

November 3, 2011

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Attention: Mr. Christopher P. Weafer

Dear Mr. Weafer:

Re: An Inquiry into FortisBC Energy Inc. Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (the “Inquiry”)

Response to the Commercial Energy Consumers Association of British Columbia (“CEC”) Information Request (“IR”) No. 1

In accordance with Commission Order No. G-164-11 setting out the Regulatory Timetable for the Inquiry, the FEU respectfully submits the attached response to CEC IR No. 1.

There were a number of IRs that called for legal analysis. The FEU have provided responses to these IRs but reserve the right to make further submissions on these points in Final Argument.

If there are any questions regarding the attached, please contact the undersigned.

Yours very truly,

on behalf of the FORTISBC ENERGY UTILITIES

Original signed:

Diane Roy

Attachment

cc (e-mail only): Alanna Gillis, Acting Commission Secretary
Registered Parties

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 1

1. Reference Exhibit B-2, Page 4

Each of the New Initiatives, when provided by the FEU, are regulated activities under the *UCA*. In the intervening years since the 2008 LTRP, the FEU have brought forward specific proposals under the provisions of the *Act* in respect of each of the four New Initiatives. As further described below, the Commission has granted various approvals, implicitly accepting that the New Initiatives are regulated. The decisions to date have, by and large, accepted that the New Initiatives can deliver benefits to existing and future ratepayers, the broader public, and also advance British Columbia's energy objectives.

- 1.1 Please describe what sort of uncertainty is created for the FEU and for the FEU customers when the previous decisions of the Commission are brought into question with regard to FEU trying to continue to develop the business.

Response:

There has been significant uncertainty created as a result of previous decisions of the Commission being called into question in regard to the New Initiatives line of business.

The New Initiatives have been on the radar since 2008 when they were identified in the Long Term Resource Plan. The FEU proceeded, after BCUC Order No. G-141-09, to further the New Initiatives with the belief that they had approval from the Commission to do so, and that doing so is in the best interests of the FEU's customers. On that basis, the FEU have committed resources, time and its corporate reputation interacting with customers, signing MOU's (and other related agreements), and proceeding with engineering, in good faith, and with the intent of eventually receiving rate approval to deliver Thermal Energy Service. The uncertainty has caused a considerable amount of frustration with customers and project partners interested in pursuing these projects. The FEU do share this frustration with the pace of change particularly since we are convinced that we are doing the right thing for customers by trying to advance these initiatives.

The FEU recognize the Commission's continued interest in the New Initiatives and we are, of course, mindful of the Commission's obligations under the *Act*. The FEU have been committed to full and meaningful participation in these processes. However, navigating the regulatory process directed at these New Initiatives, which has at times involved revisiting the same issues in multiple forums, has been a significant undertaking for the Companies and takes time away from serving our customers and making the business successful. The FEU is hopeful that the uncertainties regarding the New Initiatives can be resolved in this Inquiry so that the FEU can move forward focusing on its business with clear direction. This will be in the interests of potential customers, existing customers, the Company and British Columbians generally.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 2

- 1.2 Please describe what sort of activity involved in developing the AES and Other Initiatives business has been put on hold and for how long it may be expected to be on hold.

Response:

Considerable time is being devoted to responding to customers in regard to this proceeding which otherwise could be devoted to furthering TES projects, NGV opportunities and Biomethane opportunities. The internal resources and staff time consumed in responding to the demands of the Inquiry itself are considerable and have further slowed the advancement of projects and programs in these "New Initiatives" areas. Additional time is also being devoted to reassuring customers that the FEU should/can/is able to deliver TES. This has resulted in difficulty meeting customer deadlines and/or working additional hours in order to deliver on customer timelines. Activities that are delayed or put on hold include financial analysis, engineering studies, meetings with customers, additional customer acquisition sales activity. The delaying of these activities increases the risk that the FEU will not be successful providing TES to customers.

With respect to NGV Service, projects that have been put on hold or which may suffer setbacks as a result of the uncertainty regarding the regulatory treatment of TES and other New Initiatives include the following:

1. City of Vancouver project for a fleet of 9 LNG trucks transferring waste to the Delta landfill
2. Cache Creek waste haul project – 25 trucks transferring waste from Vancouver to Cache Creek landfill
3. Project for fleet of 10 wood chip trucks hauling from BC interior to transfer point in Lower Mainland
4. Expansion of commercial garbage collection fleet from 20 to 40 CNG trucks
5. 20 truck fleet hauling woodchips to interior pulp plant
6. Short haul waste transfer fleet of 7 trucks hauling to Delta landfill

In addition to the project delays referenced above, there is a further project for the City of Surrey's waste collection and recycling fleet that involves up to 80 vehicles. City of Surrey has issued an RFP for this business requesting NGVs be used by bidders. This RFP was issued

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 3

with the expectation that vehicle incentives would be available to bidders. It remains to be seen whether regulatory uncertainty regarding FEI's NGV services and disallowance of FEI's NGV EEC incentive program will have on this business as the bid evaluation process has not been completed. The business may still be awarded as NGV without incentives given the advanced stage of the project, however the loss of the incentives will obviously weaken the business case for NGV versus diesel.

With respect to TES, areas that have experienced delays due to the above noted activities include:

1. The Delta School District project (in addition to development of other school projects)
2. Applications for several discrete geo-exchange projects
3. DES projects with certain municipalities.

With respect to Biomethane Service, the cap imposed on FEI's development of Biomethane projects (250,000 GJ of supply) sends an uncertain message to the market regarding whether FEI's activities will be constrained. This sort of message is not conducive to encouraging project developers to invest in projects to bring on Biomethane in the BC market.

The FEU are hopeful that the Inquiry can resolve some of the uncertainty with respect to TES and other New Initiatives and allow the FEU to get back to business.

- 1.3 Please calculate an estimate of the net loss of financial benefit to FEU customers from putting on hold any activity the FEU were pursuing in regard to AES and Other Initiatives. (please show and estimate of the expected loss for the delay period and separately show the potential loss from deferral, by the time period of the delay for the future development benefits to FEU customers of the markets)

Response:

Given the early stage of development of TES, the question at hand is not so much one of "lost revenue" now, but of "lost opportunity". Market transformation is a complex and difficult endeavour and reputation is paramount. As such, calculating the estimated net loss of financial benefit to the FEU customers is a difficult exercise to complete at the present time as it would be speculative at best. As noted in the response to CEC IR 1.1.2, the FEU staff have had to put in additional effort to move existing files forward and there is risk that existing and potential

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 4

business will not materialize because of the delays. Given the number of potential projects currently under development, there is risk that FEU will not be able to meet customer needs and desires.

It is also important to note that for every month that projects are delayed, extra costs must be added to the Thermal Energy Services Deferral Account, which in turn must be recovered from TES customers at a later date. The greater these costs, the less likely that a TES solution will be economically viable. It is therefore imperative to move as quickly as possible to develop, receive approval, construct, deliver energy and recover costs. Adding time to this cycle is not in the best interest of customers.

With respect to the NGV Service, it is possible to calculate direct losses that result from delays with respect to specific projects that are presently in the sales pipeline. Estimates of lost margin are shown in the table below.

The table shows a set of projects that would add 454,567 GJ of load to the FEI system. Benefits from this load addition are as follows:

1. Benefits to NGV Customers – 454,567 GJ of load per year is equivalent to approximately 12 million litres of diesel fuel consumption per year. FEI's experience is that NGV projects will save NGV customers more than \$0.50/litre, hence the cost of a year's delay in implementing this set of projects is approximately \$6 million to those NGV customers who have not moved forward with their projects. It is FEI's view that over time these cost savings would make their way into the products and services that these NGV customers provide; therefore, benefitting customers who buy these products and services, and the provincial economy.
2. All Customers – NGV load growth will benefit all customers to the degree that delivery rate revenues and Rate Schedule 16 revenues under existing tariffs exceed the incremental costs associated with serving the new business. The first 6 projects in the list are LNG projects that would be serviced using Rate Schedule 16 at a rate of \$3.96/GJ. Incremental margin from this business is calculated at \$3.96 less \$2.07 O&M allowance for a net benefit of \$1.89/GJ for every GJ of business added. The last project is a CNG project where the margin benefit is equivalent to the revenue added as there are no incremental costs associated with increasing the customer load through existing facilities. The total estimate of lost benefits to existing customers is \$827,378/year.

It may be noted that the margin calculation assumes that the O&M charge for incremental business is the same as the base O&M component of the Rate Schedule 16. In reality many costs associated with producing LNG do not scale linearly with volume; hence the margin calculation is conservative in nature.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 5

It may further be noted that the volume included in the calculation exceeds the present tariff volume cap on Rate Schedule 16 which is 1,040 GJ/day or 379,600 GJ per year. FEI has assessed the volume cap associated with Rate Schedule 16 and has determined that the cap could be increased to 2,500 GJ/day or 912,500 GJ/year without impairing the primary goal of providing peak shaving and emergency backup supply; hence FEI believes the paper volume constraint should not be factored into this calculation of lost margins¹. In any event the lost opportunity is significant.

Customer	Number of Vehicles	Consumption (GJ)	Delivery Charge (\$/GJ)	Delivery Revenue Forgone (\$ per year)	Delivery Margin Forgone (\$ per year)
City of Vancouver	9	13,716	\$ 3.96	\$ 54,315	\$ 25,920
Cache Creek haul	25	193,275	\$ 3.96	\$ 765,369	\$ 365,243
Delta haul	5	11,596	\$ 3.96	\$ 45,920	\$ 21,914
Woodchip haul	10	57,980	\$ 3.96	\$ 229,601	\$ 109,568
Woodchip haul	20	153,000	\$ 3.96	\$ 605,880	\$ 289,133
Waste collection	20	25,000	\$ 0.62	\$ 15,600	\$ 15,600
Total		454,567		\$ 1,716,685	\$ 827,378

- 1.4 Please describe the losses other than financial which occur when the FEU AES and New Initiative activities are delayed.

Response:

As noted in the response to CEC IR 1.1.1, the reputation of the FEU is potentially damaged as a result of delays. Customers now question whether or not the FEU can deliver on its promise.

The building of Thermal Energy Service is often dependent upon attaching as many customers, as early as possible. Unlike the frequency with which a consumer changes a light bulb, customers generally only change heating equipment at the end of its life (25-50 years). The delaying of a thermal energy project can result in customers and potential customers choosing an alternate solution for their thermal energy needs. Missing potential customers at this point in the replacement cycle means that the likelihood of attaching these customers is now minimal and therefore the likelihood of the Thermal Energy System being economic is reduced. This may result in the project failing or not being able to proceed.

¹ The estimate of lost margins does not factor in any costs associated with an NGV incentive program. FEI believes that an NGV incentive program is required in order to facilitate the development of this market. Further, incentive costs can be recovered from the incremental benefits created by the NGV load growth, while still leaving a net benefit to all customers.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 6

With respect to New Initiatives such as NGV market development, delays put market development on hold. Market conditions have aligned with economic, environmental and technological factors all supporting adoption of NGVs for heavy duty transportation. While the supporting market conditions are expected to continue, delays prevent stakeholders from achieving the benefits and create uncertainty in the market as to whether the FEU will be able to deliver the required services. This in general undermines the credibility of the NGV Service at a crucial point in its development.

With respect to Biomethane Service, a re-examination of the merits of the program so soon after gaining regulatory approval serves to undermine the level of confidence that the market has in the FEU's undertakings and the Commission process. Supply side projects need long term commitments and the tentative approvals that the FEU are working under do not instill confidence that the program will be a lasting one.

- 1.5 Please describe the potential benefits of certainty with respect to getting clarity with respect to FEU proceeding with the AES and New Initiative business.

Response:

While the complaint and Inquiry process does pose additional risks for FEI's Thermal Energy Service business in the short term and represents a very significant regulatory commitment, FEI believes that the completion of the process has to potential to provide clarity for both customers and other providers of thermal energy solutions in BC. As such, customers will have more confidence in the future of the offerings, the rules governing utility participation in these initiatives will be clear to all stakeholders and that the FEU will have the ability to re-focus its attention from the regulatory process to making the business a success.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 7

2. Reference Exhibit B-2, Page 28

space & water heating on a normalized year basis. Multiplying the quantity of lost load by our average delivery rate leads to a conservative estimate of approximately \$5.1 million in lost revenue from 2006 to 2010 that the FEU will have to recover through rates from all the customers.

- 2.1 Please identify for \$5 million per year in incremental revenue, what this would mean in terms of rates to FEU customers for FEU service and to the bills of FEU customers.

Response:

On an average the FEU basis, incremental revenue loss of \$5 million per year results in an approximate delivery rate increase of 0.7% or approximately \$0.03/GJ, as summarized in the table below. This average delivery rate change equates to an annual bill increase of approximately \$3 or 0.3% for a typical Lower Mainland Residential customer consuming 95 GJs per year.

Line		2012 Forecast Delivery Margin (\$ Thousands)	2012 Forecast Non-Bypass Volume (TJs)	Reference
	(A)	(B)	(C)	
1	Mainland	588,938	160,760	2012-2013 RRA, Exhibit B-21, Tab 7.1
2	Vancouver Island	121,456	11,774	2012-2013 RRA, Exhibit B-52, Tab 7.2
3	Whistler	8,103	716	2012-2013 RRA, Exhibit B-21, Tab 7.3
4	Fort Nelson	1,874	633	2012-2013 RRA, Exhibit B-66, Tab 7.4
5	FortisBC Energy Utilities	720,371	173,882	
6				
7	Incremental Revenue	5,000		
8				
9	Approximate Impact (%) to FEU Delivery Rates	0.7%		Column B, Line 7 / Line 5
10	Average FEU Delivery Rate Change (\$/GJ)	0.03		Column B, Line 7 / Column C, Line 5
11				

As demonstrated in the table, the revenue loss from reduced throughput creates tangible upward pressure on delivery rates.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 8

3. Reference Exhibit A-5, Page 7

ISSUE 1 Evaluating AES and Other New Initiatives

Scope

Given British Columbia's energy objectives as set out in the Clean Energy Act, the responsibilities of the Commission under that Act and the Utilities Commission Act and the emergence of new and innovative technologies in the areas of alternative energy services and other new initiatives, the scope of this new issue includes:

- a) When evaluating AES and other new initiatives, what principles or guidelines should be followed by the BCUC to protect the public interest including:
- the interests of utility ratepayers;
 - the impact on the broader public including potential competitors;
 - the furthering of British Columbia's energy objectives; and
 - the rights of the utility shareholder?

The CEC want to explore the Commission's responsibilities under the Utilities Commission Act (UCA). As well the CEC want to explore the implied definition of 'public interest' in Issue 1 Scope.

- 3.1 Please describe what FEU believe is meant by the phrase 'BCUC to protect' when referencing the 'public interest'.

Response:

The *UCA* does not make use of the phrase "protect the public interest" or "protect". Some examples of how the *Act* uses the phrase "public interest" are as follows:

"... considers to be in the public interest"

"... is in the public interest"

"... considers to be of public interest"

"... considers proper and in the public interest"

The FEU are not certain as to what the Commission means by "protect" the public interest, but assumes that it was intended to be synonymous with the use of the above phrases.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 9

- 3.2 Please describe FEU's view as to whether or not the BCUC is charged under the UCA with 'protecting the public interest' in general or whether it is charged with considering and using the 'public interest' as a criteria in making certain types of decisions, which it has jurisdiction over for 'public utilities' under the UCA.

Response:

The FEU believe it is the latter. As set out at p. 62 of the Evidence, generally speaking, a consideration of the public interest requires the weighing of various interests of affected parties and any legislated considerations in arriving at an opinion of whether a given project, supply agreement, expenditure or resource plan is in the public interest (or is required by the public convenience and necessity). It is a matter of discretion as to how much weight the regulator gives to any one consideration, impact, or concern of the public. The test allows the regulator to weigh both private and public interests in arriving at its opinion, but the Commission must always remain cognizant of the overall purpose behind its mandate.

Sections 44.1, 44.2, 45-46, and 59-61 of the *Act* set out what the Commission may do when considering an application brought before it. For example:

- (a) when considering a CPCN application, section 46(3) states that the Commission may "issue or refuse to issue the certificate, or may issue a certificate of public convenience and necessity for the construction or operation of a part only of the proposed facility... and may attach to the exercise of the right or privilege granted by the certificate, terms..."
- (b) when considering an expenditure schedule, section 44.2(3) states that the Commission may accept or reject the schedule;
- (c) when considering a long term resource plan, section 44.1(7) states that the Commission may accept or reject the plan;
- (d) when considering a rate application (ss. 59-61), the Commission's jurisdiction is limited to setting just and reasonable rates.

In addition to these provisions, the Commission has additional remedial powers under section 89, 90 and 99 of the *Act*:

89. On an application under this *Act*, the commission may make an order granting the whole or part of the relief applied for or may grant further or other relief, as the commission considers advisable.

90(1) In an order or regulation, the commission may direct that the order or regulation or part of it comes into operation

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 10

- (a) at a future time,
- (b) on the happening of an event specified in the order or regulation, or
- (c) on the performance, to the satisfaction of the commission, by a person named by it of a term imposed by the order.

(2) The commission may, in the first instance, make an interim order, and reserve further direction for an adjourned hearing or further application.

...

99. The commission may reconsider, vary or rescind a decision, order, rule or regulation made by it, and may rehear an application before deciding it.

Utilities retain the responsibility to manage their affairs. The Commission's jurisdiction is, in general terms under the above provisions, limited to considering the applications brought before it, and to determining whether their approval is in the public interest. The Commission also has general supervisory powers under the *Act* (for example, see sections 23, 24, 25, 26), but a review of these provisions makes clear that the Commission's public interest jurisdiction extends only to the supervision of the provision of service offered by public utilities, and not a general power to protect the public interest beyond the oversight of public utility services.

Consistent with this framework, the FEU provide a Long Term Resource Plan that provides a sense of the general direction of the utility. In addition, the FEU have brought forward applications in respect of proposed offerings such as NGV service, Biomethane Service and EEC funding.

b) What process should the BCUC utilize and how comprehensive should its analysis be before it allows the utility to undertake AES or other innovative technologies as part of its regulated business?

3.3 Please describe FEU's view as to what sections under the UCA have the Commission making decisions about allowing a service in general and or specifically AES or Other New Initiatives to be undertaken as part of the utility regular business.

Response:

Please refer to the response to BCOAPO IR 1.9.2.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 11

- 3.4 Does the Commission review any other of the utility's service specifically for approval to allow them to be undertaken?

Response:

Please refer to the response to BCOAPO IR 1.9.2.

- c) To what extent and under what conditions could EEC or other funding be made available to support AES and other new initiatives?
- 3.5 Please describe FEU's view as to what the UCA legislation requires of the Commission with respect to Demand Side Measures and what criteria the Commission are legislated to use in regard to decisions the Commission makes in regard to Demand Side Measures.

Response:

There are five provision of the *UCA* that refer to demand-side measures:

- (a) Section 1 states that "demand-side measure" has the same meaning as set out in the *Clean Energy Act*. Note: The Commission considered this definition in the NGV-EEC Decision, and provided its interpretation of the references to efficiency and conservation.
- (b) Section 43 provides that a public utility provide an annual DSM report to the Commission.
- (c) Section 44.1 sets out the information related to DSM that a public utility must provide in a long term resource plan. In deciding whether or not to approve a long term resource plan under section 44.1, section 44.1(8)(c) of the *Act* prescribes that the Commission must consider whether the plan shows that the public utility intends to pursue "adequate, cost-effective demand-side measures".
- (d) Section 44.2 provides that an expenditure schedule filed by a public utility may include a statement of the expenditures on demand-side measures the public utility has made or anticipates making during the period addressed by the schedule. In deciding whether or not to approve an expenditure schedule under section 44.2, section 44.2(5)(d) of the *Act* prescribes that the Commission must

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 12

consider whether the demand-side measures are cost-effective within the meaning prescribed by regulation, if any.

- (e) Section 44.1 and 44.2 require the Commission to consider the applicable of "British Columbia's energy objectives".
- (f) Section 125.1 provides that the Minister may make regulations regarding demand-side measures.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 13

4. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 158

2. Expenditures and investments in infrastructure to support making Biomethane, NGV fueling service, and thermal energy service available to the FEU customers and potential customers are generally aligned with, and support, British Columbia's energy objectives and Provincial policy, although the extent to which each initiative do so will differ in each case, as will the Commission's assessment of the weight given to the policy considerations relative to other considerations.
3. EEC expenditures that are directed at providing incentives to customers to improve energy efficiency, educate customers about energy efficiency, and supporting the necessary administration to deliver the initiatives, are "demand side measures" and are aligned with British Columbia's energy objectives and provincial policy.

- 4.1 Does the FEU believe that the proposed guidelines should be referenced specifically to its existing proposed AES or might a more general category allow the guideline to be more robust with respect to the future and the potential introduction of other new energy services?

Response:

The FEU believe that the guidelines should be limited to the initiatives contemplated by the FEU and that are being canvassed in this Inquiry (TES, NGV, Biomethane upgrading and EEC). At this time, further initiatives are speculative in nature. The Commission should not be setting guidelines in the absence of any evidence about initiatives.

- 4.2 Why would the Commission need a general guideline to say that AES are aligned with the British Columbia energy objectives?

Response:

A key overall objective that the FEU have in coming out of this Inquiry is to obtain a level of certainty and clarity that will provide a general level of comfort to existing and potential customers and the Companies and permit the Companies to shift their focus from regulatory processes to making the New Initiatives a success. The effect of adopting these guidelines going forward is to acknowledge that the determination of the public interest in particular instances going forward will normally turn on other considerations (e.g. customer benefits and impacts), rather than on the issues of fact set out in these proposed guidelines. Adopting these

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 14

principles as an outcome of this Inquiry will avoid the need for the FEU to re-file extensive general policy and general evidence in each future proceeding where FEI is requesting public interest approval relating to TES. The outcome will be a more focussed public interest examination of proposed projects and expenditures and ultimately more efficient processes.

Please see the response to BCUC IR 1.138.1, which includes a discussion of the FEU's proposed approach to policy objective changes over time.

- 4.3 In FEU's view would it not be more helpful for the general guidelines to reference the types of decisions the Commission deals with and any general process difference for AES and Other New Initiatives versus the Commission's general process practices for those types of decisions for the common natural gas business?

Response:

The FEU agree that guidelines that address process differences for the New Initiatives are an important outcome of this Inquiry, and has proposed process guidelines that in the FEU's view will ensure efficient regulatory review of the New Initiatives. However, for the reasons stated in the response to CEC IR 1.4.2, the FEU also believe that other guidelines that address policy and related issues regarding the New Initiatives are also desirable to ensure a more focused public interest examination of proposed projects and expenditures and ultimately more efficient processes.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 15

5. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 160

1. It is important for the FEU to own and operate the *interconnection* facilities (i.e. measuring, monitoring, and odourizing) to ensure the quality and safety of the biomethane being injected into the distribution system.

- 5.1 In FEU's view why would the Commission guidelines say anything about what it is important for FEU to own or not?

Response:

This issue about the ownership of interconnection facilities has been raised in the past by others, and is being raised again. The FEU believe that the merits of the Companies owning the interconnection facilities are significant and, conversely, the downside of not owning them is also potentially significant. The FEU would like to have this issue determined to remove the need to debate it further. Please refer to the responses to CEC IRs 1.4.2 and 1.4.3.

- 5.2 Why would the Commission guidelines not focus on defining what the Commission processes will or will not do?

Response:

Please refer to the responses to CEC IRs 1.4.2 and 1.4.3.

- 5.3 In FEU's view would it be more helpful to say that the FEU have adopted the following policies and practices (provide the list) for development of their Biomethane Services and the Commission has reviewed these policies and practices and does not intend to review them within the scope of future CPCN applications from the utility or future expenditure schedule applications of the utility until (future date specified), unless there is compelling evidence to do otherwise?

Response:

In the FEU's view, the proposed approach would likely have the same effect as the FEU's proposed guidelines. Ultimately, the FEU believe that the Commission should adopt principles that will avoid the need for the FEU to re-file extensive policy and general evidence in future

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 16

proceedings with the intention of making regulatory review of these projects more efficient. To the extent that CEC's suggested approach can achieve that result the FEU would support that as an alternative approach.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 17

6. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 160

The Commission recognizes the benefit of a streamlined regulatory process when it comes to Biomethane supply projects, and also recognizes that energy supply contracts are typically accepted by the Commission without process and supplemental evidence. Therefore, the following procedural guidelines are appropriate:

- 6.1 Why would the guidelines spell out thresholds for CPCNs which are general for FEU and state the fact that the legislation with respect to Expenditure Schedules gives the utility options to use them for approval or not and instead rely on RRA approvals?

Response:

A key overall objective that the FEU have in coming out of this Inquiry is to provide a level of certainty and clarity that will provide a general level of comfort to existing and potential customers and the Companies and permit the Companies to shift their focus from regulatory processes to making the initiatives a success.

The intention of proposing a guideline of this nature would be to make process expectations transparent to all involved. It would be preferable and more cost-effective to minimize the level of debate in future processes about the appropriate type of application to be filed and the appropriate type of review procedure.

- 6.2 Would it be more helpful for the guidelines to say that the Commission in reviewing Biomethane project Energy Purchase Agreements the following information (provide the list) will be required by the Commission and provided the agreements meet the following criteria (provide the list) the Commission does not expect a regulatory process will be necessary for it to make its approval decisions, unless some compelling to do otherwise is presented?

Response:

Please see the response to CEC IR 1.5.3.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 18

7. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 162

The FEU submit that, in light of the recent NGV Decision, there is no need for the Commission to articulate further guidelines and principles regarding the NGV offering itself. However, as contemplated in the Application and the Decision, going forward the FEU will need to file individual "take-or-pay" contracts with the Commission for rate approvals. Future regulatory review of the tariff supplements can be streamlined to account for the Commission's acceptance that the NGV offering is, in principle, beneficial, subject to the FEU filing amended GT&Cs. The FEU believe that the following are appropriate procedural guidelines in this context:

- 7.1 Why would the guidelines spell out thresholds for CPCNs which are general for FEU and state the fact that the legislation with respect to Expenditure Schedules gives the utility options to use them for approval or not and instead rely on RRA approvals?

Response:

One of the purposes of our proposed guidelines is to ensure that the FEU's intentions and expectations are clearly communicated, such that they can be open to meaningful discussion in this process. While most participants in this regulatory process will be familiar with the CPCN threshold and the way in which it will continue to apply in the context of the NGV Service, potential stakeholders in the NGV Service segment may not be. Including this text will serve regulatory and administrative efficiency by ensuring that participants unfamiliar with the CPCN construct are made aware of it in the guidelines.

- 7.2 Would it not be more helpful for the guidelines to say that the Commission in reviewing NGV Expenditure Schedules for approval will require the following information (provide the list) and provided the proposed expenditures meet the following criteria (provide the list) the Commission does not expect a regulatory process will be necessary for it to make its approval decisions, unless some compelling to do otherwise is presented?

Response:

This response will also address CEC IR 1.7.3.

Please see the response to CEC IR 1.5.3. The same comments apply in this case. The Commission has approved all of the fundamental components of FEI's NGV refueling business model in Order No.G-128-11, reviewing individual "take-or-pay" contracts for rate approvals.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 19

- 7.3 Would it not be more helpful for the guidelines to say that the Commission in reviewing NGV project Take or Pay Contracts the following information (provide the list) will be required by the Commission and provided the agreements meet the following criteria (provide the list) the Commission does not expect a regulatory process will be necessary for it to make its approval decisions, unless any of the following conditions exist (provide the list) or unless some other compelling evidence to do otherwise is presented?

Response:

Please see the response to CEC IR 1.7.2 and 1.5.3. The same comments apply in this case.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 20

8. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 162

With respect to the Commission's Issue 1(a), the FEU propose the following guidelines for the Commission's public interest evaluation of TES projects:

- 8.1 Why are the proposed guidelines for TES, in the initial instance, laid out in the form of the Commission's 'public interest' scope question as opposed to by the type of Commission decision which may apply to TES, which is used in the second instance and with the other services?

Response:

The reason that the TES guidelines are more extensive than the NGV and Biomethane guidelines, and organized into "public interest" and then "process" guidelines (at pp. 163-169 of the Evidence), is that to date FEI has not had a complete regulatory review of a TES project filed with the BCUC. Although, FEI has an established GT&C (Section 12A) for TES projects, the information contained in future filed TES projects will more than likely continue to evolve as the business models get refined and better understood by all parties in the review process. This is in contrast to the Biomethane and NGV initiatives, which have both been reviewed through initiative-specific regulatory proceedings in which the Commission made findings regarding the public interest component of these initiatives. As there has been no decision to date regarding TES initiatives apart from the approval of the 2010-2011 RRA NSA, the FEU believes that the more extensive "public interest" guidelines proposed in this Inquiry for TES are beneficial. Please refer to the response to CEC IR 1.4.2 regarding the rationale for these kinds of guidelines.

- 8.2 Why are the Commission's public interest scope questions not addressed for the other services?

Response:

Please refer to the response to CEC IR 1.8.1.

- 8.3 Can the Commission's public interest scope questions about 'public interest' be made generic and applicable to all AES services and new initiatives?

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 21

Response:

The FEU believe that some of the "public interest" guidelines for TES could, in principle, be made generic and applicable to all New Initiatives, although some modifications would have to be made to certain proposed guidelines as they are specifically applicable to the TES context and would not make sense in respect of Biomethane and NGV projects (see for example guideline 3 on page 164 of the Application). The FEU have not done a complete analysis of how they would have to be modified.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 22

9. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 167

In terms of the process for the review of regulated TES projects, the FEU believes that the appropriate regulatory process should balance the interest of customers in maintaining adequate Commission oversight of such projects with the interests of all stakeholders in having an efficient and cost-effective review process. On this basis, the FEU believe that an appropriate model for the review of such projects would consist of the following elements.

- 9.1 Why would the Commission guidelines for TES cover what FEI's policy for offering TES will be?

Response:

With respect to the referenced passage itself, the FEU do not provide a statement in this passage regarding its "policy for offering TES" and so is unsure as to what exactly the question is referring to.

The FEU wish to clarify that only the numbered paragraphs in section 8 and at the end of sections 4, 5, 6 and 7 are intended as guidelines. The referenced text in section 8 (and elsewhere) that is interspersed among the numbered paragraphs, such as the paragraph cited in this information request, are for explanatory purposes only. The FEU do not intend that such text would ultimately be included in the final guidelines adopted by the Commission.

- 9.2 Why discuss the FEU CPCN threshold and the Expenditure Schedule rights generally?

Response:

A key overall objective that the FEU have in coming out of this Inquiry is to provide a level of certainty and clarity that will provide a general level of comfort to existing and potential customers and the Companies and permit the Companies to shift their focus from regulatory processes to making the initiatives a success. The intention of proposing a guideline of this nature would be to make process expectations transparent to all involved. It would be preferable and more cost-effective to minimize the level of debate in future processes about the appropriate type of application to be filed and the appropriate type of review procedure.

The FEU acknowledges that guideline 3 is not strictly speaking necessary, as the Commission's guideline cannot displace the FEU's right under the *UCA* to apply for an expenditures schedule.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 23

The FEU proposed this guideline in order to make sure that all parties and the Commission understand that, even though the FEU is not proposing to file expenditure schedules as a matter of course in respect of the New Initiatives, the FEU may do so from time to time.

The FEU believe that the discussion of the CPCN threshold is an important element of the proposed guidelines and should be adopted by the Commission. For the reasons described in response to BCUC IR 1.129.2, CPCN thresholds serve an important regulatory purpose and, in the FEU's view, a CPCN threshold should be established in respect of each of the New Initiatives. This is why FEI discussed CPCN thresholds.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 24

10. Reference Exhibit B-2, Response to Issues and Proposed Guidelines, Page 170

2. The FEU's existing mechanisms for making funds available are sufficient and appropriate to ensure that funds are made available in an impartial manner to all customers irrespective of whether the customer is going to own and operate the TES facilities, or with whom they chose to partner (the FEU, Corix, ESAC members, or some other party). That process is as follows:

- 10.1 Why is the Commission's question with respect to all AES and Other Initiatives answered only in respect to TES? Could this response be equally applicable for all the AES and Other Initiatives because the EEC process is generic to all EEC funding regardless of the type of service being provided?

Response:

The FEU focused on the provision of EEC funding for TES projects because that is the issue that has been raised by Corix and ESAC. No complaints have ever been made about how funding is dispensed on other EEC programs. The FEU confirm that the principle of impartial delivery of EEC funding to recipients could be (and is already) applied equally to all EEC funding.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 25

11. Reference Exhibit A-5, Page 7

ISSUE 2 Regulated versus Non-regulated Activities

Scope

- a) What are the principles that should be applied to determine whether an AES or other new initiatives activity can or should be pursued as a regulated business?
- b) Where an AES activity or other new initiative has been undertaken by a regulated utility to allow it to be proven or established and after that it is determined that it should be spun out as an unregulated activity, what costs/benefits should accrue to the ratepayer and/or the utility shareholder? What principles or guidelines should the Commission follow in assessing an application to spin out a regulated activity to a non-regulated entity?
- c) What are the practices in other jurisdictions with respect to AES and other new initiatives (including the application of EEC) that are allowed to be undertaken as part of the regulated business and what is the degree of oversight by the regulator in approving and monitoring these activities?
- d) Under what conditions should a regulated utility be allowed to share market sensitive information it has obtained through its regulated business activities with non-regulated businesses (a) that are related businesses or (b) unrelated businesses?

- 11.1 One aspect of question 2(a), which the company answered, is whether or not AES and similar sorts of new initiatives are regulated businesses however another aspect could be what principles should be used in pursuing the regulated business. Please answer the question from this second point of view identifying the principles for pursuing new regulated business.

Response:

The FEU have not proposed principles or guidelines regarding the issue of whether it *should* pursue a particular initiative because the FEU believe that fundamentally this is a management decision beyond the jurisdiction of the Commission. The Commission's role, in basic terms, is to hear and decide the applications before it, and to ensure through oversight that the public utilities that it regulates are providing the services it chooses to offer in a safe, adequate and reliable manner. The Commission cannot, and therefore should not, issue guidelines regarding whether the FEU *should* pursue the New Initiatives generally.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 26

Reference Exhibit B-2, Page 172

In the event that the Commission is asking about guidelines for when it can *direct* the sale of the assets relating to a previously approved pilot, the FEU submit that the Commission does not have that jurisdiction under the *UCA*. The Commission does, however, have the jurisdiction to cease a pilot, consider the prudence of the expenditures incurred to that point in support of the pilot, and to exclude imprudently incurred expenditures from rate base. At that point, assets deemed to have been imprudently acquired would become unregulated assets held by the FEU, and could be disposed of by the FEU at its option at a gain or loss as the case may be. As such, the applicable guideline in this scenario is one that identifies that cost recovery and rate basing is assessed according to the established prudence test. The prudence test is outlined under Issue 3(a) below. The FEU believe, however, that the decision to install the assets required for a pilot will generally be prudent where it was done based on a prior public interest approval issued by the Commission.

- 11.2 In the event the Commission were to determine that an AES service and the associated assets was not or was no longer appropriate to hold in the company's rate base and support through revenue requirements and the assets were to become non-regulated assets, would the company expect principles on the transfer to non-regulated status to involve cost recovery from customers for undepreciated balances, if the assets had been acquired prudently and no cost recovery if the assets had been acquired imprudently?

Response:

Three points of clarification before addressing the question.

First, while the quote in the preamble refers to pilots it should be noted that there are no pilot programs in the TES class of service. Biomethane Service, which is part of the natural gas class of service, was approved by the Commission (Order No. G-194-10, dated December 14, 2010) with a Commission report required after two years.

Second, TES projects would be subject to the same regulation regardless of the owner of the assets, and thus would not become unregulated by virtue of a sale or disposition.

Third, we have approached this response on the basis that we are dealing with the disposition of a regulated asset other than in the ordinary course of business at a point in time where the asset still has value.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 27

Where Assets are Prudent and Used and Useful

Used and useful assets that were acquired prudently are properly included within rate base. The disposition of regulated TES assets that are used and useful for utility purposes and prudently acquired, and as such are properly within rate base, should be treated no differently than other utility assets when there is a disposition. The FEU agree generally with the characterization in the question except that the amount to be credited to or recovered from ratepayers in the case of prudently acquired assets would be the net gain or loss on transfer rather than the undepreciated value of the assets. The assets may continue to have value as assets so only the difference between that and the net book value would be credited to or charged to ratepayers.

Where Assets have been Properly Excluded from Rate Base and are then Sold

Different principles apply where the asset has already been excluded from rate base at the time it is to be sold. The Commission must have a valid reason to exclude utility assets from rate base: these reasons would be the imprudent acquisition of the asset or the fact that the asset is no longer used and useful. The determination that an asset was imprudently acquired or is not used and useful for utility purposes would likely result in the asset being removed from utility rate base, with rate base being credited with the net book value. Costs relating to that asset that have already been reflected in past rates cannot be revisited with a prudence review. Once the assets are out of rate base, the Commission does not regulate them any longer. The utility can, at its option, continue to hold those assets as non-regulated assets within the Company or sell them for a shareholder gain or loss.

- 11.3 Would the company expect that in the case of imprudently acquired assets, which then became non-regulated, that in addition to the company not recovering the cost of the assets from customers, any associated costs and overheads might also be recovered back to customers at the time of transferring the assets to non-regulated status?

Response:

Overheads are normally added to direct project costs to become part of rate base where the project is used and useful and the costs are prudently incurred. Project costs including overhead which do not meet the test for prudent investment would be excluded from the revenue requirement and would be at the risk of the shareholder. The Commission would have to decide on the amount that was subject to exclusion from the revenue requirement. Please also see the response to CEC IR 1.11.2.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 28

1. Subject to any particular legislative or contractual obligations, or a specific request by a customer that information be shared, the FEU should not provide unrelated businesses with personal or commercial information about the customer.
- 11.4 When referring to unrelated businesses does FEU mean businesses that are unrelated or arms-length to the FEU companies?

Response:

Yes. The use of information by affiliates of the FEU is governed by existing policies. The FEU and other parties are obviously subject to privacy legislation as well.

Reference Exhibit B-2, Page 173

3. With respect to the sharing of customer information within the FEU between regulated classes of service, subject to applicable privacy legislation it is generally appropriate for utility staff with access to information and resources in the possession of the utility to be made available for the benefit of thermal energy services customers.
- 11.5 When referring to making information available within the FEU between regulated classes of service for the benefit of thermal customers, could this also apply to any AES service or new initiative which is a regulated class of service?

Response:

Yes, the same principles would apply to other initiatives that are a regulated class of service.

Fundamentally, the Companies' position on the use of information within FEI is rooted in the belief that there is an important principle at play that should be upheld. The principle is this: FEI is a single company offering different regulated services to customers. The distinction between classes of service required by the Act is only required for the purpose of setting rates; the Act doesn't dictate a functional or operational separation of the business itself or confer upon the Commission any power to limit the flow of information within the utility out of a desire to promote competition.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 29

It is important to understand that this position is rooted in principle, as the access to the information in question doesn't confer any material benefit upon FEI vis a vis TES competitors. The FEU have information on a customer's annual and peak consumption along with other general account information but does not know what appliances or end uses are consuming gas and in what quantities. This more detailed information on customer energy use is what is most important when designing a Thermal Energy Service. Only the customer can provide this kind of information and the FEU must collect this data in the same way as any competitor in the TES marketplace when competing for a project.

- 11.6 Please clarify that when referring to 'benefit of thermal energy services customers' the FEU are referring to existing and future prospective customers.

Response:

Please see the FEU's proposed guideline #1(a) on p. 164 of the Evidence, which provides that when the Commission evaluates a TES project it should consider: "the potential TES customer(s) who will receive service from the TES project". As this proposed guideline, and those around it indicate, the FEU believe that existing and future customers should be considered when evaluating TES projects.

The FEU believe the references in the *UCA* that the Commission, in making its decisions and orders, should consider "the interests of persons in British Columbia who receive or may receive service from the public utility²" provide clear instruction that the interests of future prospective customers must be taken into account as well as those of existing ratepayers.

- 11.7 Please clarify that when referring to 'benefit of thermal energy services customers' the FEU are not referring to benefit by way of transmission of its internal information directly to the customer, except the customer's own information, but that the FEU are referring to use of its internal information to assist it to provide cost-effective beneficial service to the TES or AES or other regulated class of service customer.

² See, for example, section 44.1 (8) (d) in regard to long-term resource plans, section 44.2 (5) (e) in regard to expenditure schedules and section 71 (2.1) (d) in regard to energy supply contracts.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 30

Response:

Yes, the FEU confirm that the understanding expressed in the question is correct. However, although the FEU will have historical natural gas consumption information (if the potential TES customer is a natural gas customer), the FEU do not have knowledge of the manner in which the customer uses the energy or what type of equipment may be used to produce this energy. As outlined in section 6.4.5 of the Evidence (page 127-128) the value of FEI's historical natural gas consumption information in the development of a TES project is very limited. FEI must still rely on the customer providing access to the specific usage characteristics in order to design a suitable and efficient TES system. A customer has access to that account information and may provide that information to any party. Please see the response to CEC IR 1.11.5.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 31

12. Reference Exhibit A-5, Page 8

ISSUE 3 Evaluation of Approved Regulated AES and Other New Initiatives

Scope

- a) When ratepayers are paying for AES and other new initiatives what standards should the BCUC apply to determine whether the activity is being carried out in the most cost-effective manner?
- b) What principles or guidelines should be applied to ensure that where feasible competitive forces can be utilized to maximize the efficiency and effectiveness of AES activities and other new initiatives?
- c) What guidelines should utilities follow in making EEC incentive funds available for addressing issues such as (i) who can access the funds, and (ii) transparency of funding programs?
- d) What criteria should be used to assess whether an AES or new initiative activity has been successful in meeting the initial objectives set out for the activity? If the activity has not been fully meeting the goals set out in the initial application, what criteria should be used to determine when the program should be terminated? What portion of the risk of program failure should rest with the ratepayer?

Reference Exhibit B-2, Page 174

The FEU understand that this issue is focused on efficiency and effectiveness, which are benefits from a customer perspective¹¹⁰. The proposed guidelines on customer considerations are addressed above in the context of Issue 1(a).

- 12.1 The discussion in Issue 1(a) is mixed with answering 1(b) and is answered service by service making the record with respect to this issue difficult to parse out. Could the FEU please pull together its response as to what guidelines it believes may be appropriate with respect to how competition and competitors should be dealt with?

Response:

The scope of the Inquiry, as established by Order No. G-118-11, is focused on the activities of the FEU. The FEU believe that each initiative must be addressed separately. The FEU have proposed guidelines that address the issue of assessing certain competition issues in relation to the FEU's projects. These are as follows:

- (a) Biomethane – guidelines 3 and 4(d), pp. 160-161;
- (b) NGV – guideline 4, p. 163; and

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 32

(c) TES – guidelines 6-9, pp. 165-166.

- 12.2 Should the Commission's guidelines with respect to the AES and New Initiatives assess competition on the basis of its ability to provide on balance net benefits to the FEU customers of any and all services classes which may be affected?

Response:

The FEU is somewhat unclear regarding the reference to "assess competition" in this information request, but has endeavoured to respond.

The FEU's view of the scope of the Commission's ability to consider competition can be summarized as follows: the Commission does not regulate markets or competition in the public interest; it regulates public utilities. The Commission should only be considering competition from the perspective of whether and how it impacts customers of the utility. Put another way, the "public interest", as that term is used in the *UCA*, must be considered from the perspective of customers, not the competitor. The Commission should not put the desire to foster competing businesses - or more accurately a desire to protect such businesses from competition from the FEU - ahead of the customers' interests. The relevant customers to consider are those existing and potential customers of both the natural gas class of service and the TES class of service.

- 12.3 Should the Commission's guidelines with respect to competitors be established on a reciprocal competition principle such as where competitors to the FEU can compete against the FEU with their marginal costs of providing a service the FEU can compete against competitors on a reciprocal basis using its marginal costs?

Response:

As stated in the response to CEC IR 1.12.2, the FEU's view of the scope of the Commission's ability to consider competition can be summarized as follows: the Commission does not regulate markets or competition in the public interest; it regulates public utilities. The Commission should only be considering competition to the perspective of whether and how it impacts customers of the utility. Put another way, the "public interest", as that term is used in the *UCA*, must be considered from the perspective of customers, not the competitor. The Commission should not put the desire to foster competing businesses - or more accurately a desire to protect such businesses from competition from the FEU - ahead of the customers' interests. The relevant

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 33

customers to consider are those existing and potential customers of both the natural gas class of service and the TES class of service.

It stands to reason that other competitors will be pricing based on the marginal costs of providing service. The FEU believe that it is most beneficial to customers to have the FEU providing an option to customers at its marginal cost of service too. The customer taking the service will then benefit from the lowest cost option.

- 12.4 Should the Commission's guidelines with respect to competitors that provide loss leading contributions to garner market share enable the FEU to respond with loss leading contributions to combat loss of market share?

Response:

As the FEU understand this question, the assumption is that one of the FEU's competitors might charge lower regulated rates for services that do not recover the cost of service (i.e. through deliberate loss leading). The FEU observe that there are two factors that may make this scenario less likely to occur. First, TES service will be regulated regardless of who is providing it, and rates charged must be just and reasonable. The FEU would expect that, consistent with normal regulatory practice, rates will be based generally on the utility cost of service. Second, all parties involved in TES are subject to the *Competition Act*, which deals with such matters as predatory pricing.

Regardless, the FEU intends to base its pricing on cost of service regulation principles, irrespective of what other parties are doing.

- 12.5 Should the Commission's guidelines put the FEU at a disadvantage in competition with competitors such that FEU customers are in a net loss position with respect to competitors?

Response:

No. The FEU consider that the Commission's ability to consider competition matters is only to consider them insofar as they affect customers. The FEU do not believe that the Commission has jurisdiction to attempt to protect third party providers from competition from the FEU at the expense of the customer.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 34

- 12.6 Please clarify that the FEU do not have and are not asking for an exclusive right to service AES and New Initiative markets.

Response:

The FEU confirm that we are not seeking an exclusive right to service any of the New Initiatives.

- 12.7 Please clarify that the AES and New Initiatives markets are or can be competitive markets.

Response:

Please see the response to BCUC IR 1.149.1.

- 12.8 Please clarify that there is no legislative or regulatory basis for precluding the FEU from competing in competitive markets for providing utility services to customers in those markets.

Response:

The FEU confirm that there is no legislative or regulatory basis for the Commission precluding the FEU from competing in competitive markets for providing utility services to customers in those markets. Please refer to the response to BCOAPO IR 1.9.2.

Reference Exhibit B-2, Page 170

- (g) Incentives are distributed to customers, and not to the third party project partner (whether that is Corix, ESAC member, or the FEU); and

- 12.9 Please advise as to whether or not to the best of FEU's knowledge, Corix or ESAC members when competing for customers against the FEU provide any incentive payments to customers.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 35

Response:

The FEU are not aware of any incentives which Corix or ESAC members offer to their potential customers. The FEU's EEC incentives are delivered via defined programs and are available to all customers who meet an available program's criteria, terms and conditions. Corix or ESAC members' customers may partake of EEC incentives without restriction due to their selection of service provider.

- 12.10 Please advise what percentage of customers applying for EEC funds use third party project partners to install their 'demand side measure' and what percentage use FEU.

Response:

EEC incentives are provided to the customer, e.g. building owners, long term lease holders or building developers directly. As such, the FEU's EEC staff does not keep detailed records on program participant's retention of third party provided energy services. The FEU are therefore unable to provide the requested analysis. Anecdotally, some customers have the resources or expertise to install the demand side measure, whereas other customers seek third party contractors to complete the work. The FEU do not make the selection of any particular project partner a condition precedent for participation in EEC programs, including in the case of TES projects. Potential program participants make the decision as to which service provider to employ, if any, of their own accord.

- 12.11 Please describe the net benefits to customers in the difference between customers choosing FEU as their project partner versus having them choose a third party project partner.

Response:

In terms of the availability of EEC incentives, there is no difference in customers' eligibility for EEC incentives whether they choose the FEU as their project partner or a third party project partner, or if they choose to pursue a project on their own. All customers that comply with the terms and conditions of a program are eligible for an EEC incentive.

Customers (FEU assumes that "Customers" in this question refer to TES customers rather than natural gas customers) see a number of reasons to choose the FEU as their project partner. Some of these reasons include but are not limited to:

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 36

- Seeing the FEU as a strong stable partner
- Ability of the FEU to deliver TES
- Knowledge and expertise of the FEU

12.12 Do the FEU use ESAC members under contract to provide the FEU service as the customer's project partner?

Response:

Yes. In fact, FEI would not be able to be as successful in its school TES programs without the partnership and contractual relationship with ESAC members.

FEI's business model is to provide Thermal Energy Service to customers by owning and operating thermal assets which are regulated by the BCUC. With FEI providing the capital for a project, customers are able to contemplate the TES offering where otherwise the customer would not be able to undertake the TES solution because they often do not have access to capital. While the FEU have many qualified staff capable of providing these activities, it would not necessarily be the best approach to employ all these staff ourselves. Similar to how the natural gas class of service uses contractors to install natural gas services, the TES class of service requires third party contractors to develop, design and build some projects. FEI is able to fulfill customer requests by contracting with ESAC members. The result is that each of the customer, FEI and the contracted member of ESAC benefits.

The members of ESAC compete with each other to offer design, construction and operation services. The FEU, whether it is a Thermal Energy Service, or natural gas distribution service, procures design services and construction services from firms that compete with each other to offer these services or products. The FEU also purchase maintenance and repair services where the services are available at a level of quality and price that represents value compared to the FEU personnel providing them.

In March 2011, FEI issued a request for expressions of interest in large scale TES delivery projects to a number of members of ESAC. Through that RFEI process, JCI and Honeywell responded.

FEI has contracted with JCI for the Delta Schools project. FEI has also contracted with both JCI and Honeywell on a number of additional school projects. FEI has also contracted with other

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 37

providers of technology, engineering and project management including: Stantec, FVB, Nexterra, Cobalt Engineering, Dec Design to name a few.

12.13 Please explain the principles being used by the FEU with respect to the openness and transparency around the availability of and process for accessing EEC funding.

Response:

The FEU strive to ensure that all available incentives are openly communicated to market participants. It is entirely consistent with the objectives of the EEC program to ensure that all customers who implement natural gas saving measures are made fully aware and take advantage of all applicable funding opportunities. For further details on the mechanisms the FEU use to make program information available, please refer to the response to BCUC IR 1.113.3.1.

All customers that comply with the terms and conditions of the Companies' EEC programs are eligible to receive an incentive. EEC program details are posted on the Companies' website. The Companies produce an extensive EEC Annual Report by March 31 every year that details existing and planned EEC activity, including programs that offer incentive funds to customers. EEC Stakeholder meetings are held twice yearly at which program results and plans are discussed; proceedings from these meetings are filed with the Companies' EEC Annual Reports.

Reference Exhibit B-2, Page 175

objectives) will be the appropriate criteria for such an assessment. Generally speaking, when the Commission believes that a new project's benefits no longer outweigh the program's costs, or will not advance the benefits outlined in the initial application for the program under which the project is advanced, then the Commission may wish to consider terminating the program on the basis that it is no longer in the public interest. The Commission should take care in allowing sufficient time to pass to allow programs to gain traction before engaging in this analysis.

12.14 Please confirm that the Commission does not either initiate programs or terminate them but that the Commission makes determinations as to whether or not a portfolio of programs meets its 'Demand Side Measure' requirements for approval and the Commission can deny the utility cost recovery for any portion of an expenditure schedule related to providing EEC funding.

An Inquiry Into FortisBC Energy Inc. ("FEI" or the "Company") Regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives	Submission Date: November 3, 2011
Response to Commercial Energy Consumers Association of BC ("CEC") Information Request ("IR") No. 1	Page 38

Response:

The FEU understand the question to be asking about EEC programs.

The FEU confirm that EEC programs and the EEC program portfolio as a whole are designed by the FEU, and brought forward to the Commission for acceptance as expenditure schedules under section 44.2 of the *Utilities Commission Act*. Under the EEC expenditures schedules sought to date, the FEU have sought acceptance of a portfolio of EEC activities within defined Program Areas, with flexibility given to the FEU to initiate programs within these Program Areas. In considering whether to accept an EEC expenditure schedule as being in the public interest, the Commission bases its determination in part on an assessment of the cost-effectiveness of the portfolio of proposed EEC activities in accordance with section 44.2 of the *Act* and the *Demand-Side Measures Regulation*. The Commission can accept or reject proposed expenditures on programs or Program Areas based on its assessment of the public interest. A rejection has the practical effect of causing the Companies not to pursue those rejected programs or Program Areas because the Companies would be at greater risk of cost disallowances in that case. It would also be possible for the Commission to deny the utility cost recovery for a portion of an accepted expenditure schedule if it were to find upon a review that funding reflected in the accepted expenditure schedule was not being spent prudently.