intervenors strategically or philosophically disagree, no worse than that can be said.

18. At paras. 20 and 97 of its argument, and while elsewhere stating this is not the issue (para. 94), BCMEU suggests that the contractual demand approach derived from a FortisBC plot to buy the assets of the municipal utilities. There is no basis for drawing this linkage other than the fact that FortisBC's adoption of the contractual demand approach occurred sometime after offers to buy the Summerland and Kelowna municipal utilities (ironically, the utilities least affected, if at all, by contractual demand) were made. While at para. 96 of its argument, BCMEU quotes Mr. Mulcahy's statement that if a margin or profitability is reduced, the "potential value of a business would decrease", Mr. Mulcahy also noted that "that would be dependent upon how the business responded to an increase in costs" (Transcript Volume 2, p. 208 ll.4-6). By equating rate increases to BCMEU members with rate increases to BCMEU's customers elsewhere in its argument (see paras. 46-47 below), BCMEU itself suggests profitability would not be reduced by the contractual demand approach; rather, it suggests that municipalities would pass the cost onto their customers. Further, if contractual demand methodology does reduce the value and/or profitability of a municipal utility, there is no reason to assume it becomes more attractive to FortisBC to acquire; rather, the contrary would be true.

19. Celgar notes that FortisBC's request to EES to prepare the 1997 cost of service study cannot have been made on December 15, 1997 (Celgar Argument at para. 154).

Celgar is clearly correct given the dates of other materials, but the logical assumption is simply that "1997" was a misstatement and that "1996" should be substituted.

20. Celgar states at para. 155 of its argument that FBC "accepts, that there has been no change in cost-causation since 1997 that supports a change in the cost allocators to be used". This is certainly not what is contained in the evidence to which Celgar points (FBC response to BCUC IR 1.46.1 – Ex. B-3-1), nor is that proposition otherwise accepted by FortisBC. In the passage that Celgar cites, FortisBC wrote the following:

> **The COS study states that:**
>
> **"Changes that have occurred over the past 10 years in terms of the FortisBC system, changes in the overall electric industry, and trends in utility ratemaking were all considered when developing this COSA."**
>
> **Q46.1 Please identify the specific changes, in each of the three categories mentioned in the above quote, which have occurred and were considered when developing the COSA.**
>
> A46.1 EES has not identified each specific change that has occurred but they would include the following:
>
> • Changes in the FortisBC system include increased transmission capital expenditures, greater reliance on outside power purchases during peak periods and growth in the summer peak for the system;
>
> • Changes in the electric industry include greater reliance on wholesale power markets, unbundling of power products, availability of wholesale wheeling, risks shifted from the utility to its customers, and fewer full requirements wholesale power contracts; and
>
> • Trends in rate design include separation of wires and power supply charges, other rate unbundling for items such as control area service, load following, reliability, standby service, etc., rates that are based on real-time market conditions, and more conservation-based rates.

(4) Status of Contracts

21. While at paras. 14, 80 and 98 of its argument, BCMEU refers to the contracts between FBC and the municipal utilities as having "expired", at para. 85 it concedes that it "assumes the existing agreements will remain in effect until the Commission has ruled

on this application". Irrespective of that, the contract between FortisBC and the City of Nelson remains in effect until 2014 (see FBC June Submission at para. 13(k)).

22. BCMEU suggests there may be certain difficulties in negotiating new contracts should the contractual demand approach be accepted. It raises as one possibility that "if BCMEU members are allocated all costs in regard to a Contract Demand they will logically require compensation if that capacity is utilized by other customers who are not paying for it" (para. 101). However, transmission capacity could be used by other customers only if non-firm service were being provided, which is not the case as municipal contracts are presently drafted. Further, contrary to paras. 64 and 91 of BCMEU's argument, that portion of substation capacity dedicated to the municipal utilities and used for the COSA allocation is not used by other customers: even where the substation is shared, the Demand Limit relates only to that portion dedicated to the utility. Additionally, while at para. 67 of its argument BCMEU suggests more capacity is allocated to BCMEU members than the sum of their Demand Limits, the whole system has three times more capacity than load (see Schedule 8.2 of Appendix "A" to Ex. B-1). While certain customers may be allocated three times their contractual load, other customers are allocated three times their actual load.

23. Celgar provides no substantive response either to FortisBC's contention that the parties' unsigned October 2006 agreement governs or to various of the other contract-related issues that FortisBC raised, submitting (a) that "these secondary issues need not be considered" in light of the "first principles" that Celgar says are determinative (para. 147)[3] and alternatively (b) that FortisBC did not give sufficient or any consideration to those issues before the proceeding. The evidence on which Celgar relies to demonstrate the latter is simply a passage on a different point, in which Mr. Swanson attests that he believes "we [can] move forward without having a GBL determination" (Transcript Volume 3, p. 363 ll.1-10).

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[3] Celgar's wording is that "FortisBC submits...that these secondary issues need not be considered" (para. 147), but this is clearly intended as a reference to Celgar.

(5) Contractual Benefits to Wholesale and Other Customers

24. At paras. 86 and 87 of its argument, relying in part on the contractual and Tariff interpretation undertaken by Dr. Rosenberg (a non-lawyer who elsewhere claimed not to be qualified to answer legal questions [see para. 30 below]), BCMEU suggests that there is "no consequence to FBC, or its customers, if it failed to meet the requirements in relation to the Demand Limits". This effort to downplay the importance of the contracts is belied by the fact that (at para. 103 of its argument) BCMEU proceeds to urge the Commission to direct that new agreements be negotiated after determination of the contractual demand concept: it obviously values having FortisBC bound to certain contractual obligations rather than relying on the Tariff. Likewise, Celgar seeks a new general service agreement with FortisBC, which it asks the Commission to direct be on certain terms (paras. 8, 16, 103, 165(a) of the Celgar Argument); Celgar itself does not appear to wish to rely on the "obligation to serve" that it invokes elsewhere in its argument.

25. BCMEU's assertion that "no consequence" results from FBC's failure to meet Demand Limit-related requirements is also wrong on the face of the contracts themselves. In this regard, with reference to the contract between FBC and the City of Kelowna (the "**Kelowna Contract**"; BCMEU Appendix A34.2 from p. 23 - Ex. B-3-3)[4]:

(a) Section 4.02 of the Kelowna Contract provides:

> Notwithstanding the provisions of subsection 4.03 ["Failure to Deliver"] and 4.04 ["Liability, Indemnity, Limitations and Requirements for Notice with Respect to Variations or Defects in Supply"] the Company has a duty not to be imprudent in arranging for the supply of electricity required pursuant to subsection 4.01 of this Agreement and the Company will be liable to the Customer for any loss, injury, damage or expense caused to the Customer if the

---

[4] The wording of the Kelowna contract and FortisBC's contract with the City of Nelson is the same in respect of the provisions outlined in this paragraph. The language of FBC's contracts with Grand Forks, Penticton and Summerland is in some respects different, including as it incorporates s. 8.1 of the Tariff (which is addressed in subparagraphs (b) and (d) below); those contracts are also found in Ex. B-3-3, Appendix A34.2. However, it is submitted that under either form of wording, FortisBC has (a) binding obligations and that (b) breach of those obligations has consequences for the Company.

British Columbia Utilities Commission determines that the Company has failed to meet its duty not to be imprudent. [underlining added]

(b) Section 4.04 of the Kelowna Contract (which, unlike certain of the other FBC-municipal contracts, does not incorporate s. 8.1 of the Tariff) provides that the Company can be liable to the Customer for direct loss or damage to the physical property of the Customer, resulting from wilful misconduct or negligent acts or omissions by the Company, its servants or agents. For those contracts which do import s. 8.1 of the Tariff, that section (contrary to part of Dr. Rosenberg's assertion in the passage quoted in para. 86 of the BCMEU argument) does permit compensation in the event of non-economic loss directly resulting from the wilful misconduct of the Company, its servants and agents.

(c) Section 4.04 of the Kelowna Contract provides, in respect of liability under that clause, that "[i]n no event shall the liability of the Company exceed the sum of $10,000,000.00 for any single occurrence". Although a limitation, in itself it contemplates far from trivial financial consequences to FortisBC.

(d) Neither the contracts nor the Tariff address (or, correspondingly, appear to preclude) non-monetary relief against FortisBC.

(e) Section 4.05(a) of the Kelowna Contract further provides:

> The Company will indemnify and save harmless the Customer from and against any and all actions, proceedings, claims and demands that may be made against, and all loss or damage suffered by, the Customer by reason of any damage or injury to any person or property, including the property of the Customer, resulting from any electrical facilities owned by the Company located within the Service Area.

(f) Section 5.01 of the Kelowna Contract continues:

> The Company is a signatory of the Western Systems Coordination Council (WSCC) Reliability Management System (RMS) Agreement. The Company is committed to the service reliability standards detailed in this document and is liable for financial

> sanctions that WSCC can impose for non-adherence to those standards. [underlining added]

26. Contracts were negotiated and finalized by the municipal utilities with the benefit of legal advice; in 1999-2001, it was the advice of Brian Wallace, by whom wording changes were suggested (BCMEU response to FBC IR 1.5.6 - Ex. C1-11 at pp. 84-86). Contracts are also reviewed by staff and municipal Council (BCMEU response to FBC IR 1.5.9 – Ex. C1-11). Particularly in this context it would not be credible to suggest that the wording of certain provisions in those contracts or (where applicable) their incorporation of s. 8.1 of the Tariff removed the very obligations for which those contracts elsewhere provide. The very title of those contracts refers to "the Supply of Electricity Wholesale Service", and they provide clearly in s. 4.01 that "the Company shall supply up to the Demand Limit electricity required by the Customer" (BCMEU Appendix A34.2 at p. 29, in the words of the contract between FBC and the City of Kelowna – Ex. B-3-3). Indeed, while suggesting there would be "no consequence" from a breach (itself belied by the matters set out in para. 25 above), BCMEU does not expressly say this would eliminate the underlying obligations. To the contrary, at para. 87 of its argument, it continues to refer to "the requirements in relation to the Demand Limits" (underlining added).

27. The parties cannot have contemplated that FortisBC would not be held to obligations to which it had agreed elsewhere in the contracts: this would be absurd, and in the absence of clear words, an interpretation producing such a result should not be accepted. As stated in the leading case of *Schuler (L.) A.G. v. Wickman Machine Tool Sales Ltd.*, [1974] A.C. 235 at 251 (H.L.), per Lord Reid:

> The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.

28. Further, to suggest FortisBC does not have meaningful obligations under the contracts would in effect be to ask the Commission to ignore or strike out certain terms, contrary to the canon of construction that all parts of a contract should be given effect

where possible, and no part treated as inoperative (K. Lewison, *The Interpretation of Contracts*, 2d ed. [London: Sweet & Maxwell, 1997] at s. 6.03).

29. In addition, the contracts between FortisBC and the municipal utilities expressly set out specific, limited instances in which - under certain conditions - the Company may discontinue supply (*e.g.*, in s. 10.04, "for the failure by the Customer to commence remedial action", after a notice period, to correct a breach of a significant practice, term or condition that the Customer is to perform under the agreement). There is no basis to assume that, after having gone to the trouble of describing specific instances where this was permitted, the parties intended to permit discontinuance of supply in other instances as well. To the contrary, as Lewison states at s. 6.05 of his text:

> Where the contract expressly mentions some things, it is often to be inferred that other things of the same general category which are not expressly mentioned were deliberately omitted. Similar principles apply to the express inclusion of obligations dealing with a particular area of application.

And, at s. 6.06:

> An express term in a contract excludes the possibility of implying any term dealing with the same subject-matter as the express term.

30. In any event, both s. 8.1 of the Tariff and s. 4.04 of the Kelowna and Nelson contracts contain language which appears to relate to the commodity (*e.g.*, the provisions refer to defects, continuity, frequency and voltage) rather than the obligation to have the capacity in place to serve the Demand Limit; if there is a restriction, it appears to be with respect to the former. However, even as to the commodity, when FortisBC asked BCMEU during the IR process whether it agreed that its members have contractual terms that obligate FortisBC to supply a certain amount of power, BCMEU did not say "no" but, rather, declined to answer, responding simply that "[t]his calls for a legal conclusion which Dr. Rosenberg is not qualified to render" (BCMEU response to FBC IR 1.11.2 – Ex. C1-11).

31. At para. 88 of its argument, BCMEU refers to FBC's written curtailment policies of 2006 and February 2010, without referencing FortisBC's evidence of intervening,

unwritten changes (Ex. B-28 at p. 10). Further, BCMEU's suggestion that municipal customers were on the "first line of interruption" under the 2006 policy is not accurate. While the 2006 policy refers to "wholesale city" (as well as large industrial and commercial customers) under the heading "Load Curtailment Level 1", that curtailment level is described as "largely voluntary" and the policy provided simply for "requests" to the "wholesale city" group to reduce non-essential load or re-arrange shifts to reduce loads during peak periods. The reference to "wholesale city" is not found under the more stringent Load Curtailment Levels 2 and 3 (Ex. B-28-A).

32. While BCMEU is correct that FBC and municipal utilities have cooperated in various respects in the past (as BCMEU claims at paras. 89-90 of its argument), this does not unseat the principles of cost causation. Certainly, FortisBC has good relationships with many of its customers, and endeavours to preserve those relationships. The importance and potential hazards of electrical service make this a sensible approach. However, cooperation does not mean that FortisBC does not or will not incur infrastructure and other costs.

(6) System Planning

33. The assertion at paras. 23 and 29 of BCMEU's argument that "FBC concedes that it does not utilize Contract Demands for system planning" is simply wrong. Immediately prior to the transcript excerpt that BCMEU quotes (at para. 26 of its argument) in support of the proposition that FBC does not plan on an N-0 basis, Mr. Chernikhowsky described N-0 planning purposes (in which FortisBC includes contractual demand) as "normal planning purposes":

> MR. WEAFER: Q: So, is it fair to say you must meet the contract demands except where the footnotes allow you not to?
>
> MR. CHERNIKHOWSKY: A: For normal planning purposes, N minus zero planning purposes, the transmission planning standards make reference to including all projected firm transfers must be modeled.
>
> [underlining added]
>
> **Transcript Volume 2 p. 234 ll.4-10**

34. Later during the Hearing, the following exchange occurred:

> MR. WEAFER: Q: Has any FortisBC wholesale customer ever requested that Fortis perform its N minus 0 transmission planning using contracted demand rather than forecasted demand?
>
> MR. CHERNIKHOWSKY: A: I -- from a planning point of view, I would say that I don't generally speak with the municipal customers, but regardless I still have to abide by the obligations in our contractual agreements with them. [underlining added]

Transcript Volume 2 p. 240 ll.11-19

35. In addition, Mr. Chernikhowsky testified as follows in response to a question from Ms. Khan:

> MS. KHAN: Q: Okay, but you would agree, then, that cost causality is an important consideration?
>
> MR. SALEBA: A: Yes.
>
> MS. KHAN: Q: Okay. So, there is a bit of an agreement there with Dr. Rosenberg. Given that, we're interested in understanding how contract demands are taken into account in transmission planning. So I'm wondering if you could turn to BCUC IR number 2 to FortisBC, questions 38 and 39.
>
> And so, are you familiar with those IRs? I'm not planning to read them out loud. It's our interpretation that in planning for the transmission system, Fortis looks at the facilities needed to meet N minus 0 and N 4 one reliability criteria, and that in considering the N minus 0 criterion, the contract demands for large general service and wholesale customers are considered, but that when considering the N minus 1 criterion, only the forecast demands for these customers are considered.
>
> Can you confirm that this is -- if this is a correct interpretation, or if it's -- or where I'm wrong?
>
> MR. CHERNIKHOWSKY: A: No, that's a correct characterization. Again, just to restate it for N minus 0 planning, yes, we use our forecast demands for our customers and we use contractual demands for our contract customers, any customer that has a contract. For N minus 1, we use forecast demands only.

> MS. KHAN: Q: Okay. And in the case of other customer classes, the forecast loads are used when assessing both N minus 0 and N minus 1 conditions. Is that correct?
>
> MR. CHERNIKHOWSKY: A: That's correct.
>
> MS. KHAN: Q: Can you indicate when the use of contract demands for N minus 0 planning first started?
>
> MR. CHERNIKHOWSKY: A: We made reference to that in BCUC IR 1, the response to question 30.1. It was in 2008, is when we -- in, I'll say, modern history began considering contract demand.
>
> [underlining added]
>
> **Transcript Volume 4 p. 569 l.1 to p. 570 l.13**

36. Ms. Khan prefaced this line of questioning by quoting Dr. Rosenberg's statement that "[t]he primary factor in selecting a COSA methodology is the connection, in a cause and effect manner, between the service characteristics of the customer and the investments and expenses that the utility incurs in response to those characteristics". At para. 51 of its argument, in response to FortisBC's use of that quote in its June Submission, BCMEU pointed out that Dr. Rosenberg said this is subject to an analyst seeking other sources of information where the connections are "not immediately evident or unambiguous". However, at para. 52 of its argument, BCMEU in fact suggests that various factors "would indicate the concept of 'Contract Demands' for the purpose of allocating costs in a COSA study was or should have been immediately evident or unambiguous". In accordance with FortisBC's approach, this again points back to the use of cost causation as a primary factor in selecting a COSA methodology. If there is a typo in BCMEU's argument and it in fact intended to question whether the concept was "immediately evident or unambiguous" (including by its suggestion, also at para. 52, that the contracts between BCMEU members and FBC "were available for review in the preparation of the 1997 COSA study and the 2007 COSA study" without being utilized), it should be noted that its suggestion is inaccurate. Mr. Saleba testified that the information was not produced to him when doing the 1997 study, so he did not have a chance to look at it (Transcript Volume 2, p. 213 ll.19-21). He also testified that he did not know about the contractual demand requirement in 1997 and, he is fairly

certain, at the time EES did its work in 2007 in connection with Big White (Transcript Volume 2, p. 211 ll.17-22, p. 213 ll.8-10). Rather, the contracts were produced to him for review as part of a data request that EES made in connection with the present COSA (Transcript Volume 2, p. 210 ll.5-18).

37. Returning to Mr. Chernikhowsky's testimony quoted in para. 35 above, while Celgar suggests at para. 143 of its argument that FortisBC commenced *N-0 planning* only in 2008 (Celgar Argument at para. 143), that is not the case. FortisBC's evidence was that N-0 studies incorporating contractual demand were first run at that time, not that N-0 planning did not occur prior to that time (FBC response to BCMEU IR 1.30.1 - Ex. B-3-3).

38. Indeed, FortisBC's evidence was also that, historically, it planned its system beyond actual demand and that "to some level, that contract demand was considered in that N minus 0 planning in the past" (Transcript Volume 4 p. 571 l.11 to p. 572 l.8). While in its paraphrase at footnote 19, BCMEU suggests that Mr. Chernikhowsky said contractual demand limits had "not triggered any upstream investment" (and Celgar at para. 143 of its argument suggests that N-0 analysis does not drive investment decisions), this portion of Mr. Chernikhowsky's answer was expressly qualified as being with reference to "recent history", and expanded upon as follows:

> MR. CHERNIKHOWSKY: A: In terms of upstream transmission reinforcements, in recent history, no, it has not driven any. But again, we have to consider all of history, then, at that point. So when we look back to previous planning criteria, certainly the substation facilities and the infrastructure that was built upstream clearly was sized to greater than the actual forecast demand. And we've seen evidence of that again, simply because of the fact that when we were conducting infrastructure upgrades at local facilities, we did not need to do upstream transmission improvements as well.
>
> So to some level, that contract demand was considered in that N minus 0 planning in the past.
>
> MS. KHAN: Q: Okay, and when you say "in the past", how far back are you talking about?

> MR. CHERNIKHOWSKY: A: I'm referring to back in the 1980s and the 1990s. Again, we have a bit of an internal gap in terms of planning for a number of years. The predecessor company had chosen to outsource planning, so the actual planning methodologies that were used back then we don't have direct access to. But based on the evidence that we've seen, it seemed to be used to some degree. [underlining added]

Transcript Volume 4 p. 571 l.11 to p. 572 l.8

39. While BCMEU, Celgar and the BC Old Age Pensioners' Organization et al. ("**BCOAPO**") attribute much to Mr. Chernikhowsky's forthright statement during the Hearing that N-0 planning is "not very interesting" or not a "routine activity" (BCMEU argument at para. 32, Celgar argument at para. 143, BCOAPO argument at para. 35), those are unsurprising attributes for N-0 planning to have given that (with the few exceptions noted in the FBC June Submission) N-0 reliability has now been achieved. Indeed full contract demand obligations for all wholesale customers can be met even during N-1 events, aside from either Kelowna or Penticton under certain scenarios (FBC response to BCUC IR 2.39.3 – Ex. B-7). While FBC's engineers would no doubt find running more complicated scenarios of greater interest, achievement of the N-0 threshold demonstrates that FBC has invested sufficient resources to attain that standard even when contractual demand is taken into account.

40. For its part, Celgar suggests at para. 144 of its argument that contractual obligations need not be taken into account under N-0 standards in any event, suggesting that only the contractual obligations pertaining to "Open Access Transmission ('OATT') firm point to point customers" should be considered in that framework. However, while Celgar's purchases from FortisBC are not under the OATT, at one point in the transcript Mr. Linxwiler describes firm transmission service as "understood to be" service provided either under an OATT "[o]r a similar contractual obligation" (Transcript Volume 5 p. 922, ll.5-10; underlining added). As to the suggestion that only "firm" contractual service qualifies for N-0 planning, FortisBC's evidence was that it does not use the concept of non-firm demand for transmission planning at this time (Transcript Volume 3, p. 365 ll.23-25 (Mr. Chernikhowsky)). Further, as to Celgar's "point to point" reference, as returned to below Mr. Saleba testified that point-to-point is "analogous to the service Fortis is providing to the

wholesale customers" (Transcript Volume 2, p. 138 l.25 – p. 139 l.1 [this was in the context of a question from Mr. Weafer, not Mr. Moller]). Further, and in any event, Mr. Linxwiler's understanding and experiences are narrower than the definition of firm transmission service on the face of the NERC standards (the "highest quality (priority) service offered to customers under a filed rate schedule that anticipates no planned interruption") (Ex. B-27).

41. The evidence of Mr. Chernikhowsky, FortisBC's Director, Engineering Services, as to the proper interpretation of the N-0 obligations under which he operates should be preferred on this point. Mr. Chernikhowsky, who gave extensive evidence on the issue and was present throughout the questioning of the FBC witness panel, is an electrical engineer with over 14 years experience in electric utility power systems planning, design and operations. Further, his education and experience is in the British Columbia context to which the NERC standards are being applied (Ex. B-20).

42. Further, in any event of how the debate in which Celgar seeks to engage on the correct interpretation of NERC standards should be resolved (which, we respectfully submit, should be in FBC's favour), the reasonable practices that FBC has implemented and intends to continue to follow based on its understanding of those standards should be given deference. The standard for rate-setting is reasonableness, not correctness. The fact is that FortisBC is planning on an N-0 basis using contractual demand, and intends to conduct its future transmission planning so as to meet its contractual obligations at an N-1 level (see para. 29 of the FBC June Submission). FortisBC's practices and interpretation of NERC standards were spoken to in detail by Mr. Chernikhowsky, as he was well qualified to do given he is responsible for the planning, engineering and execution for all FortisBC's transmission and distribution projects (Ex. B-20).

43. At para. 39 of its argument, BCOAPO suggests deferring contractual demand-related matters (at least insofar as they relate to NERC standards) until FortisBC's next COSA, in the hope that "the question of using contract demands in applying NERC's planning criteria" will be resolved by then. However, it is only in the context of cost

allocation that affected customers can be presumed to have an interest in minimizing planning protections. Given planning and expenditures are ongoing processes, FBC should not be left without guidance from the Commission pending its next COSA. While BCOAPO suggests at para. 38 of its argument that BC Hydro should also have input as to the interpretation of NERC criteria, BC Hydro has not taken its opportunity to comment on that aspect of FortisBC's submissions despite filing argument in this matter.[5]

44. Further, even if (as Celgar and BCMEU suggest, contrary to FortisBC's evidence) planning does not in any meaningful sense presently take contractual demand into account, Mr. Chernikhowsky's evidence of pending amendments to the N-1 standard which would incorporate contractual demand is uncontradicted. For the purposes of COSA, reasonable expectations can be taken into account.

45. BCOAPO points at para. 12 of its argument to the fact that contracts between the municipal utilities and FortisBC provide for 5-year load forecasts to be supplied to FBC. Mr. Swanson testified that he did not believe the municipalities had actually been providing such forecasts in all cases, but in any event that the forecasts were used primarily from a commodity point of view, "not the delivery or the ability to deliver electricity to the customers" (Transcript Volume 2 p. 220 l.14 – p. 221 l.12). On cross-examination by BCMEU's counsel, Mr. Swanson continued as follows (Transcript Volume 2 p. 225 l.15 – p. 226 l.5):

> MR. WEAFER: Q: It's -- 704 [s. 7.04 of the contracts between FBC and municipal utilities] is the five-year load forecast that we spoke of. And again, why -- if the contract demand methodology is utilized, what would be the need for something like this?
>
> MR. SWANSON: A: Again, we have planning in terms of infrastructure, and we have planning in terms of power supply. 704 [s. 7.04] is more in terms, as I read it, more in terms of the planning in terms of power supply.

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5 BC Hydro states on page 1 of its argument of July 14, 2010 that it "considers that except where an issue impacts BC Hydro or its customers, it is not BC Hydro's role to make submissions about the manner in which BCUC regulates FortisBC. Therefore, BC Hydro is not making submissions about the approvals sought by FortisBC in the FortisBC RDA".

> And regardless of whether they provide a five-year forecast, the contract demand recognizes the company's obligation to those customers and the benefits those customers receive. And all we're really trying to do is allocate the costs on the basis of who gains the benefit, as opposed to having other customers pay for benefits -- you know, one group of customers paying for the benefits that go to another group of customers. [underlining added]

(7) Impact of the Contractual Demand Approach

46. At paras. 17, 96 and 97 of its argument, BCMEU refers to a "shift [of] $7 to $8 million costs" to BCMEU members or customers (a distinction returned to below) through use of the contractual demand approach. The $7 to $8 million is based on the Demand Limits used in the October 2009 filing rather than the re-nominations reflected in Exhibit B-35 (as BCMEU acknowledges in para. 97), pursuant to which - even with rebalancing to 100% rather than 95% - any shift would decrease to approximately $3.4 million. Further, the numbers must be taken in the context of the lengthy time period over which any shift would occur. Mr. Swanson stated the following at Transcript Volume 5 p. 788 at l.24 to p. 789 l.17, in addressing the more general shift to contractual customers using October 2009 numbers:

> In addition, through the rebalancing proposal, it is somewhat of a phase-in. I believe Mr. Fulton yesterday asked me to verify that this change to contract demand represents a ten and a half -- approximately ten and a half million dollar transfer of revenue requirement from a bunch of classes of customers to a few customers. And as much as I suggest subject to check, I don't think we can forget that through our proposed rebalancing, by the time that ten and a half million actually gets transferred, we'd be thirty some-odd years out, and it would assume that no customer renominated down in that thirty someodd years before you get to that full ten and a half million.
>
> Not to downplay it. I do realize it is a significant change. But again, I go back to, as much as it is a change to those customers who will now be paying it, let's not forget that other customers have been paying it in the past, and quite rightly should not have been.
>
> [underlining added]

47. At para. 17 of its argument, BCMEU suggests the shift that occurs is "to BCMEU customers" (at paras. 96-97 of its argument, as returned to below, BCMEU more

accurately describes any such shift as being to its members). BCMEU members are the direct customers of FortisBC, and it is the municipal utility (from which BCMEU's customers purchase power) that ultimately controls the rates that are charged to and costs borne by its customers. While rate increases to BCMEU's customers may result from increases in FortisBC rates charged to municipalities (the suggestion of BCMEU noted at para. 18 above), this is certainly not inevitable; municipal utilities may also reduce their rates of return or take other measures. Mr. Carle (with Dr. Rosenberg assisting in the reshaping of the answer) said the following on cross-examination by Ms. Khan, at Transcript Volume 6 p. 1028 l.13 – p. 1029 l.23:

> MS. KHAN: Q: Okay, thanks. Will the municipal rates -- do you expect if FortisBC's application is accepted by the Commission that municipal electricity rates will increase as a result? Above FortisBC levels?
>
> MR. CARLE: A: I would have to say, we've had no discussion on that. We're really waiting to find out the decision by the Panel on Fortis.
>
> MS. KHAN: Q: But based on the proposal, as -- based on the COSA proposal before the Commission right now, is that what you anticipate happening?
>
> MR. CARLE: A: I'm not going to say one way or the other, because I think to be fair to the municipalities they would have to make a decision on the outcome and I really can't say whether they would or not.
>
> MS. KHAN: Q: Okay. So they have some options then, is what you're saying.
>
> MR. CARLE: A: Yes.
>
> MS. KHAN: Q: Okay. Do you know then -- I assume the answer will be the same, that you don't know whether these increases will affect residential customers in municipal service territories.
>
> MR. CARLE: A: I would have to say the same.
>
> MS. KHAN: Q: Okay.
>
> MR. ROSENBERG: A: I might add that obviously as Rod said, those would be decisions of the municipalities themselves. But obviously the rates that Fortis charges these communities are clearly a prime component of their cost of service. So they would either have to pass it along or increase taxes or reduce services. I mean, just logic.

> MS. KHAN: Q: Okay. So is it possible then that residential customers in municipal territories could be paying more for their electricity rates than FortisBC residential customers?
>
> MR. CARLE: A: Could be possible.
>
> [underlining added]

48. While BCMEU seeks to rely on the concept of postage stamp rates at paras. 70-72 of its argument by comparing its customers to nearby FBC customers (a comparison that BCMEU also attempts at paras. 13, 17 and 95, to the extent of alleging discrimination against BCMEU's customers), postage stamp rates are premised on comparable customers being treated the same regardless of their geographic location. FortisBC's direct customer in the case of a municipal utility is the municipal utility. The municipal utilities are not comparable to FortisBC's residential customers given that, among other things, they operate within a different contractual framework; contrary to para. 17 of BCMEU's argument, "identical service from FBC" is not provided. Treating unlike customers alike is not part of postage stamp methodology, nor do postage stamp rates prevent, more generally, divergence between rates charged by different utilities – otherwise separate rate design proceedings for BC Hydro, for example, would not be required. (The same flaws arise in relation to Mr. Shadrack's attempt to compare residential customers of FortisBC and residential customers of Nelson Hydro, on page 3 of his argument, although apparently to opposite effect.) From the standpoint of cost allocation this issue arose during cross-examination of the FBC witness panel by counsel for BCMEU (Transcript Volume 2 p. 133 l.19 – Transcript Volume 2 p. 135 l.1):

> MR. WEAFER: Q: So if we had a situation in the area of Kelowna where we had one customer served by Fortis off a substation that services both the City of Kelowna and Fortis, and another customer served off the same substation who's a customer of the City of Kelowna -- so one customer of Fortis, one a customer of Kelowna, served off the same substation, would you agree with me that it would be fair that the costs were allocated to them, in terms of Fortis's costs, in the same manner?
>
> MR. SWANSON: A: Fortis can only control or have input into the costs it charges to its direct customers. The charges to the indirect customers are set by the individual municipalities. And in fact customers in Kelowna, you could have one customer served by B.C. Hydro, one customer served by FortisBC, and one customer served by the City of Kelowna. We can only

> control our -- or really have strength -- or strong input into the charges allocated to our direct customers.
>
> MR. WEAFER: Q: Yes, Mr. Swanson, and I'm dealing with the costs that flow to the substation, and I accept that post-substation those are city of Kelowna costs, Fortis costs. And I'm talking about the cost that gets you to the point of delivery. The same substation, one customer a Fortis customer, one customer a city of Kelowna customer. To the point of delivery, should both incur the same costs?
>
> MR. SALEBA: A: It depends on the contractual obligation and rights associated with the different customers of that substation. If you have a retail customer, you have a B.C. Hydro customer, and a Kelowna customer, their reliability and obligation from Fortis's standpoint, sir, might be different. In which case the cost allocation should be different.
>
> **See also Transcript Volume 4 p. 601 l.9 – p. 602 l.11 (Mr. Swanson responding to Mr. Wait)**

49. At para. 63 of its argument, BCMEU suggests that economies of scale contribute to making municipal utilities inexpensive for FortisBC to serve. However, the exit of certain of those municipal utilities would in some scenarios result in a general rate decrease for the rest of FortisBC's customers. This fact was one of the indicators that drew FortisBC's attention to the possibility that other of FBC's customer classes could be subsidizing the wholesale customers (FBC response to Andy Shadrack IR 1.6 – Ex. B-3-8; Transcript Volume 3, p. 428 l.21 – p. 429 l.1 (Mr. Swanson)). While BCMEU advocates at para. 11 of its argument that FortisBC should be directed to re-file a COSA in accordance with Dr. Rosenberg's evidence, Dr. Rosenberg's approach would not address the issues that contributed to concerns about the present rate structure nor address the circumstances that had developed since 1997.

(8) Big White Study

50. At paras. 13, 40-42 and 58 its argument, BCMEU refers to EES's 2007 cost of service study in relation to Big White (the "**Big White Study**") as endorsing the principles used in 1997 (see also para. 153 of Celgar's argument). However, as FortisBC has explained, following the 1997 principles in the Big White Study was required given the circumstances in which it was conducted; Mr. Swanson notes that FortisBC viewed the Big White Study "as being a sub-study of the existing cost of

service rate design, as opposed to a brand-new study" (Transcript Volume 5 p. 794 l.26 – p. 795 l.3). The COSA done for the Big White proceeding "was specifically prepared using the same methodology as the 1997 COSA, in order to reflect the basis for the rates in place in 2007; the COSA for Big White was intended only for the purpose of determining the impacts of a separate regional rate for the Big White area" (FBC Reply at p. 6 - Ex. B-16; see also Transcript Volume 2 p. 195 l.17 – p. 196 l.24; p. 212 l.22 – p. 213 l.12 (Mr. Saleba); Transcript Volume 5 p. 794 l.17 – p. 795 l.9 (Mr. Saleba and Mr. Swanson)).

51. At footnote 67 of its argument, BCMEU takes issue with Mr. Saleba's statement that Big White Ski Resort ("**BWSR**") would be treated now as it was under the Big White Study despite application of the contractual demand methodology. However, this is precisely in accordance with the premises underlying the Application. BWSR does not have a contract with FortisBC and does not have the capacity reservation that such contracts entail. Further, its characteristics may be such that, unlike for Rate Schedule 31 customers (but in common with Rate Schedule 30 customers, as noted in para. 9 above), actual demand provides sufficient planning guidance.

52. At paras. 41 and 58 of its argument, BCMEU cites a passage from the Big White Study referencing the "lumpiness" of capital additions (see also para. 29 of BCOAPO's argument). The "lumpiness" of capital additions does not abrogate FortisBC's contractual obligations. For example, with contractual obligations taken into account, there is less remaining capacity to serve FortisBC's "non-contract demand loads"; FBC would have to advance upgrades as that load continues to grow. See also para. 38 above.

(9) Following Precedent

53. BCMEU peppers its submissions with references to the supposedly "unprecedented" nature of the approach that FortisBC has adopted. However:

(a) Precedent is at best an unreliable guide in circumstances where each utility has unique characteristics and issues with which it must deal; and

(b) With the caveat expressed in (a), there is some precedent in support of FortisBC's approach, at least in generally analogous circumstances. By contrast, the Intervenors have not pointed to any precedent of contractual demand having been rejected by a regulatory body in circumstances that they say are the same as those facing FortisBC.

(a) Precedent Is At Best Unreliable

54. FortisBC has unique characteristics which make it unlikely that precedents from other jurisdictions will be directly applicable to it. Among the circumstances distinguishing FortisBC from many utilities is the high concentration of wholesale customers in its service territory. As stated in the FBC response to BCUC IR 1.12.1 (Ex. B-3-1):

> ...While these precedents demonstrate use of contract demand the cost causation factors for each utility system are what should drive cost allocations for that specific utility. One size doesn't fit all from a COSA standpoint. The Company considers the approach it has taken in the COSA related to contract demand to be appropriate, particularly given its circumstance of serving a large portion, approximately 26 percent of its peak load, through wholesale contracts with municipal utilities that include a specific demand obligation. [underlining added]

55. Another key distinguishing feature is the fact that the rates which FortisBC charges to wholesale customers with whom it has contracts are regulated. As stated in FortisBC's reply evidence (p. 3 of Ex. B-16), "[m]unicipal utilities are now more likely to have contracts for power supply outside of the regulated process". See also Ms. Tabone's testimony at para. 57 below.

56. In other circumstances, BCMEU itself emphasizes the distinctions between utilities (at para. 1 of its argument, the "uniqueness" of its member group as compared to FortisBC). Indeed, the material on which BCMEU relies for that statement underlines distinctions even within its member group. At footnote 2, BCMEU cites a draft EES study regarding the City of Nelson which, among other matters, refers to an item not applicable to the other involved BCMEU members: "the investment in hydroelectric

facilities to reduce its reliance upon Aquila Networks Canada for power supply" (Ex. C1-11, p. 345).

57. Ms. Tabone's research bears out that the underlying circumstances of many other utilities are dissimilar to those of FortisBC. In a passage on which BCMEU relies to suggest a "hard search" for studies similar to the FBC COSA was unsuccessful (at para. 39 of its argument), more accurately Ms. Tabone was describing a lack of success in finding similar circumstances from which such studies could arise. Ms. Tabone noted that she searched "quite hard to find a situation that would be similar to FortisBC where there was a case of a significant number of wholesale customers that were served on a tariff, as opposed to a contract that was outside of the rate-making regulated process". Ms. Tabone testified that she "didn't really find another case that was representative that would provide a precedent that would mimic the situation for FortisBC" (Transcript Volume 2, p. 187 ll.18-25).

58. While at paras. 43-47 of the BCMEU argument and para. 157 of the Celgar argument those Intervenors take pains to criticize examples of contractual demand that FBC has offered, this is unfair given FortisBC openly stated that precedent is not a reliable guide to cost allocation in this circumstance and that it is not being relied upon.[6] Mr. Saleba stated his position with respect to precedent as follows:

> The whole issue of precedents I find interesting but irrelevant to what we do in a cost of service study. The cost of service study turns on cost causation, which is different for every utility. We've probably done three or four hundred cost of service studies over the last 30 years, and no two of them have been the same. So what happens in B.C. or Alberta or New York or California is -- I think it -- intellectually it's interesting and curious, but it has absolutely nothing to do with the cost of service study for FortisBC.
>
> **Transcript Volume 2, p. 186 l.21 - p. 187 l.5**

59. As he continued:

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6 As to the one study to which Celgar points as not having been produced (para. 153), Mr. Saleba clearly said during the Hearing that he would "need to check" (Transcript Volume 2, p. 259 l.11).

> With respect to precedents, as I said before, I think precedents are interesting, and we like to look at them, and I find it entertaining, but in my view that has nothing to do with cost causation for FortisBC. Every utility has different cost causation factors. Every utility needs to be looked at separately. What happens in Alberta and Washington state are interesting, but I don't think they bear on what happens here whatsoever.

Transcript Volume 2 p. 216 ll.14-22;
see also Transcript Volume 3, p. 420 ll.12-14 (Mr. Saleba)

60. Contrary to BCMEU's suggestion at paras. 35 and 36 of its argument, FortisBC expressly acknowledged at para. 5 of its June Submission that Dr. Rosenberg qualified his focus on the circumstances of the particular utility whose costs were being allocated. However, Dr. Rosenberg's analysis itself demonstrates the problems inherent in losing that focus. In attempting to rely in his evidence on precedent to argue that contractual demand should not be used, he singled out two utilities, in Nova Scotia and New Brunswick, whose circumstances are unlike those of FortisBC. In this regard, while Dr. Rosenberg alleged (at pp. 7-8 of Ex. C1-6) that Nova Scotia and New Brunswick utilities have municipal/wholesale customers that are not allocated costs or billed on the basis of contract demands, the municipal/wholesale load is a much greater share of the total for FortisBC: only 2% of load is municipal/wholesale for Nova Scotia Power and approximately 8-9% of load is municipal/wholesale for New Brunswick Power. This compares to FortisBC where 30% of energy sales are to municipal/wholesale customers (FBC reply at p. 3 - Ex. B-16). Further, while Dr. Rosenberg understood that the municipal wholesale customers of Nova Scotia Power and New Brunswick Power had contracts with the respective utility, he did not have copies of the contracts in his possession (BCMEU response to FBC IR 1.9.4, 1.9.8 – Ex. C1-11). There is no evidence that those contracts contained demand limits or similar concepts which could form the basis for using contractual demand in cost allocation, even if those utilities wished to apply that method.

61. In addition, while BCMEU now appears to adopt AESO as an example of contract demand not being used, this arises in circumstances that BCMEU says are distinguishable from those of FortisBC (see footnote 39 of the BCMEU argument).

62. Correspondingly, the Commission itself is not bound by precedent, even its own decisions (*Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 75). Neither precedent nor convention should be followed for their own sake, although BCMEU's repeated invocation of both terms in its argument suggests it would favour doing so even if past practice were incorrect or arose in different circumstances. This is not a sound basis on which to allocate costs or set rates. While at para. 19 of its argument, BCMEU suggests that "the consequences of this new method" (presumably the consequences for BCMEU members, as discussed at para. 46 above) create an additional hurdle in departing from the old, customers who are presently overpaying would bear the cost of not correcting a flawed approach.

(b) Contractual Demand Precedent

63. While certain of the Intervenors are critical of the examples of contractual demand that FortisBC provided, Mr. Swanson noted confirmation from AESO's Director of Regulatory Affairs, John Martin, that FortisBC's proposed approach was generally consistent with AESO's application of contract demand (Transcript Volume 2 p. 229 ll.4-10). Further, while BCMEU harshly criticizes Ms. Tabone's use of "bulk system charge" in referring to the AESO example, all that occurred was a misunderstanding between herself and BCMEU over the generic and defined uses of that term. Ms. Tabone explained this as follows at Transcript Volume 2 p. 248 l.7 – p. 249 l.1:

> MR. WEAFER: Mr. Chairman, I don't know if Mr. Saleba had any success over the break in terms of the research they were going to do.
>
> Q: Did you want to deal with that now, Mr. Saleba?
>
> MR. SALEBA: A: It's good with us if it's okay with the Commission.
>
> THE CHAIRPERSON: Fine.
>
> MS. TABONE: A: I think it was just a poor choice of words in calling it the "bulk system charge". We meant it to be a generic bulk system charge because the AESL chart calls it a demand transmission service, which is not a standard term. So the whole -- the DTS tariff has multiple components within it, and rather than calling it the demand transmission service rate, which is not a normal term that people would understand, I referred to it as a bulk system charge for transmission, and that happens

> to be one of the specific terms within that DTS rate. The DTS rate has three components, one of which is based on actual coincident demand, and two of which are based on contract demand.

64. In addition, while BCMEU suggests at para. 46 of its argument that examples from the "point-to-point" context of Bonneville Power Administration ("**BPA**") do not apply, there is an analogy to be drawn to that context given the contractual nature of the service provided by FortisBC to Rate Schedule 31, 33, 40 and 41 customers. As noted earlier, Mr. Saleba also testified that point-to-point is "analogous to the service Fortis is providing to the wholesale customers" (Transcript Volume 2, p. 138 l.25 – p. 139 l.1).

65. Contrary to para. 47 of the BCMEU argument, there was no "recant[ing]" of an additional BPA example (this given in FortisBC's reply), nor would any such recantation have been warranted. It is evident from the passage quoted at para. 46 of BCMEU's argument that FBC from the outset associated the "CDQ" concept with power supply and did not purport to extend it to other scenarios.

66. Further, while certainly Dr. Rosenberg draws attention to the distinctions between these utilities and the practices they adopt, he noted that some gas pipelines do use a capacity reservation mechanism for rate design (Ex. C1-6 at p. 13). In the context of electrical generation, rather than transmission, Mr. Linxwiler also noted that "[a]s to wholesale costs, it is not uncommon for generation costs to be allocated to a wholesale customer on the basis of a contract demand" (Ex. C13-7 at p. 12). The City of Kelowna itself employed contract demand as a billing determinant for one customer (BCMEU response to FBC IR 1.20.1 – Ex. C1-11).

67. Other examples of contractual demand being used would be difficult to find irrespective of distinctions between utilities. The manner in which materials are filed also becomes an issue. Ms. Tabone noted in her testimony that it was difficult to tell from her review of various cost of service studies whether or not contract demand was used. As she testified (Transcript Volume 2, p. 189 l.17 – p. 190 l.2):

> And also within a cost of service study when we're looking through what other people have done, there isn't always sufficient detail in how the load forecast or the load data was developed, and we really can't differentiate

> unless they specifically say that they're using contract demand for a particular class. We don't know if contract demands are included in the loads that they have forecast for, let's say, industrial customers or wholesale customers. We don't always know the basis for that demand. So we can't say definitively that it is not a contract demand.

68. The Intervenors, in turn, have not pointed to any precedent of a regulatory body rejecting the contractual demand methodology in what they say are the same circumstances facing FortisBC. In this regard:

(a) The Alberta regulatory precedent BCMEU cites at para. 45 of its argument is from what BCMEU describes as a different context (see footnote 39 of its argument).

(b) Where contractual demand was commented upon by BC Hydro, in a passage quoted by BCMEU (at para. 48) and Celgar (at para. 149), it was not adjudicated upon by the Commission. Further, BC Hydro is elsewhere treated by BCMEU as distinct from FortisBC, to the point that (when arguing for an expanded range of reasonableness), BCMEU questions FortisBC's use of BC Hydro load data: at para. 78 of its argument, BCMEU says that "FBC concedes that it has used borrowed data for determining the load of most of its customers, and the relevance to FBC is questionable" (underlining added). More generally, contrary to BCMEU's suggestion at paras. 48 and 49 of its argument, the fact BC Hydro made a statement in responding to an information request in another proceeding (in 2007, no less, so prior even to being able to consider FBC's approach) could not constitute either an "unequivocal repudiation" of contractual demand in cost allocation nor a "complete answer" to it. Certainly BC Hydro has not engaged in this proceeding on issues relating to this topic, and if FortisBC were required simply to follow BC Hydro's lead, there would have been no need for this proceeding at all. Further, no commentary from British Columbia Transmission Corporation – as of 2007 or otherwise during its existence – was adduced in evidence.

(c) While BCMEU relies heavily on FortisBC's 1997 study, contractual demand was not argued by any party in that case (and thus not exposed to regulatory determination). Indeed, the outcome itself was the result of a negotiated settlement process rather than a contested hearing on cost allocation or rate design principles as in this case. While the Commission noted there was sufficient evidence in the application and responses to information requests to provide a reasonable basis for the proposed changes, the Settlement Agreement appended to the Commission's Order G-15-98 of January 29, 1998 specifically provides (as the Commission also noted):

> The following settlement agreement with respect to Rate Design was made on the understanding that it does not imply support for or agreement with any particular rate design policies or principles. Accordingly, the settlement agreement has no implications for any future rate design positions which may be put forward by any party to the settlement. [underlining added]

(10) Re-Nomination

69. Certain of the Intervenor arguments (at least Mr. Wait's, that of the Rate 30 Group, and BCMEU in the context of describing a $7-$8 million cost shift) refer to numbers from the COSA filed on October 30, 2009. For clarity, we note that the relevant numbers are from Cases E and F in the updated COSA filed on May 14, 2010, reflecting new Celgar and BCMEU nominations (Ex. B-35).

70. While Mr. Wait suggests in the third paragraph of his argument that FortisBC did not "allow...for a re-nomination" of "Contract Demand" before calculating the new rates, this is not the case. As indicated by the September 2009 emails from BCMEU members, re-nomination of transmission capacity was under discussion prior to the October 30, 2009 filing. Correspondingly, the filing of the Application was delayed from September 2009 to that date.

71. In para. 80 of its argument, BCMEU expresses surprise about the "fashion" in which new contractual demands were derived from September 2009 emails. However, as the new numbers were derived by reading the emails, the result is unsurprising.

Among other things, the new numbers provided by BCMEU members were the same for winter and summer (that is, only one number was provided); in this context, it does not lie in BCMEU's mouth to take objection (as it does at para. 80 of its argument) to FortisBC's use of the same contractual demands for winter and summer in the transmission context (FBC response to BCMEU IR 3.9.3 - Ex. B-38).

72. BCMEU complains as well in para. 80 of its argument that Ex. B-35 continues to use the Appendix "A" "Demand Limits" from the contracts between FBC and the municipal utilities for allocating distribution substations. However, FortisBC has consistently made clear that re-nomination was for transmission capacity reservations only (FBC response to BCMEU IR 3.9.1 - Ex. B-37). The "Demand Limits" in Appendix "A" reflect the installed capacity of equipment already in place.

73. At para. 81 of its argument, BCMEU takes issue with the fact that the FBC June Submission characterizes Dr. Rosenberg's comments on Ex. B-30 as vexatious. While certainly comments from Dr. Rosenberg were invited, the issue is not the fact that comments were provided, but their content, which was not constructive.

(11) Other

74. At paras. 10 and 108 of its argument, BCMEU asserts that Dr. Rosenberg's evidence "has not been challenged in any material way in this proceeding". This is simply not the case. For example, Dr. Rosenberg's report was written on the premise of a dispute with Mr. Saleba. Clearly those experts joined issue.

B. Use of a Separate Revenue-to-Cost Ratio for Each Wholesale Customer Formerly in Rate Schedule 40

75. Mr. Wait suggests in the fourth paragraph of his argument that separating municipal customers into separate rate schedules is contrary to postage stamp rates. However, the underlying feature of postage stamp rates is that customers with similar characteristics (and likely similar costs) are considered as one group. As illustrated by their disparate revenue-to-cost ratios, each of the municipal utilities has distinct characteristics. In response to the table on page 2 of Mr. Wait's submission, the

rationale for separating the wholesale group into separate rate schedules stemmed from their cost disparity, not their load factor.

76. This being said, and given BCMEU's expressed preference in its argument for this approach (para. 106), FortisBC does not oppose placement of the municipal utilities formerly in Rate Schedule 40 in a single rate schedule.

77. It should be noted that Rate Schedule 41 (Nelson) would nonetheless remain separate from Rate Schedule 40. In para. 2 of its argument, the BCMEU refers to its members *presently* being "served as a single rate class of FBC", but this is not the case. While four of the municipal utilities (Grand Forks, Kelowna, Penticton and Summerland) are served under Rate Schedule 40, Nelson is served under Rate Schedule 41 given it is a transmission customer. A similar issue arises in the argument of Mr. Gabana, where on page 2 he criticizes FortisBC for having prepared a table that does not include Nelson figures "in the Total Rate 40 column". Given Nelson does not fall within Rate Schedule 40, those figures could not be included there.

C. Use of a Separate Revenue-to-Cost Ratio for Celgar

78. No Intervenor submissions other than those of the Irrigation Ratepayers Group ("**IRG**") (which favours FortisBC's approach on this point, at para. 15) appear to have specifically addressed the issue of having a separate revenue-to-cost ratio for Celgar. FortisBC reaffirms its earlier position that treating Celgar separately in this regard makes sense in the circumstances (see paras. 42-45 of the FBC June Submission).

D. Setting of a GBL

(1) Potential Cost to FortisBC Ratepayers

79. BC Hydro states on pages 10-11 of its argument that it interprets para. 2.1(b) of its Power Purchase Agreement with FortisBC (the "**PPA**"), as amended by Order G-48-09, to mean that "FortisBC shall not sell electricity purchased under the agreement to any FortisBC customer who is selling self-generation not in excess of the customer's actual plant load on a dynamic basis". BC Hydro highlights the potential costs to FortisBC ratepayers (at pp. 22-24), and expressly concludes that "FortisBC could not

use BC Hydro PPA power to meet the increase [of Celgar usage]" (p. 26). BC Hydro's arguments make clear that FortisBC was right to be concerned about the implications of setting a Celgar GBL in this proceeding.

(2) Obligation to Serve

80. BC Hydro's arguments regarding the obligation to serve, including on reading that obligation in the context of past decisions of the Commission and in the context of s. 28(3) of the *Utilities Commission Act*,[7] are persuasive (see pages 16-18 of the BC Hydro argument; see also para. 53 of the BCOAPO argument). FortisBC cannot have an obligation to serve Celgar in a manner that would contravene Order G-48-09. Further, and in addition to BC Hydro's statement of those principles:

(a) Celgar states at para. 30 of its argument that FortisBC has an obligation to serve "the full load requirements of Celgar". However, the issue is what constitutes "full load".

(b) While Celgar may contend this is the mill load absent generation, more appropriately it is only what is manifested at the meter, as is the case for other customers. Any regulatory obligation to provide service should not be in excess of what the customer needs.

81. At para. 46 of its argument, Celgar cites page 277 of the transcript as containing an acknowledgement by FortisBC of its obligation to serve. However, no such acknowledgement (in the sense that Celgar intends) is found in this portion of transcript or elsewhere: any obligation to serve was qualified by the questions of "at what cost and at what cost to [FBC] customers", which depend "on the outcome of the interpretation of G-48-09 and the amendment to Section 2.1 of the 3808 agreement" (Transcript Volume

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[7] Although FortisBC does not contend it needs to rely on this subsection (Celgar's argument fails on other and earlier bases), its wording illustrates that Celgar's repeated contention that the Commission "cannot relieve a public utility from an obligation to serve" is wrong. Section 28(3) provides that "[a]fter a hearing and for proper cause, the commission may relieve a public utility from the obligation to supply service under this Act on terms the commission considers proper and in the public interest".

2, p. 284 ll.15-23). Further, with respect to particular other items cited by Celgar in relation to the "obligation to serve" issue:

(a) While Celgar asserts that the FortisBC witness panel "acknowledged that Celgar has customer status for the entire load requirement of the Mill" (para. 46), this was specifically qualified by the possibility of disagreement of what constitutes "load". In the lines of transcript to which Celgar makes reference (Transcript Volume 3, p. 368 ll.16-24), the following exchange occurred:

> MR. MOLLER: Q: Well, does FortisBC acknowledge that Zelstoff Celgar has customer status for the entire load requirement of the mill?
>
> MR. SWANSON: A: Subject to some interpretation, but yes. It's -- sorry, not the fact that Celgar is a customer requires interpretation, just what constitutes the load of the mill may require some interpretation. But generally speaking that seems to make sense.
>
> [underlining added]

(b) In the passage on which Celgar relies for the proposition that "under the APA [Access Principles Application], a self-generation customer and a retail customer should be given the same treatment", the exchange which in fact occurred was as follows (Transcript Volume 3 p. 369 ll.14-22):

> MR. MOLLER: Q: Yes, I'm not suggesting that the two can't coexist. In FortisBC's view, is a customer with self-generation entitled to be treated the same as any other retail customer under the access principles application decision, subject only to the requirement to avoid arbitrage?
>
> MR. SWANSON: A: I think so but I can't say for certain because, to tell you the truth, I haven't looked at that access principles application in quite some time.
>
> [underlining added]

(c) While at para. 136 of its argument Celgar notes (in another context) that "FortisBC witnesses also testified that all customers, including self-generation customers, should be served at average embedded costs

rates", this was subject at least to the requirement to avoid arbitrage. The passage on which Celgar relies (Transcript Volume 3 p. 370 ll.16-26) provides:

> MR. MOLLER: Q: Well, isn't it fair to say that all customers, including self-generation customers, should be served at average embedded cost rates subject only again to this requirement to avoid arbitrage?
>
> MR. SWANSON: A: Subject to that and subject to any other Commission decision that would say otherwise, yes.
>
> MR. MOLLER: Q: But you're not aware of any other Commission decision at this point that would say otherwise, are you?
>
> MR. SWANSON: A: I don't believe so, no.
>
> [underlining added]

Mr. Swanson also testified as follows (Transcript Volume 3 p. 368 l.25 – p. 369 l.5):

> MR. MOLLER: Q: And would you agree that customer entitlements to receive average and better cost power are established under the access principles application approved by Commission Order G-27-99?
>
> MR. SWANSON: A: In general, yes, subject to G-48-09 which may restrict that in terms of arbitrage-type situations.
>
> [underlining added]

(3) Level of GBL, if Set

82. FortisBC takes no position on the level of an appropriate GBL for Celgar.

83. While at paras. 5 and 9 of its argument Celgar contends that "FortisBC accepted that the establishment of a GBL of 1.5 MW 'satisfies the objectives of the RDA'", what FortisBC said in the passage in Ex. B-35-1 on which Celgar relies is that "Case F satisfies the objectives set out in its Application in those circumstances" (underlining added). Those assumed circumstances were "when the BCMEU wholesale utilities

have transmission nominations as set out in Exhibit B-30 and Zellstoff-Celgar has firm contract demand of 41.5 MVA with a 1.5 MVA GBL" (Celgar's formula for calculating firm contract demand having been described in its evidence as the difference between 43 MVA and 1.5 MVA).

84. Celgar says as well, without a specific transcript reference, that FortisBC recognized "that the establishment of a GBL for Celgar of 1.5 MW would be fair" (para. 9). In response to questioning by Mr. Moller during the Hearing, Mr. Swanson stated (Transcript Volume 2 p. 292 l.12 – p. 293 l.8):

> MR. MOLLER: Q: FortisBC has never established a GBL for any customer.
>
> MR. SWANSON: A: There was never a need to.
>
> MR. MOLLER: Q: Never a need to, prior to 48-09.
>
> MR. SWANSON: A: Prior to G-48-09, there was never a need to.
>
> MR. MOLLER: Q: And from the 2008 power purchase agreement, assuming again that the 3808 problem is gone and the arbitrage issue is dealt with, can we infer that a generation baseline of 1.5, based upon incremental generation after 1993 to the mill would be acceptable to FortisBC? Given that it had agreed to essentially purchase all of the energy in 2008?
>
> MR. SWANSON: A: First, again, that agreement to purchase all the energy was prior to G-48-09. If it was prior to G-48-09, like, we would agree to 1.5, we would agree to zero. Now it's a little bit uncertain, and it's even uncertain for us how to arrive at a GBL. I understand a GBL is a negotiated figure between -- historically has been a negotiated figure between B.C. Hydro and its self-generating customers. The basis of how to calculate that GBL I'm not familiar with and I don't have access to...
>
> [underlining added]

85. Earlier Mr. Swanson had noted (Transcript Volume 2 p. 286 ll.7-11), as Celgar acknowledges in para. 106 of its argument:

> And to answer the broader question, am I in favour of Celgar having a GBL that's lower than 40, and can I see benefits to that as well as logic to that? And the answer would most definitely be yes if I could have continued access to 3808. [underlining added]

86. While Celgar suggests at para. 2 of its argument that FortisBC had declined to negotiate a service agreement having a GBL with Celgar prior to FortisBC's October 2009 filing, Celgar's evidence was that some conversations with FortisBC on the GBL issue occurred commencing in June 2009, and that on January 12, 2010, Celgar "provided written confirmation to FortisBC...that it would not enter into a general service agreement with FortisBC that did not include a FortisBC GBL" (Celgar response to FBC IR 1.12.6 – Ex. C13-11).

E. Use of 2 CP Methodology

87. BCOAPO supports use of the 2 CP methodology (para. 40). Only the IRG has taken issue in its argument with the use of the 2CP methodology. The issues raised in that regard are specific to the Irrigation class, and do not change the overall considerations in support of the 2 CP approach (Transcript Volume 3 p. 499 ll.2-19 (Mr. Saleba)). FortisBC reaffirms its earlier position in this regard.

PART 3 - RATE DESIGN

A. Compliance with Government Policy, in Particular with Respect to Conservation and Energy Efficiency

(1) Contractual Demand

88. BCMEU suggests at para. 74 and footnote 69 of its argument that the contractual demand approach is contrary to conservation. Dr. Rosenberg's assumption in the passage BCMEU quotes, that municipal utilities will be encouraged by the contractual demand approach to sell more energy to spread the fixed cost, both:

(a) ascribes to those utilities a profit motivation which is contrary to BCMEU's suggestion elsewhere of those utilities' conservation consciousness. This reinforces the concerns expressed by FortisBC in responding to information requests from OEIA, which in turn reinforce use of the contractual demand approach. As set out in FBC's response to OEIA IR 1.16.1 (Ex. B-3-6):

> Q16.1 Please discuss how the drop in Energy Rate for all wholesale customers (e.g. Grand Forks 3.838 cents/kwh to 1.728 cents/kwh) supports the claim that *"the Company has proposed rate structures that encourage energy efficiency and conservation"*.
>
> 16.1 One of the challenges the Company faces in encouraging energy efficiency and conservation is that 26 percent of its load is being provided to wholesale utilities that are not regulated by the Commission and that make incremental profit on the sale of additional electricity. From that perspective, the wholesale utilities have an incentive to sell additional electricity, rather than to conserve energy. The first step in encouraging energy efficiency and conservation in this context is the acceptance of contract demand and rebalancing rates so that the wholesale utilities are paying their cost of service....
>
> [underlining added]

(b) assumes that billing based on contract demand (to an even greater extent than is presently the case) will not incent municipal utilities to nominate lower contract demand numbers. In fact, the September 2009 emails, which contain BCMEU's transmission capacity nominations (and are lower than the transmission capacity reservations extrapolated from the existing Demand Limits), demonstrate the opposite to be the case.

(2) Basic Charge and Interim Rate Structures

89. BCOAPO has expressed its support for FortisBC's approach of not implementing new residential rate structures pending its application to the Commission to employ other rate structures. In particular, BCOAPO has expressed its support for not implementing "inclining block rates for residential customers at this time, as changing rate structures could lead to customer confusion with little conservation benefits for the Company and its ratepayers" (BCOAPO Argument at para. 58). FortisBC is sensitive to the effect changed rates may have on customers, including those represented by BCOAPO, and asks the Commission to consider the position that this group has put forward.

90. In response to Mr. Shadrack's position regarding inclining block rates, Mr. Shadrack appears to acknowledge in his argument that time-based rates assist in

shaping peak power consumption and shifting use off-peak, which are key objectives for FortisBC. FortisBC seeks to achieve those objectives with the implementation of AMI.

B. Postage Stamp Rates

91. Various Intervenors invoke the concept of postage stamp rates for purposes other than that for which intended. Those points are addressed above in paras. 48 and 75 above.

C. Security Deposits

92. FortisBC's proposed approach to security deposits at the 200 kVA threshold is supported by Mr. Wait (page 3 of his argument), IRG (para. 28 of its argument) and, it appears, BCOAPO (paras. 59-63 of its argument). This is reflective of the fact ratepayers such as Mr. Wait and those represented by IRG and BCOAPO bear the risk if security deposit requirements are not in place, and that FortisBC's proposal is a reasonable measure to protect the interests of its customers. The only Intervenor which has expressed opposition to the security deposit requirement is one of those customers required to pay, International Forest Products Limited ("**Interfor**").

93. Throughout its argument, Interfor refers to security deposits as "non-returnable". This is not the case. As Interfor notes, they are returned after cessation of service. FortisBC seeks in its proposed wording precisely to make clear its obligation to return the deposits to customers at that time.

94. As BCOAPO notes in its submission (paras. 61-63), the active credit monitoring that Interfor urges FortisBC to adopt, including at paras. 15, 18 and 86 of its argument, would be costly. That cost would be borne by other FBC customers. However, that monitoring would not be as effective as having a security deposit in place.

95. Interfor cites its credit history with BC Hydro at para. 14 of its argument. However, basing deposit requirements on the credit history of a large customer does not provide sufficient security. Financial records are by their nature historical records and by the time credit risks are identified, the customer may have already defaulted on payments or be in a poor condition to provide a deposit.

96. At paras. 26-29 of its argument, Interfor suggests that a security deposit is a "rate", in part based on the reference to "charge" in subpara. (a) of the definition of "rate" in s. 1 of the *Utilities Commission Act*. However, as made clear by the concluding words of subpara. (a), a "charge" is included in this category only if it constitutes a form of "compensation of a public utility". A security deposit is not compensation; rather, subject to non-payment by the customer, it is preserved and ultimately returned.

97. Table 2 and para. 45 of Interfor's argument include comments such as "Mistake never rectified" with reference to deposits that were not collected from six customers who should have been required to provide a deposit since April 1, 2007. The process that resulted in those deposits not being collected has in fact been reviewed to reduce the likelihood of such errors in the future (FBC response to Interfor IR 1.1(e)(ii)). FBC has not approached the six customers for a deposit as they are no longer new customers and had not been informed that a deposit was required when they signed up for service (Transcript Volume 5 p. 771 l.15 – p. 772 l.17). This should not prevent FortisBC from moving forward with its approach. Mistakes which may have been committed in the past in the application of security deposit requirements should not prevent the correct approach from being taken in the present and future.

98. In some cases, as Interfor notes in paras. 46-48 and Table 2 of its argument, customer loads increased above 200 kVA since April 1, 2007 (without the customer having notified FortisBC) and a deposit was not collected. As stated in Undertaking 24 (Exhibit B-28 at p. 5), FortisBC is currently developing system enhancements to ensure that these changes in demand are identified going forward so that the appropriate deposit can be charged or refunded as appropriate.

99. Subject to use of the word "non-returnable", paras. 31 and 41 of the Interfor argument imply that FortisBC does not collect deposits for most customers. In fact, FortisBC collects deposits from all non-residential customers and some residential customers, but typically holds them for a shorter time frame for customers with lower demand levels.

100. Paragraph 32 of Interfor's argument highlights the concern that underpins FortisBC's security deposit objectives: a single Industrial default in the past 9 years resulted in the Industrial class default percentage nearly equaling that of the Residential class. Had the Industrial customer been larger, or had there been two defaults, this would have been even worse. The customers to which Interfor refers at para. 37 of its argument as having demand in excess of Interfor's usage are municipal utilities, which are unlikely to default.

101. The discretion applied to the deposit amounts required from existing customers once they are in financial difficulty (as referred to in paras. 53-55 of the Interfor argument) is necessary to balance the interest of ratepayers generally by keeping the customer solvent (and paying for power) while reducing the financial consequence of default (Transcript Volume 4, p. 644, ll.15-19). Contrary to para. 56 of the Interfor argument, however, FortisBC did not "negotiate" with the customer referenced there: rather, FBC required the deposit based on the incremental load.

102. At para. 89 of its argument, Interfor asserts that "[o]ther major service providers in Western Canada do not require security deposits from their customers, where those customers are creditworthy and have a good payment history". However:

(a) This may be inaccurate. While Interfor suggests that other service providers would not require a security deposit in similar circumstances (although it also refers in para. 89 to the existence of circumstances in which deposits are required):

(i) Schedules 1255, 1256, 1265 and 1266 of BC Hydro's Electric Tariff have a special condition: "Where the Customer's demand is or is likely to be in excess of 45 kVA, then BC Hydro may require that supply to such Customer be by special contract and that such supply be subject to such special conditions as BC Hydro, in its sole discretion, considers necessary to insert in the Customer's special contract". Presumably such special conditions could

include a mandatory security deposit (FBC response to Interfor IR 2.13(a)(ii) - Ex. B-7).

(ii) As per Distribution Tariff Regulation A.R. 162/2003, all Retailers must provide security acceptable to FortisAlberta as per Article 6 – Prudential Requirements in the Retailer Terms and Conditions. This could be in such forms as cash deposit, bond, letter of credit or bank guarantee. FortisAlberta requires that retailers satisfy security requirements to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations. FortisAlberta reserves the right to re-evaluate the security requirements of a Retailer on a regular basis, and to require additional security where appropriate (FBC response to Interfor IR 2.15(c) - Ex. B-7).

(iii) While Interfor suggests this was not so in its case (para. 91), Terasen Gas requires all new commercial and industrial customers to provide a security deposit and that Terasen Gas can require industrial customers on certain rate schedules to provide a security deposit or a irrevocable letter of credit in order to ensure prompt and orderly payment (FBC response to Interfor IR 2.17(e) - Ex. B-7).

(iv) EPCOR advised Interfor that it was not accurate to state that it does not require a security deposit from new customers where the customer can establish satisfactory credit. Rather, it "may" not do so (Interfor Evidence at Appendix R, p. 216 - Ex. C8-4). Further, EPCOR may require a deposit in circumstances including where there has been more than a 50% increase in the customer's average monthly consumption of energy (Interfor Evidence at Appendix R, p. 223, s. 3.6.1(c) - Ex. C8-4).

(b) In any event, even if Interfor's characterization of other service providers' practices is accurate, there may be distinguishing circumstances. Interfor admits it is "unaware of the default histories, or the reasons for the defaults, of other major service providers, including BC Hydro, EPCOR and SaskPower" (Interfor response to FBC IR 1.3.1 - Ex. C8-9). Interfor also admits it is "unaware of the default rates of other major service providers, including BC Hydro, EPCOR and SaskPower" (Interfor response to FBC IR 1.3.2 - Ex. C8-9).

(c) Additionally, Interfor is not aware of any regulation or policy that would require FortisBC to have the same security deposit policy as BC Hydro (Transcript Volume 5, p. 840 l.23 - p. 841 l.1 (Mr. Williams)).

103. Interfor repeatedly complains of the fact FortisBC's security deposit requirements have applied to customers only from what it characterizes as an "arbitrary date" (*e.g.*, at para. 92). The date is not arbitrary, but simply represents the commencement of the present policy. FortisBC has explained that seeking to collect mandatory deposits of the same nature from pre-existing customers whose load does not increase would be contrary to its practice in relation to policy or tariff changes more generally; correspondingly, for example, FortisBC does not charge customers who had paid a customer-in-aid-of-construction fee previous to a policy change for a different contribution after the change (FBC response to Interfor IR 1.3(I)(ii) – Ex. B-3-5; Transcript Volume 5 p. 769 l.21 – p. 770 l.3 (Mr. Warren)).

104. At para. 65 of its argument, Interfor suggests that it is placed at a disadvantage "compared to others outside the FortisBC service area". However, not only is there no discrimination, or undue discrimination, but in any event that concept would not apply on an "inter-utility" basis (BCUC Decision dated December 21, 2007 on BC Hydro 2007 Rate Design Application Phases II and III at p. 33).

D. Billing Rate Schedules 31 and 33

105. At para. 163 of its argument, Celgar suggests that the ratchets used in Rate Schedules 31 and 33 should be changed from 100% to 80%. While Celgar suggests

that the evidence of Mr. Linxwiler on this point (on which Celgar relies in proposing this change) was not challenged, notably Mr. Saleba responded as follows in cross-examination by Mr. Moller:

> MR. MOLLER: Q: But would you agree that on an industry standard basis that a 75 percent or 80 percent ratchet is more traditionally used than a 100 percent ratchet?
>
> MR. SALEBA: A: Again, it depends on the requirement that the customer puts on the utility. It may be that if the utility's got a situation where they can curtail load to somebody occasionally, maybe that's not bad. 75 to 80 percent is not bad. But in this specific situation, FortisBC is on the hook for a hundred percent of that contract demand every month. So, if there is no relief there, that we know of, in the planning or the operational standpoint, and it follows to us, then that if Fortis has to provide that contract demand every month, that the customer should pay for that contract demand every month. [underlining added]

Transcript Volume 2, p. 310 ll.5-19;
see also FBC response to BCUC IR 2.35.1 – Ex. B-7

106. Mr. Mulcahy also noted that FortisBC's proposed "use of the full contractual demand as a billing determinant" as a conservation-related measure (Transcript Volume 4 p. 701 ll.5-10).

107. The Rate 30 Customer Group suggest they would like there to be no change to the demand charge in its schedule (paras. 3.5-3.7). However, this would mean an increase in the energy rate, which seems to be less desirable for those customers given that their demand is easier to manage.

E. Billing Rate Schedules 40 and 41

108. At para. 24 of its argument, BCOAPO raises concerns with:

(a) the fact that no "excess demand charges" are provided for in the Tariff should actual load exceed contract demand. FortisBC has proposed to address this through use of a correction mechanism (see paras. 13(e) and 25 of the FBC June Submission); and

(b) the "minimum bill provision" in the present Tariff referring to 25% of contract demand. FortisBC agrees that 25% would not be appropriate in its proposed regime. Its new Tariff would thus involve a 100% ratchet for wholesale customers (see Rate Schedules 40-41 in Appendix "B" to the Application).

PART 4 - RATE REBALANCING

A. Range of Reasonableness

109. In reply to the argument of BWSR that rates should be rebalanced to unity, the policy considerations in this regard were discussed during the Hearing. At paras. 10 and 11 of its argument, BWSR refers to Mr. Swanson as stating that he believed no one would be "harmed" by rebalancing to the centre point of a range. However, Mr. Swanson and Mr. Sinclair continued as follows, at Transcript Volume 3 p. 542 l.14 – p. 543 l.23:

> MR. LUSZTIG: Q: And if no one is harmed, would you agree we're -- the general service class is better off, they're at 111 or something compared to 120 something.
>
> MR. SWANSON: A: I didn't say anybody's -- nobody's worse off. I said nobody's harmed -- with the definition of "harm". Some classes would have to pay more, and some classes would benefit, general service and Big White would benefit at that -- by that.
>
> MR. LUSZTIG: Q: I understand no one -- people are worse off, but I was leading unharmed. In other words, it seems to me harmful if somebody is paying rates that are inefficient or not related to cost causation. And that would be the general service class under all conditions. But everybody else is still within where they want -- where you want them to be under the proposal of aiming at unity, aren't they?
>
> MR. SINCLAIR: A: Well, please correct me if I misinterpret what you mean by "harm" for other classes, but it is the case -- some customer classes may feel they are harmed if they -- if we shoot and don't stop until unity, when they would have previously stopped at 95. So they may be looking at an additional five percent if you want to interpret it that way.
>
> MR. LUSZTIG: Q: Right. But do you think -- I mean, by your definition of "harm", since they would still be expected to be underpaying -- I mean,

> that's still the authority. Are they harmed, or are they just kind of bummed out?
>
> MR. SINCLAIR: A: I really do hesitate to speak for what the customers would consider their level of harm was. I would only surmise that if they were facing an additional increase over one that they would have been facing under the other scenario, they may consider that to be harm.
>
> [underlining added]

110. The deferral mechanism that BWSR proposes at paras. 17-23 of its argument in the alternative to rebalancing to unity is problematic. FortisBC addressed issues associated with use of a deferral mechanism in this context in its response to BWSR IR 2.4.2.4 (Ex. B-7):

> **Q4.2.4 If the Commission were to instruct FortisBC to move the General Service class to unity within five years using a deferral account mechanism to protect other classes from "rate shock", how would FortisBC propose to implement that instruction?....**
>
> A4.2.4 FortisBC assumes that any direction from the BCUC to move the General Service class to unity would occur within a more general order to move all classes with adequate metering data within the same time frame. Using the same criteria for rate mitigation as the original rebalancing plan would require no individual class increases above 10 percent in total. Capping class rate increases while forcing the over-collecting classes to unity would result in a revenue shortfall that would need to be recovered in some manner at the end of the rebalancing period. One such scenario is contained in the table below. Practically speaking, such an approach would be fraught with implementation issues as actual rates would need to be adjusted as actual annual rate changes are incorporated and results verified through future cost of service studies. Note that some classes will still not achieve a 100% ratio.
>
> .... [tables omitted]
>
> Using this methodology, it would take 26 years to rebalance all rate classes. In addition, there would be approximately $5.2 million (or an NPV of $2.0 million) of carrying costs associated with the deferral that would have to be collected from customers as part of the annual revenue requirement. The Company respectfully submits that this would not be a reasonable method of addressing rate rebalancing.

B. Annual Caps

111. At para. 79 of its argument, BCMEU refers to a 5-year phase-in period. Specifically, what FortisBC has proposed is a cap of 5% for increases arising out of rebalancing, along with an overall rate increase cap of 10%. The cap results in most rate classes achieving a revenue-to-cost ratio within the 95-105% range within the 5 years to which BCMEU refers (FBC response to BCUC IR 1.11.1 – Ex. B-3-1).

112. Also at para. 79, BCMEU "urges that no more than two annual rebalancings occur without requiring FBC to submit an updated rate base" (which we assume to mean a new COSA). FortisBC has said it would file a new COSA as part of its move toward time-based rates, which will likely be in three to five years (see para. 101 of the FBC June Submission). Having customers pay for another such process after two years seems excessive.

C. Inclusion of All Customer Groups in Rebalancing

113. No Intervenors other than IRG have expressed support for excluding the Irrigation class from the rebalancing exercise.

114. The bulk of IRG's argument on rebalancing hinges on IRG's assertion that the FBC COSA is flawed in its treatment of the Irrigation class. However, as set out below, IRG's assertion is based on an evident misunderstanding of the model and its inputs. Correspondingly, the Company respectfully submits that the conclusions drawn by IRG on the basis of that flawed assertion should not be given weight.

115. At paras. 43-54 of its argument, the IRG suggests that FortisBC's rebalancing of irrigation rates is premised on flawed methodology not taking into account the fact that irrigators are on General Service ("GS") rates for part of the year. Contrary to IRG's argument at para. 43 that "FortisBC's COSA failed to recognize and account for a crucial distinguishing feature of Irrigation RS 60 [that "[f]or almost half of each year, Irrigation customers do not pay 'Irrigation' (i.e. RS 60) rates"]", Irrigation customers are not transferred to the GS class during the 5 winter months (as IRG suggests). Irrigators are simply charged the GS rate in the winter (in other words, they have a seasonal

rate). All summer and winter usage and revenues for Irrigators are included in class information presented by FortisBC and for purposes of the COSA. As set out in the exchange at Transcript Volume 3 p. 463 l.7 – p. 464 l.3:

> MR. WEISBERG: Q: Right. So we have to watch the semantics, because they're still under that schedule, and they're on that tariff, but they're no longer paying what's considered generally to be the irrigation rate. They're on a general service rate at that time. Correct?
>
> MR. MULCAHY: A: That's correct.
>
> MR. WEISBERG: Q: Okay.
>
> MR. WARREN: A: I should just clarify.
>
> MR. WEISBERG: Q: Yeah.
>
> MR. WARREN: A: For COSA purposes, they're treated as an irrigation customer in terms of the class all year long.
>
> MR. CHERNIKHOWSKY: A: Even when --
>
> MR. WARREN: A: So they're credited --
>
> MR. CHERNIKHOWSKY: A: Even when they're on the general service rates.
>
> MR. WEISBERG: Q: A: Treated that way, meaning that the revenue generated --
>
> MR. CHERNIKHOWSKY: A: Correct.
>
> MR. WEISBERG: Q: -- as a general service payment is credited to the class.
>
> MR. CHERNIKHOWSKY: A: Yes.

116. IRG suggests at para. 51 of its argument that "[t]he consequence of FortisBC's mandatory switching from Irrigation RS 60 to General Service, combined with the flawed allocation methodology, is double counting of the costs to serve those customers for the five month winter period". This is also incorrect. Because the winter loads and revenues for Irrigation customers are included in only the Irrigation class and are never included in the GS class, there is no double counting. Rather than being charged twice for the cost of facilities in the COSA, they are charged less than those customers with year-round loads because they are allocated very few costs other than power supply in the winter months when their usage is low.

117. At para. 48 of its argument, IRG claims that the irrigation costs should be reduced by 42% to reflect the fact that they do not take service during the winter months. As stated above, the FBC COSA already accounts for their lower loads and the switch to GS rates in the winter. In fact, the revenues resulting from the switch to the GS rates in the winter months are likely to recover more than the cost of service for irrigators during those months due to the fact that the GS rates are significantly above 100% of cost. That overpayment is incorporated into the annual revenue-to-cost ratio of 78.6%. If those winter revenues and costs were excluded from the Irrigation class for purposes of the COSA, there would likely be an even lower revenue-to-cost ratio for the remaining summer months. This is contrary to what IRG suggests at para. 57 of its argument.

118. All this said, as FortisBC noted during the Hearing in the context of time-based rates (and further to para. 68 of the BCOAPO argument), it is certainly prepared to work and consult with the irrigators going forward on particular issues (Transcript Volume 4, p. 705 l.19 – p.706 l.16; Ex. B-25-B, p. 2).

PART 5 - CONCLUSION

119. Having studied and addressed the submissions of the Intervenors, FortisBC maintains that the approvals it seeks are prudent and essential if it is to continue to meet the needs of its customers fairly and effectively. Correspondingly, it reaffirms its request that those approvals be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

George K. Macintosh, Q.C.

Ludmila B. Herbst

Dated:July 23, 2010