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

Attention: Ms. Alanna Gillis,
Acting Commission Secretary

Dear Sirs/Mesdames:

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

We enclose for filing in the above referenced proceeding the electronic version of the FortisBC Energy Utilities' Reply Submission. Twelve hard copies of the Reply Submission will follow by courier.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Matthew Ghikas

MTG/DHC

An Inquiry Into

FortisBC Energy Inc. Regarding the Offering of Products and Services In Alternative Energy Solutions and Other New Initiatives

Reply Submission of the FortisBC Energy Utilities

April 24, 2012

TABLE OF CONTENTS

PART ONE: INTRODUCTION AND OVERVIEW

A. INTRODUCTION

1. It is telling that the interveners representing energy consumers support key elements of the FEU's Final Submission, and in particular the importance of achieving economies of scope for the benefit of customers. The competitors advocating maximum corporate and regulatory disaggregation are the only stakeholders that benefit from greater inefficiency in the FEU's operations.

2. Proper cost allocation is fundamental to ensure that rates are just and reasonable and not unduly discriminatory. However, the type of corporate or functional separation advocated by competitors who have intervened in this proceeding is not a prerequisite to proper allocation and effective regulation of the FEU. The Commission has recognized, dating back to the RMDM Decision, that seeking "the most economically efficient allocation of goods and resources" is an important objective.[1] In this Inquiry the FEU are advocating an approach to the regulation of the New Initiatives that captures economies of scope associated with offering the New Initiatives for the benefit of customers. The FEU's approach relies on well-established regulatory principles to ensure that rates remain fair to all customers.

3. The competitors that have intervened in this Inquiry seek to portray anything short of full corporate separation of the New Initiatives from the natural gas utility business as fatal to the market in the long-term. The evidence in this Inquiry does not sustain that conclusion. The existing rate structures allocate costs fairly. The Commission's ongoing oversight, while it should not be directed to this end, will have the effect of ensuring that the FEU continue to compete fairly by passing on only legitimate efficiencies to consumers.

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[1] RMDM Guidelines, p. 9 (Section 4.1, Commission Objectives).

B. ORGANIZATION OF SUBMISSION

4. This Reply Submission primarily addresses the submissions of Ferus, ESAC, Corix and Clean Energy. The FEU have taken the approach of addressing the broader points made by interveners, rather than dissecting the submissions line by line. As such, the FEU's silence on a particular point should not be construed as agreement. This Reply Submission is organized as follows:

- Part Two reviews the positions taken by BCOAPO, CEC and BCSEA, who are the customer group interveners in this Inquiry.
- Part Three addresses the submissions of Corix and ESAC on TES.
- Part Four responds to the submissions of Ferus and Clean Energy on CNG/LNG Fueling Service.
- Part Five addresses Biomethane Service, and in particular the submissions of The Coalition for Renewable Natural Gas (the "Coalition") and BCOAPO.
- Part Six addresses EEC, and in particular submissions by ESAC, Corix and Ferus on this initiative.

5. In this Reply Submission, the FEU refers to its previous submission filed in this Inquiry on March 15, 2012, as the "FEU's Final Submission". As in the FEU's Final Submission, in this Reply Submission the FEU refer to the *Utilities Commission Act* as either the "*UCA*" or the "Act".

PART TWO: CUSTOMER VIEWS ON NEW INITIATIVES AND CAPTURING EFFICIENCIES

6. In this part, the FEU review the submissions of BCOAPO, CEC and BCSEA-SCBC, who by-and-large support the FEU's involvement in developing the New Initiatives for the benefit of energy consumers.

A. BCOAPO

7. BCOAPO have been involved in all of the regulatory proceedings that led to the FEU undertaking the New Initiatives. BCOAPO recognize that the FEU's participation in the New Initiatives "will produce efficiencies putting downward pressure on AES costs to the benefit of those customers while creating reciprocal efficiencies to the benefit of FEU's ratepayers."[2] There are certain points of disagreement between BCOAPO and the FEU on issues raised in this Inquiry such as the appropriateness of CPCN thresholds for the New Initiatives and how proceeding costs should be allocated. The FEU have addressed most of these points in their Final Submission, and will not repeat those points in reply. BCOAPO's submission regarding cost allocation for the Biomethane initiatives is discussed in Part Five of this Reply.

B. CEC

8. CEC has also participated in all of the regulatory proceedings concerning the New Initiatives. CEC's strong support for the FEU's involvement in the New Initiatives is (similar to BCOAPO) grounded in the recognition of the benefits of these initiatives for customers.[3] CEC's view is that the regulatory structures developed through these previous proceedings are working, and that apart from some refinement and augmentation where needed, they should be continued.[4] While the FEU and CEC do not agree on every detail of the refinements needed, the points of disagreement are generally minor and the FEU have no further reply on these points beyond the FEU's Final Submission.

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[2] BCOAPO Final Submission, para. 6.

[3] CEC Final Submission, para. 203.

[4] CEC Final Submission, paras. 5-6.

C. BCSEA-SCBC

9. BCSEA-SCBC have been involved in most of the regulatory proceedings involving the New Initiatives. They support the development of initiatives that reduce GHGs and make use of renewable energy. While BCSEA-SCBC do not oppose or support any particular company in providing the New Initiatives, whether through a regulated or unregulated model, they do make the following submissions regarding the FEU's participation in the New Initiatives:

- the Commission should *not* inhibit the development of TES by public utilities;[5]
- the Commission should re-affirm its NGV Decision allowing FEI to provide CNG/LNG Fueling Service, and not impede FEI from doing so in order to benefit the competitive interests of unregulated service providers;[6]
- the Commission should re-affirm its Biomethane Decision and the initiative should be evaluated in due course in the review process contemplated in that decision.[7]

10. Given the support of BCSEA-SCBC for the FEU's involvement in the New Initiatives, the FEU do not have any reply submissions in respect of this intervener.

D. SUMMARY

11. The customer groups have indicated that they understand and value the benefits associated with the New Initiatives, both in terms of presenting new options for energy consumers and the realization of efficiencies. The FEU submit that regardless of whether the Commission directs the use of the class of service model or the affiliate model, the objective should be to develop guidelines and allocate costs in a manner that preserves economies of scope and the resulting benefits to all of the FEU's customers. While the Commission's ultimate focus should be on customers, and not on regulating markets, economies of scope are legitimate efficiencies that benefit customers and that can be achieved within the parameters of fair competition.

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[5] BCSEA Final Submission, para. 11.

[6] BCSEA Final Submission, para. 12. BCSEA is clear, however, that its support is limited to efforts to provide service to the heavy duty vehicle sector in BC, as distinct from the passenger vehicle sector (para. 13).

[7] BCSEA Final Submission, para. 14.

PART THREE: THERMAL ENERGY SERVICES

12. In this Part, the FEU respond to the submissions of Corix and ESAC on TES. There is some common ground. For instance, ESAC and Corix both agree with the FEU that district energy systems are public utility services. There is general agreement between Corix and the FEU that regulation of smaller systems should be adjusted to ensure it remains cost-effective, however, the FEU disagree with ESAC and Corix regarding the need for exemptions for discrete TES projects. The most significant point of departure is that ESAC and Corix, citing competitive considerations, wish to prevent the FEU from flowing legitimate economies of scope to customers. As discussed below, the FEU submit that customer considerations should be paramount, and in any event capturing efficiencies for customers can exist within the confines of fair competition.

A. REPLY TO CORIX

(a) Efficient Regulation of TES

13. Corix makes a number of submissions regarding how TES should be regulated by the Commission. The FEU are encouraged by the fact that Corix generally agrees with the importance of tailoring the regulatory process to match the size and complexity of TES projects.[8] The FEU address below the few key points of disagreement with Corix on this topic.

14. First, the FEU disagree with Corix that sections 22 or 88 of the Act are needed to employ the light-handed approach to regulation that is favoured by both parties.[9] The Commission has broad jurisdiction to determine its own regulatory process, and the Commission routinely exercises that jurisdiction to achieve regulatory efficiency. CPCN thresholds and guidelines to establish streamlined filing requirements and rate reviews can be addressed under sections 45-46 and 59-61 of the Act, and the provisions of the *Administrative Tribunals Act*.

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[8] Corix Final Submission, p. 18.

[9] Corix Final Submission, p. 18.

15. Second, the adoption of guidelines that relate only to the FEU is not, as Corix appears to suggest[10], predicated on acceptance that the FEU hold a franchise for TES generally. The FEU have proposed Guidelines that apply only to the FEU because that was the approach contemplated in the Commission's Scoping Order.[11] The FEU have maintained throughout this Inquiry that guidelines can be effective for all competitors, and the Commission's Scoping Order contemplates that guidelines established in the Inquiry may have implications beyond the FEU.

16. Third, while the FEU agree with the use of complaint-based regulation in appropriate circumstances,[12] the FEU disagree with Corix that utilities such as Corix and the FEU should begin providing service without any application, and with regulation only being triggered upon customer complaint. A complaints-based approach should *follow* the filing and review of an initial application for approval of a TES project (or perhaps just the service agreements). This is the approach reflected in the FEU's proposed Guidelines.[13]

17. Fourth, Corix states that, "to avoid an unduly onerous regulatory burden and likely unintended regulatory outcomes, such "micro-utilities" [as the Delta School District "DSD" Project] should be exempted from Commission regulation by either section 22 or 88 of the UCA".[14] The FEU respond to this issue below in reply to ESAC's submissions.[15]

(b) Class of Service Model vs. Affiliate Model

18. Corix, citing the DSD Decision, advocates a regulatory approach whereby utilities should be permitted to provide more than one class of service: "only if the Commission is satisfied that cross-subsidization risks have been addressed and the public interest has been taken into account."[16] Corix maintains that the FEU bear the burden of proof, that FEU has not

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[10] Corix Final Submission, pp. 18 – 19.

[11] AES Inquiry: Ex. A-5, Order G-118-11, Appendix B, Terms of Reference, Item No. 3.

[12] FEU Final Submission, paras. 43-45.

[13] AES Inquiry: Ex. B-2, pp. 167-169.

[14] Corix Final Submission, p. 19.

[15] See paras. 35 – 40 below.

[16] Corix Final Submission, p. 25.

discharged the burden[17], and that FEI should be required to transfer its TES business to an affiliate.[18] For Corix, full corporate separation appears to entail full loading of costs assigned to TES in such a way as to eliminate the benefit of economies of scope for TES customers. The FEU make four submissions in response.

19. First, as the FEU have described in their Final Submission, the UCA expressly contemplates that utilities will offer more than one class of service, and the Commission is directed to *consider* distinct classes as if they were a self-contained unit. This language cannot be reconciled with Corix's position that "full corporate separation of the natural gas and TES businesses" is the "starting point".[19]

20. Second, the FEU have provided evidence that the class of service model permits the efficient allocation of utility resources and flows benefits to customers.[20] Corix's opposition to the FEU's objective cannot be reconciled with the fact that Corix provides multi-utility services within a single corporate entity to achieve economies of scope. Corix stated in its responses to IRs:

> By offering several utility services at one location, Corix is able to offer efficient service through economies of scope.[21]
> …
> The Corix approach to providing several utility services using common resources to achieve economies of scope is an efficient method for the provision of utility services in the communities that we serve.[22]

Achieving economies of scope is equally legitimate and beneficial for the FEU's customers as it is for Corix's customers. Proper allocation that permits achieving economies of scope is equally possible for FEU as it is for Corix.

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[17] See the seven bullet points set out in Corix's Final Submission at pp. 22 – 25.

[18] Corix Final Submission, p. 2.

[19] Corix Final Submission, p. 25.

[20] See the FEU's Final Submission, paras. 133 – 145.

[21] AES Inquiry: Ex. C12-10-1, Corix Response to FEU IR 1.4.1.

[22] AES Inquiry: Ex. C12-10-1, Corix Response to FEU IR 1.4.1.6.

21. Third, the DSD Decision, cited by Corix in support of its "starting point", was made within the context of the ongoing Inquiry, and is properly viewed as a decision designed to allow the DSD project to move forward while leaving the larger Inquiry issues to be determined in due course. As the Panel noted in the DSD Decision:

> The Commission Panel concludes that a separate corporate affiliate will provide maximum flexibility to align the Delta SD arrangement with the models that result from the AES Inquiry. Should the AES Inquiry accept that TES may be provided as a separate class of service or corporate division within FEI, it will be easier to bring the Delta SD arrangement into this model than to segregate it later.[23] [Emphasis added.]

22. Fourth, many, if not most of the specific concerns that Corix and ESAC have raised in this proceeding regarding cost allocation to TES were addressed and reflected in the increased allocation approved in the 2012-2013 RRA Decision for use during the test period.[24] In the 2012-2013 RRA Decision, the Commission Panel rejected the proposed allocation of $500,000 to the TES class of service, and increased the amount to $750,000 for each of the two test years to address the concerns of competitors.[25] The FEU will be proposing criteria that can be used beyond the current test period. The formulaic approach for allocation employed with Fort Nelson has much to offer in the context of TES.

(c) FEU's Position *If* the Affiliate Approach is Required

23. The FEU have addressed in the Final Submission (para. 185) a modified transfer pricing policy to address transfer pricing between FEI and a regulated TES affiliate, should the Commission determine the affiliate model is appropriate. Corix appears to have misconstrued the FEU's proposal as allocating only incremental costs to TES.[26] (The FEU's Final Submission

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[23] DSD Decision, p. 96.

[24] Corix's concerns are summarized at pp. 22-23 of its Final Submission.

[25] *In the Matter of the FortisBC Energy Utilities 2012-2013 Revenue Requirements and Rates Decision*, April 12, 2012, Decision (the 2012-2013 RRA Decision), p. 140. The overhead amount that was estimated by FEI was for expenses for executive time, finance, regulatory affairs, human resources, information technology support, and facilities costs. 2012-2013 RRA Decision, pp. 130, 138-140.

[26] There are two instances on page 24 of the Corix submission where this erroneous assumption appears. Corix states that any transfer pricing to an affiliate should be on a fully-loaded basis, as recovering only incremental costs would "mimic the current scenario where default costs are borne by the natural gas business". Corix also states that "[i]t is patently unfair for the TES ratepayers [to] bear only the incremental costs that are actually

may have been insufficiently clear in this regard.) As described below, the FEU's modified transfer pricing would allocate all fully-loaded direct costs, plus a fair portion of overhead.

24. For ease of reference, the FEU's transfer pricing proposal is the following:

> For the purposes of this Inquiry, the FEU submit that, in the event the Commission affirms its approach of preferring that TES be provided through a corporate affiliate, the best approach is to:
>
> - allocate common costs to the TES affiliate using the approved formula specific in the Shared Services Agreement; and
>
> - charge direct costs using the FEU's existing Transfer Pricing Policy, which contemplates fully loaded costs. Since the services are being provided to a regulated entity, and not an NRB, it is appropriate to modify the transfer pricing formula in this case to exclude profit, overheads and facilities fee components.[27]

25. The modified transfer pricing policy contemplates that all direct costs of the affiliate are to be charged the fully loaded costs of the services. Overhead and facilities fees must be excluded from the fully loaded direct charges in order to avoid double-charging the TES customer for those amounts; these items will have already been accounted for in the allocation of common costs to the TES affiliate (see the first bullet quoted above). However, this does not mean that the direct charges are "incremental costs" only, as suggested by Corix. The TES customer pays the fully-loaded amount of direct charges, *plus* a reasonable allocation of shared services. Accordingly, on this approach the FEU cannot be said to have any "unfair cost advantage" over competitors.

26. A profit component should also be excluded from transfer pricing because charging a profit component to TES goes beyond cost recovery and would represent a cross-subsidy of the gas business by TES.

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recorded which then leaves the FEI natural gas rate payers to bear the balance of the costs of the co-mingled FEI business platform".

[27] FEU Final Submission, para. 185.

27. The adoption of modified transfer pricing under an affiliate model maintains some, but not all, of the benefits of economies of scope. The adoption of classes of service as opposed to operating two corporations eliminates duplication of corporate costs. It also ensures that TES customers can obtain the benefit of using FEI's overall credit capacity, and will be charged for the use of that credit capacity only to the extent that this approach adds to the debt costs borne by natural gas customers (which is not a concern at the present where the TES business is in its nascent stages). For this reason, the FEU submit that the class of service approach has more to offer customers as it is more efficient and avoids the unnecessary creation of costs.

(d) TESDA Recovery

28. Corix agrees with the FEU that under the affiliate model the TESDA should be transferred to the affiliate, but Corix's agreement is conditional upon that affiliate commencing recovery of the TESDA in the near term in order to avoid "intergenerational equity issues and adverse effects in the TES market".[28] ESAC makes a similar argument.[29] The FEU do not agree with the concerns articulated by these competitors. Nevertheless, the FEU submit that this particular issue should be deferred. The FEU are currently developing a TESDA recovery proposal that will be put forward in a stand-alone application (brought by either FEI or an affiliate as appropriate) in the near future.

(e) Use of Information

29. Corix's position on "TES customer information" is that it should be available to competing TES public utilities (subject to applicable privacy laws) on an equal footing as FEI.[30]

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[28] Corix Final Submission, p. 20.

[29] ESAC says: "The TESDA is not the responsibility of the utility's natural gas ratepayers. If the Commission finds that a TES project (e.g. a Discrete Energy Project) is not to be regulated, there may be a need for the Commission to assign some costs to the FEU affiliate to recover a reasonable portion of the TESDA." See ESAC Final Submission, para. 230.

[30] Corix Final Submission, p. 24.

The FEU's proposal set out in the Final Submissions puts all competitors in the same position regarding access to that information. [31]

B. REPLY TO ESAC

30. The FEU have focussed this Reply on the substance of ESAC's submissions, and will not (with minor exceptions) specifically address the accompanying allegations and rhetoric, which the FEU reject. The points addressed below relate to the effect of past Commission decisions, the rationale for regulating discrete energy systems, economies of scope and fair competition, and the use of information.

(a) Previous Regulatory Proceedings and Decisions

31. ESAC makes a number of submissions to the effect that the manner in which the FEU have brought forward its various applications for New Initiatives has involved either a "nefarious design"[32] intended to eradicate competition, or has had the effect of killing competition "by a thousand cuts".[33] ESAC's submissions in this regard strain credulity and are inconsistent with the evidence before the Commission.

32. Since 2008, the FEU have proceeded in a transparent fashion. Past proceedings have involved public hearings and in every case public notice was provided. The FEU's rationale for proceeding with the New Initiatives is summarized in the FEU's evidence and in their Final Submission.[34] The rationale, in the most general terms, has been to address declining throughput,[35] a changing policy and legislative environment,[36] and changing customer expectations.[37] The FEU has been transparent about its objectives since 2008.

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[31] FEU Final Submission, para. 150.

[32] ESAC Final Submission, para. 1.

[33] ESAC Final Submission, para. 67. See also para. 3 of ESAC Final Submission: "As a result, brick by brick, the FEU have built a wall around the market and now seek to close the door to competition by arguing vociferously that "it is too late", the Commission has already determined all the issues and established the precedent."

[34] AES Inquiry: Ex. B-2, Section 2; FEU Submissions, Appendix "A".

[35] AES Inquiry: Ex. B-2, Section 2.1.

[36] AES Inquiry: Ex. B-2, Section 2.2 and 2.3.

[37] AES Inquiry: Ex. B-2, Section 2.4.

33. ESAC describes the FEU's submissions on the effect of past Commission decisions as an "invidious approach" that is designed to preclude an investigation of the matters raised in the Inquiry.[38] The FEU disagree. The FEU's position from the outset of this Inquiry has been that the *outcomes* of past decisions need to be respected, as evidenced from the FEU's Scoping Submission:

> As a result of these Applications, many issues raised by the Staff Working Paper—particularly those related to NGV, Biomethane and EEC—have already been heard or decided based on facts and policy that remain the same today. The Companies have taken the approvals granted at face value and have proceeded with the approved initiatives in good faith. There are customers that have taken steps to avail themselves of approved services in the reasonable expectation that the services will continue to be available. There will be business implications for FEU and stakeholders if this Inquiry includes issues that have been reasonably understood to have been settled through prior proceedings. FEU and potential customers must, as a matter of basic fairness, be able to rely on these past Commission decisions and the policies inherent in them without having to re-justify the initiatives based on substantially the same policy and factual evidence…[39]

In the Inquiry Scoping Order Reasons for Decision the Commission Panel accepted that it was not appropriate to use the Inquiry as a means to re-open past decisions of the Commission.[40] The FEU have, in this Inquiry, addressed all of the issues identified by the Commission in the Scoping Order and have responded to hundreds of information requests on all four of the New Initiatives. These responses make up the vast bulk of the evidentiary record in this Inquiry.

34. ESAC cites section 75 of the *UCA* as a basis to revisit past decisions relating to the New Initiatives, arguing that the Commission cannot be bound by previous decisions. ESAC is misapplying section 75 in citing it as a basis to depart from the Scoping Order and to nullify the outcome of past orders. Section 75 is concerned with the application of *stare decisis* to tribunals, and it provides that just because a tribunal has interpreted the law or exercised its discretion in a certain way in the past, does not mean that the tribunal must interpret the law or exercise its discretion in the same way on a different application that comes before it. This

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[38] ESAC Final Submission, para. 17.

[39] AES Inquiry: Ex. B-1 (FEU Scoping Submission), para. 8.

[40] AES Inquiry: Ex. A-5, Appendix A to Order G-118-11, p. 5 of 8.

rule does not speak to whether the Commission can or should undo an order made in a previous decision. The Commission has a separate statutory authority for revisiting decisions previously made, namely the Commission's reconsideration jurisdiction under section 99 of the Act. The reconsideration process has its own set of procedures, guidelines and legal tests. The previous decisions regarding the New Initiatives were made on the basis of full evidentiary records and robust proceedings, a significant amount of time has passed since they were made, and section 99 is not engaged in this Inquiry. ESAC is really seeking to have decisions reconsidered without having to satisfy the test for reconsideration under section 99 of the Act.

(b) Scope of Regulation of TES

35. ESAC appears to agree with how the FEU have formulated the test for statutory interpretation as it relates to the scope of the Commission's jurisdiction to regulate TES. There is also general agreement that the object and purpose of the Act (as described in the *ATCO* decision) is to regulate natural monopolies and also to protect consumers from the exercise of economic power. ESAC agrees with the FEU that district energy systems should be regulated based on the object and the purpose of the UCA.[41] Where the FEU and ESAC part company is on whether the "purpose" or rationale for regulation is engaged with discrete systems.[42]

36. In order to understand the nature of this disagreement, it is useful to consider ESAC's proposed "test" for regulation and how ESAC applies this test to discrete and district energy systems. ESAC's proposed test is whether "a natural monopoly exists or that there is real and substantial market dominance".[43] Applying this test, ESAC concludes that the regulation of district systems is appropriate under the Act, and that the regulation of discrete systems is not:

> ESAC submits that regulation of District Energy Systems will in most instances be appropriate because most such systems exhibit the characteristics of a "natural monopoly". A cost of service model is likely to be the most appropriate. Because District

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[41] ESAC Final Submission, para. 81. The FEU maintain their position that the distinction between these two types of systems is not always clear, but for the purposes of addressing ESAC's argument the FEU assume that the distinction can be made in most cases. See FEU's Final Submission, para. 119.

[42] ESAC Final Submission, paras. 43 – 47.

[43] ESAC Final Submission, para. 116.

> Energy Systems serve multiple customers, they serve "the public". Moreover, it is probable that the service can only be provided efficiently by a single supplier so there are no realistic competitive options and, because the customers are effectively "captive", they are vulnerable and require protection through the regulatory oversight.
> District Energy Systems are different from Discrete Energy Projects in a number of fundamentally significant ways. In the latter case a single customer is served in a private commercial transaction. The customer has available to it a range of competitive options in equipment and facilities and may choose from a variety of suppliers. No natural monopoly exists and there is no reason to expect that the customer will be vulnerable to any abuse of market power by any supplier competing in this space; certainly not in a way that cannot be adequately addressed by the Competition Act (Canada).[44]

37. As ESAC points out, the rationale for regulating district systems is that "customers are effectively "captive", they are vulnerable and require protection through the regulatory oversight".[45] ESAC has not addressed why customers of discrete systems, after selecting a provider, are any less "captive" or "vulnerable and require protection through regulatory oversight". Once a thermal energy system has been installed for a customer, be it discrete or district, the customer faces a high cost to switch service providers.[46]

38. In support of their submission that discrete systems should not be regulated ESAC submits that: "The public has nothing to fear from ESCOs, none of whom exercise market dominance or anything approaching a monopoly and who operate in a competitive market."[47] The FEU do not have a dominant position in the TES market or have a monopoly with respect to TES,[48] and as ESAC makes clear in its submission, in terms of competition "for the market", consumers have a choice among service providers.[49] The issue with the potential for abuse of economic power arises *after* a supplier has been chosen, the facilities have been installed, and the customer is now in a relationship with a monopoly supplier and faces very high costs to switch providers. The result is an *ex post* monopoly and there is a compelling rationale for

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[44] ESAC Final Submission, paras. 81-82.

[45] ESAC Final Submission, para. 81.

[46] AES Inquiry: Ex. B-25, BCUC IR 2.12.1; Ex. B-19, Att. B, para. 27.

[47] ESAC Final Submission, para. 63.

[48] FEU 2012-2013 RRA: FEU Response to BCUC IR 2.131.1.

[49] ESAC Final Submission, para. 9.

regulation.[50] ESAC has not acknowledged or addressed in its submission the distinction between competition "for the market" and "competition in the market".

39. ESAC characterizes the FEU's interpretation of the definition of public utility as a "broad, literal interpretation"[51] and says that its application leads to the absurd result that a seller of (for example) D batteries is a public utility.[52] The FEU submit that it is unlikely that a D battery could be fairly characterized as "equipment or facilities" for the purpose of providing energy, or that the seller in the proposed example could be construed as an owner or operator. Even if the plain wording of the Act did suggest that the seller of batteries is a public utility, the legal test from *Rizzo* is clear that the grammatical and ordinary sense of the words must be read *harmoniously* with the purpose of the Act.[53] In the battery example, the "purpose" of the Act would prevent the required "harmonious" reading. The purchaser of batteries from the supplier does not find itself in a captive relationship with a monopoly provider or in an *ex post* monopoly. Someone unhappy with one brand of D batteries does not face a barrier to switching to another. In other words, there is competition "in" the battery market, thus eliminating the rationale for regulation.

40. ESAC also points to an FEU IR response in which the FEU acknowledged that the supplier of a temporary heating system would be regulated under the Act.[54] In light of Dr. Ware's evidence, filed subsequently, the FEU would provide a more nuanced response to this question, namely that the answer depends on the size of the heater and the potential for the service provider to become an *ex post* monopoly supplier. A relatively low cost heater would be unlikely to present the necessary market barriers to warrant regulation based on the object and purpose of the UCA. Like a D battery, the competition would be "in the market", not "for the market".

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[50] AES Inquiry: Ex. B-25, BCUC IR 2.12.1.

[51] ESAC Final Submission, para. 44.

[52] ESAC Final Submission, paras. 45-46.

[53] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 (this authority was included with the FEU's Final Submission).

[54] ESAC Final Submission, para. 48, referring to the FEU's Response to ESAC IR 10.1(b).

(c) Economic Efficiency

41. When discussing the topic of transfer pricing and/or cost allocation between separate classes of service, ESAC suggests that the fact the FEU make use of shared services is a demonstration that the FEU are not operating the natural gas utility efficiently.[55] In the 2012-2013 RRA proceeding the Commission thoroughly examined the FEU's cost structures and set rates with reference to costs that the Commission considers to be consistent with efficient operations. The FEU submit that economies of scope and operational efficiency within the natural gas business co-exist. Economies of scope recognize that with certain fixed costs, it may be more efficient to provide two products or services than one. Corix has cited economies of scope as the basis for holding multiple utility services within the broader company.[56] ESAC acknowledged that its members, who they say are not regulated, share overheads with multiple lines of business.[57]

(d) Use of Information

42. ESAC maintains that the FEU have attempted to use personal and confidential information collected through the natural gas class of service as part of a marketing strategy to solicit AES business,[58] and that this is contrary to the *Personal Information Protection Act*.[59] The FEU adheres to the *Personal Information Protection Act* and there is a regulatory framework under that Act to address such matters. The Commission, as an economic regulator, can consider ESAC's alternative argument that FEI should charge a market price for that information and should make the information freely available to all parties willing to pay (subject always to applicable privacy laws).[60] The FEU have demonstrated that the information has limited, if any value. The FEU's proposal to require any competitor (including the FEU) to obtain prior customer consent as a means of ensuring equal access to information underscores that

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[55] ESAC Final Submission, para. 123.

[56] AES Inquiry: Ex. C12-10-1, Corix Response to FEU IRs 1.3.1.4.6, 1.4.1 and 1.4.1.6.

[57] AES Inquiry: Ex. C1-7, ESAC Response to CEC IR 1.2.3.

[58] ESAC Final Submission, para. 124 - 129.

[59] ESAC Final Submission, paras. 25(iv) and 124 - 129.

[60] ESAC Final Submission, para. 128.

evidence and avoids the necessity for the Commission to make any determination regarding the value of that information.[61]

(e) ESAC's Submission Regarding the *Competition Act*

43. ESAC argues that regulated utilities "effectively operate outside the *Competition Act*" by virtue of the "regulated conduct defence".[62] The regulatory void or gap that ESAC is alleging does not exist. The *Competition Act* applies to regulated utilities. The "regulated conduct defence" (as its name suggests) is a *defence*, not an exemption. The FEU are also subject to BCUC oversight, and the FEU are proposing to allocate costs fairly to ensure just and reasonable rates.

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[61] FEU Final Submission, para. 150.

[62] ESAC Final Submission, para. 64.

PART FOUR: CNG/LNG FUELING SERVICE

A. REPLY TO FERUS

(a) Application of Guidelines to LNG Production/Dispensing/Transportation

44. The FEU's focus in this Inquiry has been on CNG/LNG Fueling services, and the proposed Guidelines are in respect of these services alone. Ferus' position is that production/dispensing or transportation services should also be addressed in the Guidelines.[63] The FEU do not agree. The FEU have, to date, only brought forward applications for approval of CNG/LNG Fueling Service projects.[64] The time and place for a consideration of LNG production, transportation and dispensing services is in the context of a specific application. At that time the Commission, with the benefit of the Inquiry outcomes, can consider this particular initiative based on a proper evidentiary record.

(b) Forbearance Regarding CNG/LNG Fueling Service

45. Ferus has cited and attached excerpts from a paper co-authored by Dr. Ware in support of its submission favouring forbearance for CNG/LNG Fueling Service.[65] This paper is not evidence in this proceeding, and ought to have been put to Dr. Ware.[66] In any event, it is obvious from a careful reading of the quoted passage that the authors are *describing* the impetus for deregulation of natural gas storage, rather than expressing an *opinion* on the merits of the deregulation efforts. Dr. Ware's opinion is reflected in his Report and in the responses to IRs that were directed to him.[67]

46. The point that Ferus appears to make in its submission on forbearance is that if the Commission is going to regulate the FEU's CNG/LNG Fueling Service, then it should ensure that no cross-subsidization occurs. GT&C 12B accomplishes the objective that Ferus advocates.

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[63] Ferus Final Submission, para. 7.

[64] With the exception of the approval of Rate Schedule 16, which is a tariff that makes use of existing facilities from the Tilbury LNG plant.

[65] Ferus Final Submission, para. 18.

[66] Ferus had the opportunity to put these passages to Dr. Ware. The Commission asked Ferus during the procedural conference whether it wished to ask Dr. Ware any IRs and it declined to do so.

[67] AES Inquiry: Ex. B-19, Att. B; Ex. B-25, FEU response to BCUC Round 2 information requests.

Ferus has not identified any specific shortcomings of the existing terms and conditions of service.

(c) Jurisdiction to Prohibit Utility Participation in CNG/LNG Fueling Service

47. Ferus states that the incorporation of "British Columbia's energy objectives" into the UCA results in a broad mandate for the Commission to consider the impact of a utility's actions on the development of an overall market segment, such as the CNG/LNG Fueling Service market. Ferus submits that this expanded mandate results in the Commission having the legal ability to prohibit a utility from participating in a market or to direct greater structural separation.[68] The FEU disagree with Ferus' interpretation of the role that British Columbia's energy objectives play within the scheme of the UCA. The energy objectives apply in the context of an application for approval of a specific public utility project, capital expenditure, long-term resource plan or energy supply contract.[69] The purpose of the objectives is to encourage regulated public utilities to take specific actions, such as reduce greenhouse gas emissions, pursue energy conservation and efficiency, leverage innovative energy technologies and make use of renewable resources.

48. Moreover, the evidence does not support Ferus' position that the FEU's participation in the market is going to harm the development of the market. In particular:

- FEI's evidence is that the NGV market in BC had stagnated until FEI recently became involved.[70]
- Ferus does not currently own or operate any NGV facilities in BC. Its evidence is that it has very recently created a new LNG division and it intends to invest into

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[68] Ferus Final Submission para. 27. Ferus has again included passages from a textbook co-authored by Dr. Ware in support of its argument that the Commission should exclude the FEU from competing with other LNG suppliers based on its suggestion of a "broad mandate". Again, Ferus ought to have put that passage to Dr. Ware, and having not done so the book excerpts cannot be treated as Dr. Ware's evidence. The importance of this procedural step is underscored by the fact that both passages cited are self-evidently *descriptive* of past activities in the telecommunications industry, other arguments in favour of excluding regulated entities, and the regulatory response.

[69] *Utilities Commission Act*, ss. 44.1(8)(a), 44.2(5)(a), 46(3.1)(a), and 71(2.1)(a).

[70] AES Inquiry: Ex. B-2, p. 93; Ex. B-11, BCUC IR 1.52.1

the "robust energy market in north eastern BC";[71] however, Ferus largely declined to respond to IRs regarding its actual and/or intended participation in the CNG/LNG market in BC, even on a confidential basis.[72] Ferus indicated that it has 10 employees dedicated to its LNG division, who are apparently dedicated to projects in "North America", but did not indicate whether or not any of these employees are dedicated to development of LNG projects in BC. In terms of current projects, Ferus identified only one specific facility in northeast BC, subject to internal approval, and that if approved, the project can be operational by early 2013.[73]

- Ferus also cited Clean Energy, BC Transit, EnCana, Shell and Gaz Metro as companies "who will be encouraged to enter the BC Market provided there is a level playing field".[74] BC Transit is not involved in the development of CNG Fueling stations in BC.[75] Encana has indicated that its interest in BC domestic LNG market is a low priority.[76] Finally, the announcement from Shell relied on by Ferus is related to the opening of a liquefied natural gas facility and Fueling infrastructure in Alberta, not British Columbia.[77] Ferus acknowledged that Gaz Metro's initiatives are not aimed at BC.[78]

(d) The Scope of Regulation

49. Ferus argues that "Natural Unregulated Services", which is a term of its own invention, should not be regulated. The FEU submit that what is and is not regulated under the Act is determined by applying the rules of statutory interpretation to the definition of "public utility", which involves considering the grammatical and ordinary sense of the words in the definition in harmony with the object and purpose of the legislation.[79] As the Commission has previously recognized in the NGV Decision, the plain wording of the Act dictates that CNG/LNG

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[71] AES Inquiry: Ex. C8-5-1, p. 1.

[72] Ferus declined to (a) identify the number of full time employees fully dedicated to market development in BC (Ex. C8-6, FEU IR 2.1) (b) provide information about customer commitments to provide LNG service in BC (Ex. C8-6, FEU IR 3.1 to 3.8) or (c) acknowledge whether they had conducted any market research on the potential for LNG as a transportation fuel in the BC market (Ex. C8-6, FEU IR 4.1).

[73] AES Inquiry: Ex. C8-7, BCUC IR 2.1.

[74] AES Inquiry: Ex. C8-5-1, pp. 5-8.

[75] A separate transit authority, Translink, owns a CNG Fueling station which provides fuel to 50 transit buses. See AES Inquiry: Ex. B-19, para. 40.

[76] AES Inquiry: Ex. B-19, para. 40.

[77] AES Inquiry: Ex. B-19, para. 40.

[78] AES Inquiry: Ex. C8-5-1, pp. 7 - 8.

[79] *Rizzo*, *supra*.

Fueling Service is regulated when provided by a public utility.[80] The legislative intent is to ensure that the Commission maintains regulatory oversight of public utilities that wish to provide service in this market, which is what the Commission has been doing to date in its regulation of FEI's CNG/LNG Fueling Service.

50. Ferus' primary argument in support of requiring the FEU to provide CNG/LNG Fueling Service through an affiliate is that "the forces of competition are superior to regulation in developing the marketplace as well as ensuring lowest prices and greatest efficiency in the delivery of service rates".[81] In fact, competition exists among providers regardless of whether the FEU or an affiliate provide service. Energy consumers are provided with greater choice where the FEU can offer a regulated service to compete along side with unregulated options.

51. Ferus' second argument against a regulated service is that "the cost of regulation will generally outweigh any benefits of having entities operate within competitive market sectors", including "the extensive regulation required to ensure there is minimal cross-subsidization". The Commission's approval of GT&C 12B, combined with the outcome of this Inquiry, should serve to keep any regulatory costs going forward to a minimum. In any event, it is difficult to see how the market position of non-regulated providers could be harmed by the FEU having to recover regulatory costs in the rates it charges to CNG/LNG Fueling Service customers.

(e) Scope of Inquiry

52. Ferus and the FEU disagree on the impact of past decisions on the Inquiry and the nature of the issues being considered in this Inquiry. The FEU's position on the effect of past decisions is described above in detail in reply to ESAC, which raises the same issue.[82] As the FEU submit in that section, the law requires that the *outcomes* of past decisions need to be respected subject to a formal reconsideration process under section 99 of the Act. Ferus has

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[80] NGV Decision, pp. 18-19.

[81] Ferus Final Submission, para. 31. The FEU note that in this section of their argument, Ferus has again included passages from a textbook co-authored by Dr. Ware in support of its argument. Again, Ferus ought to have put that passage to Dr. Ware, and having not done so the book excerpts cannot be treated as Dr. Ware's evidence.

[82] See paras. 31 - 34.

never articulated a basis for reconsidering GT&C 12B; in fact, Ferus makes almost no mention of GT&C 12B in its submissions at all.

(f) Onus and Greater Separation

53. Ferus, like Corix and ESAC, argues that the onus is on the FEU to argue the merits of greater integration[83] and advocates "the greatest separation practical between the provision of regulated services and Natural Unregulated Services".[84] The FEU repeat and rely on the submissions above in response to Corix on the same position taken by Ferus on the "starting point" of corporate separation.[85] The FEU submit in the alternative that the Commission approved GT&C 12B would discharge the suggested onus, as the Commission is satisfied that these general terms and conditions result in an appropriate allocation of risk as between the service customer and natural gas ratepayers. The RMDM Guidelines, cited by Ferus, include as an objective that: "The most economically efficient allocation of goods and resources should be sought."[86] GT&C 12B permits this objective to be achieved.

54. Ferus is really asking the Commission to equate anything short of full separation with potential CNG/LNG market failure, without any evidence to support that inference. Fair competition and utility participation can co-exist within an appropriate regulatory framework and GT&C 12B is an example of how that can occur.

(g) CNG/LNG Fueling Service as a Natural Gas Service

55. Ferus argues that the drivers of CNG/LNG Fueling Service and TES initiatives are virtually identical, and thus CNG/LNG Fueling Service should likewise be considered a separate class of service (as in the case of TES).[87] The FEU disagree.

56. As the FEU describe in their Final Submission: (a) the CNG/LNG Fueling Service is entirely integrated with and makes use of the natural gas delivery system; (b) CNG/LNG Fueling

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[83] Ferus Final Submission, para. 105

[84] Ferus Submission, para. 95.

[85] See paras. 18 – 22.

[86] RMDM Guidelines, p. 9 (Section 4.1, Commission Objectives).

[87] Ferus Final Submission, para. 125.

Service customers pay the same rates for certain components of their bill as the corresponding natural gas rate classes; and (c) CNG/LNG Fueling Service delivers natural gas to the end-use customer in a useable form, and there is no basis to treat it any differently than delivery to any other commercial customers due only to the fact that it must be further compressed or liquefied to make it usable.[88] The important distinction between TES and CNG/LNG Fueling Service that warrants different treatment regarding the creation of a new class of service is that TES involves the use of a variety of energy sources as inputs to generate thermal energy (steam, hot water etc.), while CNG/LNG Fueling Service is an extension of the natural gas distribution system, and much more directly linked to natural gas load building than TES.

57. Ferus suggests that the FEU have admitted that the CNG/LNG Fueling Service increases business risk to the natural gas class of service, and that this results in a cross-subsidy. First, Ferus' argument presupposes that CNG/LNG Fueling Service is not part of the natural gas class of service; as described above it is an extension of the natural gas system. Second, it is difficult to see how the provision of CNG/LNG Fueling Service under GT&C 12B could ever add sufficient stranding or construction risk to unfavourably "move the [business risk] needle" (in Ferus' words) for the natural gas customers as a whole, as the rate design allocates so much of that risk to the CNG/LNG Fueling Service customer.

B. REPLY TO CLEAN ENERGY

58. Clean Energy's position in this Inquiry is that the FEU should not be allowed to participate in the CNG/LNG Fueling Service market, and should only be allowed to compete through an unregulated affiliate.[89] Clean Energy implies that a perception that the FEU are competing unfairly has caused a number of companies to avoid doing business in BC. The evidence on the latter point is confined to general statements by Clean Energy and Ferus, without any tangible examples or analysis to back-up those statements. The FEU have previously addressed how the GT&C 12B ensures a fair cost allocation. The Commission should conclude that any perception held by competitors that the FEU is competing unfairly is

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[88] FEU Final Submission, para. 192.

[89] Clean Energy Final Submission (Conclusion).

attributable to their apparent unwillingness to recognize GT&C 12B. Clean Energy is a sophisticated multinational corporation that is capable of undertaking such an assessment.

PART FIVE: BIOMETHANE SERVICE

59. In this Part, the FEU address the limited arguments of the Coalition and BCOAPO on aspects of the Biomethane service.

A. REPLY TO RENEWABLE NATURAL GAS COALITION

60. The Coalition's primary concern in the Inquiry is with FEI's approach to the ownership and operation of biogas upgrading facilities. The Coalition's central point is that "it is almost preposterous to believe that FEU, or anyone in the same situation, would procure gas from a third-party facility when it can secure both gas and a return on investment from a facility it already owns and or operates".[90]

61. The Coalition has overstated the significance of the shareholder's potential to earn on its investment in upgrading facilities. The shareholder does earn a return on its investment in the facilities, but the magnitude of the earnings is limited to the regulated rate of return on the 40% equity portion of a relatively small system investment. The investment is dwarfed by other system investments. The shareholder's overarching interest in the Biomethane program is to protect its much more significant investment in the natural gas system, and to ensure that there continues to be sufficient Biomethane available to meet growing demand. Achieving this broader objective will require the FEU to be willing to accommodate, where reasonable to do so, a developer's interest in owning the upgrading facilities.

62. The FEU's proposed guidelines for Biomethane service contemplate that the FEU will notify the Commission in circumstances where it rejects a project proponent's proposal to own and operate upgrading facilities, and explain the reasons for the decision.[91] This ensures transparency in the FEU's decision making process and Commission scrutiny of those decisions. Also, any person who feels that their supply proposal has been unreasonably rejected by FEI can complain to the Commission. The FEU submit that these safeguards are a

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[90] CRNG Final Submission, p. 3.

[91] AES Inquiry: Ex. B-2, para. 161.

more than adequate way to address the Coalition's concerns, while ensuring that the FEU retain the ability to ensure that Biomethane supply is available for its customers who desire the service.

B. REPLY TO BCOAPO

63. BCOAPO asks the Commission to modify the current approach to cost allocation for the Biomethane program so that the costs associated with making the program available to all customers be allocated to program customers only instead of all natural gas customers.[92] Biomethane rate design is best addressed as part of the post-implementation review once the two-year test period is completed.[93] The cost allocation methodology approved in the Biomethane Decision is, in any event, consistent with how these kinds of costs are treated by the Commission in programs such as Customer Choice.

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[92] BCOAPO Final Submission, para. 91.

[93] AES Inquiry: Ex. B-2, p. 70.

PART SIX: DISBURSEMENT OF EEC FUNDING

64. The issues raised by interveners in respect of EEC relate to the provision of funding for TES (ESAC and Corix) and CNG/LNG Fueling Service (Ferus). Those points are addressed below.

A. REPLY TO ESAC

(a) Third Party Administration

65. ESAC's primary rationale as to why a third party is required to administer EEC funding is that the FEU cannot be trusted, citing the FEU's correction of testimony in the 2012-2013 RRA proceeding.[94] After the evidentiary record of the RRA was closed, the FEU's EEC witness realized that some of her testimony had been incorrect. The FEU's response to this discovery was to immediately correct the record through a written filing with the Commission, circulated to all parties. The FEU submits that this conduct demonstrates integrity and honesty, and that any party looking at the situation objectively would come to the same conclusion.[95]

(b) Disclosure Statement

66. One of the suggestions made by ESAC to address their concerns with the administration of EEC funding by the FEU is the use of a disclosure statement. ESAC suggests that, at the outset of any communication between a customer seeking EEC funding regarding a TES project, the applicant should be provided with a disclosure statement that sets out the following:

> (1) there are other competitive options for AES project implementation that the customer can pursue;
>
> (2) that contracting with the FEU will not provide preferential access to EEC Funds;
>
> (3) that if the FEU has any interest in the project, any EEC Funds award must be approved by an independent panel set up by the Commission; and

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[94] ESAC Final Submission, para. 186.

[95] For more detail on this point, please see paragraphs 109 - 117 of the FEU's Reply Submission in the 2012-2013 RRA.

(4) that the customer has not been made aware by the FEU of any pending or non-approved EEC programs that have not been publicly released.[96]

67. The FEU are willing to employ a disclosure statement if the Commission considers it to be appropriate. However, the FEU do not accept the inclusion of the third bullet in a disclosure statement. ESAC's third bullet is premised on there being a third party review, which the FEU submit adds unnecessary costs for customers.[97] The FEU submit that disclosure of the first, second and fourth items in this list may be an appropriate solution for any EEC application that relates to thermal energy services regardless of energy supplier.

B. REPLY TO CORIX

68. The evidence does not support Corix's position that the DSD's sole-source selection of FEI as its service provider is evidence of a market advantage arising from EEC.[98] The DSD (the customer) has articulated a number of reasons why it selected FEI as its project partner, none of which involve access to EEC funding.[99] In any event, the FEU's proposal to undertake a third party engineering review is more than adequate[100] to address Corix's central argument that a competitive TES market is "challenged if potential customers perceive FEI to have (correctly or not) a large competitive advantage by having exclusive or preferential access to EEC incentives for TES project". The disclosure statement, whether on its own or in conjunction with the engineering review, would also be a full answer to Corix's arguments regarding the provision of EEC.[101]

69. Corix suggests that the FEU are naturally biased in their selection of alternative technologies eligible for EEC funding, again relying on the DSD Project as an example.[102] The DSD Project incorporated natural gas as a means of reducing energy costs for the customer. An

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[96] ESAC Final Submission, para. 140.

[97] FEU's Final Submission, para. 271.

[98] Corix Final Submission, p. 29.

[99] DSD Proceeding: Ex. C1-2, DSD Responses to BCUC IRs 1.1, 3.1, 3.2, 3.3, and 16.1.

[100] FEU Final Submission, para. 271.

[101] Corix Final Submission, p. 28.

[102] Corix Final Submission, p. 29.

all electric system was not workable in the circumstances.[103] Corix itself has incorporated natural gas into its UniverCity project. Natural gas is a part of these solutions because it makes sense for the customer because of the cost-effectiveness and reliability of natural gas.

C. REPLY TO FERUS

70. Ferus' submission on EEC funding is premised on the incorrect assumption that the FEU dispensed NGV-related incentives on a discriminatory basis.[104] The funding was payable to the customer, and the customer was free to self-provide fueling service or engage a third party to provide it for them. There are currently no incentives for NGVs.

[103] DSD Proceeding: Ex. C1-2, DSD Response to BCUC IR 1.13.2.1.

[104] Ferus Final Submission, paras. 149 - 154.

PART SEVEN: CONCLUSION

71. Customers have an interest in regulatory oversight of *ex post* monopolies. That interest extends to ensuring that the costs of operating the utility business are allocated to the correct customer groups, and also in ensuring that the utility operates efficiently. The customer groups who have intervened in this Inquiry have supported the regulation of the New Initiatives. They share the FEU's view on the importance of appropriate cost allocation and rate design. There is also recognition among the customer groups that, in putting forward a regulatory and corporate model, the FEU are seeking to ensure that economies of scope associated with offering these New Initiatives using existing utility resources continue to benefit customers.

72. The Commission has approved rate structures for TES (GT&C 12A and the TESDA), CNG-LNG Fueling Service (GT&C 12B, as amended to reflect the directions of the Commission), and Biomethane Service (the pilot program) that form an appropriate basis for providing the New Initiatives going forward based on an appropriate cost allocation. Dr. Ware's evidence confirms that achieving economies of scope for the benefit of customers is not only fair, but is the most efficient result.

73. The competitors who have intervened would have the Commission conclude that one must choose between, on the one hand, inefficient and costly regulation, or on the other hand efficient exemptions and cheap, low risk service. However, the evidence does not support the position of the competitors. The form of regulation can be adjusted for particular circumstances to ensure it is cost effective. Cost of service regulation and performance based contracts have different attributes that will appeal to different customers; contracts under both models are intended to recover the cost of service, but represent a different price-risk trade-off.

74. The fundamental submission of the FEU in this proceeding, which the evidence supports, is that it is possible to allocate costs appropriately, achieve economies of scope for

the benefit of customers, and regulate efficiently under the framework for New Initiatives put forward by the FEU.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: April 24, 2012

[original signed by Matthew Ghikas]
Matthew Ghikas
Counsel for the FEU

Dated: April 24, 2012

[original signed by David Curtis]
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